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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
STATE OF ILLINOIS

GORDON RANDY STEIDL,)
Plaintiff,)
vs.) No. 05-CV-2127
CITY OF PARIS, Present and Former)
Paris Police Officials Chief Gene)
Ray and Detective James Parrish;)
former Illinois State Trooper Jack)
Eckerty; former Edgar County)
State's Attorney Michael McFATRIDGE;))
EDGAR COUNTY; and Illinois State)
Police Officials Steven M. Fermon,)
Diane Carper, Charles E. Brueggemann))
Andre Parker and Kenneth Kaupus,)
Defendants.)

-----)
HERBERT WHITLOCK,)
Plaintiff,)
vs.) No. 08-CV-2055
CITY OF PARIS, Present and Former)
Paris Police Officials Chief Gene)
Ray and Detective James Parrish;)
former Illinois State Trooper Jack)
Eckerty; former Edgar County)
State's Attorney Michael McFATRIDGE;))
EDGAR COUNTY; and Illinois State)
Police Officials Steven M. Fermon,)
Diane Carper, Charles E. Brueggemann))
Andre Parker, Kenneth Kaupus and)
Jeff Marlow; and Deborah Rienbolt,)
Defendants.)

DEPOSITION OF MICHAEL MCFATRIDGE
August 19 and 20, 2009

Deann Parkinson: CSR # 084-002089
June Haeme: RMR, CRR, CSR # 084-003038
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Jack Eckerty
Randy Steidl
Herbert Whitlock

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STIPULATION

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED by and between the parties that the deposition of MICHAEL McFATRIDGE may be taken on August 19th and 20th, 2009, at the offices of Area Wide Reporting Service, 301 West White Street, Champaign, Illinois, pursuant to the Rules of the Federal Court and the Rules of Federal Procedure governing said depositions.

IT IS FURTHER STIPULATED that the necessity for calling the Court Reporter for impeachment purposes is waived.

1 (Whereupon the deposition began at 10:04 AM.)

2 MICHAEL McFATRIDGE,
3 the deponent herein, called as a witness, after
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. TAYLOR:

7 Q. Your name, sir?

8 A. Michael Matthew McFatrige.

9 Q. And you are the same McFatrige who is
10 the defendant in these two lawsuits that are here
11 today, is that right?

12 A. Yes.

13 Q. And sir, what is your present occupation?

14 A. I'm a staff attorney with the VA office,
15 regional counsel that is the VA, being the United
16 States Department of Veterans Affairs.

17 Q. Where do you work?

18 A. Our main office is at Heinz, Illinois. I'm
19 outstationed at Danville, Illinois, the medical
20 center there. I also handle the medical center down
21 in Marion, Illinois.

22 Q. How long have you been working there?

23 A. Since December of 1996.

24 Q. And before that where did you work?

1 A. Before that I was a partner with Manion,
2 Devens and McFetridge M-C-F-E-T-R-I-D-G-E. And
3 their main office was out of Danville, Illinois.
4 They also had a satellite office in Paris, Illinois.

5 Q. And for how long did you work in that
6 partnership?

7 A. It would be -- let's see; January of '92
8 to December of '96. So, about five years.

9 Q. And were you a partner in that law firm?

10 A. Yes.

11 Q. And did you say that it was a different
12 McFatridge there as well?

13 A. It was a John D. McFetridge. I'm spelled
14 M-C-F-A-T-R-I-D-G-E. And his name was John D
15 capital M-C-F-E-T-R-I-D-G-E. There is no relation.

16 Q. Where do you presently reside?

17 A. Paris, Illinois.

18 Q. Pardon me?

19 A. Paris, Illinois.

20 Q. And you work out of the Danville office?

21 A. Of the VA?

22 Q. Yes?

23 A. Primarily.

24 Q. And you own your house in Paris?

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A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED] [REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED] [REDACTED]

[REDACTED]

A. [REDACTED] [REDACTED]

[REDACTED]

Q. [REDACTED]

[REDACTED] [REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

[REDACTED]

A. [REDACTED]

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Q. [REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

[REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED] [REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

[REDACTED]

MR. MANCINI: Objection to foundation.

A. [REDACTED]

Q. [REDACTED]

1 [REDACTED]

2 A. [REDACTED]

3 Q. [REDACTED]

4 A. [REDACTED]

5 Q. [REDACTED] [REDACTED]

6 A. [REDACTED]

7 Q. [REDACTED]

8 [REDACTED]

9 A. [REDACTED]

10 Q. [REDACTED]

11 A. [REDACTED]

12 Q. [REDACTED]

13 [REDACTED]

14 A. [REDACTED]

15 Q. [REDACTED]

16 A. [REDACTED]

17 Q. [REDACTED]

18 A. [REDACTED]

19 Q. [REDACTED]

20 A. [REDACTED]

21 Q. [REDACTED]

22 A. [REDACTED]

23 Q. [REDACTED]

24 A. [REDACTED]

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[REDACTED]

[REDACTED]

Q. Now, you know Mr. Eckerty, is that correct?

A. That's correct.

Q. He is the man in the blue shirt here?

A. Yes.

Q. All right. When is the last time you spoke with him?

A. I would say a few months ago.

Q. All right. And what was the circumstances in talking with him two months ago?

MR. MANCINI: Objection as to form. He said a few months ago.

Q. I'm sorry, a few months ago?

A. Really just called to tell me that Deborah Reinbolt was going to be deposed, and that he intended to, I can't remember if he was going to listen to it or whatever he was going to do. And wanted to know if I was interested, and I wasn't.

Q. Did he tell you that his deposition was about to be taken?

A. I don't recall.

1 Q. All right. Well, did you discuss any
2 substance, in terms of the issues in this case when
3 you spoke with him a few months ago?

4 A. No.

5 Q. And before that, when is the last time you
6 spoke with him?

7 A. A year.

8 Q. What was the circumstances of speaking to
9 him a year ago?

10 A. Basically we just periodically commiserate
11 with each other, discussing how hard this lawsuit is
12 on our families. Discussed about our disappointment
13 with the criminal justice system, letting guilty
14 people go free. That we hope this thing gets over
15 with.

16 Q. Okay. So you and he commiserate on the
17 fact that you got sued for putting Mr. Steidl and
18 Mr. Whitlock behind bars for the rest of their lives
19 and on Death Row, is that what you're saying?

20 MR. MANCINI: Objection as to form.

21 A. The jury did that.

22 Q. You were the prosecutor, weren't you?

23 A. That's correct.

24 Q. You put on the evidence, didn't you?

1 A. That's correct.

2 Q. You investigated this case for over a
3 year, didn't you?

4 A. I didn't investigate. I was the
5 prosecutor.

6 Q. You were also an investigator, weren't
7 you?

8 A. No.

9 Q. You deny that you were involved in
10 investigative activities prior to the indictment and
11 charge of our clients?

12 MR. MANCINI: Objection as to form.

13 A. My involvement would be that as a
14 prosecutor, as a legal adviser.

15 Q. Okay. When you talked to Mr. Eckerty
16 about the vagaries or the disappointments of the
17 legal system in letting guilty people go free, do
18 you have specific instances that you talk about?

19 MR. MANCINI: Objection as to form and
20 foundation.

21 A. I really don't understand the question.

22 Q. Well, let me ask you directly. When you
23 talk about guilty men going free, you're talking
24 about Whitlock and Steidl?

1 MR. MANCINI: Objection as to foundation.

2 A. Yes.

3 Q. All right. And what do you and Eckerty
4 talk about, in terms of guilty people going free
5 with regard to Whitlock and Steidl?

6 MR. MANCINI: Objection as to foundation.

7 A. Talked about that the -- these types of
8 lawsuits where there's allegations of prosecutorial
9 misconduct and/or police misconduct involve cases
10 where there was an allegation of coerced confession,
11 manufactured evidence, physical evidence that
12 exonerates someone.

13 Someone else has confessed to the crime. None of
14 which are here. And quite frankly, we discuss we
15 just don't understand why, what the basis of the
16 lawsuit is.

17 Q. You don't discuss the fact that you had
18 two witnesses who even Eckerty later has conceded
19 were incredible?

20 MR. MANCINI: Objection to form.

21 A. I don't know what he would have said.

22 Q. Didn't discuss that with him?

23 MR. MANCINI: Objection to form.

24 A. No.

1 Q. No?

2 A. No.

3 Q. You know Jeff Marlow, sitting here?

4 A. Yes.

5 Q. When is the last time you spoke with
6 him?

7 A. Would have been at a meeting in
8 Springfield at the Appellate Prosecutor's office.

9 Q. And when was that?

10 A. Two or three years ago.

11 Q. And what was the purpose of your being
12 there?

13 A. Appellate Prosecutor was having a meeting
14 to discuss the status of the prosecution of Whitlock
15 and/or Steidl. And invited me to come. I said, you
16 know, if anybody is uncomfortable about that, I
17 don't need to be there. But invited me to be there.

18 Q. Could you give us a little more firm date?
19 Two or three years ago?

20 A. I really can't.

21 Q. Are we talking about the year 2006, 2007?

22 A. I really can't.

23 Q. All right. Who was the special prosecutor
24 who invited you to come?

1 A. Well, people that were there would have
2 been Pat Delfino and Mike Vujovich. Ed Parkinson.

3 Q. How about Rands?

4 A. I don't recall him being there.

5 Q. You had quite a bit of e-mail and other
6 contact with Rands and the special prosecutors
7 office before they invited you to come, right?

8 A. It's Appellate Prosecutor. Not a special
9 prosecutor.

10 Q. Do you understand my question? I'm sorry
11 that I misspoke, but you understand who I'm talking
12 about?

13 A. It's the Appellate Prosecutor.

14 Q. And you had quite a bit of contact with
15 that office, didn't you?

16 A. Yes.

17 MR. MANCINI: Objection to form.

18 A. Yes.

19 Q. Right? And you had quite -- you were
20 e-mailing Rands and others, is that right?

21 MR. MANCINI: Objection to form,
22 foundation.

23 A. Yes.

24 Q. And when did you start having contact with

1 the Appellate Prosecutor?

2 A. Well, it would have been at some point
3 where they would have handled any of the
4 post-conviction matters. But, I don't recall -- the
5 Attorney General handled a lot of it. The Appellate
6 Prosecutor handled X amount.

7 Q. Well, about what year was it?

8 A. Could have been right after the trials.
9 I mean, could be years.

10 Q. Okay. Sometime in '88, '89, is that when
11 you are saying?

12 MR. MANCINI: Objection to form
13 foundation.

14 A. Depending on what entity was handling the
15 post-conviction matter.

16 Q. What entity was handling it?

17 A. Either the Attorney General's office or
18 the Appellate Prosecutor.

19 Q. Well, at some point in 2003 the Attorney
20 General -- strike that. The federal court granted
21 Mr. Steidl's habeas corpus, is that right?

22 A. Yes.

23 Q. Were you in contact with the Attorney
24 General's office at that time?

1 A. Possibly.

2 Q. Okay. Well, let's mark this as Exhibit
3 No. 1, McFatrige Exhibit No. 1.

4 MR. MANCINI: For those on the phone, it's
5 entitled Mike McFatrige's Response For Production
6 of Documents. No Bates label. No date on that
7 either.

8 (Whereupon, Deposition Exhibit No. 1 was
9 marked for identification.)

10 BY MR. TAYLOR:

11 Q. I want to call your attention to page, the
12 seventh page, it's called McFatrige Privilege Log.
13 Do you want to turn to that, please? It looks like
14 this.

15 Now, this is a privilege log with items
16 starting in March 23, 2004, and it goes on for some
17 ten pages or so. The last entry is CPU used by
18 McFatrige during the relevant time period.
19 Data is presently inaccessible due to the
20 outdated nature of the operating system. Do you see
21 the document, portion of this document I'm referring
22 to?

23 A. Yes.

24 Q. All right. Now, did you participate in

1 the compiling of this work product privilege log?

2 A. Only in producing the items that are
3 listed.

4 Q. All right. So, the materials that are
5 listed in these ten pages are materials that were or
6 are in your possession, is that correct?

7 A. If I may look at the list.

8 Q. Rather than have you having to look at
9 each other, let's look at it together. First is a
10 letter dated March 23, 2004, from you to Mandeltort
11 regarding continued prosecution. Do you see that?

12 A. Yes.

13 Q. Is that a letter you had and produced to
14 your counsel?

15 A. Not by direct memory. If that's what it
16 purports to be.

17 Q. Well, were you in touch with Miss
18 Mandeltort in March of 2004 concerning the continued
19 prosecution of Randy Steidl?

20 MR. MANCINI: Objection to form.

21 A. The correspondence will speak for
22 itself. I mean, I can't be specific about the
23 dates.

24 Q. All right. Forget the date for a moment.

1 Were you in touch with Miss Mandeltort concerning
2 the continued prosecution of Randy Steidl?

3 A. Yes.

4 Q. Were you urging her to continue the
5 prosecution of Randy Steidl?

6 MR. MANCINI: Objection to form,
7 foundation.

8 A. Actually, I was in touch with Miss
9 Mandeltort, if I recall, the emphasis was on the
10 reason that the Attorney General should appeal the
11 decision of the federal magistrate. And if I
12 recall, I even put in there specifically that I
13 said, you know, I can understand where some entity
14 may be reluctant to re prosecute, but that I couldn't
15 understand why an entity would be reluctant to
16 appeal, especially due to the Illinois Attorney
17 General, whose duty it is to defend the integrity of
18 the Illinois courts.

19 MR. MANCINI: I'm going to interpose an
20 objection at this point.

21 Q. You are interrupting your own witness.
22 Would you let him finish?

23 A. I'm done.

24 MR. MANCINI: I thought he was done.

1 Q. You were done in mid-sentence?

2 A. Yeah.

3 MR. MANCINI: I just want to interpose an
4 objection. The content of those letters obviously
5 are work product and we have asserted privilege on
6 those. If you are going to ask him as a method for
7 refreshing his recollection of particular dates of
8 the privilege log, okay. But if you ask him to get
9 into the content of the letters, obviously that is
10 going to be privileged at least as we asserted to
11 this point. I just want to state that objection up
12 front as we start to go through these itemizations.

13 MR. BALSON: Phil, can you indicate to us
14 your work product?

15 MR. MANCINI: Phil?

16 MR. BALSON: How they are work product?

17 MR. MANCINI: I'm not going to do that in a
18 deposition.

19 BY MR. TAYLOR:

20 Q. It's okay. We can deal with that later.
21 I'm looking here, now the first two pages,
22 apparently somebody went in the reverse
23 chronological order. Starting in September of '93
24 and going through March of 2004, if you look at the

1 bottom of page two, it says letter dated September
2 16th, 1993, from McFatriidge to Attorney General
3 regarding status of post-conviction matters. Right?
4 Do you see that one on the second page at the
5 bottom?

6 A. Yes.

7 Q. Now, did you tell us as of 1992 you were
8 no longer working for the State of Illinois as a
9 prosecutor, right? Is that correct?

10 A. Yes. January of '92.

11 Q. So, you were in private practice in '93?
12 Right?

13 A. Right.

14 Q. And so when you were talking to the
15 Attorney General in '93 concerning status of
16 post-conviction matters, you were dealing with the
17 status of post-conviction matters of Randy Steidl,
18 is that correct?

19 MR. MANCINI: Objection form and
20 foundation. Again, are we getting into the content
21 of the letters, Flint?

22 A. Could have been either one of them.

23 Q. Okay. So, it could have been either
24 Whitlock, Steidl or both, is that correct?

1 A. Presumably.

2 Q. All right. And what were you talking
3 about with the Attorney General in 1993 concerning
4 the status of post-conviction matters?

5 MR. MANCINI: Going to assert an
6 objection as to work product. Instruct him not to
7 answer in light of the fact we have a privileged log
8 that has not been in any way, shape or form
9 challenged.

10 Q. I'm not asking him about the letter.
11 I'm asking him about his conversation with the
12 Attorney General. That certainly would not be work
13 product. He is no longer working for the State of
14 Illinois. How could that be work product?

15 MR. MANCINI: Objection form and
16 foundation. Again, if you're talking about a
17 telephone conversation, that's a different issue
18 than what's in this privilege log. I think you can
19 rephrase your question in a manner which is
20 consistent with that.

21 Q. I think the question is clear, but if the
22 witness doesn't understand what I'm asking him --
23 I'm asking you in 1993, in the fall of 93 it
24 indicates that you had two letters. One from you

1 and a response from the Attorney General in this
2 log. Now, what I'm asking you is, generally
3 speaking you were in contact with the Attorney
4 General during the fall of 1993 concerning Mr.
5 Steidl and/or Mr. Whitlock's post-conviction
6 matters, am I correct?

7 A. Well, the letters would be indicative of
8 some contact.

9 Q. And in fact, in 1993, even though you were
10 in private practice you were still concerned that
11 the convictions of Mr. Steidl and Mr.
12 Whitlock stand, weren't you?

13 MR. MANCINI: Objection as to form and
14 foundation.

15 A. Having just left the prosecutor's office,
16 I still had a good relationship with the Appellate
17 Prosecutor, and the Attorney General, and knew a
18 number of these individuals that were handling the
19 case. And I certainly didn't think it was untoward
20 for the prosecutor who handled the matters that were
21 still currently on appeal or whatever, to keep in
22 contact, and vice-versa. If they had questions for
23 me or vice versa. I didn't see anything unusual
24 about that.

1 Q. Well, and in fact, is it not true that you
2 consistently, from the day that you first sought --
3 well, strike that.

4 Since you've been in private practice and
5 working for the government, that is no longer
6 working for the State's Attorney office, you have
7 continued to have input into Steidl and Whitlock's
8 cases from that time in the early nineties to the
9 present, isn't that correct?

10 MR. MANCINI: Objection to form.

11 A. I've continued to have communications.
12 I wouldn't indicate that it was input.

13 Q. Well, what were you talking about with the
14 Attorney General regarding the post-conviction
15 matters in 1993?

16 MR. MANCINI: Going to object and assert
17 the work product privilege at this time.

18 Q. Did you have any conversations outside the
19 two letters? Not communications in 1993 with the
20 Attorney General concerning the post-conviction
21 matters of Steidl and Whitlock?

22 A. I don't specifically recall any.

23 Q. Do you recall what in fact you were
24 talking about with regard to post-conviction

1 matters?

2 MR. MANCINI: Again going to object, assert
3 the work product privilege at this time.
4 You don't have to answer.

5 Q. Are you asserting a work product
6 privilege?

7 MR. MANCINI: That's what I said.

8 Q. I'm asking him? Are you following your
9 counsel's advice and following the -- in asserting
10 the work product privilege?

11 A. I will follow my counsel's advice.

12 Q. All right. Could you tell us why you
13 consider, you are an attorney, you are a former
14 State's Attorney, you are now a private practitioner
15 or Government practitioner, could you please explain
16 to me how that is privileged?

17 MR. MANCINI: Objection to form and
18 foundation. You don't have to answer that.

19 MR. BALSON: That is also my question.
20 You are asserting an objection here. The objection
21 seems to be to work product. And I don't understand
22 how a private citizen can be involved in a work
23 product privilege. That doesn't make any sense to
24 me either.

1 MR. MANCINI: Thank you. I don't have to
2 respond to that. This isn't a court of law.
3 There is no judge before us.

4 MR. BALSON: We can get the judge on the
5 phone. We can clear this up.

6 MR. MANCINI: Should have cleared it up
7 months ago. This has been a privilege in existence.

8 MR. BALSON: Don't tell me what I should
9 have done. You are asserting a privilege, and
10 instructing a witness not to answer at a deposition.

11 MR. MANCINI: That's correct.

12 MR. BALSON: What I'm indicating is at
13 least for the basis of our understanding here before
14 we take it further you can tell us what the -- your
15 foundation is for such an objection when he is a
16 private citizen.

17 MR. MANCINI: I'm telling you I don't
18 testify at depositions.

19 BY MR. TAYLOR:

20 Q. Now, with regard to your conversations
21 with the Attorney General in 1993, please tell us
22 the substance of those conversations?

23 MR. MANCINI: Again going to object. If you
24 are asking for general substance they are outlined

1 in the privilege log. If you want to ask him --

2 MR. TAYLOR: I'm talking about -- I asked
3 him not the letters, I'm asking him about
4 communications other than the letters.

5 MR. MANCINI: He indicated he didn't recall
6 any communications, so I'm going to object to form
7 and foundation.

8

9 BY MR. TAYLOR:

10 Q. You may answer.

11 A. Again, I don't have any specific
12 recollections about any conversations presuming
13 other than whatever was pending.

14 Q. All right. The next entry going up is a
15 letter dated March 22, 1995, from Attorney General
16 to Allan Lolie, considering outcome of appeal in
17 Whitlock matter. Now, Allan Lolie was your
18 successor in Edgar County, am I correct or
19 incorrect?

20 A. That is correct.

21 Q. And was he elected in 1992 by the county?
22 Was he the State's Attorney?

23 A. He would have been elected in '92.

24 Q. All right. Did you run against him or did

1 you choose not to run in '92?

2 A. I left, I resigned a year early to join
3 the law firm that we talked about, was offered a
4 partnership in the law firm. So, I resigned a year
5 early, and --

6 Q. Excuse me, go ahead?

7 A. I resigned and that thing was effective if
8 I recall like December 31st of '91. And then Mr.
9 Lolie was appointed by the county board to the
10 remainder of my term. And then he was elected in
11 '92.

12 Q. Did you have an assistant state's attorney
13 in '91?

14 A. In '91?

15 Q. Yeah.

16 A. I would say yes. I can't -- we had -- I
17 mean, we had Jen Roytech at one point. And then
18 Heidi, I think Gist at one point.

19 Q. All right.

20 A. Then Alan Bell came back at one point. You
21 would have to look at the county for exact dates.

22 Q. Now, in 1995, did you receive a copy of
23 this letter from the Attorney General to Allan
24 Lolie? Is that why it's on your privileged log?

1 MR. MANCINI: Objection as to form. He
2 doesn't have to testify as to why it's on the
3 privileged log. It's attorney client communication.
4 You can ask him a better question. You don't have to
5 answer, Mike.

6 Q. Are you instructing him not to answer?

7 MR. MANCINI: Yeah, you are asking him why
8 something is on the privileged log. That is
9 attorney client communication.

10 Q. Is this letter a letter that you had a
11 copy of on or about March or April of 1995?

12 MR. MANCINI: Yes, you can answer.

13 A. Apparently.

14 Q. And are you familiar with the contents of
15 that letter?

16 A. I have no specific recollection of the
17 contents of the letter.

18 Q. Do you know generally why you were in
19 communication with Allan Lolie, if you were, or the
20 Attorney General two years later in 1995?

21 MR. MANCINI: Objection to form.

22 A. Apparently about the outcome of the
23 appeal in the Whitlock matter.

24 Q. Can you tell me anything more than that?

1 MR. MANCINI: Objection, going to assert
2 the work product privilege as it indicates on the
3 privilege log. You don't have to answer that.

4 Q. All right. So you are following the
5 instruction of your lawyer?

6 A. Yes.

7 Q. Now, in May of 1995, the next entry is a
8 letter from you to Jim Ryan regarding impression of
9 claims made in post-conviction matters. Now, am I
10 correct that Jim Ryan was the Attorney General of
11 the State of Illinois in May of 1995?

12 A. I would guess.

13 Q. All right. And were you in communication
14 with Jim Ryan concerning the -- your impressions of
15 claims made in the post-conviction matters?

16 A. My only recollection is what's stated in
17 the log.

18 Q. Do you have any recollection of any more
19 communications other than a letter that you sent to
20 Ryan concerning your impression of claims made in
21 the post-conviction matters?

22 A. That's what's in the log.

23 Q. Is it fair to say that you initiated
24 communication with Jim Ryan by letter dated May 30th

1 concerning your impression of claims made in
2 post-conviction matters?

3 A. No.

4 Q. All right. Then who, did he contact you
5 first?

6 A. I couldn't tell you who contacted who.

7 Q. Well, he certainly wasn't handling the
8 litigation personally, was he?

9 MR. MANCINI: Objection form and
10 foundation. Calls for speculation. If you can
11 answer.

12 A. His people were, and I may have copied his
13 people or may have referenced his people in the
14 letter.

15 Q. Do you have any knowledge of why you wrote
16 directly to Jim Ryan rather than to the Attorney
17 General assistant that was handling the
18 post-conviction matter, if there was an Attorney
19 General handling it?

20 A. The reason?

21 Q. Yeah.

22 A. Because I knew Jim Ryan when he was
23 State's Attorney. We were both State's Attorneys
24 together.

1 Q. So you had a personal relationship with
2 Jim Ryan, is that right?

3 A. Well, I wouldn't call it personal. We had
4 a working relationship. I mean, we were State's
5 Attorneys at the same time.

6 Q. Well, you wrote, it looks to me like you
7 wrote him May 30th. You wrote him again on August
8 3rd and you wrote him again on October 3rd of '95.
9 And all of those had to do with post-conviction
10 matters and evidence in the Steidl case, correct?

11 MR. MANCINI: Going to object to the form.
12 I'm trying to follow the dates.

13 Q. May 30th, August 3rd and October 3rd.

14 A. Well, the October 3rd letter specifically
15 references Steidl. August 3rd specifically
16 references Steidl. May 30th letter does not. So, I
17 can't say about that one.

18 Q. I think my question was, you were in
19 contact on three occasions in 1995, you wrote Jim
20 Ryan concerning either post-conviction matters in
21 general in the Steidl and Whitlock cases, or the
22 evidence in those cases, am I right?

23 A. I can only say what the -- I guess the
24 summary of the work product is. I don't know what

1 was in the letters.

2 Q. And was not your intent at that time to
3 assist in any way that you could in making sure that
4 Steidl's post-conviction petition was not granted by
5 the court?

6 MR. MANCINI: Objection to form.

7 A. My intent was a continuing, in my mind,
8 continuing duties as State's Attorney, prosecutor,
9 whatever you want to say, was to make sure that the
10 attorneys handling the matter were fully informed.

11 Q. Well, you wouldn't contact Jim Ryan to
12 fully inform the attorneys that were handling the
13 case now, would you?

14 MR. MANCINI: Objection form and
15 foundation.

16 A. Yes, I would. I don't know what else -- I
17 mean, I didn't have any political influence over him
18 if that's what you're asking.

19 Q. Well, you told us earlier that you
20 certainly still believed that Steidl and Whitlock
21 are guilty, right?

22 A. I still believe that, yes.

23 Q. And you certainly were doing everything
24 that you could to make sure that these guilty men

1 stayed in jail, right?

2 MR. MANCINI: Objection form and
3 foundation.

4 A. I would do what I legally could do.

5 Q. Okay. And one of the things that you
6 could legally do is call up and write the Attorney
7 General of the State of Illinois and let him know
8 that your feeling was that these guilty men should
9 stay in jail and these are the reasons why, isn't
10 that correct?

11 MR. MANCINI: Objection form and
12 foundation.

13 A. I don't know what's in the letters. It
14 could have been merely saying these were the facts
15 introduced at trial.

16 Q. I'm asking what was in your mind, sir? Not
17 what was in the letters.

18 A. What was in my mind?

19 Q. Yes. What was your intent in contacting
20 the Attorney General of the State of Illinois on
21 three occasions in 1995 to talk about Steidl's case
22 and perhaps Whitlock's case as well?

23 MR. MANCINI: Objection, been asked and
24 answered. He indicated it was to inform the

1 attorneys now handling the case as to the facts and
2 other information that he was privy to as State's
3 Attorney. If you would like to answer again, you
4 can answer again.

5 Q. If you would like to testify that's fine.
6 You are trying to interject yourself with a bogus
7 privilege, now you're trying to testify for him.

8 MR. MANCINI: I said he can answer. You
9 can answer the question again.

10 A. As I said before, my intent was to insure
11 that the Attorney General, again, was fully
12 informed. I mean, legally, evidentiary.

13 Q. Well, were you telling him about the
14 evidence that you didn't produce at trial?

15 MR. MANCINI: Objection form and
16 foundation. Are we talking about the letters?
17 Are we talking about some other communication?
18 Because if we are talking about the letters, we're
19 going to assert the work product privilege.

20 Q. Talking generally.

21 MR. MANCINI: Thank you.

22 A. Well, in my opinion we have fully
23 disclosed.

24 Q. So, you were telling him evidence that

1 supported the convictions, not evidence that
2 undercut the convictions, am I right?

3 MR. MANCINI: Again I have to object, form
4 and foundation. Are we talking about what's in the
5 letters? Are we talking about other communications?
6 If you don't clarify that, I'm going to instruct him
7 not to answer because you can interpret that to be
8 something within the letter, thereby waiving the
9 product privilege. Please clarify your question.

10 Q. You may answer.

11 MR. MANCINI: You don't have to answer.
12 He has to ask a better question.

13 A. I don't know what you're asking.

14 Q. Were you informing the Attorney General of
15 the State of Illinois of all the evidence in the
16 case, including evidence that undercut the
17 convictions, or simply were you informing him of
18 evidence that supported the convictions?

19 MR. MANCINI: Object to the form and
20 foundation. Are we talking about the letters that
21 are identified in the privilege log as being the
22 basis of communication?

23 Q. I'm talking generally, and all my
24 questions have been in that regard.

1 MR. MANCINI: Generally is a difficult way
2 to pose a question in this nature given the
3 privilege asserted. I'm simply asking you to say,
4 is it communications that you had over the phone? Is
5 it communications you had in these letters?
6 See we can preserve that privilege until it's hashed
7 out in court, which I assume is going to be done.

8 Q. Other than with the letters?

9 MR. MANCINI: Do you remember the question?

10 Q. Were you informing the Attorney General of
11 the State of Illinois of evidence that
12 undercut the convictions, or simply the evidence
13 that supported them?

14 A. I can't recall.

15 Q. Okay. Now, in November of -- excuse me.
16 In July of '98 you sent a memorandum to Paul Casey
17 regarding the strategy and assistance on the
18 post-conviction. Now that is Steidl's
19 post-conviction, is it not?

20 A. I can't tell you.

21 Q. Who is Paul Casey?

22 A. My recollection he's with the Attorney
23 General.

24 Q. And so you were at least offering to

1 strategize with Mr. Casey concerning his defense of
2 Mr. Steidl's -- against Mr. Steidl's
3 post-conviction, is that correct?

4 MR. MANCINI: Objection form and
5 foundation. If you are seeking for what the
6 particular letter says it's work product privilege.

7 A. The heading is what it says.

8 Q. Did you meet with Mr. Casey in 1998 to
9 discuss strategy and assistance on Mr. Steidl's
10 post-conviction?

11 A. Through the years I did meet with Attorney
12 General's, assistant Attorney General's.

13 Q. Well, did you meet with Casey?

14 A. I can't tell you if I met with him or not.

15 Q. Would the letter assist in refreshing your
16 recollection as to what you discussed with Paul
17 Casey concerning the strategy and assistance on
18 post-conviction?

19 MR. MANCINI: I'm going to assert the work
20 product privilege as to what was discussed with Mr.
21 Casey at the time.

22 Q. I'm only asking for him to refresh his
23 recollection.

24 MR. MANCINI: Just making a record.

1 Q. It does matter, because that is in fact an
2 issue that goes to the work product privilege.

3 MR. MANCINI: I'm just asserting the
4 objection. He can answer the question if he can
5 recall.

6 A. I can't tell you if a document is going to
7 refresh my recollection unless I see the document.

8 Q. Right. And I can't show it to you unless
9 I have it, can I? I withdraw the question.

10 MR. MANCINI: Thank you.

11 Q. Have you looked at these letters in
12 preparation for this deposition?

13 A. No.

14 Q. What have you looked at in preparation for
15 this deposition?

16 A. Looked at a copy of my testimony at a
17 Steidl post-conviction matter. I looked at two
18 affidavits that I signed in post-trial matters.
19 And a letter regarding a plea proposal to Ron Tulin
20 regarding Mr. Whitlock on a pending matter that he
21 had.

22 Q. Anything else?

23 A. No.

24 Q. No?

1 A. (Witness shook head.)

2 Q. You have to answer yes or no?

3 A. I said no.

4 Q. And then in '99, you were in contact again
5 with Jim Ryan himself? He was still Attorney
6 General at that time I take it?

7 A. I don't know when he was Attorney General.

8 Q. Well, you were in contact with him
9 concerning your assisting on the appeal, is that
10 correct?

11 A. I can only indicate what the heading is on
12 the work product log.

13 Q. Well, does that refresh your recollection
14 that you were in contact with Jim Ryan in 1999
15 concerning assisting on either Whitlock or Steidl's
16 appeal?

17 A. Only to the extent that's in the heading
18 on the work product log.

19 Q. And would the letter refresh your
20 recollection as to your communication with Jim Ryan
21 in 1999?

22 A. I would have no idea.

23 Q. Now, in August of 2002 you now are in
24 contact with the special, the state Appellate

1 Prosecutor office regarding advice and strategy on
2 appeals, is that correct?

3 A. Can only respond to what is in the heading
4 of the work product.

5 Q. Did you have any other contact with Jim
6 Ryan in 1999 or at any other time concerning
7 assisting him or his office on appeals or on
8 post-conviction matters?

9 MR. MANCINI: Objection form and
10 foundation.

11 A. I don't have any specific recollection of
12 such.

13 Q. Do you have any general recollection of
14 communications with Jim Ryan outside of these
15 letters?

16 A. I've had communications with assistant
17 Attorney General's throughout the years. And I can
18 not tell you specific dates.

19 Q. I'm asking about Jim Ryan, the Attorney
20 General.

21 A. I don't recall ever speaking to Jim Ryan,
22 the Attorney General.

23 Q. About these cases?

24 A. Right.

1 Q. All right. In 2002 you wrote the state
2 Appellate Prosecutor office regarding advice and
3 strategy on appeals, is that correct?

4 MR. MANCINI: Objection, asked and
5 answered. Answer again.

6 A. Okay. As I said before, I can only state
7 what's in the heading of the work product log.

8 Q. Well, in 2002 was the state Appellate
9 Prosecutor office not handling the appeals of
10 Whitlock and Steidl's cases?

11 A. That would be the fair inference.

12 Q. And in fact, were you in touch with the
13 state Appellate Prosecutor office concerning advice
14 and strategy?

15 MR. MANCINI: Objection to the form.
16 Other than this letter? Or as evidenced in the log?
17 You can answer.

18 A. I had conversations with the Appellate
19 Prosecutor office.

20 Q. And what was the substance of those
21 conversations?

22 MR. MANCINI: Going to object to the
23 substance of those conversations as they are work
24 product privilege.

1 Q. Could you tell us what work product this
2 man had with the Appellate Prosecutor office in
3 2002?

4 MR. MANCINI: Yes, he is providing as noted
5 in the log advice and strategy on appeals.

6 MR. BALSON: Vince, is it your position
7 that he was in some official capacity when he was
8 doing this? Was he engaged by the State of Illinois
9 or retained or working for the State of Illinois at
10 that time?

11 MR. MANCINI: Ron, I'm not going to testify
12 to that.

13 MR. BALSON: It's appropriate for me to ask
14 you the basis for your objection.

15 MR. MANCINI: Not at my client's
16 deposition.

17 MR. BALSON: Of course it is. It's a
18 deposition question. You are instructing him not to
19 answer.

20 MR. MANCINI: The federal rules of
21 discovery have the methodology for raising these
22 objections and making these inquiries. They are not
23 to be made in a deposition of my client. If you had
24 issues with them, you could have sent me rule,

1 rederal rule letters.

2 MR. BALSON: Vince, you're objecting at
3 this time to questions to your witness at a
4 deposition. It's appropriate for us to ask you what
5 the basis for those objections are.

6 MR. MANCINI: Work product privilege.

7 MR. BALSON: What is the work product
8 privilege and how are you asserting it?

9 MR. MANCINI: I'm asserting it on behalf of
10 my client. I don't understand what you are asking?

11 MR. BALSON: But your client is not the
12 State of Illinois. What is his standing to assert
13 that?

14 MR. MANCINI: Again, it's an assertion we
15 have made in discovery answers.

16 MR. BALSON: No, we're talking now about
17 your answers to doing right now at this table.

18 MR. MANCINI: I'm not going to debate this
19 and waste time at this deposition. You have two
20 days of depositions. Take the deposition.

21 MR. TAYLOR: Well, we will be back I'm sure
22 on these letters if we get them produced.

23 MR. MANCINI: Should have done it a long
24 time ago if you had an issue.

1 BY MR. TAYLOR:

2 Q. Shoulda, woulda, coulda; you should have
3 produced these instead of asserting a bogus
4 privilege.

5 Now, in 2002 you are also in touch with
6 the Department of Corrections regarding clemency,
7 December 18th of 2002, am I right?

8 A. I can only indicate what's the heading of
9 the work product log.

10 Q. Well, and again on December 22, you wrote
11 the prisoner review board regarding clemency
12 hearing, is that correct?

13 MR. MANCINI: December 27th.

14 Q. I'm sorry?

15 A. I can only state what's in the --

16 Q. Do you have any reason to disbelieve that
17 you wrote the letters that are in the log because
18 you produced these letters to your lawyer, didn't
19 you?

20 A. I have no doubt that I wrote them.

21 Q. Okay. Why were you writing about clemency
22 to the Department of Corrections just before
23 Governor Ryan granted clemency and pardons?

24 MR. MANCINI: Going to object if you are

1 asking as to the substance of the letters. If you
2 are asking his mental state, that's a different
3 question.

4 Q. I'm asking your mental state.

5 MR. MANCINI: Thank you.

6 Q. Could you read back the question. Did you
7 answer the question? Could you answer the question,
8 please? Do you need it read back, sir?

9 A. Yeah, if you would.

10 (At this point the court reporter read the
11 requested portion of the record.)

12 A. I will state I wanted to see justice done.

13 Q. And what did you consider justice to be
14 done? That the clemencies of Steidl and Whitlock be
15 denied, right?

16 MR. MANCINI: Objection form and
17 foundation.

18 A. Wanted to make sure that the -- at least
19 that the clemency board be fully informed.

20 Q. By fully informed, you mean informed of
21 your viewpoint about the fact that they were guilty
22 and should stay in jail, isn't that right?

23 MR. MANCINI: Objection to form. Argumentative.

24 A. My viewpoint based upon the evidence and

1 the facts.

2 Q. When you say fully informed, you are not
3 fully informing them, you are informing them of your
4 position, isn't that fair to say?

5 MR. MANCINI: Objection to form. Argumentative.

6 A. Clemency board was clearly being fully
7 informed about the defense position, and my, in
8 seeking justice, would be that they be fully
9 informed of all positions.

10 Q. Well, the Attorney General was
11 representing your position in front of the clemency
12 board and the PRB, wasn't it?

13 MR. MANCINI: Objection form and
14 foundation.

15 MR. ACKERMAN: Same objection.

16 A. I believe the Appellate Prosecutor was
17 doing it.

18 Q. Pardon me?

19 A. I believe the Appellate Prosecutor was
20 handling the review.

21 Q. Well, they were vigorously presenting your
22 point of view, being the prosecution's point of
23 view, in those hearings, weren't they?

24 MR. MANCINI: Objection to form. Speculative. Go

1 ahead if you can answer.

2 MR. ACKERMAN: Same objection.

3 A. Certainly presenting a point of view.

4 Q. Well, they were presenting your point of
5 view, weren't they?

6 MR. MANCINI: Objection as to form and
7 foundation.

8 A. No, the Appellate Prosecutor was
9 presenting the Appellate Prosecutor point of view.

10 Q. And so you felt that the Appellate
11 Prosecutor was not sufficiently representing your
12 position before the clemency board? You needed to
13 come forward and put it forward personally, is that
14 right?

15 MR. MANCINI: Objection form and
16 foundation.

17 MR. ACKERMAN: Same objection.

18 A. No. That as the former State's Attorney
19 and the person who actually prosecuted the case, I
20 have certain insights into fully informing the
21 clemency people.

22 Q. But, you didn't call -- you didn't call or
23 give it to Rands or the special Appellate
24 Prosecutor, you contacted decision makers? The

1 Department of Corrections and the prisoner review
2 board, right?

3 MR. MANCINI: Objection as to form.

4 A. I don't recall.

5 Q. Is it true, is it fair to say that you
6 didn't trust the Attorney General office and the
7 prisoner -- and the Appellate Prosecutor office to
8 sufficiently make sure that justice was served and
9 that Steidl and Whitlock stayed in jail?

10 MR. MANCINI: Objection to form.

11 Q. You felt you had to personally
12 intervene?

13 MR. MANCINI: Objection form and
14 foundation.

15 MR. ACKERMAN: Same objection.

16 A. No. As a matter of fact, not only is
17 that not true, it's -- I recall I could have been
18 asked to do it.

19 Q. Who asked you to do it?

20 A. Whoever is handling it, the Appellate
21 Prosecutor.

22 Q. The prisoner review board asked you to do
23 that?

24 A. The Appellate Prosecutor who was handling

1 the State's position with the prisoner review board.

2 Q. Do you have a letter to show that? Or is
3 this just something you remember?

4 A. I recall conversations.

5 Q. Okay. You had conversations with the
6 Appellate Prosecutor, and he asked you to write an
7 e-mail to the Department of Corrections regarding
8 clemency, is that your testimony?

9 MR. MANCINI: Objection to form. It's not
10 an e-mail.

11 Q. December of '02?

12 A. I said they may have.

13 Q. They may have? Do you remember that?

14 A. Like I say, they may have.

15 Q. So you don't remember that?

16 A. I'm not saying specifically please write,
17 please write.

18 Q. You don't remember that?

19 A. I have no specific recollection.

20 Q. And again, did the Appellate Prosecutor
21 contact you and say please write the prisoner review
22 board regarding Mr. Steidl and Mr. Whitlock's
23 clemency petition?

24 MR. MANCINI: Objection as to form. It's

1 been asked and answered.

2 A. Communications regarding the prisoner
3 review board hearings.

4 Q. Pardon me?

5 A. I said we communicated with the Appellate
6 Prosecutor regarding the prisoner review board
7 hearings.

8 Q. And who initiated those communications?
9 Yourself or the Appellate Prosecutor office?

10 A. I don't recall.

11 Q. Now, on January 10th. January 10th was
12 the date that Governor Ryan granted the pardons to
13 four prisoners, and was going to the next day grant
14 clemency to all men on Death Row. You remember
15 those dates very well, don't you?

16 MR. MANCINI: Objection as to form.

17 A. I don't remember those dates. I remember
18 the topic.

19 Q. And you remember being disturbed that
20 justice had not been served by the pardons and the
21 clemencies that Governor Ryan gave, isn't that
22 right?

23 MR. MANCINI: Objection form and
24 foundation. Are we talking about all clemencies and

1 pardons?

2 Q. Talking generally.

3 A. Generally how I felt about the clemencies?

4 Q. Yes.

5 A. I didn't have enough information actually
6 to legally render an opinion about the clemencies,
7 other than it had to be case by case.

8 Q. Well, did you have an opinion with regard
9 to whether it was right for Governor Ryan to give
10 blanket clemencies to all men on Death Row and
11 commute their sentences to life in prison?

12 MR. MANCINI: Objection form and
13 foundation. Relevancy.

14 A. In my opinion?

15 Q. Yes?

16 A. In my opinion it was wrong to give blanket
17 clemencies.

18 Q. And you knew that a blanket clemency would
19 be clemency to Mr. Steidl?

20 A. That was not correct.

21 Q. Because he had already had his sentence
22 reduced?

23 A. He was not on Death Row.

24 Q. You're right. Withdraw that question. But

1 the letter that you wrote was on January 10th, the
2 date that the pardons were granted to the four men,
3 and it was from McFatriddle to George Ryan regarding
4 commutation of sentences. You wrote a letter on
5 January 10th to Governor Ryan concerning the
6 commutation of sentences, did you not?

7 A. I can only answer what's in the heading
8 there.

9 Q. Well, did you or didn't you?

10 A. I can only answer the heading purports
11 that I wrote a letter that day.

12 Q. And this heading characterizes a letter
13 that you turned over to your lawyer, right?

14 A. Apparently.

15 Q. And where did you keep these letters?
16 You are no longer in the State's Attorney's office,
17 but you managed to turn over ten pages of letters
18 here; do you have your own personal file at home?

19 MR. MANCINI: Objection as to form.

20 A. I've turned over my personal file to my
21 attorney.

22 Q. I'm sorry?

23 A. I turned over my personal file to my
24 attorney.

1 Q. And what letterhead would you use when you
2 wrote these letters to Ryan and to -- Ryan and
3 others that are on this list?

4 MR. MANCINI: Objection as to form.
5 Compound.

6 A. I don't recall. It would either be my
7 home personal letterhead or it may have been the law
8 firm, if I was in the law firm at the time.

9 Q. All right. And in this letter to George
10 Ryan regarding the commutation of sentences, would
11 the commutation of sentences -- were the commutation
12 of sentences specifically of Steidl and Whitlock?

13 MR. MANCINI: Going to object if you are
14 asking for the specific contents of the letter as we
15 have asserted the work product privilege. Is that
16 what you are asking?

17 MR. TAYLOR: I'm asking because it doesn't
18 specifically state whether it has to do with this
19 case or not. We are certainly entitled to know that
20 much. Otherwise it's an incomplete privilege log.
21 So I certainly have the right to inquire as to
22 whether the subject matter of commutation of
23 sentences had to do with this case and our clients,
24 or generally something else.

1 MR. MANCINI: And as required by the
2 Federal rules of civil procedure and discovery, you
3 could make that request to me. You are correct. I
4 should have been more specific as to whose sentences
5 were or the commutation of whose sentences were
6 being referenced in that letter. I can provide that
7 information to you in an updated privilege log.

8 MR. TAYLOR: I want to ask him about it.

9 MR. MANCINI: I'm not going to let him talk
10 about what's in the letters, Flint.

11 MR. TAYLOR: Well, a specific question, if
12 he can answer it you should permit him to answer it
13 and we won't have to wait around and bring him back
14 to ask now, will we?

15 MR. MANCINI: I will let you answer it if
16 you remember what those commutations were.

17 A. Since it's in here, the fair inference is
18 that it's Steidl and/or Whitlock.

19 Q. Now, had you received information from the
20 ISP or anyone else that George Ryan was considering
21 granting or commuting the sentences of Whitlock and
22 Steidl?

23 MR. MANCINI: Objection as to foundation.

24 MS. WADE: I join that objection.

1 A. The Appellate Prosecutor would have told
2 me that; somebody in the Appellate Prosecutor
3 indicated that George Ryan might be considering it.
4 He wasn't sure, but he might be.

5 Q. Which Appellate Prosecutor told you that?

6 A. I believe Ed Parkinson.

7 Q. And did Parkinson also tell you that there
8 was an ISP investigator by the name of Michale
9 Callahan who had recommended or was asking whether
10 he could recommend that those pardons be granted?

11 MR. ACKERMAN: Objection to form and
12 foundation.

13 MR. MANCINI: Join.

14 A. I don't recall that.

15 Q. When did you first learn about Michale
16 Callahan and his investigation?

17 A. I legally have no idea.

18 Q. Was it before or after January 10th, 2003?

19 A. I would have to say it was before that.

20 Q. All right. And how did you learn about
21 Michale Callahan before January of 2003?

22 A. I'm going to emphasize my best guess is
23 somehow within the post-conviction federal stuff
24 with Steidl.

1 Q. All right. Did the Appellate Prosecutor
2 inform you about Michale Callahan?

3 A. I don't recall.

4 Q. And what did you learn about Michale
5 Callahan?

6 MR. MANCINI: Objection to foundation,
7 form.

8 A. Maybe in the other lawsuit too that was in
9 the paper. His own lawsuit, you know, certainly
10 made reference to this case.

11 Q. But, what did you learn about Michale
12 Callahan?

13 MR. MANCINI: Objection form and
14 foundation.

15 A. That he believed that other people might
16 also be responsible for the murders, Rhoads murders.

17 Q. Did you agree or disagree with his
18 conclusion?

19 MR. ACKERMAN: Objection to foundation.

20 MR. MANCINI: Join the objection.

21 A. I don't know what his conclusion was.

22 Q. I thought you just told me that his
23 conclusion was that there were other people who
24 might have been responsible for it?

1 MR. MANCINI: Objection as to form. He
2 said that Michale Callahan believed there may have
3 been other people.

4 MR. ACKERMAN: Same objection.

5 A. I legally can't answer it without going
6 more specific. I can't answer that without knowing
7 what his actual -- I mean without seeing his
8 conclusion, other people, you know I --

9 Q. Well, did you also learn that Michale
10 Callahan had said that Whitlock and Steidl had not
11 been proven guilty beyond a reasonable doubt, and
12 that there was corruption in the prosecution?

13 MR. MANCINI: Objection as to form and
14 foundation.

15 MR. ACKERMAN: Same objection.

16 A. If those were his conclusions, I would
17 disagree with those.

18 Q. Did you learn that at any time prior to
19 January 10th, 2003?

20 MR. MANCINI: Restate the same objection.

21 MR. ACKERMAN: Same objection.

22 A. I've never seen his specific
23 conclusions.

24 Q. I'm asking you, sir, whether you learned

1 about that aspect of Mr. Callahan's investigation
2 and conclusions at any time prior to January 10th,
3 2003? Yes or no?

4 MR. MANCINI: Object to form and
5 foundation.

6 MR. ACKERMAN: Same objection.

7 A. I answered that. Now whether that was
8 before January of 2003, I can't say. But if your
9 question, as I recall, was to conclude that there
10 was prosecutorial corruption and Whitlock and Steidl
11 weren't convicted beyond a reasonable doubt, I don't
12 agree with that.

13 Q. I'm not asking whether you agree with it.
14 I'm asking whether you learned it?

15 A. I'm saying I don't recall if I learned
16 that particular aspect before or after January 10th
17 of 2003.

18 Q. But at some point did you learn that, is
19 that right?

20 MR. MANCINI: Objection as to form and
21 foundation.

22 MR. ACKERMAN: Object to form and
23 foundation.

24 A. Well, you're telling me that.

1 Q. Before I told you that; did you know about
2 it before I told you that just now?

3 MR. MANCINI: Object, form and
4 foundation.

5 MR. ACKERMAN: Same objection.

6 A. I can't tell you. I mean, that's
7 certainly what apparently he believes, but I can't
8 tell you when I learned that.

9 Q. Now, in your letter to George Ryan
10 regarding the commutation of sentences, did you say
11 it was of Steidl and Whitlock?

12 MR. MANCINI: Objection; he didn't say
13 either way. He said the inference was that it was
14 because it was included in the privilege log.

15 Q. Did you take a position, sir, that Steidl
16 and Whitlock should not be granted pardons, clemency
17 or commutations?

18 MR. MANCINI: Objection; if you are asking
19 the contents of that letter we will assert the work
20 product privilege. I'll instruct my client not to
21 answer.

22 Q. If you took that position, did you take it
23 as a private citizen or as a prosecutor or as a
24 former prosecutor of Edgar County?

1 MR. MANCINI: Object to form and
2 foundation of that question because it implies an
3 answer to your previous question, if he took that
4 position. So, if he answers in any way, shape or
5 form, he is almost admitting that he did take that
6 position, which we've already asserted a work
7 product privilege on the contents of that letter. So
8 I'm instructing him not to answer.

9 Q. Did you have any other communications with
10 George Ryan on or about January 10th, 2003, the
11 subject being commutation of sentences, other than
12 the letter that is in the work product log?

13 A. I never talked to George Ryan.

14 Q. Did you have any kind of a relationship
15 with George Ryan like you did with Jim Ryan?

16 MR. MANCINI: Objection as to form.

17 A. No.

18 Q. No? No communication with him other than
19 this letter?

20 A. I would say that's correct.

21 Q. All right. And did you contact George
22 Ryan because of the Appellate Prosecutor asked you
23 to or was that on your own volition?

24 MR. MANCINI: Objection form and

1 foundation.

2 A. I would say I would not have known to
3 contact George Ryan but for the communication with
4 the Appellate Prosecutor.

5 Q. Did you have any communication with the
6 staff of George Ryan on or about January of 2003?

7 A. I talked with one person. I couldn't tell
8 you who it was.

9 Q. Was it Matt Bettenhausen? The chief of
10 staff who was handing these matters?

11 MR. MANCINI: Objection to form.

12 A. I legally can't say.

13 Q. Well, who was, without remembering who
14 it was, can you tell us what his job title was?

15 A. I legally don't recall.

16 Q. Was he someone that you understood to be
17 working on the issue of the commutations or pardons
18 of individuals, including Mr. Steidl and Mr.
19 Whitlock?

20 A. It was someone the Appellate Prosecutor
21 gave me his name and number.

22 Q. And you spoke with this person?

23 A. Briefly.

24 Q. And was it before or after you wrote the

1 letter?

2 A. I don't recall.

3 Q. And what was the content of your quote,
4 "brief", end quote, conversation with this person?

5 A. Basically the Appellate Prosecutor didn't
6 feel that they were being fully informed, and that
7 they needed to look more, look better at the
8 evidence of the case.

9 Q. By being fully informed, you mean fully
10 informed about the guilt of, as you saw it, of
11 Steidl and Whitlock, right?

12 MR. MANCINI: Objection as to form.

13 A. It's not as I saw it. As the evidence, as
14 the totality of the evidence presented.

15 Q. Well, again, just like all the other
16 people you contacted, you felt that Governor Ryan
17 and his people didn't have all the evidence that
18 pointed to Mr. Steidl's guilt, right?

19 MR. MANCINI: Objection, mischaracterizes
20 his testimony.

21 A. I acted at the suggestion of the Appellate
22 Prosecutor.

23 Q. I'm not asking you who asked you to act.
24 I'm asking you, sir, what you did, in terms of what

1 kind of evidence you were quote, "fully informing
2 all of these high public officials of with regard to
3 Mr. Steidl and Mr. Whitlock"? Understand?

4 MR. MANCINI: You are asking -- I'm going
5 to object if we are asking about the content of the
6 letters. If we are talking about telephone
7 conversation, if you recall.

8 Q. Specifically talking right now about the
9 conversation that you had with this unknown person
10 on the phone. You said that you wanted to fully
11 inform him, like you've said you wanted to fully
12 inform all the others, right?

13 A. Basically indicate, just read the
14 appellate court decisions, that they were-- the
15 appellate court decisions presented a fair summation
16 of the evidence.

17 Q. That was your point to the governor's
18 office, is that right?

19 A. Generally.

20 Q. Don't look at the new evidence, don't look
21 at anything new, look at the decisions of the
22 courts, right?

23 MR. MANCINI: Objection as to form.

24 A. I wouldn't know what the new evidence was.

1 Q. Well, weren't you reading the petitions
2 and the post-conviction petitions as they were
3 coming across your desk?

4 A. In general, but not specific. In general,
5 I said you ought to read the appellate court
6 decisions.

7 Q. But by 2003 you had seen Mr. Steidl's two
8 PCs, you had seen whatever Mr. Whitlock had filed,
9 you had seen Mr. Clutter's investigation, you had
10 seen a good deal of what Mr. Callahan had done, you
11 had seen there was a lot of new evidence, hadn't
12 you?

13 MR. MANCINI: Objection form and
14 foundation.

15 MR. ACKERMAN: Same objection.

16 MR. MANCINI: Compound question.

17 Q. You may answer.

18 A. I can't answer that, because it's like
19 15 different things. I didn't see all 15 of them.

20 Q. Well, had you seen the PCs and the
21 affidavits attached to the PCs?

22 MR. MANCINI: Objection to form. Which
23 PCs?

24 A. There is 30 of them, and I have not read

1 all 30 of them or whatever there are.

2 Q. Did you know that Debbie Rienbolt had
3 given a two-day video recantation to Mike Metnick in
4 1996?

5 MR. MANCINI: Objection to form and
6 foundation.

7 Q. You knew about that, didn't you?

8 A. Probably.

9 Q. What do you mean probably? You did,
10 didn't you?

11 A. In all likelihood, yeah.

12 Q. And you also knew about an affidavit or
13 two affidavits that she had given to an attorney
14 named Peter Rotskoff in 1989? You knew about that,
15 didn't you?

16 A. I was State's Attorney then.

17 Q. So you knew about that, right?

18 A. Yes.

19 Q. And you knew about, you were still State's
20 Attorney when Darrell Herrington gave an affidavit
21 that recanted certain parts of his testimony? You
22 were still State's Attorney and knew about that,
23 right?

24 MR. MANCINI: Objection as to form.

1 A. I believe that was a deposition that the
2 court reporter wouldn't sign.

3 Q. Well, you knew about it?

4 A. Yes.

5 Q. And you knew about the fact that Mr.
6 Eckerty had told both Mr. Marlow and Mr. Callahan
7 that you had told him and the other investigators
8 not to preserve negative evidence, right?

9 MS. EKL: Objection, form and
10 foundation.

11 MR. MANCINI: Objection form and
12 foundation.

13 MS. WADE: Objection.

14 MR. ACKERMAN: Same objection.

15 A. That's incorrect.

16 Q. I'm not asking you whether it's correct.
17 I'm asking that you knew about that allegation,
18 didn't you?

19 MR. MANCINI: Objection, form and
20 foundation.

21 MR. ACKERMAN: Same objection.

22 MS. EKL: Objection form.

23 MS. WADE: Objection.

24 A. Not that allegation.

1 Q. You never heard that Eckerty had told Mr.
2 Marlow and Mr. -- that Eckerty had told Mr. Marlow
3 and on another occasion had told Mr. Callahan that
4 you said don't preserve negative evidence that would
5 tend to show Steidl and Whitlock's guilt?

6 MR. MANCINI: Objection as to form.

7 MS. WADE: Objection.

8 Q. Never heard anything along those lines.

9 MR. ACKERMAN: Objection to form.

10 MR. MANCINI: You can answer the
11 question.

12 A. What the allegation was don't create
13 negative evidence.

14 Q. You knew about that?

15 A. Yeah.

16 Q. The allegation was that don't create any
17 negative evidence?

18 MR. MANCINI: Objection, asked and
19 answered.

20 Q. Is that what you're saying?

21 A. Yes.

22 Q. And that was an allegation that was true?

23 MR. MANCINI: Objection as to form and
24 foundation.

1 MR. ACKERMAN: Same objection.

2 MR. MANCINI: What are you asking, Flint?
3 If the allegation was true, or if it's true that he
4 said don't create negative evidence? It's an
5 unclear question.

6 Q. I'm asking -- it's the same.

7 MR. MANCINI: No, it isn't.

8 Q. Whether the allegation was true, in fact
9 you said don't create any negative evidence?

10 A. I informed police officers not to create
11 negative evidence. For example, don't have two
12 people write the same interview because
13 oftentimes there's inconsistencies between the
14 interviews when two people write it. That only one
15 officer should write it.

16 Q. When did you tell the officers this?

17 A. In this specific case, I couldn't tell
18 you.

19 Q. You tell officers that in all cases?
20 Not to create any negative evidence?

21 MR. MANCINI: Objection form.

22 Q. Or was it just in this case you told them
23 not to?

24 MR. MANCINI: Same objection. Which one do

1 you want him to answer? The first or the second?

2 Q. You may answer.

3 MR. MANCINI: Which one do you want him to
4 answer? The first or second?

5 Q. I'm asking the questions, you're not.

6 MR. MANCINI: I know I'm not, but you have
7 asked two questions without an answer to each one of
8 them. Which one do you want him to answer?

9 Q. Do you want to read back the question?

10 MR. MANCINI: Which question?

11 (At this point the court reporter read the
12 requested portion of the record.)

13 A. As a general proposition a prosecutor may
14 instruct an officer, don't create negative evidence.
15 And again by having multiple officers write the same
16 reports, because even though it's the same event,
17 oftentimes there's inconsistencies between the
18 reports. Even though it's the exact same interview.
19 So if you have an interview, you should generally
20 have one officer write it. That eliminates any
21 negative inferences.

22 Q. Right. So as an experienced prosecutor
23 you didn't want to have two reports that a defense
24 lawyer could use that were inconsistent with each

1 other, right?

2 MR. MANCINI: Objection form and
3 foundation.

4 Q. Is that what you're saying? Am I
5 understanding you lawyer to lawyer?

6 MR. MANCINI: Objection form and
7 foundation.

8 A. That would be true of any lawyer.

9 Q. I'm asking you as a prosecutor, as an
10 experienced prosecutor, you didn't want to create a
11 negative inference that could be used by a defense
12 attorney to undercut your case? Right?

13 MR. MANCINI: Objection, form and
14 foundation.

15 A. Inconsistency wouldn't necessarily
16 undercut your case, but it does sometimes have
17 inconsistency -- Pete might write down different
18 dates. May miss a street. It could be -- generally
19 it is very minor stuff, but why even deal with it?

20 Q. Could be major stuff too, like it was with
21 Herrington, right?

22 MR. MANCINI: Objection, form and
23 foundation.

24 A. There was nothing major in Herrington's.

1 Q. When you got the two reports, Eckerty's
2 report on Herrington and Parrish's report on
3 Herrington, there were a number of inconsistencies,
4 differences between the two reports? You noticed
5 that when you got those reports, didn't you?

6 A. There was some minor inconsistencies.

7 Q. Well, isn't that why you characterize them
8 as minor; you think it's minor between what bar he
9 was in, and what color the car was, and what time he
10 got there? Those were minor differences in terms of
11 the two reports, Eckerty's and Parrish?

12 MS. EKL: Objection form and foundation.

13 MR. MANCINI: Same objection.

14 A. I don't believe that is a fair
15 characterization.

16 Q. Well, what is a fair characterization? You
17 read the reports.

18 A. I don't recall them. All I know it was
19 minor, but they were minor.

20 Q. But, minor or not, you raised it with
21 them, don't do this again, right? You don't want to
22 create any negative reports that might be used to
23 help Steidl or Whitlock, right?

24 MR. MANCINI: Objection as to form.

1 A. It's a broad, general advice to avoid the
2 natural differences there's going to be when you
3 have two people write the same report. It's normal
4 human nature. It's going to happen. It's like two
5 witnesses watching a car accident. They are going
6 to see different things. You have consistency if
7 you have one person write the report.

8 Q. And you told the investigators, that being
9 your co-defendants here, Eckerty and Parrish, in
10 this case in September, after they created two
11 separate reports on Herrington, not to do that,
12 right?

13 MR. MANCINI: Objection as to form.

14 A. I gave them that legal advice because
15 actually I had no control over either of them. I
16 mean, they're both answer -- they didn't answer to
17 me. Jack Eckerty answered to the State Police, and
18 they quite frankly had their own policy regarding
19 writing of reports that obviously I could not --
20 that was their policy. There is nothing I could do.
21 And the Paris police department, Jim Parrish, they
22 would have their policies and he followed the chief.
23 As a legal adviser I recommended that not to have
24 two people write the same report.

1 Q. And you did that after the Herrington
2 reports, that's what I'm asking you? Whatever you
3 want to characterize it as, you did it in September
4 after you saw these two reports from Eckerty and
5 from Parrish that were not totally consistent?

6 MR. MANCINI: Object to the form.

7 Q. Am I right? Can you answer that?

8 MR. MANCINI: Object to the form.

9 A. That would be my best recollection.

10 Q. Thank you. Now, so you disagree with Ray
11 and Eckerty and Parrish's testimony that you and
12 they were part of an investigative team during the
13 first seven or eight months of this investigation
14 before there were arrests made of Mr. Whitlock and
15 Steidl?

16 MS. EKL: Objection form and foundation.

17 MR. MANCINI: Join the objection, misstates
18 testimony.

19 MR. ACKERMAN: Join the objection.

20 MR. MANCINI: Restate the question because
21 the question was asked.

22 Q. Did you want to reread it?

23 MR. MANCINI: Objection to the form of the
24 question.

1 (Record read.)

2 A. Each of us had our defined roles. Jack
3 Eckerty's role and Jim Parrish's role were that of
4 police/investigator. My role was that of State's
5 Attorney/prosecutor/legal adviser.

6 Q. So you disagree?

7 MR. MANCINI: Objection as to form.

8 Q. Are you sitting here trying to tell us you
9 weren't involved in the investigation of this case
10 for the seven or eight months prior to the time that
11 the charges were brought against Mr. Whitlock and
12 Mr. Steidl?

13 MR. MANCINI: Objection as to form.

14 A. I was involved in the investigation and
15 the role of a prosecutor/State's Attorney/legal
16 adviser.

17 Q. So, that's your description of what you
18 were doing in the context of this investigation that
19 had only suspects and no arrestees, right?

20 MR. MANCINI: Objection as to form.

21 A. I can't answer that because investigation
22 was a long term incident. Obviously the day
23 afterwards there was still an investigation, but
24 there was no suspects or other individuals the day

1 after the event. I can't answer that question.

2 Q. Well, you were involved in the
3 investigation from the first day right up and until
4 the day that Mr. Whitlock and Steidl were arrested
5 on the 19th of February some eight months later,
6 right?

7 MR. MANCINI: Objection to the form of the
8 question. He has already testified as to his role
9 in the process.

10 Q. Could you let him answer one of these
11 questions?

12 MR. MANCINI: Because, no, you're asking
13 the same questions over and over, Flint.

14 A. I was involved as a prosecutor/elected
15 State's Attorney/legal adviser.

16 Q. Okay. So, when you went to the scene of
17 the crime you were there as a State's Attorney,
18 right?

19 MR. MANCINI: Objection form and
20 foundation.

21 Q. Is that what you are saying?

22 MR. MANCINI: Objection, form and
23 foundation.

24 A. I was the elected State's Attorney. Had

1 the ability to go to a crime scene.

2 Q. And you weren't prosecuting anybody at
3 that time, were you?

4 MR. MANCINI: Objection form and
5 foundation. You mean Steidl or Whitlock, the
6 murders? Who was he prosecuting? He was
7 prosecuting DUI clients.

8 MR. BALSON: Objection to these speaking
9 objections. Stop coaching the witness, please.

10 MR. MANCINI: I'm not. Is he
11 prosecuting people? Yeah, he's prosecuting people.
12 He's the State's Attorney.

13 MS. SUSLER: Five minute break.

14 (Break taken at 11:44 AM.)

15 EXAMINATION BY MR. TAYLOR:

16 Q. Do you remember whether the person that
17 you spoke to at the governor's office was male or
18 female?

19 A. I believe it was male.

20 Q. Any other conversations you had with
21 anyone in the governor's office other than this one
22 brief conversation that you've told us about on or
23 about January of 2003?

24 A. I would say no.

1 Q. Pardon me?

2 A. No.

3 Q. Now, in June of 2003, specifically June
4 17th of 2003, Judge McCuskey granted Mr. Steidl's
5 habeas petition. You became aware of that
6 approximately when it happened, right?

7 A. Yes.

8 Q. And did you make a public statement about
9 that?

10 A. I don't recall.

11 Q. You made public statements from time to
12 time after you left the State's Attorney's office
13 about this case, did you not?

14 A. Yes.

15 Q. And you commented on decisions both
16 favorable and unfavorable to the prosecution and
17 favorable and unfavorable to Mr. Steidl, right, and
18 Whitlock?

19 MR. MANCINI: Objection form and
20 foundation.

21 A. Probably commented on court decisions; I
22 mean favorable or unfavorable is a matter of
23 perspective.

24 Q. Well, you in your public statements

1 consistently maintained that Mr. Steidl and Mr.
2 Whitlock were guilty of the crimes, right?

3 MR. MANCINI: Objection form and
4 foundation.

5 A. I maintained that I believe the juries
6 appropriately convicted them.

7 Q. And that they were guilty, right?

8 A. That the juries found them guilty.

9 Q. And in fact you had sought the death
10 penalty for Mr. Steidl and would have sought the
11 death penalty for Mr. Whitlock if you had gotten a
12 conviction that would have supported the conviction,
13 the death penalty of Mr. Whitlock if you (sic) were
14 convicted of both murders, right?

15 MR. MANCINI: Objection form and
16 foundation.

17 A. If I recall the law at the time, you had
18 to, and I could be wrong on this, but I thought you
19 had to advise that you were seeking the death
20 penalty prior to trial. And I may be wrong on that.
21 But in any case it's not -- as you pointed out, it
22 was not sought on Whitlock in light of the fact that
23 he was convicted of one murder.

24 Q. But you had to declare before trial,

1 right?

2 A. The record would speak for itself, but I
3 recall that we had to do that.

4 Q. And you declared you were seeking the
5 death penalty on both Mr. Whitlock and Mr.
6 Steidl's cases, true?

7 A. Again, the record speaks for itself, but I
8 believe that's correct.

9 Q. And that was based on your belief that
10 despite whatever problems you had with the witnesses
11 in the case, that you thought they, if found guilty,
12 should be executed, is that right?

13 MR. MANCINI: Objection as form.

14 A. If they were convicted, then I believed
15 it was within my duty as State's Attorney to seek
16 the death penalty for this crime, but that decision
17 would either be made by the jury or by the judge.

18 Q. But, you could have decided to seek life
19 without -- life sentence, rather than death penalty,
20 isn't that right? You had that discretion, didn't
21 you?

22 A. The State's Attorney has that discretion.

23 Q. But you chose the death penalty for both
24 men if they were convicted, right?

1 MR. MANCINI: Objection as to form.

2 A. I chose to seek the death penalty.

3 Q. Right. Because you wanted them to get the
4 death penalty if they were convicted, right?

5 A. It was not my decision to make. That
6 would have been the trier of fact, the jury.

7 Q. You didn't argue that he get the death
8 penalty because you didn't want him to get the death
9 penalty; you argued and elected for them to get the
10 death penalty because you wanted them to get the
11 death penalty; isn't that fair to say?

12 A. No.

13 MR. MANCINI: Objection as to form.
14 Argumentative.

15 Q. It's not fair to say? Were you seeking
16 the death penalty but hoping the jury would come
17 back with a not guilty on the death penalty? Is
18 that what you're trying to tell us?

19 A. The duty of the State's Attorney, he
20 represents the people of the State of Illinois.
21 The people of the State of Illinois includes the
22 defendants. That being said, the crime spoke for
23 itself to seek the death penalty. If the jury, and
24 if the State's Attorney makes a decision within his

1 discretion to give the trier of fact that
2 opportunity, that's what I did.

3 Q. So as you sit here today you still want
4 Mr. Steidl to be executed, is that right?

5 MR. MANCINI: Objection as to form and
6 relevance.

7 A. I legally don't care one way or the other.

8 Q. Well, you still think he's guilty, right?

9 A. Absolutely.

10 Q. And you still believe in the death
11 penalty, don't you?

12 MR. MANCINI: Objection as to form,
13 relevance.

14 Q. Am I right?

15 A. I believe that the death penalty is
16 appropriate in certain circumstances, and I also
17 agree with the reforms that have been made regarding
18 the death penalty.

19 Q. And one of those reforms had to do with
20 lawyers, right?

21 A. Correct.

22 Q. And you certainly agree that Mr. Steidl
23 didn't receive the best of representation in that
24 trial, did he?

1 MR. MANCINI: Objection form and
2 foundation.

3 A. I absolutely don't agree with that.

4 Q. So you think he got top notch
5 representation?

6 MR. MANCINI: Objection, form and
7 foundation.

8 A. I believe he was represented within
9 the -- he received adequate representation within
10 the legal definitions.

11 Q. All right. So, given that he had adequate
12 representation, given the fact that you believed he
13 was guilty of what you call the crime that speaks
14 for itself, given the fact you still believe he's
15 guilty, it follows, does it not, that you still want
16 him to be executed?

17 MR. MANCINI: Objection to form. Argumentive. Been
18 asked and answered.

19 A. That is not my decision to make.

20 Q. You made the decision before to seek it,
21 didn't you?

22 MR. MANCINI: Objection to form.

23 A. I made my decision to give the trier of
24 fact the opportunity to make that decision.

1 Q. And you would do that again?

2 MR. MANCINI: Objection to form. How could
3 he answer that?

4 A. Do that again as we sit here today? Do
5 that again as I sat there based upon the evidence in
6 1986, or -- based upon the evidence in 1986 I
7 obviously would do it again.

8 Q. Well, given that you know now, and you
9 certainly have seen a lot of different pleadings,
10 you have seen our lawsuit, right?

11 A. Yeah.

12 Q. And you've seen Mr. Whitlock's lawsuit,
13 right?

14 A. Yes.

15 Q. You've seen maybe not all of the PCs, but
16 a lot of the PCs, right?

17 A. Yes.

18 Q. You read all of the opinions in the cases,
19 right?

20 A. Most of them.

21 Q. All right. Based on all of that, would
22 you still recommend the death penalty for Mr.
23 Whitlock and Mr. Steidl if in fact they were
24 convicted again?

1 MR. MANCINI: Objection as to form and
2 foundation.

3 A. Well, if they were convicted again,
4 absolutely. But I mean that's -- if they were
5 convicted again, then I would say again, we would be
6 faced with the same opportunity. That, you know,
7 that the prosecutor, in my mind, it would be his
8 duty to give the opportunity to the trier of fact to
9 determine whether the death penalty was imposed. In
10 terms of whether they should be reprosecuted or not,
11 I'm not privy to all of the information and I'm not
12 in a position to answer that.

13 Q. Well, based on the evidence that you do
14 know, should they be reprosecuted?

15 MR. MANCINI: Objection as to form and
16 foundation.

17 A. I have no opinion.

18 Q. Well, you have had contact with the
19 special prosecutor -- strike that. With the
20 Appellate Prosecutor based on his investigation
21 subsequent to the release of Mr. Steidl in 2004,
22 isn't that right?

23 A. Had communications with the Appellate
24 Prosecutor.

1 Q. And some of those were after Mr. Steidl
2 was released from jail, right?

3 A. Yes.

4 Q. And some of those were concerning
5 continuing the investigation of Mr. Steidl to see if
6 he could be reprosecuted, isn't that right?

7 MR. MANCINI: Objection as to foundation.

8 A. I'm really not privy to continuing
9 investigation. I can only comment on what I believe
10 to be the status of the evidence at the time in
11 1987, and what I would perceive to be perhaps
12 incorrect assessments that are directed toward that
13 evidence.

14 Q. Well, let's try to put that into English
15 if we might.

16 MR. MANCINI: Objection as to the statement
17 of Mr. Taylor.

18 Q. Looking at page four of your reported
19 privilege log, look at the one, two, three, four,
20 five, sixth entry. E-mails to and from McFatridge
21 and David Rands regarding retrial of Steidl. Do you
22 see that? There is no date on it, which is a
23 defect certainly. Do you know when those e-mails
24 between you and Rands were?

1 MR. MANCINI: I think we're on the wrong
2 page.

3 Q. It's this page here.

4 MR. MANCINI: Trying to find it on the
5 witness's copy.

6 Q. Okay. If you look at the sixth page,
7 e-mails to and from McFatridge and Rands regarding
8 retrial of Steidl. Do you see that?

9 A. Yes.

10 Q. When did you start using e-mails as a
11 method of communication?

12 A. I mean, I can't tell you.

13 Q. Well, when did you first start using a
14 computer?

15 A. I would guess I got a PC sometime in the
16 mid-nineties. And had a PC when I started at the
17 VA.

18 Q. Okay. Can you tell us when you were
19 e-mailing David Rands concerning the retrial of
20 Steidl? Was it before, after, or both? Was it
21 either before Mr. Steidl was released in May of
22 2004, after Steidl was released in May of 2004, or
23 both?

24 A. It was certainly after his release. Before

1 his release, I can't say.

2 Q. Say that again?

3 A. I would say it certainly had to be after
4 his release. Before his release, I can't say.

5 Q. So you were aware, were you not, that Mr.
6 Rands was looking into the possibility of
7 reindicting Mr. Steidl for the murders, am I right?

8 A. Was aware the Appellate Prosecutor was
9 weighing that.

10 Q. You were attempting to assist him in that,
11 is that right?

12 MR. MANCINI: Objection as to form.

13 A. As the former prosecutor, I was again
14 trying to make him fully informed and to give him
15 insights regarding the first trials.

16 Q. And what you were trying to do is give him
17 insights that would help him to come to the
18 conclusion to re prosecute Mr. Steidl, right?

19 A. No.

20 MR. MANCINI: Objection as to form.

21 A. No. I would give him information to make
22 that determination whether he should be retried or
23 not. And if in fact they retried him, I would
24 render certain advice having tried him before. But

1 the decision whether or not to retry Mr. Steidl and
2 or Mr. Whitlock rests -- quite frankly I don't know
3 who it rests with; the Appellate Prosecutor or the
4 Attorney General. I don't know the interplay there
5 in regard to who would make that decision.

6 Q. Well, you were certainly thinking that he
7 was guilty, you wanted him to be reprosecuted,
8 right?

9 MR. MANCINI: Objection as to form and
10 foundation.

11 A. Well, the fact that I believe he's guilty
12 doesn't equate to having to be reprosecuted.
13 Because again, they have to weigh the evidence to
14 determine whether there's a reasonable opportunity
15 to convict him beyond a reasonable doubt. That is
16 their decision to make. I'm not privy to all that
17 information.

18 Q. Well, did you tell him, for instance, that
19 you had told the experienced investigators on the
20 case not to create negative evidence?

21 MR. MANCINI: Objection as to form.

22 Q. Did you tell him that?

23 A. I would not recall.

24 Q. You would not recall?

1 A. I do not recall.

2 Q. It's possible you told him that?

3 MR. MANCINI: Objection as to form.

4 A. If it was raised in the pleadings, and if
5 we discussed the pleadings, and we may have
6 discussed that.

7 Q. So, you may have told him that in fact you
8 did tell Eckerty something similar to what he
9 reported to Callahan and later to Marlow, is that
10 right?

11 MS. EKL: Objection as to form and
12 foundation.

13 MR. ACKERMAN: Same objection.

14 MR. MANCINI: Join.

15 MS. WADE: Join.

16 A. I would only have discussed with him in
17 the context of the pleadings.

18 Q. What pleadings are you talking about?

19 A. Post-conviction, post-trial, whatever they
20 were.

21 Q. All right. Now, there is also a series of
22 e-mails here having to do with Whitlock. It starts
23 with e-mails to and from McFatridge and Rands
24 regarding ruling on Whitlock's post-conviction

1 petition and strategy for responding thereto. Then
2 it goes on, there is e-mails to and from McFatrige
3 and Rands regarding input on response brief. Whose
4 response brief is that?

5 A. Well, the fair inference would be the
6 response to the post-conviction relief petition.

7 Q. Of Whitlock's, is that right?

8 A. Oh, I thought you said whose response,
9 versus -- I couldn't tell you if it was Whitlock or
10 Steidl.

11 Q. But, then it goes on, e-mails dated May
12 25th, 2005, from Rands to McFatrige regarding
13 pleadings filed in Whitlock case. And then May
14 24th, these all appear to be having to do with your
15 involvement on to the next page in Whitlock's case.
16 Is that right?

17 A. That would be the fair inference from the
18 dates.

19 Q. Appears to me that we have you writing
20 letters or receiving letters on numerous occasions
21 in 2004 and 2005 concerning Whitlock's case and his
22 PC, is that right?

23 A. The heading speak for themselves.

24 Q. Is that right?

1 A. The headings are listed there on the work
2 product sheet.

3 Q. I'm asking you, are you agreeing with me?

4 A. Well, I guess it would depend on how you
5 define a lot or a fair number.

6 Q. All right. Well, let's add them up here a
7 little bit since we can't seem to agree on that. I'm
8 starting here, I see an e-mail May 25th, 2005. See
9 an e-mail dated May 24th, 2005. I see an e-mail
10 dated April 19th, 2005. See an e-mail dated April
11 18th, 2005. See an e-mail dated or a letter, some
12 of these are letters, excuse me, dated April 14th,
13 2005. I see a letter dated March 16th, 2005. I see
14 a letter dated March 10th, 2005. I see a letter
15 dated March 3, 2005.

16 I see a letter dated February 17th, 2005. I see a
17 fax cover sheet dated August 23, 2004. I see an
18 e-mail not dated between you and Parkinson. I see a
19 memorandum from you to Parkinson reviewing
20 Whitlock's PC petition. I see a memorandum to
21 Rands. Observations and impressions of Whitlock's
22 PC petition.

23 I see a ruling on Whitlock's PC on June
24 22, 2005 and containing your impressions, notes and

1 observations concerning the ruling. I see written
2 notes from review of Whitlock's appellate court
3 ruling. I see an e-mail dated May 4th, 2006.
4 Strike that. That is between you and your lawyer.
5 And I see another McFatridge folder of legal
6 research, case law, treatises etc., concerning the
7 prosecution of Whitlock and Steidl. So, would you
8 agree with me that in the years 2004 and 2005, on at
9 least 15 or 20 occasions, there was communication
10 between you and the special -- and the Appellate
11 Prosecutor about the pending PC petition that
12 Whitlock was litigating at that time?

13 A. Yes, the record speaks for itself.

14 Q. And the answer is yes?

15 A. Yes.

16 Q. All right. And in fact, you were very
17 actively involved not only in the investigation,
18 reinvestigation of Mr. Steidl, but also in helping
19 to defend against Mr. Whitlock's post-conviction in
20 the years 2004 and 2005, were you not?

21 A. I was not involved in the reinvestigation
22 of Mr. Steidl. I was involved in assisting the
23 Appellate Prosecutor in responsive pleadings.

24 MR. BALSON: I didn't hear that answer. May

1 I have it repeated.

2 (At this point the court reporter read the
3 requested portion of the record.)

4 Q. Now, I want to go back towards the
5 beginning of this log for a moment. And when, after
6 you contacted the governor and we are on page one
7 again, of the -- at the time he granted the
8 clemencies and pardons in January of 2003, you next
9 wrote Ellen Mandeltort of the AG's office on June
10 26th, 2003, is that right?

11 A. That's what the heading indicates.

12 Q. And you were giving her impressions,
13 advice and strategy on post-conviction matters, is
14 that correct?

15 A. That's what the heading indicates.

16 Q. Now, this is -- and not only the heading
17 indicates that, but you were, were you not?

18 A. Assuming the heading is a fair summary of
19 the contents of the letter, I would say yes.

20 Q. Can you tell us, that is a six or seven
21 page letter; can you tell us what advice and
22 strategy and on what post-conviction matters you
23 were giving that advice?

24 MR. MANCINI: Objection as to the form.

1 Work product privilege that's been asserted in the
2 log. I will instruct him not to answer as to the
3 contents of the letter. As for who it's involving,
4 that's my mistake and I will correct that with an
5 amended privilege log identifying whose particular
6 case Mr. McFatridge was giving impressions, advice
7 and strategy on post-conviction matters.

8 Q. Well, on June 17th, 2003, Judge McCuskey
9 had granted Mr. Steidl's habeas, right? Am I right?

10 A. I don't remember the date.

11 Q. Well, if you take my word for that, you
12 did read that opinion, as you testified earlier?

13 A. Yes.

14 Q. And you knew that Ellen Mandeltort had
15 been assigned by the Attorney General's office to
16 consider whether to appeal that habeas, right?

17 A. She is the one I had contact with. Whether
18 it was her decision, I can't say.

19 Q. Well, you wrote her on the 26th of June,
20 is that right?

21 A. That's what the log indicates.

22 Q. And then on July 9th, a week or two later,
23 you wrote Lisa Madigan, the Attorney General
24 herself, regarding impressions and advice on rulings

1 in federal court. Now, are we -- is it fair to say
2 that what you wrote her about was about Mr. Steidl's
3 habeas petition and the granting by the court of
4 that, the ruling that the court made in his favor?

5 MR. MANCINI: Objection as to whether you
6 are asking him the contents of the letter, which I
7 would assert a work product privilege. If you are
8 asking him generally speaking if he recalls what he
9 was writing about, I will allow him to answer that.

10 A. If I'm going to answer that, I was writing
11 about a US Supreme Court decision in which Lisa
12 Madigan joined in, wherein it was stated and she
13 concurred that it was the duty of the Illinois
14 Attorney General to defend the integrity of their
15 state courts. And suggested that, it's in light of
16 that, that she needs to consider whether to appeal
17 the Steidl matters because she just stated in the US
18 Supreme Court decision that that was part of her
19 duties.

20 Q. So you were trying to hold her to some
21 argument that she had made in another case, is that
22 what you're saying, in order to urge her to appeal
23 Mr. Steidl's grant of habeas?

24 MR. MANCINI: Objection as to form and

1 foundation of the argumentative question. If you
2 can answer that --

3 A. I was just stating what she had stated in
4 a court opinion.

5 Q. Just because you wanted to have
6 conversation with her or because you wanted to try
7 to convince her to appeal?

8 MR. MANCINI: Objection as to form and
9 foundation.

10 A. I have no influence over the Attorney
11 General.

12 Q. Well, you were trying to exert some
13 though, weren't you?

14 MR. MANCINI: Objection to form.

15 A. Stating their duty.

16 Q. You were just telling the Attorney
17 General what her duty was, and in your opinion her
18 duty was to appeal Mr. Steidl's grant of habeas, am
19 I correct?

20 A. No. Stating that her duty was to defend
21 the integrity of the courts. How she did that is
22 her decision.

23 Q. Well, you weren't writing her to try to
24 convince her not to appeal, were you?

1 MR. MANCINI: Objection as to form.

2 A. Writing her to consider appealing.

3 Q. Because you had heard, had you not, that
4 she was considering not appealing, right?

5 MR. MANCINI: Objection as to form and
6 foundation.

7 A. Actually, I don't believe I ever heard
8 that. Quite frankly, I would consider it a foregone
9 conclusion that she would appeal. So I legally
10 hadn't heard that. It was more of a matter of, you
11 know, how to proceed on appeal or --

12 Q. Well, why were you invoking her language
13 that said it was her duty to appeal, if you didn't
14 know or have an inclination at least that she wasn't
15 going to appeal?

16 A. I know they were weighing their options.
17 But, I didn't actually ever anticipate that they
18 wouldn't appeal.

19 Q. All right. Well, then a week later you
20 wrote someone named John C. Piland regarding
21 recollection of trial advice on post-conviction. Who
22 was John C. Piland?

23 MR. RAUB: He used to be Champaign County
24 State's Attorney.

1 MS. SUSLER: What?

2 Q. Do you agree with counsel's
3 characterization on this point?

4 A. Yes, he was.

5 MR. MANCINI: Answer.

6 A. Yes.

7 Q. And why were you writing the State's
8 Attorney of Champaign County concerning recollection
9 of trial and advice on post-conviction?

10 A. Because he was the president of the
11 Illinois States Attorney's Association.

12 Q. So you wanted his input into the issue of
13 whether to appeal Mr. Steidl's grant of habeas, is
14 that right?

15 MR. MANCINI: Objection as to form.

16 A. That is not what the heading indicates. It
17 doesn't talk about appeal. It talks about
18 post-conviction.

19 Q. Well, tell me why did you write John C.
20 Piland regarding his recollection of trial and
21 advice on post-conviction? Was he involved in your
22 trial?

23 MR. MANCINI: Objection as to form.

24 A. No, but I was also a former president of

1 the Illinois State's Attorney's Association, and,
2 you know, as such I wanted to be fully informed, if
3 he wanted to have any input in that the matter be
4 looked at fairly and appropriately.

5 Q. Did he act on your request to intervene
6 with the Attorney General with regard to the Steidl
7 appeal?

8 A. No.

9 MR. MANCINI: Objection as to form. He
10 never indicated he acted to intervene in anything.
11 If you can answer that question.

12 A. He took no action that I am aware of.

13 Q. Did he tell you he didn't want to take any
14 action?

15 A. No.

16 Q. He didn't tell you one way or the other,
17 or did he tell you look, I don't want to get
18 involved in this mess?

19 MR. MANCINI: Objection as to form.

20 A. I don't recall ever having any
21 communication with him.

22 Q. Did he write you back or did this letter
23 fall on deaf ears and you never heard anything
24 again?

1 A. I don't know what happened to the letter.
2 I just indicated I had had no communication with Mr.
3 Piland.

4 Q. So he never got back to you, is that what
5 you are telling me?

6 A. That is my recollection.

7 Q. All right. And then a week or so later,
8 on July 29th you again wrote Mandeltort regarding
9 advice on appeal and impressions of findings.
10 Now, did she say Mike, I want you to give me some
11 advice on this appeal, and your impressions of the
12 findings. Or did you initiate that, giving her that
13 advice and impressions?

14 MR. MANCINI: Objection as to form. It's
15 compound with other alternatives. You can answer if
16 you can.

17 A. Okay. We exchanged communications.

18 Q. Well, that's not my question. I notice
19 that you wrote her on the 29th, on the 30th of
20 October, in January of 2004, and March of 2004.
21 And earlier you wrote her on July 9th. And on July
22 9th, on July 29th, and on October 20th, in each
23 instance it is in, the nature of the letter, it said
24 regarding advice on appeal and impression of

1 findings.

2 So, it appears that you were persistently
3 giving her advice on whether to appeal, and your
4 impression of the findings of the court, that being
5 the habeas court, am I reading those
6 characterizations correctly? Is that in fact what
7 you were doing?

8 MR. MANCINI: Objection as to form. It
9 misstates two of the descriptions. You can answer.

10 A. As the prosecutor who handled the case, I
11 had certain experience with the case, firsthand
12 experience. And I believed it was appropriate and
13 within my, I guess duty, to provide information.
14 I had no influence upon what they would do with that
15 information.

16 Q. You were trying to have influence, were
17 you not?

18 MR. MANCINI: Objection as to form. It's
19 argumentative.

20 A. If I was trying to exert influence, I
21 would have explored political avenues, which I did
22 not. I just merely communicated information with
23 the Attorney General.

24 Q. What political avenues would you have

1 explored if you were legally serious about making
2 sure there was an appeal?

3 MR. MANCINI: Objection form.

4 A. I legally never looked into it very far. I
5 mean, I was the former State's Attorney. I was a
6 Democrat, former office holder. Attorney General is
7 a Democrat. I don't know if they were still there,
8 but there were people over the years that were
9 muckety mucks with the Attorney General's office,
10 you know, former, that I had good relationship,
11 former head of this, former head of that, that I
12 could have called up and say have you got Lisa
13 Madigan's ear. There was all kinds of avenues I
14 could have done, but I didn't.

15 Q. Did Miss Mandeltort ever tell you in any
16 of these communications, it doesn't appear she sent
17 you any letters back, is that fair to say?
18 Or are there some letters that are missing from this
19 log?

20 MR. MANCINI: Objection form.

21 A. I don't recall.

22 Q. Well, do you remember her ever writing you
23 back in response to any of these seven or eight
24 letters that you sent to her and to Lisa Madigan?

1 Eight letters?

2 A. I said I know we talked. I don't recall
3 if she wrote a letter back.

4 Q. Did either Miss Mandeltort or Lisa Madigan
5 ever ask you about any of the alleged improprieties
6 that happened in the first trial?

7 MR. MANCINI: Objection as to form.

8 A. Actually, no.

9 Q. No? So you were never interviewed or
10 asked in any way about whether, about any alleged
11 Brady violations or any other kinds of manipulation
12 of witnesses or anything like that? You never had
13 any discussion with Miss
14 Mandeltort, with Lisa Madigan or with anyone else in
15 the AG's office during the time they were
16 considering to appeal about your role and your
17 investigator's role in the case?

18 MR. MANCINI: Objection to form.

19 Misstates the evidence.

20 A. I know that she indicated she had a
21 concern about Brady, but I don't legally recall we
22 had any specific discussions about it.

23 Q. Did you assure her that there was no Brady
24 violations that you were involved in?

1 A. I've indicated and still indicated that I
2 don't believe we could, that the prosecutor or the
3 State's Attorney committed a Brady violation in this
4 case.

5 Q. Well, that's fine, you believe that.
6 Did you communicate that in any detail to either
7 Mandeltort or to Lisa Madigan?

8 A. I never talked to Lisa Madigan. And Miss
9 Mandeltort -- I know that Brady came up, and I would
10 have indicated, I believed everything was complied
11 with is all I could say. I don't recall talking
12 about anything specific.

13 Q. During the prosecution, did you ever hear
14 that Darrell Herrington had named Jim and Ed as the
15 people who committed the crime?

16 MR. MANCINI: Objection as to form and
17 foundation.

18 A. I heard that, but it may have been after
19 the prosecution. I don't recall when I heard that.

20 Q. Well, you never communicated that to
21 defense counsel, did you?

22 MR. MANCINI: Objection to form.

23 A. I don't re-- I know the record shows
24 that it was not communicated.

1 Q. And you have no memory of communicating
2 it?

3 A. I have no specific recollection of
4 communicating it.

5 Q. And as you sit here now you think it could
6 likely -- you may not have known about it until
7 after the trial? Is that right?

8 A. Yes, that's possible, yes.

9 Q. And you think maybe you learned about it
10 when?

11 A. In the post-trial proceedings.

12 Q. So, you learned about it whenever it was
13 brought up by defense counsel in the post-trial
14 proceedings?

15 A. I may have learned about it then.

16 Q. All right. You may have learned about it
17 before that or no?

18 A. It's possible.

19 Q. All right. But it's more likely that you
20 learned about it through the litigation subsequent
21 to trial and appeal, than that you learned about it
22 at the time it happened, is that fair to say?

23 MR. MANCINI: Object to form. If you can
24 answer it.

1 A. I legally can't say.

2 Q. Well, let me ask you this: As a
3 prosecutor, if in fact one of your two star
4 witnesses had named two other people other than the
5 people who are on trial and who were charged as the
6 people who committed the crime, that would be Brady
7 hands down, right?

8 MR. MANCINI: Objection as to form.

9 Q. No question, right?

10 MR. MANCINI: Incomplete hypothetical.

11 A. That is not correct.

12 Q. Why would that not be correct?

13 A. Well, in the instant case, and the way it
14 was explained to me, was that Mr. Herrington would
15 initially talk to Gene Ray, something to the effect
16 of he said that Darrell Herrington was a drywaller
17 and Gene Ray was a plumber, as well as the chief of
18 police. He said don't ask me about the murders.
19 Gene Ray said, what are you talking about? Mr.
20 Herrington said I was there with Jim and Ed. And
21 Gene Ray then immediately said whose Jim and Ed? He
22 said okay, it was Whitlock and Steidl.

23 Q. Who explained that to you that way?

24 A. That's the way I've either through the

1 pleadings or the way it was explained to me. That
2 at that point --

3 Q. My question was who?

4 A. I don't recall specifically.

5 MR. MANCINI: You wouldn't let him answer
6 the question initially. You interrupted him with
7 another question. So if we can let him answer one
8 at a time.

9 Q. You don't know who told you?

10 A. I know -- I was finishing my other
11 explanation.

12 Q. Well, I was asking you, my question was,
13 who told you that?

14 A. In the middle of my answer.

15 MR. MANCINI: Don't answer. Just answer
16 his next question.

17 A. I don't recall who told me. It may have
18 been in the pleadings.

19 Q. Well, you said someone told you. A
20 pleading doesn't tell you, right? You are implying
21 that -- more than implying that someone out of their
22 mouth told you this story about how the Jim and Ed
23 story went down, right?

24 MR. MANCINI: Objection to form.

1 A. I don't recall. If I read it in the
2 pleadings, said what is this about?

3 Q. So then you went and talked to Chief Ray
4 about it? Did you ever talk to Chief Ray about how
5 it went down?

6 A. I have no specific recollection of talking
7 to a Chief Ray. I know he gave a deposition.

8 Q. Well, were you present when Jim and Ed was
9 mentioned by Darrell Herrington?

10 A. No.

11 Q. Was Eckerty present when Jim and Ed were
12 mentioned?

13 MS. EKL: Objection, foundation.

14 A. Not as it was explained to me of what
15 occurred.

16 Q. All right. But Parrish was, right?

17 MS. EKL: Objection, foundation.

18 A. Actually not as it was explained to me.

19 Q. All right. So, it was explained to you,
20 either by some pleading or by some unknown person,
21 that it was between Ray and Darrell Herrington, and
22 it was briefly mentioned, and then amended by
23 Darrell Herrington to Chief Ray; is that the way
24 that you learned about it, either through pleadings

1 or through whomever told you about it?

2 MR. MANCINI: I'm going to object because
3 you asked him that question. He tried to answer it,
4 then you interrupted him with another question. If
5 you would like to answer that question again, go
6 ahead.

7 A. The way it was explained to me is like I
8 said, Gene Ray was chief of police, but he was also
9 a plumber. Darrell Herrington was a dry waller.
10 Darrell Herrington, the conversation with Gene Ray,
11 to the effect don't ask me about the murders. Gene
12 Ray indicated what are you talking about. I was
13 there with Jim and Ed. Gene Ray said, who is Jim
14 and Ed. He says okay, it was Whitlock and Steidl.
15 Gene asked him, what happened? And that's what he
16 said. He said well, this is what happened. And
17 then Gene Ray then contacted Jim Parrish, I would
18 guess.

19 Q. And Gene Ray told you that?

20 MR. MANCINI: Objection as to form.
21 Asked and answered. He said he didn't know whether
22 he got it from pleadings or if someone told him
23 that. You can answer again.

24 A. I have no specific recollection that Gene

1 Ray is the one who told me that after I saw the
2 pleadings. I don't recall. I just recall that's
3 the version that I was told.

4 Q. Which pleadings was it in?

5 A. I don't recall.

6 Q. Well, let's narrow down a little bit about
7 where you could have learned this, because this is
8 fairly significant, as you might agree.

9 The investigators could have told you,
10 right? Eckerty or Parrish or Ray could have told
11 you?

12 MR. MANCINI: Objection as to form and
13 foundation.

14 Q. That they would be likely suspects to tell
15 you, right?

16 MR. MANCINI: Objection as to form and
17 foundation.

18 MS. EKL: Object to form.

19 A. They could have told me, yes.

20 Q. And the pleadings could have been any
21 pleading after the defense learned about this
22 information, right?

23 A. Right.

24 Q. Or it could have been in a pleading that

1 the state filed voluntarily revealing information
2 about Jim and Ray? Jim and Ed, right?

3 A. That's possible.

4 Q. All right. Well, if I were to tell you
5 that the defense did not learn about Jim and Ed
6 until the late nineties, could you tell me whether
7 you learned about it before or after the late
8 nineties?

9 A. I can't tell you, but I can tell you what
10 I was told as to what occurred.

11 Q. And is it fair to say that if you were to
12 learn from a person rather than from a pleading,
13 that it would have been either Ray, Parrish or
14 Eckerty that you learned it from?

15 MR. MANCINI: Objection to form.

16 A. Only that that would be the most likely.

17 Q. All right. Now, going back to now this
18 way that you say you learned about it, or the
19 description of how you learned about it. Even the
20 way you describe it, that would still be Brady,
21 wouldn't it?

22 MR. MANCINI: Objection to form.

23 Q. If a witness names two people, even if
24 he just in the next breath says two other people,

1 that is still information the defense is entitled to
2 under Brady, is that right?

3 MR. MANCINI: Objection as to form.

4 A. You are asking me my legal opinion?

5 Q. Yeah, I'm asking you as the prosecutor who
6 Brady applies to.

7 MR. MANCINI: Objection as to form.

8 Foundation.

9 A. Somebody walks in and they say, ask you
10 who were you with last night? The person says I was
11 with X and Y. And the person says who in the hell
12 is X and Y? He said okay, I was legally with A and
13 B, but I didn't want anybody to know I was with
14 them. Well, what did you do, A and B? We did X, Y
15 & Z, we did all this stuff. Blah, blah.

16 I can guarantee you the police report is going to
17 reflect that the witness said I was with A and B and
18 this is what we did, when it was that casual of a
19 reference. And in fact, X and Y in fact weren't
20 real people, were only aliases for A and B.

21 So that would be up for the court to
22 decide, but I certainly believe that there would be
23 an argument that that would not be a Brady
24 violation.

1 Q. Well, that's the negative information you
2 didn't want the police to write down; things such as
3 what you just described, right?

4 MR. MANCINI: Objection, misstates his
5 testimony. You can answer.

6 A. I can answer that? I would have had a
7 police report written the way that was written.
8 To me that's no big deal. I would not have
9 considered that a negative inference. Big deal; the
10 guy is saying well, I was kind of reluctant to name
11 them at first.

12 Q. Well, you just guaranteed to me that no
13 experienced officer, and I assume you considered
14 Parrish and Eckerty to be experienced officers, no
15 experienced officer would write down the Jim and Ed
16 in the context that you were told about it; they
17 would just leave that right out of the report,
18 right? Isn't that what you just told us?

19 MR. MANCINI: Objection to form.

20 A. That's not what I said.

21 Q. Fix it for me. That's not what I heard.

22 A. I said that that would be something that
23 would occur. And I said I wouldn't find that
24 unusual.

1 Q. Didn't you use the word guarantee?

2 MR. MANCINI: Objection as to form. He did
3 not.

4 A. I didn't use guarantee. Or if I did, I
5 misspoke. Like I said, that would be something that
6 wouldn't be unreasonable to believe occurred.

7 Q. So, it wouldn't be unreasonable for you to
8 believe that if two suspects were named, and then in
9 the police officer's opinion that those names were
10 quickly changed to two other names, that the first
11 two names would be left out of the report?

12 MR. MANCINI: Objection.

13 Q. You wouldn't find that unusual in your
14 experience as a prosecutor who deals day-to-day with
15 investigators, is that what you are telling us?

16 A. In the context as it was explained to me
17 where this was in essence the same sentence, would I
18 find that unusual? That unusual? Not personally.

19 Q. Well, if in fact you were present for that
20 conversation, would you have written that down or
21 made sure that the investigator wrote that down?

22 MR. MANCINI: Objection.

23 Q. Or would you say keep your pen up? It's
24 not worth writing down?

1 MR. MANCINI: Objection as to relevance.

2 A. I would have had to have been there, and I
3 wasn't.

4 Q. Well, let me ask you this. If you got a
5 report that said just exactly what you said, that in
6 fact they named Jim and Ed, but they quickly changed
7 it, would you turn that over as potential Brady, or
8 would you say ah, that's not worth turning over?

9 MR. MANCINI: Objection as to form.

10 A. I would have turned that over as a witness
11 statement. I would not necessarily consider that a
12 Brady issue.

13 Q. All right.

14 A. But it would have been turned over. I
15 wouldn't have -- if that is what is written, again,
16 I wouldn't have considered that significant, or it
17 wouldn't have mattered anyway; you turn over
18 whatever you got. But that would definitely have
19 been disclosed.

20 Q. In fact, in discovery Mr. Tulin had asked
21 for all people who had been named as being involved
22 or present at the crime. Right?

23 MR. MANCINI: Objection as to form.

24 Q. He asked specifically for that, right?

1 MR. MANCINI: Objection as to form and
2 foundation.

3 A. Whatever the pleadings are.

4 Q. Pardon me?

5 A. Whatever the pleadings are.

6 Q. All right. Well, he asked in discovery
7 for that?

8 MR. MANCINI: Objection to form.

9 Q. Agree with me on that?

10 MR. MANCINI: Objection to form.

11 A. I would have to look at the discovery.

12 I don't remember the rules 30 years ago.

13 Q. If he had in fact asked for that, which in
14 fact the record shows that he did; and you were, at
15 that point, familiar with this story that you just
16 told us, about Jim and Ed quickly changing to Herb
17 and Randy, would you have notified Mr. Tulin of that
18 information, or would you have decided that it
19 wasn't Brady, it wasn't a witness statement, I don't
20 need to turn it over?

21 MS. EKL: Objection as to form and
22 foundation, specifically to facts that you
23 interjected in your question that you said were part
24 of the record, which I don't believe was accurate.

1 MR. MANCINI: I join that objection.

2 A. In what format was it told to me?

3 Q. Well, how about Gene Ray telling it to you
4 as one of the people who you've been meeting with
5 periodically along with the other investigators in
6 the case?

7 MR. MANCINI: Objection to form.

8 A. Well, if Gene Ray had told me that I
9 would have said well, write up a report. Again, it
10 was insignificant to me. I mean, it didn't affect
11 the case.

12 Q. So, if Gene Ray told you that, or if
13 Parrish told you that, or if Eckerty told you that,
14 you would have told them to write up a report?

15 MR. MANCINI: Objection, form.

16 Q. Is that fair to say? Did I hear you say
17 that?

18 MR. MANCINI: Objection form.

19 A. I would have hoped the reports would have
20 had what was initially stated.

21 Q. My question is, would you have told them
22 to write it up?

23 MR. MANCINI: Objection form.

24 Q. If it wasn't in the report already?

1 A. My legal advice would be to write up a
2 report.

3 Q. Okay. And in fact, if Darrell Herrington,
4 did -- strike that. Did Darrell Herrington ever
5 tell you that he had named Jim and Ed originally, or
6 make any reference to you about Jim and Ed?

7 A. No.

8 Q. If Darrell Herrington had told you about
9 Jim and Ed in any conversation you had, what would
10 you do?

11 A. I --

12 MR. MANCINI: Objection to form. Incomplete
13 hypothetical. Answer the best you can.

14 A. I would have no idea.

15 Q. You have no idea what you would do?

16 MR. MANCINI: Same objection.

17 A. It would -- depend on the circumstances.

18 Q. Well, I'm giving you these
19 circumstances. The circumstances are, that one of
20 your witnesses names two other people and then takes
21 it back. If that were said to you, what would you
22 do?

23 MR. MANCINI: Objection

24 mischaracterizes --

1 Q. As a prosecutor who has certain
2 obligations under Brady and under the law of the
3 State of Illinois?

4 MR. MANCINI: Objection, mischaracterizes
5 the evidence and it's an incomplete hypothetical. If
6 you can answer, go ahead.

7 A. I can't answer that, because I don't --
8 your interpretation of Brady and my interpretation
9 of Brady may be different. I can't answer that
10 question.

11 Q. All right. I just went to know from you,
12 sir, that if Darrell Herrington had told you the
13 information that you say you later learned at some
14 point, would you have made any attempt to inform
15 defense counsel that he had said that?

16 MR. MANCINI: Objection form and
17 foundation.

18 A. Based upon the information told to me, I
19 would have told defense counsel because I wouldn't
20 have cared. It didn't mean anything.

21 Q. So you would have told defense counsel
22 because they wouldn't have cared?

23 MR. MANCINI: Objection form.

24 A. I said I wouldn't have cared. If he said

1 well, the reason I didn't want to name -- well, I
2 mean --

3 Q. But if you did care, you wouldn't tell
4 him; is that what I'm understanding? Or is that not
5 a logical extension of what you are saying?

6 MR. MANCINI: Objection form. That's
7 argumentative.

8 Q. I withdraw the question.

9 A. I would have done the right thing.

10 Q. Pardon me?

11 A. I would have followed the rules.

12 Q. Pardon me? So all I'm saying is if you
13 didn't inform defense counsel, and you didn't tell
14 Eckerty and them to write a report, is it fair to
15 assume that you did not know about Jim and Ed until
16 after your involvement in this case as prosecutor
17 was at an end?

18 MR. MANCINI: Objection form.
19 Speculative. He has answered the question that he
20 doesn't recall.

21 Q. You don't have to tell him what he said
22 before.

23 A. I don't recall.

24 Q. So it's possible that you had the

1 information and you didn't turn it over, is that
2 what you are saying?

3 MR. MANCINI: Objection form.

4 A. Huh?

5 Q. It's possible that you had it and you just
6 didn't bother to turn it over?

7 MR. MANCINI: Objection form.

8 A. Thirty years ago anything is -- I don't --
9 I don't recall.

10 MR. BALSON: Wait a minute.

11 A. I don't recall.

12 MR. BALSON: You need to keep your voice
13 up, please.

14 MR. MANCINI: Keep your voice up.

15 Q. When is the -- did you ever discuss with
16 Mr. Eckerty the Jim and Ed question?

17 A. I don't --

18 MR. MANCINI: Objection as to form and
19 foundation.

20 A. I don't recall.

21 Q. And any of these conversations where you
22 commiserate over the fact that a lot of guilty
23 people like Mr. Steidl and Mr. Whitlock are getting
24 set free, did you ever talk about the Jim and Ed

1 question and whether that was significant in the
2 case or not?

3 A. I don't recall discussing with them. As I
4 have indicated based upon the context, I don't
5 believe it was significant.

6 Q. Have you read the testimony of Mr. Gene
7 Ray and Jim Parrish in this case?

8 A. No.

9 Q. So you don't know what they say happened
10 with regard to Jim and Ed, do you?

11 A. No.

12 Q. You just know this kind of amorphous
13 thing, you don't know where it came from or when it
14 came from, but you have a certain view of the di
15 minimus nature of the Jim and Ed evidence, right?

16 MR. MANCINI: Objection form.

17 A. I have that viewpoint because I have
18 reviewed the post-trial pleadings, and based upon
19 the context of what it was informed to me, I would
20 consider it, as you have put it, di minimus.

21 Q. But, if in fact it happened in a different
22 manner, that the naming of it was in the context of
23 a questioning at the police station, and that the
24 changing of it was days later, would that alter your

1 view about whether it was di minimus or not?

2 MR. MANCINI: Objection as to form and
3 foundation.

4 A. The way it was explained to me was that
5 immediately upon that time, it was not --

6 Q. I'm not asking you how it was explained.

7 MR. RAUB: Let him --

8 Q. I'm asking if in fact it happened
9 differently than how it was explained to you, would
10 that change your view?

11 A. I would have to review the law. I would
12 have done -- followed the rules, but I would have to
13 review the law as I sit here. You are asking me
14 things, I have no clue.

15 Q. Well, you are the one who agreed with me
16 that it was di minimus in the context of the way it
17 was told to you, right?

18 A. Yes.

19 Q. And you also agreed, however, that you
20 would turn it over because it didn't matter one way
21 or the other, and in fact the defense, it might be
22 defense counsel -- it might be useful to defense
23 counsel, right?

24 MR. MANCINI: Objection form.

1 A. I don't believe it would have been useful,
2 but that would have been up to defense counsel.

3 Q. Right. You got enough, hard enough job
4 prosecuting without trying to figure out what the
5 defense is going to do, right?

6 A. I was a defense attorney for five years,
7 so I know both sides. So, I understand, I
8 appreciate, I defended three first degree murder
9 cases also.

10 Q. All right. Before you became a
11 prosecutor?

12 A. No, no, afterwards.

13 Q. All right. And as a defense lawyer, you
14 understand that the names of other suspects that
15 were named by a key witness could be very
16 significant to your defense, right?

17 MR. MANCINI: Objection as to form and
18 foundation.

19 MS. EKL: Objection to form.

20 A. Depends on the context. If somebody says,
21 names two people; well, why didn't you name them
22 first? Because I was scared to death, I thought
23 that they would do harm to me. That probably
24 wouldn't be useful to defense counsel.

1 So it would depend on the context. In the context
2 of this case it seemed di minimus whenever I learned
3 it.

4 Q. Well, wouldn't you as a competent defense
5 counsel, if you got the names of two other people,
6 even if they were quickly -- the witness quickly
7 renigged on it, wouldn't you do some investigation
8 to find out whether in fact it was di minimus?

9 MR. MANCINI: Objection, assumes he's
10 competent defense counsel.

11 A. Again, in this context, they were aliases.
12 They weren't real individuals.

13 Q. How did you know that?

14 A. That is the context it was explained to
15 me. It was like --

16 Q. Hey, you didn't find Darrell Herrington
17 sufficiently credible to base an indictment on his
18 testimony, did you, by itself, until you had Debbie
19 Reinbolt, you didn't choose to prosecute, did you?

20 MR. MANCINI: Objection form.

21 A. As I stated, the duty of a State's
22 Attorney represents the people of the State of
23 Illinois. That includes the defendant. And for my
24 duty would be -- I would prosecute someone when I

1 believed that I had a reasonable chance of
2 conviction beyond a reasonable doubt.

3 Q. So your answer was no, you didn't --

4 A. Probable cause existed, but I didn't
5 believe that there had been a reasonable chance of
6 conviction beyond a reasonable doubt based upon one
7 eyewitness and, you know, at that time the lack of
8 physical evidence and statements.

9 Q. You disagree then with Mr. Eckerty and Mr.
10 Parrish's assessment that there wasn't probable
11 cause based on Darrell Herrington's testimony?

12 MS. EKL: Objection, form, foundation.

13 MR. MANCINI: Objection as to form and
14 foundation.

15 A. In my opinion there was probable cause,
16 and as evidenced by the fact we got eavesdropping
17 orders that were granted by the judge.

18 Q. Okay. But you chose not to make an arrest
19 or prosecution based on Darrell Herrington, am I
20 right?

21 A. We chose not to prosecute at that point in
22 time.

23 Q. Yeah, all right. And yet you're saying
24 that the names that he, even though he switched

1 names, that you would discount instantly the fact
2 that he named two other people?

3 A. Based upon the context, and again the
4 example I gave you somebody says who were you with,
5 I'm with A and B. They said who was A and B? Says
6 okay, I was with X and Y. No A and B. Goes through
7 that. In that context I would -- and that's the
8 context it was explained to me, I would find that di
9 minimus.

10 Q. But Judge McCuskey didn't agree with you
11 on that, did he?

12 MR. MANCINI: Objection form and the
13 relevance of what another judge decreed.

14 MS. EKL: Also object to foundation.

15 A. Actually I don't recall when that decision
16 -- I mean I recall it was the cumulative effect, and
17 I'm not even sure Jim and Ed was part of that.

18 Q. Now --

19 A. In Judge McCuskey's decision.

20 Q. Were you involved in taking Darrell
21 Herrington to the lie detector?

22 A. No.

23 Q. Did you participate in making the decision
24 to send him to the lie detector?

1 A. A decision was made. I may have been
2 aware of the decision. That was really, my
3 recollection, more of a State Police policy. You
4 know, about the State Police tended to use lie
5 detector or polygraph.

6 Q. Were you not only aware of the decision,
7 did you concur in that decision?

8 A. At that time I tended not to emphasize
9 polygraphs.

10 Q. All right. So, by not emphasizing
11 polygraphs, do you mean that you did not concur in
12 it?

13 A. Well, that ultimately wouldn't have been
14 my decision to make. But, like I said, I would not
15 have -- you know, I would not have emphasized it.
16 I'm searching for a word, but I --

17 Q. Well, you participated in one interview of
18 Darrell Herrington, that being at Jim Parrish's
19 house on a Sunday, in September, is that right?

20 A. I was present during an interview. I
21 don't recall where it took place.

22 Q. You don't recall going to Jim Parrish's
23 house and being there with Eckerty and/or perhaps
24 Gene Ray's house?

1 A. It could have been Gene Ray's house. I
2 don't recall the exact circumstance that I was
3 present.

4 Q. Well, regardless of where it was, it was
5 -- you remember it being on a weekend, on a Sunday?

6 A. The record, I mean there's reports
7 written. The records would speak for themselves.
8 I legally don't recall.

9 Q. And did you participate in the questioning
10 of Darrell Herrington during that interview?

11 A. I don't recall asking him any questions.

12 Q. But you were present, is that right?

13 A. I was present.

14 Q. And you heard what he had to say at that
15 interview, is that right?

16 A. That's correct.

17 Q. And were you aware at that time that he
18 was an alcoholic and had drinking problems?

19 A. I can't classify somebody as an alcoholic.
20 I'm aware that he had drinking issues.

21 Q. And were you also aware that he had a
22 reputation in the community for exaggerating and
23 lying?

24 MS. EKL: Objection, foundation.

1 A. Not personally.

2 Q. What do you mean not personally?

3 A. I mean, I would not have -- I guess I
4 would not have known -- I wouldn't recall if I knew
5 he had a reputation like that or not.

6 Q. Well, do you know whether he had a
7 reputation based on prior arrests and convictions of
8 deception, theft and that kind of thing?

9 A. My recollection he would have bad checks,
10 but that was all. I don't believe there was any
11 thefts.

12 Q. When you were sitting there watching,
13 observing at least this interview that Eckerty and
14 Parrish were conducting, were you aware of whether
15 they had given him any alcoholic beverages or not?

16 A. No.

17 Q. Did you know whether he was drunk, sober
18 or somewhere in the middle?

19 A. Appeared sober to me.

20 Q. Appeared sober? If he were sober, was he
21 in the process of withdrawal as -- or did he have
22 DTs?

23 MR. MANCINI: Objection to form.

24 MS. EKL: Foundation.

1 A. As I recall I don't remember anything
2 unusual.

3 Q. Well, isn't a drunk either drunk or
4 suffering from withdrawal, if he's an alcoholic?

5 MR. MANCINI: Objection.

6 A. That would call for a medical opinion.

7 MS. EKL: Objection, foundation.

8 Q. You are trying to evaluate a potential
9 witness who is the first witness who is saying that
10 he was present at least for part of the events that
11 have -- of the murders, right?

12 A. Yes.

13 Q. So, you certainly wanted to try to figure
14 out whether he was credible or not, right?

15 A. Sure.

16 Q. And so one important aspect of whether he
17 was credible or not would be whether he was drunk,
18 sober or somewhere in the middle, right?

19 MR. MANCINI: Objection as to form and
20 foundation.

21 A. Yes.

22 Q. Did anyone ask him in your presence hey,
23 how many drinks did you have today?

24 A. I don't recall, but that's certainly not

1 the only interview he gave.

2 Q. All right. But that's the first one you
3 were involved in, right?

4 A. Correct.

5 Q. And you knew, did you not, that he had
6 been questioned for over five hours a couple of
7 nights before at the Paris police station by Parrish
8 and Gene Ray, didn't you?

9 MS. EKL: Objection as to form and
10 foundation.

11 A. I don't recall that.

12 Q. Well, how did you happen to come out to
13 the interview with Darrell Herrington? What were
14 you told about what the significance of the
15 interview was, if any?

16 A. Personally I was told that he was a
17 witness to the murders.

18 Q. Were you told that he had given a
19 statement previously to Eckerty and Parrish or to
20 Parrish and Ray?

21 A. The inference would be if he's come out
22 and see a witness to the murders, that he must have
23 talked to somebody.

24 Q. Well, I'm not asking for an inference. How

1 were you contacted to come and be involved in this
2 questioning?

3 A. I don't recall.

4 Q. What were you told about Herrington prior
5 to coming to the interview?

6 A. I don't recall the specifics, but
7 presumably he was a witness I needed to see.

8 Q. All right. And when you saw the witness,
9 were you aware at that time that both Eckerty and
10 Parrish were taking notes of the statement?

11 MS. EKL: Objection as to form and
12 foundation.

13 A. I don't recall.

14 Q. Okay. But you later saw reports from both
15 of them, right?

16 A. That's right.

17 Q. So, did you, as you sit here now, can you
18 tell us what kind of demeanor Herrington had?

19 A. No. Other than I don't recall anything
20 that I would, you know, would have been unusual that
21 I would recall it now. So there was nothing
22 significant one way or the other that would -- that
23 I would remember.

24 Q. Now, you said you weren't a big believer

1 in lie detectors, right?

2 A. In polygraphs, correct.

3 Q. As a prosecutor, right?

4 A. Right.

5 Q. And is that because in that context of
6 polygraph of a witness, particularly one of
7 questionable credibility, could only hurt your case?

8 MR. MANCINI: Objection form.

9 A. Since it's inadmissible it can't hurt my
10 case at all. I mean, if there are other reasons to
11 believe him, I mean it would be one factor.

12 Q. Well, let me ask you this: If a witness
13 of yours failed a polygraph, is that discoverable?
14 Would you have to turn that report over?

15 MR. MANCINI: Objection form.

16 A. My recollection of the law as it existed
17 then, was that the results of a polygraph were
18 inadmissible. If the witness gave a statement that
19 was inconsistent with other statements he has made,
20 in other words the questions and the answers could
21 be used for impeachment, that that was discoverable
22 and that would have been turned over.

23 Q. So if a witness flunked a lie detector on
24 questions about whether he saw the events he was

1 testifying that he saw, testifying to, it's your --
2 it was your understanding as a prosecutor you didn't
3 have to turn that over?

4 MR. MANCINI: Objection form.

5 A. That is my recollection of the law as it
6 existed at that time, and if I recall even one of
7 the more recent court decisions, since you said I'm
8 so familiar with the pleadings, etc., I believe the
9 court ruled that way also. More recently said that
10 the polygraph results wouldn't have been admissible,
11 and that didn't constitute an error in the case.

12 Q. I'm not asking you whether it was
13 admissible or not. I'm asking you whether it was
14 discoverable for other purposes.

15 A. Not that I recall, but I believe the
16 polygraphs may have been part of the motion in
17 limines also so it may have been covered there.

18 Q. Did you turn over the results of Darrell
19 Herrington's lie detector?

20 A. My recollection is the polygraphs may have
21 been included in -- we had a massive motion in
22 limine where a lot of psychological records and
23 other police reports were all lumped in, and the
24 court kind of went through them and sealed them up.

1 Q. A motion in limine that you made?

2 A. Since my recollection it involved also
3 psychologicals of Whitlock; I think that it may have
4 been a joint motion. At least the hearing.
5 It may have been two separate motions and just had a
6 joint hearing.

7 Q. Well, the defense didn't move to put under
8 seal the flunking or the unfavorable results of
9 Darrell Herrington's polygraph, did they?

10 MR. MANCINI: Objection form. Your
11 characterization.

12 A. I don't understand the question.

13 Q. Well, you are not trying to tell us that
14 the defense moved to seal the Herrington polygraph?

15 A. No. But, my recollection is they may have
16 been included and the court approved the sealing of
17 them.

18 Q. But you asked for it, right?

19 A. If it was -- I recall part of these are
20 the matters that we don't believe are discoverable
21 from each side.

22 Q. Right. So you brought it to the judge,
23 but did not give it to the defense, is that what you
24 are saying?

1 A. That's the appropriate way to do it, isn't
2 it?

3 Q. Is that what you did?

4 A. That's what the record reflects.

5 Q. All right. And did you have the notes
6 that backed up the report, or did you just have the
7 report?

8 A. For me, I would have just had the report.

9 Q. Well, let me ask you to take a look -- I'm
10 going to show him the lie detector. I believe it's
11 Murphy 4. I'm going to show you what has previously
12 been marked as Murphy Exhibit No. 4.

13 And also was an exhibit in the Gene Ray deposition.

14 MS. EKL: The Bates stamp number?

15 Q. ISP 02396. Okay. Now, the first two
16 pages of this is a division of criminal
17 investigation Zone 10, attention special agent Jack
18 Eckerty. And it has a lab number, S 862870. And it
19 is the results of Darrell Herrington's lie detector
20 test given by Mark Murphy.

21 Did you receive a copy of this report on
22 or about October 15th or thereafter?

23 A. I don't have any specific recollection of
24 the report. But I would say that this would be

1 something that the State's Attorney would routinely
2 get.

3 Q. And in this it indicates that Herrington
4 engaged in, if you look on page two, of acts of
5 purposeful, noncooperation during his polygraph
6 examination, and that the examiner was precluded
7 from rendering any opinion as to its truthfulness as
8 to the above questions. It's been the experience of
9 the examiner, however, that when a subject
10 purposefully distorts his polygraph records, he is
11 usually not telling the truth to one or more of the
12 issues under investigation. It is recommended that
13 this subject be administered a second polygraph
14 examination to further investigate his truthfulness
15 in this matter.

16 Now, did you, on or about October of '86,
17 receive the recommendation of the polygraph examiner
18 to repolygraph Darrell Herrington?

19 A. Again, I don't have any specific
20 recollection of when I got the report, only that
21 these would be reports that would be routinely
22 given.

23 Q. Well, do you recall that during the
24 investigative stages of the case after Darrell

1 Herrington had given the statement in front of you,
2 but before any arrests had been made, that the
3 question of whether to repolygraph Darrell
4 Herrington came up?

5 A. I don't recall. I would recall obviously
6 that we did hypnosis.

7 Q. Well, do you remember making a decision
8 with the investigators, Eckerty and Parrish and Gene
9 Ray, not to repolygraph Darrell Herrington, but
10 rather to submit him to hypnosis?

11 MS. EKL: Objection, form.

12 MR. MANCINI: Join the objection.

13 A. I don't recall. I have no specific
14 recollection of any conversations regarding a second
15 polygraph.

16 MR. TAYLOR: All right. Let's take a lunch
17 break now.

18 MR. MANCINI: I just want to put
19 something on the record, just so it's out front.
20 On March 9th I sent a letter to Jan specifically,
21 carboning Ron, that we would like to do the deps
22 from nine to five for Mr. McFatridge given his
23 situation, family situation and whatnot. I know you
24 noticed it up for 10 o'clock. That's fine.

1 But if we can try to accommodate the nine to five
2 tomorrow, we would appreciate it, to the best it's
3 possible.

4 MR. BALSON: Let me raise one other thing
5 while we are talking. We had subpoenaed David Rands
6 for next Tuesday, or I think it was the 25th. His
7 lawyer contacted me and said that he was not
8 available, and that David was also in a conflict. I
9 offered the dates of the 27th and the 28th. Now he
10 has contacted us and asked us as a courtesy if we
11 could all agree to do his deposition on September
12 the 18th. That's beyond the date, and I can enforce
13 that subpoena if I have to. But, I am inclined to
14 give them the courtesy and take it on the 18th, if
15 that's okay with everybody else.

16 MR. MANCINI: I will start by saying I
17 can't comment as to the 18th because I don't have my
18 calendar in front of me.

19 MR. BALSON: Can you find out at the
20 break?

21 MR. MANCINI: I can do that.

22 MS. EKL: September 18th is a Saturday. No,
23 September 18th is a Friday. Sorry.

24 MR. BALSON: Let me respond to them.

1 I'm inclined to give him the courtesy.

2 MR. RAUB: I would say yeah.

3 MS. EKL: My only question is, can he come
4 to Chicago so we don't all have to drive four hours
5 down to Springfield?

6 MR. RAUB: Speak for yourself.

7 MS. EKL: Or Champaign is fine too. But I
8 mean if he will come to Champaign, we had Rotskoff
9 in Springfield because we are already going to be
10 down there, perhaps we could have him do that one in
11 Champaign too, or Chicago, so we don't have to do an
12 eight hour drive.

13 MR. RAUB: So you don't have to do an eight
14 hour again?

15 MS. SUSLER: Can we agree to come back at
16 two from lunch?

17 (Lunch break taken.)

18 (Resumed at 2:07 p.m.)

19 BY MR. TAYLOR:

20 Q. All right. Let's go back to Murphy
21 Exhibit No. 4 which is the lie detector test, a
22 document with attached notes. Now, calling your
23 attention to the first page and the second page,
24 there's a series of questions and answers that the

1 lie detector examiner, Mr. Murphy, put to Mr.
2 Herrington; is that right?

3 A. Yes.

4 Q. And there are answers, including the first
5 question: Were you with Herbie Whitlock and Randy
6 Steidl the night Dyke and Karen Rhoads were killed?
7 Answer: Yes. Did you kill them? Answer: No. Did
8 they have blood on their clothes inside Dyke and
9 Karen Rhoads' house? Answer: Yes. Did you see
10 Karen Rhoads in her bedroom after she was killed?
11 Answer: Yes. Besides the first time you talked
12 with the police, did you make any other false
13 statements about this case? Answer: No.

14 Now, those are certainly consistent of a
15 witness statement, is it not?

16 A. Excuse me?

17 Q. That certainly consists of a witness
18 statement, doesn't it?

19 A. Yes.

20 Q. And so that would be clearly discoverable
21 under the Illinois rules of discovery in criminal
22 cases, would it not?

23 A. Contained in the polygraph. Again, it was
24 my understanding at that time is that polygraph

1 became discoverable only if the witness gave answers
2 that were inconsistent with their statements. Also
3 I believe, again, this was a subject of a motion in
4 limine.

5 Q. Well, isn't it true that this particular
6 report was not the subject of a motion in limine and
7 in fact it was never turned over until way after you
8 got out of the case?

9 A. The report as in the two page report or
10 the attachments?

11 Q. Right now we can talk about the two page
12 report.

13 A. Considerable evidence/reports were the
14 subject of a motion in limine, and I don't recall
15 specifically everything that was or wasn't, but --
16 this may or may not have been, but if it wasn't, it
17 still wasn't discoverable under the rules.

18 Q. All right. So did you make a conscious
19 decision not to turn this over?

20 MR. MANCINI: Just so it's clear, we're
21 talking about the first two pages, correct, or are
22 we talking about the entire exhibit?

23 MR. TAYLOR: Right now I'm talking about
24 the first two pages.

1 MR. MANCINI: I just want to make it
2 clear, that's all.

3 A. First of all, again, if it was the subject
4 of a motion in limine, it was ultimately the court's
5 decision whether or not it would be -- to make it
6 discoverable. If it was not the subject of a motion
7 in limine, then it would not have been discoverable
8 under the case law as I recall it that existed in
9 1987.

10 Q. So you don't consider a witness statement,
11 whether it be consistent or inconsistent, to be
12 discoverable under the law as it was in 1987?

13 MR. MANCINI: Objection to form.

14 A. This is a polygraph result and as such it
15 was not discoverable as I recall in 1987, and as I
16 indicated before, at least one Illinois court
17 subsequent to that in ruling on this determined it
18 wasn't, that it was not discoverable.

19 Q. Well, ultimately the court decided that it
20 was discoverable and it was withheld, wasn't it?

21 A. That's not my recollection of the court
22 decision.

23 Q. Did you not review the Whitlock decision
24 on the most recent Fourth District decision?

1 A. Yes.

2 Q. All right. And did you read Judge
3 McCuskey's decision?

4 A. Yes.

5 Q. All right. And did you see in either of
6 those decisions a discussion about this polygraph
7 examination and specifically whether it was
8 discoverable?

9 A. I recall it being raised and it may not --
10 because I read Judge Andrews' decision, and
11 certainly in one of those it was raised. I don't
12 think it was raised in Judge McCuskey's decision and
13 it may or may not have been at issue in the Fourth
14 District decision because they didn't address every
15 issue that Judge Andrews addressed in the trial
16 court, but if it was addressed -- I read it
17 somewhere, so it may have been in Judge Andrews'
18 trial court decision that it was a harmless error at
19 best.

20 Q. A harmless error is different from whether
21 it was discoverable, yes?

22 A. That would be true.

23 Q. And now in the last question it says:
24 Besides the first time you talked with the police,

1 did you make any other false statements about this
2 case? Answer: No.

3 Now, that question and answer, were you
4 familiar with that question and answer on or about
5 October 15th, 1986?

6 A. As I indicated, I don't have any specific
7 recollection about the report although the report
8 would be something that the State's Attorney would
9 normally get.

10 Q. Well, normally if you got a question and
11 answer that dealt with -- that indicated that the
12 first time that the witness talked with police that
13 he made a false statement about this case, would
14 that have been something you would have followed up
15 on?

16 MR. MANCINI: Objection to form and
17 foundation.

18 A. In the complexity of this case, I can't
19 recall whether I would have followed up on that or
20 not.

21 Q. Well --

22 A. Or even noticed the question.

23 Q. Did you know that -- that Herrington had
24 talked to the police prior to the interview that you

1 participated in?

2 MR. MANCINI: Objection, asked and
3 answered.

4 A. I believe I indicated that that was my
5 inference because they said we have a -- would have
6 called me to talk to a witness reference the
7 murders, so they wouldn't have known that unless
8 they had talked to him.

9 Q. Well, did they tell you that he had made
10 false statements during the first interview that
11 they had done with him?

12 A. No.

13 Q. All right. So you were not familiar with
14 the fact that, according to the police officers that
15 were investigating the case, Herrington had made
16 false statements?

17 MR. MANCINI: Objection as to form,
18 foundation.

19 A. But nothing relating that I questioned
20 that would have made me inquire further.

21 Q. And independent of that question, you had
22 no information from the officers that said that he
23 had told them anything that was false.

24 A. That's my recollection.

1 Q. All right. Now, calling your attention to
2 pages 3, 4, 5 and 6 of this exhibit, these appear to
3 be notes taken by the polygraph examiner concerning
4 Darrell Herrington; is that right?

5 A. I would have no idea.

6 Q. Well, have you seen these notes before?

7 A. To the best of my recollection, this is
8 the first time I've ever seen these notes.

9 Q. All right. So would you agree with me
10 that if this is, in fact, notes of the polygraph
11 examiner, that they would be discoverable as a
12 witness statement by Darrell Herrington?

13 A. I think that's a question of fact and law
14 that would have existed in 1987, and I really can't
15 say other than the general rule was that polygraphs
16 were inadmissible, and the only thing that was
17 admissible, and to me admissible and discovery
18 were -- can be coexistent, and the only thing that
19 would be admissible was if a person gave a statement
20 that was inconsistent with his other statement.

21 Q. Well, in '87 Brady existed, right? I mean
22 that was the law at that time as it is now, right?

23 A. I believe. Yeah, I'm sure it --

24 Q. And the Illinois discovery rules were

1 basically the same then as they are now.

2 A. That I can't answer.

3 Q. Well, there were certainly Illinois
4 discovery rules that required witness statements to
5 be turned over, right?

6 MR. MANCINI: Objection as to form.

7 A. I -- yes.

8 Q. All right. Now, looking at this three
9 pages, would you agree with me that it appears to be
10 a witness statement of Darrell Herrington, notes of
11 a witness statement?

12 A. You're going to have to give me a second
13 as, again, this is the first time I've ever seen it.

14 Q. Okay. Okay, I'm just asking about the
15 first three pages and not the chart.

16 A. Oh.

17 Q. That appears to be a witness statement in
18 some detail of what Herrington had said at some
19 point, isn't it?

20 A. Well, it's hard to read. What I can read
21 would seem to be consistent with his other
22 statements.

23 Q. Well, let's stop for a moment here and
24 look at the third entry on the first page. It

1 says -- it's about the names Jim and Ed, do you see
2 that? Just, I'm sorry, this first page right here
3 (indicating) has writing. Maybe it's out of order.

4 MR. MANCINI: Yeah, that's our third page
5 I think.

6 Q. I guess it's out of order maybe. I'm
7 talking about this page here (indicating). So we're
8 on the -- this is the part of the exhibit that
9 starts with a printed form. It says work; 2, you;
10 3, suspects; 4, who not suspects; 5, things stolen,
11 6 -- do you see that?

12 A. Yes, I do.

13 Q. Okay. And have you seen this kind of form
14 with regard to polygraph examiners, that they do an
15 interview and that they have these -- this form to
16 follow, and then they number what the answers they
17 got. Do you see that?

18 A. I actually don't recall ever seeing a form
19 like this. Again, I would be familiar with the
20 results, but I don't -- I don't ever recall
21 receiving as State's Attorney, you know, this type
22 of form.

23 Q. All right. But do you see as the second
24 entry here, it says: Okay, see if I'm telling the

1 truth. Only reason I know about the names Jim and
2 Ed -- do you see that? Third line down.

3 MR. MANCINI: It's hard to read.

4 Q. Well, you can agree with me it says about
5 the names slash Jim and Ed, right? That's readable,
6 isn't it?

7 A. Not really, but if that's what you say. I
8 mean Jim is readable. About is readable.

9 Q. All right. If, in fact, that says what
10 Mr. Murphy has testified that it says, about the
11 names Jim and Ed, that is not consistent with what
12 you knew Darrell Herrington's prior statements to
13 be; isn't that right?

14 MR. MANCINI: Objection as to form.

15 A. Again, we've already talked about it.
16 Given the context as the way it was explained to me,
17 it would not necessarily be more than a minor de
18 minimis, the terminology of you, inconsistency.
19 However, I've never seen this form before.

20 Q. So would it be fair to say that if you had
21 been given this form by Eckerty or Parrish or anyone
22 else who had it back in October or at any time prior
23 to the trial, that even though you consider it to be
24 de minimis, because it contained the names Jim and

1 Ed, you would have considered it discoverable and
2 turned it over?

3 MS. EKL: Objection, form, foundation.

4 MR. MANCINI: Join.

5 A. I would have followed the law.

6 Q. And the law would have required that you
7 turn it over, right?

8 A. I don't necessarily agree with that, but I
9 would have followed the law.

10 Q. All right. Well, you disagree with that?

11 A. Well, I would have to do legal research of
12 what the law existed in 1987. I would -- if the law
13 indicated it should be turned over, I would have
14 turned it over.

15 Q. Well, has the law changed from 1987 until
16 the time the Fourth District decided that Jim and Ed
17 was, in fact, evidence that should have been turned
18 over?

19 MS. EKL: Objection, form, foundation.

20 MR. MANCINI: Join.

21 A. I don't know.

22 Q. All right. Well, do you have any reason
23 to believe that your research would have told you
24 that you shouldn't turn over this statement of

1 Darrell Herrington in which the names of Jim and Ed
2 as potential suspects were listed?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 A. If the law would have indicated it would
6 -- it had to be turned over, it would have been
7 turned over. It's -- I would have followed the law.

8 Q. And the law said you should have turned it
9 over, right? If you had it. Now, I realize you say
10 you didn't have it, but I'm asking if you had it,
11 you would have turned it over, right?

12 MR. MANCINI: Objection as to form. It's
13 been asked and answered.

14 A. I would have complied with the law.

15 Q. Well, I'm not asking you whether you would
16 comply with the law. I'm asking you whether you
17 would turn it over or not.

18 A. You're asking me what the law was 30 years
19 ago. I don't recall what the law -- exact law would
20 have been 30 years ago.

21 Q. So you would have gone and researched the
22 law and if you thought that the law supported your
23 turning it over, you would have. Otherwise, you
24 would have withheld it. Is that what you're saying?

1 A. I would have followed the law.

2 Q. Assuming the law was that you turn over
3 witness statements that may name potential suspects,
4 you would have turned it over; is that right?

5 MR. MANCINI: Objection, form, as to other
6 suspects.

7 A. Again, in the context explained to me,
8 these weren't other suspects. These were, in
9 essence, aliases of the same people that he freely
10 gave.

11 Q. What led you to believe that Randy Steidl
12 or Herb Whitlock went by the aliases of Jim or Ed?

13 A. Aliases in the sense that Herrington used
14 them as an alias, an alternate name. He gave the
15 names, and there's no indication otherwise, he gave
16 the names Steidl and Whitlock.

17 Q. Well, there's no indication otherwise
18 because no one did any investigation to see if there
19 was a Jim and Ed, is that fair?

20 MR. MANCINI: Objection as to form.
21 Argumentative.

22 A. In the context as it was given to me, Jim
23 and Ed were, in essence, Randy and Herbie.

24 Q. Oh, so this pleading or this unknown

1 person who whispered in your ear about the de
2 minimis nature of it also said that the names Jim
3 and Ed were alternative names or aliases for Randy
4 Steidl and Herb Whitlock; is that right?

5 MR. MANCINI: Objection as to form.

6 A. That was the context as it was presented
7 to me.

8 Q. Did you ever confront Darrell Herrington
9 with the question of Jim and Ed and say who is Jim
10 and Ed, why did you name Jim and Ed? Did you ever
11 do that?

12 MR. MANCINI: Objection as to form,
13 foundation.

14 A. Did I?

15 Q. Yeah.

16 A. No.

17 Q. Did you prepare Darrell Herrington for
18 trial testimony?

19 A. Yes.

20 Q. All right. On how many occasions did you
21 meet with Darrell Herrington prior to his
22 testifying?

23 A. I don't recall.

24 Q. Well, two, one, five?

1 A. I don't recall.

2 Q. Was it more than once?

3 A. Yes.

4 Q. And was it -- did you meet with him before
5 the Whitlock trial?

6 A. I'm sorry, I don't remember which one went
7 first.

8 Q. Whitlock was first.

9 A. Yes.

10 Q. Did you meet with him again before he
11 testified at Randy Steidl's trial?

12 A. I would have been remiss not to have
13 talked with him.

14 Q. And on both occasions, did you do a, kind
15 of a practice moot court like you did with Debbie
16 Rienbolt?

17 MR. MANCINI: Objection as to form,
18 foundation.

19 MS. EKL: Objection, form, foundation.

20 A. I don't specifically recall doing, going
21 to I guess a courtroom with Mr. Herrington, but if I
22 had done so, I would have done it before the
23 Whitlock trial. It would have been highly unlikely
24 then to have done that again before the Steidl

1 trial.

2 Q. With Debbie Rienbolt, did you do it before
3 both trials? Did you do moots in both trials?

4 A. At this point in time, quite frankly I
5 don't have the specific recollection of having done
6 it with Debbie Rienbolt either, but as I've seen
7 pleadings to that effect, so it may have occurred.

8 Q. When you prepared Darrell Herrington for
9 his testimony, was Mr. Eckerty present?

10 A. I don't recall.

11 Q. Was Mr. Parrish present?

12 A. I don't recall.

13 Q. Now, did you have an investigator who sat
14 with you at the table at the Whitlock and Steidl
15 trials?

16 A. An investigator?

17 Q. Yeah. Did you have a police officer,
18 whether it be Eckerty or Parrish or someone else,
19 who sat with you as an assistant, a nonlawyer
20 assistant to help you with the case?

21 A. I would have to look at the record. I
22 don't recall any police officers sitting with me.
23 Assistant State's Attorney sat with me in the second
24 trial would have been Alan Bell. And Mike Zopf who

1 we hired, the county hired, to assist in the
2 prosecution sat with me in reference to the Whitlock
3 trial, but I don't recall any police officers
4 sitting there.

5 Q. In your preparation of Darrell Herrington,
6 did either Eckerty or Parrish ever raise the
7 question in your presence about Jim and Ed?

8 A. Not that I recall.

9 Q. Did anyone in your presence, that being
10 either Eckerty or Parrish or any other investigator,
11 at any time confront Darrell Herrington with any
12 inconsistencies in his testimony?

13 MR. MANCINI: Objection as to form.

14 A. Reference to what?

15 Q. What do you mean? What don't you
16 understand?

17 A. In trial preparation, you would have
18 talked to witnesses I mean about -- you wouldn't
19 necessarily label, you know, you say, well, X said
20 this and, you know, Y said this, you know, what's
21 the difference in your version, you wouldn't say
22 that, but you might sit there and represent, okay,
23 well, where exactly -- you might clarify things. I
24 don't know what -- I mean inconsistencies. Are you

1 talking about the Jim and Ed? That would be no.
2 Talking about -- I don't know, I'd have to look at
3 the statements and go through them and see if there
4 would be anything to address. It would just be part
5 of normal routine trial preparation.

6 Q. Well, did you address the contradictions
7 between Debbie Rienbolt's story and Darrell
8 Herrington's story with Darrell Herrington?

9 MR. MANCINI: Objection as to form,
10 foundation.

11 A. Not that I recall. I didn't want to taint
12 their testimony. I kept them separate.

13 Q. And did you confront Debbie Rienbolt with
14 any of the inconsistencies between her testimony and
15 Darrell Herrington's testimony?

16 MR. MANCINI: Objection as to form,
17 foundation.

18 A. Not that I recall for the same reason.

19 Q. The same reason, you didn't want to taint
20 her testimony; is that right?

21 A. That's correct.

22 Q. And by tainting it, you mean you didn't
23 want to in any way have her change her testimony to
24 conform with Herrington's testimony --

1 A. Absolutely --

2 Q. -- and vice-versa?

3 A. That is absolutely untrue. The reason
4 would be you wouldn't want somebody who'll sit there
5 and say, well, your testimony is changing to conform
6 with somebody else's. You say, well, somebody else
7 said this, why don't you think about that a little
8 longer and, oh, now it's changed? I didn't want
9 that to happen. She gave her statement. He gave
10 his statement. Obviously there was certain
11 inconsistencies which would be expected in a case
12 like this, and, you know, it's fine, let's keep them
13 clean, let's go to trial.

14 Q. So you understood the power of suggestion
15 with regard to a State's Attorney or an investigator
16 when it came to a witness who was -- particularly a
17 witness who was nonprofessional and had addiction
18 problems.

19 MS. EKL: Objection --

20 MR. MANCINI: Objection as to form,
21 foundation.

22 MS. EKL: -- to form.

23 A. I don't even know what you're talking
24 about.

1 Q. Well, let me see if I can make it so you
2 do understand what I'm talking about, okay?

3 A. Okay.

4 Q. What I'm saying is, I'll make it very
5 clear, you understood the power of law enforcement
6 to suggest to an unprofessional witness certain
7 parts of evidence that would suggest to them that
8 they might change their testimony and you didn't
9 want to do that, right?

10 MR. MANCINI: Objection.

11 MS. EKL: Objection, form.

12 MR. MANCINI: Foundation also.

13 A. Every witness is different. I can't
14 answer that question.

15 Q. Well, you had two of them, right? You had
16 Debbie Rienbolt. You worked in some detail with
17 her, didn't you?

18 A. Yes.

19 Q. And you had Darrell Herrington. You
20 worked with him. You started working with him in
21 September and you worked with him right through the
22 next June in two trials, right?

23 A. Yeah.

24 Q. So I'm not asking you about any witnesses.

1 I'm asking about these two witnesses, okay?

2 A. Okay.

3 Q. With regard to these two witnesses, you
4 understood they had a propensity for suggestibility
5 and you didn't want to suggest to one that there
6 were inconsistencies so that they might change;
7 isn't that right?

8 MR. MANCINI: Objection to form.

9 Q. You didn't want to taint them, right?

10 MR. MANCINI: Objection as to form and
11 foundation to both questions.

12 A. Herrington gave a statement in September.
13 From September throughout the trial, that statement
14 was consistent. It was consistent in his
15 prehypnotic statement, it was consistent during the
16 hypnosis session, it was consistent during trial, so
17 there was nothing to suggest. I mean it was
18 consistent throughout.

19 Q. It was totally inconsistent with Debbie
20 Rienbolt, wasn't it?

21 MR. MANCINI: Objection as to form.

22 A. And that's incorrect. Obviously they
23 corroborated themselves on a number of issues.
24 Otherwise, the juries wouldn't have convicted.

1 Q. Would you agree or disagree with me that,
2 in fact, someone such as Rienbolt who was a drug
3 addict and an alcoholic and had various criminal
4 problems in her background, was -- didn't have much
5 money, didn't have a job, that she would be more
6 suggestible perhaps than someone in a better -- in a
7 state of sobriety who didn't have the kinds of
8 problems that Debbie Rienbolt had?

9 MR. MANCINI: Objection.

10 MS. EKL: Objection, form.

11 MR. MANCINI: Form, foundation.

12 A. Apparently you've never met Ms. Rienbolt
13 if you believe that. Ms. Rienbolt is going to
14 testify what she believes is the truth, and no force
15 on earth was going to change that.

16 Q. Okay. So your answer to my question is,
17 no, she wasn't suggestible?

18 MR. MANCINI: Objection as to form,
19 foundation.

20 A. Not in my mind.

21 Q. But she changed her story three times in a
22 month, right?

23 A. She changed her own story a few times or
24 whatever the evidence shows in terms of the

1 statements.

2 Q. Were you there when she gave those various
3 different versions?

4 A. I -- the police reports would reflect if I
5 was there or not. I don't recall.

6 Q. Do you have any memory of being there on
7 February 17th when she gave a statement to Parrish
8 and Eckerty?

9 A. I don't recall.

10 Q. Well, did you -- were you there when she
11 gave a statement in March to either Parrish or
12 Eckerty?

13 A. Don't recall.

14 Q. Were you there when she gave a statement
15 on April 11th to either Parrish or Eckerty?

16 A. Assuming for the moment those are the
17 dates that -- of her statements in the police
18 report, I can't recall.

19 Q. Well, do you remember being present for
20 various sessions where she changed her statements
21 somewhat substantially to say the least?

22 MR. MANCINI: Objection as to form.

23 A. I know I was present when -- during
24 statements. Now, whether that was statements or

1 trial preparation, I can't recall.

2 Q. Well, was she changing her testimony while
3 you were preparing her for trial?

4 A. I would have -- since probable cause
5 existed at the time of Herrington coming forward and
6 she was corroborative, that phase, at least my role,
7 would have been as prosecutor.

8 Q. Do you remember her changing her testimony
9 substantially while you were preparing her for
10 trial?

11 A. The dates have to speak for themselves.
12 Again, probable cause existed, she was
13 corroborative, she gave statements, and ultimately a
14 decision was made it was time to go to trial.

15 Q. Were you present when she said in February
16 of 1987 that she didn't go into the house and that
17 she -- the only mention she made of Randy Steidl was
18 that she saw him by the house, that being the Rhoads
19 house? Were you present for that statement?

20 A. If I was present, it would be most likely
21 indicated in the police report, which then I'd
22 assume you're quoting from.

23 Q. And so you don't have any memory of being
24 present, is that what you're saying?

1 MR. MANCINI: I'm just going to object as
2 asked and answered, but --

3 A. Obviously I had conversations with Debra
4 Rienbolt prior to trial.

5 Q. That's not my question. I asked you
6 whether you were present when she made the
7 statement, the content of the statement as I just
8 recounted?

9 A. And as I've answered, the police report
10 should reflect that, whether or not I was present.

11 Q. So you have no memory of whether you were
12 or not, is that what you're saying?

13 A. I don't have any specific recollection
14 other than what would be contained in the police
15 report, if it showed I was present or not present.

16 Q. All right. And is your answer the same
17 with regard to the statement she gave approximately
18 a month later when she then said she did enter the
19 apartment or, excuse me, the house, the Rhoads
20 house, but did not witness -- did not say anything
21 about witnessing the crime?

22 A. The answer would be the same and that I
23 recall again court eavesdrop, slash, you know,
24 search warrants, et cetera, that were based upon the

1 various statements that were attached, at least my
2 recollection, and were used in the court process.

3 Q. My question wasn't about search warrants
4 or whatever. My question was whether you were
5 present for the March statement in which she changed
6 her statement to say she was present in the house
7 but did not mention that she witnessed the crime?

8 A. If I was present, it would have been most
9 likely reflected in the police report.

10 Q. So once again, you don't remember whether
11 you were present; is that right?

12 A. Right.

13 Q. And were you present in April when she for
14 the first time said that she was not only present
15 for the murder but that she participated in it by
16 holding Karen Rhoads down when she was allegedly cut
17 and killed? Were you present for that statement?

18 A. I was certainly present for her -- that
19 statement in terms of trial preparation because
20 that's basically how she testified, but in terms of
21 that specific moment in time, it would -- if I was
22 present, it would've been most likely reflected in
23 the police report.

24 Q. Did you participate in any way in the

1 process that started when she gave the first
2 statement when she just said that she went, passed
3 by the house and only saw Randy Steidl there for a
4 moment to the time when a month or two later when
5 she said that Randy Steidl and Herb Whitlock
6 participated with her in the murder of Karen Rhoads
7 and Dyke Rhoads?

8 MR. MANCINI: Objection as to form.

9 Q. Did you -- what, if any, participation did
10 you have in that process?

11 MR. MANCINI: Objection as to form.

12 A. I would have participated as a
13 prosecutor/State's Attorney/legal advisory to the
14 process.

15 Q. What specifically did you do in that
16 process? Not what function you tried to tell us you
17 performed. What did you do and what did you know
18 about that process?

19 A. I listened.

20 Q. You listened. So you were present for
21 those various conversations.

22 MR. MANCINI: Objection as to form. It's
23 already been --

24 A. I told you I was present for some

1 conversations. Obviously it's part of -- if nothing
2 else, part of getting ready for court process or
3 part of trial preparation.

4 Q. Were you present at Jim Parrish's house
5 when he spoke with Debbie Rienbolt and then the
6 knife was obtained? Were you present there?

7 A. When the knife was obtained?

8 Q. Were you present at Jim Parrish's house on
9 the 16th of February when Debbie and he talked and
10 then subsequently Parrish's wife went and got the
11 knife from Debbie Rienbolt?

12 A. No.

13 Q. Did you know that Parrish's wife was the
14 one who obtained the knife rather than Parrish?

15 A. I don't recall.

16 Q. Do you know why Debbie Rienbolt testified
17 at trial that she gave the knife to Parrish when in
18 fact she gave the knife to Ann Parrish rather than
19 Jim Parrish? Do you have any idea why?

20 A. I don't know.

21 Q. Well, let me ask you this. If you're a
22 prosecutor and your witness tells you something that
23 you know to be false, such as I gave the knife to
24 Jim Parrish and you know there are reports or

1 evidence that in fact shows that he[sic] gave it to
2 Ann Parrish, what would you do in that circumstance?

3 MR. MANCINI: Objection to form and
4 foundation, speculative, but --

5 A. In that circumstance, I would correct it
6 because it's a readily identifiable piece of
7 evidence, so it's not going to matter. There's no
8 chain of custody issue, so what does it matter?

9 Q. So you would tell the witness she was
10 wrong in her memory and that she should correct
11 that?

12 MR. MANCINI: Objection as to form,
13 foundation.

14 A. That's not -- I would say are you sure
15 that's how it went down, I mean if I had knew
16 information to the contrary, but again, this is a
17 readily identifiable object.

18 Q. Well, did Parrish or Eckerty ever tell you
19 that in fact the knife was given to Ann Parrish
20 rather than to Jim Parrish or were you proceeding on
21 the assumption that Debbie Rienbolt was telling the
22 truth when she said that the knife was given to Jim
23 Parrish?

24 MR. MANCINI: Objection as to form.

1 A. I don't recall ever being told that, but
2 that wouldn't have made any difference.

3 Q. Well, it's a contradiction in your case,
4 isn't it?

5 MR. MANCINI: Objection as to form. It's
6 argumentative.

7 A. Again, I have defense counsel experience.
8 That wouldn't have mattered one bit.

9 Q. Right. In your experience, you wouldn't
10 want to impeach a witness about who she gave the
11 murder weapon to, would you --

12 MR. MANCINI: Objection.

13 Q. -- as a defense lawyer? Is that what
14 you're trying to tell us?

15 MR. MANCINI: Objection to form and
16 foundation.

17 A. Depends on the facts of the case.

18 Q. Well, you just told us -- you just laughed
19 and said you wouldn't -- that wouldn't be important
20 to you as this big defense lawyer in criminal murder
21 cases, right? That's what you're trying to tell all
22 of us at the table?

23 MR. MANCINI: Objection. It's
24 argumentative.

1 A. It would depend on the facts of the case.

2 Q. Well, I'm not talking --

3 A. In this particular case, it's a readily
4 identifiable object.

5 Q. Well, weren't in fact -- didn't you later
6 learn that Parrish was trying to protect his wife
7 from involvement in this case?

8 MR. MANCINI: Objection.

9 MS. EKL: Objection, form, foundation.

10 MR. MANCINI: Join.

11 A. Not that I recall.

12 Q. And didn't you go along with that?

13 MR. MANCINI: Objection as to form,
14 foundation.

15 A. No.

16 Q. Well, in fact, it may have been
17 insignificant to you, but you don't know if whether
18 that would have been a significant piece of
19 impeachment to a defense lawyer defending this case,
20 do you?

21 MR. MANCINI: Objection.

22 A. I just answered I didn't know --

23 MR. MANCINI: Form, foundation.

24 A. -- that had happened.

1 Q. Well, in fact, the knife was a very hot
2 issue in this case, wasn't it?

3 MR. MANCINI: Objection as to form.

4 A. It was a piece of the evidence.

5 Q. Well, not only was it a piece of the
6 evidence, but your witness had given contrary
7 statements about whether it was her knife -- excuse
8 me, whether it was Herb Whitlock's knife or whether
9 it was her husband's knife, right? You know that,
10 right?

11 MR. MANCINI: Objection as to form.

12 A. My recollection is she indicated that this
13 was her husband's knife that she loaned to Herb
14 Whitlock.

15 Q. And she also at some point said -- say
16 that again?

17 A. I said my recollection was this was her
18 husband's knife that she loaned to Herb Whitlock.

19 Q. Right, that was her second story, but her
20 first story was, was it not, that it was Whitlock's
21 knife that he had given to her for protection,
22 right?

23 A. I don't recall.

24 Q. You don't recall that part of it.

1 A. No.

2 Q. All right. And do you recall that there
3 was some question about the deepness of the wounds
4 caused by the knife in comparison to the length of
5 the knife blade? Do you remember that to be an
6 issue?

7 MR. MANCINI: Objection as to foundation,
8 when it was an issue.

9 A. Yeah, that was an issue and it was raised
10 I thought very well in closing arguments.

11 Q. Okay. By you?

12 A. By defense counsel.

13 Q. All right. So that was an issue with the
14 knife, right?

15 MR. MANCINI: Objection as to form,
16 foundation.

17 A. Yes.

18 Q. And there was an issue with the knife that
19 in fact that Darrell Herrington said that he saw
20 Randy Steidl with a -- some kind of fish fillet
21 knife and that this knife did not meet that
22 particular characterization, right? That was
23 another question in the case with regard to the
24 knife, wasn't it?

1 MR. MANCINI: Objection as to form.

2 A. The jury heard it and made their decision.

3 Q. Well, was it an issue in the case?

4 A. The jury heard it and made their decision.

5 Q. And it was an issue that they made their
6 decision on, they considered that evidence, is that
7 what you're trying to tell me?

8 MR. MANCINI: Objection as to form,
9 foundation.

10 A. The jury heard the evidence and made their
11 decision.

12 Q. All right. And there was also a question
13 about whether Rienbolt had boiled or washed the
14 knife and taken the blood off of it, right?

15 MR. MANCINI: Objection as to form,
16 foundation.

17 A. What I recall their[sic] statement was.

18 Q. There was also a question about why she
19 held onto this knife for eight months before she
20 turned it over to whoever she turned it over to,
21 right?

22 MR. MANCINI: Objection, form, foundation.

23 A. That I don't --

24 Q. So as a defense lawyer --

1 A. -- recall.

2 Q. Let's be real. If you had all that
3 evidence to work with on the knife, wouldn't you
4 also like to have the fact that the witness was
5 lying for some reason about why -- who she turned
6 the knife over to?

7 MR. MANCINI: Objection, form, foundation.

8 MS. EKL: Objection.

9 Q. Or wouldn't it matter in that context?

10 MR. MANCINI: Objection, form, foundation.

11 A. It would depend on the facts of the case,
12 and it's hypothetical as to me because I don't
13 recall that.

14 Q. All right.

15 A. You're asking me to predict --

16 Q. I'm not asking --

17 A. -- with a crystal ball based upon -- it's
18 a hypothetical, and these are hypotheticals that
19 would fit within a parameter of each case case by
20 case.

21 Q. I'm just asking you about your opinion
22 that you gave us so willingly earlier as an
23 experienced criminal defense lawyer that the issue
24 of who the knife is turned over to was not

1 significant.

2 MR. MANCINI: Objection, form.

3 A. Ultimately -- well, ultimately in my mind
4 it wouldn't be significant. That would be covered
5 by -- an experienced prosecutor would cover that
6 issue and ultimately it wouldn't make a difference,
7 if that's your question.

8 Q. All right. So again --

9 A. Unless you have a working prosecutor on
10 the other side.

11 Q. So again, you're putting on your defense
12 hat and saying that defense lawyers wouldn't find
13 that evidence to be significant.

14 A. No, I'm saying I would raise it, but if
15 you had a good prosecutor on the other side, it
16 wouldn't make a difference.

17 Q. Now, you lived in Paris in July of 1986,
18 did you not?

19 A. Yes.

20 Q. And where in Paris did you live?

21 A. Same place I live now.

22 Q. How far is that from the scene of the
23 crime?

24 A. About four blocks.

1 Q. And were you awakened -- were you home the
2 night of the murders?

3 A. Yes.

4 Q. And were you home with your family?

5 A. [REDACTED] [REDACTED]
6 [REDACTED]

7 Q. All right. And were -- did you hear any
8 of the events such as sirens? Did you see the fire?
9 Did you -- were you in any way a witness to any of
10 the aspects of the case?

11 A. No.

12 MR. MANCINI: Objection as to form.

13 A. I'm sorry, no.

14 Q. All right. When did you first hear about
15 the crime?

16 A. I was called at home and was -- I can't
17 tell you who called me. Somebody, law enforcement
18 called me at home and indicated that -- I mean I
19 don't -- can't say used the term murder or stabbing
20 or whatever, but that there was a significant issue
21 and that I should come down to the funeral home.

22 Q. And how did they call you? Was -- did you
23 have a police receiver or was it a regular phone?

24 A. I believe by regular phone.

1 Q. And you were told at that time that it was
2 -- there was a fire and also murders; is that
3 correct?

4 MR. MANCINI: Objection as to form. It
5 misstates what he said.

6 A. I told you I don't recall exactly what was
7 said other than something significant, and whether
8 they used the term murder -- I doubt if they used
9 the term fire, but something significant and that I
10 should come down to the funeral home. And I don't
11 remember exactly -- must have been late enough in
12 the morning because it seems to me that I called
13 somebody because I was supposed to read at mass and
14 I had to call somebody to read for me.

15 Q. All right. So it was sometime in the mid
16 morning; is that right?

17 A. Yeah, that -- again, I mean that's my
18 recollection, because I do recall I had to call
19 somebody to read at mass, and if it was like 4:00 in
20 the morning, I wouldn't have been doing that, so it
21 had to be at least late enough for me to make that
22 call.

23 Q. All right. And was it someone from the
24 Paris Police Department that called you?

1 A. Again, I don't recall who did. Some law
2 enforcement entity.

3 Q. Now, you're quoted in a newspaper article
4 at some point as saying this was the crime of the
5 century with regard to Paris. Is that a fair
6 characterization from your point of view?

7 MR. MANCINI: Objection as to form.

8 A. I -- I don't recall making that statement.

9 Q. Well, do you agree with your statement
10 whether you remember making it or not?

11 A. It certainly was a significant crime in
12 Paris. A double murder would be a significant crime
13 in any small town.

14 Q. All right. Do you remember using the term
15 crime of the century?

16 A. I really don't.

17 Q. In any event, you did not -- did you go to
18 -- you went first to the funeral home did you say?

19 A. That's my recollection.

20 Q. And what did you do when you got to the
21 funeral home?

22 A. I viewed the bodies.

23 Q. All right. And did you look at both
24 bodies?

1 A. Yes.

2 Q. And was it your understanding that the
3 bodies were in the same condition that they were
4 when they were found at the -- at the home?

5 A. That would have been my inference. I'm
6 sure I didn't make that -- I didn't ask that
7 question.

8 Q. Who was there besides yourself at the
9 funeral home?

10 A. I don't recall.

11 Q. Was Mr. Eckerty there?

12 A. I don't recall.

13 Q. Now, when you looked at the bodies, did
14 you notice wounds on both bodies?

15 A. Wounds would have been pointed out to me.

16 Q. All right. And did you also -- were the
17 bodies clothed or unclothed?

18 A. I really don't recall, although it would
19 be, if they were clothed, it was partially.

20 Q. You don't recall whether they were naked
21 or not?

22 A. Not naked or not. I don't recall.

23 Q. Did you learn later that the fire people
24 who found the bodies reported that both bodies were

1 naked when they were found?

2 A. If that were the case, then they must have
3 been naked.

4 Q. Well, I'm asking you is that consistent
5 with your memory?

6 A. Well, consistent with my memory. As I
7 said, if -- as I indicated, if they had clothes, it
8 was partial, so that would be consistent. If you
9 say they were naked, then I would say they must have
10 been.

11 Q. But you don't have that memory now.

12 A. I couldn't say positively other than the
13 fact that -- again, other than the fact if they were
14 clothed, it was very partial.

15 Q. Well, as you prepared -- strike that.
16 When you heard Herrington give his statement in
17 September of '86, did you hear him say that both
18 Dyke and Karen were partially clothed?

19 A. I don't have any specific recollection of
20 that. Again, the report would speak for itself.

21 Q. Was there any concern that you had at that
22 time that Herrington's statement to you and the
23 others was inconsistent with the physical evidence
24 that they were unclothed at the time that they were

1 found?

2 MR. MANCINI: Objection as to form.

3 A. Again, I don't recall Herrington's
4 statement, so I...

5 Q. I'm asking you whether you at that point
6 had any concerns about any inconsistencies that
7 Herrington had with regard to the clothing of the
8 bodies?

9 A. If I don't recall, I won't be able to
10 interpret whether there was inconsistencies or not.

11 Q. All right. What did you do after you left
12 the funeral home?

13 A. I don't recall.

14 Q. All right. Did you meet with Chief Ray,
15 Parrish and Eckerty during that day?

16 A. I'm sure I met with the individuals that
17 were most likely to conduct the investigation.
18 Whether I met with those three, I in all likelihood
19 would have met with Detective Parrish and Detective
20 Eckerty because they're detectives. Whether I met
21 with Gene Ray or not, it's certainly possible.

22 Q. Now, as Edgar County prosecutor, you knew
23 both Ray and Parrish; is that right?

24 A. Yes.

1 Q. And you had worked with them in the past?

2 A. Yes.

3 Q. And you also knew Eckerty; is that right?

4 A. Yes.

5 Q. And you had worked with him in the past;
6 is that right?

7 A. Yes.

8 Q. How long had you been State's Attorney
9 prior to the time that these murders took place?

10 A. Took office in December of 1980.

11 Q. '80? And you were elected at that time,
12 right?

13 A. That's correct.

14 Q. And you were reelected in '84; is that
15 right?

16 A. Unopposed in '84 and unopposed in '88.

17 Q. All right. So you served three terms?

18 A. Once again, I left one year early on the
19 third term to become a partner in a law firm.

20 Q. Okay. And prior to being elected State's
21 Attorney, did you serve as an Assistant State's
22 Attorney?

23 A. I started -- yes. I mean I started April
24 1st of 1977.

1 Q. Okay. And you were an assistant in Edgar
2 County?

3 A. That was a shared position between Edgar
4 and Clark County.

5 Q. And who was the State's Attorney of Edgar
6 County while you were the assistant?

7 A. Peter Dole.

8 Q. And who was the State's Attorney of Clark
9 County?

10 A. Tracy Rush.

11 Q. Tracy Rush, okay. Now, did you discuss
12 with Eckerty and Parrish the next steps to take with
13 regard to the investigation after you became
14 involved in the morning hours of July 6th?

15 A. I'd say only as legal advisor, and the
16 general rule at that time would obviously be
17 preserve the evidence.

18 Q. All right. And specifically what did you
19 discuss with regard to preserve the evidence?

20 A. They were both detectives. They did their
21 -- presumably did their job to preserve the
22 evidence. As the prosecutor, legal advice is
23 preserve the evidence.

24 Q. Did you also discuss what kinds of

1 investigation to do with regard to questioning?

2 A. No.

3 Q. You were receiving, were you not, the
4 reports from the -- both Mr. Eckerty and the other
5 ISP officials/investigators as well as the Paris
6 police investigators, particularly Parrish; isn't
7 that right?

8 A. I would receive their reports.

9 Q. And you would read them; is that right?

10 A. Yes.

11 Q. And as necessary, would you discuss the
12 information in the reports?

13 MR. MANCINI: Objection to form,
14 foundation.

15 A. I wouldn't have been performing my duties
16 as State's Attorney if I didn't discuss the reports.

17 Q. All right. And, in fact, as part of your
18 duties as State's Attorney, you were not only
19 discussing the reports with them, but you were
20 discussing with them what leads to follow and where
21 to go with the investigation. Isn't that fair to
22 say?

23 A. No, it's not. Again, both were
24 experienced detectives, and in particular the state

1 police had very experienced -- I know Jack Eckerty
2 had experienced supervisors who had handled, since
3 they worked multiple counties, major cases. They
4 would know what to do.

5 Q. All right. So you -- you didn't have
6 discussions in this crime of the century about what
7 to do next. You left that up to Eckerty and
8 Parrish. Is that your testimony?

9 A. Testimony is as legal advisor is that
10 these -- as legal advisor, these are the elements we
11 need. You know, I mean these are the things that
12 need to be proven, this is the legal criteria. The
13 actual who to interview and in what order would
14 ultimately come -- I mean my recollection, probably
15 most ultimately come with the state police. I would
16 say in between the two, I mean between the state
17 police and the city, I mean they would discuss who
18 was going to do what.

19 Q. Well, you were meeting at least two to
20 three times a week with Eckerty and Parrish, weren't
21 you?

22 A. Yes.

23 Q. And sometimes Gene Ray was there, right?

24 A. I -- I don't recall Gene Ray being there,

1 but he could have been.

2 Q. And during that period of time, you were
3 dealing with a whole series of questions having to
4 do with the investigation, right?

5 A. There were issues that obviously would
6 come up.

7 Q. Well, at first there were issues about
8 early suspects, right?

9 A. I don't recall any early what I would --
10 suspects.

11 Q. Well, do you recall the fact that Bob
12 Morgan's name came up early in the investigation?

13 A. Only in the context that he was the
14 employer of Karen Rhoads.

15 Q. Did you ever discuss with Eckerty and
16 Parrish or Gene Ray the fact that he was a suspect?

17 A. A suspect is a term of art. I would not
18 have called him a suspect.

19 Q. Was he someone that was of interest in
20 terms of a potential suspect?

21 A. Well, again, based upon the police reports
22 provided me, he would have been of interest as
23 Karen's employer and if there were any issues
24 regarding her employment.

1 Q. All right. Well, was he of interest as a
2 potential person along with people who worked with
3 him as someone who may have either ordered or
4 participated in the murders?

5 A. A wide swath of individuals were mentioned
6 in the police reports and he would be one of them,
7 and I would say that it was, at least again in my
8 view, that the investigation proceeded accordingly.
9 I don't know what else to say. I mean the police
10 reports speak for themselves.

11 Q. Well, when you were reading these police
12 reports and meeting with the investigators on a
13 biweekly or triweekly basis, were you discussing
14 these leads and which ones to focus on and what to
15 do with regard to the leads that you had?

16 A. If there was going to be focus, my role
17 would have been on is there sufficient evidence to
18 obtain search warrants, eavesdrops, matters like
19 that.

20 Q. So you just kind of sat there during all
21 these meetings unless there was an issue of search
22 warrants or arrest warrants, something of those
23 nature. You didn't participate in decisions based
24 on how -- who to investigate further, how to

1 follow-up on leads, that kind of thing?

2 A. I did not ever say investigate that
3 person.

4 Q. Did you ever just say don't follow that
5 lead?

6 A. I never said don't follow a lead.

7 Q. Did you participate in discussions with
8 Eckerty and Parrish about what leads to follow and
9 what leads not to follow?

10 A. Only in the context as legal advisor which
11 ones may have established probable cause, which ones
12 don't, which ones may have reasonable suspicion, you
13 know, the legal terms of art that a prosecutor -- or
14 the legal advice that a prosecutor would give the
15 investigators.

16 Q. So you were evaluating the information
17 that was coming in with the investigators to
18 determine whether there was suspicion of probable
19 cause in a legal sense. Is that your testimony?

20 A. Not with them. I would read that and make
21 -- and say, well, whatever speaks for itself. I
22 mean I wasn't an investigator. I was a prosecutor.
23 I was the State's Attorney.

24 Q. But you were involved in these day-to-day,

1 week-to-week discussions over the eight months prior
2 to the arrest of Steidl and Whitlock, were you not?

3 MR. MANCINI: Objection as to form.

4 A. I was involved in the discussions in my
5 role as legal advisor/State's Attorney/prosecutor.

6 Q. Well, in your role as legal advisor,
7 State's Attorney and prosecutor, did you ever
8 discuss or give advice to the investigators
9 concerning Bob Morgan and further investigation that
10 should be done with regard to Bob Morgan?

11 A. As I indicated before, I never ever said
12 don't investigate somebody or investigate somebody.

13 MR. MANCINI: Somebody on the phone, if
14 you can mute your phone, we're getting a little
15 feedback.

16 MR. ACKERMAN: Sorry.

17 Q. Now, did you have access to the files of
18 the Paris Police Department during this
19 investigation?

20 A. Only what was presented to me. I mean I
21 don't -- I mean they have their file system. I -- I
22 mean that's their system.

23 Q. Were you aware that they had a card
24 catalog that was being kept on the case with the

1 names of witnesses and information that was being
2 gathered on certain witnesses?

3 A. I don't recall.

4 Q. All right. Well, let me show you what has
5 previously been marked in the Ray deposition, I
6 believe it was 10, 11, somewhere in that area, 14
7 maybe. Thank you, Ray Exhibit 13.

8 MR. MANCINI: Again, for those on the
9 phone, it's Ray Exhibit No. 13. Flint, can I get
10 rid of these other exhibits in front of him?

11 MR. TAYLOR: Yeah, don't get rid of them.

12 MR. MANCINI: No, but I mean just move
13 them.

14 MR. TAYLOR: Put them aside.

15 BY MR. TAYLOR:

16 Q. I'm going to ask you to take a look at Ray
17 Exhibit 13. You can thumb through it and you can
18 see that this is a rather lengthy card catalog of
19 witnesses in the case with certain defensive names.
20 You see it starts with A with Ashley and Asbury and
21 Alexander and goes alpha -- through the alphabet
22 with numerous witness entries. Do you see that?

23 A. Yes.

24 Q. Now, prior to my showing this to you

1 today, were you -- did you ever see this card
2 catalog or were you ever made familiar with the
3 contents of this card catalog during the
4 investigation?

5 A. Not that I recall.

6 Q. Okay. If you had knowledge of this card
7 catalog, would you have reviewed it to see if there
8 was anything discoverable within it?

9 MR. MANCINI: Objection as to form.
10 Speculative.

11 A. I would have again in terms of discovery
12 made sure that the officers have indicated that
13 everything that's contained in this was also
14 contained in their reports.

15 Q. Okay. So if there was something that was
16 not in a report that was in the card catalog, would
17 you -- you'd direct them to either make a report or
18 to -- you would turn over the card itself?

19 MR. MANCINI: Objection as to form. It's
20 speculative.

21 A. In general. I mean I guess theoretically
22 it would depend on what's on the card. If the card
23 said phoned, person not at home, that would not seem
24 to be something you would do. I mean I -- so it

1 would depend what was on the card.

2 Q. Well, let's take a look, for instance, at
3 an entry under Morgan.

4 MR. MANCINI: Looks like it's Steidl
5 12685.

6 Q. Okay. Do you see it says: Interviewed,
7 Eckerty and Bensyl. Karen well-liked, no problems.
8 Suspects impulse killing, at least two or more
9 suspects, intention of rape. Has been contacting
10 people offering money for information. Does not
11 believe drug-related. Named Kenny Ziegler and Jeff
12 Simons. Do you see that entry?

13 A. Yes.

14 Q. Now, if that information were not
15 contained in a report and you were aware of it, that
16 would be the kind of information that should be in
17 -- you would ask the detectives to put in a report
18 for discovery purposes, wouldn't you?

19 MR. MANCINI: Objection as to form.

20 A. I would have asked them to generate that
21 report. The report may or may not be discoverable.
22 Just the fact you name suspects as a person of
23 interest doesn't make it per se discoverable.

24 Q. Well, if a defense lawyer asked for any --

1 any suspects that the police department had, then
2 that would certainly make it discoverable in that
3 sense, wouldn't it?

4 A. There's case law on that, and the fact
5 that somebody is merely a suspect, still got to be
6 relevant material. The fact that somebody's a
7 suspect does not make it discoverable and I know
8 that was subject to a motion in limine.

9 Q. Well, this information wasn't subject to a
10 motion in limine because you didn't know about it,
11 right?

12 A. I don't recall knowing about the cards. I
13 don't know if what's in here was also contained in
14 police reports.

15 Q. Well, was one aspect of your role as the,
16 quote, advisor and State's Attorney in your biweekly
17 or triweekly meetings with the investigators to make
18 sure that they were recording all the relevant
19 information? Did you stress that to them, that you
20 needed reports and you needed them to write it down,
21 or was there some other directive that they were
22 following with regard to writing reports?

23 A. Based upon the bulk of reports that were
24 written, certainly my observation is they were doing

1 the appropriate work.

2 Q. In fact, they were writing too many
3 reports from your point of view, right?

4 MR. MANCINI: Objection as to form.

5 A. That's not what I indicated. I indicated
6 that in terms of there shouldn't be, as we discussed
7 before, shouldn't be multiple officers writing upon
8 the same subject interview.

9 Q. Because it would create negative
10 information, right?

11 A. Not necessarily, but might create minor,
12 you know, inconsistencies that would have to be
13 addressed.

14 Q. Your term not mine, negative information,
15 right?

16 A. Yes, I mean you want to avoid creating
17 negative evidence.

18 Q. And certainly suspects, two suspects,
19 Kenny Ziegler and Jeff Simons, who were involved in
20 an impulse killing with the intention of rape would
21 be information that would be inconsistent with the
22 theory that Steidl and Whitlock committed this crime
23 with the motive of a drug deal gone bad, right?

24 MS. EKL: Objection, form.

1 MR. MANCINI: Join.

2 A. You're assuming that Kenny Ziegler and
3 Jeff Simons were involved in an impulse killing that
4 involved a rape. I have absolutely no knowing of
5 that. All I -- for all I know, that Robert Morgan
6 said that these are two guys that didn't like Karen
7 or didn't like Dyke. I have no clue why they're
8 named.

9 Q. Well, it certainly would be important if
10 you had this information to talk to Eckerty or
11 Bensyl and find out what Morgan did say, right?

12 MR. MANCINI: Objection as to form.

13 A. Morgan's statement was reduced to a police
14 report and I relied upon that.

15 Q. Well, the names Jeff Simons and Kenny
16 Ziegler weren't in that report, were they?

17 MR. MANCINI: Objection as to form.

18 A. I have no idea.

19 Q. Well, wouldn't you agree with me as a --
20 as a State's Attorney giving legal advice, if you
21 had seen this card and the information on it, number
22 one, you'd ask them to make a complete report on it,
23 and number two, you'd ask them to do more
24 investigation to find out the -- whether this

1 statement by Morgan had any credibility that it was
2 a motive of rape, impulse killings and he named --
3 not drug-related and he named Ziegler and Simons.
4 That would be something that you should follow up in
5 the crime of the century, isn't it?

6 MR. MANCINI: Objection.

7 MS. EKL: Objection to form.

8 MR. MANCINI: Join.

9 A. The -- again, would have directed that a
10 report be written. That report may or may not be
11 discoverable because the rules -- based upon the law
12 in terms of suspects and persons of interest. You
13 know, ultimately be the court's decision or that --
14 again, ultimately is the investigator's decision who
15 to investigate.

16 Q. Well, you would give them advice, would
17 you not, with regard to whether there was any,
18 quote, probable cause or suspicion from a legal
19 point of view based on evidence that you were
20 reading about in reports? Isn't that one of your
21 functions that you would perform?

22 A. I would render them legal advice.

23 Q. And the legal advice -- I think I
24 understood your testimony to be earlier that that

1 legal advice included whether there was probable
2 cause or sufficient suspicion as with regard to
3 certain suspects, right?

4 A. In the legal sense, yeah.

5 Q. And, in fact, there were numerous names
6 that were coming across your desk in the reports and
7 also in these meetings about possible suspects who
8 committed these crimes, right?

9 MR. MANCINI: Objection as to form,
10 foundation.

11 A. There were all kinds of reports coming
12 across my desk naming numerous people. It was an
13 open investigation from my point of view that would
14 -- that's looking at all kinds of people.

15 Q. Now, did you drink in the bars of Paris?

16 A. Did I?

17 Q. Yes.

18 A. Yes.

19 MR. MANCINI: Objection as to foundation.

20 Q. And did you in 1986 drink in those bars?

21 A. Less so because I got married in May of
22 '85.

23 Q. All right. But prior to getting married,
24 certainly you frequented those bars.

1 A. Yes.

2 Q. And what bars did you normally frequent?

3 A. Oh, at that time, I would say the
4 Friendly, the bowling alley, little bit the country
5 club, little bit the Tap Room.

6 Q. Did you go in there with certain people?
7 Did you frequent it with -- did you have certain
8 friends and associates you normally drank with?

9 A. I had my group of friends, yes.

10 Q. And who were they?

11 A. Can you give me a time frame?

12 Q. Well, let's say '85 and '86.

13 A. In '85, '86, I wouldn't have gone as much.

14 Q. Well, if you didn't go as much, tell me
15 when you did go.

16 A. Yeah, then I would say that I -- in '85
17 and '86, Tom Davis, I don't know, Steve Ackman, I
18 don't know if he --

19 Q. Who?

20 A. Steve Ackman. I don't know when he moved.
21 Jeff Englum.

22 Q. Jeff Engles?

23 A. Englum, E-N-G-L-U-M. Certainly Jack
24 Eckerty and Jim Parrish I would have a drink with.

1 Q. Okay.

2 A. The other -- and other police officers. I
3 mean whoever joined us. I mean I was State's
4 Attorney.

5 Q. Anyone else?

6 A. If you name people, I could probably yes
7 or no, but I mean those are, I guess, kind of off
8 the top of my head.

9 Q. Okay. And what kind of -- did you have a
10 normal drink that you drank? Beer, whiskey, gin?

11 A. Normally beer.

12 Q. Beer. And how about -- how much beer
13 would you drink in any --

14 MR. MANCINI: I'm going to object to the
15 relevance of it at this point.

16 A. It would depend.

17 Q. All right. Well, give me a range.

18 A. Again, I mean before I got married or
19 after I got married?

20 Q. Well, let's start with before you got
21 married.

22 MR. MANCINI: I'm going to object to the
23 relevancy. If you will let me have a standing
24 objection, that would be sufficient.

1 MR. TAYLOR: All right, yes.

2 A. It would just depend on I mean it just --
3 if it's a Friday night or one-beer-after-work night.
4 I mean it just depends.

5 Q. All right. So you would say maybe from
6 one beer to what? Maybe six, seven beers?

7 A. I'd say one to eight.

8 Q. Okay. And would you throw in a whiskey
9 here and there or would --

10 A. Doing a shot would be rare.

11 Q. Okay. Now, were you affiliated with any
12 sports teams that you went into bars with?

13 A. Yeah, I -- whenever I first came to town,
14 I played softball with the Jaycees, and then there
15 was a flag football league that lasted a year or
16 two, played that. Then I can't -- going way back.
17 Played for the pizza teams. I know I played
18 Domino's for a while, and then --

19 Q. Is that Joe's Pizza?

20 A. No.

21 Q. Never played for him?

22 A. No.

23 MR. MANCINI: Just so it's clear, I think
24 he said Domino's.

1 Q. Okay.

2 A. Was with Domino's and then I can't
3 remember. The longest team I played for was
4 Monical's.

5 Q. Monical's?

6 A. Right. And I currently play for St.
7 Mary's.

8 Q. Did you ever meet or deal with Dyke Rhoads
9 in any of these teams or games?

10 A. I don't believe that he was ever on my
11 team. I would have played against Dyke Rhoads. He
12 certainly played. And he was younger. I don't
13 remember his age, how many years younger, but he's
14 younger, and can't really tell you what team he
15 played for, and then there would be pick-up
16 basketball at the Y. He played up there.

17 Q. So you knew him as an acquaintance, sports
18 acquaintance?

19 A. Sports acquaintance.

20 Q. And did you know about his drinking or
21 drug habits?

22 A. Not really. He's younger than me.

23 Q. Okay. Did you observe him drinking in the
24 bars with you or not with you necessarily but when

1 you were there?

2 A. I'm sure he was.

3 Q. All right. Did you know any -- do you
4 know about any reputation he had for using any
5 drugs? This is before his death.

6 A. I -- not that I recall. I can't recall.

7 Q. All right. In any of those bars, did you
8 observe there being any kind of numbers or tickets,
9 any kind of gambling going on in any of those bars?

10 A. I'm sure I did.

11 Q. Well, you say you're sure you did, but did
12 you observe it from time to time?

13 A. Give me a time frame.

14 Q. Well, any time from, say, 1980 to 1986.

15 A. I have no specific recollection as such,
16 but I'd say probably.

17 Q. All right. And did -- was it the kind of
18 petty crime, so to speak, that the law enforcement
19 in Paris really kind of looked the other way on?

20 MS. EKL: Objection, form, foundation.

21 MR. MANCINI: Join.

22 A. I can't speak to local law enforcement,
23 but I know if -- if a compliant came to my desk, we
24 would look into it. I don't recall any gambling

1 complaints ever actually coming to the State's
2 Attorney's office.

3 Q. Well, if you were -- observed any such
4 gambling, did you make any effort to do anything
5 about it?

6 A. Did I?

7 Q. Yes.

8 A. No, I -- that was part of the small town
9 community.

10 Q. All right. So that wouldn't be something
11 that you felt that was appropriate to do, to come
12 into a bar and hang out with a bunch of guys and
13 then turn around and get the bar busted because they
14 were -- they were running a little minor petty
15 gambling going on; is that right?

16 MR. MANCINI: Objection as to form.

17 A. My position is something like that. It
18 was quite frankly ingrained in the community, was
19 that if it didn't -- if somebody made a complaint to
20 the State's Attorney's office, we would have handled
21 it appropriately. I don't recall any such complaint
22 being made in my 11 years as State's Attorney.

23 Q. Okay. So it was a victimless crime at
24 best, right?

1 MR. MANCINI: Objection as to form.

2 Q. At worst I guess I should say.

3 A. Yeah, I -- it just was something that went
4 on.

5 Q. And were you aware that there was
6 narcotics trafficking going on in certain bars in
7 Paris?

8 A. That I had no specific knowledge about
9 other than through if there was a police
10 investigation.

11 Q. Had you been involved in any prosecutions
12 or investigations with regards to narcotics use or
13 trafficking in the city of Paris prior to the summer
14 of 1986?

15 MR. MANCINI: Objection as to form,
16 compound.

17 A. Yes.

18 Q. All right. And did some of them center
19 around bars in the city of Paris?

20 A. I -- I really can't recall that.

21 Q. Well, did -- did you either as -- from
22 personal observation or from rumors in the bars or
23 from any prosecutions and investigations you did,
24 did you learn whether the Friendly bar was a

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[SUBJECT TO PROTECTIVE ORDER]

location of any drug use or drug trafficking?

MR. MANCINI: I'm going to object to foundation.

A. In the community, the bar with the reputation, deserved or not, I mean again I would have to rely on police reports, would have been the Barn.

Q. Did you ever go in there?

A. Once or twice at the most.

Q. Who owned the Barn?

A. I can't recall.

Q. Did either the Friendly or the Tap Room have any reputation for that?

A. Any reputation regarding the Friendly would have come about after Mary Bell got out of running it and I couldn't tell you when that was.

Q. Okay. Was that before or after 1986?

A. I can't tell you.

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

MR. MANCINI: Objection as to form,

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[SUBJECT TO PROTECTIVE ORDER]

relevance.

Q. [REDACTED]

MR. MANCINI: Objection as to relevance.

MR. TAYLOR: Pardon me?

MR. MANCINI: Relevance objection.

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

[REDACTED]

A. [REDACTED]

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Q. [REDACTED]

A. [REDACTED]

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[SUBJECT TO PROTECTIVE ORDER]

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Q. [REDACTED]

A. [REDACTED]

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A. [REDACTED]

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[SUBJECT TO PROTECTIVE ORDER]

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MR. RAUB:

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[SUBJECT TO PROTECTIVE ORDER]

A. [REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED]

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[REDACTED]

Q. [REDACTED]

[REDACTED]

MR. MANCINI: Objection as to form.

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED]

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Q. All right.

MR. MANCINI: Just --

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[SUBJECT TO PROTECTIVE ORDER]

Q. [REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED]

MR. MANCINI: Just so it's clear, I want to reiterate the standing objection to the last set of questions [REDACTED]

Q. All right. [REDACTED]

[REDACTED]

[REDACTED]

A. [REDACTED]

Q. And do you still drink?

A. Yes.

Q. All right. How often do you drink?

A. Probably have a beer daily actually.

Q. One?

A. Again, it depends on the day.

Q. So you -- could you give us a range again, one to what, one to three, four, five?

A. I'd say probably that same range, one

1 to --

2 Q. To eight?

3 A. Well, if it's on a weekend, one to ten.

4 Q. How about on a particular day?

5 A. On a particular day, there -- on a
6 particular normal day, range one to four.

7 Q. All right. And do you still drink in the
8 bars of Paris?

9 MR. MANCINI: Object to the relevancy.

10 A. I only go into, well, the K of C hall, I
11 guess if you consider that a bar. I would say that
12 the golf course is the only place. I don't think
13 I've been in a bar if I'm not -- I'm just trying to
14 think. A few years -- well, the American Legion
15 maybe, rarely, maybe a couple times a year.

16 Q. Okay. Back in the '80s when you were
17 frequenting the bars more frequently in Paris, the
18 early '80s, did you ever run into Darrell
19 Herrington?

20 A. I have no specific recollection of running
21 into Darrell Herrington.

22 Q. Did you know about his reputation as being
23 one if not the town drunk?

24 A. I knew about his reputation as being a

1 heavy drinker.

2 Q. Well, did you know he was an alcoholic?

3 A. That's --

4 MR. MANCINI: Objection, asked and
5 answered.

6 A. Again, that's a medical conclusion.

7 MR. TAYLOR: Okay. Let's take a short
8 break.

9 (Recess at 3:31 p.m. to 3:50 p.m.)

10 MR. MANCINI: I just want to discuss
11 tonight. How long do you think you might go
12 because, like I said, we asked in March that we go
13 from 9:00 to 5:00. I understand you started at
14 10:00, we'll accommodate you as best we can, but I
15 want to get information for my client how long you
16 think you're going to go tonight so he can make
17 whatever arrangements.

18 MR. TAYLOR: 5:30.

19 MS. SUSLER: I'd say that that's up to
20 you.

21 MR. MANCINI: I'm not going to hold you to
22 it, but I just -- like I said, I just want to be
23 able to --

24 MR. TAYLOR: Okay.

1 MR. MANCINI: Thanks.

2 BY MR. TAYLOR:

3 Q. All right. Now, did you also know a man
4 by the name of Matt Colvine?

5 MS. SUSLER: Colvin.

6 Q. Colvin, I'm sorry. Colvin, a defendant?

7 A. Matt Colvin?

8 Q. Yeah.

9 A. Yes.

10 Q. Did you drink with him sometimes?

11 A. Probably.

12 Q. All right. How about Mike Elledge? Do
13 you know Mike?

14 A. Yes.

15 Q. Did you know him through the Friendly?

16 A. He -- I think he may have done the
17 county's insurance also.

18 Q. All right. And did he drink in the
19 Friendly?

20 A. Yes.

21 Q. How about Robby Doblestein? Do you know
22 Robby Doblestein?

23 A. Used to be the golf pro.

24 Q. All right. And did he drink sometimes

1 with you in the Friendly?

2 A. Not necessarily with me, but he would
3 drink in the Friendly.

4 Q. All right. And how about Mike -- now,
5 did -- in terms of those fellows, did you know them
6 to do cocaine in that bar?

7 A. No.

8 Q. [REDACTED]
9 [REDACTED]

10 A. [REDACTED]

11 Q. [REDACTED] [REDACTED]

12 A. [REDACTED]

13 Q. [REDACTED] [REDACTED]
14 [REDACTED]

15 A. [REDACTED]

16 Q. [REDACTED] [REDACTED]
17 [REDACTED]

18 A. [REDACTED]

19 Q. Do you know a fellow by the name of Leo
20 Shanks?

21 A. Yes.

22 Q. All right. And how do you know him?

23 A. There's Leo Senior and Junior.

24 Q. All right. Well, who do you know?

1 A. Well, I know them both, or I couldn't tell
2 you if Senior's dead or not, but I mean I haven't
3 seen him in a long time, seen neither of them,
4 probably 20 years. I mean I just know who they are.

5 Q. All right. Did you ever drink with either
6 of them?

7 A. I mean possible. Probably not.

8 Q. All right. Were you ever at a party with
9 either of them?

10 A. I would say no.

11 Q. All right. Did you know Jeb Ashley?

12 A. Yes.

13 Q. All right. And how did you know Jeb
14 Ashley?

15 A. Basically the same as Dyke Rhoads.

16 Q. Saw him in the bars, he played on sports
17 teams, that kind of thing?

18 A. Through sports and the bars, yes.

19 Q. Did he walk with a limp?

20 A. Not that I recall.

21 Q. Did -- in 198 -- strike that. Did Jeb
22 Ashley come into the Friendly sometimes?

23 A. I'm sure he did.

24 Q. All right. Did you know Jeb to be someone

1 who dealt or used drugs?

2 A. Not that I'm aware of.

3 Q. All right. Were you ever at a party with
4 Randy Steidl?

5 A. Not that I recall.

6 Q. Were you ever in the bars with Randy
7 Steidl?

8 A. I would say yes.

9 Q. All right. And did you know Randy Steidl
10 before the murders?

11 A. Yes.

12 Q. And what did you know about Randy Steidl
13 if anything?

14 A. My recollection, worked construction, was
15 a big drinker, and actually was a very friendly guy
16 in the bars.

17 Q. And so you and he would have conversations
18 from time to time?

19 A. Probably no more than to say -- you know,
20 wave or say hi.

21 Q. Did you -- did he have any reputation that
22 you knew of to be involved in drugs in any way?
23 Prior to the murders now.

24 A. Prior to the murders, I would say yes. I

1 mean not necessarily in the early '80s but more
2 towards the time '85 and that type of time.

3 Q. All right. And from whom did you learn
4 that information?

5 A. I don't know if his name came up in police
6 reports or just general police/law enforcement
7 knowledge.

8 Q. Well, what specifically was the general
9 law enforcement knowledge you had with regard to
10 Randy Steidl and drugs?

11 A. Clearly he was a known associate of Mr.
12 Whitlock, and Mr. Whitlock was -- had a pending
13 cocaine charge from '86.

14 Q. Well, let's -- let's ask you a little bit
15 about Mr. Whitlock. Did you know Mr. Whitlock from
16 the bars?

17 A. Really only to know who he was.

18 Q. And you say that you knew of the
19 reputation that Mr. Whitlock had with regard to
20 drugs?

21 A. I believe he had several drugs arrests.

22 Q. All right. And other -- and had you
23 prosecuted any of those?

24 A. I misspoke about '86 which is the murder

1 case, so it would still have been 1985. He was --
2 had a pending felony for -- one of cocaine
3 possession or delivery, I can't recall, but he had a
4 pending felony cocaine charge/information from 1985.

5 Q. And did you know of any relationship
6 between Jeb Ashley and Herb Whitlock prior to the
7 murders?

8 A. Not personally.

9 Q. All right. Well, did you know of any talk
10 in the bars or anything like that with regard to Jeb
11 Ashley and Herb Whitlock?

12 A. Not that I recall.

13 Q. Now, you said that you knew Randy was an
14 associate of Herb Whitlock. You mean that he was a
15 friend or did you have information that he was
16 somehow involved in the alleged drug activities of
17 Herb Whitlock?

18 A. My recollection is that we had information
19 that he was somehow involved in the -- with the
20 Whitlock drug issues.

21 Q. And was he a defendant in any of those
22 cases?

23 A. I don't recall any drug cases that he was
24 a defendant.

1 Q. Was he a witness in any of those cases?

2 A. Not that I recall.

3 Q. All right. So how -- what kind of
4 information did you have that linked him to any of
5 those cases or activities of Mr. Whitlock's alleged
6 with regard to drugs?

7 A. Well, again, it would be it's a small
8 county and would have been law enforcement's
9 certainly belief that Mr. Steidl was tied in with
10 Mr. Whitlock.

11 Q. And was that your understanding from Mr.
12 Eckerty?

13 A. I can't tell you where specifically of how
14 I would -- again, as State's Attorney would have
15 gotten that information, but that was certainly the
16 -- I guess the opinion of law enforcement.

17 Q. When you -- when you drank at the
18 Friendly, did you sometimes drink with Parrish and
19 Eckerty at the Friendly?

20 A. Yes.

21 Q. All right. And at the Tap Room, sometimes
22 did you and Eckerty drink and Parrish drink there or
23 was it mostly the Friendly?

24 A. Well, again, dependent on the time frame.

1 I mean the -- in the first move to Paris, on Friday
2 after work, other city officials and probably some
3 county officials and some of the law enforcement
4 people would go down to the Station, and I think we
5 drank at -- would have a drink at the bowling alley,
6 sometimes have a drink at Mr. Charlie's when it was
7 open, and I can't tell you the time frame of that.
8 I'd say the Tap Room would probably be the usual,
9 so --

10 Q. But not the Friendly. The Friendly was
11 not --

12 A. The Friendly was a place, you know, that
13 every -- that everybody went.

14 Q. Okay. Did they smoke marijuana in the
15 Friendly while you were there?

16 A. Not that I've ever been aware of.

17 Q. Ever smelled marijuana when you were in
18 there?

19 A. Not that I recall.

20 Q. Did you ever see any cocaine use while you
21 were at the Friendly?

22 A. No.

23 Q. All right. Now, any of the other bars
24 that have a reputation or did you observe drug use

1 in any of the other bars you went into?

2 A. No.

3 Q. Did the Barn have a reputation for drug
4 use?

5 MR. MANCINI: Objection, asked and
6 answered.

7 A. Yes.

8 Q. And was that drug use cocaine, marijuana?

9 A. I don't recall.

10 Q. Now, did -- sometime prior to the murders,
11 did -- was it called to your attention that a
12 detective in the Paris Police Department had written
13 the Attorney General about evidence that he claimed
14 he had concerning your drug use?

15 MR. MANCINI: Objection as to form.

16 A. Detective. Yes, I became aware of that,
17 yes.

18 Q. And that was Detective McKenna?

19 A. I don't believe he was a detective.

20 Q. Was he a police officer?

21 A. Yes.

22 Q. Did you know him?

23 A. Yes.

24 Q. And did you discuss with him the alleged

1 drug use?

2 A. Well, it was brought to my attention
3 that -- I don't recall the specifics, but it was
4 brought to my attention that -- and I don't recall
5 an entity, but that someone was saying, hey, there
6 was an allegation of drug use on my part and the
7 Paris Police Department was looking at it. And I
8 called Jim Lindley who was the chief at that time to
9 my apartment, which at that time was the old post
10 office, and I said, "Jim, I hear this." I said,
11 "you should have just asked me, I'll tell you
12 exactly what happened."

13 And I said what happened was that went to
14 an after-hours party at a -- again, it's been so
15 long ago -- a cabin on the lake, and I went with one
16 buddy and I can't be sure who that was, but in any
17 case, I walked into the cabin, saw all this -- it
18 was a house, cabin, whatever, saw this -- there was
19 people doing marijuana, and I mean I was out like a
20 shot, turned around, walked directly out, and my
21 buddy joined me within a few minutes and we left.
22 And I -- I wasn't even in there long enough to
23 identify anybody. I [sound] just got out.

24 So I said, "yeah," I said, "that's what

1 happened." And he goes "oh." I said yeah. So --
2 and I can't remember what he said, but anyways you
3 need to meet with Officers McKenna and Parrish. And
4 I sat down and told them, met with them, and I was
5 quite frankly irritated that they didn't -- and my
6 irritation was that you guys don't trust me enough
7 just to ask me? I said I'll tell you exactly what
8 happened, and I told them just what I just told you.
9 I said, hey, I walked in, bam, turned around and
10 walked out, and that's the end of it.

11 Q. And -- go ahead.

12 A. Oh, like I say, I know I was angry enough
13 that -- John McKenna had a reputation for taping
14 things, and I looked at him and I said, "I hope
15 you're taping this conversation."

16 Q. Was he?

17 A. I have no idea.

18 Q. Did you ever see a tape of it?

19 A. No.

20 Q. Did he make a report of it?

21 A. I couldn't tell you.

22 Q. Did you make anything in writing to anyone
23 about this incident?

24 A. Not that I recall.

1 Q. Now, Lindley was the chief; is that right?

2 A. Jim Lindley was the chief.

3 Q. And he -- but he -- when was he the chief,
4 what year?

5 A. And I'm going to time this -- my best
6 estimate is that there was an attorney that worked
7 at the bank and I know that there was some rumblings
8 he was thinking about running for State's Attorney,
9 and one of the officers went to this attorney who
10 worked at the bank and I guess it was -- I don't
11 know how, but eventually it made -- called the
12 Attorney General, whatever they did, and in light of
13 my election, I'm going to have to guess it was
14 sometime before 1984.

15 Q. All right. So it was a run up to the
16 November '84 election?

17 A. Well, I can't say when in that time frame.
18 I mean it could have been 1982. I mean it just --
19 it just --

20 Q. So somewhere between 1982 and 1984?

21 A. I'm just -- at best it would be '82ish
22 because I mean I certainly -- I just don't know
23 when, so I'm going to guess '82ish, '83.

24 Q. All right. And the buddy that you said

1 that you were with, what was his name?

2 A. I really can't be sure. I don't know.

3 Q. Well, if you're not sure, what's your best
4 memory of who it was?

5 MR. MANCINI: Object as to form and object
6 as to the relevancy at this point also again
7 restating the standing objection.

8 A. I'm going to -- I would -- just people I
9 hung around with. If I was, I'm going to emphasize
10 the term, guessing, would have been Tom Davis or
11 Jeff Englum.

12 Q. And where are they now?

13 A. Jeff lives in Indianapolis and Tom lives
14 in Paris.

15 Q. All right. Now, you say it was a cabin on
16 the lake. What lake are we talking about?

17 A. Paris Lake. The -- get my directions
18 confused. I guess West Lake.

19 Q. Now, whose cabin was it?

20 A. I have no idea.

21 Q. And did you -- were you -- this is before
22 you were married or after you were married?

23 A. It would have been '82ish, so it would
24 have been before I was married.

1 Q. All right. Were you also with your
2 wife-to-be or was it --

3 A. No, I -- like I said, just my
4 recollection, I was with one buddy, may or may not
5 be those guys, and just went in, turned around,
6 walked out, and he came out within a few minutes. I
7 stood outside. He came out in a few minutes and we
8 left.

9 Q. Was Jeff -- Jeb Ashley there?

10 A. I couldn't tell you anybody else that was
11 there. I can't, again, even be sure who I was with.

12 Q. All right. How did you get there?

13 A. I would have to think that either myself
14 or my buddy drove.

15 Q. Okay. Now, did you also have at another
16 time have a confront -- strike that.

17 Did at some point Eckerty come up to you
18 and raise with you the question of rumors that were
19 persisting in Paris that you were involved in drugs,
20 in using drugs?

21 A. I can't say other than I mean, as I said,
22 somehow I was told as to -- it prompted my call to
23 the chief. That that could have been the same time,
24 could be the same time.

1 Q. Do you remember a separate time when
2 Eckerty and you --

3 A. No, that's my -- I don't remember any time
4 specifically with Jack Eckerty, him saying that to
5 me, but my point is if, in fact, that occurred, it
6 could have been that time.

7 Q. Well, according to Eckerty, you denied any
8 drug use and said if he had any evidence you'd be
9 the first one to come in and admit it. Do you
10 remember such a circumstance?

11 MS. EKL: Objection, form, foundation.

12 MR. MANCINI: Join.

13 MS. WADE: Objection.

14 A. No.

15 Q. Other than this incident with McKenna, do
16 you remember any other time that you were confronted
17 with any allegations of drug use --

18 MR. MANCINI: Object to the form.

19 Q. -- in Paris?

20 MR. MANCINI: Object to the relevance.
21 It's a standing objection.

22 A. Not that I recall.

23 Q. All right. Now, either through the
24 investigation or through your contacts in the bars,

1 did you learn that Robert Morgan had gone into the
2 bars and offered a \$25,000 reward for information
3 having to do with the murders?

4 A. I learned about that from law enforcement.

5 Q. And you learned it from Parrish and
6 Eckerty?

7 A. I -- I couldn't tell you exactly. I mean
8 that would be the most likely.

9 Q. And you learned about it right after the
10 murders, that he had done that within a day or two
11 of that?

12 A. I couldn't tell you a day or two, but it
13 was certainly shortly thereafter.

14 Q. All right. And did you take any action or
15 recommend in your -- with Eckerty and Parrish
16 anything with regard to the reward?

17 A. I strongly recommended that they or he go
18 to Mr. Morgan and have him withdraw or quiet down,
19 or withdraw I guess I mean, that offer because I
20 thought that that was the type of thing that could
21 taint evidence.

22 Q. Because \$25,000 to almost anybody who
23 frequented those bars would be a lot of money,
24 right?

1 MS. EKL: Objection, form, foundation.

2 MR. MANCINI: Join.

3 A. Well, as I told you before, frequenting
4 the bars was everybody, so I guess it would depend
5 on the person.

6 Q. All right. Well, for someone who -- like
7 Darrell Herrington who at that time was not making a
8 lot of money, that would certainly be a major
9 enticement to come forward, wouldn't it?

10 MR. MANCINI: Objection.

11 MS. EKL: Objection, form, foundation.

12 MR. MANCINI: Join.

13 A. I have no idea.

14 Q. Well, why did you think it would taint the
15 case, the reward money?

16 A. Because I thought any reward money would
17 taint the case.

18 Q. Why?

19 A. Because you would have to deal with
20 somebody -- you'd -- even if the person was telling
21 the truth, you'd have to deal with, well, did the --
22 the reward have any influence even if it didn't. It
23 just -- it would be an issue we'd have to deal with.
24 And I thought, again my legal advice as a prosecutor

1 and a State's Attorney, that this wasn't something
2 that was needed and certainly at that time. Now,
3 again, I mean you can see cases that go on for years
4 and years where individuals may offer a reward
5 because, you know, that's -- you know, again, that's
6 a case by case thing, but certainly at that point in
7 time when we were within a short period of time
8 after the crime, that was inappropriate.

9 Q. Well, what, if anything, was done to your
10 knowledge given your strong advice that Morgan be
11 contacted and told to withdraw the reward?

12 A. To my knowledge, he withdrew the reward.

13 Q. And from where did you learn that?

14 A. That would have been whoever went down
15 there presumably told me that he agreed he won't do
16 it.

17 Q. Now, was the reward something that should
18 have appeared in the reports?

19 MR. MANCINI: Objection as to form,
20 foundation.

21 A. I -- I would have no idea.

22 Q. Well, would you expect that the withdrawal
23 of the reward and what the investigators did to
24 withdraw the reward and the -- and what Morgan did

1 to withdraw the reward would be something that would
2 be documented?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 A. It would depend on the facts. I can't
6 tell you.

7 Q. Well, what were you told was done to
8 withdraw the reward?

9 MR. MANCINI: Objection. I believe it was
10 asked and answered, but --

11 A. Somebody went down there and told him to
12 get rid of it.

13 Q. What do you mean get rid of it?

14 A. Well, withdraw it.

15 Q. There wasn't a --

16 A. Huh?

17 Q. I mean there wasn't a sign. There wasn't
18 a billboard out there \$25,000 dollar reward. It was
19 something he circulated in the bars, right, Morgan?

20 A. Well, actually I can't frankly tell you if
21 he did circulate it in the bars. I'm just saying
22 there was a rumor or word was out that he was doing
23 it. Whether in fact he was or he wasn't, I couldn't
24 tell you. All I know is that I was told about it,

1 and I said if in fact he's doing this, this is not
2 something that should be done.

3 Q. All right. And so did Eckerty -- all
4 right, you're saying that someone reported back that
5 they went to Morgan and told him to withdraw the
6 reward.

7 A. That's -- yes.

8 Q. Okay. Well, my question is how do you
9 unring a bell in the bars of Paris that there's a
10 \$25,000 reward?

11 MR. MANCINI: Objection as to form and
12 foundation.

13 A. Well, I would have no idea, but since the
14 arrest didn't occur until February, it wouldn't
15 appear that it had any influence.

16 Q. Well, how about with Darrell Herrington?
17 He came in in September, didn't he?

18 A. Yes.

19 Q. All right. So you had read -- you got
20 your first witness that you used at trial in
21 September, right?

22 A. Still two and a half months later.

23 Q. All right. Well, money's still good, if
24 it isn't withdrawn, two and a half months later,

1 right?

2 MR. MANCINI: Objection as to form.

3 A. As far as I knew, it was withdrawn.

4 Q. Well, did you ever talk to Morgan to see
5 if he had withdrawn it and how -- if he did, how he
6 did that?

7 A. No.

8 Q. And, in fact, Darrell Herrington right
9 after the trial all of a sudden became no longer
10 destitute but came into quite a bit of money, didn't
11 he?

12 MS. EKL: Objection, form, foundation.

13 MR. MANCINI: Join.

14 A. I have no idea.

15 Q. Well, did you -- was it ever drawn to your
16 attention that he made a statement after the trial
17 that Morgan had given him \$25,000?

18 MR. MANCINI: Objection as to foundation.

19 A. Not that I recall.

20 Q. So that was never brought to your
21 attention.

22 A. Not that I recall.

23 Q. All right. And was it ever brought to
24 your attention that after the trial Darrell had told

1 Gene Ray and others that in fact he hadn't told the
2 truth at the trial?

3 MS. EKL: Objection, form, foundation.

4 MR. MANCINI: Join.

5 A. Not that I recall.

6 Q. All right. Now, in the -- after -- the
7 trials went on and the first trial was Whitlock and
8 that went on in May; is that right?

9 A. Yes.

10 Q. And it was followed within a couple of
11 weeks by Steidl's which was in June, right?

12 A. Yes.

13 Q. So both trials were over by the what, the
14 end of June or --

15 A. Yes.

16 Q. And Steidl had been sentenced by the end
17 of June; is that right?

18 A. That I don't recall.

19 Q. Well, wasn't he sentenced the day after
20 the jury came back? Wasn't there a sentencing
21 hearing the next day?

22 A. I don't recall.

23 Q. All right. But -- and Whitlock was
24 sentenced -- was Whitlock sentenced before Steidl

1 went to trial or after he went to trial?

2 A. I don't recall.

3 Q. But in -- Whitlock filed a post-trial
4 motion in the summer of 1987, didn't he?

5 A. The record would speak for itself.

6 Q. Did you handle the defense of the
7 post-trial motion or by that time was someone else
8 handling the case?

9 A. I don't recall, and again the record will
10 speak for itself, but I don't recall that I handled
11 any hearing. I may have been involved and even
12 handled some pleadings, but when it got to a
13 hearing, if in fact there was going to be testimony,
14 I don't recall handling any hearing wherein there
15 was testimony in the post-trial/postconviction
16 matters.

17 Q. Okay. Well, when I use the term
18 post-trial with regard to Whitlock, I'm talking
19 about a motion for new trial. Do you remember that
20 being filed and there was some kind of like 70
21 points that Whitlock raised?

22 A. That may be.

23 Q. And how long after that motion was filed
24 in the summer of '87 was there an evidentiary

1 hearing or was there one? Did the judge just deny
2 it on argument or was there a post-trial hearing, do
3 you know?

4 A. The record will speak for itself, but my
5 -- the record will speak for itself. I don't --
6 again, the reason -- I would think it was based upon
7 argument again because my recollection, and again
8 the record speaks for itself, but is that I didn't
9 handle any hearing where there was live testimony.

10 Q. Okay. And you didn't handle any of the
11 appeals either, right?

12 A. Appeals would be handled by the Appellate
13 Prosecutor for Whitlock and by the Attorney General
14 for Steidl.

15 Q. All right. So if, in fact, the post-trial
16 motions were filed in the summer of '87 after the
17 verdicts and the sentences, it would be fair to say
18 that by the end of 1987 at the latest your
19 involvement as the prosecutor was at an end.

20 MR. MANCINI: Object as to form, I think
21 it mischaracterizes his testimony, but he can
22 answer.

23 A. My responsibility as Edgar County State's
24 Attorney would remain.

1 Q. Right, I didn't -- I'm sorry, my question
2 may not have been clear. Your involvement as the
3 prosecutor in the Whitlock and Steidl cases was at
4 an end and that the continuing proceedings were
5 being handled by other agencies and other lawyers.

6 A. The appeals, the lead counsel on the
7 appeals would be handled by other lawyers, but as
8 State's Attorney, it would be part of your duties to
9 assist.

10 Q. So you were -- you were still involved in
11 the Steidl and Whitlock cases after the convictions
12 and post-trial motions?

13 A. I wouldn't have been fulfilling my duty as
14 the elected State's Attorney if I wasn't.

15 Q. All right. So you still had a function as
16 the State's Attorney in the prosecutions after the
17 trials, is that your testimony?

18 MR. MANCINI: Objection as to form.

19 A. That would be my opinion.

20 Q. Did you understand that you had a
21 continuing obligation while these proceedings were
22 going on to produce materials under Brady and under
23 Supreme Court Rule 412 if they came into your hands?

24 MR. MANCINI: Objection as to form.

1 A. You can correct me, there's a continuing
2 duty, but I think the criteria is different, but I
3 could be wrong on that.

4 Q. What do you mean criteria?

5 A. It's certainly the criteria of what type
6 of evidence it would -- it would take postconviction
7 versus pretrial. I mean, again, I haven't done
8 criminal law in quite a while, but I know there's
9 some difference in the legal standings.

10 Q. All right. Putting aside the differences,
11 did you understand you had a continuing duty to
12 follow the law with regard to the production of any
13 evidence that came into your hands concerning the
14 Steidl and Whitlock case even after the convictions
15 had been rendered?

16 A. There would be a continuing duty to follow
17 the law whatever that was.

18 Q. And if the law required that you turn over
19 exculpatory evidence, you understood that to be your
20 continuing duty as the prosecutor, right?

21 MR. MANCINI: Objection as to form.

22 A. That, again, a State's Attorney represents
23 the people of the State of Illinois, includes the
24 defendant. You almost have that duty anyway.

1 Q. And you understood that Rule 412 of the
2 Supreme Court was the rule that governed discovery
3 at least up and until trial, right?

4 A. Pretrial discovery.

5 Q. And did you -- and that was the operative
6 rule that was in play during the Whitlock and Steidl
7 cases, right?

8 A. I don't remember all the numbers. If you
9 say that's what it was.

10 Q. Well, let me read you from Rule 412 and
11 see if it refreshes your recollection. That
12 prosecutor is to disclose to defense counsel the
13 following within its possession and control. The
14 names and last known addresses of persons whom the
15 State intends to call as witnesses together with
16 their relevant written or recorded statements,
17 memoranda containing substantially or --
18 substantially all statements and a list of memoranda
19 reporting or summarizing oral statements.

20 Do you -- does that refresh your
21 recollection that that was your duty under Rule 412
22 of the Supreme Court in 1987 when this case was
23 getting ready for trial?

24 MR. MANCINI: I'm going to interpose an

1 objection just because I don't know that that's Rule
2 412 back in 1987. If you know, feel free to answer.

3 A. Which is what I -- we were under '87
4 rules.

5 Q. Pardon me?

6 A. We were under the 1987 rules and --

7 Q. I know and that's what I'm reading.

8 A. That's the 1987 rule?

9 Q. Uh-huh.

10 A. Then I would have known about it.

11 Q. All right. And so wouldn't the -- these
12 statements of Herrington that were recorded and
13 reflected in the State's -- in the exhibit of the
14 lie detector examiner, that would fall under Rule
15 412, wouldn't it?

16 MR. MANCINI: Objection as to the form and
17 also been asked and answered.

18 A. The rules for polygraphs are different.
19 It's whatever the law is.

20 Q. The rules for statements are the rules for
21 statements; isn't that right?

22 MR. MANCINI: Objection as to form.

23 Q. Is that right?

24 A. Since all polygraphs contain statements,

1 there wouldn't be a reason for a polygraph rule if
2 that were the case.

3 Q. Now, also we -- on the 9th of -- strike
4 that. After you went to the scene, what, if
5 anything, did you do other than meet with Parrish
6 and Eckerty and perhaps Gene Ray up and until the
7 9th of July which is the date that Randy and Herb
8 were taken into custody at the Tap Room?

9 A. Excuse me?

10 Q. All right. I'm asking you what, if
11 anything, you recall doing from the 6th of July to
12 the 9th of July other than what you've already
13 testified to?

14 A. Just meeting with the law enforcement
15 officers.

16 Q. All right. Do you recall on July 9th of
17 1986 that Randy Steidl and Herb Whitlock were taken
18 to the police station by Paris police officers and
19 ISP police officers for questioning?

20 A. Yes, I know it's contained in police
21 reports.

22 Q. And, in fact, were you present at the
23 police station when they were brought there?

24 A. I was present at the police station at

1 some point. I can't be positive I was present at
2 the exact moment they were brought there.

3 Q. And did you discuss with them prior to
4 them being brought there the fact that they were
5 going to be brought there by law enforcement for
6 questioning?

7 MR. MANCINI: Objection as to form. Are
8 you asking if he talked to Randy and Herb?

9 Q. No. Did you talk to the detectives and
10 the chief and the persons who made the move to bring
11 them in?

12 A. It was represented to me that Steidl and
13 Whitlock were stating things in a bar that patrons,
14 the bar owner, concerned them enough regarding the
15 murders that they contacted the police.

16 Q. And I would --

17 A. And then I would have given my legal
18 advice as to what passes the elements of a voluntary
19 statement because a statement that would be
20 involuntary would have no value.

21 Q. Now, no one was in custody at this time,
22 is that right, for this crime?

23 A. That's your conclusion.

24 Q. No one was in custody for this crime, was

1 there?

2 A. Oh, no.

3 Q. And, in fact, you were -- the
4 investigators I take it, Eckerty and Parrish,
5 reported to you that there had been some report from
6 the bar that Whitlock and Steidl were making
7 statements that in some way connected them to the
8 crime. Is that what -- basically your testimony?

9 MR. MANCINI: Objection as to form.

10 A. Well, there could have been another police
11 officer regarding that. It would not necessarily
12 have been Eckerty or Parrish.

13 Q. Well, did you receive anything in writing
14 concerning what, in fact, was being reported as what
15 these men were saying?

16 A. No.

17 Q. Did you take down any notes about what was
18 -- what you were told?

19 A. No.

20 Q. Did you request a written report to
21 document what information was allegedly being stated
22 by Whitlock and Steidl that linked them to the
23 crime?

24 A. No, but a report was generated concerning

1 their statements.

2 Q. Did you ever see a report that in any way
3 reflected who reported from the bar and what they
4 reported?

5 A. Not that I recall.

6 Q. All right. There is no such report, is
7 there?

8 MR. MANCINI: Objection as to form.

9 A. Don't know.

10 Q. Well, in fact, that would be a significant
11 omission not to write a report about what witnesses
12 were saying they overheard Steidl and Whitlock
13 saying, wouldn't it?

14 MR. MANCINI: Objection as to form.

15 A. Statements made, and they were never
16 subject to a motion to suppress or any other motion.

17 Q. I'm not asking you about the statements
18 that Whitlock and Steidl made at the police station.
19 I'm asking you about the reported statements that
20 they made in the bars which led you to authorize
21 them being brought in for questioning.

22 MR. MANCINI: Objection as to form.

23 Misstates what he's testified to.

24 A. It's case by case.

1 Q. Well, as a prosecutor, if they had made
2 admissions in a bar, you would want to use those
3 particular admissions against them if you prosecuted
4 them; isn't that right?

5 MR. MANCINI: Objection as to form,
6 speculation.

7 A. Again, depending on the -- what the
8 statements were.

9 Q. Well, you certainly want to be able to
10 evaluate them. You want to know what they were and
11 who made them in order to decide whether to use
12 them, right?

13 MR. MANCINI: Objection as to form,
14 speculation.

15 A. That wasn't the circumstance that was
16 presented.

17 Q. Well, the circumstance presented was that
18 you were -- that investigators in the case reported
19 to you that people in the bars were saying that
20 these men were making certain admissions, right?

21 MR. MANCINI: Objection as to form.
22 Misstates his testimony.

23 A. They were making certain statements.
24 Whether they rose to the level of admissions, I

1 couldn't tell.

2 Q. But they were significant enough that you
3 authorized or approved of them bringing them down
4 for questioning.

5 A. That's not true.

6 MR. MANCINI: Objection as to form.
7 Misstates his testimony.

8 A. I explained what would constitute a
9 voluntary statement and gave guidance in that
10 regard, because again if the statement was
11 involuntary, it would have no value.

12 Q. And did -- what was the content of the
13 information that was reported to you that Whitlock
14 and Steidl had purportedly said?

15 A. I don't recall.

16 Q. What was -- was it reported to you who the
17 witnesses were who allegedly overheard them making
18 these admissions?

19 A. I don't recall.

20 Q. Did you make any attempt to find out who
21 those witnesses would be?

22 A. I don't recall any -- anything specific.

23 Q. You gave them advice about what a
24 voluntary statement would be, is that what your

1 testimony was? That meaning the investigators,
2 Parrish, Eckerty, others. Is that right?

3 A. Yes.

4 Q. And what was that advice?

5 A. Whatever the elements are of
6 voluntariness. I mean -- I mean, again, I couldn't
7 -- been out of criminal law, I couldn't tell you.
8 There's a list that -- you know, voluntariness is
9 the totality of the circumstances. I assume that's
10 still this law. And would have rendered advice if
11 these individuals are going to be questioned, make
12 sure, you know, that these are the elements that
13 need to be followed when they -- to render the
14 statement voluntary.

15 Q. Well, was one of those elements to give
16 them their Miranda warnings?

17 A. That's actually not an element of
18 voluntariness, at least in the law at the time. I
19 don't know -- I don't recall if they gave Miranda or
20 not.

21 Q. Well, Miranda was certainly the law,
22 wasn't it?

23 MR. MANCINI: Objection as to form.

24 A. Miranda is an in custodial interrogation.

1 Q. Okay. And these men were in custody, were
2 they not, when they were brought into the police
3 station?

4 A. That's a legal conclusion.

5 MR. MANCINI: Objection to form.

6 Q. Well, you were there to make legal
7 conclusions, right? Isn't that what you're telling
8 us your role was?

9 MR. MANCINI: Objection as to form.
10 Misstates his testimony.

11 A. I told you what I -- I indicated what
12 would constitute a voluntary statement.

13 Q. All right. And -- but you're having a
14 little trouble telling me what you told them, right?

15 A. Well, I don't recall. It's --

16 Q. Well, did you tell them, did you advise
17 them what a custodial statement was versus what a
18 noncustodial statement was?

19 A. May have.

20 Q. What was the distinction in 1987?

21 A. Again, it's the totality of the
22 circumstances.

23 Q. All right. And was one of the -- one of
24 the circumstances whether they had voluntarily come

1 to the station or whether they had been brought
2 there against their will?

3 A. That would be an element.

4 Q. And did you realize at the time that they
5 had been taken from the bar to the station in a
6 police car?

7 A. I don't recall how they got there. Again,
8 I just recall that there was no motions to suppress.

9 Q. And that's because they didn't make any
10 inculpatory statements at the -- at the police
11 station, right?

12 MR. MANCINI: Objection to form,
13 foundation.

14 A. That -- again, that's a matter of legal
15 interpretation. Certainly their statements were
16 introduced at trial.

17 Q. You introduced them at trial?

18 A. It's my recollection.

19 Q. As false exculpatory statements?

20 A. Pardon me?

21 Q. As false exculpatory statements?

22 A. I don't remember exactly how they were
23 introduced, but I -- my recollection, I thought they
24 were introduced.

1 Q. Did you at the time consider the
2 statements that they made to be false?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 A. I considered them to be statements.

6 Q. Did you consider what impact it would have
7 on the community of Paris to bring these two men to
8 the police station in broad daylight out of the bars
9 to be questioned?

10 A. I don't know what time they were brought
11 in.

12 Q. All right. Well, they were brought in
13 around 4:30 in the afternoon.

14 A. First of all, this was not the only
15 pending crime either in the community or that I was
16 handling, so the fact that two individuals would be
17 brought into the police station wouldn't strike me
18 as being that amazing to me.

19 Q. Well, if they were brought in for the
20 crime of the century, it would be, wouldn't it?

21 A. But they would have had to tell people
22 that.

23 Q. Well, do you normally bring people in by
24 going to a bar and going in the front door and the

1 back door and bringing them out, bringing them to
2 the station?

3 MR. MANCINI: Objection as to form.
4 Mischaracterizes his testimony.

5 A. I don't know.

6 Q. Well, did you discuss with Eckerty or
7 Parrish, Chief Ray or anyone else involved in the
8 investigation, the impact it would have on the
9 evidence to bring two persons to the police station
10 such as Steidl and Whitlock?

11 A. I think you're making a quantum leap here.
12 The fact that they were brought into the police
13 station could have been for other crimes. I mean I
14 -- the only way it would be, quote, unquote,
15 broadcast through the community is if Steidl or
16 Whitlock broadcast it through the community.

17 Q. Well, if in fact they were -- your source
18 was accurate, they were talking about the murders in
19 the bar and then someone calls in, drops a dime on
20 them and calls the police station, then, in fact,
21 everybody in the bar when they see the police come
22 knows that that's what they're bringing them down
23 for; isn't that right?

24 MR. MANCINI: Objection as to form. It's

1 speculation.

2 A. I can't read minds.

3 Q. Well, is it your testimony that in fact it
4 didn't concern you that you had brought these two
5 men in, and whatever spotlight it would have put on
6 them wasn't a concern to you or the investigators?

7 MR. MANCINI: Objection to form.
8 Mischaracterizes his testimony.

9 MS. EKL: Objection, foundation.

10 A. Anything that could taint evidence is a
11 concern, but I -- I can't recall if I consciously
12 thought that at the time.

13 Q. Well, did you think that the fact that
14 there was a \$25,000 reward out in the bars together
15 with these two men being brought in to be questioned
16 about the crimes, that that put an undue taint on
17 them as suspects?

18 MR. MANCINI: Objection as to form. Don't
19 know when the reward was offered.

20 A. I can't speculate to that.

21 Q. At the time that Steidl and Whitlock were
22 brought to the station on November 9th, were they
23 suspects?

24 MR. MANCINI: Objection as to form,

1 foundation.

2 A. Again, suspect is a term of art. I would
3 say at that moment in time, again you'd have to look
4 at the police reports, I would -- I would say no.

5 Q. No? Did you continue to have a focus on
6 them after they came into the station and made the
7 statements denying that they had any involvement in
8 the crime?

9 MR. MANCINI: Objection as to form.

10 A. In July of 1986, it was my impression or
11 assessment as State's Attorney that there was an
12 open investigation, and I think saying that the
13 investigation focussed on Whitlock and Steidl at
14 that time, certainly in my role as prosecutor, is
15 not accurate.

16 Q. Now, at some time during the trial, the
17 trial -- Steidl's trial, the trial was recessed so
18 that he could speak with the FBI about alleged
19 corruption in your office; is that right?

20 MR. MANCINI: Objection as to form.

21 A. FBI Special Agent Ken Temples approached
22 me on that topic.

23 Q. All right. And when he approached you,
24 what did he say?

1 A. Basically that Steidl wanted to -- again,
2 I don't know how he found that out, but is that
3 Steidl, I don't recall anyway, Steidl wanted to talk
4 to him and that he would appreciate it if he could
5 talk to him now because he might not be in the mood
6 to talk depending on the verdict either way, either
7 direction. If he was found not guilty, he would
8 have no motivation to cooperate. If he was found
9 guilty, he would not be, again use, in the mood to
10 confer with the FBI. So I said, well, that's fine.
11 Went ahead and did it.

12 Q. Did he tell you what he wanted to consult
13 with the FBI about?

14 A. That --

15 Q. Did Temples tell you?

16 A. Did Temples tell me? I don't recall. I
17 don't believe he did, but I don't recall.

18 Q. Were you aware that Steidl and Whitlock
19 had previously gone to the FBI prior to the murders
20 and complained about your involvement in alleged
21 drug or gambling activities?

22 MR. MANCINI: Objection to the form,
23 foundation.

24 A. I first became aware of a prior contact in

1 the post-trial pleadings when I first read the
2 report, you know, regarding the -- regarding the
3 interview. The FBI generated a report obviously
4 regarding the interview that Ken Temples had with
5 Steidl during the course of the trial. That report
6 referenced an earlier meeting. First time I learned
7 about the earlier meeting was when I read that
8 report. I never received a copy of that report and
9 the first time I actually saw that report, being the
10 June 1987 report, would have been it was attached to
11 post-trial pleadings and that's the first time that
12 I saw it. Now, my recollection is, in reference to
13 the earlier meeting, it didn't have anything to do
14 with drugs. It was all about gambling.

15 Q. All right. Now, at some point, did you
16 have an occasion to have contact with Mr. Steidl
17 around an incident having to do with the Super Bowl?

18 A. I don't recall unless I interviewed him as
19 a witness. About the Super Bowl?

20 Q. Well, do you recall an incident that was
21 at a motel during the Super Bowl where Mr. Whitlock
22 supposedly shot off some guns and there was a call
23 and all of that?

24 A. Yeah, I recall that incident.

1 Q. And were you also involved in using an
2 informant to wire -- did you wire someone with
3 regard to Mr. Whitlock in that instance?

4 A. In that incident?

5 Q. Yeah.

6 A. I don't recall.

7 Q. Did you at some time attempt -- was there
8 a woman named Greathouse or Greenhouse that was
9 involved as giving information on that case?

10 A. I don't recall.

11 Q. Do you remember a case in which a witness
12 was wired by the name of Greenhouse[sic] that had to
13 do with Mr. Whitlock and Mr. Steidl?

14 A. If there's records to that effect, it must
15 have happened, but I don't have any specific
16 recollection.

17 Q. You have no recollection of that, okay.
18 Did you participate in any way in attempting to
19 develop evidence against Mr. Steidl in a drug
20 prosecution that also involved Mr. Whitlock?

21 A. Again, that would have been the role of
22 the investigators, but again since they were close
23 associates and I know there was investigations
24 regarding Whitlock, I would say that the fair

1 inference is that it's -- that Steidl would have
2 been investigated along with that.

3 Q. Well, do you know someone by the name of
4 Sandy Greathouse?

5 A. I recall the name.

6 Q. All right. And was she involved in an
7 investigation in a case that you prosecuted?

8 A. I -- I don't recall. Certainly I don't
9 have any specific recollection.

10 Q. Now, going back for a moment to the lie
11 detector and the decision to not proceed with the
12 second lie detector as was recommended but rather to
13 proceed with the hypnosis, were you involved in the
14 decision to hypnotize Darrell Herrington?

15 A. First of all, disavowing your
16 characterization of your lead up to this, in terms
17 of the hypnosis, it was discussed, and again in my
18 role as prosecutor, State's Attorney and legal
19 advisor gave the pluses and minuses of proceeding
20 with hypnosis.

21 Q. All right. Well, with regard to the lie
22 detector, Herrington was given a lie detector,
23 right?

24 A. Apparently.

1 Q. And he wasn't given a second one, right?

2 A. I -- I'm not aware of any reports of a
3 second one.

4 Q. All right. Ferlin Wells was given a lie
5 detector concerning the burglary of your office,
6 right, in March of 1987?

7 A. I don't recall.

8 Q. But he wasn't given a lie detector about
9 his testimony and its truthfulness in the Steidl
10 case, was he?

11 A. I don't recall.

12 Q. Debra Rienbolt was not given a lie
13 detector test, was she?

14 A. I don't recall.

15 Q. Other -- several other witnesses in the
16 case were given lie detectors and were made the
17 subject of your motion in limine, right?

18 A. The record would speak for itself, yes.

19 Q. Now, in each of those cases, were you
20 giving what you call legal advice as to whether
21 there should be a lie detector or not be a lie
22 detector?

23 MR. MANCINI: Objection to form,
24 foundation.

1 A. As I stated before, as State's Attorney,
2 my preference was not to give polygraphs.

3 Q. And I take it you communicated that to the
4 investigators you were working with, that being
5 Eckerty and Parrish and those who did certain lie
6 detectors and didn't do certain others; is that
7 right?

8 A. They would know my preference.

9 Q. Well, as a prosecutor, you wanted to make
10 sure you not only had a good case but that you had
11 an honest one, didn't you?

12 MR. MANCINI: Objection as to form,
13 foundation.

14 A. It was my duty.

15 Q. To have an honest case, right?

16 A. Well --

17 MR. MANCINI: Objection as to form.

18 A. -- State's Attorney uses his judgment, and
19 if you want to use the terminology honest versus I
20 mean other synonyms, that's fine.

21 Q. Well, a prosecutor has a greater duty than
22 just to convict. He has a duty not to present
23 perjured testimony, for instance, right, that he
24 knows to be perjury?

1 MR. MANCINI: Objection as to form,
2 foundation.

3 A. All lawyers have a duty not to present an
4 individual on the stand who they know is going to
5 lie.

6 Q. But a State's Attorney has a special duty
7 as a representative, as you put it, of all the
8 people in the State of Illinois including the
9 defendants.

10 A. That's correct.

11 Q. Isn't that right?

12 MR. MANCINI: Objection as to form,
13 foundation.

14 A. That's right.

15 Q. And that special duty certainly includes
16 not to put on a perjured case, right?

17 MR. MANCINI: Objection as to form,
18 foundation.

19 A. Actually I would define that duty to avoid
20 violations of the constitutional rights of the
21 defendant, one of which would be putting on a
22 perjured case.

23 Q. Well -- and, in fact, as in pursuit of
24 that duty, you'd want to know whether key witnesses

1 were telling the truth or not, wouldn't you?

2 MR. MANCINI: Objection as to form,
3 foundation.

4 A. Ultimately that's going to be the State's
5 Attorney's decision.

6 Q. And you're the State's Attorney, aren't
7 you?

8 A. I was.

9 Q. And before you proceed with prosecution,
10 you want to know first that you have probable cause,
11 right?

12 MR. MANCINI: Objection as to form,
13 foundation.

14 A. Yes.

15 Q. And second, from the way you've been
16 testifying, you also want to know whether you have a
17 good chance of a conviction, right?

18 MR. MANCINI: Objection to form,
19 foundation.

20 Q. Is that right?

21 MR. MANCINI: Same objection.

22 A. A reasonable chance.

23 Q. All right. But you also had the
24 obligation, did you not, to make sure that that case

1 was premised on credible evidence, right?

2 MR. MANCINI: Objection to form,
3 foundation.

4 A. Yes.

5 Q. And in terms of lie detectors, that could
6 be a device to give you some insight into whether
7 your witnesses were telling the truth or not; isn't
8 that right?

9 MR. MANCINI: Objection to form and
10 foundation.

11 A. Depending on the circumstances, it could
12 be an element.

13 Q. And, in fact, on the other side of the
14 score card, if in fact the witness was shown not to
15 be telling the truth or gave some kind of statement
16 that was discoverable that would hurt your case,
17 that would be something that you would not want to
18 develop; isn't that right?

19 MR. MANCINI: Objection as to form,
20 foundation.

21 A. I didn't understand that question.

22 Q. Well, my question is, isn't one of the
23 reasons that as a prosecutor seeking a conviction
24 that you didn't want to lie box key witnesses was

1 because they might flunk the lie box or make some
2 statements that could be negative in the case?
3 Isn't that fair to say?

4 MR. MANCINI: Objection as to form,
5 foundation.

6 A. All attorneys would want their witnesses
7 to give as few statements as possible. That's for
8 everybody.

9 Q. But a defense lawyer doesn't have the same
10 obligation, does he, that a prosecutor does to
11 proceed in the interest of all the citizens of the
12 state. You have a higher duty than a defense lawyer
13 who's only representing his client. Isn't that fair
14 to say?

15 MR. MANCINI: Objection to form,
16 foundation.

17 A. I'd say we both have high duties to
18 perform within the ethical guidelines. If you want
19 to say the prosecutor's is higher than yours as a
20 defense attorney, that's fine, but all attorneys
21 have ethical obligations.

22 Q. And wasn't one of your ethical obligations
23 to determine whether a witness that at least your
24 lead investigator had characterized as a bad witness

1 and a not credible witness, to determine by all
2 means possible whether, in fact, he's telling the
3 truth in a double murder case?

4 MS. EKL: Objection, form, foundation.

5 MR. MANCINI: Join.

6 A. And quite frankly, in fact, that was done.
7 If you've ever seen the tape, the prehypnotic
8 testimony, you can judge for yourself. And I know
9 he's deceased now, but if you see the tape, you can
10 judge for yourself his demeanor and how he answered
11 the questions. You can look at the pre -- the
12 hypnotic tape, the hypnotic tape. The hypnotist, I
13 believe it was a psychiatrist, only knew that it was
14 a major case, murder at the most, that's all he
15 knew. He could not lead the witness. He looked at
16 that tape. It's very impressive that the individual
17 is telling the truth.

18 If you look at the other evidence
19 developed during the course of the case, you'll get
20 all the corroboration, referring to Mr. Herrington,
21 all the different corroborating witnesses and
22 evidence that corroborated Mr. Herrington's
23 testimony. And the biggest -- and one of the
24 factors also, if you look at the -- in terms of the

1 two eyewitnesses, you would look at the fact that it
2 wasn't so much what they said, it's what they didn't
3 say. They didn't say the murders occurred in the
4 living room. They didn't say the victims were bound
5 and gagged. What they said was generally consistent
6 with no major instances of wrong. So I would say
7 that Mr. Herrington's testimony was exceptionally
8 corroborated as the investigation continued and
9 through the trial.

10 Q. Well, you chose not to lie box him, right?

11 MR. MANCINI: Objection as to form,
12 foundation. Mischaracterizes his testimony.

13 A. First of all, it wouldn't have been my
14 decision. Second of all, it never reached that
15 point.

16 Q. Well, how many times have you had a
17 witness, key witness in a case, subjected to
18 hypnosis in your career?

19 A. It's the only time.

20 Q. Only time. And so it was an
21 extraordinary, extraordinary step that you took;
22 isn't that right?

23 A. Well, again, you're saying I took, but --

24 Q. Well, you in conjunction with your

1 investigators took, right?

2 MR. MANCINI: Objection as to form.

3 A. Myself in my role advising that this was
4 certainly one method of investigation that could be
5 pursued.

6 Q. On what did you base your determination
7 that it would be a useful and credible tool if you
8 had never done it before?

9 A. Again, what I did was I looked at the case
10 law of every jurisdiction in the United States and
11 came up with a criteria using the strictest terms,
12 the strictest terms for each state and said, okay,
13 this is what we have, you know, it has to be
14 followed, this is my recommendation, this is what
15 needs to be followed.

16 The course of the investigation, as I
17 recall being presented, was that again, as I
18 indicated, that the psychiatrist, and I believe it
19 was a psychiatrist, hypnotized Mr. Herrington.
20 Could not lead him because he didn't know anything,
21 any details of the crime. Went through the process.
22 The process then includes -- would have been -- and
23 that's the end of your testimony. He does a
24 prehypnotic tape and that is all he can testify to.

1 Q. So what you said, a prehypnotic tape,
2 what --

3 A. Right, it was a prehypnotic videotape done
4 of Mr. Herrington.

5 Q. By Parrish?

6 A. Well, I can't recall who it would have
7 been, but there was a prehypnotic videotape.

8 Q. But it wasn't done with the hypnotist
9 there? That was --

10 A. No, that was -- oh, go ahead, I'm sorry.

11 Q. That was done for purposes of the
12 hypnosis.

13 A. No, that was done to preserve the
14 testimony because, again, anything -- any changes in
15 the testimony after the hypnotic session, again
16 using the strictest terms, not saying what the court
17 would have ultimately ruled, I mean I was using the
18 criteria of all the jurisdictions, there's certain
19 subjects, that he couldn't testify to any
20 posthypnotic recollections, so you'd preserve the
21 prehypnotic recollections and you did that through a
22 videotape.

23 Q. All right.

24 A. And then --

1 Q. Go ahead.

2 A. -- hypnosis, and then the next step in the
3 investigative process would have been there would
4 have been a second hypnosis, and in this one, the
5 psychiatrist would have said, well, you remember you
6 said X, can you tell me more about it, to try to get
7 him to concentrate, and like I say again, use the
8 classic example or TV example, that he remembers the
9 license plate of a car. Well, he wouldn't be
10 allowed to testify to the license plate of the car,
11 but that could be a lead in the investigation.
12 Certainly the investigators could look to see who
13 that license plate belongs to, that person was at
14 the scene, the means, motive, opportunity at the
15 scene, and that would have been the second
16 investigatory step of the hypnotic process. That
17 didn't occur not as -- like I said, the second
18 polygraph didn't occur because in that interim
19 period is when Ms. Rienbolt came forward.

20 Q. You were contemplating a second hypnosis
21 of Herrington?

22 A. That's what -- if that would have been the
23 process.

24 Q. Well, let's go back for a moment. When

1 the decision was made to hypnotize Herrington, was
2 the decision made in order to test his credibility
3 to try to get more information or what was the
4 purpose of the hypnosis? To do something that had
5 never been done in the history of Edgar County as
6 far as you knew.

7 MR. MANCINI: Objection as to form.

8 A. Well, the investigatory purpose would have
9 been to develop or seek leads for the investigators
10 to find more corroborative evidence of a single
11 eyewitness case. This was a single eyewitness case
12 at that point in time, so the -- the thrust of the
13 investigation would then be to hopefully use the --
14 any leads developed through the second hypnosis and
15 then pursue those leads.

16 Q. Did you get any leads out of the first
17 hypnosis?

18 A. Well, the first -- the prehypnotic session
19 and the hypnotic session itself were virtual carbon
20 copies of his first statement, the prehypnotic
21 videotape and the hypnotic session, and actually I
22 mean I found, you know, as the prosecutor saying
23 about judging credibility, I found that to be very
24 compelling, I mean looking at the hypnotic tape and

1 his demeanor in the videotape. Looking at that
2 hypnotic tape, if you have not seen it, I mean he
3 just goes right through the events very consistent
4 with his prior statements.

5 Q. Were you present when he gave that
6 statement?

7 A. Which statement?

8 Q. With the hypnotist.

9 A. No, no one was present. He had a --

10 Q. Were you in St. Louis?

11 A. I was in St. Louis.

12 Q. Did you ride down with Darrell Herrington?

13 A. I was -- yes, he must have. We didn't
14 take separate cars. I'm sure he came down with us.

15 Q. And how long after he gave the videotaped
16 statement to the investigators was the hypnosis?

17 A. I know the videotape was disclosed. You
18 would have to look at the records.

19 Q. Was it within days?

20 A. I really can't say. I mean probably. I
21 think you do it in short order, but I can't say for
22 sure.

23 Q. Was he shown the videotape after he made
24 it and before he went to the hypnotist?

1 A. No.

2 Q. Positive of that?

3 A. Pardon me?

4 Q. Are you positive --

5 A. I would be --

6 Q. -- of that?

7 A. -- pretty confident about that.

8 Q. How long of a drive is it from Paris to
9 St. Louis?

10 A. It's about 180 miles.

11 Q. Did any of you discuss his testimony
12 during that 180 mile ride?

13 A. I don't recall.

14 Q. And during the hypnosis itself, that
15 wasn't recorded, was it?

16 A. Yes.

17 Q. The act of hypnotizing?

18 A. Oh, the act of hypno -- no, that was part
19 of the psychiatrist's rule. He didn't -- you
20 couldn't -- he wouldn't share, or however you want
21 to say, show him actually putting him under
22 hypnosis, but it was -- I mean shows his -- his
23 asking him, "okay, calling your attention," you
24 know, whatever I get, and then going -- and

1 basically it's "and then what happened and then what
2 happened and then what happened?"

3 Q. Did you talk to -- by that time, Darrell
4 had given his statement on at least three prior
5 occasions, right?

6 A. I mean if you're counting the -- in other
7 words, it's a single interview with the two reports.

8 Q. I'm counting the interview he did with the
9 -- with Parrish and Ray on the 19th, the interview
10 that you were present for on the 21st of September,
11 and the videotape on the 24th of November.

12 A. Okay, that would be his third, yes.

13 Q. And he had also been questioned by the
14 polygraph examiner, so that was four occasions,
15 right?

16 A. Right.

17 Q. And so now we're at the fifth occasion
18 with the hypnotist. The hypnosis itself is not
19 recorded, but at least a portion of what he says
20 after is. Does anything -- prior to his hypnosis,
21 did you speak with the psychiatrist?

22 A. I don't recall if I said -- asked him
23 anything.

24 Q. Well, did you and Parrish -- was Parrish

1 with you?

2 A. I -- I can't say for certain.

3 Q. Was Eckerty with you?

4 A. I -- my best is that I think both were
5 there, but I really can't say for sure.

6 Q. Was Gene Ray with you?

7 A. I would say no.

8 Q. Now, did you consider Gene Ray a friend of
9 Darrell Herrington?

10 MR. MANCINI: Objection as to form,
11 foundation.

12 A. They were both in construction.

13 Q. And did they have -- did they have a
14 relationship that included having coffee at the Bon
15 Ton and that kind of thing?

16 MS. EKL: Objection, foundation.

17 A. I really don't know. I mean the Bon Ton
18 would be where the workers would gather before their
19 workday and they may or may not have done that.

20 Q. All right. Now, how long did you meet
21 with the psychiatrist before he hypnotized Darrell
22 Herrington?

23 A. Well, the state police arranged everything
24 through I believe the St. Louis Police Department,

1 and I mean I couldn't tell you how long we met.

2 Q. Okay. So how did you arrive at the name
3 of the psychiatrist who you employed to do this?

4 A. Again, I didn't do that, but my
5 understanding was it was through the Illinois State
6 Police and someone with the St. Louis Police
7 Department.

8 Q. So he was a psychiatrist that was used by
9 the police department of St. Louis?

10 A. That's my recollection.

11 Q. All right. And did you show him this
12 videotape of Darrell Herrington before he hypnotized
13 Darrell Herrington?

14 A. No, absolutely not, because, again, one of
15 the criteria is that the hypnotist can't know any of
16 the details of the incident and that way he can't
17 possibly influence, I guess, the testimony or the
18 statement of the witness because he didn't know
19 anything about it.

20 Q. Now, you said that he -- he was consistent
21 between the videotape statement that he gave to you
22 all and the video statement that he gave to the
23 psychiatrist, right?

24 A. It -- I'm sure there are minor points, but

1 general overall was consistent.

2 Q. But it was inconsistent with the statement
3 that was given on the 19th to Ray and Parrish which
4 wasn't recorded; isn't that right?

5 MR. MANCINI: Objection as to form,
6 foundation.

7 A. I really don't -- I wasn't -- was there a
8 police report generated on that statement?

9 Q. No, there wasn't.

10 A. Well, then I wouldn't know.

11 Q. Should have been though, right?

12 MR. MANCINI: Objection as to form,
13 foundation.

14 A. Apparently that was an investigator's
15 oversight.

16 Q. Well, let me ask you this. You've
17 testified earlier that these two investigators were
18 very experienced. You had known them for many
19 years. You drank with them, but you also worked
20 with them, right?

21 A. Which investigators are we talking about?

22 Q. Parrish and Eckerty.

23 A. Yes, they're experienced.

24 Q. And Gene Ray was also the chief, right?

1 A. He was the chief, but he wouldn't -- I
2 wouldn't say he had an extensive law enforcement
3 background.

4 Q. All right, but if I were to tell you that
5 Herrington was questioned from 12:00 midnight until
6 5:00 in the morning on the 19th and 20th of
7 September and that he gave substantive statements
8 about the events, including the Jim and Ed
9 statement, you would expect that an experienced
10 investigator such as Parrish would have written a
11 report concerning that lengthy questioning and
12 answer session, wouldn't you?

13 MS. EKL: Objection, form, foundation.

14 MR. MANCINI: Join.

15 A. That would have been his decision, and if
16 everything, which is often the case or used to be, I
17 mean with police, if everything that Mr. Herrington
18 said in that statement is incorporated in the later
19 statement, the investigator may have not felt a
20 necessity to generate a report.

21 Q. Well, he would have had notes, would he
22 not?

23 MR. MANCINI: Objection, form, foundation.

24 A. I have no clue.

1 Q. Well, if you knew that Parrish and Eckerty
2 had notes or Parrish and Ray had notes of the
3 interview with Herrington, would you request that
4 they either make that into a report or give you the
5 notes?

6 MR. MANCINI: Objection as to form,
7 foundation.

8 A. Again, this was each department's policies
9 and procedures and really had no -- I guess nothing
10 to do with the prosecutor/State's Attorney, but the
11 general rule would be that -- it was the policy that
12 I recall was you do an interview, do your notes,
13 incorporate -- you had an obligation to incorporate
14 your notes into your report and then you could
15 destroy your notes. I don't think there was any
16 obligation to maintain the notes --

17 Q. Well --

18 A. -- now that they're incorporated into the
19 report.

20 Q. Well, if you -- you would certainly expect
21 that if there were a five hour interview, that if
22 you're going to incorporate that into your report,
23 that it would at least reflect that that interview
24 took place, when it took place, where it took place,

1 and that everything that he said was consistent with
2 what he said two days later. You'd expect at the
3 very minimum that to be the case, wouldn't you?

4 MR. MANCINI: Objection.

5 MS. EKL: Objection, form.

6 MR. MANCINI: Join.

7 A. I don't know.

8 Q. Well, you learned on or before the 21st
9 that Herrington had spoken with Ray and Parrish
10 about the crime; isn't that right?

11 MR. MANCINI: Objection. Mischaracterizes
12 his prior testimony.

13 A. Again, what I stated was that was my
14 inference since they were calling me down to be
15 present during the -- another interview. I -- so I
16 would infer that they would have talked to him ahead
17 of time.

18 Q. Did you make any inquiry to either of them
19 as to what he said at the prior interrogation or
20 questioning that led to calling you and everyone
21 together to talk to him?

22 A. They gave no -- there was no indication to
23 me that what he said when I was present was
24 different than his prior apparent interview that I

1 wasn't at.

2 Q. So you made no request for the notes or
3 for a report or anything like that.

4 MS. EKL: Objection, form. Assumes facts
5 not in evidence.

6 MR. MANCINI: Join.

7 A. The investigator's telling me this is what
8 he said, there would be no reason to.

9 Q. Well, let me ask you this. Before you
10 were -- participated in the interview on the 21st,
11 you didn't know whether what he said before would be
12 consistent or inconsistent with what he'd say later,
13 did you?

14 MR. MANCINI: Objection.

15 MS. EKL: Objection, form.

16 MR. MANCINI: Join.

17 A. No one, including Darrell Herrington, ever
18 gave me an indication that what he was saying was
19 inconsistent with anything else.

20 Q. Well, he didn't give you any indication
21 whether it was consistent or inconsistent, right?

22 MR. MANCINI: Objection, form.

23 A. Well --

24 Q. Because you didn't know what was said.

1 MR. MANCINI: Objection as to form.

2 A. No, I knew what was said when I was
3 present, I knew what was said on the videotape, and
4 obviously during pretrial preparation talked to Mr.
5 Herrington, and at no time did Mr. Herrington give
6 me any indication or any reason to inquire that he
7 had given other statements that were inconsistent.

8 Q. Well, how about Eckerty, Parrish or Ray?
9 Did any of them say to you, hey, what he said to us
10 on the two nights before was in any way
11 inconsistent?

12 MR. MANCINI: Objection as to form.

13 A. No.

14 Q. Didn't say, hey, he said -- he named Jim
15 and Ed. Didn't tell you that.

16 MR. MANCINI: Objection as to form.

17 A. No.

18 Q. All right. And, in fact, if there was
19 substantial inconsistencies between what he said two
20 nights before and what he said the night you were
21 there, the first night you were there, you would
22 have requested that those notes be preserved or be
23 reduced to a report, wouldn't you?

24 MR. MANCINI: Objection as to form,

1 foundation.

2 A. No one said that there was
3 inconsistencies.

4 Q. Okay. So since no one told you there
5 were, you didn't inquire as to whether there were.
6 Is that fair to say?

7 A. There would have been no reason to
8 inquire.

9 Q. Well, one reason might be because you
10 would be curious about whether the town drunk could
11 tell the same story two nights in a row, right?

12 MR. MANCINI: Objection as to form.

13 A. Well, he told the same story for -- for
14 two years.

15 Q. Yeah, but he didn't -- you didn't know
16 that on the 21st of September. All you knew was you
17 had one statement from a town drunk, right?

18 MR. MANCINI: Objection as to form.

19 A. Well, again, even if you assume what
20 you're saying is true, the -- the decision to
21 prosecute and formally charge the defendants didn't
22 occur until February of '87 after other evidence had
23 been developed.

24 Q. And that's because you didn't have

1 probable cause and you had a really incredible
2 witness in Darrell Herrington; is that --

3 A. That is --

4 MR. MANCINI: Objection as to form. It's
5 already been asked and answered.

6 A. That's untrue. We absolutely had probable
7 cause in September of '87, and again my under -- my
8 recollection is that we, in fact, used his
9 statements to obtain court ordered eavesdrops.

10 Q. Okay. So you just were desisting from
11 prosecuting and indicting even though you felt you
12 had a hell of a witness in Darrell Herrington. Is
13 that your testimony?

14 MR. MANCINI: Objection as to form.
15 Mischaracterizes his last seven hours of testimony.

16 A. You've indicated that the prosecutor has a
17 high duty. I was exercising my discretion within
18 that high duty.

19 Q. Okay. So were you aware that during that
20 period of time after Herrington went to the
21 hypnotist that the FBI was working on a VICAP report
22 with you?

23 A. I'm not sure what a VICAP report is, and
24 certainly I wasn't the one they would have been

1 working with.

2 Q. Well, I'm going to show you what was
3 marked previously as -- well, you know what a VICAP
4 is, right?

5 A. Well, that's what I said. I'm not -- I
6 think I know what it is, but I'm not positive.

7 Q. Well, in fact, did Parrish and the
8 investigators make out a 200 page questionnaire
9 which they gave to the FBI in order for the FBI to
10 do a VICAP report?

11 A. If you could tell me for sure what a VICAP
12 report is, I may be in a better position to answer.

13 Q. Well, okay. So you don't know exactly
14 what a VICAP is?

15 A. As I said, I think I know what it is.

16 Q. Well, let me show you what I marked as
17 Parrish 3 which is some FBI reports that were
18 connected to the VICAP. Bates numbers are
19 Plaintiff's 01745. Have you seen these documents
20 before?

21 A. Have I?

22 Q. Yes.

23 A. I don't recall ever seeing.

24 Q. Now, they indicate that Parrish was in

1 communication with the FBI concerning this case; is
2 that right?

3 A. I'm sorry, I wasn't --

4 MR. MANCINI: Can you restate it?

5 A. Yeah, I was getting my water, I'm sorry.

6 Q. Okay. These documents indicate that
7 Parrish was in communication with the FBI concerning
8 profiling and related aspects of this case.

9 MS. EKL: Objection, form.

10 A. That's what the document purports to be.

11 Q. Okay. And I want to call your attention
12 to Plaintiff's 020952.

13 MR. MANCINI: 020 --

14 MR. TAYLOR: 952.

15 MR. MANCINI: Give us a second, Flint.

16 Okay, I think we're on the same page.

17 Q. All right. And you see that it's an
18 AIRTEL to the Behavioral Science Unit, the profiling
19 section, from the special agent in charge of the FBI
20 at Springfield. Do you see that?

21 A. Yes.

22 Q. And you're familiar generally with FBI
23 documents. You're aware from the time of being a
24 prosecutor, right?

1 A. Generally.

2 Q. All right. And do you see that in this
3 document it says that: On January 20th, Detective
4 Parrish of Paris advised that Steidl and Whitlock
5 were suspects and that Parrish advised that the
6 suspects were developed through informant
7 information. However, he advised that he considered
8 the source to be a poor witness. He advised that
9 the suspects had been interviewed but were
10 uncooperative.

11 Now, do you agree with -- at that time
12 with Parrish's assessment? He has said that he was
13 referring to the informant being Darrell Herrington.
14 Do you agree that he was a poor witness?

15 MS. EKL: Objection, form.

16 MR. MANCINI: Join.

17 A. Not necessarily agree that he was a poor
18 witness. He certainly again substantiated probable
19 cause, but he was again a single eyewitness. In my
20 mind, did not provide State's Attorney a reasonable
21 chance of securing a conviction, but that's
22 different than probable cause.

23 Q. Why not?

24 A. We had a single eyewitness and very

1 limited corroborating evidence, at least, you know,
2 from my viewpoint as the prosecutor.

3 Q. Now, if you didn't agree that he was a
4 poor witness, what was your conclusion about whether
5 he -- what kind of witness he was?

6 A. I believed him to be a credible witness in
7 light of the fact, again, he didn't -- he gave a
8 relatively detailed statement of what occurred at
9 the murder scene and didn't get anything materially
10 wrong.

11 Q. All right. Going to the next page here,
12 there is a Beacon News report of February 2nd, 1987.
13 Do you see that?

14 MR. MANCINI: That's not our next page,
15 Flint.

16 Q. Yeah, the next -- after the two page
17 document, there's an FBI report on Parrish. Do you
18 see that?

19 MR. MANCINI: Doesn't look like we have
20 that.

21 A. No, I don't. What -- I thought I saw it
22 in there earlier though.

23 MR. MANCINI: Oh, yeah, I think we got it.

24 MR. TAYLOR: You got it?

1 MR. MANCINI: Is it Plaintiff's 017179?

2 MR. TAYLOR: Yes.

3 MR. MANCINI: Thank you.

4 BY MR. TAYLOR:

5 Q. Okay. This is a report from Nancy Garrett
6 of the Beacon News staff. Do you know Nancy
7 Garrett?

8 A. Yes.

9 Q. Was she a reporter that you were talking
10 to from time to time concerning this case?

11 A. Yes.

12 Q. And did you talk to her on or about
13 February 2nd?

14 A. Apparently so.

15 Q. And it has -- it quotes you saying various
16 things in this article. It says that: A report by
17 the FBI on the double murders of Dyke and Karen
18 Rhoads has not sparked any major developments in the
19 case but has, quote, got us thinking about some
20 different areas, Edgar County State's Attorney
21 Michael McFatrige said.

22 Did you make that statement?

23 MR. MANCINI: The quoted statement?

24 MR. TAYLOR: Yes.

1 MR. MANCINI: Oh, here it is (indicating).

2 Do you see it?

3 A. Yes. Apparently so.

4 Q. And it says: The FBI report was based on
5 a detailed description of the crime scene,
6 photographs of the murder scene and victims,
7 pathologist photographs as well as a 200 page form
8 filled out by the two detectives who continued to
9 work on the case, McFatridge said.

10 Did you, in essence, tell Ms. Garrett that
11 information?

12 A. Apparently so.

13 Q. Now, this 200 page form filled out by the
14 two detectives who continued to work on the case,
15 now those two detectives are Parrish and Eckerty,
16 are they not?

17 A. I would say yes.

18 Q. And so on or about February 2nd, 1987, you
19 had access to a 200 page form filled out by Eckerty
20 and Parrish and sent to the FBI; is that right?

21 A. Actually having access to it and actually
22 looking at it are two different things, and I never
23 said it didn't happen. I was trying to clarify the
24 VICAP, what a VICAP report was. And if you had

1 indicated to me that it was a profiling, I would
2 have said yes, I was aware that that was happening.

3 Q. Well, did you ever turn that 200 page form
4 over to defense counsel?

5 A. The record would speak for itself but not
6 that I recall.

7 Q. All right. And why not?

8 A. Well, first of all, it may not be
9 discoverable. I mean it's a profiling.

10 Q. Well, did you review the 200 pages to
11 determine whether it was in your view discoverable
12 under Rule 412 and Brady?

13 A. I don't recall ever personally reviewing
14 it, but it would have -- what it would have been
15 would have been attaching all the police reports,
16 filling out some forms and attaching the police
17 reports and sending them to the FBI. Those police
18 reports and photographs, et cetera, all would have
19 been discussed.

20 Q. But the form itself, whatever they wrote
21 in that form, was not; is that right?

22 A. I don't recall.

23 Q. All right. Now, you say that the forms
24 were quite lengthy and it took a box to send

1 everything to the FBI. Did you say that?

2 MR. MANCINI: Can you give us some, to
3 speed it up --

4 MR. TAYLOR: It's the second paragraph.

5 MR. MANCINI: Okay.

6 A. I apparently did so.

7 Q. All right. And did you also say it was --
8 that contacting the FBI and sending them all this
9 information was a way for us to try to open some new
10 doors into this case?

11 A. Yes.

12 Q. And what doors were you talking about
13 opening?

14 A. Again, there was -- though Mr. Herrington
15 provided us probable -- you know, provided me as the
16 prosecutor probable cause, I had to make a decision
17 what would be sufficient to pursue, formally pursue
18 a conviction, and as such, in my mind, in terms of
19 the investigators, this was -- remained an open
20 investigation, and this was one investigatory tool
21 that the investigators apparently pursued.

22 Q. Well, I'm asking you what specific doors
23 were you looking at to try to open?

24 MR. MANCINI: Objection to form. It's a

1 colloquialism.

2 A. Yeah. I mean I was -- I -- they were
3 unknown doors.

4 Q. Okay. And you go on to say that you --
5 that this profile hasn't provided us with any
6 answers, but it provides another perspective into
7 the crime from expert outsiders. It's a useful tool
8 but not one that has given us any answers. The
9 report does emphasize the person or persons who may
10 have committed the crime, quote, is likely someone
11 who has undergone a personality change since the
12 murder, McFatridge says. This person may display
13 opposite personality characteristics, McFatridge
14 said. This would be a 180 degree change.

15 Did you make those statements?

16 MR. MANCINI: The quoted statements?

17 MR. TAYLOR: Yeah.

18 Q. Did you say what is attributed to you
19 whether it's quoted or not?

20 A. Apparently so.

21 Q. All right. And, in fact, did you make any
22 attempt to determine whether there was anyone in the
23 investigation who had undergone a personality change
24 pursuant to the FBI's statement?

1 A. That would have been the role of the
2 investigators.

3 Q. All right. Well, did they report back to
4 you whether either Whitlock or Steidl had gone
5 through a 180 degree personality change?

6 A. I don't recall, but looking at the date,
7 this would have been right at the exact time frame
8 that Debra Rienbolt came forward, which would have
9 obviously changed the emphasis.

10 Q. Well, two weeks later she came forward; is
11 that right?

12 A. Well, I would think it was before that
13 because they arrested them February 19th and this
14 article is dated February 2nd. I don't know when
15 her first statement was.

16 Q. 16th. Two weeks. Now, it indicates that
17 you and Parrish and Eckerty were still meeting,
18 working on the case, right?

19 A. Yes.

20 Q. And, in fact, the past Friday you had met
21 with the state crime lab and Eckerty and Parrish to
22 discuss exactly what evidence has been obtained and
23 what analysis could be performed; is that right?

24 A. Apparently so.

1 Q. All right. And it says that you and the
2 other two met weekly to discuss the case. Quote, as
3 long as there are matters to investigate, then the
4 outlook has to be considered positive in solving the
5 murders. Is that right?

6 MR. MANCINI: That he said that, is that
7 what you're asking?

8 Q. Yes, you said that.

9 A. Yes.

10 Q. Okay. And that's accurate, is it not, of
11 what was occurring in early February?

12 A. Well, I can't say that every week.

13 Q. But you did then, you said that then,
14 right?

15 A. Well, unfortunately the State's Attorney
16 is also an elected position and -- but there's --
17 you know, any major crime, I mean the public would
18 like to know status, so periodically State's
19 Attorney would give status.

20 Q. All right. Now, you also state here that
21 the crimes -- that a crime scene reconstruction
22 expert continues to work on the flow chart time
23 study in the case; is that right?

24 A. Apparently.

1 Q. Who was your reconstruction crime scene
2 expert?

3 A. I really don't recall.

4 Q. Well, did you retain him in the same way
5 that you sought out the hypnotist?

6 A. Based upon pure speculation, I would be
7 guessing the Illinois State Police.

8 Q. All right. Well, this flow chart, did the
9 Illinois State Police and Eckerty ever turn this
10 over to you to evaluate?

11 A. Well, really in the rest of the statement
12 you can -- and I have no specific recollection of
13 this, but reading the rest of this statement, it may
14 not be something that actually is in a certain
15 format. I don't know.

16 Q. Well, a flow chart, did you ever see a
17 flow chart from a reconstruction expert while you
18 were prosecuting or investigating this case?

19 A. I don't recall.

20 Q. All right. Well, would that be something
21 that you would expect you would turn over if you had
22 access to it?

23 MR. MANCINI: Object to the form because
24 it's speculative. If he doesn't recall, how can he

1 answer as to what its content would be?

2 A. I wouldn't even know what it would look
3 like. I would have no idea.

4 Q. So you don't recall any such flow chart,
5 so therefore you don't have any recollection of
6 turning it over, right?

7 MR. MANCINI: Objection as to form.

8 A. I don't recall the flow chart.

9 Q. And so, in fact, it's more likely that
10 Eckerty and the Illinois State Police were working
11 with this reconstruction expert to develop this flow
12 chart, whatever it turned out to be.

13 MS. EKL: Objection, form, foundation.

14 MS. WADE: I join in the objection.

15 MR. MANCINI: Join.

16 MR. ACKERMAN: I join the objection.

17 A. The investigators would have been the ones
18 providing the information to crime scene
19 reconstruction experts who again may have just been
20 someone in the Illinois State Police.

21 Q. That someone more likely than not was
22 Eckerty, was it not, in order for you to know enough
23 about it to talk about it in the newspaper?

24 MS. EKL: Objection, form, foundation.

1 MR. MANCINI: Join.

2 A. I don't recall.

3 Q. Well, let me -- let me see now. On
4 February 2nd it is now six months almost to the day
5 from the murders, right?

6 A. I think seven months.

7 MR. MANCINI: Yeah, seven.

8 Q. Seven, I'm sorry, I miscounted. Seven
9 months to the day from the murders; is that right?

10 A. The murders occurred July 6th.

11 Q. So a little less than seven months, right?

12 A. Apparently.

13 Q. And we're here in a little town of Paris,
14 Illinois, and it was the crime of the century and
15 you didn't have anybody in custody, right?

16 MS. EKL: Objection to form.

17 MR. MANCINI: Objection to form.

18 A. On that date, no one was in custody.

19 Q. And no one had been arrested for the crime
20 in those seven months; isn't that right?

21 A. That's correct.

22 Q. And, in fact, were you not feeling --
23 strike that. And even though you had had a witness,
24 Darrell Herrington, give you information implicating

1 Steidl and Whitlock in the crime, you hadn't felt
2 that you had enough evidence to arrest or charge
3 them; isn't that right?

4 MR. MANCINI: Objection, form.

5 MS. EKL: Objection, form.

6 MR. MANCINI: Join.

7 A. I felt that probable cause existed, but as
8 I stated several times, probable cause does not
9 equate to acting within my duties as State's
10 Attorney to have a reasonable chance of conviction.

11 Q. So you disagreed with the detectives on
12 the case who thought there wasn't probable cause; is
13 that right?

14 MR. MANCINI: Objection.

15 MS. EKL: Objection, form, foundation.

16 MR. MANCINI: Asked and answered also.

17 A. That's correct.

18 Q. And at that point, even though they
19 thought there was no probable cause, you thought
20 there was probable cause but did not -- you both
21 agreed, you all agreed that you weren't going to
22 charge or arrest Mr. Steidl and Mr. Whitlock, right?

23 MR. MANCINI: Objection.

24 MS. EKL: Objection, form, foundation.

1 MR. MANCINI: Join.

2 Q. If for different reasons.

3 MR. MANCINI: Same objections.

4 A. Well, their role would be the
5 investigators and my role would have made, I guess,
6 the ultimate decision whether or not someone was
7 going to be charged or not.

8 Q. Well, police can arrest on probable cause
9 and you can charge on probable cause, right?

10 A. Right, that's correct.

11 Q. There was a lot of heat on the case by
12 this time as an unsolved murder that was headed
13 towards almost cold case status; isn't that right?

14 MR. MANCINI: Objection as to form.

15 A. Well, again, I think cold case -- however
16 you would look at, it had been seven months. That
17 doesn't necessarily make it a cold case. It would
18 seem to me as the article presents itself, that in
19 terms of the investigation itself, it was, you know,
20 an open investigation and any and all leads were
21 going to be investigated.

22 Q. Okay. Well, I'm asking you as the
23 prosecutor who lived and worked in the small town of
24 Paris, who went into the bars in Paris, who dealt

1 with investigators on a day-to-day basis who worked
2 and lived in Paris, is it fair to say there was a
3 lot of public pressure to solve the crime of the
4 century seven months after the crimes had been
5 committed?

6 MR. MANCINI: Objection.

7 MS. EKL: Objection, form, foundation.

8 MR. MANCINI: Form. Mischaracterizes his
9 prior testimony also.

10 A. Bottom line is if the public pressure, as
11 you put it, was going to influence my decision, I
12 would have made that -- wouldn't have sat on it for
13 seven months. I would have acted on Darrell
14 Herrington's testimony and hoped that by actually
15 charging individuals, which happens a lot, when you
16 actually charge individuals and they're put in jail,
17 a lot of times mystically new leads come up because
18 people aren't afraid of the people who are now in
19 jail.

20 So quite frankly if I was feeling the
21 public pressure and would have acted irresponsibly,
22 he would have been charged a lot sooner than this.
23 The fact that it's now seven months later and he
24 hasn't been charged speaks to the fact that we were

1 -- you know, that the investigators were weighing
2 their duties, and as prosecutor and State's
3 Attorney, I was weighing my duties.

4 Q. Well, it speaks to the fact that at least
5 in the view of the lead investigator from the Paris
6 Police Department that you had a poor witness and
7 that, in fact, there wasn't probable cause.

8 MR. MANCINI: Objection as to form.

9 Q. Isn't that right?

10 MR. MANCINI: Foundation. You've gone
11 over this ground.

12 A. I believe the legal criteria of probable
13 cause was satisfied by Darrell Herrington who I
14 believed to be a credible witness.

15 Q. Well, take a look at 020952 and 0 -- and
16 the next page, 953. This is --

17 MR. MANCINI: We've already gone over
18 that, okay?

19 Q. But I want to look at another part of it
20 now. It says at the top of page 2: Parrish advised
21 that they have not determined a motive for these
22 crimes and to date do not have probable cause for
23 arrest of the suspects.

24 MR. MANCINI: Flint, we don't have that.

1 What page are you on?

2 MR. TAYLOR: 020953.

3 MR. MANCINI: They're in nonsequential
4 order, so bear with me while I try to find 953.

5 MR. TAYLOR: It's one, two --

6 MR. MANCINI: Got it.

7 MR. TAYLOR: You got it, okay.

8 MR. MANCINI: Do you want her to restate
9 the question or --

10 MR. TAYLOR: Could you read it back
11 please?

12 (Requested portion of the deposition was
13 read by the court reporter.)

14 BY MR. TAYLOR:

15 Q. Do you see that in the document?

16 A. Yes.

17 Q. And that is on the 21st of January just
18 before the news statements that you make on February
19 2nd; is that correct?

20 A. Yes.

21 Q. Okay. And isn't it, in fact, that's why
22 you hadn't charged? It was because Parrish had said
23 that Herrington was a poor witness and you had not
24 determined a motive and that to date you did not

1 have probable cause to arrest them; isn't that
2 right?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 A. That is incorrect. Motive -- first of
6 all, motive is not an element that needs to be
7 proven. It's obviously helpful, but motive is not
8 an element of the crime. Second, again, in my
9 opinion, probable cause existed, and that opinion is
10 I guess corroborated by the fact that, in fact,
11 court orders were obtained based upon the statements
12 of Herrington.

13 Q. Well, probable cause to get a court order
14 isn't quite the same as probable cause to charge and
15 arrest now, is it?

16 MS. EKL: Objection, form.

17 MR. MANCINI: Objection, form, foundation.

18 A. I guess that depends on the judge.

19 Q. Okay. So whether or not you were
20 succumbing to public pressure, there was public
21 pressure, wasn't there?

22 MR. MANCINI: Objection as to form,
23 foundation.

24 Q. In a small town like Paris, to charge --

1 weren't people worried that these killers were still
2 on the street in the crime of the century?

3 MR. MANCINI: Objection to form,
4 foundation, to both questions.

5 A. I'm sure as -- it would be normal for the
6 public to be concerned. I mean I can't speak beyond
7 that.

8 Q. And the newspapers were inquiring, they
9 wanted to know the progress, and you felt it then
10 necessary to tell them about the FBI's involvement
11 just a few days later, right?

12 A. Well, actually the Paris Beacon News
13 published an editorial indicating that they backed
14 the State's Attorney's judgment after the Terre
15 Haute paper had written an editorial indicating that
16 the public had a right to know, and the Paris paper
17 published an editorial that said we back whatever
18 our State's Attorney says. You know, we trust his
19 judgment.

20 Q. And what would you -- in terms of what?
21 It wasn't an issue, a public issue whether to -- the
22 public didn't know about Darrell Herrington, did
23 they?

24 A. No.

1 MR. MANCINI: Objection as to form.

2 Q. All right. So what was the newspaper war
3 about whether you were right or wrong? What was
4 that about?

5 A. Because at least the media access to my
6 office and the statements I gave at least I
7 characterize as being very tight-lipped. I did not
8 want to state anything that may be detrimental to
9 the case, details of the case, et cetera. That I
10 believe we were -- at least I was very conservative
11 in dealing with the media regarding the facts of
12 this case.

13 Q. So the Terre Haute paper condemned you for
14 not being more forthcoming with the press with the
15 progress of the investigation while the local paper,
16 the Paris paper, applauded you for, in your terms,
17 being conservative with regard to what you told the
18 public?

19 A. I'd have to look at what you're telling
20 me. Basically they said, well, trust the judgment
21 of our elected official.

22 Q. Well, and I mean so all that did was add
23 to the pressure that was out there concerning
24 solving the crime of the century, wasn't it? You

1 had newspapers talking to you on both sides of the
2 fence, you had the killers still at large, and you
3 had at least one main detective saying you didn't
4 have probable cause and you had a poor witness. So
5 you were in a situation in early February where
6 there was a lot of pressure to solve this crime.
7 Isn't that fair to say?

8 MR. MANCINI: Objection as to form and
9 foundation, and I think he's asked and answered
10 that.

11 A. The answer is no because what do I care
12 about the Terre Haute paper. The Paris paper was
13 backing my judgment. That's the one that matters.

14 Q. Okay. So it didn't really concern you
15 that seven months later that the individual or
16 individuals that had committed the crime of the
17 century were still walking the streets of Paris; is
18 that right?

19 MR. MANCINI: Objection. That misstates
20 his testimony.

21 MS. EKL: Objection, form.

22 A. As I stated before, if that was going to
23 be the deciding factor, the individuals would have
24 been indicted much sooner.

1 MR. TAYLOR: This is a good point to stop
2 right now for the evening.

3 MR. MANCINI: What time would you like to
4 reconvene?

5 MS. SUSLER: 9:00.

6 MR. MANCINI: 9:00, okay.

7 MR. TAYLOR: 7:00.

8 MR. BALSON: By the way -- we can go off
9 the record.

10 (Recessed at 5:38 p.m. and reconvened the
11 following day, August 20, 2009, commencing at 9:00
12 a.m. with Attorneys Taylor, Susler, Balson, Kling,
13 Ortiz, Raub, Ekl, Wade and Mancini present in person
14 and Attorneys Ackerman, Stanker and Hall appearing
15 via telephone. Also present Randy Steidl, Herb
16 Whitlock, Jeff Marlow and Jack Eckerty.)

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1 (Commencing at 9:06 a.m.)

2 BY MR. TAYLOR:

3 Q. This is the continued deposition of
4 Defendant Michael McFatridge in the consolidated
5 cases of Steidl and Whitlock versus various
6 defendants including Mr. McFatridge.

7 You're the same Mr. McFatridge who
8 testified here yesterday; is that correct?

9 A. Yes.

10 Q. And you're a defendant in these lawsuits;
11 is that correct?

12 A. Yes.

13 Q. And you understand you're still under
14 oath; is that correct?

15 A. Yes.

16 Q. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 A. [REDACTED]

20 Q. Now, have you ever been arrested on any
21 charge?

22 MR. MANCINI: Objection to relevance. Go
23 ahead.

24 A. I would say no. I've had traffic

1 citations.

2 Q. All right. Other than traffic -- have you
3 had any DUI arrests?

4 A. No.

5 Q. All right. Other than traffic, have you
6 had any arrests that have been expunged?

7 A. No.

8 Q. All right. Now, calling your attention to
9 the 9th of July, you testified about being present
10 in the police station when Mr. Whitlock and Mr.
11 Steidl were brought there on the 9th from the bar;
12 is that correct?

13 A. At least some portion of the time.

14 Q. And they were both questioned after you
15 discussed with the detectives there how to approach
16 their statements; is that correct?

17 A. I --

18 MR. MANCINI: Objection as to form.

19 A. -- would have advised the officers
20 regarding the elements of voluntariness of a
21 statement.

22 Q. And after you advised them, as you say,
23 about the voluntariness of the statements they were
24 about to attempt to take, did you participate in any

1 of the questioning of either Mr. Steidl or Mr.
2 Whitlock?

3 A. No.

4 Q. Did the detectives who questioned them
5 report back to you about what they had said?

6 A. I can't recall if they reported back
7 immediately. Certainly there was police reports
8 generated.

9 Q. All right. Were you there when they were
10 questioned?

11 A. I don't recall.

12 Q. When you say police reports were
13 generated, are you saying there were police reports
14 generated that you saw with regard to what Mr.
15 Steidl and Mr. Whitlock had said according to the
16 officers who questioned them?

17 MR. MANCINI: Objection, foundation.

18 A. There were police reports concerning their
19 statements that would have been provided to me.

20 Q. Okay. And from those reports, you learned
21 that Mr. Steidl and Mr. Whitlock had both denied any
22 involvement in the crimes; isn't that correct?

23 A. I don't remember the exact wording of the
24 reports, but I would say they certainly didn't say

1 anything that incriminated themselves with the
2 crime.

3 Q. Now, after you learned through reports or
4 through -- or personal reporting from the detectives
5 involved that they had not admitted to any
6 involvement in the crimes, did you still consider
7 them to be suspects based on what they had allegedly
8 said in the bars?

9 MR. MANCINI: Objection as to form.

10 A. I would say at that point in time there
11 were no suspects.

12 Q. Well, were there people you were looking
13 at and had focussed on as potential suspects during
14 this investigation at that time?

15 MR. MANCINI: Objection as to form.

16 A. To my knowledge at that time, there was no
17 one, there was nobody focussed on.

18 Q. Well, there has been testimony in this
19 case and documentation which says that the
20 detectives working with you on the investigation had
21 focussed on Bob Morgan as a suspect in the case. Is
22 that consistent with your memory of who, if anyone,
23 was a suspect in July of 1986?

24 MR. MANCINI: Objection.

1 MS. EKL: Objection, form.

2 MR. MANCINI: Go ahead. Form, foundation.

3 A. Per my recollection and I believe as
4 reflected in the reports that have been provided to
5 me, Bob Morgan was the employer of Karen Rhoads and
6 would naturally be someone that would be interviewed
7 by the investigators.

8 Q. Well, did you also learn from the reports
9 that according to a witness by the name of Tim
10 Busby, Mr. Morgan -- that Karen Rhoads had seen
11 Morgan involved in what appeared to be illegal
12 activity?

13 MR. MANCINI: Objection as to foundation.

14 A. It's whatever was reflected in the
15 reports.

16 Q. Well, do you recall that?

17 A. What I recall is something about guns and
18 money.

19 Q. All right. And specifically about guns
20 and money being put in a car by Smoke Burba and
21 Morgan to go to Chicago. Is that what you remember?

22 MR. MANCINI: Objection as to form,
23 foundation.

24 A. I think I just indicated what I remembered

1 was I remember something about guns and cash or
2 money.

3 Q. Connected to Morgan and Smoke Burba,
4 right?

5 A. I recall it being in reference to Mr.
6 Morgan. I really can't recall Smoke Burba.

7 Q. All right. And you also recall, do you
8 not, the fact that it was -- part of that
9 information was that Karen Rhoads had seen this
10 happen?

11 MR. MANCINI: Objection to form.

12 A. That would be the fair inference.
13 Otherwise, how would -- I know Tim Busby was her
14 boyfriend.

15 Q. What, if anything, was done to your
16 knowledge to follow up on that lead which would
17 supply a potential motive for the murder of Karen
18 and Dyke Rhoads?

19 MR. MANCINI: Objection as to form.

20 A. I would have no direct knowledge, but as
21 the prosecutor/State's Attorney/legal advisor, it
22 appeared to me that all leads were being
23 appropriately investigated.

24 Q. Well, did you have a discussion with

1 Eckerty and Parrish in any of these meetings that
2 you were having with them during the investigation
3 about whether they should directly approach
4 witnesses at Morgan Manufacturing about the question
5 of Morgan's criminal activity and whether Karen
6 Rhoads was privy to it?

7 A. I don't recall any such discussions other
8 than that would be a natural follow-up that
9 investigators would do.

10 Q. Were you informed at any time that
11 Investigators Parrish and Eckerty had decided not to
12 directly follow up that lead at that time but rather
13 wait to see if any more evidence developed that
14 would link Morgan to the crime?

15 MS. EKL: Objection to form.

16 MR. MANCINI: Join.

17 A. I don't recall that.

18 Q. Did you advise them in this role that you
19 have told us you had as a State's
20 Attorney/prosecutor during the investigation, did
21 you advise them to aggressively pursue all leads
22 including the lead that led to Morgan?

23 MR. MANCINI: Objection as to form,
24 foundation.

1 A. That really wouldn't have been my role to
2 say aggressively investigate this or investigate --
3 aggressively investigate that. I mean, there's two
4 experienced detectives and -- that were
5 investigating what they felt appropriate. And
6 again, I would render legal advice as a prosecutor,
7 what the elements are needed, you know, what we're
8 looking for, but the term aggressiveness, that would
9 be the role of the investigators.

10 Q. Well, did you have any discussion with the
11 investigators as to whether they should in any way
12 stop or desist from actively investigating Robert
13 Morgan?

14 A. That I can tell you I've never told the
15 investigators not to investigate somebody.

16 Q. Did you ever tell them or become aware of
17 the fact that they decided not to actively
18 investigate Morgan's role with others and with him
19 during their investigation?

20 MS. EKL: Objection, form.

21 MR. MANCINI: Join.

22 A. I don't recall any such discussion. If
23 the investigators in their discretion determined
24 that it was the best approach to try to develop

1 corroborative evidence or peripheral evidence or --
2 before approaching a person of interest, that would
3 certainly seem to be within their sound discretion.

4 Q. All right. Well, do you remember them
5 deciding to do that?

6 A. I don't recall any specific discussions.

7 Q. Now, sometime within the first few days of
8 the murders you had a meeting with the families of
9 the Rhoads and Spesard family, did you not? Did you
10 meet with the Rhoads family and Spesard family?

11 A. I -- I may have. I don't have any
12 specific recollection of that.

13 Q. You have no recollection of meeting with
14 them and briefing them about the status and progress
15 of the investigation?

16 A. That would seem to be something that if I
17 didn't do I should have, but I really don't have any
18 specific recollection of doing that.

19 Q. Well, didn't you do that on more than one
20 occasion?

21 A. I'm --

22 MR. MANCINI: Objection as to form.

23 MR. TAYLOR: Excuse me?

24 MR. MANCINI: I just objected as to form.

1 A. No. I met with the families.

2 Q. And, in fact, did you just prior to the
3 trial meet with the families and discuss their
4 dissatisfaction with your theory of the case, that
5 being that Dyke Rhoads was involved in a drug deal
6 gone bad?

7 A. I may have. I really -- I don't have any
8 specific recollection of that, but it certainly
9 would have been appropriate to meet with the
10 families before the trial.

11 Q. Well, do you remember discussing their
12 concern about your theory of the case that you were
13 pursuing at that time, which was that it was a drug
14 deal gone bad that Dyke Rhoads was involved in?

15 A. I know now that certain members of the
16 family are upset about that theory, but that was the
17 -- based upon the evidence, that seemed to be the
18 appropriate way for myself as State's Attorney to
19 proceed.

20 Q. Did you promise the families and
21 specifically the Rhoads family that Dyke Rhoads and
22 his reputation would be vindicated at the trial?

23 A. I would say no. The most I would have
24 said is that we would try to keep his involvement to

1 a minimum. Vindicated, I would not have used that
2 word.

3 Q. And, in fact, his reputation was not
4 vindicated at the trial but rather was to some
5 degree besmirched, was it not?

6 MR. MANCINI: Objection as to form. You
7 can answer.

8 A. That's a matter of opinion.

9 Q. Well, what's your opinion? You're the
10 prosecutor. What's your opinion?

11 MR. MANCINI: Objection as to form.

12 A. My opinion, as it was presented in the
13 evidence, is that there was some -- it was
14 drug-related, not necessarily the -- from massive
15 drug dealing but rather some minor drug dealing.

16 Q. And a minor drug deal gone bad in your
17 theory led to the brutal crime of the century in
18 Paris; is that right?

19 MR. MANCINI: Objection as to form.

20 A. That's what was presented at trial.

21 Q. By you.

22 A. That's correct.

23 Q. So that was your theory, right?

24 A. That's what was presented at trial.

1 Q. By you.

2 A. Correct.

3 Q. And you together with the investigators
4 determined that theory, did you not?

5 MR. MANCINI: Objection as to form,
6 foundation.

7 A. Well, ultimately the State's Attorney
8 makes that determination based upon the evidence
9 that is provided by the investigators.

10 Q. So you took the evidence that was
11 presented to you by Defendants Parrish and Eckerty
12 and others in the investigation and you devised the
13 theory that you presented to the jury. Is that your
14 testimony?

15 A. It's based upon the evidence. I mean,
16 there was considerable evidence that suggested that
17 or it wouldn't have been presented to the jury.

18 Q. Well, there was also evidence that, in
19 fact, the motive could have been rape according to
20 Morgan, right?

21 MR. MANCINI: Objection as to form.

22 A. Well, as far as I know, Mr. Morgan was not
23 at the crime scene.

24 Q. Well, you just smiled when I asked you

1 that question. Do you find it humorous to consider
2 the fact that -- the possibility that the motive
3 might have been rape rather than the motive that you
4 presented?

5 MR. MANCINI: Objection as to form.

6 A. Based upon the evidence.

7 Q. Based upon the evidence, it's funny to
8 talk about alternative theories, is that what you're
9 saying to me?

10 MR. MANCINI: Objection as to form.

11 A. Based upon the evidence. The fact that
12 the alternative theory of someone who's a person in
13 town -- somebody in town could say the theory was
14 that it was aliens, so my point was that based upon
15 the evidence, the theory supported that it was
16 drug-related.

17 Q. Do you find it similarly humorous when I
18 suggest to you the possibility of a motive that
19 Morgan and his associates killed Karen Rhoads
20 because of the information she had of criminal
21 activity?

22 MR. MANCINI: Objection as to form.

23 Q. There was evidence of that, right?

24 MR. MANCINI: Objection as to form. Which

1 question do you want him to answer, Flint?

2 Q. There was evidence of that motive through
3 Tim Busby and others in the family; wasn't that
4 right?

5 A. Well, I guess that would be a matter of
6 opinion as to sub -- the substantiability of that
7 evidence, but the evidence in my opinion and
8 certainly -- otherwise I wouldn't have had the
9 indictments. The evidence that was presented to the
10 jury that led to the convictions of Whitlock and
11 Steidl was that it was drug-related and they
12 committed the crimes.

13 Q. So you rejected the Morgan theory and
14 accepted the Dyke Rhoads drug deal gone bad theory.
15 Is that correct?

16 MR. MANCINI: Objection as to form.
17 Mischaracterizes his testimony.

18 A. That would be based upon the evidence of
19 two eyewitnesses. It would be based upon the
20 evidence of incriminating statements by Mr.
21 Whitlock, including his statement where he said
22 Steidl was responsible for the murders. That would
23 include all other types of corroborative evidence is
24 what was presented to the jury.

1 Q. All right. Well, we'll get back to that
2 evidence as we have throughout this deposition and
3 the credibility of that evidence. At this point,
4 however, I'm asking you whether you rejected the
5 motivation that would have led to Morgan and Smoke
6 Burba as the people behind the crime. You did
7 reject that, right?

8 A. I rejected nothing. I accepted the
9 evidence that was presented to the jury within my
10 discretion as State's Attorney.

11 Q. Okay. So -- but by accepting one theory,
12 you were rejecting another. Isn't that fair to say?

13 MR. MANCINI: Objection as to form.

14 A. That's not fair.

15 Q. No? Okay. Well, on the same date that
16 you were -- participated in the events which led to
17 Mr. Whitlock and Mr. Steidl being brought to the
18 police station from the bar by a group of officers,
19 you also participated that day in a, quote,
20 reconstruction of the scene, end quote, did you not?

21 MR. MANCINI: Objection as to form.
22 Mischaracterizes his testimony in the preface of
23 that question.

24 A. I'm aware, and I can't say I was

1 absolutely present at it, but I was aware that the
2 First Responders to the scene were brought back to
3 the scene to go -- I guess to give a firsthand
4 account of, you know, what they saw.

5 Q. Now, the First Responders were the fire
6 people; is that right?

7 A. That's correct.

8 Q. The firemen?

9 A. That's correct.

10 Q. And also Parrish was present at this
11 reconstruction, was he not?

12 A. I -- again, I don't have specific
13 recollection who was present. I can't tell you I
14 was present. I know there were photographs that
15 ended up being taken that I saw, but I do know the
16 firemen as First Responders were taken to the scene
17 to go through their actions.

18 Q. Well, the scene was the house that was
19 partially burned that the Rhoadses were living in;
20 is that right?

21 A. That is correct.

22 Q. And at that time, the scene had been
23 cordoned off with yellow tape so that -- was it also
24 under guard so that people couldn't enter and exit

1 the area?

2 A. I don't recall.

3 Q. Did you make any order with regard to
4 preservation of the scene?

5 MR. MANCINI: Objection, form.

6 A. Again, if I did anything, it would be the
7 basic premise preserve the evidence. I would not --
8 I didn't have any authority to order the sheriff's
9 department or state police or the city police to do
10 anything. I could only make recommendations.

11 Q. And what recommendations did you make, if
12 any, with regard to the scene?

13 MR. MANCINI: Objection as to form. It's
14 already been asked and answered.

15 A. If anything, preserve the evidence, the
16 basic recommendation.

17 Q. I take it that you -- it was important to
18 you that what remained of the crime scene not be
19 altered; is that right?

20 A. That would be important to any prosecutor.

21 Q. And, in fact, there were questions that
22 came out -- came up throughout the investigation
23 concerning aspects of the crime scene; isn't that
24 right?

1 MR. MANCINI: Objection to form,
2 foundation.

3 A. I -- you would have to be more specific.

4 Q. Well, for instance, there was a question
5 as to whether there was a shower in the basement,
6 wasn't there?

7 MR. MANCINI: Objection as to form,
8 foundation.

9 A. There may have been.

10 Q. All right. Well, do you remember that one
11 of your witnesses had said something about there
12 being a shower in the basement and made some vague
13 reference to it?

14 A. There may have been.

15 Q. All right. Now, this building was owned
16 by a woman named Pandorf; is that correct?

17 A. I don't recall.

18 Q. It was torn down within a week or two of
19 the murders, was it not?

20 A. I don't recall.

21 Q. Did you make any effort to have the crime
22 scene preserved beyond the first few days?

23 MR. MANCINI: Objection as to form,
24 foundation. It's already been asked and answered

1 also.

2 A. I -- I know that the crime scene
3 technicians worked the scene for hours and hours.
4 Would have relied upon their judgment, again
5 recognizing it's not my authority to close the
6 scene, but would have been the investigators'
7 judgment when the scene could be released. And I
8 know the crime scene investigators worked it. I
9 know the fire investigator worked the scene.

10 Q. So the investigators gave the
11 authorization to release the scene so that it could
12 be torn down. Is that your testimony?

13 MR. MANCINI: Objection.

14 MS. EKL: Objection, form, foundation.

15 MR. MANCINI: Join.

16 A. It would not necessarily have been up to
17 me to release the scene. I really don't know what
18 you're asking.

19 Q. I'm asking whether to your knowledge
20 Eckerty, Parrish, Ray or yourself participated in
21 the decision to release the scene which ultimately
22 led to the tearing down of it?

23 MR. MANCINI: Objection as to form,
24 foundation.

1 A. I can't recall who would have released the
2 scene.

3 Q. So you have -- you can't give us any
4 insight on why the scene of this double murder was
5 destroyed within a week or two of its occurrence?

6 MR. MANCINI: Objection as to form.

7 Q. Of the murders occurrence.

8 MR. MANCINI: Objection as to form.

9 A. I'm relying on your representation as to
10 when it was destroyed. I have no idea when it was
11 destroyed. All I would know is that with the level
12 of expertise that was being used to investigate the
13 crime scene, obviously it was believed that
14 everything that could be gained, you know, gained
15 from the crime scene, had been done.

16 Q. Now, there was also questions in the trial
17 about locations of bodies and blood and mattresses,
18 wasn't there?

19 MR. MANCINI: I'm going to object to the
20 form as compound.

21 A. I wouldn't think there would have been
22 much question about location of bodies since, as I
23 recall, there was the soot marks or the white area
24 on the rugs where the bodies were.

1 Q. So soot marks were important in terms of
2 locating objects and determining certain aspects of
3 the physical evidence in the case. Would you agree
4 with me on that?

5 A. That would certainly be relevant.

6 Q. And the soot marks were something that you
7 and your investigators took into consideration in
8 evaluating not only the physical evidence but in
9 evaluating the testimony of your witnesses; is that
10 correct?

11 MS. EKL: Objection to form, foundation.

12 MR. MANCINI: Join.

13 A. Can you repeat the question?

14 Q. Sure.

15 MR. TAYLOR: Could you read it back
16 please?

17 (Requested portion of the deposition was
18 read by the court reporter.)

19 MR. MANCINI: Restate the objection.

20 A. Well, I relied upon the expertise of the
21 investigators. That would have included crime scene
22 technicians. Obviously those would be important in
23 their assessment of what -- you know, their opinions
24 of what occurred.

1 Q. And there was a question about a lamp that
2 your witness Rienbolt said was broken at the time
3 she was allegedly witnessing the crime; is that
4 right?

5 MR. MANCINI: Objection as to form.

6 A. I believe there was testimony about a
7 broken lamp.

8 Q. And that lamp could have been evaluated to
9 see if there was soot on the lamp to determine
10 whether the lamp had been broken before or after
11 Rienbolt said she was there. Isn't that correct?

12 MS. EKL: Objection, foundation.

13 MR. MANCINI: Join.

14 A. I would have to rely upon the crime scene
15 people and --

16 Q. Well, did you make any effort to check the
17 credibility of Rienbolt in saying there was a broken
18 lamp that one of the individuals was holding a piece
19 of by asking the expert whether the soot marks or
20 lack of soot marks supported her testimony on that
21 score?

22 MR. MANCINI: Objection, form, foundation.

23 A. Based upon the reports that were presented
24 to me, it would seem that it supported that it --

1 that inference.

2 Q. The reports -- what reports were presented
3 to you that supported the fact that the lamp had
4 been broken before the fire rather than after the
5 fire? Please explain to me.

6 A. I -- I don't recall specifically. I know
7 that there was a fire investigator, there was crime
8 scene technicians.

9 Q. All right. And your testimony here today
10 is that you saw some reports from those experts
11 which led you to believe that the lamp had been
12 broken before the fire rather than after the fire.
13 Is that your testimony here today?

14 MR. MANCINI: Objection as to form.
15 Mischaracterizes his testimony.

16 A. My testimony is that based upon the
17 reports that were presented to me, apparently
18 nothing triggered me to pursue it further or
19 recommend further.

20 Q. All right. So also you had a witness,
21 Darrell Herrington, who said that the mattress was
22 covering the body of Dyke Rhoads when he was in the
23 room. Do you remember that?

24 A. I believe that's the -- what was the

1 testimony.

2 Q. All right. And did you look at any of the
3 evidence that -- soot evidence, blood evidence,
4 pictures of where -- diagrams of where the body was
5 allegedly found to determine whether, in fact, that
6 was a physical possibility given the evidence that
7 existed independent of Herrington's statement?

8 MR. MANCINI: Objection to foundation.

9 A. My recollection is that the firemen
10 testified that when they entered the room they had
11 to push the mattress that was laying across the bed
12 frame, and the box springs I guess, and that they
13 had to push the mattress away from the body of Dyke
14 Rhoads, so that, in fact, it would have partially
15 covered his body as Herrington testified.

16 Q. Did you do any inquiry or examination to
17 determine whether the soot marks on the bed and on
18 the mattress and on the box spring supported the
19 proposition that the bed had been put on an angle
20 sufficient to cover Dyke Rhoads before the fire or
21 not?

22 A. I would have relied upon my investigators.

23 Q. And what did your investigators tell you
24 with regard to the soot marks in light of how the

1 mattress was aligned with the box spring?

2 A. I don't recall if they said anything.

3 Q. Well, did you make any -- you've later
4 learned, have you not, that the soot marks do not
5 support the proposition that the mattress was at an
6 angle?

7 MS. EKL: Objection, form, foundation.

8 MR. MANCINI: Join.

9 A. I've never been told that.

10 Q. So you're not aware of any testimony or
11 evidence that shows that the soot marks indicate
12 that the bed was aligned with the box spring and
13 there were not soot marks that would reflect the
14 mattress being at a substantial angle to the box
15 spring before the fire.

16 A. I know --

17 MR. MANCINI: Objection as to form,
18 foundation.

19 A. -- what Mr. Herrington testified to. I
20 know what the firemen testified to. I am not aware
21 of any other reports at this time.

22 Q. So as the prosecutor or as the person who
23 was advising the investigators, you made no effort
24 to determine whether the physical evidence supported

1 the testimony of your firemen and Darrell
2 Herrington.

3 MR. MANCINI: Objection to form.

4 Q. Is that correct?

5 MR. MANCINI: It's argumentative.

6 A. Relied upon the expertise of the
7 investigators and crime scene.

8 Q. All right. Well, you also had photos, did
9 you not?

10 MR. MANCINI: Objection as to form,
11 foundation.

12 A. Yes.

13 Q. And you had photos taken by Gary Knight at
14 the scene, right?

15 A. Yes.

16 Q. And the photos showed that the bed was not
17 at an angle at the time that he evaluated the crime
18 scene in the early morning of July 6; isn't that
19 correct?

20 A. That's correct, and that was consistent
21 with the firemen.

22 Q. So the firemen gave you testimony or at
23 least one of them gave you testimony that they had
24 somehow put the bed back after they had moved it?

1 A. They put -- they shoved the mattress back,
2 that that was laying on top of the bed.

3 Q. All right. Did you -- was there any
4 physical evidence or evaluation done on the bottom
5 of the mattress to determine whether Dyke Rhoads'
6 blood was on the bottom of the mattress consistent
7 with it covering his body?

8 A. I don't recall.

9 Q. Did you do any evaluation of the distances
10 from where the body was found on the floor to the
11 mattress to see if, in fact, the body was in a
12 distance range that the mattress could actually have
13 covered it?

14 MR. MANCINI: Objection as to form. You
15 referred to him personally.

16 A. I would have relied upon the
17 investigators, but my recollection is is that that
18 wasn't at issue. I mean I think you can clearly see
19 that from the photos.

20 Q. So it's your interpretation of the photos
21 that the mattress could have reached the body and
22 covered the body as Darrell Herrington said.

23 A. That's my recollection.

24 Q. All right. Now, you have characterized

1 Herrington as an impeachable witness, haven't you?

2 MR. MANCINI: Objection as to form.

3 Mischaracterizes his testimony.

4 A. No.

5 Q. Do you remember an email that you sent to
6 Eric Zorn?

7 A. Yes, I sent a lot of emails to Eric Zorn.

8 Q. Okay. In one of them you characterized
9 the credibility of Herrington as a less than
10 unimpeachable witness, didn't you?

11 MR. MANCINI: Objection as to form.

12 A. I don't recall that. You know, he
13 certainly would be subject to impeachment because he
14 had prior bad checks, he'd be subject to impeachment
15 probably because of his drinking issues, but that
16 would be -- so that would make him subject to
17 impeachment.

18 Q. And at some point you helped him out with
19 those drinking issues, didn't you?

20 MR. MANCINI: Objection to form,
21 foundation.

22 A. I -- I don't know what you're talking
23 about there. Can you be more specific?

24 Q. Well, didn't you help him get his license

1 back after he had lost it for an extended period of
2 time due to driving under the influence?

3 A. I wrote a letter or letters on his behalf,
4 but whether that helped him get back his license, I
5 don't know. My recollection is he didn't get his
6 license back for years and well after those letters.

7 Q. Well, when did you write the letters?

8 A. They would speak for themselves.

9 Q. Well, you tell me when you wrote them.
10 Was it before the trial, during the trial, after the
11 trial?

12 A. It was after the trial.

13 Q. And was it about the same time that you
14 were going through a period where he had given a
15 court reported statement recanting certain aspects
16 of his testimony and then was talking to you about
17 how he wanted to recant his recant?

18 MR. MANCINI: Objection to form.

19 Q. About the same time, did you write those
20 letters?

21 MR. MANCINI: Objection as to form,
22 foundation.

23 A. I don't agree with your characterization.

24 Q. Well, which characterization don't you

1 agree with?

2 A. That there was any motivation. I would
3 write letters generally at the request of Joe
4 Elledge who was the human resources alcohol
5 counselor, and it would be really routine for me to
6 write, you know, based upon the facts, write a
7 letter, say this person hasn't been arrested for X
8 time, hasn't done for Y, and if you look at any of
9 those letters, all the letters say is give him due
10 consideration. It doesn't say he's -- doesn't say
11 like give him back his license, I'm the State's
12 Attorney. It just says give him whatever
13 consideration -- these are the facts, give him
14 whatever consideration you want to give him.

15 Q. I'm not making any characterization. I'm
16 asking you whether the time frame was the same. Was
17 it at the same time you were writing these letters
18 that I take it the intent was to help him get his
19 license back, right? I mean you weren't just
20 writing them for the hell of it. You were writing
21 them because he had asked you to help assist him in
22 getting his license back, right?

23 MR. MANCINI: Objection as to form. I
24 don't know how many questions there are.

1 A. Like many other constituents.

2 Q. Do you write letters to help DUI
3 defendants get their licenses back as a matter of
4 course as part of your function as a State's
5 Attorney?

6 A. If it would have been ten years after
7 their DUI. I recall a case, it was like 20 years
8 after the DUI, and the Secretary of State wouldn't
9 give him back his license, and so it's been 20 years
10 and I went to bat for that individual. Hadn't had
11 an arrest and there was evidence he hadn't drank in
12 20 years.

13 Q. Other than Herrington and the guy who
14 hadn't drank or drunk for 20 years, any other cases
15 you can remember where you went to bat for someone
16 who had -- was trying to get his license back?

17 A. I can't recall the specifics, but again it
18 would not have been unusual if Joe Elledge
19 requested, and again the person had to be deserving
20 to sit there and say, well, he hasn't been arrested
21 X amount. I mean everything in there's true. Write
22 the letter, well, they haven't been arrested X
23 amount of time and for all whatever, and again it
24 would be whatever consideration.

1 Q. Can you tell me of any other instance
2 where you had a witness who had testified for you in
3 a case, he had five DUI convictions, and you went to
4 bat for him with the Secretary of State after he
5 testified for you? Can you give me any other
6 example other than Darrell Herrington?

7 MR. MANCINI: Objection as to form.

8 A. I would doubt if there's another witness
9 that I -- that that was an unusual circumstance, but
10 it wasn't -- the motivation was the same. And
11 again, if you've read the letters, all they
12 indicate -- I believe the first letter just says
13 consider him for a restricted driving permit.

14 Q. Okay. So the favor was to get a
15 restricted driving permit not to get his license
16 back. Is that your testimony?

17 MR. MANCINI: Objection as to form.

18 A. Actually the only documented situation
19 that I'm aware of that has been testified to in
20 regard to someone actually promising him to get his
21 driver's license was defense counsel at the time of
22 that recantation.

23 Q. Right, and he had -- certainly had the
24 same power you did as State's Attorney to get

1 somebody's license back. Is that your testimony?

2 MR. MANCINI: Objection, argumentative.

3 A. No, but I --

4 Q. I'll withdraw the question. My original
5 question to you was did you write the letter around
6 the same time period that you were informed by
7 Herrington that he had made a court reported
8 recantation of part of his testimony?

9 A. My answer again is I don't recall.

10 Q. And did you write the letter subsequent to
11 the time in 1987 that you became aware, if you did,
12 that Herrington was saying that he had been offered
13 \$25,000 by Morgan?

14 MR. MANCINI: Objection as to form.

15 A. I believe I testified I don't recall him
16 ever saying -- that I'm aware of him saying that
17 he's been -- was offered \$25,000 from Morgan.

18 Q. Okay. Well, that happened in August of
19 '87 and in -- it was I believe September or October
20 of '88 when Herrington gave his court reported
21 partial recantation. Can you tell me where within
22 that time frame you wrote the letter for him seeking
23 him to get driving privileges restored?

24 MR. MANCINI: Objection as to form.

1 A. Again, the initial letter was
2 consideration for a restricted driving permit, and
3 again I don't recall.

4 Q. Was it -- it was after the trial though,
5 was it not?

6 A. It was after the trial.

7 Q. Was it -- do you know whether it was in
8 1987?

9 A. I don't recall.

10 Q. Do you know whether it was in 1988?

11 A. I don't recall.

12 Q. You were still State's Attorney though,
13 were you not?

14 A. That's correct.

15 Q. So it had to have been before the end of
16 1991; is that correct?

17 A. That's correct.

18 Q. All right. Now, in September of 1986
19 after you went to Parrish's or Ray's house to
20 witness the questioning of Darrell Herrington, was
21 Darrell Herrington wired to attempt to get more
22 evidence with regard to the case?

23 A. Maybe I -- did you say December of 1986?

24 Q. No, I said -- if I did, I misspoke. I

1 meant September.

2 A. I know there were -- I recall court
3 ordered eavesdrops.

4 Q. And you participated in that process of
5 Herrington being wired and getting court ordered
6 eavesdrops; is that right?

7 A. Participated in the process of obtaining
8 the court ordered eavesdrops.

9 Q. And were you present at any time with
10 Darrell Herrington when he was prepared for the
11 eavesdrop?

12 A. I don't recall that. I know I was at
13 least in one of the eavesdrops, could have been this
14 one, or another one was in a van, the overhear van.

15 Q. Well, were you in an overhear van with
16 regard to Darrell Herrington?

17 A. I don't recall which one it would have
18 been.

19 Q. But which one meaning --

20 A. Between the eavesdrop on Rienbolt or an
21 eavesdrop on Herrington.

22 Q. All right. Now, were you aware that Gene
23 Ray and Parrish and Eckerty had arranged for Darrell
24 Herrington to be taken to Charleston to be put up in

1 a hotel before he was wired?

2 A. I don't recall.

3 Q. Were you aware that Herrington was given
4 alcohol at any time while he was in the custody of
5 Parrish -- the Paris police or the Illinois State
6 Police?

7 MS. EKL: Objection, form.

8 A. I don't recall.

9 Q. Did -- did it ever come to your attention
10 that Herrington had been given or was under the
11 influence of alcohol at any time he had been
12 questioned by either the Paris Police Department or
13 the Illinois State Police?

14 MR. MANCINI: Objection as to form.

15 A. It was never -- it was never in my mind he
16 was ever under the influence of alcohol.

17 Q. Okay. So is it your testimony that he
18 didn't appear to be under the influence of alcohol
19 at the time that you witnessed his statement in
20 September of -- at Gene Ray's house?

21 MR. MANCINI: Objection, asked and
22 answered.

23 A. It is my testimony that at any time that I
24 observed Darrell Herrington during this process he

1 never appeared to be under the influence of alcohol.

2 Q. All right. Did any -- did either Eckerty
3 or Parrish or anyone else in the investigation tell
4 you that they had supplied Darrell Herrington with
5 alcohol at any point?

6 A. I don't recall.

7 Q. Would that have been an inappropriate
8 thing for law enforcement to do with regard to a
9 witness that you were dealing with in a case or a
10 potential case?

11 MR. MANCINI: Objection to form,
12 foundation.

13 A. It would depend on the facts. I wouldn't
14 think that in and of itself would affect someone's
15 testimony.

16 Q. So whether you approved it or not, you
17 have no objection to investigators giving Darrell
18 Herrington alcoholic beverages; is that right?

19 MR. MANCINI: Objection. Mischaracterizes
20 his testimony.

21 A. That's not what I said. I didn't say I
22 wouldn't have an objection. I just said I don't
23 believe it would influence his testimony. If he
24 gave testimony not under the influence and at some

1 point is given an alcoholic beverage and then six
2 months later he testifies at trial, what difference
3 would that make that at some point in that six
4 months intervening period when nothing was going on
5 that he got an alcoholic beverage and they were
6 talking to him or were doing an eavesdrop? I don't
7 think that would be -- that would be, in your terms,
8 de minimis. Would I approve of it? That's --
9 that's not -- yeah, I probably wouldn't approve of
10 it.

11 Q. You probably would not approve of it, is
12 that what you said?

13 A. Well --

14 Q. Well, I'm asking what you said. I'm not
15 asking you to re-define what you said. I just
16 didn't hear what you said. Did you say you probably
17 wouldn't have approved of it?

18 A. I would not have recommended it.

19 Q. Okay. So -- and so it's fair to say that
20 you didn't recommend it here.

21 A. I didn't recommend it.

22 Q. Okay. And, in fact, if the alcohol was a
23 favor that was given him in the process of his
24 questioning, that would be something that could

1 taint his testimony, couldn't it?

2 MR. MANCINI: Objection as to form, the
3 term favor.

4 A. There is no indication to my knowledge he
5 was ever provided any alcohol during the time of his
6 statements.

7 Q. All right. Well, no one told you that he
8 was drunk when he was brought in and talked to Gene
9 Ray and Parrish on the 19th of September?

10 MR. MANCINI: Objection as to form,
11 foundation.

12 A. That was never characterized to me that he
13 was drunk at that time.

14 Q. All right. And no one told you that he
15 was bought and given a six-pack of beer and a fifth
16 of Seven and Seven when he was being held by
17 authorities, including Eckerty and Parrish, in
18 Charleston in September of 1986 prior to his being
19 wired?

20 MR. MANCINI: Objection as to form,
21 foundation.

22 A. I would have no idea.

23 Q. Well, you did learn, did you not, whether
24 you were in the overhear truck or not, that

1 Herrington's attempts to try to entice Steidl and
2 Whitlock into making admissions concerning the crime
3 were not successful?

4 MS. EKL: Objection.

5 MR. MANCINI: Objection as to form.

6 MS. EKL: Form.

7 MR. MANCINI: Join.

8 Q. Is that correct?

9 A. I heard the tapes.

10 Q. You heard the tapes, and in fact both
11 Whitlock and Steidl gave very strong denials on
12 those tapes, didn't they?

13 A. And that evidence was presented to the
14 jury.

15 Q. But I'm asking you right now, you knew
16 that, right?

17 A. I knew that they denied involvement.

18 Q. Yes. And you knew that the attempt was to
19 try to get them to implicate themselves; is that
20 correct?

21 MR. MANCINI: Objection as to form,
22 foundation.

23 A. The attempt was obviously -- it's an
24 eavesdrop. The intent would obviously be to obtain

1 statements.

2 Q. Right. And those would be statements that
3 would be given without the benefit of Miranda
4 warnings, correct?

5 A. Those would be statements that would be
6 given pursuant to court order.

7 Q. And not only pursuant to court order but
8 pursuant to the fact that they would not have to be
9 given Miranda warnings, right?

10 A. They wouldn't be in custody. Miranda is
11 not required.

12 Q. Right. So the answer to my question is,
13 no, they were not given and did not have to be given
14 Miranda warnings if you went by the route of
15 overhears, right?

16 A. That's why there are overhears.

17 Q. And, in fact, you made the decision to go
18 by the route of overhears rather than to do form --
19 additional questioning of them, didn't you?

20 MR. MANCINI: Objection as to form,
21 foundation.

22 Q. Them being Whitlock and Steidl.

23 MR. MANCINI: Same objection.

24 A. Well, State's Attorney is the conduit to

1 present the probable cause statement to the judge to
2 obtain the overhears.

3 Q. All right. And, in fact, that probable
4 cause information that was presented to the judge
5 for purposes of overhears was information that
6 Detective Eckerty and Detective Parrish and yourself
7 had learned from Darrell Herrington, right?

8 MR. MANCINI: Objection as to form.

9 A. It was based upon the statement -- I
10 presume it was based upon the statement of Darrell
11 Herrington.

12 Q. Well, who made the representation to the
13 court which got the overhear. Did you?

14 A. In Edgar County, the State's Attorney
15 presents the petition.

16 Q. So you -- did you make a representation to
17 the court about what the -- what supported the
18 overhears?

19 A. The petition for the overhear would be
20 whatever it says. It's a matter of record.

21 Q. Well, I'm not asking you whether it's a
22 matter of record. I'm asking you whether you
23 participated in the representation to the court
24 which led to the overhears.

1 MR. MANCINI: Objection.

2 A. I --

3 MR. MANCINI: Asked and answered. Go
4 ahead.

5 A. I wouldn't have -- I wouldn't have signed
6 a petition, I would have presented the petition. So
7 you would have to look. It would be a matter of the
8 record.

9 Q. Well, I'm asking you, sir, whether you
10 made an affidavit or a representation in court which
11 supported your request for an overhear.

12 A. I would have presented an affidavit. I
13 wouldn't have made the affidavit.

14 Q. Okay. Then who made the affidavit?

15 A. I don't recall. It's a matter of record.

16 Q. All right. Did Mr. Eckerty make that
17 representation?

18 A. I don't recall. It's a matter of record.

19 Q. So the finding by the court was based on
20 representations made by a detective who was involved
21 in the investigation; is that correct?

22 MS. EKL: Objection, foundation.

23 A. That would be the most likely, but it
24 would also -- it would be based upon the statement

1 of an eyewitness.

2 Q. And the statement that was represented was
3 the statement of Darrell Herrington; isn't that
4 right?

5 A. Most likely.

6 Q. And that statement did not include to your
7 knowledge any mention of any contrary evidence that
8 he had given on the 19th being two days before;
9 isn't that right?

10 MR. MANCINI: Objection as to the form and
11 foundation.

12 A. It would be a matter of record.

13 Q. Well, you know, do you not, that the
14 affidavit or the representation made to get that
15 overheard did not include any evidence concerning the
16 19th and any information that Darrell Herrington had
17 given about Jim and Ed. Didn't include that, did
18 it?

19 A. It's a matter of record.

20 Q. I'm asking you. To your knowledge, it did
21 not include Jim and Ed, did it?

22 A. And I'm answering it's a matter of record.

23 Q. Well, and I'm asking you, sir, if it had
24 Jim and Ed, you wouldn't sit here and tell me that

1 you didn't know about Jim and Ed because you would
2 have looked at the affidavit and seen it mentioned
3 and said, hey, what's this?

4 MR. MANCINI: Objection as to form.

5 Q. Correct?

6 MR. MANCINI: Same objection.

7 A. The affidavit is what it is and I don't
8 recall the specifics of it.

9 Q. In any event, after the overhears, you had
10 developed no additional evidence to support Darrell
11 Herrington; is that correct?

12 MS. EKL: Objection, foundation.

13 MR. MANCINI: Objection as to form and
14 foundation.

15 A. I would have to look at the reports and
16 the time frames.

17 Q. Is that one of the reasons it was
18 determined to take Darrell Herrington to the lie
19 detector, because in fact you were unable to develop
20 any information that corroborated him and you wanted
21 to determine whether, in fact, he was lying or not?

22 MR. MANCINI: Objection as to form.

23 Personalized it again. Go ahead.

24 A. I believe I already testified that -- that

1 my general proposition would be to recommend against
2 polygraphs. That that generally was an
3 investigator's policy.

4 Q. Well, in this particular circumstance, was
5 it the investigator's decision to your knowledge to
6 take Darrell Herrington to the lie detector because
7 in part at least his story was not corroborated when
8 you attempted to corroborate it through an overhear?

9 MR. MANCINI: Objection to form and
10 foundation.

11 A. I -- I don't know what the investigator's
12 motivations were.

13 Q. All right. Now, I think yesterday when
14 you were testifying about hypnosis you said that the
15 plan originally was to take him through two stages
16 of hypnosis; is that right?

17 A. That is the process.

18 Q. But you abandoned the second part of the
19 process; is that right?

20 MR. MANCINI: Objection as to form. You
21 personalized it.

22 A. The second part of the process, which
23 would have tainted Mr. Herrington's testimony as I
24 explained yesterday, wasn't become -- didn't become

1 necessary because Ms. Rienbolt came forward in the
2 intervening time.

3 Q. Okay. So she came forward like three or
4 four months later, right?

5 MR. MANCINI: Objection as to form.
6 Mischaracterizes the evidence.

7 A. I don't recall the time frame exactly.

8 Q. All right. Well, she -- okay. Well, you
9 took him to the lie detector -- to the hypnotist in
10 late November, she came forward in the middle of
11 February, so that's close to three months as a
12 time -- of a time frame; isn't that right?

13 A. I would have to rely on your
14 representations. I don't know the time frames. I
15 know that she came forward in February, but I don't
16 recall when the hypnosis was.

17 Q. So you had the question of whether to take
18 Herrington back for a second session of hypnosis
19 pending for the two and a half to three months time
20 period from late November until mid February when
21 she, Rienbolt, came forward. Is that your
22 testimony?

23 MR. MANCINI: Objection as to form. You
24 personalized it.

1 A. My testimony, I can't tell you. I don't
2 know the date of the hypnosis.

3 Q. Well, assuming for whatever time period
4 there was between the first session of hypnosis and
5 the time that Rienbolt came forward, that entire
6 period of time you had pending with your
7 investigators the question of whether to do a second
8 hypnosis of Darrell Herrington; is that right?

9 MR. MANCINI: Objection as to form.

10 A. The second hypnosis was an option that
11 apparently was not pursued prior to Ms. Rienbolt
12 coming forward.

13 Q. Well, was there a decision made not to
14 pursue it or was it an open question until she came
15 forward?

16 A. My recollection, it was an open question.

17 Q. The second hypnosis, the point of that was
18 to try to get him to give you additional leads; is
19 that right?

20 MR. MANCINI: Objection as to form.

21 A. The point of the second hypnosis, as I
22 indicated yesterday, is that in this case a
23 psychiatrist would then say -- apparently as
24 explained to me by my recollection, is that he would

1 then say, "well, you indicated X," would concentrate
2 on that, and then "can you see more" or, you know,
3 whatever he would do. We never reached that stage,
4 you know, that -- and then, for example, try to come
5 up with a license plate. And it's my understanding
6 of the law, Mr. Herrington could not testify as to
7 the license plate, but the license plate obviously
8 could be pursued by the investigators as a lead,
9 that would be an example, or whatever it might be.

10 Q. Well, what if in the second hypnosis he
11 gave a substantially different story? Let's say
12 that he admitted that he himself did the crime
13 rather than Whitlock and Steidl? Could you use that
14 against him?

15 MR. MANCINI: Objection as to form.

16 It's --

17 A. First of all, he gave -- in his first
18 hypnosis, he gave a substantially similar statement
19 that --

20 Q. I didn't ask you that. I'm asking you
21 under the circumstance whether you got additional
22 information that further implicated him, could you
23 use that against him?

24 MR. MANCINI: Objection as to form. It's

1 speculative.

2 Q. Under your understanding of the law.

3 MR. MANCINI: Objection as to form,
4 speculative.

5 A. Yeah. Under my understanding of the law,
6 I don't think it could have been used.

7 Q. All right. And if, in fact, he had given
8 you additional information, let's say rather than
9 just to say that he saw the men coming down the
10 stairs, he then put himself in the scene like
11 Rienbolt did on the third -- on her third or fourth
12 statement and actually got -- put himself involved
13 in the case, could you have used that additional
14 information that he gave against Whitlock and
15 Steidl?

16 MR. MANCINI: Objection as to form.

17 Q. According to your understanding of the
18 law.

19 MR. MANCINI: Objection as to form.

20 A. My recollection of the law, and again, as
21 I said, what I did was research all the different
22 jurisdictions and came up with a composite list and
23 used that, because Illinois was, as I recall, was a
24 little more unclear on the issue. That to play for

1 the safe side is I'm going to use all the different
2 jurisdictions, use the strictest criteria, kind of
3 combined them, and that's what was presented to the
4 psychiatrist. So I really don't know what an
5 Illinois court would have ruled, but certainly there
6 would have been an issue as to whether or not that
7 would be admissible.

8 Q. All right. And if his further statement
9 would not be admissible, could he have come to trial
10 and testified about the enhanced memory that he said
11 he had because of the hypnosis? In other words, is
12 that whole portion of his new story inadmissible
13 under your understanding of the law or could he
14 testify about it, just not use the statement he made
15 to the hypnotist?

16 MR. MANCINI: Objection, asked and
17 answered. Go ahead.

18 A. Okay, that's why you do a prehypnotic
19 videotape, to preserve the prehypnotic
20 recollections. At least my understanding of the
21 law, again Illinois was a little more unclear, but
22 he could certainly testify to everything he said
23 prehypnosis, so there was a prehypnotic videotape --

24 Q. So you --

1 A. -- to preserve that.

2 Q. So when you made the -- your understanding
3 of the law was, then, when you made the decision to
4 take him to the hypnotist, whatever he told you
5 before on that tape, you were frozen with that. In
6 other words, if he said anything additional, you
7 couldn't use that in court.

8 MR. MANCINI: Objection as to form.

9 Q. Is that right?

10 A. That would depend on --

11 MR. MANCINI: Objection as to form.

12 A. -- the Illinois law.

13 Q. But that's what you understood the law to
14 be, right?

15 A. No, that's what I understood -- that was a
16 compilation of all the jurisdictions. I said my
17 recollection is Illinois was unclear as to exactly
18 what would happen, but again, based upon the
19 compilation, certainly that the prehypnotic
20 statement would likely be admissible.

21 Q. All right. Now, in January of '87 there
22 was a suicide by a man named Starks. Do you
23 remember that?

24 A. Yes.

1 Q. And, in fact, at some point Starks is --
2 was it his blood or his hair was compared with
3 evidence in the Steidl -- excuse me, in the Rhoads
4 homicides. Is that right?

5 A. I don't recall specifically. I know the
6 investigators looked at Mr. Stark too.

7 Q. All right. And, in fact, were you aware
8 of the fact that Mr. Stark -- that there was
9 evidence that linked Mr. Stark to the homicides?

10 MR. MANCINI: Objection.

11 MS. EKL: Objection to form.

12 MR. MANCINI: Join.

13 A. I think that's a gross
14 mischaracterization. My recollection is that Mr.
15 Stark was investigated and excluded.

16 Q. Okay. Well, let me show you what's been
17 previously marked as Eckerty Exhibit No. 2.

18 MR. MANCINI: Can I take two minutes just
19 to use the restroom --

20 MR. TAYLOR: Sure. Why don't you look --

21 MR. MANCINI: -- while he's looking at
22 that?

23 MR. TAYLOR: Yes.

24 (Brief pause.)

1 (McFATRIDGE Exhibit No. 2 was marked by
2 the court reporter.)

3 BY MR. TAYLOR:

4 Q. All right, I've shown you what I
5 previously marked as Eckerty Exhibit No. 2 which is
6 a -- appears to be the Starks file. Have you ever
7 seen this file prior to my showing it to you today?

8 A. The entire file?

9 Q. Yes.

10 A. I wouldn't say I would have seen all of
11 it.

12 Q. All right. Well, let me ask you this. I
13 want to call your attention to a report. It's a
14 Parrish -- it's an Eckerty report. It's Plaintiff
15 017582 and 83 and 84. It's dated January 5, 6 and
16 7, '87. Subject, Philip Stark suicide.

17 Do you see that report right now? Do you
18 find that report?

19 A. Yes.

20 Q. All right. And if you look on page 3 of
21 that report, do you see that there's a statement
22 that he -- that his wife or his girlfriend stated
23 that the day of or the day after, she could not
24 remember, the Rhoads homicide in Paris in July '86

1 Philip woke up in a cold sweat. He told her that he
2 had dreamt of stabbing someone. Nancy stated from
3 that time on Philip was continuously worried about
4 whether he committed the homicide.

5 Do you see that?

6 MR. MANCINI: There (indicating).

7 A. Yes.

8 Q. All right. Now, did you -- on or about
9 January of 1987, did you see this particular report
10 by Eckerty?

11 A. This report I probably saw.

12 Q. All right. And it was not filed in the
13 file of the homicide but rather in a separate
14 suicide file; is that right?

15 MS. EKL: Objection, form.

16 MR. MANCINI: Join.

17 MS. EKL: Foundation.

18 A. I do know that reports regarding Mr. Stark
19 were turned over to defense counsel prior to trial.

20 Q. Well, you see 87-L-0072. That's a suicide
21 file; is that right?

22 A. I would have no idea.

23 Q. All right. And it's your testimony that
24 this report was turned over to defense counsel?

1 A. My testimony is that reports involving
2 Phil Stark were turned over to defense counsel.
3 Whether this particular one was or not, I couldn't
4 tell you, but this particular one most likely would
5 have been part of that motion in limine.

6 Q. All right. Well, let me ask you this,
7 sir. Would you agree with me that a statement that
8 a person was dreaming and worried about having
9 committed the Rhoads homicide would be something
10 that would be discoverable and that defense counsel
11 was entitled to have that report that included that
12 information?

13 MR. MANCINI: Objection as to form,
14 foundation.

15 A. The law in Illinois is that the fact that
16 somebody may be a suspect or person of interest does
17 not per se make it discoverable. That's a court
18 decision. And my recollection is that I know some
19 of the Stark matter was turned over and some of the
20 Stark matter may have been subject to the motions in
21 limine.

22 Q. Well, you know that's not true. It's not
23 a court decision. Rule 412 and Brady says that both
24 information that is either exculpatory, impeachment

1 or has to do with potential witnesses must be turned
2 over.

3 MR. MANCINI: Objection.

4 Q. There's no question you should have turned
5 this over, is there?

6 MR. MANCINI: Objection as to form.

7 A. I disagree. Certainly if it's subject to
8 the motion in limine that I believe it was or at
9 least the Phil Stark issues were, then if the court
10 indicates that it's a matter of suspect, it doesn't
11 make it again per se discoverable.

12 Q. You never turned this report over, did
13 you?

14 MR. MANCINI: Objection as to form. Asked
15 and answered.

16 A. I -- I don't recall. I know Stark matters
17 were turned over.

18 Q. The only thing that you turned over was
19 the fact -- was a report that said that Stark's
20 blood had been turned over to be tested. That's the
21 only thing you turned over, isn't it?

22 MR. MANCINI: Objection as to form. Asked
23 and answered. Answer it again.

24 A. To my recollection, that a number of

1 persons of interest were subject to a motion in
2 limine, and if the court approved that it didn't
3 have to be turned over, they would be court
4 sanctioned.

5 Q. Right. So you -- it's your testimony that
6 you took this file and these reports and gave them
7 to the judge and told him -- and took the position
8 that they shouldn't be turned over and the judge
9 agreed with you. Is that what your testimony is?

10 MR. MANCINI: Objection as to form.
11 Mischaracterizes what he said.

12 A. I said a number of persons of interest and
13 I cannot tell you each one, but I know some Stark
14 stuff was turned over.

15 Q. So if we look at the motion in limine and
16 determine that this file was not tendered to the
17 judge or the defense, is it your testimony that it
18 was because you made a decision that it was not
19 discoverable under the rules?

20 MR. MANCINI: Objection as to form.

21 A. I don't recall what happened that many
22 years ago. I do recall that there was a full
23 investigation. It was presented that he was
24 excluded as being a possible suspect because it's my

1 recollection, as was represented to me, was that it
2 was substantiated that he never left the house that
3 night.

4 Q. Well, the only thing that you turned over
5 was the lab reports which in your view excluded him,
6 but you didn't turn over the report that showed that
7 the man was having dreams and reported that he was
8 concerned continuously about whether he did the
9 crime; isn't that right?

10 MR. MANCINI: Objection. It's been asked
11 and answered.

12 A. I don't recall.

13 Q. And you as a -- as a State's Attorney knew
14 of other cases where men had gone to Death Row for
15 dream statements, didn't you?

16 MR. MANCINI: Objection as to form,
17 foundation.

18 Q. Well, you know the Rolando Cruz case,
19 right, and the Nicarico case? You knew about that
20 case, didn't you?

21 A. Aren't those after this?

22 Q. 1983.

23 A. Oh, I don't know.

24 Q. Do you remember that case, that Rolando

1 Cruz went to prison based on a dream statement that
2 he gave?

3 MR. MANCINI: Objection to form,
4 foundation.

5 A. I would imagine that he didn't have
6 someone that testified that he never left the house,
7 that it would have been physically impossible for
8 him to commit the crime.

9 Q. So if he had -- because if Starks had an
10 alibi, you figured that this wasn't discoverable, is
11 that what you're telling me?

12 MR. MANCINI: Objection to form,
13 foundation.

14 A. That's not what I said. I said that I
15 don't recall, and, in fact, it may have been subject
16 to a motion in limine, and I do know that certain
17 portions were disclosed.

18 Q. But this was not disclosed, this report,
19 was it?

20 MR. MANCINI: Objection. It's been asked
21 and answered four times.

22 A. I don't recall.

23 Q. Why would you take this to the judge, if
24 you did, and ask him to keep the defense from

1 knowing about the evidence that's found in this
2 report? What possible position could you have that
3 would support suppressing this evidence?

4 MR. MANCINI: Objection as to form.

5 A. I believe that suppressing is a
6 mischaracterization. You go to the judge to find
7 out what -- what is not discoverable. The rule in
8 Illinois, as I recall at the time, was the mere fact
9 somebody was a suspect did not make it necessarily
10 discoverable, because defense counsel would place
11 undue influence/emphasis on it just as was done
12 here, so this guy must have done it, and the courts
13 make a determination, well, if there's no way this
14 guy, then I'm not going to allow it in to clutter
15 the trial, and that's what courts do.

16 Q. Courts keep it out of evidence at trial,
17 but they certainly don't -- the law is not that you
18 can't have the discovery. Then the court determines
19 whether you can use it. Isn't that the way the law
20 goes, sir?

21 MR. MANCINI: Objection to form,
22 foundation.

23 A. You present the reports to the judge, the
24 judge makes the determination, and I believe a

1 number of reports were presented.

2 Q. Now, let me get this -- try and understand
3 what you're saying. Phil Starks, a random person
4 who the evidence supported did not leave his house,
5 you had his blood tested anyway, right?

6 MR. MANCINI: Objection to form,
7 foundation.

8 A. First of all, the investigators had his
9 blood tested and presumably, as any good
10 investigator, that was to preserve the evidence. I
11 mean there was information, as you pointed out here,
12 that he was a person of interest and presumably the
13 blood has an X amount where it couldn't be used
14 anymore, and the investigators did the prudent
15 action in taking the blood sample.

16 Q. Well, but Herrington who was -- who
17 admitted being there and said he had a cut on his
18 hand and helped, you didn't ask for his blood and it
19 wasn't tested.

20 MS. EKL: Objection, form, foundation.

21 Q. Isn't that correct?

22 MR. MANCINI: Join.

23 MR. ACKERMAN: Same objection.

24 A. I don't recall.

1 Q. You don't remember whether, in fact,
2 Herrington's blood was tested or not?

3 MR. MANCINI: Objection to form.

4 A. I don't recall.

5 MR. MANCINI: It's been asked and
6 answered.

7 Q. Okay. Did Herrington ever tell you or
8 testify to your knowledge that he destroyed his
9 clothes? Were you under that impression?

10 A. I don't recall.

11 Q. He never told you that, did he?

12 A. I don't recall.

13 Q. Well, did he testify to that?

14 A. I don't recall.

15 Q. Well, what -- how was the issue of why
16 Herrington's clothes were not in evidence when he
17 said he got blood on them, how did you deal with
18 that at trial?

19 A. I don't recall.

20 Q. Well, did you instruct the investigators
21 to bring in -- to get from him his clothes that he
22 said he had on that night?

23 MR. MANCINI: Objection to form.

24 A. I don't recall.

1 Q. Would that be something as a State's
2 Attorney you'd want to have to help to corroborate
3 the story that there was -- that there were clothes
4 that had blood on it and -- that would be something
5 you would want to check, wouldn't you?

6 A. I don't recall him indicating he had blood
7 on his clothes.

8 Q. Didn't he say he had a cut on his hand at
9 some point?

10 MR. MANCINI: Objection, asked and
11 answered.

12 A. I don't recall.

13 Q. Okay. But in any event, you have no
14 memory of what Herrington said or didn't say about
15 his clothes; is that right?

16 A. I don't recall.

17 Q. You don't recall whether you have a memory
18 or you don't have a memory?

19 A. I don't recall him talking about his
20 clothes.

21 Q. All right. Now, on February 16th and 17th
22 Rienbolt comes forward; is that right?

23 A. I know it was in February.

24 Q. All right. Now, before I go to that, let

1 me ask you, as the State's Attorney, you at least in
2 this case charged Debbie Rienbolt with concealment
3 of a homicidal death; is that right?

4 A. Correct.

5 Q. And what was the elements that you saw in
6 her testimony which led you to charge her with
7 concealment of a homicidal death?

8 A. As I recall, it had to do with her
9 cleaning the knife.

10 Q. All right. So it didn't have anything to
11 do with her participation in the crime as she
12 ultimately stated on her third or fourth interview.
13 It had to do with her cleaning the knife. Is that
14 correct?

15 MR. MANCINI: Objection as to form.

16 A. There was a written plea agreement.

17 Q. All right, I understand that, but what I'm
18 asking you is what the basis of your charge for
19 homicidal death was.

20 MR. MANCINI: Objection, asked and
21 answered.

22 Q. Okay.

23 A. Stated in the information.

24 Q. Okay. Is it not true that you could have

1 also charged Darrell Herrington with concealment of
2 a homicidal death?

3 MR. MANCINI: Objection as to form.

4 A. As I sit here today, I would say no. I
5 mean he -- really in reality he was merely present.

6 Q. He, for instance, had boots on which would
7 have confirmed whether he stepped in blood when he
8 went in the room, didn't he?

9 MS. EKL: Objection, foundation.

10 MR. MANCINI: Join.

11 A. I don't recall what shoes he was wearing.

12 Q. Did you have his shoes tested?

13 A. I don't recall.

14 MR. MANCINI: Objection as to form.

15 Q. So it isn't sufficient to be charged with
16 concealing a homicidal death to simply not come
17 forward and tell about it for several months? You
18 have to do something more active such as clean off a
19 knife? Is that what your testimony is?

20 MR. MANCINI: Objection as to form.
21 Mischaracterizes his testimony.

22 A. I believe the law in the United States is
23 there's no duty to report a crime.

24 Q. All right. So unless Herrington gave you

1 evidence that he participated in the crime, there
2 was nothing you could do to charge him. Is that
3 right?

4 MR. MANCINI: Objection as to form and
5 foundation.

6 A. Based -- I mean based upon what you're
7 telling me, I would say there was -- he could not
8 have been charged.

9 Q. Well, based on what you knew about what he
10 said about his knowledge of the crime, did you
11 consider whether to charge him with concealment of a
12 homicidal death?

13 A. It would have been inappropriate.

14 Q. All right. Was there any other charge
15 that, within the criminal statutes of the State of
16 Illinois, that Herrington by his conduct could have
17 been charged with in relationship to this homicide?

18 A. Besides being a drunken pedestrian, I --
19 no, not that I'm aware of.

20 Q. Okay. Now, you told us that you didn't
21 believe that Debbie Rienbolt, despite her addiction
22 problems, her drinking problems, her poverty and her
23 ever-changing stories, that you didn't think she was
24 suggestible. Is that -- you said that yesterday,

1 right?

2 MR. MANCINI: Objection as to form.

3 Mischaracterizes his testimony.

4 A. Indicated she's a very strong-willed
5 person and she gave those statements on her on
6 volition.

7 Q. Darrell Herrington, on the other hand, was
8 a very suggestible person, wasn't he?

9 MS. EKL: Objection, foundation.

10 MR. MANCINI: Objection, asked and
11 answered also.

12 A. Not to my knowledge.

13 Q. You saw him and knew about his reputation,
14 right?

15 MR. MANCINI: Objection as to form. Asked
16 and answered.

17 A. Yes.

18 Q. You knew he was an alcoholic.

19 MR. MANCINI: Objection to form. Asked
20 and answered yesterday.

21 A. I also knew doing research for the trial
22 that alcohol -- even an alcoholic, which again is a
23 medical determination, does not necessarily equate
24 with credibility.

1 Q. All right. How about with suggestibility?

2 A. Not that I'm aware.

3 Q. Now, you were not present for at least
4 some of the sessions of questioning of Darrell
5 Herrington, were you?

6 A. I didn't --

7 Q. Some of the sessions of questioning of
8 Darrell Herrington you were not present for, were
9 you?

10 A. That's correct.

11 Q. Including the first time, right, that
12 being September 19th, the first time on record; is
13 that right?

14 A. That would be correct.

15 Q. So you don't know what the content of that
16 interrogation or questioning was, do you?

17 A. I wasn't there.

18 Q. And you don't know how Ray or Parrish
19 conducted themselves during that interrogation, do
20 you?

21 A. I wasn't present.

22 Q. And you don't know -- and by saying you
23 weren't present, you're agreeing with me that you
24 don't know; is that right?

1 A. If I wasn't present, I wouldn't know.

2 Q. All right. So you -- unless you asked
3 them and they told you, right?

4 A. There was no indication of anything
5 unusual.

6 Q. Okay. Well, what I'm asking you is you
7 don't know whether, in fact, they used any coercive
8 tactics or not, do you?

9 A. I wasn't present.

10 Q. Did you ever ask them about the September
11 19th interrogation as to whether they had used any
12 coercive or suggestive tactics with Darrell
13 Herrington?

14 A. I don't recall doing so, but I was able to
15 observe Darrell Herrington give statements in my
16 presence and he seemed to be credible to me.

17 Q. Well, okay, but you don't know -- the
18 story that you were presented with was a story that
19 could have been suggested to him in part or in full
20 in the prior questioning on the 19th; isn't that
21 right?

22 MR. MANCINI: Objection.

23 MS. EKL: Objection, form, foundation.

24 MR. MANCINI: Join.

1 A. While I don't know what occurred then, I
2 did -- he was videotaped and he was placed under
3 hypnosis and gave consistent statements. I would
4 find it, at least in my own layperson mind, that
5 that would be pretty amazing that he would give
6 consistent statements under videotape and under
7 hypnosis if something, as had been suggested
8 earlier, was just a brief matter, you know, if
9 that's what you're talking about.

10 Q. Well, if a man were interrogated for five
11 hours and certain facts were suggested to him or he
12 was coerced, he could retell that story at a later
13 time and it often happens, doesn't it?

14 MS. EKL: Objection, form, foundation.

15 MR. MANCINI: Join.

16 A. Not that I'm aware.

17 Q. Well, you have studied wrongful conviction
18 cases, haven't you?

19 A. Yes.

20 Q. And you've studied false confession cases,
21 haven't you?

22 A. Yes.

23 Q. And you know sometimes people confess to
24 things that they didn't do when they're under

1 coercion or suggestion; isn't that right?

2 A. Confess, yes.

3 Q. All right. And, in fact, if they can
4 confess to things they didn't do, they certainly can
5 give stories implicating others that aren't true if
6 they're under coercion or suggestion.

7 MR. MANCINI: Objection.

8 MS. EKL: Objection, form, foundation.

9 MR. MANCINI: Join.

10 A. I can't speak to that.

11 Q. Well, you are enough of a student of the
12 -- of these cases to know that that does in fact
13 happen, aren't you?

14 MR. MANCINI: Objection as to form,
15 foundation.

16 A. There's different motivations.
17 Confession -- in confession you're implicating
18 yourself. So I think the circumstances are
19 completely different and I don't think you can draw
20 that comparison.

21 Q. So you're telling me that while you can be
22 coerced to confess to a double homicide that you
23 didn't do, you can't be coerced into fingering
24 someone else for that crime. Are you saying,

1 telling -- trying to tell me that?

2 MR. MANCINI: Objection as to form,
3 foundation.

4 A. I'm not saying that, but generally there
5 would be some motivation to do that, and there's no
6 that I'm aware of motivation for Mr. Herrington to
7 have done that.

8 Q. No motivation?

9 A. That I'm aware of.

10 Q. Okay. So the fact that he was, in fact,
11 very vulnerable as an alcoholic and a town drunk and
12 someone who didn't have a license, someone who if he
13 did know something, to his knowledge he might be the
14 one that got fingered rather than someone else, that
15 isn't a motivation for him to perhaps tell a story
16 that wasn't true?

17 MS. EKL: Objection, form, foundation.

18 MR. MANCINI: Join. It's argumentative.

19 A. I would find that a huge stretch.

20 Q. All right. So you wouldn't find it a huge
21 stretch for someone to confess to a double murder
22 that they didn't do, but you would find it a huge
23 stretch for an alcoholic without a job who wants to
24 please the police to tell a story that implicates

1 someone else. Is that -- you're trying to make a
2 distinction there between those two circumstances?

3 MS. EKL: Objection, form.

4 MR. MANCINI: Objection to form.

5 A. It would be based upon the individual
6 facts of the case, and on the individual facts of
7 this case, in my opinion, Darrell Herrington was
8 credible.

9 Q. Well, what about the fact that there was a
10 500,000 -- excuse me, a \$25,000 reward floated in
11 the bars that Darrell Herrington, a man without
12 substantial means, frequented?

13 MS. EKL: Objection, form.

14 Q. Would that be a motivation to you?

15 MR. MANCINI: Objection as to form,
16 foundation.

17 MS. EKL: Objection, form, foundation.

18 A. Well, if that was a motivation, it would
19 seem to me that he would have come forward in July
20 not waited until September.

21 Q. So you discounted the idea of a reward as
22 a factor in his coming forward because he didn't do
23 it for a couple of months; is that right?

24 MR. MANCINI: Objection as to form,

1 foundation.

2 A. To my knowledge, the reward was virtually
3 immediately withdrawn, and I had no indication that
4 Mr. Herrington even knew about the reward much less
5 that that would potentially influence him.

6 Q. But when I asked you about it, you weren't
7 able to tell me anything about how you -- what led
8 you to believe that the reward had been rescinded or
9 that the people who frequented the bars understood
10 that that reward had been rescinded.

11 MR. MANCINI: Objection as to form.

12 Q. Right?

13 A. To my knowledge, the reward was rescinded.

14 Q. Okay. And was that -- were there posters
15 around town in the bars saying my \$25,000 reward is
16 no longer operative?

17 A. Well, that would seem to be indicative
18 that there was once a reward. I don't know.

19 Q. All right.

20 MR. TAYLOR: Let's take a short break.

21 (Recess at 10:32 a.m. to 10:48 a.m.)

22 BY MR. TAYLOR:

23 Q. Okay, I want to put in front of you Ray
24 Exhibit 2 which is a compendium of Eckerty and other

1 ISP reports and Parrish 9 -- I mean Ray 9 which is a
2 compendium of the main report that Parrish did in
3 the case, so I want you to have those in front of
4 you.

5 MS. EKL: I'm sorry, can you repeat those?
6 Is it Parrish 9, Ray 9 and Eckerty 2?

7 MR. TAYLOR: No, Ray 9 and Ray 2.

8 MR. MANCINI: Flint, Eckerty 2 and
9 McFatridge 2, can we move those away from him or are
10 you going to be using those also in conjunction with
11 what you're doing?

12 MR. TAYLOR: You can move them away for
13 now.

14 MR. MANCINI: Okay, I'm just trying to
15 make room. We're tight here.

16 BY MR. TAYLOR:

17 Q. Now, I believe you testified yesterday
18 that you didn't have a memory of being involved in
19 the -- in the February 17th interview with Rienbolt,
20 but that the reports would reflect whether you were
21 or not. I wanted to take a look at the reports and
22 establish whether you were there for the 17th
23 interview with Rienbolt.

24 If you look at Steidl -- look at Exhibit

1 2, Ray Exhibit 2, and you look at Steidl 12269, do
2 you see that?

3 A. Yes.

4 Q. You find it, okay. And this is a report
5 of Snyder, Bensyl, Nuxoll and Eckerty, and it starts
6 out -- and it's routed, according to dissemination,
7 to the Edgar County State's Attorney and Chief Gene
8 Ray. And the report starts: On 2/17/87 Detective
9 Parrish and RA, meaning Eckerty, interviewed Debra
10 Rienbolt. And it goes on for several pages giving
11 what she said at that time.

12 Does this report refresh your recollection
13 that you were not physically present when this
14 interview or questioning took place?

15 A. I would say yes. If I was physically
16 present, I believe it would have been reflected in
17 the report.

18 Q. Okay. So -- but is it also fair to say
19 that you received this report either -- you received
20 a briefing on it from the officers and you also
21 received the written report sometime after it was
22 written?

23 MR. MANCINI: Objection as to form. It's
24 compound.

1 A. That's -- I'm sure I got a copy of the
2 report.

3 Q. Okay. Now, this report says it's typed by
4 -- the date is 2/26 which would be nine days later
5 and that -- from the 17th. Is it your recollection
6 that with something as significant as a new witness
7 coming forward and giving evidence, that you would
8 have been informed by Eckerty and Parrish about this
9 prior to receiving the written report nine or ten
10 days later?

11 A. I would say yes.

12 Q. Okay. So at some time around the 17th of
13 February, '87, you learned that the investigators,
14 Parrish and Eckerty, had developed a new witness who
15 had evidence relevant to the case; is that right?

16 A. Yes.

17 Q. All right. And you knew at that time that
18 Ms. Rienbolt was claiming that Whitlock had made
19 some admissions to her; is that right?

20 A. I would have expected I would have been
21 told by the investigators basically the contents of
22 this report.

23 Q. All right. And in this report she makes
24 little or no mention of Randy Steidl having any

1 involvement or making any admissions, does she?

2 MS. EKL: Objection, form. The report
3 speaks for itself.

4 A. Without reading the report word for word,
5 it seems that most of the statements come from Mr.
6 Whitlock, but she does make reference to Mr. Steidl.

7 Q. Where does she make reference to Mr.
8 Steidl according to this report?

9 A. Well, the first full paragraph of the
10 second page, she notices Herrington and Steidl being
11 together at a bar.

12 Q. Okay. So she puts Herrington and Steidl
13 together in the bar on the evening of the murders,
14 is that right, as well as Whitlock in that bar or
15 no?

16 A. Well, again, I'm reading. I mean the
17 report speaks for itself. I'm looking at it very
18 fast.

19 Q. No?

20 A. But it would seem she sees them all
21 together.

22 Q. All right. So the sum total of what --
23 what she has on Randy Steidl is seeing him in the
24 bar that night with Whitlock and Herrington and

1 Steidl saying "I'll see you later" to Whitlock. Is
2 that right?

3 A. Then she says stated a couple of -- or
4 that was a day later she talked to Whitlock and
5 Steidl.

6 MR. MANCINI: He's looking at, for the
7 record, Steidl 12271.

8 Q. Okay.

9 A. I mean, again, the report speaks for
10 itself. Reading it fast, I mean she puts them all
11 together and then talks about the knife on 12271.

12 Q. Okay, but she doesn't -- she doesn't
13 connect Steidl to the knife, does she?

14 MR. MANCINI: Take your time. Read it all
15 the way through.

16 A. Okay, I'll just read it.

17 Q. Anything else that she says about Steidl?

18 A. I thought your -- again, the report speaks
19 for itself, but if you want me to answer, I'm going
20 to have to read the report. I'm trying to read as
21 fast as I can.

22 Stated that Randy Steidl exited the front
23 door at which time Whitlock said to Steidl "see you
24 later, I'll be there in a little while."

1 Q. Okay.

2 A. Again, she places them all together.

3 Q. Well, she puts Steidl and Herrington in
4 one part of the bar and herself and Whitlock in
5 another, right?

6 MR. MANCINI: Is there a particular
7 paragraph just to speed this up or --

8 MR. TAYLOR: Page 2.

9 MR. MANCINI: Down here (indicating).

10 A. At a different bar. Like I said earlier,
11 though, she said they were going to get back
12 together. That's what she overheard.

13 Q. Okay. And, in fact, the "see you later"
14 was them meeting up later at the Legion, is that
15 right, according to the report?

16 A. I haven't -- still talking about the
17 Horseshoe where they are talking about the knife is
18 where I'm at.

19 Q. What page?

20 A. It's page 3 or 12271. Talked about
21 Whitlock talking about Herrington being at the
22 house.

23 Q. Well --

24 A. Okay.

1 Q. -- why don't you --

2 A. I mean how far am I supposed to go? I'm
3 getting --

4 Q. Actually if you can go through and then we
5 can agree perhaps on what the -- the essence of what
6 she's saying is after you look at it.

7 A. How far in the report am I supposed to go?
8 Through her statement or --

9 Q. Yes, just through her statement.

10 A. Okay, then I'm --

11 Q. You're through that?

12 A. Yes, I'm through her statement.

13 Q. Well, is it fair to say that what you were
14 told about what Rienbolt had said concerning her
15 knowledge of Steidl and Whitlock was that they were
16 at some point on the -- on the night of the crime
17 they were together; that Steidl was together with
18 Herrington at some point that night; that Whitlock
19 made some inculpatory statements to her about people
20 not knowing too -- about people knowing too much,
21 about it having to do with drugs; that Whitlock then
22 gave her a knife the next day that had blood on it;
23 that the -- that she then took the knife and boiled
24 it in hot water and then honed it and cleaned it and

1 picked it with a toothpick to get some of the blood
2 out of it; that Whitlock made in the next few days a
3 few additional statements that appeared to be -- to
4 show knowledge of the crime. And that was in
5 essence what she had said at this first interview.
6 Is that a fair characterization?

7 MR. MANCINI: Objection as to form.

8 A. Again, the report speaks for itself. I
9 mean she placed Whitlock, Steidl and Herrington
10 together and specifically -- and further than that,
11 places Herrington at the scene.

12 Q. All right. She places --

13 A. At the scene through Whitlock.

14 Q. Okay. But she does not say -- does she
15 put herself at the scene?

16 A. Not in this admission. Not in this
17 statement.

18 Q. Okay. Based on her coming forward and
19 giving this statement, did you along with the
20 investigators make a decision to arrest Steidl and
21 Whitlock?

22 MR. MANCINI: Objection as to form.

23 A. The decision to charge would have been the
24 prosecutor/State's Attorney, and as you've

1 indicated, there is -- if you're saying there's --
2 if, in fact, that's when this part was typed, I mean
3 there's a nine day delay, and I would have to think
4 that there may have been additional statements. I
5 don't know when she gave her other statements.

6 Q. She didn't -- at least the reports
7 indicate that there is no written report of any
8 additional statement before the 19th which is when
9 she[sic] was arrested, but you did attempt to do an
10 overhear with her, did you not?

11 A. The report so indicates.

12 Q. Yeah. And, in fact, did you participate
13 in obtaining the authorization for the overhear?

14 A. Would have participated in obtaining the
15 authorization.

16 Q. All right. And you did that based on
17 representations that were made to you by Eckerty and
18 Parrish, representations having to do with this
19 report of Rienbolt's testimony.

20 MS. EKL: Objection.

21 Q. Or Rienbolt's statement, excuse me.

22 MS. EKL: Objection, form.

23 MR. MANCINI: Join.

24 A. The petition and the order would speak for

1 itself. I mean I can't recall what would be exactly
2 in there.

3 Q. Well, did you interview Debra Rienbolt
4 yourself personally before you sought an overhear
5 order from the judge on the 19th?

6 A. I don't recall.

7 Q. And did you make a decision to attempt to
8 develop additional evidence through an overhear with
9 Debra Rienbolt of Steidl and Herrington -- Steidl
10 and Whitlock before making a decision whether to
11 arrest them or not?

12 MR. MANCINI: Objection as to form.

13 A. The eavesdrop order was obtained prior to
14 their arrest.

15 Q. And did you do that because you felt that
16 you wanted to attempt to develop additional evidence
17 before they were arrested?

18 A. The purpose of any eavesdrop order is to
19 develop -- is to obtain additional evidence.

20 Q. And, in fact, after the eavesdrop was
21 done, did you listen to the tape of the eavesdrop?

22 A. If I did not listen to it, I would have
23 been advised of the contents, but I may have
24 listened to it.

1 Q. And whether you listened to it or were
2 advised of the content, you became aware of the fact
3 that neither of them had made any inculpatory
4 statements on the overhears with Ms. Rienbolt; is
5 that correct?

6 A. Certainly they didn't admit to the crime.

7 Q. They made no admissions, did they?

8 MR. MANCINI: Objection, asked and
9 answered.

10 A. I can't recall the exact contents of the
11 overhear.

12 Q. All right. Well, the report indicates no
13 information whatsoever with regard to the overhear,
14 does it?

15 MR. MANCINI: Just for clarity, we're
16 talking about the February 26th report?

17 Q. Well, it's -- yeah, yeah, the same report
18 we're looking at.

19 MS. EKL: You're talking about the Paris
20 PD report or the ISP report?

21 MR. TAYLOR: ISP report.

22 A. The only reference that I see here, and
23 I'm looking at 12272, is: See attached copies of
24 eavesdropping order in Duane Hill's report. But

1 Duane Hill's report may have included a summary.

2 Q. All right. All right. In any event,
3 there's no record that we have of any -- any
4 statements that they made that in any way implicated
5 them further in the case; is that right?

6 MS. EKL: Objection, form, foundation.

7 MR. MANCINI: Objection as to form,
8 foundation.

9 A. I -- I don't know. Again, I don't recall
10 the transcript of the eavesdrop order.

11 Q. Well, did you -- after the eavesdrop,
12 Whitlock and Steidl were arrested; is that right?

13 A. That would be my recollection.

14 Q. And were they arrested with a warrant or
15 without a warrant?

16 A. The record speaks for itself, but I
17 believe it was without a warrant.

18 Q. All right. And the arrests were made by
19 Paris police and the Illinois State Police; is that
20 right?

21 A. I -- yes. I don't know if the sheriff's
22 department played any role.

23 Q. Now, did the -- did Chief Ray participate
24 in the decision to arrest?

1 A. He certainly would have had input.

2 Q. All right. Did he agree that they should
3 be arrested at that time?

4 MS. EKL: Objection, foundation.

5 A. I don't recall.

6 Q. Did Eckerty as the chief Illinois State
7 Police investigator on the case, did he participate
8 in the decision whether to arrest at that time?

9 A. I'm sure he had input.

10 Q. Did he make -- did he say he agreed with
11 the decision to arrest?

12 A. I don't recall.

13 Q. All right. Did Parrish, James Parrish
14 participate in the decision to arrest Steidl and
15 Whitlock?

16 A. I'm sure he had input.

17 Q. And did he agree or disagree with the
18 decision to arrest at that time?

19 MS. EKL: Objection, foundation.

20 A. I don't recall.

21 Q. Anyone else other than those three
22 individuals and yourself who participated in the
23 decision to arrest Steidl and Whitlock on the 19th?

24 A. I wouldn't recall.

1 Q. All right. Did you physically participate
2 in either of the arrests?

3 A. No.

4 Q. Where were you when the arrests were made?

5 A. I don't specifically recall. I believe I
6 was with Gene Ray.

7 Q. All right. And where was Gene Ray?

8 A. I don't recall if we were in a car or at
9 the station.

10 Q. Did any one of the individuals that
11 participated with you in the decision to arrest
12 state that the arrests should be delayed or
13 postponed until more evidence could be developed?

14 A. Well, as stated before, probable cause
15 existed at the time of Mr. Herrington's statement;
16 that this statement substantially corroborated Mr.
17 Herrington's statement. Therefore, there was
18 sufficient probable cause to make the arrest.

19 Q. That wasn't my question. My question was,
20 was there any one of the persons who participated
21 with you in the decision to arrest who stated that
22 the arrests should be postponed until more
23 investigation was done?

24 A. I don't recall.

1 Q. Did anyone articulate to you that, with
2 regard to Mr. Steidl at least, there was
3 insufficient evidence, additional evidence presented
4 by Debbie Rienbolt to support his arrest?

5 A. I don't recall.

6 Q. Well, in looking at this report, there was
7 very, very little corroborative evidence with regard
8 to Steidl that was presented by Ms. Rienbolt in her
9 statement on the 17th, would you agree with me?

10 MS. EKL: Objection, form.

11 MR. MANCINI: Join.

12 A. If you have an eyewitness and -- who has
13 named two people, that he was present with two
14 people who committed a murder, I would say that
15 credible corroborative evidence that was presented
16 in terms of a knife and placing the two individuals
17 together would be sufficient probable cause for an
18 arrest.

19 Q. What I asked you was that Rienbolt didn't
20 give you really anything of substance with regard to
21 Steidl beyond what you already had with Herrington.
22 Is that fair to say?

23 MR. MANCINI: Objection as to form.

24 MS. EKL: Objection, form.

1 A. She placed all the parties together.

2 Q. Not at the scene of the crime.

3 A. Placed all the parties together the night
4 of the crime --

5 Q. Okay.

6 A. -- which corroborated an eyewitness's
7 testimony.

8 Q. Well, Herrington wasn't quite an
9 eyewitness. He wasn't there, according to him, when
10 the murders took place. He wasn't in the room when
11 the murders took place, was he?

12 MR. MANCINI: Objection as to form.

13 A. I believe you would consider him an
14 eyewitness.

15 Q. All right, you considered him an
16 eyewitness.

17 A. The jury also considered him an
18 eyewitness.

19 Q. Okay. Well, going back to my question,
20 beyond Rienbolt placing Steidl together with
21 Herrington and Whitlock the night of the crime, she
22 added nothing more with regard to Steidl than you
23 already had. Isn't that right?

24 MR. MANCINI: Objection as to form.

1 A. The report speaks for itself. There was
2 sufficient probable cause to effect the two arrests.

3 Q. My question, if you'd listen to it for a
4 moment please, is she didn't add anything additional
5 beyond putting Steidl with Whitlock and Herrington
6 at a bar prior to the murders, did she?

7 MR. MANCINI: Objection to form.

8 A. That's your interpretation.

9 Q. Well, I'm asking you if you agree with it.

10 A. I don't agree with it.

11 Q. All right. Well, what else did she add
12 other than that?

13 A. I've just indicated. She corroborates an
14 eyewitness. The fact she places the individuals
15 together, that's fine if you want to say that, but
16 the probable cause is also built on Herrington's
17 statement. Herrington's statement as an eyewitness
18 was -- was, I guess, heavily corroborated by hers,
19 so that would make his testimony that much more
20 believable in terms of Steidl being a participant.

21 Q. All right. So you relied not only on what
22 she said but on the fact that she corroborated
23 Herrington generally about the case, about the
24 murders; is that right?

1 A. That would be fair.

2 Q. All right. Now, they were arrested on the
3 19th; is that right?

4 A. That's my recollection.

5 Q. And were you present when they were
6 questioned on the 19th?

7 A. No, I certainly didn't question them. I
8 don't -- I -- I'm not sure they were even
9 questioned. I don't recall.

10 Q. All right. Well, did they make any kind
11 of inculpatory statements after they were arrested
12 upon questioning by either Eckerty or Parrish?

13 A. I don't recall anything specific and the
14 reports would speak for themselves.

15 Q. Okay. You have no recollection of any
16 admissions that they made; is that right?

17 A. Not that I recall.

18 Q. Now, as of the 17th when you were informed
19 of these particular facts, you had enough evidence
20 to charge Debbie Rienbolt with concealing a
21 homicidal death, did you not?

22 A. It would have been very thin.

23 Q. Pardon me?

24 A. It would have been thin.

1 Q. It would have been thin that she took a
2 knife and boiled it and cleaned it knowing that it
3 was used in a homicide?

4 MR. MANCINI: Objection as to form.

5 Q. Took the blood off of it and held it for
6 eight months and didn't come -- bring it forward.
7 That would have been a thin case?

8 MR. MANCINI: Objection as to form.

9 A. Based upon the fact -- I mean based upon
10 her representations at the time.

11 Q. Well, you ultimately charged her with
12 concealing a homicide, didn't you?

13 A. As part of the plea agreement.

14 Q. All right. But you charged her, right?

15 A. That's correct.

16 Q. But you chose not to charge her at that --
17 in February; is that right?

18 A. She wasn't -- she was charged, but again,
19 the document will speak for itself when she was
20 charged.

21 Q. Well, I'm asking you why you made a
22 decision in February not to charge her when you had
23 evidence that she had concealed a homicidal death
24 given her statement that she had taken the murder

1 weapon and cleaned it off and altered it and held it
2 and not turned it over to the authorities?

3 A. Well, she wasn't going anywhere. There
4 was no need to rush to judgment.

5 Q. Well, she could have changed and not
6 cooperated and gotten a lawyer, couldn't she?

7 MR. MANCINI: Objection to form,
8 speculation.

9 A. I have no idea.

10 Q. Well, you wanted to continue to work with
11 her to see if she had anything more to say, didn't
12 you?

13 MR. MANCINI: Objection as to form.

14 A. Everybody wants to work with their
15 witnesses.

16 Q. Well, at that time, did you feel that she
17 had more to offer than what she was offering?

18 A. I had no idea.

19 Q. Did the investigators feel that she was
20 concealing more information than what she was
21 actually telling about what she knew about the
22 crime?

23 MR. MANCINI: Objection.

24 MS. EKL: Objection, foundation.

1 MR. MANCINI: And form as to what someone
2 else felt.

3 A. I don't recall.

4 Q. Well, they continued to question her; is
5 that right?

6 A. Whether she voluntarily offered more or it
7 was through questioning, I don't recall.

8 Q. Well, she was questioned at length in
9 March after the Grand Jury, wasn't she?

10 A. The reports would speak for themselves.

11 Q. Well, do you recall?

12 A. I recall that -- I recall that there were
13 multiple statements and that in each of the multiple
14 statements there was a general progression in terms
15 of her involvement.

16 Q. Okay. Now, this was the opposite of the
17 situation that you deemed to be credible with
18 Herrington, right? And Herrington, he kept telling
19 the same story. Rienbolt kept telling different
20 stories, right?

21 MR. MANCINI: Objection as to form.

22 A. It was a natural -- as argued and
23 presented in the Appellate Court, it was a natural
24 progression. All the statements were turned over to

1 defense counsel and it was a natural progression.
2 She progressed in terms of her involvement in the
3 crime.

4 Q. So in that instance, you're saying that
5 the changes in her story didn't go, in your mind, to
6 the fact that she was lying, but you saw that as an
7 indicati of credibility; is that right?

8 MR. MANCINI: Objection as to form.

9 A. Individuals who are more
10 inculpating[sic] themselves in a crime, that
11 would -- in a progression, that would seem to be
12 credible.

13 Q. All right. Well, did you ever learn that
14 Parrish had used any coercive tactics with Debbie
15 Rienbolt?

16 MS. EKL: Objection, foundation.

17 A. Not to my knowledge.

18 Q. Did she ever tell you or did Parrish tell
19 you that he told her that he wanted more on Randy
20 Steidl, that he didn't have enough on Randy Steidl
21 from her?

22 A. Not to my knowledge.

23 Q. That never happened in your presence?

24 MR. MANCINI: Objection to form,

1 foundation.

2 A. Not in my presence.

3 Q. Would that be inappropriate for an
4 interrogator to say that to a witness?

5 MR. MANCINI: Objection to form,
6 foundation.

7 A. It would depend on the circumstances.

8 Q. There are circumstances where it's okay to
9 say to a witness I want more on a person than you're
10 giving me?

11 MR. MANCINI: Objection to form,
12 foundation.

13 A. The purpose is to say, well, you place
14 these together, do you remember anything else in
15 terms of Steidl being there that evening, and she
16 says, oh, yeah, I do now, I remember X. So asking
17 that question, that would be appropriate.

18 Q. So it would be appropriate to say to a
19 witness I need more on Steidl, you're not giving me
20 enough?

21 A. That's not what I said. What I said was
22 it would be appropriate for -- to ask a witness do
23 you recall anything more about the interactions
24 between X and Y.

1 Q. All right, but that's different than what
2 I said, right? What I said is not an appropriate
3 way to question, is it?

4 MR. MANCINI: Objection as to form,
5 foundation.

6 A. It would depend on the inflections of the
7 voice, the circumstances. There's too many factors
8 to determine that.

9 Q. All right. Well, would it be appropriate
10 for an investigator to pound on the table while he
11 was -- in questioning a witness?

12 A. Depends on the circumstances.

13 Q. So would it be appropriate for a
14 witness[sic] to pound on the table so hard that he
15 broke his finger?

16 MS. EKL: Objection to form, specifically
17 the word appropriate.

18 Q. In your view.

19 MR. MANCINI: Flint, just for clarity, you
20 said a witness pounding his fist on the table.

21 Q. Would an interrogator questioning a
22 witness?

23 MS. EKL: Same objection.

24 MR. MANCINI: Join.

1 A. Voluntariness is determined by the
2 totality of the statements.

3 Q. Did you ever pound a table when you were
4 questioning a witness?

5 MR. MANCINI: Objection to form,
6 foundation.

7 A. Generally I would interview witnesses in
8 terms of trial preparation, so I didn't really
9 interview witnesses as such, I mean that's a term of
10 art, but I do -- no, I didn't pound my -- if that's
11 your -- when I'm in pretrial? No.

12 Q. Did you ever learn either directly or
13 indirectly from Parrish that he had pounded on the
14 table while he was questioning Debra Rienbolt and
15 injured his finger?

16 A. I don't recall.

17 Q. You don't recall whether you learned that
18 or not? It's possible you did know that -- know
19 that?

20 A. I don't recall hearing that.

21 Q. All right. Did you ever see Parrish
22 during that period of time with any kind of injured
23 finger or any kind of broken finger or injured
24 finger?

1 A. I don't recall.

2 Q. Did you either witness or learn of any
3 other potentially coercive tactics that were used by
4 either Eckerty or Parrish in questioning Debra
5 Rienbolt over the next month or two?

6 A. State's Attorney gives legal advice as to
7 voluntariness. I was not aware of any coercive
8 tactics.

9 Q. Well, were you giving them advice telling
10 them don't coerce this witness, don't suggest things
11 to her?

12 MR. MANCINI: Objection as to form.

13 A. It's general advice I give for any
14 witness. I don't recall specifically as to this
15 witness.

16 Q. All right. Did -- at some point after you
17 learned that she was a corroborating witness of
18 Darrell Herrington, did she -- did you personally
19 interview her?

20 MR. MANCINI: I'm just going to object to
21 the form as to time frame. Foundation.

22 A. If she -- it would be reflected in the
23 statements. I don't recall.

24 Q. Okay. So if -- if the reports don't

1 indicate your presence, then you weren't there.

2 A. At least at those times.

3 Q. Well, what I'm asking you is did you at
4 some point go and interview her in order to evaluate
5 her credibility as her statements were changing?

6 A. I would say yes. The defendants were
7 arrested and now we're into the pretrial
8 preparation.

9 Q. All right. So between the time that you
10 -- they were arrested and you went to the Grand Jury
11 to get indictments in March, which was March 9th I
12 believe, which is two or three weeks later, March
13 10th, all right, did you -- did you personally
14 interview Debra Rienbolt?

15 A. I would say that I would have had to have
16 talked to her between then and the Grand Jury.

17 Q. All right. And who was present other than
18 yourself when you talked to her between the time of
19 the arrest and the time you went to the Grand Jury?

20 A. I don't recall.

21 Q. Okay. Was -- was there someone else
22 present or were you by yourself?

23 A. It would be more than likely someone else
24 would be present, but I can't say that for sure.

1 Q. Was it either Eckerty or Parrish in all
2 likelihood?

3 A. I couldn't say.

4 Q. Okay. Was it an investigator or another
5 lawyer?

6 A. It's actually possible that the Assistant
7 State's Attorney would have been present at
8 something. Probably not, but it's possible.

9 Q. And who would be Assistant State's
10 Attorney at that time?

11 A. It would have been Alan Bell.

12 Q. All right. And he's the one who
13 participated in the trial of Randy Steidl with you?

14 A. Who went first? Which trial was first?

15 MR. MANCINI: Whitlock.

16 Q. Whitlock.

17 A. Okay, so then he participated in the
18 second trial which would be Steidl.

19 Q. Now, there's no record of your interview
20 with Debra Rienbolt, is that right, the one you've
21 told us in between the arrest and the Grand Jury?

22 MR. MANCINI: Objection as to form.

23 A. In the course of -- I don't recall if she
24 testified at the Grand Jury, so I mean --

1 Q. She didn't testify at the Grand Jury.

2 A. Okay.

3 Q. Did you interview her nonetheless before
4 going to the Grand Jury to --

5 A. I would say that I would have talked to
6 her before going to the Grand Jury.

7 Q. Did you take notes of that interview?

8 A. Not that I recall.

9 Q. Did she tell you anything additional to
10 the story that she gave the first time, that being
11 on the 17th of February?

12 A. Well, in light of her progressions, it
13 would have been at what time I talked to her, she
14 would have said something to me at that time frame
15 which would have been similar to what was in the
16 statements.

17 Q. That's what I'm asking you. Did she
18 basically repeat to you what we've just read here in
19 the first statement?

20 MR. MANCINI: Objection. Mischaracterized
21 what he's testified.

22 A. There are multiple statements, so it would
23 have been at what point I would have conferred with
24 her.

1 Q. That's what I'm asking you. You seem to
2 -- you've told us that it was between the time of
3 the Grand -- between the arrest and the Grand Jury
4 in all likelihood, so --

5 A. I would have talked to her at that point.
6 If the other statement was given after the Grand
7 Jury, then what she would have told me would have
8 been substantially similar to this statement.

9 Q. Well, what I'm asking you is did she
10 suggest anything new to you before the Grand Jury
11 given the fact that according to the reports she
12 hadn't given any additional information until well
13 after the Grand Jury?

14 MR. MANCINI: Objection as to form.

15 A. Well, relying on your representations,
16 again it would depend on what the -- her statements,
17 statements which were included in the police
18 reports. What she would have told me in the course
19 of trial preparation or Grand Jury preparation would
20 have been substantially similar to the police -- to
21 the last statement that was given to the police.

22 Q. Okay. So she repeated what she told the
23 police to you.

24 A. In all probability.

1 Q. Okay. So she told the story that is
2 recounted in the February 17th report on at least
3 one subsequent occasion before she changed it.

4 MR. MANCINI: Objection as to form.

5 Q. And that being to you, right?

6 MR. MANCINI: Same objection.

7 A. I don't know the dates of the statements.
8 I don't recall --

9 Q. No, let's --

10 A. -- the dates of the Grand Jury.

11 Q. Well, let's fix those then because those
12 are of public record. The next interview that we
13 have a record of with Debra Rienbolt where she
14 changes her story is I believe the 26th or the 29th
15 of March, okay. And the Grand Jury was the 10th, if
16 you look at Parrish's report.

17 MR. MANCINI: For the record, this is Ray
18 Exhibit No. 9 you're referencing?

19 MR. TAYLOR: Yeah.

20 MR. MANCINI: The dates on these reports
21 are -- oh, there we go.

22 MS. EKL: Do you have a page, Flint?

23 MS. SUSLER: Steidl 11686 through 691.

24 MR. MANCINI: That's Ray Exhibit 2 or 9?

1 MS. SUSLER: Ray 2 is Eckerty. Ray 9 is
2 Parrish.

3 MR. MANCINI: I don't have any 11.

4 MS. EKL: Right, they start at 12.

5 MR. TAYLOR: I'm looking at Exhibit 9,
6 page 44 of the report. At approximately 10:15 a.m.
7 on March 29th --

8 MS. SUSLER: It's Steidl 12357.

9 MR. MANCINI: Okay.

10 MR. TAYLOR: While you're looking, I'm
11 just going to run to the bathroom.

12 MR. MANCINI: Do you want him to review
13 it?

14 MR. TAYLOR: Yes.

15 (Brief pause.)

16 MR. TAYLOR: All right. So given the
17 fact -- and I will also mark the Grand Jury
18 transcript.

19 MS. SUSLER: I will do it.

20 MR. TAYLOR: Which I believe on its face
21 shows that it was March 10th of 1986 -- 7.

22 MR. MANCINI: And you're referring to
23 Randy Steidl's Grand Jury, just so it's clear.

24 MR. TAYLOR: I think there was only one.

1 MR. MANCINI: Grand Jury?

2 MR. TAYLOR: Uh-huh. Are you referring to
3 another Grand Jury?

4 MR. MANCINI: Didn't Herb Whitlock, didn't
5 he have a Grand Jury?

6 MS. SUSLER: I think there's only one
7 Grand Jury.

8 MR. MANCINI: There's only one? I thought
9 there were different transcripts.

10 MR. TAYLOR: Let me mark this as 3.

11 (McFatridge Exhibit No. 3 was marked by
12 the court reporter.)

13 BY MR. TAYLOR:

14 Q. Now, if you look, we have the 17th when
15 she makes the statement that we've gone over of
16 February, right?

17 A. Yes.

18 Q. Now, if you take a look at Exhibit 3 that
19 I've just marked which is the Grand Jury --

20 MR. MANCINI: He's still reading the
21 police report.

22 Q. Yeah. No, I'm just trying to set the
23 dates now. That is the 10th of March. Do you see
24 that?

1 MR. MANCINI: There are multiple dates.

2 Q. I think it's all the same date, isn't it?

3 MR. MANCINI: I'm just checking.

4 Q. Is there a reason we're thumbing through
5 this? Is there any problem with the fact that there
6 was a Grand Jury proceeding on the 10th of March at
7 which Parrish and others testified that you presided
8 at?

9 MR. MANCINI: I think the only thing I'm
10 curious is if this was all on one day or not, and
11 that's what I'm looking for.

12 Q. Okay. And are you looking at something
13 that makes you think that it wasn't?

14 MR. MANCINI: Well, the court reporter
15 certified it on the 16th. That may help my client
16 recollect.

17 Q. Well, that's when she transcribed it,
18 isn't it?

19 A. Well, it was filed the 31st.

20 Q. Well, the 31st of '87 in the Supreme
21 Court, so this is an appellate stamp on it.

22 MR. MANCINI: Up at the top.

23 Q. If you look at the bottom.

24 A. That's the Supreme Court stamp. I'm

1 talking about the stamp in the upper right. And
2 then her date -- I know it says it starts the 10th
3 and then she seals it March 16th and then it's filed
4 the 31st.

5 Q. Well, can we agree that whether it all
6 took place on one day or not, that it took place
7 between the days of March 10th and March 16th, the
8 date that the court reporter signed it?

9 A. It's a fair inference.

10 Q. Okay. Well, the fair inference is, then,
11 that at the Grand Jury proceedings --

12 MS. WADE: I didn't know if that was
13 supposed to be part of it.

14 MS. EKL: There's just extras because I
15 don't have those pages in mine.

16 MS. WADE: I'll later figure it out.

17 BY MR. TAYLOR:

18 Q. Is it a fair inference that in fact you
19 spoke with Debra Rienbolt before the Grand Jury
20 started on the 10th of March 1987 and that was
21 before she gave a statement on March 29th in which
22 she recounted additional information that she hadn't
23 recounted on the 17th?

24 A. I have no specific recollection of talking

1 to her during that time frame, but it would have
2 seemed highly probable.

3 Q. Okay. And if it were highly probable,
4 would -- if, in fact, she had changed her testimony
5 and given the additional information that she
6 subsequently gave on the 29th, you would have made a
7 record of that. Is that fair to say?

8 A. I wouldn't generate a police report, but I
9 would say if she said this it would reflect the date
10 that she made that statement.

11 Q. All right. So what I'm -- what I'm trying
12 to establish is that when you spoke with her, she
13 didn't add any additional new information other than
14 what she had already told the police on the 17th
15 when you spoke to her before the Grand Jury.

16 A. Well, since I have no specific
17 recollection of speaking to her, only that that
18 would be the norm, I can't say that.

19 Q. All right. So we have -- you have no
20 record of anything additional that she said beyond
21 what she said on the 17th when you spoke with her on
22 subsequent dates?

23 MR. MANCINI: Objection. Assumes facts
24 not in evidence.

1 A. Talking about between February, whatever
2 it is, 19th and -- or 17th and March 10th?

3 Q. Right.

4 A. Yeah, I don't recall any record.

5 Q. Okay. So on March 10th when you appeared
6 in front of the Grand Jury, you put on James
7 Parrish; is that right?

8 A. The record reflects who were witnesses.

9 Q. And he testified and then you recalled
10 him. He testified at pages 6 to 51 and then again
11 on page 92; is that right?

12 A. I would have no recollection.

13 MR. MANCINI: Go ahead and look through
14 it.

15 Q. Do you see at page 6 Examination by Mr.
16 McFatrige of James Parrish?

17 A. Yes, that's where I'm at.

18 Q. All right. So you indeed did call Mr.
19 Parrish to a Grand Jury; is that right?

20 A. Yes.

21 Q. And, in fact, he gave some 50 pages of
22 testimony to the Grand Jury; is that right?

23 A. Whatever the record reflects.

24 Q. All right. Well, if you look at this

1 transcript, that's what it reflects, does it not?

2 MR. MANCINI: Take your time and look at
3 it. Don't --

4 Q. Take a look at page 51. Do you see that
5 his testimony ends on page 51? I'm sorry, you are
6 recalling him on page 51, do you see that?

7 A. I'm just looking at the Grand Jury
8 questions. At 34 the Grand Jury was allowed to
9 question him.

10 Q. Okay.

11 A. Would have been 39 Penny Cash comes in.

12 Q. Okay. But in any event, regardless of how
13 long it was, he testified in length at the Grand
14 Jury; is that right?

15 A. Yes.

16 Q. All right. And he on pages -- starting on
17 page 23 and going for several pages thereafter, Mr.
18 Parrish talks about the interview of the 17th; is
19 that right?

20 A. On what page, I'm sorry?

21 Q. Starting on page 23 and going for the next
22 five or six pages, Mr. Parrish in essence reads the
23 police report of his interview on the 17th, doesn't
24 he?

1 A. I'm sorry, what page?

2 Q. Starting on page 23, do you see the
3 question have you had -- you asked him: Have you
4 had occasion to interview Debbie Rienbolt? Answer:
5 Yes, I have. And then you say --

6 MR. MANCINI: We don't have that on page
7 23.

8 A. Well, are you talking about page 23 of the
9 record?

10 Q. 23 --

11 A. I'm sorry.

12 Q. -- of the transcript.

13 A. And I'm looking --

14 MR. MANCINI: Our 23, the top question for
15 line 1 says: The matters[sic] is turned into an
16 east-west direction.

17 Q. Right. And the next --

18 MR. MANCINI: Mattress.

19 Q. -- have you had occasion to interview
20 Debbie Rienbolt? Yes, sir, I have.

21 A. Okay, I see.

22 Q. And again on several occasions? Yes, sir.
23 And apparently she's familiar with Herbert Whitlock.
24 Yes, sir. And then you go on to ask her[sic]

1 questions. And then starting at the bottom of page
2 23, he gives a long narrative answer. Do you see
3 that?

4 A. Yes.

5 Q. And, in fact, he goes on for some six or
6 so, seven, nine pages of the transcript. Do you see
7 that? And it's a narrative about what she told him;
8 is that right?

9 A. Okay.

10 Q. All right. So would you agree with me
11 that Parrish, in essence, recounted the interview of
12 the 17th from his report?

13 MR. MANCINI: Objection to form.

14 MS. EKL: Objection.

15 MR. MANCINI: Foundation.

16 A. It seems similar to his report of the
17 17th.

18 Q. Okay. And at this time there was nothing
19 additional that he added from her that either you or
20 he had learned in any subsequent interview up until
21 that time beyond what was said before; is that
22 right?

23 MR. MANCINI: Objection to form and
24 foundation.

1 A. I would say Detective Parrish testified as
2 to the state of the evidence on or about March 10th.

3 Q. All right. And the state of the evidence
4 on or about March 10th was, with regard to Rienbolt,
5 what she had, in essence, said on the 17th of
6 February; is that right?

7 A. It seems similar.

8 Q. And, in fact, at that point she hadn't
9 said that she was in the room or that she was in the
10 building or that she saw the murders, any of the
11 subsequent statements that she made; is that right?

12 A. It would appear at that time she does not
13 place herself at the scene.

14 Q. Now, on page 32 you ask Parrish the
15 question: And you subsequently obtained the knife
16 from Debbie Rienbolt? Answer: I have the knife in
17 my possession at this time.

18 Now, when you asked that question, you
19 were under the impression that Debbie Rienbolt had
20 given the knife to Jim Parrish; isn't that right?

21 MR. MANCINI: Objection as to form.

22 A. Presumption that Jim Parrish had
23 possession of the knife.

24 Q. Right.

1 A. Right.

2 Q. So if, in fact, you knew Ann Parrish was
3 the one that Debbie Rienbolt would have given the
4 knife to, you would have corrected the record at
5 that time, would you not?

6 MS. EKL: Objection to form, foundation.

7 MR. MANCINI: Join the objection.

8 A. Again, it would be a minor point in my
9 mind, but if -- that wasn't the question. The
10 question is who has possession of the knife at that
11 moment in time, and that issue didn't seem to arise
12 how we came in possession of the knife.

13 Q. Well, if you look on the next page, it
14 says and you -- you asked the question: And you
15 obtained this knife from her on what, February 16th
16 of '87? And he says: Yes, sir. Again, he doesn't
17 say that he obtained it from Ann Parrish. He says
18 he obtained it from Debbie Rienbolt, right?

19 A. Well, that's a matter of interpretation.
20 He obtained the knife from her on that date. Now,
21 whether there was a conduit or not, I don't know. I
22 mean that the inference would be that he obtained it
23 from her. I mean the knife came from her on
24 February 16th.

1 Q. But you have -- you knew nothing that
2 contradicted that; is that right?

3 A. I don't recall the knife being first given
4 to Ann Parrish.

5 Q. Okay. Now, you also called a series of
6 civilian witnesses to the Grand Jury; is that right?

7 A. The record reflects who testified.

8 Q. Well, let's take a look at that.

9 MR. MANCINI: There's like a table of
10 contents.

11 Q. On page I think it's 4.

12 A. Okay.

13 Q. You called Penny Cash; is that right?

14 A. Apparently.

15 Q. Eileen Armstrong; is that right?

16 A. Apparently.

17 Q. McClaskey?

18 A. Apparently.

19 Q. Marcia Edwards, Cline, Ferris and Land, is
20 that right, as well as Arbuckle and Murphy?

21 A. That's what the record reflects.

22 Q. So you called both Steidl and Whitlock's
23 alibi witnesses, that being Cline, Ferris and Land;
24 is that right?

1 A. Yes.

2 Q. And -- but you did not call either
3 Rienbolt or Herrington; is that right?

4 A. Yes.

5 Q. And you then -- you called those alibi
6 witnesses so that you could pin them down for
7 purposes of trial, did you not?

8 MR. MANCINI: Objection as to form.

9 A. I did what any good prosecutor would do
10 which would be tie down the alibi witnesses.

11 Q. Right. And so you wanted to tie them down
12 so that when you got the indictment you were seeking
13 they would not -- you would have them in a position
14 where you could impeach them if they said anything
15 other than what they said at the Grand Jury; is that
16 right?

17 MR. MANCINI: Objection as to form.

18 A. That wouldn't -- if they're telling the
19 truth, that's not going to -- they won't be subject
20 to impeachment.

21 Q. Well, why didn't you call Herrington or
22 Rienbolt to the Grand Jury? If you called all of
23 the defense witnesses to the Grand Jury to tie them
24 down, why didn't you call Rienbolt to the Grand Jury

1 to tie her down to the story that she had given?

2 A. When you're going to the Grand Jury, the
3 emphasis has shifted. The emphasis is now the duty
4 of the State's Attorney who is seeking to
5 indictment -- to convict the person that he's
6 seeking the indictment on. At that point the
7 emphasis shifts the trial strategy. And in the
8 trial strategy you're not going to give defense
9 counsel the sworn statements of, I guess for lack of
10 a better term, two eyewitnesses. That's just sound
11 trial strategy. It's as simple as that.

12 Q. And the sound trial strategy from your
13 point of view was you didn't want to pin Debbie
14 Rienbolt down to her story because you were working
15 with her trying to get more information and trying
16 to get her to say that she saw more than what she
17 said to Parrish on the 17th, right?

18 MR. MANCINI: Objection.

19 A. That's a lie.

20 MR. MANCINI: Mischaracterizes the
21 evidence.

22 Q. Well, if in fact she came to that Grand
23 Jury and told the story that Parrish put in her
24 mouth from the stand at the Grand Jury, she told

1 that under oath to the Grand Jury, you'd be stuck
2 with that story. You wouldn't be able to put her on
3 to say that she was in the room and she got blood
4 all over her and she held Debbie Rienbolt -- she
5 held Karen Rhoads down, would you?

6 MR. MANCINI: Objection.

7 MS. EKL: Objection, form, foundation.

8 MR. MANCINI: Form.

9 A. I find your statement offensive that you
10 would infer that Detective Parrish put words into
11 her mouth.

12 Q. Well, whether he put words -- I didn't say
13 he put words in her mouth.

14 A. That's exactly what you said.

15 Q. I said he -- all right. You would have
16 been stuck with whatever she said at the Grand Jury
17 if you subsequently used her at a trial, so it was
18 sound trial strategy from a prosecutor's point of
19 view not to put her on; isn't that right?

20 MR. MANCINI: Objection to form.

21 A. It would be trial strategy from a
22 prosecutor's point of view after you -- when you're
23 seeking the indictment, the emphasis changes. Once
24 you have your indictment, you're seeking to convict,

1 and it would have not been prudent to put your two
2 witnesses on to Grand Jury.

3 Q. And in this case, if you had put Debbie
4 Rienbolt on to say what Parrish recounted that she
5 had told him, you would have been stuck with a
6 witness who didn't see the occurrence, right?

7 MR. MANCINI: Objection as to form.

8 A. That's incorrect also. If, in fact, she
9 later says even after the Grand Jury, you know, I
10 was actually there, that's not what you said to the
11 Grand Jury, you're going -- that would be something
12 you would have to explain. It would be a hurdle,
13 but it would not bar her testimony. She said, I
14 didn't want to admit I was there initially, you
15 know, which is essentially what occurred in the four
16 statements. She would have had to just explain
17 that, yes, that's what I said then. I really was
18 there. For whatever reason, she would have to
19 explain it, fine. She had to explain the other four
20 statements --

21 Q. But she didn't have --

22 A. -- so it's the same thing.

23 Q. She didn't have to explain why she
24 committed perjury in front of the Grand Jury if she

1 said something different, did she?

2 MR. MANCINI: Objection as to form.

3 A. Actually it would not necessarily be
4 perjury because it's not necessarily -- when
5 somebody then increases their culpability, I'm not
6 sure that that would rise to the level of perjury.
7 What I said then and what I'm saying there, nobody's
8 going to get -- I'm sorry, I'm not sure that it
9 would rise to the level of perjury once somebody
10 increases their culpability.

11 Q. If a grand juror asked her did you
12 participate in this murder and she said no --

13 MR. MANCINI: Objection as to form.

14 Q. -- you would have a problem, wouldn't you?

15 MR. MANCINI: Speculation.

16 A. Probably it would be something that would
17 be addressed at trial and the person presumably
18 would say I didn't -- I thought about it and I want
19 to admit that I was there.

20 Q. Well --

21 A. And she --

22 Q. -- but could be charged for perjury for
23 coming into that Grand Jury, taking the oath and
24 saying she wasn't there and didn't participate in a

1 double murder, the crime of the century, and later
2 came and said she did. You could as prosecutor
3 prosecute her for perjury if she did that, right?

4 MR. MANCINI: Objection as to form. It's
5 speculation.

6 Q. Yes or no, could you have?

7 A. Anybody -- if a misdemeanor trial and
8 somebody says I didn't steal the object -- it's a
9 misdemeanor trial, I didn't steal it, takes the
10 stand, 50 people testify the person did take the
11 stand[sic], the person is convicted of theft, not a
12 prosecutor in history has then prosecuted that
13 individual who denied taking the item, even though
14 it's overwhelming it was, for perjury which would
15 have been a felony. It's just not done.

16 Q. Well, how about in a circumstance where
17 you have a crime of the century, a double murder,
18 and a witness comes in who actually participated in
19 the murder, held the victim down while she was
20 stabbed, came in, testified at the Grand Jury I
21 didn't -- I wasn't there, I didn't have anything to
22 do with it, I just drove by the scene. Would any
23 prosecutor in history prosecute her for perjury --

24 MR. MANCINI: Objection.

1 Q. -- or obstruction of justice?

2 MR. MANCINI: Objection as to form.

3 A. You'd have to ask another prosecutor.

4 MS. EKL: Objection, foundation.

5 Q. I'm asking you as a prosecutor.

6 A. I'm no longer a prosecutor.

7 Q. I'm asking you as a former prosecutor.

8 MR. MANCINI: Objection.

9 Q. Would you prosecute --

10 MR. MANCINI: Are we going to have to take
11 a break so your voice --

12 Q. -- her in that circumstance?

13 MR. MANCINI: Flint, are we going to have
14 to take a break so you can calm down and quit
15 yelling at the witness?

16 MR. TAYLOR: I'm not, I'm not ask --

17 MR. MANCINI: Yes, you are. You're
18 yelling at the witness. I understand you're trying
19 to make a point, but --

20 Q. You may answer.

21 MR. MANCINI: He may, but do we need to
22 take a break so you --

23 MR. TAYLOR: No, we don't need to take a
24 break.

1 MR. MANCINI: Okay. Do you remember the
2 question?

3 A. No.

4 MR. TAYLOR: Could you read it back
5 please?

6 (Requested portion of the deposition was
7 read by the court reporter.)

8 MR. MANCINI: I object to the form and
9 foundation of that question.

10 A. Well, can I hear what the circumstance
11 was? I mean it was a tirade of facts.

12 (Requested portion of the deposition was
13 read by the court reporter.)

14 A. Under those facts? I would probably say
15 no, and I would say the similar circumstance is the
16 fact she gave four statements, theoretically she
17 could have been prosecuted, if you want to have
18 obstruction of justice, giving false statements to
19 the police, so that option is still available. In
20 fact, she was prosecuted. She was prosecuted for
21 concealment of homicidal death and was sentenced to
22 the maximum term. So she was prosecuted.

23 Q. I asked you whether, in fact, if she --
24 let's add one more point to this. She later came

1 forward and testified under oath that she was
2 involved in the murders and that she -- that she
3 held the witness down. You could prosecute her for
4 perjury in front of the Grand Jury for lying to that
5 Grand Jury in saying she wasn't involved. You'd
6 have her cold to rights, wouldn't you? You'd have
7 two totally inconsistent, under oath statements.
8 Isn't that the essence of perjury?

9 MR. MANCINI: Objection as to form,
10 foundation.

11 A. Under those circumstances where a witness
12 gives a subsequent statement that, in fact,
13 confesses to a crime, nobody would be prosecuted for
14 perjury.

15 Q. That's your opinion as a prosecutor.

16 A. That's my opinion.

17 Q. And of course you didn't prosecute her for
18 perjury. You used her as a witness in a double
19 murder case, didn't you?

20 MR. MANCINI: Objection to form. It's
21 argumentative.

22 A. She was prosecuted for concealment of a
23 homicidal death. She plead guilty and was sentenced
24 to the maximum term.

1 Q. Yeah, but she wasn't charged with murder,
2 was she?

3 A. No, she wasn't.

4 Q. And she was involved, according to her own
5 admissions, in a murder, wasn't she?

6 A. Yes.

7 Q. And she, in fact, held somebody down
8 while -- and told that person don't worry when she
9 knew that she was in -- that woman was about to be
10 killed and that woman was killed and stabbed while
11 she held her down so she couldn't resist, right?

12 A. That's what she said and said that
13 Whitlock and Steidl participated.

14 Q. And there's no doubt in your mind she was
15 chargeable for first degree murder, right?

16 MR. MANCINI: Object as to form.

17 A. Well, she would have been chargeable, yes.

18 Q. Pardon me?

19 A. Yes.

20 Q. And you didn't charge her for murder, did
21 you?

22 A. No.

23 Q. You didn't charge her until she -- several
24 months after this Grand Jury proceeding, did you?

1 And then when you charged her, you charged her with
2 concealment of a homicidal death rather than murder,
3 didn't you?

4 MR. MANCINI: Objection as to form. Which
5 question do you want him to answer, whether or not
6 he charged her after the Grand Jury or whether or
7 not he charged her with concealment of a homicide?

8 A. I think that's a mischaracterization. I
9 think she was charged off the top of my head in
10 April.

11 Q. She was charged in April, right?

12 A. Yeah, that's not several months after the
13 Grand Jury that was in March.

14 Q. All right. So she was charged a month and
15 a half later, right?

16 MR. MANCINI: Objection as to form.

17 A. Are we going -- it would depend on the
18 dates if it was a month and a half.

19 Q. You didn't have this Grand Jury charge
20 her, did you? You didn't ask for her indictment
21 when you went in front of that Grand Jury, did you?

22 A. No.

23 Q. Did you go in front of a Grand Jury at all
24 to charge Ms. Rienbolt?

1 A. No.

2 Q. Did Ms. Rienbolt spend a day in jail prior
3 to her -- prior to this trial in May and June of
4 1986?

5 MR. MANCINI: Objection to form.

6 MS. EKL: '87.

7 Q. She didn't, did she?

8 A. Not that I recall.

9 Q. In fact, she got a recognizance bond after
10 you charged with her concealment of a homicidal
11 death, right?

12 A. The record would reflect what happened.

13 Q. And, in fact, you could have charged her,
14 as you said, with murder, right?

15 MR. MANCINI: Objection, asked and
16 answered.

17 A. Yes.

18 Q. And you didn't charge her with murder
19 because she was a witness for you, right?

20 MR. MANCINI: Objection as to form.

21 A. Presuming that -- the belief of her
22 version of events, she was a participant. However,
23 based upon her version of events, the greater
24 culpability lied with Whitlock and Steidl.

1 Q. So in order to -- because of the version
2 that she had ultimately given, you chose to give her
3 the favor of recognizance bond, charged with a much
4 lesser degree felony, drug treatment and various
5 other favors that you gave her in exchange for her
6 testimony against these two men; is that correct?

7 MR. MANCINI: Objection as to form.

8 A. Consideration that she was given is
9 contained in the written plea agreement that's part
10 of the record and that fairly states the agreement.
11 I -- again, your mischaracterization of the facts is
12 offensive.

13 Q. Well, it's offensive because why?

14 A. Because you're alleging things that are
15 not -- not of fact.

16 Q. Well, let me get this straight. Tell me
17 what's wrong with what I'm alleging. Number one,
18 you didn't charge her with perjury, right?

19 A. That's correct.

20 Q. Number two, you didn't charge her with
21 murder, right?

22 A. That's correct.

23 Q. Number three, you didn't put her under an
24 exorbitant bond and make her sit in jail waiting

1 trial. You gave her a recognizance bond, right?

2 A. But the judge actually gives the bond.

3 Q. Well, you didn't ask for, as you would in
4 a normal murder case, no bond or a million dollars
5 bond, did you?

6 MR. MANCINI: Objection to form,
7 foundation.

8 A. Well, actually since she was -- the bond
9 would have been commensurate with the charge of
10 concealment of a homicidal death.

11 Q. All right. So when you charged her with
12 concealment of a homicidal death, you knew that the
13 bond, if any, would be much -- would be makeable
14 rather than murder, right?

15 A. I don't know.

16 MR. MANCINI: Objection as to form,
17 foundation.

18 A. I don't recall --

19 MR. MANCINI: Speculation as to what --

20 A. Okay, I'm sorry. I don't recall the
21 recommendation that I made. I -- if you're saying
22 she got a recog bond, she got a recog bond.

23 Q. And that would have been based on your
24 representation, wouldn't it?

1 MR. MANCINI: Objection to form. Asked
2 and answered.

3 A. It may or may not have been.

4 Q. And you got her a lawyer too, didn't you?

5 MR. MANCINI: Objection to form,
6 foundation.

7 A. She had a lawyer.

8 Q. Jean Ochs, right?

9 A. Yes.

10 Q. And what involvement did you have in
11 getting her Jean Ochs as a lawyer?

12 A. What involvement did I have?

13 Q. Yeah.

14 A. None that I recall.

15 Q. What was your relationship with Jean Ochs?

16 A. She was another attorney in town.

17 Q. Did you have -- did any -- did you
18 recommend Jean Ochs to represent Debbie Rienbolt at
19 the time that you thought she needed a lawyer?

20 A. She may have been the Public Defender. I
21 -- so if I was -- you'd have to look at the record.
22 I mean she may have been Public Defender part-time,
23 I really don't recall.

24 Q. And you also arranged for Debbie Rienbolt

1 to go into drug treatment, did you not?

2 MR. MANCINI: Objection to form,
3 foundation.

4 A. I know she went into drug treatment, but I
5 didn't -- I didn't arrange it.

6 Q. Who paid for that?

7 A. I have no idea.

8 Q. All right. Anything else that she
9 received in exchange for her being a witness for you
10 other than what I've named?

11 MS. EKL: Objection, form.

12 MR. MANCINI: Join.

13 A. What she received for being a witness is
14 contained in the plea agreement.

15 Q. Well, the plea agreement does not mention
16 that you did not -- you chose not to charge her for
17 murder, does it?

18 MR. MANCINI: Objection, form.

19 A. What the plea agreement, if you read it,
20 indicates is that she in fact could be charged with
21 murder, if you actually read the plea agreement.

22 Q. Right, she could be charged with murder if
23 she changed her testimony from what she had -- what
24 she said in the plea agreement; is that right?

1 A. Or if the evidence shows that she had
2 greater culpability I believe is what the plea
3 agreement says.

4 Q. All right. So you had a couple of
5 assorted demands you built over her head to make
6 sure she didn't say more or less than what she told
7 you the last time that she talked before you gave
8 her the plea agreement, right?

9 MR. MANCINI: Objection to form.

10 A. That's not correct. Again, if I recall
11 the one clause, that would have, in essence,
12 indicated, if the evidence came forth that in fact
13 she was the one who planned the murders, that she
14 would have been, in fact, charged with the murders.
15 So if the evidence showed her greater culpability,
16 then she could have been charged. That's what the
17 plea agreement -- and if you've read the record, the
18 plea agreement -- actually Judge Robinson indicated
19 to her that she was to testify truthfully regardless
20 of the plea agreement; that he threw, in essence,
21 the plea agreement out and she was admonished to
22 testify truthfully. Said I don't care what you say,
23 you tell the truth, that plea agreement is going to
24 stand. That was done in the Whitlock trial.

1 Q. You -- you agreed and you actually
2 constructed the plea agreement, did you not?

3 A. The plea agreement was given to her
4 attorney and they could have made additions and
5 corrections and they may have.

6 Q. You drafted it though, didn't you?

7 A. I would have drafted the initial version.

8 Q. Let's take a look at it.

9 (McFatridge Exhibit No. 4 was marked by
10 the court reporter.)

11 MR. MANCINI: Can I get rid of the other
12 exhibits, Flint, just to --

13 MR. TAYLOR: Don't get rid of them.

14 MR. MANCINI: No, I mean move them away
15 from the witness.

16 MS. EKL: Do you have other copies?

17 MR. TAYLOR: If I can find my copy, yes.

18 MS. WADE: Is this Exhibit 4?

19 MR. MANCINI: It would be 4.

20 BY MR. TAYLOR:

21 Q. Do you recognize that to be the plea
22 agreement that you drafted?

23 A. Yes.

24 Q. And you drafted it on or before the 29th

1 of April, 1987?

2 A. Yes.

3 Q. Now, when you drafted that, there were --
4 there was a record of four separate statements that
5 Rienbolt had made in the police reports where she
6 substantially changed important aspects of her
7 testimony; isn't that right?

8 MR. MANCINI: Objection to form,
9 foundation.

10 A. Apparently four statements that were
11 contained that where she progressively inculpated
12 herself more.

13 Q. Inculpated herself more and made herself
14 a -- from a witness who just drove by the scene and
15 had some admissions made to her, to a witness who
16 went into the building, to a witness who actually
17 was there when the stabbings took place, right?
18 That was the progression in the four statements, am
19 I right?

20 A. With Whitlock and Steidl.

21 Q. Am I right?

22 A. Yes.

23 Q. Okay. So she progressively implicated
24 Steidl and Whitlock more and more and ultimately

1 also implicated herself, right?

2 A. I don't know if she implicated them more
3 and more. She certainly implicated herself more and
4 more. I mean by placing herself at the scene was --
5 gave greater detail of what occurred I guess.

6 Q. Well, it wasn't until the final statement
7 that she gave on the 13th of April, or at least the
8 one that she said she held people down, that the
9 investigators and you saw fit to give her a lawyer
10 and give her her warnings, right?

11 MR. MANCINI: Objection as to form.

12 A. The judge provides a lawyer.

13 Q. Well, the warnings you or the
14 investigators give; isn't that right?

15 MS. EKL: Objection, form.

16 MR. MANCINI: Join.

17 A. Excuse me?

18 Q. The judge doesn't give the warnings, the
19 Miranda warnings. Do we understand what warnings
20 mean? I mean we're on the same page with warnings?

21 A. Once you used the term Miranda, now we are
22 on the same page. There's warnings and there's
23 warnings.

24 Q. Okay, talking about Miranda.

1 A. Yes.

2 Q. What other warnings were you thinking that
3 you might have given her other than Mirandas?

4 A. Well, judge may give warnings or admonish
5 an individual who -- at arraignment.

6 Q. Well, Mirandas were not given to -- to
7 Debbie Rienbolt until the 13th of April, were they?

8 MR. MANCINI: Objection as to form.

9 A. Based upon the attachment to what you've
10 shown me as the plea agreement, that's certainly one
11 time. Whether she was given Miranda warnings prior
12 to that, I don't recall.

13 Q. Well, as a State's Attorney, would you
14 think it would be appropriate for her to have been
15 given warnings prior to the 13th?

16 MR. MANCINI: Objection as to form.

17 A. Depends on the facts.

18 Q. Well, the facts as you knew them.

19 MR. MANCINI: Objection as to form and
20 foundation.

21 A. Based upon the police reports, she was
22 never in custody.

23 Q. Okay, so --

24 A. Miranda would not have been triggered.

1 Q. So your answer would be, no, you don't
2 think that she needed to be given the warnings
3 before the 13th, right?

4 MR. MANCINI: Objection as to form and
5 foundation.

6 A. That's not what I said. I said I relied
7 on the police reports that that's what seemed to be
8 the case. Again, it would be the totality of the
9 circumstances, and I don't know the totality of the
10 circumstances, I don't recall the totality of the
11 circumstances.

12 Q. Well, she --

13 A. I do know that the statement that's
14 attached to this was reviewed with her and her
15 attorney and they had the option to change anything
16 in there.

17 Q. All right. When she was questioned on the
18 13th, she was questioned at her house, right?

19 A. I don't know.

20 Q. Was she in custody on the 13th to your
21 knowledge?

22 A. I don't know.

23 Q. Now, going to the plea agreement, if we
24 look at paragraph 4, did you draft that paragraph?

1 A. I would say yes.

2 Q. And it says that: The defendant agrees to
3 truthfully testify on behalf of the People of the
4 State of Illinois during the trial and hearings
5 concerning People versus Whitlock and People versus
6 Steidl. Is that right?

7 A. Yes.

8 Q. And then it goes on and says that: The
9 defendant shall be granted a recognizance bond
10 pending her sentencing hearing. Is that right?

11 A. Yes.

12 Q. So you drafted that as well, right?

13 A. Yes.

14 Q. So you agreed with her that she would get
15 a recognizance bond, right?

16 A. Apparently.

17 Q. And a recognizance bond means you don't
18 have to put up any money and you stay free; isn't
19 that right?

20 A. You don't put up any money. You're still
21 subject to certain conditions of the bond.

22 Q. You're not in jail.

23 A. You're not in jail, correct.

24 Q. In that sense, you're free of being

1 incarcerated; is that right?

2 MR. MANCINI: Objection to form.

3 A. She was not in jail.

4 Q. And she would have a recognizance bond
5 until she was sentenced; is that right?

6 A. Yes.

7 Q. And, in fact, it says that: The People,
8 meaning the State, waive any additional criminal
9 charges regarding the defendant's involvement and/or
10 concealment of the deaths of Dyke and Karen Rhoads
11 in Paris, Illinois, on or about July 6 UNLESS, in
12 capitals, said defendant gives testimony materially
13 different from the attached statement of facts which
14 incorporates her interviews with law enforcement
15 authorities. You wrote that; is that correct?

16 A. Yes.

17 Q. And, in fact, that was a key part of your
18 agreement; is that right?

19 MR. MANCINI: Objection as to form.

20 A. It's part of the agreement.

21 Q. And you wanted to make sure that she would
22 not change her testimony and flip you if you got to
23 trial on these murder cases, right?

24 MR. MANCINI: Objection to form.

1 A. She had given a statement that was
2 reviewed by her attorney, and if she materially
3 varied from her own statement, then she was subject
4 to further prosecution.

5 Q. And you were -- you wanted -- you had that
6 agreement with her and her attorney because you
7 wanted to make sure that she wouldn't change her
8 testimony when she got on the stand against Mr.
9 Steidl and Mr. Whitlock and state that, in fact, her
10 testimony was false.

11 MR. MANCINI: Objection.

12 Q. You were worried about that, weren't you?

13 MR. MANCINI: Objection as to form.

14 A. The overriding paragraph is that she was
15 to testify truthfully, and as I stated earlier, she
16 was actually -- the plea agreement was set aside and
17 the judge admonished her that the plea agreement
18 would stand regardless of her testimony and she was
19 to testify truthfully.

20 Q. The judge hadn't admonished her at the
21 time that you wrote this agreement and she signed
22 it, had he?

23 A. Not at that time.

24 Q. And, in fact, if you're saying the judge

1 set it aside, he set it aside because this part of
2 the agreement was unconscionable, right?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 A. That's absolutely -- that's not a fact.
6 The judge said that he understood the situation, but
7 he was seeking or he thought that it was the
8 overriding -- for the integrity of the trial or
9 whatever, I can't recall his exact words, but that
10 he didn't really have a problem with the language.
11 He just said this is what's going to happen in my
12 court. We want the truth.

13 Q. Well, the integrity of the trial would
14 be -- in the judge's view would be compromised if
15 you had an agreement that if she didn't testify in
16 the same manner as in this statement here that you
17 attached, that she could be charged with murder,
18 right?

19 MR. MANCINI: Objection. Are you asking
20 him to testify as to the judge's view because that's
21 how you prefaced the question? So if you are,
22 that's how he's going to answer it, in the judge's
23 view.

24 MR. TAYLOR: You don't know how he's going

1 to answer it I would assume.

2 MR. MANCINI: Under that question --

3 MR. TAYLOR: Let him answer it.

4 MR. MANCINI: Well, it's under the
5 presumption that you're asking the judge's view, so
6 I'm objecting to the form --

7 MR. TAYLOR: Could you --

8 MR. MANCINI: -- of that question.

9 MR. TAYLOR: -- read the question back
10 please? Or let me rephrase the question.

11 BY MR. TAYLOR:

12 Q. You testified that the integrity -- the
13 judge said that the integrity of the trial required
14 that this portion that you drafted and got Rienbolt
15 to agree to did not -- should not be followed,
16 right?

17 MR. MANCINI: Objection to form.
18 Mischaracterizes what he testified to.

19 A. That's not what happened. The bottom line
20 is what happened is the judge said the plea
21 agreement -- you testify truthfully, which is the
22 same thing I had told her on multiple occasions and
23 including in the plea agreement. That was what my
24 duty was, that's what I try to do, present the

1 truth.

2 Q. Okay, you're presenting the truth. You
3 got four versions of this truth from her, you picked
4 a certain version, and that was this version that
5 put these men on Death Row, right?

6 MR. MANCINI: Objection as to form.

7 A. She gave the statements that were reviewed
8 with her own attorney.

9 Q. My question -- you said your pursuit was
10 the truth and that this agreement was in pursuit of
11 the truth. This agreement in fact, with capital
12 letters, said unless she gives testimony material
13 different -- materially different from the attached
14 statement of facts. Right?

15 A. Yeah, and it also says there was the fact
16 the case could prove greater culpability on the part
17 of the defendant, in which case the plea agreement
18 becomes voidable at the discretion of the People.

19 Q. So if she were to make herself more
20 culpable, which would also hurt your case, she could
21 be screwed too, right?

22 MR. MANCINI: Objection as to form. How
23 can he answer that?

24 Q. Let me put -- let me rephrase the

1 question.

2 MR. MANCINI: Thank you.

3 Q. You had her in two vices. One is if she
4 said less about her involvement and said less about
5 Whitlock and Steidl's involvement, you could
6 prosecute her for murder. And on the other hand, if
7 she said more about her involvement, you could
8 prosecute her for murder. So you had her in a
9 double vice, right? She had given four different
10 statements, she was liable to give four more
11 different statements, but you wanted to keep her in
12 this one, so you put a double vice on her. If you
13 say less, we'll prosecute her for murder; if you say
14 more, we'll prosecute her for murder, but if you
15 stay with this, we'll give you a recognizance bond,
16 we will put you in drug treatment and basically
17 we'll try to get you probation, right? Isn't that
18 really what this agreement is about?

19 MR. MANCINI: Objection as to form. It's
20 argumentative. It misstates about a half hour's
21 worth of testimony. If you can answer that
22 question, give it a shot.

23 A. It sounded like a statement rather than a
24 question.

1 Q. It was a question.

2 A. Then can you restate it for me please?

3 MR. TAYLOR: Would you read it back
4 please?

5 (Requested portion of the deposition was
6 read by the court reporter.)

7 A. First of all, I don't say anything about
8 drug treatment. Second of all, she in fact was
9 sentenced to five years in a penitentiary. Third of
10 all, the purpose of the plea agreement was to secure
11 truthful testimony, all of which became academic
12 since the judge admonished her to provide truthful
13 testimony, which was the purpose of the trial. The
14 plea agreement was not dependent on the murder
15 convictions of the defendants.

16 Q. So your answer to my question is no?

17 MR. MANCINI: No, his answer is what his
18 answer is.

19 A. She was to tell the truth, that's the
20 bottom line.

21 Q. Okay. So the bottom line in your opinion
22 was not paragraph 7 which was the crux of the deal
23 that you struck with her, but rather it was that she
24 was supposed to tell the truth, which you didn't

1 need a deal for her to tell the truth, did you?

2 MR. MANCINI: Objection as to form.

3 Q. Well, let me withdraw the question. You
4 were so concerned about whether she'd tell the truth
5 when she testified that you needed a plea agreement?
6 You needed -- you needed her to agree to tell the
7 truth? Isn't that what a witness does when they
8 raise their hand? What was it that you needed her
9 to sign an agreement, the heart of which was that
10 she tell the truth? Please explain that.

11 MR. MANCINI: Objection as to form.

12 A. As you've pointed out, she was a
13 participant in the murders, and if she was -- if it
14 was appropriate to charge her to give her some
15 responsibility, some culpability for those murders,
16 that is the purpose of the plea agreement. She
17 didn't get immunity. She didn't walk away free.
18 She was charged, she was convicted, spent five years
19 in prison. The thrust of the plea agreement is to
20 tell the truth. She had counsel, she reviewed her
21 statement, all of which was appropriate under the
22 circumstances.

23 Q. Well, she didn't get five years in the
24 penitentiary, she didn't serve five years in the

1 penitentiary. She served less than two years in the
2 penitentiary, didn't she?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 A. I would have no clue. She was sentenced
6 to five years, and whatever the time is --

7 Q. Well, you intervened and helped her get
8 with Judge Pearman to help her to get the two months
9 that she was under -- under surveillance by the
10 police, to get time served for the time she was in
11 her house, right?

12 MR. MANCINI: Objection as to form.

13 Q. You wrote a letter or letters on that one,
14 didn't you?

15 MR. MANCINI: Objection as to form,
16 foundation.

17 A. Not that I recall.

18 Q. You don't recall that now?

19 A. I don't recall her getting credit for
20 that.

21 Q. You don't recall having something to do
22 with her getting credit for that?

23 A. I don't recall if she got credit for that
24 or not.

1 Q. Well, in any event, she didn't do five
2 years, we know that, right?

3 MR. MANCINI: Objection to form,
4 foundation. It's been asked and answered.

5 A. She went to the penitentiary.

6 Q. She went to the penitentiary, but didn't
7 you promise to her or lead her to believe that she
8 was going to get probation?

9 MR. MANCINI: Objection to form,
10 foundation.

11 A. No.

12 Q. Is she lying when she testified to that --

13 MR. MANCINI: Objection to form.

14 Q. -- the other day?

15 MR. MANCINI: Foundation.

16 A. It was a blind plea open to the judge.

17 Q. So you -- did you make a recommendation as
18 to what she should get for a sentence?

19 A. My recollection is the State stood moot.

20 Q. Okay. So that was -- you took no position
21 publicly on the record, but didn't you privately let
22 her know that you thought that she would probably
23 get probation?

24 MR. MANCINI: Objection to form,

1 foundation.

2 A. No.

3 Q. All right, let's go back to this agreement
4 to tell the truth. You really didn't answer my
5 question. My question is why did you feel that you
6 needed an agreement, the heart of which was for a
7 witness to tell the truth, when in fact that is what
8 a witness is sworn to do in each and every case that
9 they're called?

10 MR. MANCINI: Objection to form. It's
11 been asked and answered.

12 A. It would be routine practice to enter into
13 a plea agreement with a codefendant. The plea
14 agreement is this is your plea agreement if you
15 agree to testify truthfully on behalf of the State.
16 I mean I don't understand why this case is any
17 different than the other 10,000 cases annually in
18 the state of Illinois. This is a plea agreement
19 like you would do with any codefendant. They plea
20 to a lesser charge in exchange for testimony on
21 behalf of the State.

22 Q. And in the 10,000 cases that you know
23 about in the state of Illinois, do you file a one,
24 two, three, four, five, six page statement of facts

1 that the witness is required to testify to in order
2 not to be charged with a murder?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 Q. Did you do that routinely? Did you write
6 up a statement for what the witness is supposed to
7 say in exchange for the plea agreement? That's not
8 a common way for prosecutors to proceed, is it?

9 A. I can't speak for other prosecutors, but
10 this was based upon her statements with the advice
11 of counsel.

12 Q. Did you ever do this before or after,
13 write up a six page statement of what the witness
14 must say on her testimony in order to get the
15 agreement that you're offering her? Ever do that
16 before or since as a prosecutor or is this the one
17 time you did it?

18 A. I don't recall.

19 MR. MANCINI: Objection as to form.

20 Q. Can you give us another case where you did
21 this?

22 A. I don't recall.

23 Q. And, in fact, you already had her
24 statement -- strike that.

1 (Discussion off the record.)

2 BY MR. TAYLOR:

3 Q. All right. Now, had you -- you
4 communicated to her that, in fact, that if she
5 didn't cooperate, you would charge her with murder,
6 right?

7 A. No.

8 MR. MANCINI: Objection, form, foundation.

9 Q. If she had said -- come in and her lawyer
10 said, hey, no more cooperation, I'm taking the Fifth
11 from here on in, I don't understand how the hell you
12 didn't give her warnings before and how you got her
13 to say all of this that implicated her, I'm not
14 letting her say another word, would you charge her
15 with murder then?

16 MR. MANCINI: Objection, form, foundation.

17 A. I wasn't faced with that.

18 Q. Well, how did you get Jean Ochs not to say
19 that?

20 MR. MANCINI: Objection to form,
21 foundation.

22 A. You would have to ask Jean Ochs.

23 Q. Well, did you talk to Jean Ochs about why?
24 In fact, did you -- did you have to do any

1 convincing to get her to say that Debra Rienbolt
2 would continue to cooperate with you or did that
3 just fall out of the sky for you?

4 MR. MANCINI: Objection to form,
5 foundation.

6 A. She was -- she was obviously given
7 consideration as noted in the plea agreement. I
8 mean --

9 Q. Right, she was given consideration, and
10 that consideration was as long as you don't flip us
11 and change your testimony, we won't charge you with
12 a double murder and ask for the death penalty,
13 right?

14 MR. MANCINI: Objection to form,
15 foundation.

16 A. No.

17 Q. Isn't that what this statement says?

18 A. No. This statement says tell the truth.

19 Q. Okay. And once again, I'll ask you for
20 the tenth time, why did you need an agreement for
21 her to tell the truth?

22 MR. MANCINI: Objection. It's been asked
23 and answered for the tenth time, at least based on
24 Mr. Taylor's representation.

1 A. Because it was part of a plea agreement to
2 a lesser charge.

3 Q. Okay. And would you agree with me that
4 this was a very unique plea agreement, one that you
5 cannot recall ever having used before or after this
6 one occasion?

7 MR. MANCINI: Objection to form,
8 foundation.

9 A. I can't tell you how unique it is.

10 MR. TAYLOR: All right. Let's take a
11 lunch break.

12 MS. SUSLER: Come back at 1:30?

13 (Recess at 12:31 p.m. to 1:44 p.m.)

14 BY MR. TAYLOR:

15 Q. I'd like to call your attention to Ray
16 Exhibit No. 9 and specifically to page 44 of the
17 report. Up on the top right corner if you look at
18 the pagination of the report itself.

19 MR. MANCINI: To make it easier for you --

20 A. Okay.

21 MR. BALSON: Flint, what are you looking
22 at?

23 MR. TAYLOR: I'm looking at the Parrish
24 reports, the entry of --

1 MR. BALSON: What date?

2 MR. TAYLOR: March 29th.

3 MR. BALSON: Thank you.

4 BY MR. TAYLOR:

5 Q. Do you find them? At the bottom of the
6 page, we're talking about at approximately 10:15
7 a.m. on March 29th, 1987. Do you see that? Are you
8 on the same page?

9 A. (Indicating).

10 Q. Yes, do you see that?

11 A. Yes.

12 Q. And this is the RO being Parrish, right?
13 This is a Parrish report?

14 A. Yes.

15 Q. Okay. And it concerns an interview with
16 Debra Rienbolt; is that correct?

17 A. Yes.

18 Q. And this is the second reported interview
19 with Rienbolt; is that right? The first one was in
20 February that we've already looked at. Recorded I
21 mean in the reports. I don't mean whether there
22 were more.

23 A. I understand what you're saying, and I'm
24 going to say according to the record's

1 representation that this would be the second one.

2 Q. Okay. And this is subsequent to the Grand
3 Jury, right? Whether we say that it went two days
4 or one day, it was done by at the latest the 16th,
5 so this is subsequent to the Grand Jury, right?

6 A. Yes.

7 Q. All right. And in this, Debra speaks to
8 Parrish, but no one else is indicated present, is
9 that right, in terms of law officers? If you look,
10 it says RO conducted an interview with Debra
11 Rienbolt.

12 A. No other officers are referenced.

13 Q. Okay. So it would be your best
14 recollection that you -- looking at this report,
15 that you were not present for this interview; is
16 that correct?

17 A. My best recollection, I would not have
18 been present.

19 Q. And you don't know personally whether any
20 suggestive/coercive tactics were used by Parrish in
21 this interview or not, do you?

22 A. I don't know the circumstances of the
23 interview.

24 Q. Okay. And you don't know whether she was

1 under influence of drugs or alcohol or sober or
2 whatever, do you?

3 A. I don't know the circumstances of the
4 interview.

5 Q. All right. Now, looking at this report,
6 she's adding some significant information that
7 wasn't -- that she hadn't told in the prior report;
8 is that right?

9 A. Can I look at it?

10 Q. Well, yeah, let me call your attention --

11 A. Okay, that's fine, that's fine.

12 Q. -- to particular things that I think we
13 can agree on here. First of all, if you look at
14 page 47, at the bottom she says the next thing she
15 recollects is getting out of a car at Dyke and
16 Karen's house and seeing no one around. She stated
17 that after getting out of the car she remembers
18 going into the house through a porch into the
19 kitchen, and at this time she stated she could hear
20 people screaming and a voice saying oh God, oh God.
21 She said that it seemed like the screaming went on
22 for a long time.

23 She stated she went upstairs and saw a
24 vase-like object approximately 18 inches tall. That

1 she remembers a doorway and almost tripping over
2 something and then looking down and seeing a body by
3 the door and a lot of blood. She stated that she
4 saw something brown in the room, and Debra stated
5 that she then saw a bed with the foot of the bed in
6 the middle of the room in line with the door. Debra
7 stated the bed was to the right of the door as you
8 went into the bedroom and also observed another body
9 lying on the floor on the other side of the bed away
10 from the door. She stated that she also saw a lot
11 of blood everywhere in the room.

12 She says then the next thing she remembers
13 is being outside and getting back into the car. And
14 then it appears that she -- that there's a break
15 here and she's talking about a subsequent time. And
16 she says Debbie remembers telling Herbie that she
17 had to have the knife back and Herbie wanted to get
18 rid of the knife. Finally Herbie gave the knife
19 back because it was Vic's and Deb insisted on
20 getting the knife back. And then she says that she
21 went home and -- while she remembers hearing sirens.

22 So this whole recountation -- recitation
23 that she gives here to Parrish about going into the
24 place and seeing the dead bodies and blood all

1 around in the bedroom, this is new, right? This is
2 -- this is certainly different than what she had
3 said in February when she just said that she had
4 driven by the place, am I right?

5 MR. MANCINI: Objection to form.

6 A. Yes.

7 Q. Okay. And then she goes on and says --
8 she doesn't mention in this narrative saying that
9 she saw either Herb or Randy in the place when she
10 goes in there, does she?

11 MS. EKL: Objection. Document speaks for
12 itself.

13 Q. If you follow with me, if you look in the
14 middle of the page, she says: Debra stated that she
15 also saw a lot of blood everywhere in the room. She
16 stated the next thing she remembers is being outside
17 and getting back into the car. Do you see that?

18 A. I see that, but I need to read the report
19 if she makes other references.

20 Q. Right. Do you see any reference that she
21 makes that she saw Herbie or Randy in the house when
22 she was in there?

23 A. No, she -- it says she states later that
24 Herb and Randy came down by the house and that Herb

1 had blood on him.

2 Q. Okay. But that could be her house or that
3 could be the house, right?

4 MR. MANCINI: Objection as to form.

5 A. And it -- but the point is she saw them
6 together at the time or shortly thereafter the
7 murders.

8 Q. Right. I'm not asking you whether there's
9 not -- this may be additional evidence that she's
10 giving of their involvement, but I'm asking you
11 whether at this point she doesn't say anything about
12 seeing them in the house, does she?

13 MR. MANCINI: Object as to form.

14 Q. In this interview.

15 A. The statement speaks for itself.

16 Q. And the statement doesn't say that, right?

17 A. Not specifically.

18 Q. Okay. And -- but the statement does have
19 Herb telling her -- giving her the knife and her
20 saying that it's Vic's knife, her husband Vic, and
21 that she then washed the knife off, right?

22 A. It says that Herb and Randy came to her
23 house and Herb threatened her not to say anything
24 and gave her the knife.

1 Q. Right.

2 A. That she washed the knife off in hot water
3 and cleaned the knife up.

4 Q. And it also in here somewhere says that it
5 was Vic's knife, right?

6 A. Yes.

7 Q. Okay. So that she had never said before
8 it was Vic's knife. Before she said it was Herbie's
9 knife, right?

10 MR. MANCINI: Object to --

11 Q. In the 17th, in the statement of the 17th.
12 Do you remember that?

13 A. The statements speak for themselves, but
14 that would be my recollection is that she got the
15 knife from Herbie.

16 Q. Okay. No, that's not my question. My
17 question is in the earlier statement she said that
18 -- yeah, she said earlier, yeah, that she got the
19 knife from Herbie, that it was Herbie's knife.

20 A. Yeah.

21 Q. This time she says it's Vic's knife, her
22 husband's, right?

23 A. Yes.

24 Q. Okay. So she's now saying she's in the

1 house, she sees the bodies, she see the blood, there
2 was some additional admissions that Herbie and Randy
3 allegedly made and she changes the story with regard
4 to whose knife it is, right?

5 MR. MANCINI: Object to form.

6 Q. Is that a fair summary of the differences
7 and the additions between the two reports?

8 A. Recognizing the documents speak for
9 themselves, yes.

10 Q. All right. And was it also true that
11 what's consistent is that she says that she washed
12 off the knife in hot water and cleaned it up; that
13 she said that both on the 17th of February and again
14 here on the 29th; is that right?

15 A. Well, that would not be the only
16 consistency --

17 Q. No, that's a --

18 A. -- but that would be one of them.

19 Q. That's a consistency that actually would
20 implicate her in a concealment, right?

21 A. That's what -- that's what she was -- I
22 believe that was the basis of the charge.

23 Q. All right. So you did not charge her or
24 arrest her for concealment of a homicide -- strike

1 that.

2 I take it that you received this
3 information around the same time that Parrish got
4 it. This was she -- this was significant new
5 information that he would have passed on to you on
6 or about March 29th; is that right?

7 A. I would say yes.

8 Q. But again, with regard to this interview,
9 you do not know the circumstances of the interview,
10 whether Parrish used any coercive or suggestive
11 tactics, whether Debra was sober, drunk, under the
12 influence of drugs. None of that you know.

13 MR. MANCINI: Object to form.

14 Q. Or knew at the time either; is that right?

15 A. I was not present at the interview.

16 Q. Do you recall asking Parrish the
17 circumstances of the interview in any way?

18 A. I don't recall.

19 Q. All right. But did he volunteer to you
20 anything unusual about the circumstances of this
21 interview with regard to coercion, influence of
22 drugs, suggestion, anything like that?

23 A. I don't recall anything that would suggest
24 that the interview was involuntary.

1 Q. All right. Once you got this new
2 information, did you take it to the Grand Jury in
3 order to correct the record of what Parrish had
4 originally stated with regard to Debbie's
5 involvement?

6 MR. MANCINI: Object to the form.

7 A. There would be no reason. They were
8 already indicted and all this would have done is
9 made them more culpable.

10 Q. So you didn't -- you made no effort to
11 correct the record on that; is that correct?

12 MR. MANCINI: Object to the form.

13 A. I believe there wasn't any reason to
14 correct the record.

15 Q. All right. And did this also make her
16 more culpable that she had actually gone into and
17 seen the murders and then destroyed the -- had
18 altered the knife than if she had just simply gotten
19 the knife as she said in the first story that she
20 told?

21 MR. MANCINI: Object to the form,
22 foundation.

23 A. Arguably, yes.

24 Q. But you didn't go back to the Grand Jury

1 and seek her indictment, did you?

2 A. No.

3 Q. And you didn't seek to put her -- and
4 since she was changing her testimony, did you seek
5 to put her under oath and ask her under oath what
6 her story was?

7 A. I believe she was under oath at the time
8 of the plea agreement.

9 Q. All right. But that was sometime
10 subsequent, wasn't it?

11 A. Yes.

12 Q. And she had already changed her story
13 again after that, after -- at that time before you
14 put her under oath in the plea agreement, didn't
15 you?

16 MR. MANCINI: Object to the form.

17 A. I believe she was under oath and under the
18 advice of counsel at the time of the statement of
19 the plea agreement.

20 Q. All right. But not -- not in front -- you
21 didn't take it to the Grand Jury is my question; is
22 that right?

23 MR. MANCINI: Objection. Asked and
24 answered.

1 A. Yes, I did not take her to the Grand Jury.

2 Q. Okay, thank you. Now, the next time
3 there's an interview that's recorded in either of
4 the police reports is the 11th of April. Did you
5 speak with Ms. Rienbolt yourself at any time between
6 the 29th of March and the 11th of April which is the
7 next recorded interview with her?

8 A. I don't recall.

9 Q. All right. If you look at page 50 of the
10 Parrish report, it says in the second paragraph, it
11 says: At approximately 4:30 p.m. on April 11th. Do
12 you see that?

13 A. Yes.

14 Q. That Parrish received a telephone call
15 from the Rienbolt residence and requested --
16 requesting her to come there. Do you see that?

17 A. Yes.

18 Q. Requesting him to come there, excuse me.
19 And did Parrish inform you on April 11th that he had
20 received a call from Debra Rienbolt or from her
21 residence, excuse me, and that he had a request to
22 go to her residence to speak with her?

23 A. I don't recall.

24 Q. All right. And do you know someone -- in

1 this report, it says that at least someone named Lee
2 Chambers, a counselor at the Human Resource Center,
3 was there upon his rival. Do you know who Lee
4 Chambers is?

5 A. Other than, you know, I believe that she
6 was a counselor.

7 Q. All right. Did you ever have any
8 conversations with her about this case?

9 A. Not that I recall.

10 Q. All right. Now, this indicates that he --
11 that she said that she had remembered more details
12 in the case and at this time she wanted to speak
13 with -- that she, meaning Debra, wanted to speak
14 with Parrish. And that before conducting an
15 interview with her, Parrish verbally read her her
16 constitutional rights and warnings with Ms. Chambers
17 present.

18 Did you -- did Parrish contact you and ask
19 you whether to advise him on -- as to whether to
20 give her her rights at this point, her Miranda
21 rights?

22 A. I don't recall.

23 Q. All right. And in any event, this -- in
24 this statement, she goes on to say additional

1 information that implicated Herb Whitlock and Randy
2 Steidl; is that correct?

3 A. I'd have to look at the statement.

4 Q. Well, if you look at the statement and go
5 to the heart of it, it says that, if you look at the
6 bottom, she says that she entered the --

7 MR. MANCINI: What page, Flint?

8 Q. At the bottom of the same page: That she
9 remembers entering the Rhoads residence through the
10 back door and onto a porch and going into the
11 kitchen and proceeding upstairs. She stated she
12 remembers the vase and flowers on a landing at the
13 top of the stairway and she stated she remembered a
14 broken lamp in the bedroom which she stated that she
15 believes that this broken lamp was used on somebody.

16 Now, with regard to the broken lamp, this
17 is the first time that a broken lamp and that it was
18 allegedly used on some of the -- one of the victims
19 and more, that's the first time that this comes up;
20 isn't that correct?

21 MR. MANCINI: Object to form, foundation.

22 A. The documents would speak for themselves.

23 Q. All right. But you've seen the documents
24 and you received the documents at the time. Is it

1 fair to say that this is the first time in any of
2 the recorded statements that we have here that the
3 vase -- a broken lamp, excuse me, is mentioned and
4 particularly that the broken lamp was used on
5 somebody according to Rienbolt?

6 A. I received the documents -- I received the
7 documents sometime in 1987.

8 Q. Right.

9 A. So I don't -- I can only indicate that the
10 documents speak for themselves. So if you're saying
11 this is the first time and the documents say it's
12 the first time, fine, but to ask me to remember that
13 from what was handed to me in 1987 is a stretch.

14 Q. Well, you've also had occasion to look at
15 them today and there was nothing in either of the
16 two prior reports --

17 A. Well --

18 Q. -- that we looked at that indicates that
19 she stated anything about a broken lamp being in the
20 bedroom that was used on somebody, right? Isn't
21 that new as of the 11th of April?

22 A. Have had the opportunity to read or give a
23 cursory review of the reports. I mean I haven't
24 read them like I would have at the time.

1 Q. Okay. But the review that you have had
2 today doesn't -- indicates that this is the first
3 time; isn't that right?

4 A. Based upon my cursory review, this is the
5 first time I've seen broken lamp.

6 Q. Okay, but now -- now this time, as we go
7 onto the next page, she then is now giving a version
8 that both Karen and Dyke were alive, that Dyke was
9 trying to get out of the bed, that he was stumbling,
10 he was lying on the floor; that Debra stated that
11 during this time that she was on the other side of
12 the bed trying to calm Karen Rhoads down because she
13 was fighting and screaming, oh God, oh God, and that
14 she told Karen everything would be all right on
15 several occasions because it wasn't her that they
16 were after.

17 And that she stated she remembers a
18 nightstand and that while she was holding her down
19 on the bed that she wasn't wearing any clothes on
20 the top part of her body. That Debra stated she
21 remembers telling Herbie and Randy that she's got
22 nothing to do with it and to leave her alone and
23 that she made this comment on several occasions, no
24 response, and then she stated that Karen was lying

1 on the floor on the south side of the bed.

2 And she says she remembers the basement at
3 the residence and also remembers a shower being
4 taken and a sheet being used to wipe blood off and
5 then she remembers seeing a fire and Herbie to be
6 present at the fire. Now -- and that the next day
7 she burnt the clothes she was wearing in a trash
8 barrel.

9 All of that is new information that she's
10 -- that she's supplying and it's at odds with her
11 prior statements that, first of all, the first time,
12 that she wasn't in the building, and the second
13 time, she was in there only after the bodies were
14 dead, right? So she's now -- this is the third
15 version; is that correct?

16 MR. MANCINI: Object as to form.

17 A. It's a progression.

18 Q. All right. Well, progression, but it's a
19 third version, isn't it?

20 MR. MANCINI: Object as to form.

21 A. Third statement.

22 Q. All right. And it's different in terms of
23 key parts of the information than the other two,
24 isn't it?

1 MR. MANCINI: Object as to form.

2 A. Yes, but the money that she got, that was
3 corroborated. The shower I believe was
4 corroborated.

5 Q. You never saw the shower, did you?

6 A. Did I see the shower?

7 Q. Yeah.

8 A. I don't recall seeing it.

9 Q. Okay. But even in this third version she
10 does not describe seeing the stabbings, does she?

11 A. Well, not specifically. She apparently
12 remembered Dyke stumbling and lying between the bed
13 and the door which is the position that he was
14 found.

15 Q. Right.

16 A. The oh Gods and blood and --

17 Q. Everything but the actual stabbings she
18 describes in terms of what she -- in terms of being
19 there when the crime allegedly occurred, right?

20 A. Describes where Karen's body was which is
21 correct.

22 Q. I'm not asking whether it's correct. I'm
23 asking you whether in this version, she's now there,
24 they were alive when she came in, she's holding

1 Karen down, but she doesn't say Randy stabbed Dyke
2 or Herbie stabbed Dyke and she doesn't say Randy
3 stabbed Karen or Herbie stabbed Karen. She says --
4 she does not describe the stabbings themselves,
5 right?

6 MR. MANCINI: Object as to form. He's not
7 there.

8 A. Not specifically.

9 Q. Not specifically or generally, right? I
10 mean she just doesn't mention it for some reason.

11 MR. MANCINI: Object to form. He's not
12 there to hear the interview.

13 Q. According to the recorded record.

14 A. Well, the report speaks for itself.

15 Q. All right. So would you -- at this point,
16 given what she said, would you say she's now
17 implicated herself in the murders themselves?

18 A. Yes.

19 Q. All right. At this date, you didn't seek
20 her arrest and you didn't seek to bring her before a
21 Grand Jury, did you?

22 A. No.

23 Q. And you didn't reconvene or convene a
24 Grand Jury to hear evidence including any evidence

1 that she might give concerning her involvement in
2 the case, did you?

3 A. No.

4 Q. Now, this happened at her house and she
5 was free to stay at her house after she implicated
6 herself in this murder; is that right?

7 A. I don't recall her being placed under
8 arrest, so I would say that would be correct.

9 Q. All right.

10 A. She was there with her counsel.

11 Q. And, in fact, I assume that before you
12 even saw this in writing, that Parrish contacted you
13 and told you now Rienbolt is saying she was there
14 when the murders took place and she's -- she's
15 saying that she had some involvement in it; is that
16 right?

17 A. That would be likely.

18 Q. Okay. And so your decision not to seek
19 her arrest and to seek a Grand Jury to charge her
20 was based on the information that Parrish supplied
21 you that is summarized in this report of April 11th;
22 is that right?

23 MR. MANCINI: Object as to form.

24 A. She was not charged.

1 Q. Based on this -- based on this information
2 you had.

3 A. She was not charged at that time.

4 Q. But I'm asking you was it -- did you have
5 this information when you made that decision not to
6 charge her?

7 MR. MANCINI: Object as to form and
8 foundation.

9 A. Well, ultimately she was charged based
10 upon this information.

11 Q. That wasn't my question. My question was
12 on April 11th you didn't choose to charge her.

13 A. She was not charged on April 11th.

14 Q. And you had this information, right?

15 A. Yes.

16 Q. Okay, thank you. Now, the -- she was
17 again interviewed on the 13th of April, was she not?
18 Oh, by the way, let me ask you, between the 11th of
19 April when you got this information about her now
20 saying she was there while the murders were taking
21 place and the 13th of April, did you have an
22 occasion to speak with her?

23 A. I don't recall.

24 Q. And with regard to the interview on the

1 11th done by Parrish, that report indicates that --
2 does not indicate you were present, does it?

3 A. That's correct.

4 Q. And, in fact, is it your best recollection
5 after looking at this report that you were not
6 present on the 11th when she added the information
7 concerning her involvement in the actual crime of
8 murder?

9 A. From the characterization, I was not
10 present on April -- to my knowledge on April 11th
11 during the course of this interview.

12 Q. All right. And so you have no personal
13 knowledge as to whether there was any coercive
14 tactics, suggestive tactics used by Detective
15 Parrish; is that right?

16 A. I have no personal knowledge other than
17 the report indicates that Lee Chambers was present.

18 Q. All right.

19 A. And her husband.

20 Q. Okay. And Lee Chambers was present during
21 the interview, right?

22 A. That's what the report indicates.

23 Q. All right. You have no information, do
24 you, whether Ms. Rienbolt was sober, drunk, under

1 the influence of any narcotics when she gave this
2 statement, do you?

3 A. I was not present on April 11th.

4 Q. Did you make any inquiry to find out
5 whether there was any coercive or suggestive tactics
6 or whether she was under the influence of any
7 narcotics or alcohol when she purportedly made this
8 statement on the 11th?

9 A. None was reported to me.

10 Q. I'm sorry?

11 A. None was reported to me.

12 Q. None was reported to you and did you make
13 an inquiry?

14 A. I don't recall.

15 Q. Were you -- do you remember asking
16 detectives during the investigation when they
17 reported to you about interviews with Herrington or
18 Rienbolt, asking them what their mental and
19 emotional and -- state was when they were giving
20 these statements?

21 MR. MANCINI: Object as to form.

22 A. I have no specific recollection, but that
23 could have occurred at some point. Again, we have
24 multiple interviews, multiple witnesses.

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[SUBJECT TO PROTECTIVE ORDER]

Q. All right. Now, looking at Exhibit No.

2 --

MR. MANCINI: Again, it's Ray Exhibit No.
2?

MR. TAYLOR: Yeah.

Q. Looking towards the back of the document,
this is Steidl 12182. It's an entry of 4/13/87.

MR. MANCINI: What page?

Q. Start from the back. 12162.

A. I just --

MR. MANCINI: Want to go to 121 --

THE WITNESS: Well, the numbers are not in
sequence. I mean they're all over the place. We've
got it, but --

MR. MANCINI: Luckily.

Q. This is a report of Eckerty and the
reporting date is 4/13, typed on 4/14 by Faye
Phillippi. Was Faye Phillippi your secretary?

A. Yes.

Q. [REDACTED]
[REDACTED]

MR. MANCINI: Object as to the relevance,
form.

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[SUBJECT TO PROTECTIVE ORDER]

A. [REDACTED].

Q. [REDACTED]

[REDACTED]

MR. MANCINI: Objection to relevance and form.

MS. EKL: I would ask, too, that this portion of the transcript be sealed as we've done with other depositions; that if any questions are asked regarding [REDACTED]

[REDACTED] that they be placed as part of the protective order that's already in place. Would you agree to that, Mr. Taylor?

MR. TAYLOR: Jan?

MS. SUSLER: That's fine.

MR. TAYLOR: Okay.

MS. SUSLER: He didn't answer the question.

MR. MANCINI: Do you remember the question?

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED] [REDACTED]

Q. All right. Now, going back to this report.

MS. SUSLER: We're not under wraps anymore.

Q. Okay. This indicates that Parrish and Eckerty interviewed Debbie Rienbolt at approximately 4:35 p.m.; is that right?

A. That's what the report indicates.

Q. It says also Attorney Peter Dole was representing Rienbolt; is that right?

A. Yes.

Q. Who is Peter Dole?

A. A local attorney. He's also former State's Attorney.

Q. All right.

A. He was my predecessor.

Q. He was your predecessor. By your predecessor, you mean he was when you were -- he was

1 a predecessor as Assistant State's Attorney or as
2 State's Attorney?

3 A. As State's Attorney.

4 Q. And so he was State's Attorney until 1980?

5 A. Yes. I mean we ran against each other and
6 I beat him.

7 Q. And then he stayed in Paris as a lawyer?

8 A. Well, he is from Paris.

9 Q. Okay. And he was representing people in
10 Paris at the time of 1987?

11 A. Yes.

12 Q. Did you have a relationship with him?
13 Were you friends with him?

14 A. I think our relationship was strained when
15 I ran against him.

16 Q. Okay. Well, this is six years later. Did
17 you still have a strained relationship?

18 A. We got along fine.

19 Q. All right. And did you have any input
20 into Mr. Dole representing him?

21 A. No.

22 Q. And you were -- I'm sorry?

23 A. No.

24 Q. And you were his -- do you know how he

1 came to be present on the 13th representing Ms.
2 Rienbolt?

3 A. I don't recall.

4 Q. So sometime between the 13th of April when
5 he was representing -- she was represented by Dole
6 until the 29th when she entered the plea, she
7 switched lawyers and ended up with Jean Ochs; is
8 that right?

9 A. That's what the record would reflect.

10 Q. And was Jean Ochs ever a State's Attorney
11 or Assistant State's Attorney?

12 A. Not to my knowledge. She may have been
13 Public Defender or Assistant Public Defender.

14 Q. Do you have any knowledge of how Rienbolt
15 came to have Dole represent her at this interview?

16 A. I don't recall anything.

17 Q. Now, this report was typed on 4/14/89 --
18 yeah, '86 -- '87. Is that right?

19 A. That's what's indicated on the report.

20 Q. Now, did you receive this report orally
21 from either Eckerty or Parrish before you got it in
22 writing?

23 A. Looking at the tight turnaround, I can't
24 say.

1 Q. Okay. This indicates that Eckerty and
2 Parrish were present. Is that a fair character --
3 is that a fair representation or were you present
4 for this interview?

5 A. Well, especially in light of the fact that
6 it specifically mentions she was -- had an attorney
7 present, I would say if I was there it would have
8 been indicated.

9 Q. All right. So you in all likelihood were
10 not present for this interview; is that right?

11 A. That's correct.

12 Q. And this -- it says: In summary Rienbolt
13 added the following to her previous statements. So
14 this is, in fact, the fourth time that she's giving
15 a statement which is in some aspects at least adding
16 and at variance with prior statements. Is that
17 correct?

18 MR. MANCINI: Object to the form.

19 A. The report itself indicates that this is
20 progression from her previous statements.

21 Q. Okay. And it's also different from her
22 previous statements, isn't it?

23 MR. MANCINI: Object as to form. Can you
24 let him read it?

1 A. There's some additions, but also there's
2 some that's really the same as the prior statements.

3 Q. All right. Well, would it be fair to say
4 that the one significant addition would be after she
5 says that she was grabbing Karen and holding her and
6 saying it was all right, that at that time either
7 Whitlock or Steidl cut Karen? Now, that certainly
8 was something that she hadn't said before; is that
9 right?

10 MR. MANCINI: Object as to form again.

11 A. Can I read where she says that?

12 Q. Kind of at about eight lines up from the
13 bottom on page 2 of the report.

14 A. I mean she had previously indicated she
15 was holding her down when she got cut and did not
16 say she did it, but that she had already said
17 Whitlock and Steidl was there, and the inference
18 would be one of those two had to cut Karen. So the
19 fact that she was saying now either it was Whitlock
20 or Steidl without specifically identifying the
21 person who cut Karen wouldn't seem to be that
22 different.

23 Q. Well, I mean the 11th, the statement on
24 the 11th, she didn't say that she saw anybody cut

1 Karen. She just said that she held her down --

2 A. Right.

3 Q. -- is that right?

4 A. But she was certainly stabbed, so I --
5 it's semantics, but it is certainly added.

6 Q. It's direct. Now you have a witness.
7 She's actually saying that she saw Karen stabbed by
8 either Herb or Randy, something she never said
9 before, right?

10 MR. MANCINI: Object as to form.

11 Q. Well, at least nothing -- something that
12 had never been reported before to you, right?

13 A. She's now indicated she saw her stabbed or
14 recalls her being stabbed.

15 Q. By Herbie and/or --

16 A. Or Whitlock.

17 Q. Right?

18 A. Right.

19 Q. And earlier in this recitation she says
20 she remembers Randy Steidl first having a knife and
21 was cutting Dyke while Whitlock was helping with
22 Dyke, and then she stated that later Whitlock had
23 the knife and Steidl is helping Whitlock. Now, that
24 again is the first time that she said that she saw

1 Whitlock and Steidl stabbing Dyke Rhoads; isn't that
2 right?

3 MR. MANCINI: Object as to form.

4 A. Again, the statements are going to speak
5 for themselves.

6 Q. Well, I'm not asking you whether they
7 speak for themselves. This is the first time that
8 this was said to your knowledge looking at these
9 reports and given your memory of the occurrences;
10 isn't that right?

11 A. Based upon the report.

12 MR. MANCINI: Object to form.

13 Q. And based on -- so on the 13th or
14 thereabouts, it's fair to say that this is the first
15 time that the detectives and you were supplied with
16 information from Rienbolt that, in fact, she was
17 identifying Steidl and Whitlock as having stabbed
18 Dyke and that either Whitlock or Steidl had stabbed
19 Karen. This is the first time for that significant
20 new information.

21 MR. MANCINI: Object as to form.

22 A. While it's more specific, again the
23 inference is she's present at this crime scene with
24 -- earlier she had indicated she was present at the

1 crime scene with Whitlock and Steidl and now has
2 greater detail towards the stabbing, I --

3 Q. Well, it's no longer an inference from
4 her. She's now saying that it happened, right, that
5 she saw it and she's describing it and she's saying
6 who did it. So that's quite a bit different than
7 saying you were there and there's an inference that
8 she saw it happen without her ever saying who did it
9 or that she saw it happen; isn't that right?

10 MR. MANCINI: Object as to the form.

11 A. That's her statement.

12 Q. Not only is that her statement, but that,
13 in fact, there is a difference, a significant
14 difference, isn't there?

15 MR. MANCINI: Object as to form.

16 A. She's more specific.

17 Q. Yes. Now, at this particular time, did
18 you take her to the Grand Jury?

19 A. No.

20 Q. Did you at this particular time charge her
21 as either an accomplice or as a participant in the
22 murders?

23 A. No.

24 Q. At this time, did you have her arrested

1 for either murder, conspiracy to murder, concealing
2 a homicidal death, perjury, anything? Any of those
3 charges?

4 A. I'd have to look at the date of the
5 concealment charge.

6 Q. Well, the date of the concealment charge
7 is the 29th.

8 A. Was that the same day as the plea
9 agreement?

10 Q. I think so.

11 A. I don't see the plea agreement. And it
12 may be. I just...

13 MR. MANCINI: Just for reference, it's
14 McFatridge Exhibit 4.

15 A. I really need a copy of the information.

16 MR. MANCINI: I don't think it's attached.

17 Q. Well, how long after she made that
18 statement on the 13th did you charge her with
19 concealment of a homicidal death?

20 A. Whatever the -- the date of the
21 information.

22 Q. All right. And what's the date on that?

23 A. It's not attached to the plea agreement.

24 Q. All right. Do you have any recollection

1 when that was?

2 A. In between that date and the date of the
3 plea agreement.

4 Q. All right. So sometime between the 13th
5 when she made her fourth statement, at least her
6 fourth recorded statement, and the 29th when she
7 entered the plea to homicidal death, you charged her
8 by information with one count of concealing a
9 homicidal death; is that right?

10 A. Yes.

11 Q. And you did that by information. That
12 means that you brought the charges yourself rather
13 than taking it to a Grand Jury; is that right?

14 A. The document speaks for itself, but that's
15 my recollection.

16 Q. Why didn't you take it to a Grand Jury but
17 rather used an information?

18 A. Because a Grand Jury is not required in
19 Illinois.

20 Q. Well, but you made a decision, did you
21 not, to do one rather than the other? Why did you
22 do that? Was there some tactical decision, reason
23 as a prosecutor that you did that? Is --

24 A. Well, you have to convene a Grand Jury,

1 and I don't know if the other Grand Jury was still
2 convened. Just it's a more difficult process.

3 Q. Now, did you have trial dates set in the
4 two cases by the 13th of April?

5 A. I would have no idea. The record would
6 reflect that.

7 Q. Well, in fact, you did go to trial in
8 Whitlock's case in the middle of May, did you not?

9 A. Early May.

10 Q. So you were within a month of trial when,
11 in fact, you got this statement, this fourth
12 statement from Debbie Rienbolt and decided to charge
13 her by information; is that right?

14 MR. MANCINI: Object as to form.

15 A. Well, you had 120 days from February to
16 try the cases, the murder cases.

17 Q. My question was you were within a month of
18 the trial date when you got this statement and
19 decided to proceed by information rather than Grand
20 Jury; is that right?

21 A. I can't say it was within a month. It
22 would be roughly a month.

23 Q. All right. Now, on the 13th Debra
24 Rienbolt was taken to rehab, wasn't she, and checked

1 into rehab?

2 A. I have no idea.

3 Q. Were you aware that at about that time she
4 was checked into a rehab center?

5 A. I recall that she received some counseling
6 as is evidenced by Lee Chambers. I don't recall
7 that there was actually -- she was in inpatient
8 rehab.

9 Q. All right. And were you aware that in
10 March of 1987 she had also been checked into rehab
11 but had walked away the same day?

12 MS. EKL: Objection, form, foundation.

13 MR. MANCINI: Join.

14 A. I don't recall.

15 Q. And were you aware that she had a chemical
16 dependency problem at that time when she was giving
17 these statements?

18 MS. EKL: Objection, form, foundation.

19 MR. MANCINI: Join.

20 A. Again, I think that calls for beyond my
21 expertise. I know it's documented that she had
22 alcohol and drug issues.

23 Q. Well, did you make the decision along with
24 the investigators to have her placed in the detox

1 center so she could detox from alcohol and other
2 street drugs so that she could testify in the
3 upcoming trials?

4 MS. EKL: Objection, form, foundation.

5 MR. MANCINI: Join.

6 A. Well, the only way you can go to a detox
7 center is to do it voluntarily. Otherwise, it takes
8 an involuntary commitment. And I don't recall any
9 involuntary commitments being done.

10 Q. Well, did you or the investigators
11 convince her to go to a detox center for inpatient
12 care in order to prepare her so that she could
13 testify in the upcoming trials?

14 MR. MANCINI: Object to form, foundation.

15 A. I recall again that she went. For how
16 long, I have no idea. She may have gone on her own
17 volition. Well, she had to go on her own volition.
18 It had to be voluntary.

19 Q. Well, do you know that she was brought
20 there by either Eckerty or Parrish?

21 A. I don't recall.

22 MS. EKL: Objection, form.

23 Q. Well, let me mark this as Exhibit 5A and
24 5B.

1 MR. TAYLOR: Why don't we just mark it and
2 I'll show it to him briefly, and it's ECC505 and
3 W017234. And I'll make that 5A and 5B.

4 (McFATRIDGE Exhibits No. 5A and 5B were
5 marked by the court reporter.)

6 BY MR. TAYLOR:

7 Q. Now, if you look at Exhibit 5A, does that
8 refresh your recollection as to whether she had gone
9 to a detox center on the 13th of March, 1987?

10 A. Would not -- it has to speak for itself.
11 Like I said before, I already knew that she had
12 gotten some voluntary rehab treatment and I couldn't
13 remember -- I couldn't tell you the dates or the
14 circumstances.

15 Q. Well, did you know that she had left the
16 first time, that she had gone without getting any
17 treatment?

18 A. I don't recall.

19 Q. All right. Does that refresh your
20 recollection that that happened around the 13th of
21 March, 1987?

22 A. I still don't recall.

23 Q. Okay. Let me take that from you and let
24 me look at this briefly. Do you see here that this

1 is a discharge summary dated the 20th of April,
2 1987? Is that what it appears to be, the discharge
3 summary of the 20th of April?

4 A. Yes.

5 Q. And do you see that, in fact, where it
6 says status on admission, plaintiff -- I'm sorry,
7 patient admitted on 4/13/87, EA BAC DID, patient
8 accompanied by her counselor and a police detective.
9 Do you see that?

10 A. I don't know. The B --

11 Q. Right.

12 A. The BAC could be .01.

13 Q. Okay. But, in fact, does that refresh
14 your recollection that on or about the 13th of April
15 that one of the detectives in the case took Ms.
16 Rienbolt, along with her counselor, to the detox
17 center?

18 A. As I indicated, I don't recall the exact
19 circumstances. I would note April 13th is a date
20 she was represented by an attorney in the matter.

21 Q. And the date she gave the final statement,
22 right?

23 A. And that -- well, she actually again
24 reviewed with a different other attorney the

1 statement that's attached to the plea agreement, so
2 that was a compilation, but she had the ability to
3 change that statement if she wanted. So if you want
4 to call that a fifth statement, but it was reviewed
5 with her counsel.

6 Q. Okay, the fourth statement. And in this
7 discharge summary it says: Progress, she remained
8 in special care throughout her stay in the unit.
9 Patient was being detoxed from alcohol and other
10 street drugs so that she could testify in an
11 upcoming trial.

12 So was that -- does that refresh your
13 recollection that in fact Ms. Rienbolt was taken to
14 the detox center with -- by one of the detectives in
15 the case in order that she be detoxed in order that
16 she be able to testify at trial?

17 A. Well, if what's on here is true, it looks
18 like she was discharged April 20th which would have
19 been three weeks before trial.

20 Q. Yeah, but by -- but in fact was -- did you
21 have any participation in the decision to convince
22 her to go get detoxed so that she could testify at
23 the trial?

24 MS. EKL: Objection, form, foundation.

1 MR. MANCINI: Join.

2 A. Again, I don't recall, but if she was
3 discharged April 20th and the only way you can go is
4 voluntary and she was represented by counsel, you
5 know, an attorney, I don't recall the exact
6 circumstances other than I recall her going to a --
7 other than I recall her receiving treatment.

8 Q. My question is do you recall participating
9 in a decision to have her taken to detox so that she
10 would be able to testify at the upcoming trial in
11 May of Whitlock?

12 MS. EKL: Objection, form.

13 MR. MANCINI: Objection, asked and
14 answered.

15 Q. Yes or no?

16 A. It would have been a decision between her
17 and her attorney ultimately.

18 Q. So you're saying, no, you didn't
19 participate in the decision, is that your testimony?

20 MS. EKL: Objection to form.

21 A. My testimony is is that someone may have
22 suggested it, but that's her decision.

23 Q. Well, it was certainly in your interest as
24 the prosecutor that she be detoxed so that she be

1 able to testify at a trial; isn't that right?

2 MR. MANCINI: Objection as to form.

3 A. It's also in her interest.

4 Q. And it also indicates that the detective
5 and the counselor were there when she was discharged
6 seven -- seven days later, right?

7 A. Three weeks before trial.

8 Q. Okay. My question was the detective
9 brought her there and he brought her back, right?

10 MS. EKL: Objection, foundation.

11 A. I had the document. I didn't write the
12 document.

13 Q. I'm asking whether it refreshes your
14 recollection that to your knowledge the detective,
15 whether it be Parrish or Eckerty, was involved in
16 bringing her there and bringing her back in order
17 that she could detox so that she could testify at
18 your trial? Is that consistent with your memory of
19 what happened with regard to detox in April of 1987?

20 MR. MANCINI: Objection to form. You
21 first asked him if this refreshes your recollection.
22 Now, you're asking if it's consistent with his
23 memory.

24 Q. Is it consistent with your memory?

1 A. I recall that she received treatment.

2 Q. And I'm asking you was that -- was the
3 treatment consistent -- is your memory consistent
4 with what this report reflects?

5 A. Only in the sense that she received
6 treatment.

7 Q. Okay. Now, sometime in March of 1987 did
8 you become aware that there was a jailhouse
9 informant or snitch by the name of Ferlin Wells who
10 had been placed in the same cell with Randy Steidl?

11 A. I'm aware of Ferlin Lester Wells. Whether
12 he was in the same cell with Mr. Steidl I cannot
13 say.

14 Q. Did you ever interview Mr. Wells?

15 A. Yes.

16 Q. And when did you interview him?

17 A. You would have to look at the reports.

18 Q. Was it before trial?

19 A. Well, yes.

20 Q. Did you put him on in Mr. Steidl's trial?

21 A. Yes.

22 Q. Did you vouch for his credibility at that
23 trial?

24 MR. MANCINI: Objection as to the form.

1 Are you asking if he testified at the trial, Flint?

2 A. I don't --

3 Q. Did you put him on and vouch for his
4 credibility?

5 MR. MANCINI: Objection as to the form.

6 A. I really don't understand what the
7 question is, vouching for his credibility. I mean
8 you're under an ethical obligation that you can't
9 put somebody on the stand knowing he's going to lie,
10 and if that's vouching for his credibility, yes.

11 Q. At the time that you put him on the stand,
12 was he under indictment for having burglarized your
13 State's Attorney's office?

14 A. He was in jail for something and with Mr.
15 Wells it would be burglary or theft.

16 Q. And he faced the possibility of 30 years
17 in jail, did he not?

18 MR. MANCINI: Objection to form,
19 foundation.

20 A. I would doubt that, but I don't know for
21 sure.

22 Q. Well --

23 A. I mean certainly he faced jail time.

24 Q. He faced an extended term of 30 years if

1 he were convicted, didn't he?

2 A. I don't recall.

3 Q. And, in fact, you were prosecuting him on
4 that burglary, were you not?

5 A. Yes.

6 Q. And, in fact, he ultimately received after
7 he was -- after he testified for you in Mr. Steidl's
8 trial, 180 days in jail, did he not?

9 MR. MANCINI: Objection as to form.

10 A. I don't recall.

11 Q. All right. Did you at the time that you
12 put him on or previous thereto, were you aware that
13 he had made admissions to other prisoners that, in
14 fact, he was about to or had lied concerning Mr.
15 Steidl?

16 MR. MANCINI: Objection to form.

17 MS. EKL: Objection to form.

18 MR. MANCINI: And foundation.

19 A. I don't recall. A recollection there was
20 some in terms of post-trial.

21 Q. All right. What, if any, favors did you
22 do for Mr. Wells other than get him an 180 day
23 sentence on his burglary charge?

24 MR. MANCINI: Objection as to form,

1 foundation.

2 A. I believe as he testified, and he was
3 represented by counsel, there were no threats and
4 promises made to him prior to trial.

5 Q. Well, he also testified -- and I read you
6 this question and answer. Now -- you asked this
7 question: Now your particular charge, you can face
8 a sentence of up to 30 years; is that correct?

9 Answer: Yes, sir.

10 So does that refresh your recollection
11 that in fact he could have faced up to 30 years and
12 you -- and you in fact asked him that question and
13 he gave that answer?

14 MR. MANCINI: Objection as to the form of
15 the question.

16 A. In the trial?

17 Q. Yeah.

18 A. If that's what's in the trial transcript.

19 Q. Okay.

20 A. I'm just saying because shortly thereafter
21 he was sentenced to ten years. Within a very brief
22 period of time after the trial, he had received ten
23 years in prison.

24 Q. That was a different case, wasn't it?

1 A. It was a different case. Got ten years.

2 Q. And that case, was that case pending at
3 the time that he testified?

4 A. No, but it came about shortly thereafter.

5 Q. All right. So your favor only extended to
6 the one 30-year burglary of your office and you
7 didn't give him an additional favor by getting him
8 less than ten years on the second, on the second
9 subsequent charge. Is that what you're saying?

10 MR. MANCINI: Objection to the form. It's
11 argumentative.

12 A. I'm saying he was -- there was no threats
13 or promises made before trial. He was represented
14 by counsel.

15 Q. Okay. And, in fact, he was given a
16 polygraph with regard to the burglary of your office
17 and he flunked it; isn't that right?

18 MR. MANCINI: Objection to form,
19 foundation.

20 A. I don't recall.

21 Q. Did you direct that he been given a
22 polygraph in that case?

23 MR. MANCINI: Objection as to form,
24 foundation.

1 A. I don't recall other than I normally --
2 again, normally wouldn't recommend polygraphs.

3 Q. And you certainly didn't request a
4 polygraph to find out whether, in fact, he was
5 deceptive or not when he said that Randy Steidl had
6 made certain purported admissions to him, did you?

7 A. I don't recall.

8 MR. MANCINI: Objection as to form.

9 Q. Well, do you recall seeing a polygraph
10 with regard to Ferlin Wells's testimony and
11 statements concerning the Randy Steidl case?

12 A. I don't recall.

13 Q. All right. But it wouldn't have been --
14 you're saying it wouldn't have been your practice to
15 seek a polygraph in either case, right?

16 A. It's generally not my practice.

17 Q. But some of the witnesses in this case,
18 the alibi witnesses, were subjected to polygraphs,
19 weren't they?

20 A. I -- I know other witnesses had
21 polygraphs. What case are we talking about now?

22 Q. Well, Lisa Wheeler and Nancy Land, they
23 were given polygraphs, right?

24 A. I don't recall who was and who wasn't.

1 Q. And Tim Busby, he was given a polygraph.

2 A. I don't recall who was and who wasn't.

3 Q. Well, some people were, right? Would
4 you --

5 A. I said some people were.

6 Q. And was it your decision or advice not to
7 give those polygraphs?

8 A. I don't recall specifically. Again, my
9 general preference was not to give polygraphs.

10 Q. All right. Now, were you aware that there
11 were several other knives that were found at the
12 scene of the Rhoads residence?

13 A. My recollection, there was some kitchen
14 knives.

15 Q. All right. And did you make any effort to
16 direct the investigators to test those other knives
17 to see if any of them could have been involved in
18 the crime?

19 A. I don't recall.

20 Q. Well, would that have been a good
21 investigative technique?

22 MR. MANCINI: Objection as to form,
23 foundation.

24 A. If you have someone with a -- who's

1 purported to have the murder weapon and the
2 pathologist indicated that that was consistent with
3 the murder wound at the time of the trial, I mean
4 that would be a judgment call.

5 Q. But you made no effort to have those
6 knives tested; is that correct?

7 MR. MANCINI: Object to the form and
8 foundation.

9 A. As prosecutor and State's Attorney and
10 legal advisor, I don't recall making a
11 recommendation that the knives be tested.

12 Q. Now, are you familiar with the statement
13 of a witness by the name of Carol Robinson that you
14 had her lie on the stand?

15 A. I'm familiar through post-trial pleadings.

16 Q. All right. In fact, did you suborn her
17 perjury on the stand?

18 A. No.

19 Q. Did you force her to lie on the stand?

20 A. No.

21 Q. Did you ask her to lie on the stand?

22 A. No.

23 Q. Now, did you at any time become aware that
24 she had been physically assaulted by Parrish when he

1 was questioning her?

2 MS. EKL: Objection, form, foundation.

3 MR. MANCINI: Join.

4 A. No.

5 Q. Well, did you become aware that she had
6 been backed against a wall and that Parrish had been
7 punching her -- his hand in a threatening manner
8 when he was questioning her?

9 MS. EKL: Objection, form, foundation.

10 MR. MANCINI: Join.

11 A. No. I am aware that she's testified in
12 postconviction proceedings that she testified
13 truthfully at trial.

14 Q. Okay. And so you remember that, but you
15 don't remember whether she had alleged that Parrish
16 or you -- strike that, that Parrish had coerced her
17 into testifying --

18 MR. MANCINI: Object as to form,
19 foundation.

20 Q. -- a certain way?

21 MR. MANCINI: Same objection.

22 A. Unless it's alleged in some post-trial
23 proceedings. I don't recall it at the time.

24 Q. Now, at sometime in 1989 you testified at

1 the post-trial proceedings; isn't that right?

2 A. I testified one time.

3 Q. And when was that?

4 A. That would have been at Steidl's
5 postconviction hearing with Judge Rush.

6 Q. What year was that?

7 A. I really don't recall.

8 Q. Was it the first postconviction hearing or
9 the second postconviction hearing?

10 A. I don't recall.

11 Q. Okay. Was it in 19 -- you also gave
12 affidavits, did you not, in various postconviction
13 proceedings?

14 A. Prior to testifying here at the
15 deposition, I was -- I referenced two affidavits.

16 Q. All right. And you gave affidavits
17 concerning the testimony of Debbie Rienbolt, didn't
18 you?

19 A. One affidavit referred to Mr. Herrington,
20 and one affidavit generally referred to Ms.
21 Rienbolt.

22 Q. And in both of those affidavits you
23 vouched for their credibility in terms of their
24 trial testimony, didn't you?

1 MR. MANCINI: Objection as to form.

2 A. The affidavits speak for themselves.

3 Q. Well, I'm asking you your intent in
4 executing those affidavits was to support Rienbolt
5 and Herrington and their testimony at trial in
6 opposition to any supposed recantations that they
7 had made; isn't that right?

8 MR. MANCINI: Object as to form.

9 A. I don't recall the circumstances of the
10 affidavits.

11 Q. Now, was your last direct involvement in
12 the prosecution of Randy Steidl and Herb Whitlock at
13 the post-trial motions of Mr. Whitlock?

14 MR. MANCINI: Object as to the form.

15 A. As in what sense?

16 Q. Well, you didn't handle the appeals,
17 right?

18 A. Well, I would have had input into the
19 appeals naturally as the individual who prosecuted
20 the case.

21 Q. But you didn't write the briefs.

22 A. Well, I may have seen drafts of the
23 briefs.

24 Q. You didn't write them, did you?

1 A. I didn't sign the briefs.

2 Q. Did you write them?

3 A. Not that I recall.

4 Q. Did you argue -- did you argue any of the
5 cases in the courts of appeals?

6 A. I have -- I have done some. I don't
7 believe in this case.

8 Q. All right. I'm asking you this case not
9 in any other case.

10 A. I appreciate that. I'm just trying to
11 clarify in my own mind if for whatever reason I
12 would have in this case and I don't think I did.

13 Q. All right. Well, you did continue to make
14 public statements concerning the case subsequent to
15 the trial, did you not?

16 A. When approached by the media.

17 Q. Okay. And did sometimes you contact the
18 media?

19 A. I don't recall ever contacting the media.

20 Q. Well, let me ask you --

21 MR. TAYLOR: Mr. Mancini, could you locate
22 the newspaper clips group exhibit?

23 MR. MANCINI: Yes, this is McFatridge No.

24 2.

1 Q. All right. I want to ask you first about
2 the first newspaper article that we're looking at
3 which is dated Wednesday July 9, 1986.

4 MR. MANCINI: Just for the record, we've
5 gone through that article yesterday.

6 MR. TAYLOR: No, this one here
7 (indicating).

8 MR. MANCINI: Oh, I'm sorry. The front
9 one --

10 MR. TAYLOR: It's not on the copy that you
11 have?

12 MR. MANCINI: Is there a Bates on it by
13 chance.

14 MR. TAYLOR: Steidl 2482. Here, I don't
15 know why it's not on the exhibit.

16 MR. MANCINI: Do you want to --

17 MR. TAYLOR: Why don't you mark that as
18 Exhibit -- as a separate exhibit, since it's not
19 part of the group, as Exhibit 6.

20 (McFATRIDGE Exhibit No. 6 was marked by
21 the court reporter.)

22 BY MR. TAYLOR:

23 Q. Now, I want to call your attention to --
24 this is an article that came out a few days after --

1 A. May I read it please?

2 Q. No, I'm going to ask -- yes, you certainly
3 may, but I want to call your attention to certain
4 portions of it. This is an article in the Paris --
5 local Paris Beacon News of Wednesday, July 9th,
6 1986. Is that correct?

7 A. Yes.

8 Q. And it quotes you as having no comment
9 with regard to the investigation; is that right?

10 A. Yes.

11 Q. But on the other hand, you also confirmed
12 that a new investigator was expected in Paris today
13 to aid in the case and that investigator was a crime
14 scene analysis expert very similar to an auto
15 accident reconstruction expert. You made that
16 statement on the 9th; is that correct?

17 A. Apparently.

18 Q. And who was that person?

19 A. If I was to speculate, I'm going to guess
20 Crime Scene Gary Knight.

21 Q. So you considered him to be a
22 reconstruction expert?

23 A. He was the crime scene tech, but I mean
24 again you'd have to look at the records and reports,

1 but that's who I would --

2 Q. So this is --

3 A. -- say.

4 Q. So at this point you're saying: The
5 expert hopes by visiting and investigating the scene
6 to be able to reconstruct the sequence of events
7 leading up to the young couple's death, McFatridge
8 said. The work is very important and the Rhoads
9 home will remain under security.

10 Did you make that statement?

11 A. Apparently.

12 Q. Okay. Now, it also indicates that the
13 owner is going to tear down the house as soon as the
14 investigation was complete and the insurance
15 adjusters were finished; is that correct?

16 A. That's what apparently she said.

17 Q. All right. And so you were on notice that
18 she was going to tear the house down as soon as
19 possible; is that right?

20 MR. MANCINI: Objection as to form.

21 A. Excuse me. She says once the
22 investigation is completed. So that would -- that
23 would not necessarily be as soon as possible.

24 Q. Well, I mean you didn't complete the

1 investigation for eight months, did you?

2 MR. MANCINI: Objection as to form.

3 Personalized.

4 A. And I don't recall when the house was
5 actually torn down, but I know it was quite a while
6 afterwards.

7 Q. All right. Now, how come if Knight was
8 your crime reconstruction expert that he wasn't
9 invited to the reconstruction that you did on the
10 9th?

11 MR. MANCINI: Objection as to form.

12 A. Well, if -- again I'm guessing who we're
13 talking about, so if we're talking about Gary
14 Knight, he would have had access to those interviews
15 and whatever with the firefighters, and for all I
16 know, he was present. I don't know.

17 Q. He has testified that he was not present.
18 Any reason that you know of why he wasn't?

19 MR. MANCINI: Objection to form,
20 foundation.

21 A. Apparently he couldn't be there.

22 Q. And he also has testified that he wasn't a
23 reconstruction expert. Are you aware of that?

24 MR. MANCINI: Objection to form,

1 foundation.

2 A. Well, I think that's -- a crime scene
3 expert and a reconstruction expert, I guess it's a
4 matter of terminology.

5 Q. Well, was there anyone else who was your
6 reconstruction expert other than Mr. Knight?

7 MR. MANCINI: Objection as to form.

8 A. Well, it does say crime scene analysis
9 expert I guess. Perhaps I had a choose -- a poor
10 choice of words by saying auto accident
11 reconstructionist.

12 Q. So you can't give us a name of anyone else
13 other than Knight as a possible reconstruction
14 expert?

15 MR. MANCINI: Objection to form,
16 foundation, asked and answered.

17 A. The fire people were there. I mean I --
18 Gary Knight would be unless -- and he had other
19 people. I mean he may have had other state police.
20 I don't recall anybody other than the state police
21 doing the crime scene, if that's the question.

22 Q. All right. Now, did you also make
23 statements to the media about the criminal
24 backgrounds of Steidl and Whitlock?

1 A. When?

2 Q. Well, take a look at the fourth page or
3 fifth page of the group exhibit. It's a Champaign
4 News-Gazette article, Friend of Murder Suspect
5 Convinced of Innocence. Do you see that?

6 MR. MANCINI: Just for the record and
7 those on the phone, it's Bates label Plaintiff
8 014882.

9 Q. And while it's not dated, it indicates
10 that the -- that two men, meaning Steidl and
11 Whitlock, were arrested on Thursday by Paris police,
12 being held without bond. So this would -- this
13 article would be just after their arrest. And it
14 quotes you as saying: McFatrige said Steidl had a
15 relatively lengthy misdemeanor record. Whitlock
16 though has a prior felony conviction in Indiana for
17 possession of marijuana and is scheduled to be
18 sentenced March 1st in Edgar County for felony
19 possession of cocaine, according to the State's
20 Attorney.

21 You told the reporter, Kirby Pringle,
22 about these men's criminal background, did you not?

23 MR. MANCINI: Objection as to form.

24 A. Apparently it's a matter of public record.

1 Q. All right. So it's a matter of public
2 record what the length -- that a man has a lengthy
3 misdemeanor record?

4 A. That he has a misdemeanor record, yes.

5 Q. That wouldn't come in at a trial now,
6 would it?

7 A. That's not true. If it would be -- for
8 example, if it was a theft, it could still come in
9 for impeachment purposes.

10 Q. Well, most misdemeanors are not admissible
11 for impeachment, are they?

12 A. That is not correct.

13 MR. MANCINI: Objection to form.

14 Q. All right. Some are and some aren't; is
15 that right?

16 A. Some are and some aren't, that's correct.

17 Q. Okay, but in any event, you felt it was --
18 there was nothing improper about you putting in the
19 public record these men's criminal background; is
20 that right?

21 MR. MANCINI: Objection as to form.

22 A. Apparently the statement was made. It
23 certainly wasn't very detailed. It's a brief
24 paragraph.

1 Q. Well, weren't you concerned that you
2 didn't want to prejudice them in any way with regard
3 to any potential trial that was upcoming in the near
4 future?

5 A. Yes.

6 Q. All right. And so wouldn't putting their
7 backgrounds in the paper be something that might
8 prejudice them in the minds of the jurors?

9 A. It's a matter of public record. I note
10 it's not quoted.

11 Q. I'm asking you whether that would be
12 something that would be -- could tend to be
13 prejudicial to them.

14 MR. MANCINI: Objection as to form.
15 Speculative.

16 A. I would have to purely guess.

17 Q. Well, it also quotes you as to whether
18 the -- saying that the deaths appeared to have been
19 tied to narcotics. Did you make that statement just
20 after the men were arrested publicly in the
21 newspaper?

22 A. I know I indicated it was drug-related.

23 Q. Did you make that statement?

24 A. It's not in quotes, so I may have said

1 drug-related, they may have gone to narcotics.

2 Narcotics is not a term I would normally use.

3 Q. So you -- you said that it was
4 drug-related?

5 A. I had stated I know that it was
6 drug-related.

7 Q. And you also told the press that Steidl
8 and Whitlock had both been questioned within one
9 week of the deaths of the Rhoadses; is that right?

10 MR. MANCINI: Where are we looking now,
11 Flint, just to speed it up?

12 Q. I'm just above the paragraph I just read.
13 But he said Steidl and Whitlock were both questioned
14 within one week of the Rhoadses' deaths. You made
15 that statement, did you not?

16 MR. MANCINI: I'm not seeing that.

17 MR. TAYLOR: (Indicating).

18 MR. MANCINI: Oh, there.

19 A. Well, it's attributed to me.

20 Q. All right. Well, did you make the
21 statement?

22 A. I don't recall.

23 Q. Do you have any reason to believe you
24 didn't tell Kirby Pringle what you wrote in the

1 paper or he wrote in the paper?

2 A. No.

3 Q. Okay. And it also says that -- that --
4 all right. Let's take a look at -- you were making
5 comments to the press periodically about the trial,
6 were you not?

7 A. About the trial?

8 Q. Yes.

9 A. As in?

10 Q. About evidence and the proceedings at
11 trial.

12 A. I -- I don't recall.

13 Q. Now, I want to call your attention to an
14 article. It says Defense's tactics only
15 smokescreen, McFatridge. Do you see that? The
16 Tribune Star article by Denise Egan.

17 MR. MANCINI: It's undated?

18 Q. It's undated, yes. Do you recall that
19 article?

20 MR. ACKERMAN: What page are we looking
21 at?

22 MR. TAYLOR: It's Plaintiff 15734.

23 MR. ACKERMAN: Thank you.

24 Q. If you look at this article, it quotes you

1 as saying that you're calling -- that Tulin's
2 tactics in raising the question of Stark as a
3 potential suspect in the case is a smokescreen; is
4 that right? Did you, in fact, call Mr. Tulin's
5 tactic of raising the question of Stark's
6 involvement in the case a smokescreen?

7 A. It's attributed to me.

8 Q. Did you make it?

9 A. I don't recall.

10 Q. Do you have any reason to disbelieve that
11 you made this statement given that you're quoted by
12 Denise Egan in the paper as saying it?

13 A. No.

14 Q. And, in fact, it says: There is no
15 evidence whatsoever to link Stark to this case,
16 McFatridge said in an interview Monday. This is a
17 total smokescreen on the part of the defense, end
18 quote. Did you make that statement?

19 MR. MANCINI: Asked and answered.

20 Objection.

21 A. I already told you I can't recall making
22 the statement.

23 Q. All right. Well, do you have any reason
24 to disbelieve that you made the statement that there

1 was no evidence whatsoever to link Stark to this
2 case? Is that right?

3 A. No.

4 Q. Pardon me?

5 A. I said I have no reason. If that's what
6 he says I said, then I have no reason to doubt it.

7 Q. All right. Then, in fact, you made that
8 statement despite the report that you had that
9 indicated that he had said that he had dreamed and
10 was worried that he had committed the murders,
11 right?

12 MR. MANCINI: Objection as to form,
13 foundation.

14 A. What I recall about Stark, he was -- that
15 was investigated to the satisfaction of the
16 investigators that he, in fact, did not have any
17 connection to the murders.

18 Q. All right. But you were aware of the
19 evidence in the report that his wife reported that
20 he had made certain statements concerning the murder
21 that would have, if proved, implicated him; isn't
22 that right?

23 MR. MANCINI: Objection to form,
24 foundation. It's been asked and answered.

1 A. It was determined by the investigators
2 that it was physically impossible for Mr. Stark to
3 have committed the murders.

4 Q. And why was that?

5 MR. MANCINI: Objection as to form. Why
6 was it determined by the investigators?

7 Q. Yeah, what was -- what basis did they
8 determine it was physically impossible for him to
9 have committed the crimes?

10 MS. EKL: Objection, foundation.

11 A. Because, as I recall, his alibi -- or he
12 didn't have an alibi, but his -- the fact is his
13 whereabouts were accounted for at the time of the
14 murders.

15 Q. Well, in fact, Whitlock's and Steidl's
16 whereabouts were accounted for at the time of the
17 murders as well. Yet you chose to disbelieve their
18 alibis, so an alibi doesn't make it physically
19 impossible for someone to have committed a crime
20 now, does it?

21 MR. MANCINI: Objection as to the form.

22 A. As stated by the Appellate Court, in fact
23 the Appellate Court even specifically stated that,
24 even believing the alibi witnesses of Whitlock and

1 Steidl, there is still sufficient time gaps for them
2 to have committed the murders.

3 Q. Right, but that was your position in the
4 trial, right?

5 A. And apparently the Appellate Court's.

6 Q. Well, how did you know an Appellate Court
7 might not look at the alibi of Starks and determine
8 that there was sufficient time for him to commit the
9 crime as well?

10 MR. MANCINI: Objection as to the form,
11 speculative.

12 A. The evidence deduced by the investigators
13 was sufficient to eliminate Stark as a suspect.

14 Q. In your opinion; is that right?

15 A. As represented to me.

16 Q. And you put that in the newspaper, right?

17 MR. MANCINI: Objection as to form.

18 MR. TAYLOR: Excuse me?

19 MR. MANCINI: I objected to the form.

20 A. It's not in the newspaper.

21 Q. Well, in the newspaper you say that in
22 fact it was a smokescreen and it was impossible for
23 the crime to have been committed. Didn't you say
24 that?

1 MR. MANCINI: Objection to the form.

2 Misstates what the newspaper says.

3 Q. Well, you tell me what it says in the
4 newspaper if I'm wrong.

5 MR. MANCINI: Do you want me to read the
6 article?

7 MR. TAYLOR: I'm not asking you. I'm
8 asking the witness.

9 MR. MANCINI: Okay, my mistake.

10 MR. TAYLOR: Sorry.

11 A. It indicates there's no evidence to link
12 Stark to the murders.

13 Q. All right. Now, from time to time in the
14 newspaper you referred to Mr. Steidl and Mr.
15 Whitlock as murderers, did you not?

16 A. That's what they were convicted of.

17 Q. And that's what you referred to them as,
18 right?

19 A. If that's what they were convicted of.

20 Q. And you believe they're murderers, don't
21 you?

22 A. Personally?

23 Q. Yes.

24 A. Yes.

1 Q. And you still make that statement from
2 time to time in the media, haven't you?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 A. I -- again, I haven't talked to the media
6 in quite sometime.

7 Q. Well, you've talked to them in the last
8 few years, haven't you?

9 A. In the last several years when they've
10 contacted me.

11 Q. Well, you talked at length on the 48 Hours
12 show in 2000 and 2001, right?

13 A. Yes.

14 Q. And you told -- you said in that show that
15 they were murderers and that they were guilty,
16 didn't you?

17 A. Certainly indicated that the juries had
18 convicted them and I agreed with the juries'
19 verdicts. I don't recall the exact words.

20 Q. Well, didn't you say that they were guilty
21 of murder?

22 MR. MANCINI: Objection to form,
23 foundation.

24 A. That's what the jury found.

1 Q. And didn't you make every effort to
2 discredit the evidence that indicated to the
3 contrary?

4 MR. MANCINI: Objection as to form,
5 foundation.

6 A. No.

7 Q. You certainly spoke on that 48 Hours show
8 and attempted to refute some of the new evidence
9 that pointed to their innocence, didn't you?

10 A. I answered the questions that were
11 presented to me, and as you know in any television
12 show, those shows are heavily edited.

13 Q. Okay.

14 A. And I declined subsequent television
15 appearances.

16 Q. Well, I'm looking here at the first page
17 of the transcript and it's Dan Rather. Voiceover,
18 eyewitness testimony convicted these two men, and
19 then has footage of suspects during their trial.
20 And then it says Mr. Michael McFatridge, they're
21 murderers. You said that on 48 Hours, right?

22 A. If that's part of the transcript.

23 Q. Okay. And let's mark this as 7.

24 MR. ACKERMAN: What's the Bates on that?

1 MR. MANCINI: It's EC 27603 through 27633.

2 MR. ACKERMAN: Thank you.

3 (McFatridge Exhibit No. 7 was marked by
4 the court reporter.)

5 BY MR. TAYLOR:

6 Q. Do you see that in the transcript that
7 you're quoted as saying that they were murderers?

8 A. Well, that's a correct statement, they
9 were convicted of murder.

10 Q. Well, I'm asking you said they're
11 murderers, right?

12 A. Yes.

13 Q. Okay. And later on if you look at page 12
14 you're quoted again concerning -- strike that. On
15 page 11 that you're quoted as saying: This is
16 clearly the biggest case that I ever handled and to
17 my knowledge probably certainly the biggest case,
18 you know, of the century perhaps.

19 So, in fact, you made that statement and
20 you stand by that statement that this was the
21 biggest case of the century at least as far as the
22 city of Paris; is that right?

23 MR. MANCINI: We're trying to find it,
24 Flint. You're way ahead of us.

1 MR. TAYLOR: Page 11.

2 MR. MANCINI: Okay, here (indicating).

3 Q. Do you see that?

4 A. Of the century perhaps.

5 Q. Well, okay. You made this statement, this
6 is clearly the biggest case --

7 A. I made the statement.

8 Q. -- you ever handled, right?

9 A. As a prosecutor.

10 Q. And that's true; is that right?

11 A. As a prosecutor.

12 Q. Well, have you handled other cases
13 similarly big?

14 A. I've defended three first degree murder
15 cases.

16 Q. Okay. Cases in Paris?

17 A. One was in -- let's see.

18 Q. Where did --

19 A. One was in Paris. Two were in Danville.

20 Q. And what were the resolution of those
21 cases?

22 A. One was an acquittal of first degree, one
23 was a conviction of second degree, one was a
24 conviction of first degree.

1 Q. All right. And what was the names of the
2 defendants in those cases?

3 MR. MANCINI: Objection. No, go ahead,
4 I'm sorry. He's got attorney/client privilege,
5 Flint, so let's watch that.

6 A. Straub was one and I really can't tell you
7 the other two.

8 Q. All right. Now, you were also quoted on
9 that page as saying: I think when the dust settles
10 they'll be very disappointed because, in fact,
11 Whitlock and Steidl are guilty. I mean they're the
12 murderers. So you -- again in the 48 Hours you
13 called them the murderers, right?

14 A. I stand by that.

15 Q. All right.

16 A. In my opinion.

17 Q. And in this -- in this statement, you also
18 are asked: He's been described to me as the town
19 drunk. And you say: Well, at that time that would
20 be a fair assessment, would be that he's a big
21 drinker. Is that right?

22 MR. MANCINI: Do you have a page?

23 MR. TAYLOR: This is the bottom of page
24 11.

1 MR. MANCINI: Thank you.

2 Q. Would that be a fair assessment that he
3 was the town drunk?

4 A. You could describe him as that.

5 Q. All right. Now, in the footage, it
6 says -- on page 14 there's footage of you,
7 McFatridge, and it has one of the commentators in
8 the show saying: Despite Prosecutor McFatridge's
9 recommendation for no jail time, Debra Rienbolt
10 served two years in prison for concealing a
11 homicide. Is that accurate?

12 A. I don't believe that's accurate.

13 Q. Didn't you tell the 60 Minutes that in
14 fact you recommended no jail time but she did serve
15 two years in prison?

16 A. We know the media takes great liberty with
17 what was said and what actually makes the broadcast.
18 My recollection, and the record would have to
19 reflect it, is that we stood mute, the State stood
20 mute.

21 Q. Well, you were talking about the alibis a
22 little bit earlier. Let me ask you this. What did
23 you determine through your investigation and through
24 your evaluation of the evidence as to be the time of

1 the murders?

2 MR. MANCINI: Objection to the form,
3 foundation.

4 A. Have to determine, look at the -- it was
5 argued at the trial, whatever those times were.

6 Q. I'm asking you what -- I'm asking you what
7 you remember to be the time of the murders.

8 A. And I'm telling you it was argued at
9 trial. It's whatever it was then.

10 Q. All right. And so you're saying whatever
11 you argued at trial was what the time of the murders
12 were in your opinion.

13 MR. MANCINI: Object to the form.

14 A. What was argued at trial, the argument was
15 based upon evidence. That the argument was made
16 based upon the evidence and the time -- and the time
17 frames as presented at trial as it existed at that
18 time.

19 Q. And now you watched the 60 Minutes show,
20 did you not?

21 A. 48 Hours.

22 Q. I'm sorry, 48 Hours. Did you watch it
23 after it was -- when it aired?

24 A. Yes.

1 Q. Around sometime in 2000, is that right,
2 when it aired or --

3 MR. MANCINI: 2001.

4 A. 2001.

5 Q. June of 2001 or sometime in that area.
6 And you saw that Ms. Rienbolt at that time was
7 interviewed; is that right?

8 A. I really don't recall the show. I was --
9 after watching it maybe one time, I really haven't
10 watched it again. It was too offensive for me.

11 Q. Okay. Well, let me call your attention to
12 page 18 of the transcript and it says -- and it's
13 talking about the question of whether -- why it was
14 that Herrington never saw Rienbolt and Rienbolt
15 never saw Herrington. You put that evidence on at
16 trial and attempted to explain that apparent
17 contradiction, did you not?

18 MR. MANCINI: Objection as to form,
19 foundation.

20 A. It was presented to the jury and the jury
21 made a determination.

22 Q. Well, you also argued the facts to the
23 jury, didn't you?

24 A. Argument is not evidence.

1 Q. But I asked you whether you argued it to
2 the jury or not.

3 MR. MANCINI: Objection as to form and
4 foundation.

5 A. You'd have to look at the transcript.

6 Q. Well --

7 A. Presumably yes.

8 Q. -- didn't you give closing argument?

9 A. Yes.

10 Q. And in closing argument, didn't you
11 attempt to explain the fact of why Herrington didn't
12 see Rienbolt and Rienbolt didn't see Herrington?

13 A. I don't recall other than I would have
14 argued that they were -- the defendants were found
15 guilty beyond a reasonable doubt.

16 Q. You -- so you don't recall arguing that
17 issue; is that correct?

18 A. I don't recall the specifics of my closing
19 argument given in 1987.

20 Q. Well, let me --

21 A. Nor have I read a transcript of my closing
22 arguments.

23 Q. Well, let me ask you this. This has your
24 witness, Debra Rienbolt, saying in the year 2001

1 with regard to Herrington not seeing her and she not
2 seeing Herrington, Debra Rienbolt: I thought
3 somebody made this up. Somebody lost their frigging
4 mind. This is the town drunk. There's no way this
5 man was there.

6 Did you hear her say that?

7 MR. MANCINI: I'm going to object as to
8 the form of the question. During the show are you
9 asking?

10 Q. That you saw the show and heard Rienbolt
11 say that; is that right?

12 A. I don't recall. If that's what's in
13 there, I must have heard it.

14 Q. Did you respond to that statement?

15 MR. MANCINI: Objection as to form.

16 A. How?

17 Q. Well, did the interviewer ask you to
18 comment on Rienbolt's statement that they must be
19 out of their frigging mind if both of the witnesses
20 were there and that in her opinion that the town
21 drunk, Darrell Herrington, wasn't there?

22 MR. MANCINI: Objection as to form.

23 A. The interviewer was biased in her own way.
24 One of the statements I do recall making to the

1 interviewer, I said if the defendants are guilty,
2 there is no story. The only way that there's a
3 story is if they're not guilty. Therefore, whether
4 you like it or not, you're going to have a natural
5 bias in this program. And strangely enough, that
6 got edited out, so whether she allowed me to respond
7 to that, I have no idea. This is the edited version
8 and it was a slanted show and that's why I didn't
9 watch it again.

10 Q. Well, you did have quite a major role in
11 the show. Didn't they quote you quite often in the
12 show?

13 MR. MANCINI: Objection as to the form.

14 A. I don't know.

15 Q. Now, was it ever called to your attention
16 that according to Rienbolt there was pressure put on
17 her by the investigators and you to say that it was
18 a broken lamp and to mention a broken lamp?

19 MR. MANCINI: Objection to the form,
20 foundation.

21 A. I know there's been post-trial or
22 postconviction motions to that effect.

23 Q. All right. And do you know that she, in
24 fact, said that that was -- there was coercion and

1 pressure to identify a broken vase or a broken lamp?

2 MR. MANCINI: Objection as to the form,
3 foundation.

4 A. Looking at the statements that I just saw,
5 looks like she said vase and broken lamp in her
6 statement to Detective Parrish, and I know it says
7 vase and lamp in the statement that's attached to
8 the plea agreement that was done with her counsel.
9 And I know that she's reaffirmed the truth of her
10 testimony at trial. And as I stated before, Ms.
11 Rienbolt is such if that's what she said was true,
12 and that's how she testified at trial, that's what
13 she was going to do.

14 Q. Well, did she tell you at the time that
15 the reason that she was saying that there was a
16 broken lamp -- a broken vase there was because she
17 was being told to do that by the investigators?

18 A. No. And it was not a major matter. She
19 said there was a vase shape to whatever it was. In
20 fact, it was a vase-shaped lamp.

21 Q. Well, it was a major matter if, in fact,
22 she was told to say it was a broken vase or a broken
23 lamp when she didn't see either. That would be
24 significant, wouldn't it?

1 MS. EKL: Objection, form.

2 MR. MANCINI: Join.

3 A. It's never been alleged.

4 Q. Well, isn't that what she's saying here in
5 the 60 Minutes?

6 A. I don't have any --

7 Q. And they would come up with, well, there
8 was a broken vase or a broke lamp there. I'm
9 looking at page 2. And then I'd say, well, okay, so
10 there was.

11 Now, did you hear her say that on the
12 videotape?

13 MS. EKL: Objection, foundation.

14 A. I don't recall.

15 Q. Well, is that the first time that you
16 heard any inkling that she was saying that the
17 broken lamp or the broken vase was injected into the
18 -- into her story by the detectives and/or by you?

19 MR. MANCINI: Objection.

20 MS. EKL: Form, foundation.

21 MR. MANCINI: Mischaracterizes his
22 statement. Go ahead.

23 A. I don't recall that statement. I know
24 there's been post-trial motions on this. I also

1 know the Fourth District Appellate Court when they
2 indicated there should be a new trial didn't even
3 mention the broken vase/lamp.

4 Q. Had they --

5 A. I also noticed that, again, there's a
6 statement that says vase and lamp in her statement
7 on the 19th. It says that in her statement that's
8 attached to the plea agreement.

9 Q. She says -- yeah, it's in the statement,
10 but there's nothing in there that shows the
11 circumstances of how she happened to say that, is
12 there?

13 MR. MANCINI: Objection as to the form.

14 A. Other than she conferred with her attorney
15 when it's attached to the statement of facts.

16 Q. Well, other than the fact that she had
17 said it previously in circumstances that you don't
18 know what they were, do you?

19 MR. MANCINI: Objection to --

20 A. I wasn't there.

21 MR. MANCINI: -- the form.

22 Q. All right. And so you don't know whether
23 her entire story was suggested, coerced or fed to
24 her, do you?

1 MR. MANCINI: Objection to the form,
2 foundation.

3 A. I was able to judge her credibility on my
4 own. I found her to be a credible witness and
5 that's why we proceeded to trial.

6 Q. Did you get to watch Mike Metnick's two
7 day interview with her in which she recanted in
8 great detail what she testified to at your trials?

9 A. No.

10 MR. MANCINI: Objection to form,
11 foundation.

12 Q. Ever watch that?

13 A. No.

14 MR. MANCINI: Objection to form --

15 Q. Ever see --

16 MR. MANCINI: Foundation.

17 Q. -- a transcript of it?

18 MR. MANCINI: Objection to form,
19 foundation.

20 Q. Did you ever read the transcript of what
21 she said?

22 MR. MANCINI: Objection.

23 A. No.

24 Q. Did you ever make -- did you ever talk to

1 Allan Lolie, the State's Attorney, about the
2 statement that she made to Mike Metnick?

3 A. I have talked briefly to Mr. Lolie. He
4 indicated that they -- that she called him and that
5 they, I believe him and detective -- I can't think
6 of his name. She gave a statement to them that that
7 statement that she had given was false.

8 Q. So that this was -- you were involved in
9 an earlier scenario back with Peter Rotskoff when
10 she said that she was -- she recanted her testimony,
11 and then you were involved in getting a statement
12 from her which recanted the recantation, right?

13 MR. MANCINI: Objection to the form,
14 foundation.

15 A. I don't recall all the proceedings.

16 Q. Well, do you recall that proceeding?

17 MR. MANCINI: Again, object to the form,
18 foundation.

19 A. I recall that there was a recantation that
20 was addressed by the Appellate Court.

21 Q. Well, do you recall a recantation that was
22 sent to you by her and that you helped to construct
23 an affidavit that she signed which recanted the
24 recantation? Do you remember that?

1 MR. MANCINI: Objection to form,
2 foundation.

3 A. I know she was sent an affidavit and I
4 really don't recall all the circumstances of it,
5 but -- and that having read my affidavit, that it
6 was mailed to her so she could make any additions or
7 corrections that she wanted to make to it and she
8 sent it back.

9 Q. And you sent it to her, right?

10 A. Yes.

11 Q. And you sent it to her and the substance
12 of that affidavit was that she was recanting what
13 she said to Rotskoff which was that Randy Steidl
14 didn't commit the crimes, right?

15 MR. MANCINI: Objection to the form,
16 foundation.

17 A. Well, my recollection of the Rotskoff
18 affidavit was only that Mr. Steidl didn't -- that he
19 was present but that he didn't do the stabbing.

20 Q. All right.

21 MR. BALSON: I can't hear. Your voice is
22 dropping. Would you keep your voice up please?
23 Could you read back his answer?

24 (Requested portion of the deposition was

1 read by the court reporter.)

2 BY MR. TAYLOR:

3 Q. Well, it would certainly mess up your case
4 if she backed off of the fact that he did the
5 stabbing but that all he was was present. That
6 wouldn't have been good for the postconviction from
7 the prosecutor's point of view, would it?

8 MR. MANCINI: Objection to the foundation
9 and form. Are you talking about his point of view
10 as a prosecutor or as the prosecutor at the time?
11 It's speculative. You can answer that question.

12 A. I was prosecutor at that time, and my
13 recollection is she contacted me and said she was
14 getting bugged by Mr. Rotskoff.

15 Q. And -- but she -- you got to see the fact
16 that she had signed before a notary public, whether
17 she had been bugged or not, an affidavit in which
18 she said that she knew that Randy Steidl did not
19 stab either Dyke or Karen Rhoads on the evening of
20 July 5th and that prior to trial she repeatedly told
21 the police and the prosecutor that Randy Steidl did
22 not stab either Dyke or Karen Rhoads, but the police
23 and the prosecutor ignored her statements.

24 You knew that she had signed an affidavit

1 in January of 1989 to that effect because she
2 informed you of that, didn't she?

3 A. Yes.

4 Q. And, in fact, in response, you then helped
5 her to complete an affidavit in which she attempted
6 to repudiate that affidavit, the prior affidavit
7 that she gave to Rotskoff, right?

8 MR. MANCINI: Object to the form.

9 A. She contacted me.

10 Q. All right. She contacted you. You were
11 in communication with her with regard to letters and
12 phone calls during 1988 and 1989 and 1990, weren't
13 you?

14 MR. MANCINI: Objection to the form,
15 foundation.

16 A. There were communications, but I know in
17 that particular case she contacted me.

18 Q. Well, but didn't you have phone calls with
19 her, letters exchanged with her, and didn't you have
20 visits with her in 1988 and 1989 and 1990 --

21 MR. MANCINI: Objection to the form.

22 Q. -- on a fairly regular basis?

23 MR. MANCINI: Object to the form,
24 foundation.

1 A. I don't recall it being regular. There
2 was one time I went to the prison.

3 Q. Well, you went more than once, didn't you?

4 A. No.

5 Q. Well, you had something like 15 phone
6 calls with her, didn't you, that you documented by
7 notes during those years?

8 MR. MANCINI: Object to the form,
9 foundation.

10 A. Whatever the notes say.

11 Q. Well, tell me, did you have about 15 phone
12 calls with her when you -- either you called the
13 prison or she called you collect from the prison?

14 A. I would say that if I -- obviously there I
15 documented my own conversations.

16 Q. Well, my question is were there about 15
17 of them?

18 A. My answer is I don't recall.

19 Q. Well, did you have -- did you write her 14
20 letters during that period of time?

21 A. I don't recall.

22 Q. Well, did you write -- how many letters
23 did you write her during that --

24 A. I don't recall.

1 Q. Did she write you 27 letters during that
2 period of time?

3 A. I don't recall.

4 Q. Well, does that sound about right?

5 A. I don't recall.

6 Q. Does 14 sound about right or do we need to
7 pull them all out and let you look at them?

8 A. You need to pull them out and let me look
9 at them.

10 Q. All right, we'll do that.

11 MR. TAYLOR: Let's take a break and get
12 them. Just so we set up the time --

13 MR. BALSON: Yeah, that's what I want to
14 talk about. We need to address the issue.

15 MR. TAYLOR: How much time do we have in
16 so far? I think we've got about five hours today.
17 Is that right?

18 MR. BALSON: We had six yesterday.

19 MR. TAYLOR: We had three at lunch time
20 because I asked the court reporter.

21 MR. MANCINI: I honestly don't know. Like
22 I said, we've asked you -- I made him available
23 between 9:00 and 5:00. The way you use your time is
24 your choice.

1 MR. TAYLOR: Well, we may have to go
2 beyond five o'clock.

3 MR. MANCINI: We can reasonably go beyond
4 five o'clock but not too far. I've given you guys
5 two days, gave you 9:00 to 5:00. However you use
6 your time you use your time.

7 MR. TAYLOR: Well, we're going to, we're
8 going to keep to the 14 hours and I think we will be
9 able to do that, and I think 14 hours is we'll
10 probably end around 6:00 or 6:15, somewhere in that
11 area, but I think if you want to get a count, we can
12 get a count.

13 MR. MANCINI: You also didn't use an hour
14 yesterday.

15 MR. BALSON: Didn't what?

16 MR. MANCINI: Use an hour that you had
17 yesterday. So, you know, I'm going to be
18 reasonable, but -- I'm not trying to be difficult,
19 but --

20 MR. BALSON: Well, you don't want to have
21 to come back.

22 MR. MANCINI: I don't want you to have to
23 come back either, but I clearly on March 9th sent a
24 letter saying 9:00 to 5:00, 9:00 to 5:00. That

1 gives you eight hours a day with, you know, a lunch
2 break and a couple of breaks. That you could easily
3 have accomplished this.

4 MR. BALSON: Well, 9:00 to 5:00 with a
5 lunch break and a couple of breaks doesn't give
6 us --

7 MS. SUSLER: All right, let's take five
8 minutes. Can you mark this please?

9 (McFATRIDGE Exhibit No. 8 was marked by
10 the court reporter.)

11 (Recess at 3:28 p.m. to 3:38 p.m.)

12 BY MR. TAYLOR:

13 Q. I have in front of you a group exhibit
14 that I've marked as 8, and the first letter is dated
15 November 30th, 1987, and it's from Debra I. Rienbolt
16 to Michael M. McFATRIDGE, Dear Mike.

17 By November of 1987, were you on a first
18 name basis with Ms. Rienbolt?

19 A. Not that I recall.

20 Q. Well, she called you Mike, right?

21 A. Yes.

22 Q. And this is a letter that she sent you; is
23 that right?

24 A. Yes.

1 Q. Is this the first --

2 MR. ACKERMAN: Flint, what's the Bates on
3 what you're looking at?

4 MR. MANCINI: It's Edgar County State's
5 Attorney 436.

6 MR. ACKERMAN: Thank you.

7 BY MR. TAYLOR:

8 Q. And in this letter, she's making a request
9 to -- for your help to try to get Vic unemployment;
10 is that right? It says in the first --

11 A. Yeah, I'm reading.

12 Q. It says in the first paragraph: What I'm
13 wondering is if you could do something through
14 Willises or the unemployment office so that he could
15 draw unemployment until he can find work, jobs, if
16 you da da da.

17 So she's asking you to help with his
18 unemployment; is that correct?

19 A. Yes.

20 Q. Do you remember that request?

21 A. No.

22 Q. Well, did you write her back on the next
23 letter, December 4th, 1987? Do you see that? Is
24 that on the Edgar County official State's Attorney's

1 stationery? Is that right?

2 A. Yes.

3 Q. And you tell her to have Victor contact
4 you at your office; is that right?

5 A. Yes.

6 Q. And, in fact, did you help her -- help
7 Victor get his unemployment?

8 A. Did I actually help him get his
9 unemployment?

10 Q. Yes, did you make any effort to help him
11 get unemployment?

12 A. I have no recollection of doing so.

13 Q. Okay.

14 A. I don't know if he showed up or not.

15 Q. All right. Now, the next letter is a
16 handwritten letter. Once again it's to Dear Mike.
17 Is this a letter that -- doesn't seem to have a date
18 on it, but the envelope is dated -- doesn't have a
19 date on it either.

20 MR. MANCINI: Here it is.

21 A. The letter --

22 MR. ACKERMAN: Is there a Bates on there?

23 MR. MANCINI: 433 Edgar County.

24 MR. ACKERMAN: Thank you.

1 BY MR. TAYLOR:

2 Q. Okay. This is a letter to you, is that
3 right --

4 A. Yes.

5 Q. -- from Debra Rienbolt? And in it she is
6 talking about somebody named Betty Baugh, is that
7 right, or who she refers to as Betty B.?

8 A. It's Betty B. I can't tell you that
9 refers to Betty Baugh.

10 Q. Well, do you know someone named Betty
11 Baugh?

12 A. Yes.

13 Q. And who was Betty Baugh?

14 A. Betty Baugh was the I guess mother of a
15 group who were notorious thieves I would use the
16 term.

17 MS. SUSLER: Can you keep your voice up
18 please?

19 A. Notorious thieves I would say. I mean
20 they have a long line of convictions.

21 Q. From Paris?

22 A. From Paris and Terre Haute and west Terre
23 Haute.

24 Q. And was she in prison with Debra?

1 A. I would have no idea.

2 Q. Do you know why she was causing problems
3 with Debra Rienbolt?

4 MS. EKL: Objection, form.

5 A. I don't know. Betty Baugh went to prison
6 for -- the charge was exploiting the elderly
7 basically.

8 Q. Okay. Well, if you look at the next
9 letter which is a letter on your stationery, it --
10 State's Attorney Office to Ms. Rienbolt in Dwight on
11 February 16th, 1988. In your second paragraph, you
12 say Dear Debbie. I take it you were on a first name
13 basis with her as well; is that correct?

14 A. That's the way she was referring to me.

15 MR. ACKERMAN: Is there a Bates of what
16 you're looking at now?

17 MR. TAYLOR: 0327.

18 MR. ACKERMAN: Thank you.

19 Q. And in the second paragraph you say that
20 you will contact the State concerning the denial of
21 Vic's unemployment; is that right?

22 MR. MANCINI: Second paragraph, Flint?

23 Q. Yes. Has Vic found a job yet? I looked
24 at his unemployment insurance denial form and do not

1 see much chance of his getting any help, but I will
2 contact the State. Hopefully Vic has gotten some
3 work by now. You wrote that; is that right?

4 A. Yes.

5 Q. Did you contact the State on Vic's behalf?

6 A. I would have no -- I don't recall.

7 Q. Well, do you normally make promises to
8 witnesses and prisoners that you don't keep?

9 MR. MANCINI: Objection as to form,
10 foundation.

11 A. I would likely contact them, but as I
12 indicated, it doesn't look like it's going to do any
13 good.

14 Q. Now, you were also talking to her about
15 Whitlock's appeal and saying that we are in good
16 shape; is that right?

17 A. Yes.

18 Q. And so you considered kind of you and she
19 to be a team?

20 A. No. She was a -- someone who I think we
21 owed a debt of gratitude. She came forward, put her
22 family at risk and testified on behalf of the State.

23 Q. So we was referring to you and she
24 collectively, wasn't she -- weren't you?

1 A. We would be referring presumably to law
2 enforcement.

3 Q. Okay. Well, let's go on to the next
4 paragraph. It says: Regarding communication with
5 that, quote, person, end quote, I would keep the
6 lines open, but be careful and not put anything in
7 writing. It would be nice to get something of his
8 in writing and other information, but that is up to
9 you entirely.

10 Who is this person that you and she are
11 talking about?

12 A. I have no idea.

13 Q. And why would you inform her not to put
14 anything in writing concerning this unknown person?

15 A. I don't know.

16 Q. All right.

17 A. I also left it up to her.

18 Q. All right. And do you normally advise
19 prisoners to not put things in writing to you?

20 MR. MANCINI: Objection as to form,
21 foundation. Mischaracterizes what was stated.

22 A. Again, this is somebody who put herself
23 and her family on the line, I believe we owed her a
24 debt of gratitude, she had testified on behalf of

1 the State.

2 Q. And so that debt of gratitude you were
3 trying to repay with various responses to requests
4 that she was making with regard to unemployment,
5 with regard to her status in work release and that
6 kind of thing; is that right?

7 MR. MANCINI: Object to the form.

8 A. I don't know. I haven't seen work release
9 here. I just know that I responded to her
10 communications.

11 Q. All right. Was there any other prisoner
12 in the Illinois state system or anywhere else that
13 you were exchanging letters with while you were
14 State's Attorney or was this a unique situation
15 given the debt of gratitude you felt towards her?

16 A. Certainly the number of communications was
17 unique. I can't tell you that I didn't communicate
18 with individuals in prison.

19 Q. All right. And you also refer here that,
20 you say: It seems from our visit that you are doing
21 as well as can be expected in prison. Life is
22 tough, but keep up your good attitude. I'm sure
23 we'll make another trip there.

24 So you had visited her sometime prior to

1 February 16th, 1988; is that right?

2 A. Apparently.

3 Q. And you also are at least promising to
4 come visit her again, right?

5 A. Make reference to that. I don't recall
6 another visit.

7 Q. Well, so if indeed this letter is
8 accurate, you made more than one visit to her; is
9 that right?

10 MR. MANCINI: Object to the form.

11 A. I just said we will as a future, and I
12 don't recall a second visit.

13 Q. Who went with you on this visit?

14 A. Obviously myself, I -- beyond that, I
15 can't be sure. I would guess either Jim Parrish
16 and/or Jack Eckerty.

17 Q. All right. And what was the -- why did
18 Parrish and/or Eckerty come with you?

19 A. It's official business. It would be good
20 to have a second person there.

21 Q. All right. Now, the next letter is dated
22 March 17th. This was sent to you, was it not?

23 MR. MANCINI: No year on it?

24 MR. ACKERMAN: Is there a Bates?

1 MS. SUSLER: '88.

2 MR. MANCINI: Thank you. It doesn't have
3 a Bates.

4 MS. SUSLER: It does. It's Plaintiff
5 003246.

6 MR. ACKERMAN: I'm sorry, what was that?

7 MS. SUSLER: Plaintiff 003246.

8 MR. ACKERMAN: Thank you.

9 MR. MANCINI: Ours is kind of cut off, but
10 we'll do the best we can.

11 BY MR. TAYLOR:

12 Q. Now, this is a draft of a letter to the
13 editor that Debbie Rienbolt wrote, is it not?

14 A. If I could have a second, I --

15 Q. If you want to look at the next page after
16 that and want to compare it with the actual letter
17 that was ultimately published, you can do that. Or
18 if you recognize it to be the letter to the editor
19 that she wrote, then you wouldn't need to look.

20 A. I wouldn't recognize it as such. I mean
21 it's certainly in that format and I'll compare it.

22 Q. Okay, fine.

23 MR. ACKERMAN: Is there a Bates on the
24 published letter to the editor?

1 MR. TAYLOR: The next page.

2 MS. SUSLER: Edgar County State's
3 Attorney's file 02235.

4 MR. ACKERMAN: Thank you.

5 BY MR. TAYLOR:

6 Q. Without comparing it line by line --

7 A. I'm not doing it by line. I'm doing it
8 really fast.

9 Q. It appears to be a draft of the letter
10 that was published some months later in the
11 newspaper; isn't that right?

12 A. It would appear to be so.

13 Q. And, in fact, you assisted her in getting
14 the letter published, did you not?

15 A. Not that I recall.

16 Q. Well, do you remember you were asking her
17 or telling her that you were in touch with the
18 Beacon Daily News and that the decision was to
19 withhold publishing the letter until after
20 Whitlock's appeal was decided?

21 MR. MANCINI: Objection to the form,
22 foundation.

23 A. That could be. That would make sense. I
24 mean if she would have submitted it, if she -- I was

1 aware of it, the Beacon was aware of it, I would
2 have certainly made -- it would have made sense for
3 me to make that request that it be postponed until
4 after an appeal.

5 Q. But, in fact, it was published before the
6 appeal was decided though, wasn't it?

7 A. That I can't tell you.

8 Q. All right. Well, let's go on to the next
9 handwritten letter which is March 20, 1988, 00429.
10 This is a letter to you from Debra Rienbolt, is it
11 not?

12 A. Yes.

13 Q. And again --

14 MR. ACKERMAN: Is there a Bates on that?

15 MR. TAYLOR: 00429. Didn't I just say
16 that?

17 MR. ACKERMAN: You didn't or at least I
18 missed it, thank you.

19 Q. And she's acknowledging the receipt of
20 your last letter and she's asking for certain help,
21 is she not?

22 A. Yes.

23 Q. All right. And specifically she's asking
24 for your help for what she terms being under police

1 protection at home for the two months from the time
2 that she started to cooperate with the police until
3 the trial. Is that right?

4 A. I suppose she's asking me to present this
5 request to the judge.

6 Q. All right. And, in fact, you did present
7 it to the judge, did you not, for her on her behalf?

8 A. I would imagine I presented it to the
9 judge. What he did with it, I don't recall.

10 Q. Well, do you remember subsequently her
11 writing you a letter thanking you for your help
12 because she did get the credit?

13 A. I don't recall.

14 Q. Well, let's go on to the next letter which
15 is March 26, 1988. That's a letter from you to Ms.
16 Rienbolt, is it not?

17 A. Yes.

18 Q. Again to Dear Debbie; is that right?

19 A. Yes.

20 Q. And you -- you are saying that we, again
21 referring to the collective we, are in good shape
22 with regard to Whitlock's appeal and we don't expect
23 a retrial. She was worried about having to testify
24 again, wasn't she?

1 MR. MANCINI: Objection as to form,
2 speculative, and the collective term is incorrect.

3 A. I don't think anybody wanted a retrial, so
4 I don't know if that was her thought process or not.

5 Q. Well, I would --

6 MR. ACKERMAN: Is there a Bates on this
7 letter?

8 MR. TAYLOR: Yeah, 326.

9 Q. I would expect Mr. Steidl, Mr. Whitlock
10 and their lawyers wanted a retrial, didn't they?
11 Nobody from your side wanted a retrial, right?

12 MR. MANCINI: Objection to form.

13 A. Well, nobody who believed that they were
14 guilty wanted a retrial.

15 Q. Right, and that's the "we" that you're
16 referring to, right?

17 A. Well, it could be that we --

18 MR. MANCINI: Asked and answered.

19 A. It could be like the we is, as in this
20 particular case, the People of the State of Illinois
21 who convicted him.

22 Q. Well, you're trying to say that the People
23 of the State of Illinois all wanted them not to have
24 a retrial or are you saying that the prosecutor,

1 i.e., you, and the witnesses, i.e., Ms. Rienbolt and
2 others, didn't want them to have a new trial?

3 MR. MANCINI: Objection. Mischaracterizes
4 his testimony.

5 A. I would say the people that I represented
6 as Edgar County State's Attorney didn't want to have
7 a retrial.

8 Q. All right. And, in fact, when you -- in
9 this letter, you say: Regarding your plea and
10 conviction, you need to be more specific as to the
11 reason you require it before the judge will order a
12 free copy. In any case, I will talk to you about
13 that later. I have read a copy of your letter to
14 the editor of the Paris Beacon News and find it to
15 be exceptionally well-written, but their concern as
16 well as mine is that it should not be published
17 until the conclusion of at least the Whitlock
18 appeal. I will talk to you more about it later
19 also. Regarding the Logan Correctional Center, I
20 will examine the possibility of your transfer. Do
21 not worry about Betty Baugh or others.

22 You wrote that letter, didn't you?

23 A. Yes.

24 Q. And, in fact, it indicates that you were

1 in touch with the editor of the Beacon Daily News or
2 the Paris newspaper with regard to the publication
3 of her letter; isn't that right?

4 A. Apparently.

5 Q. And, in fact, you had talked to the editor
6 about the timing of the publishing of that letter,
7 hadn't you?

8 A. Apparently.

9 Q. And was this something you were doing in
10 order to further attempt to make sure that Mr.
11 Whitlock and Mr. Steidl didn't get another trial?

12 MR. MANCINI: Objection as to form,
13 foundation.

14 A. Well, if I recall her letter to the
15 editor, and I only looked at it briefly, it
16 indicates that she testified truthfully at trial.
17 So, if anything, it supported the position that she
18 testified truthfully at trial. I would imagine
19 whether to wait until after the appeal is just so no
20 one could indicate that was trying -- it was trying
21 in any way to influence the appeal.

22 Q. Well, but Steidl had a case pending too,
23 didn't he?

24 A. Well, but his appeal would have been --

1 Whitlock's appeal was to the Fourth District since
2 it wasn't a death penalty. Steidl's appeal was to
3 the Illinois Supreme Court since it was death
4 penalty and would have been on a lot slower track.

5 Q. But in any event, the letter would have --
6 you were hopeful that it would -- when it did --
7 when it was published, it would have some impact on
8 public opinion; is that right?

9 MR. MANCINI: Objection. Mischaracterizes
10 what he testified to.

11 A. It was her letter. Apparently from this I
12 was trying to have the timing so that it wouldn't be
13 appearing that it was influencing the Whitlock
14 appeal, which seemed to be to the benefit of
15 Whitlock.

16 Q. And publishing the letter from her
17 claiming that she was speaking truthfully whenever
18 it was published was not to the benefit of Whitlock
19 or Steidl, was it?

20 MR. MANCINI: Objection as to the form.
21 Speculative.

22 A. I didn't know.

23 Q. Well, of course you know --

24 A. It didn't --

1 Q. Of course you know that a letter from the
2 witness in the paper, in the local paper, saying
3 that she told the truth, that was, in your point of
4 view, exceptionally well-written would have a
5 positive impact for the prosecution and a negative
6 impact for the defendants. Now you knew that.

7 MR. MANCINI: I've got to object. Are you
8 indicating that the letter is going to affect the
9 appellate judges who are ruling on an appellate
10 decision, is that what your question is, because
11 there's no longer a jury, so I'm trying to get a
12 clarification as to who you think is being
13 influenced by this. Can you answer that question?

14 Q. You may answer.

15 A. Okay, it was her letter and it got
16 published. I don't -- what impact it had, I
17 wouldn't know.

18 Q. All right. But you had involvement in the
19 publishing of it, didn't you?

20 A. I had involvement in the timing.

21 Q. You also contacted the editor of the paper
22 about the letter, didn't you?

23 A. They may have contacted me. They may have
24 said they received this and, you know, this may

1 impact the appeal or trial or whatever and --

2 Q. Well, whoever contacted who, you were in
3 touch with the editor about her letter; is that
4 right?

5 A. Apparently regarding the timing of its
6 publication.

7 Q. All right. Now, you also in this letter
8 say that you'll make every effort to come and visit
9 her within the next 30 days, right?

10 A. Yes.

11 Q. So you did visit her again, did you not?

12 A. Again, I don't recall. If it's documented
13 I visited her twice, I must have visited her twice.
14 I mean I know I visited her.

15 Q. And also with regard to her request of a
16 transfer from Dwight to Logan, you said you would
17 look into that as well for her, didn't you?

18 A. The possibility.

19 Q. And on April 26th of '88 she writes you
20 again, Dear Mike. Do you see that letter? Edgar
21 County State's Attorney file 00426.

22 A. Yes.

23 Q. All right. And she wrote you that letter;
24 is that right?

1 A. Yes.

2 Q. In this letter she's talking about being
3 paroled back to Paris when she's released from
4 prison; is that right?

5 A. I'd have to read it.

6 Q. And is she talking -- take a look at it.

7 A. Yes.

8 Q. And she's making certain requests in this
9 letter as well, is she not?

10 A. I think basically she's asking if there
11 would be any objection for her to be paroled back to
12 Paris.

13 Q. All right. And you advised against that;
14 is that right?

15 A. I don't recall.

16 Q. But you told her that you'd help her,
17 didn't you?

18 A. I don't recall.

19 Q. All right. Then the next letter is May 6,
20 1988, Dear Mike. Do you see that?

21 A. Yes.

22 Q. And that was a letter that was sent to you
23 by Debra Rienbolt; is that right?

24 A. Yes.

1 Q. And that's the fifth letter that she sent
2 you in this sequence; is that right?

3 A. I'm not counting.

4 Q. All right. Well --

5 MR. ACKERMAN: Is there a Bates on that?

6 MR. MANCINI: 421.

7 MR. ACKERMAN: Thank you.

8 BY MR. TAYLOR:

9 Q. And the next letter, Bates number 418 and
10 417, that's another letter, May 9th, '88, to you; is
11 that right?

12 A. Yes.

13 Q. And you received that letter?

14 A. Yes.

15 Q. Going back for a moment to the May 6th
16 letter, she recognizes that she -- that you just
17 visited her. In that letter she says thanks for the
18 recent visit. Do you see that?

19 A. Yes.

20 Q. So you did visit her a second time, right?
21 At least twice.

22 A. Apparently so.

23 Q. Okay. And also at some point she -- at
24 the end of the letter, she says that she's really

1 begging and pleading with you, pleading to you and
2 that you will do almost -- she will do almost
3 anything in order to get, to accomplish getting to a
4 halfway house. Is that right?

5 A. I'd have to read the letter.

6 Q. Take a look. Well, let me ask you --
7 since we're trying to move along, I'll withdraw the
8 question and ask you did you indicate to her that
9 she would write -- that she should write a letter to
10 the judge, Judge Pearman, about the matters that she
11 was concerned about, and did she send you such a
12 letter on or about May 14, 1988? That would be --
13 it's Plaintiff's 3261.

14 MR. MANCINI: Your question was a compound
15 one. I don't know which one --

16 Q. All right. Did you receive this letter
17 that Debra Rienbolt wrote addressed to Judge
18 Pearman?

19 A. Whether I re -- it's apparently in the
20 State's Attorney's file. Now, whether a copy came
21 from Judge Pearman or she copied the State's
22 Attorney, I can't tell you.

23 Q. Okay. Going on to -- you send a letter,
24 it's 00324, May 16th, '88.

1 A. Yes.

2 Q. Do you see that you're responding and
3 saying to her that you're concerned -- you're sorry
4 and concerned about her recent depression and that
5 she played an active role in the deaths of two
6 people and received a relatively lenient sentence
7 for your cooperation. Is that correct? Did you
8 write that to her?

9 A. Yes, but I think you need to read the
10 whole letter to put it in context.

11 Q. Well, did you refer to her sentence as
12 relatively lenient?

13 A. Yes.

14 Q. And did you also say that she should be
15 commended and rewarded for voluntarily coming
16 forward and solving this tragedy?

17 A. Yes.

18 Q. All right. And you are telling her that
19 she gave invaluable assistance that in all
20 likelihood without which the two most responsible
21 parties would be free today, meaning Steidl and
22 Whitlock. Isn't that right?

23 A. That's what I wrote.

24 Q. All right. And that was what you -- that

1 was your viewpoint at that time; is that right?

2 A. Not necessarily my viewpoint. I'm writing
3 an individual trying to have her deal with prison
4 and have her feel self worth.

5 Q. Well, but you're -- are you saying this
6 wasn't true what you were telling her?

7 A. I'm saying it's something that you would
8 write there that -- obviously she did give
9 invaluable assistance. That's a matter of record.

10 Q. And without which the men would not be in
11 prison, right?

12 A. Well, that I can't say.

13 Q. Well, you said it though. You did, didn't
14 you?

15 A. Again, the purpose -- if you read the
16 letter, I mean that's -- I'm sorry concerning about
17 your recent depression. It's obviously easy for me
18 to say do your best to cope with prison and avoid
19 trouble, but quite frankly that is the only attitude
20 you should have.

21 Q. All right. Now, did you -- you tell her
22 in this letter that you would not object to her
23 parole being granted to Paris even though you do
24 sincerely believe that release would be a mistake

1 for her and her family; is that right?

2 A. That's correct. I also indicate in there
3 that if she wanted a modification of her sentence
4 she needed to write Judge Pearman directly.

5 Q. All right. And that's the letter that you
6 had in your file that you wrote?

7 MR. MANCINI: Objection to form.

8 A. I would say so.

9 Q. But you're also going to approach the
10 judge; is that right? It says: Give me more
11 details about such programs in order to better
12 approach the judge. Is that right?

13 A. I would present the judge with whatever
14 she presented me.

15 Q. Was he the judge in her case?

16 A. He was the sentencing judge.

17 Q. All right. And you were the prosecutor in
18 that case, right?

19 A. Yes.

20 Q. And it's kind of -- have you ever had a
21 relationship with a person that you prosecuted and
22 convicted where you've exchanged numerous letters
23 and phone calls and visits subsequent to that
24 person's conviction other than Ms. Rienbolt?

1 A. As I indicated before, it's probable that
2 I've corresponded with other witness/prisoners in
3 the penitentiary but obviously not to this extent.

4 Q. All right. Now, in this file there's a
5 couple of letters from Peter Rotskoff to Debra
6 Rienbolt dated June of 1988. Do you see those?

7 A. Yes.

8 Q. Did Ms. Rienbolt send those to you?

9 A. Yes.

10 Q. And when did she send -- did she send them
11 to you on or about the time that he sent them to
12 her?

13 A. I can't -- I couldn't tell you.

14 Q. Now, you had -- you ultimately made an
15 ARDC complaint against Mr. Rotskoff, did you not?

16 A. No.

17 Q. Did you, in fact, call him a rat at any
18 time?

19 MR. MANCINI: Objection as to form,
20 foundation.

21 A. When?

22 Q. At any time.

23 A. I don't recall.

24 Q. Did you -- did you accuse him of being a

1 rat at any time in your writing?

2 MR. MANCINI: Objection to form,
3 foundation.

4 A. I don't recall. I wasn't particularly
5 fond of him.

6 Q. And he was Mr. Steidl's appellate lawyer,
7 wasn't he?

8 A. Yes.

9 Q. All right. And, in fact, he was
10 attempting to talk to Ms. Rienbolt about her
11 testimony, wasn't he?

12 MR. MANCINI: Objection to form,
13 foundation. It's speculative.

14 A. He did talk to her.

15 Q. Right. But in June of '88 he was -- he
16 hadn't yet spoken with her, had he?

17 MR. MANCINI: Objection to form,
18 foundation.

19 A. I don't know.

20 Q. Well, you also called him a weasel, didn't
21 you?

22 MR. MANCINI: Objection to form,
23 foundation.

24 A. I don't recall calling him that.

1 Q. Okay. Well, here, let me mark this as
2 Exhibit No. 8.

3 MS. SUSLER: 9.

4 MR. TAYLOR: 9.

5 (McFatrige Exhibit No. 9 was marked by
6 the court reporter.)

7 MR. MANCINI: Is this not part of the list
8 of letters?

9 MR. TAYLOR: No.

10 MS. SUSLER: Phil, it's Edgar County
11 State's Attorney file 939.

12 MR. ACKERMAN: Thank you.

13 BY MR. TAYLOR:

14 Q. All right. I show you what I've marked as
15 Exhibit No. 9. It's a letter March 30th, 1990, from
16 you to Nathan Maddox. Do you see that letter?

17 A. Yes.

18 Q. And you did send Mr. Maddox this letter on
19 March 9; is that right?

20 A. Yes.

21 Q. And in it you say: Please find a copy of
22 my letter of commendation regarding you to Hartigan.

23 Now, what was Mr. Maddox's role and why
24 were you writing a commendation for him?

1 A. He would have been handling the
2 postconviction matters and probably perhaps the
3 appeal regarding Steidl.

4 Q. And you were writing him -- was this after
5 Steidl's postconviction was denied?

6 A. I couldn't tell you.

7 Q. Well, and you say: As discussed, it's my
8 understanding that ARDC has been keeping up-to-date
9 regarding Rotskoff, quote, the weasel, end quote.
10 Is that right?

11 A. Yes.

12 Q. So you called him a weasel in this letter,
13 did you not?

14 A. Yes.

15 Q. All right. And why did you call him a
16 weasel?

17 A. Because I thought he was behaving
18 unethically and very sneaky at least based upon the
19 representations of Ms. Rienbolt to me.

20 Q. All right. And later in the letter you
21 say: Let me know the status of said motions
22 including withdrawal of Rotskoff, the rat. So you
23 called him not only a weasel but a rat in a formal
24 letter to an Assistant Attorney General; is that

1 right?

2 A. Yes.

3 Q. All right. So you kind of had a
4 propensity to use pejorative terms for defendants,
5 for lawyers and for media people that you didn't
6 like; isn't that right?

7 MR. MANCINI: Objection as to form,
8 foundation.

9 A. I have a propensity for people that I
10 consider dishonest and unethical or who lack loyalty
11 or stab you in the back, yes, I do have a propensity
12 for that.

13 Q. Mr. Rotskoff didn't stab you in the back,
14 did he?

15 A. I thought he was acting unethically.

16 Q. Did you take it personally because he was
17 representing his client and attempting to get a
18 witness to give a statement that was beneficial to
19 his client?

20 A. As we all know, there are ethical bounds
21 in representing your clients.

22 Q. That's right, and he wasn't -- he didn't
23 break any of them, did he?

24 A. I would have no idea. I didn't turn him

1 in to the ARDC.

2 Q. Well, was he found that he violated any
3 ethical provisions of the ARDC in his dealings with
4 Debbie Rienbolt?

5 MR. MANCINI: Objection. That's
6 confidential and absolute privilege for Mr.
7 Rotskoff. As to whether or not Mr. McFatridge can
8 answer that, he shouldn't because it is an absolute
9 privilege for Mr. Rotskoff, but if you know, I guess
10 answer it.

11 Q. You may answer.

12 A. I don't know. Again, those records are
13 confidential.

14 Q. Well, you called -- you repeatedly called
15 Mr. Whitlock and Mr. Steidl murderers --

16 A. Yes.

17 Q. -- publicly, didn't you?

18 MR. MANCINI: Object as to form.

19 A. I wouldn't say repeatedly, but yes, I did.

20 Q. And your -- and you called one of his
21 lawyers at least a rat and a weasel, right?

22 A. Yes.

23 Q. And you know Eric Zorn, right?

24 A. Yes.

1 Q. And you know -- you had some conflict with
2 Eric Zorn in the early -- around the year 2000
3 because he wrote some articles that questioned
4 the -- questioned whether Mr. Steidl and Mr.
5 Whitlock were innocent; isn't that right?

6 MR. MANCINI: Objection to form,
7 foundation.

8 A. That's -- since I -- that's incorrect.
9 Actually he wrote the article, and then we, and I
10 would assume him contacting me, corresponded by
11 email which, what I believed, were, you know, open
12 and frank discussion about the case separate and
13 apart from his letters. And when I found out that,
14 in fact, all he was doing was saying what I --
15 telling him what I thought was a confidence between
16 the two of us just having an intellectual discussion
17 was being turned over to defense counsel and in
18 essence he was just a face man for the defense, yes,
19 I was very upset.

20 Q. When did you find out he was turning
21 things over to the defense?

22 A. I would imagine shortly before I sent the
23 email you're looking for.

24 Q. All right. Well, you ended up calling him

1 a pussy, didn't you?

2 A. What's ever in the email.

3 Q. Well, do you remember calling a respected
4 columnist for the Chicago Tribune a pussy?

5 MR. MANCINI: Objection as to form.

6 A. That's a matter of opinion whether he is
7 respected or not. I don't imagine he's real
8 respected by law enforcement people.

9 Q. Certainly wasn't respected by you, was he?

10 A. That's correct.

11 Q. And you figured you could call him
12 anything you wanted to, right?

13 MR. MANCINI: Objection as to form,
14 foundation.

15 A. Unlike the attacks that he would make upon
16 this case publicly through his editorials, my attack
17 on him was through an email between the two of us.
18 There's a lot of difference there.

19 Q. So you felt that you could call him
20 anything you wanted to in an email; is that right?

21 A. Man to man, yes.

22 Q. And did you tell him, hey, this is off the
23 record, don't put this in the newspaper, I may call
24 you some names, I may answer some questions, but

1 don't put it in the newspaper, this is man to man?

2 A. That was my impression that I got in our
3 private correspondence with each other.

4 Q. Well, is your email address
5 mike@tigerpaw.com?

6 A. At the time.

7 Q. All right. And do you consider it to be
8 man to man to call someone a pussy?

9 MR. MANCINI: Objection as to form. That
10 doesn't make sense.

11 A. Depends on the circumstances.

12 Q. Well -- so in this circumstance you felt
13 it was okay to call him that and it was kind of a
14 man to man thing to do; is that right?

15 A. Well, it's man to man by email, and I
16 would say that I was obviously very upset about what
17 I considered being betrayed. I was having an
18 intellectual discussion with somebody purported to
19 be open-minded and in fact he wasn't.

20 Q. In fact, he proposed ten questions to you,
21 didn't he?

22 MR. MANCINI: Objection to form,
23 foundation.

24 A. He may have. I don't recall the

1 specifics.

2 Q. Well, he asked you, did he not, why didn't
3 you search and test the car, shoes, carpeting, et
4 cetera, of Steidl and Whitlock immediately after
5 Herrington came forward?

6 MR. MANCINI: Objection to form,
7 foundation.

8 Q. You didn't answer that question. You
9 instead called him a pussy and said he hid behind
10 his mother's skirts, didn't you?

11 MR. MANCINI: Objection to form,
12 foundation.

13 A. Whatever I said.

14 Q. Well, you said that, didn't you?

15 MR. MANCINI: Objection to form,
16 foundation.

17 A. I didn't say that. I put it in writing.

18 Q. Well, do you use that terminology so
19 frequently with media and lawyers that you don't
20 remember the specifics of it?

21 MR. MANCINI: Objection to form,
22 foundation.

23 A. No, I save it for special individuals who
24 have acted I believe beyond the bounds of ethics.

1 Q. All right. Anyone else you can recall
2 calling these names other than Rotskoff, Steidl and
3 Whitlock and Eric Zorn, people who have taken the
4 position that perhaps your prosecution didn't
5 convict guilty people?

6 MR. MANCINI: Objection, mischaracterizes
7 any reference to Mr. Whitlock and Steidl being rats,
8 weasels, pussies or hiding behind the skirts of
9 their mothers. Did I get that right?

10 A. Yeah, I -- I believe that Whitlock and
11 Steidl were fairly convicted and are and remain
12 guilty.

13 Q. That wasn't my question.

14 A. Well, I'm answering your question, sir.
15 Individuals who take -- it's absolutely reasonable
16 to take a position contrary to that. That's not an
17 issue. What's at issue is when the tactics go
18 beyond at least the bounds of professional ethics
19 that those become issues. And when I've been faced
20 with that, I responded.

21 Again, I didn't write a letter to the
22 editor regarding Mr. Rotskoff. This is a private
23 communication between me and Mr. Maddox. That was a
24 private communication between me and Mr. Zorn. I'm

1 not writing letters to the editors, you know,
2 publicly ridiculing people like the newspaper
3 articles that were out of the one Springfield paper
4 accusing people, the police and the prosecutor, of
5 all kinds of things that are groundless. I'm not
6 out there writing books. These are private
7 communications.

8 Q. Well, wait a minute. You did write a
9 letter to the editor publicly condemning the
10 Attorney General of the State of Illinois, didn't
11 you?

12 A. That's correct. Yes, I did.

13 Q. And you called her incompetent and all
14 sorts of other things in a letter to the editor,
15 didn't you?

16 MR. MANCINI: Objection to form,
17 foundation.

18 A. She's an elected official and subject to
19 criticism.

20 Q. Right. So now we've got four sets of
21 people that you're attacking with all sorts of
22 pejorative terms. We've got Steidl and Whitlock who
23 are the murderers depending no matter what the
24 evidence shows, you got his lawyer who tries to get

1 an affidavit, he's a weasel and a rat, you got the
2 columnist who tries to expose the evidence publicly
3 and he's a pussy, he hides behind his mother's
4 skirts, and now we have Lisa Madigan, the elected
5 official of the State of Illinois and all she is is
6 incompetent because she doesn't appeal in a case
7 where a judge has found that your prosecution was,
8 to be kind, inadequate and convicted an innocent
9 man, right?

10 MR. MANCINI: Objection as to form.

11 That's not even a question.

12 MR. TAYLOR: It is too a question.

13 MR. MANCINI: No, it's not.

14 MR. TAYLOR: Let him answer.

15 MR. MANCINI: I'm telling him not to
16 answer. Go in front of the judge with that
17 question.

18 MR. TAYLOR: I'd love to have the judge
19 see that question and I'd love to have the judge see
20 that answer.

21 MR. MANCINI: Great.

22 MR. TAYLOR: Could you read the question
23 back please?

24 (Requested portion of the deposition was

1 read by the court reporter.)

2 MR. MANCINI: Objection as to the form,
3 foundation. It's argumentative. It's compound. It
4 lacks any -- it actually mischaracterizes whatever
5 testimony was before you and it's impossible to
6 answer because it's a closing argument.

7 Q. You may answer.

8 MR. MANCINI: I'm instructing him not to.

9 MR. TAYLOR: All right.

10 MR. BALSON: There's no basis to instruct
11 him not to answer. You know the rules. There's no
12 basis to instruct him not to answer.

13 MR. MANCINI: Sure there is. It's an
14 impossible question.

15 MR. BALSON: It's not privileged. You
16 have no basis.

17 MR. MANCINI: It's impossible to answer.

18 MR. BALSON: You can't say it's --

19 MR. MANCINI: Okay, can you answer that
20 question?

21 THE WITNESS: I -- I don't know what the
22 question is.

23 MR. TAYLOR: Okay. Well, let's break it
24 down. Could I mark this as Exhibit No. 10?

1 (McFATRIDGE Exhibit No. 10 was marked by
2 the court reporter.)

3 MR. ACKERMAN: Is there a Bates on this
4 exhibit?

5 MR. TAYLOR: Yes. Plaintiff 22992,
6 Plaintiff 22977, 78, 79, 80, and 81.

7 MR. ACKERMAN: Thank you.

8 BY MR. TAYLOR:

9 Q. Now, this is an exchange of letters and
10 email between you --

11 MR. MANCINI: Wait. He's got four copies
12 of the same email. Do you want him to have four of
13 them?

14 MS. SUSLER: Here's the rest of it right
15 here. It's a group exhibit. So give him this and
16 give him that. That's the group exhibit.

17 MR. MANCINI: We've got the mark on this
18 one, so give me the --

19 MS. SUSLER: Here's another complete group
20 exhibit.

21 MR. MANCINI: Okay, just so the record --

22 MS. EKL: This is all one exhibit?

23 MR. MANCINI: Bates -- just so the record
24 is clear, the Bates don't go in sequential order,

1 but what we've been handed is Plaintiff 0022992,
2 Plaintiff 0022977 through 22981. So apparently
3 there's about 11 pages in between these two exhibits
4 that we don't have.

5 BY MR. TAYLOR:

6 Q. All right. Now, this is a -- there's a
7 letter to Mr. Zorn, an email, from you dated May
8 12th, 2000, is that right, called Farewell to Arms?

9 A. Yes.

10 Q. All right. And you wrote that and that's
11 your email; is that right?

12 A. Yes.

13 Q. Okay. And, in fact, there's a letter from
14 Mr. Zorn to you titled Dear Mr. McFatridge and it
15 has a list of ten questions that he's putting to
16 you, do you see that, and it's dated the day before,
17 May 11th; is that right?

18 A. Yes.

19 Q. And did you receive that email?

20 A. Yes.

21 Q. All right. And then there's a third
22 email -- I'm sorry, there's a -- there's a letter
23 that's signed by you to Mr. Zorn, is that right, or
24 is it an email?

1 A. I'm sorry?

2 MR. MANCINI: I'm not following you,
3 Flint.

4 A. You're talking about May 11th, 2000?

5 Q. Yes. It's Dear Mr. -- Dear Mr. Zorn, in
6 reading your columns, who are you to assess the
7 quality and quantity of the police investigation?
8 Do you see that?

9 MR. MANCINI: Do you have a Bates number
10 or anything?

11 MR. TAYLOR: It's Bates number 22978.

12 MR. MANCINI: Okay.

13 A. Yes.

14 Q. All right. And that is an email you sent
15 to Mr. Zorn?

16 A. Yes.

17 Q. You're talking about the case as well as
18 dunking beer cans; is that right?

19 A. Yes.

20 Q. Did you -- did you have a propensity when
21 you were younger to dunk beer cans in a ten foot
22 rim?

23 MR. MANCINI: Objection to form.

24 A. I believe we talked about something about

1 dunking there, and yeah, I dunked a beer can once.

2 Q. All right. Is that the same time in
3 Memphis that you were getting a little cocaine?

4 MR. MANCINI: Objection to the form. It
5 doesn't have any relation to this and now you're
6 being hostile and badgering the witness. We were
7 kind enough when Mr. Balson asked us not to be
8 difficult with Mr. Whitlock. Don't play games in
9 the deposition. Take your deposition. You don't
10 have to do that to the witness. Putting on a show
11 for your client, that's great, but if you have a
12 relevant question, ask it.

13 Q. You may answer.

14 A. Actually that -- that was a little bit
15 older. That occurred when I believe I was visiting
16 my in-laws in Terre Haute.

17 Q. All right. Now, in this email to Mr. Zorn
18 dated the 12th you say: I assume you're in the
19 middle of a -- you are in the middle of a barfly and
20 substance abuse binge. So you're accusing Eric Zorn
21 of being a barfly and a substance abuser?

22 MR. MANCINI: We're not on the same --
23 hold on.

24 MR. TAYLOR: This is page 22990.

1 MR. MANCINI: Thank you.

2 Q. Is that right?

3 A. Those are semantics.

4 Q. They're words, right?

5 A. Yes.

6 Q. All right. And you say that -- you say:
7 I would call you a moron, but I do not want to
8 insult other morons. Is that right?

9 A. Yes, I did say that.

10 Q. Do you recall -- you're calling Zorn
11 something lower than a moron; is that right?

12 A. And again, this went to him. This didn't
13 go to his editor. This was an email between the two
14 of us.

15 Q. So that makes it okay to write a columnist
16 and call him these kind of names?

17 MR. MANCINI: Objection to form.

18 A. Well, does it make it all right if you
19 look at the heading here where he sent it on to
20 Clutter and everybody else? I mean look at all the
21 people he forwarded it on to. I mean here's a
22 conversation between the two of us and he forwards
23 it on to 10, 12 people.

24 Q. And it doesn't say on here off the record,

1 now does it?

2 MR. MANCINI: Objection, form.

3 Q. You're lucky, are you not, that this
4 wasn't in the Chicago Tribune, former prosecutor of
5 death penalty Randy Steidl, a man on Death Row,
6 calls reporter a moron and says he ought to be butt
7 fucked in the prison, right?

8 A. That wasn't --

9 Q. You're lucky that didn't get in the
10 newspapers, aren't you?

11 MR. MANCINI: Objection to form,
12 foundation.

13 A. Compared to some of the things that have
14 been printed about this case in the newspaper, about
15 myself and law enforcement, that probably would have
16 been a step up.

17 Q. Well, let me ask you this. Have you ever
18 seen anything in the paper where a former prosecutor
19 says to a reporter who dares to challenge his view
20 of the prosecution: Perhaps it's insensitive, but I
21 truly wish that you personally suffer some crime so
22 that you will be forced to rely on law enforcement
23 that you so eagerly malign.

24 A. He does eagerly malign law enforcement.

1 Q. Yeah, and you're wishing that he suffer a
2 crime so that he'll have to call the police. What
3 -- what crime were you anticipating? Perhaps an
4 anal rape?

5 MR. MANCINI: Objection as to form.

6 Q. Did you have any crime in mind?

7 A. No.

8 Q. Pardon me?

9 A. It's a matter of semantics.

10 Q. Semantics again, just words, right?

11 A. Yes, sir.

12 Q. And let's go on to the next statement.

13 Were you butt fucked in prison, question mark. Now,
14 let me ask you, sir, that carries a real
15 connotation, does it not, with regard to prisons.
16 Butt fucking is no laughing matter in the prisons of
17 this state or any state, is it?

18 MR. MANCINI: Objection to form.

19 Q. And you know that --

20 MR. MANCINI: Foundation.

21 A. Mr. Zorn --

22 Q. -- as a prosecutor.

23 MR. MANCINI: Objection, form, foundation.

24 A. -- has an extreme bias, anti-law

1 enforcement bias. I tried to have a conversation
2 with him on the level and found out it was just BS.
3 Yes, I was angry.

4 Q. So you --

5 A. And I should not have written the email.
6 I regret writing the email, but obviously it's been
7 sent. But under the circumstances and the way that
8 I believed that I was treated by him, you know, when
9 I thought we were engaged in actually a professional
10 conversation, it happened and I apologize for it.
11 If he was here, I would apologize to him.

12 Q. All right. What do you understand butt
13 fucking in prison means?

14 MR. MANCINI: Objection as to form,
15 foundation.

16 A. I don't know.

17 Q. Did you -- did you have any understanding
18 of whether Mr. Steidl or Mr. Whitlock were the
19 subjects of any butt fucking in prison because they
20 were wrongfully convicted?

21 MR. MANCINI: Objection to form,
22 foundation.

23 A. First of all, I don't believe they were
24 wrongfully convicted. As to the second part of your

1 compound question, I don't know.

2 Q. Well, if this is what you thought about a
3 reporter from the Chicago Tribune who dared
4 challenge your view of the evidence publicly, what
5 was your attitude towards Mr. Steidl and Mr.
6 Whitlock?

7 MR. MANCINI: Objection as to form.
8 Mischaracterizes what he testified to.

9 A. This is after being -- this is 2000. This
10 is after being pounded one-sidedly in the media for
11 I'd say over ten years, and it was an unfortunate
12 reaction on my part. I thought I was engaging in a
13 conversation with someone who was going to be
14 open-minded, and as I found out, I was wrong.

15 Q. Well, you say: I can appreciate the
16 embarrassment that you must feel that an Illini is
17 kicking the ass out of some rodent. Now, the Illini
18 is you; is that right?

19 A. Right.

20 Q. And the rodent is Mr. Whitlock and Mr.
21 Steidl?

22 A. No, Mr. Zorn attended Michigan.

23 Q. And they're rodents?

24 A. They're Wolverines.

1 Q. I see. That's a good one. Now, in the
2 letter that you were responding to Mr. Zorn, the
3 outrageous letter that he wrote you asked ten
4 questions, right? Look at page 22977.

5 A. Yes.

6 Q. And he asked you why you didn't search and
7 test the car, the shoes, and the carpeting of Steidl
8 and Whitlock immediately after Herrington came
9 forward. Why didn't you?

10 MR. MANCINI: Objection as to form,
11 foundation. He's already answered that. Again,
12 you're personalizing it.

13 A. Because that's an investigator's job, one,
14 it's not my job, and actually I believe the car, in
15 fact, was tested.

16 Q. All right. And he questions the use of
17 the "something big" quote that Mr. Steidl allegedly
18 made and that you put into -- into evidence. Did
19 you respond to him on that?

20 A. That's a matter of record, the evidence.

21 Q. Well, did you respond -- respond to his
22 question about the believability of the quotes and
23 the relevance of the quotes?

24 A. I don't recall.

1 Q. All right. Did you respond to his
2 suggestion that Mr. Herrington was not believable?
3 That was question number three.

4 A. Like I said, I don't recall if I responded
5 to any of his questions, and as you note in his
6 email to me: Your batting average is zero for ten.

7 Q. All right. So rather than to answer these
8 ten questions that he raised to you, you sent this
9 email which was entitled Farewell to Arms. Is that
10 right?

11 MR. MANCINI: Objection as to form.
12 Mischaracterizes the exhibits.

13 A. I don't know what the sequence of emails
14 was.

15 Q. Now, going back to the letters that you --

16 A. I do know -- let me just say I do know
17 that when he sent me the emails, all these
18 individuals that are copied on the emails, that
19 wasn't on the email that was sent to me.

20 Q. All right.

21 A. Otherwise, I would have been -- if he was
22 forthright, I'd have been at least on notice that,
23 in fact, he was disseminating our conversations to
24 the rest of the world.

1 Q. All right. Let's go back to the letters
2 for a moment.

3 MR. MANCINI: This is Exhibit 8?

4 MR. TAYLOR: Uh-huh.

5 MR. MANCINI: Is that a yes?

6 MR. TAYLOR: Yes.

7 MR. MANCINI: Thank you.

8 MR. TAYLOR: June 13, '88. I don't see a
9 number on it.

10 MR. ACKERMAN: Is there a Bates on that
11 letter?

12 MR. TAYLOR: There is, but it looks like
13 it's cut off.

14 MS. SUSLER: Plaintiff 03269.

15 MR. ACKERMAN: Thank you.

16 BY MR. TAYLOR:

17 Q. This is a letter to Mike, meaning you,
18 from Debra Rienbolt dated the 13th of June, '88; is
19 that right?

20 A. Yes.

21 Q. Now, you received this letter from her; is
22 that right?

23 A. Yes.

24 Q. All right. Now, she -- in this letter, on

1 the second page, she indicates to you that she is
2 sorry for all the games she's played with you; is
3 that right?

4 MR. MANCINI: Can you give him time to
5 read it I guess?

6 A. I mean you're taking things out of context
7 not allowing me to read the letters.

8 MR. MANCINI: Just read. Don't comment,
9 just read it.

10 Q. If you look on page 2 it says: It seems
11 to be coming true. I sometimes feel that I am being
12 played games with and I believe it is not a very fun
13 feeling. I am sorry for all the games I've played
14 because I know they have hurt a person.

15 A. Yes.

16 Q. All right. And were you aware that she
17 was playing games and hurting people?

18 MR. MANCINI: Objection to form,
19 foundation.

20 A. And again, without having read the full
21 letter, it's referring to a single person who would
22 be -- presumably is a family member, perhaps her
23 husband.

24 Q. Now -- all right. And, in fact, if you

1 look at the next page, do you see her saying to you:
2 I do appreciate all that you have done and are doing
3 for me and I want to thank you for all, including
4 letting my letter be published and also for letting
5 me be paroled back to Paris.

6 Do you see that? Page 3.

7 MR. MANCINI: I don't see it either.

8 MS. SUSLER: At the top of the page it
9 says, at the top of the page it says --

10 MR. MANCINI: It's hard to read because
11 it's got like a print on it.

12 MS. SUSLER: At the top of the page it
13 says -- what I'm talking about is the first line.

14 MR. TAYLOR: 3273.

15 MR. MANCINI: We don't have Bates numbers.

16 MS. SUSLER: And then it's the fourth
17 paragraph. Here I'll show you. About halfway down,
18 I do appreciate -- it's the start of a new
19 paragraph.

20 MR. MANCINI: It's really hard to read,
21 Jan, I'm not trying to be difficult, but let's
22 compare notes here.

23 MS. SUSLER: I do appreciate what --

24 MR. MANCINI: I'm looking at that one

1 also. Let me see if I can find that one. There it
2 is.

3 MS. WADE: Which page, I'm sorry?

4 MR. MANCINI: I don't know the page.

5 MS. SUSLER: It's 3273 of plaintiff.

6 MR. MANCINI: Just so it's clear, do you
7 want him to start reading where it says I do
8 appreciate?

9 MS. SUSLER: Yes.

10 A. Yes. What --

11 MR. MANCINI: What was the question? I
12 think in all that confusion --

13 BY MR. TAYLOR:

14 Q. So she wrote that and thanked you for all
15 that you had done for her including getting her
16 letter published and helping her get paroled to
17 Paris; isn't that right?

18 A. It said letting her be paroled back to
19 Paris. I don't recall the parole system, but
20 apparently if there's an objection, that may affect
21 parole, and I think we indicated we would not object
22 if she wanted to come back to Paris. And she also
23 goes on to say her hope is to get transferred to a
24 drug center.

1 Q. Well, you -- during the period of this
2 next year or so, you helped her with her parole, you
3 helped her with her work release, you helped her
4 with the Gateway which was a program within the
5 prison, and you helped her to get time served for
6 the two months that she was under police watch, did
7 you not?

8 MR. MANCINI: Objection.

9 Q. You helped her with all those things, did
10 you not?

11 MR. MANCINI: Objection as to the form and
12 foundation. It mischaracterizes what he's
13 previously testified to.

14 A. I would not -- I think helping her is a
15 mischaracterization because I don't recall if I
16 helped her or not. I mean certainly we made
17 inquiries and presented her petitions to
18 individuals, but whether any of that in essence, for
19 lack of a better term, actually helped her, I
20 couldn't tell you.

21 Q. Well, you made efforts to assist her in
22 all those areas; is that right?

23 MR. MANCINI: Objection as to form.
24 Mischaracterizes his testimony.

1 A. Most of the time the effort is just to say
2 this individual's made a request and could you give
3 her consideration.

4 Q. All right. Now, in the letter of -- if
5 you look at right above what you just read, I do
6 appreciate all you've done for me, it says: I also
7 want to reassure you that at this time I haven't
8 written Randy's attorney regarding talking or not
9 talking to him nor will I until I hear from you. Is
10 that right? Do you see that?

11 A. That's what it says, but in fact she
12 talked to his attorney.

13 Q. Well, this is in June of '88, isn't that
14 right, according to this letter?

15 A. That's what she was writing here.

16 Q. Yes. So at that time he had just
17 contacted her and she hadn't talked to him, right?

18 MR. MANCINI: Objection as to speculation.

19 A. I have no clue.

20 Q. Well, she didn't talk to Rotskoff until
21 the end of '88 or early '89 when she executed that
22 affidavit, did she?

23 MR. MANCINI: Objection as to form.
24 Speculation.

1 A. I have no idea.

2 Q. All right. Did you discuss with her
3 whether she should talk to Rotskoff or not?

4 A. That was her decision.

5 Q. Well, did you tell her it was her decision
6 or did you help to advise her in informing Rotskoff
7 that she wouldn't cooperate with him?

8 MR. MANCINI: Objection as to form.

9 A. I cannot tell someone not to talk to an
10 individual, but you can advise them that they have
11 the right not to talk to the person.

12 Q. All right. And is that what you remember
13 what you -- that you did with regard to her?

14 A. I would have likely reminded her, like any
15 individual in a similar situation, that you have the
16 right not to talk to that individual.

17 Q. All right. And on the 21st, that being
18 the next handwritten letter to you, Dear Mike,
19 that's a letter you received the 21st of June 1988;
20 is that right?

21 MR. MANCINI: Phil, I don't know the Bates
22 label.

23 MR. ACKERMAN: Is there a Bates on there,
24 Jan?

1 MS. SUSLER: Yeah, just a second.

2 Plaintiff 003275.

3 MR. ACKERMAN: Thank you.

4 Q. All right. And again, in this letter
5 she's saying she has not decided yet whether to talk
6 to Randy's attorney who's still trying to get her to
7 talk to him -- to her. Is that right?

8 A. It also indicates: I'm sorry that you
9 don't feel that you can help me.

10 Q. All right. And help you -- help her with
11 what?

12 A. I have no idea. It's apparently a
13 conversation with her counselor.

14 Q. All right. But you did attempt to talk to
15 her counselor, didn't you?

16 A. Probably did talk to her counselor.

17 Q. Well, at this time she actually says thank
18 you and good-bye -- good luck, thank you and
19 good-bye. So it appears at this time she's cutting
20 off communication with you; is that right?

21 MR. MANCINI: Objection as to speculation.

22 Q. Do you see the bottom? Is that what you
23 recall that letter to be telling you?

24 MR. MANCINI: Objection as to the form and

1 speculation.

2 A. That would not necessarily mean that she's
3 going to cut off communication and especially in
4 light of the fact of the rest of the stack of this
5 correspondence.

6 Q. Well, did you -- you may have done
7 something to reassure her and made sure that she
8 got -- stayed in touch with you. Is that your
9 memory of what happened?

10 MR. MANCINI: Objection as to the form.

11 A. I don't recall. I would say that my
12 communications with Ms. Rienbolt are well-documented
13 in the State's Attorney's file.

14 Q. All right. And, in fact, the next
15 document, which is 00322, June 24th, '88, you wrote
16 back to her, right, after you received the June 21st
17 letter saying good-bye, didn't you?

18 A. I don't know.

19 Q. Well, take a look.

20 A. I see the June 24th letter if that's your
21 question.

22 Q. Well, that's your letter, isn't it?

23 A. Yes.

24 Q. And it's to her?

1 A. Yes.

2 Q. Okay. And --

3 A. Also indicates that I told her I believe
4 that sentence modification is unlikely.

5 Q. But you were helping her anyway and she
6 ultimately did get it, didn't she?

7 MR. MANCINI: Objection as to the form,
8 foundation.

9 A. I have no idea.

10 Q. July 8th, '88, that's a letter that you
11 wrote to her; is that right?

12 A. July 8th.

13 MR. ACKERMAN: Bates on that?

14 MR. TAYLOR: 00321.

15 MR. ACKERMAN: Thank you.

16 A. Apparently she has a chance of getting
17 into a Gateway rehab program.

18 Q. All right. Now -- and you assisted her
19 with that; is that right?

20 MR. MANCINI: Objection as to form.

21 A. I may have.

22 Q. All right. And on July 29th, you write
23 her again about the substance of the treatment
24 program; is that right? That's your letter to her?

1 A. Well, my letter to her is that she needs
2 to get ahold of the Gateway program people if that's
3 what she wants to do.

4 MR. ACKERMAN: Plaintiff's 320 we're
5 looking at?

6 MR. MANCINI: Yes.

7 Q. The next one is a letter from you
8 September 30th, '88. Do you see that? 00319.

9 A. Yes.

10 Q. September 30th, that's your letter to her;
11 is that right?

12 A. Yes.

13 Q. And you're saying: Congratulations on
14 your acceptance for the work release at the Peoria
15 Community Corrections Center. Apparently our
16 efforts paid off. Make the best of your
17 opportunity.

18 So, in fact, you did help her get to a
19 work release program in Peoria, didn't you?

20 A. I may have. I don't know if it was on her
21 own or if -- again, my calls generally or my
22 contacts would be this is somebody who's interested
23 in the program, this is the background, whatever
24 consideration, fine.

1 Q. Well, you were helping her in part at
2 least to -- because she was giving you veiled
3 threats that if you didn't she'd refuse -- she'd
4 break off communications with you and, in fact, talk
5 to Rotskoff. Isn't that one of your concerns at
6 this time?

7 MR. MANCINI: Objection as to form.

8 A. No.

9 Q. It was just two unrelated things that were
10 going on at the same time, the fact that Rotskoff
11 was trying to talk to her on the one hand and on the
12 other hand she was asking you for all these favors
13 and assistance; is that right?

14 MR. MANCINI: Objection as to form.
15 Speculation as to what she intended.

16 A. Again, as State's Attorney, believed that
17 we owed her a debt of gratitude and opened up
18 communications with her, and I -- she -- because
19 she, in fact, met with Rotskoff, so I mean I don't
20 know what you can say. I -- she met with him and I
21 don't know. For all I know, during this time frame
22 she said no and then he never contacted her back or
23 he apparently contacted her back at some point. I
24 don't know.

1 Q. All right. Well, the next letter is
2 October 9th of '88 from her to you, Dear Mike. Do
3 you see that? Plaintiff Exhibit 00 something
4 something something.

5 MR. MANCINI: Phil, did you get that Bates
6 label?

7 MR. ACKERMAN: I didn't.

8 MR. MANCINI: It was 00 something
9 something something.

10 MS. SUSLER: 412, sorry.

11 MR. ACKERMAN: Thank you.

12 BY MR. TAYLOR:

13 Q. Now, this letter from October 9th is a
14 letter to you from Debbie Rienbolt that you
15 received; is that right?

16 A. Yes.

17 Q. All right.

18 MR. TAYLOR: Is this the one you're --

19 MS. SUSLER: Yeah.

20 Q. And then the next, October -- she wrote a
21 second letter to you on the same day, October 9th,
22 right, and it has a stamp on it October 13th, do you
23 see that? And it's Edgar County file 00412. Is
24 that right?

1 A. I'm going to -- these may be copies of the
2 same letter, I don't know.

3 MR. MANCINI: Yeah, I think they are.

4 A. It's a copy of the same letter.

5 Q. All right. It's a copy of the same
6 letter?

7 MR. MANCINI: The first one is clear from
8 our perspective. The other one's harder to read.

9 MS. SUSLER: I think that's why I put both
10 in.

11 Q. If you look at the second page of this
12 letter, do you see where she says: Thank you for
13 your congratulations to me for being accepted to the
14 Peoria work release program. I feel that the only
15 reason I was accepted was because of your letter and
16 for that I am grateful.

17 A. Yes.

18 Q. All right. And, in fact, your letter was
19 influential in getting her that transfer; is that
20 right?

21 MR. MANCINI: Objection as to form.

22 A. Apparently had some impact.

23 Q. All right. The next letter is December
24 30th.

1 MR. ACKERMAN: Is there a Bates on there?

2 MR. TAYLOR: I'm looking for it. It's
3 Edgar County 00350.

4 MR. ACKERMAN: Thank you.

5 Q. 6 January. Do you see that?

6 A. No, this is my notes from the phone
7 conversation. Apparently we got --

8 MR. MANCINI: No, I don't know what --
9 January 6th was the letter, Flint?

10 MR. TAYLOR: All right, I'm sorry, it's a
11 phone call.

12 Q. The next one in this series is a note of a
13 phone call; is that right?

14 A. My notes of a phone call if that's what
15 we're referring to.

16 Q. And it's the phone call of January 6th; is
17 that right?

18 A. If that's what's dated on it.

19 MR. MANCINI: Can you see it?

20 A. Yeah, I looked at it already.

21 Q. And this is -- your notes indicate that
22 Debra Rienbolt is telling you about your -- her
23 January 4th interview with Rotskoff at Dwight; is
24 that right?

1 A. It's whatever's in there.

2 Q. Well, do you see that as part of your
3 notes?

4 A. That indicates that she's indicating that
5 she talked to Steidl's attorney.

6 Q. All right. And that she told you that she
7 said that she had nothing to add; is that right?

8 A. I wrote down what she told me.

9 Q. Okay. And you told her certain things,
10 did you not?

11 A. Well --

12 Q. It says: McFatrige said Randy Steidl
13 associates confronted Darrell Herrington when drunk,
14 that Darrell Herrington said Randy Steidl might not
15 have had knife in his hands when he came downstairs,
16 but that Darrell told police he lied and -- Randy
17 Steidl associates and that he would not change his
18 version. Is that what your notes say?

19 A. Quote her that she was informed by that
20 attorney that Herrington had changed his version of
21 events.

22 Q. Okay. Now, at this particular time,
23 Rotskoff was actually obtaining the signature of
24 Debra Rienbolt on an affidavit.

1 MR. MANCINI: Objection as to form.

2 Q. Isn't that right?

3 MR. MANCINI: Objection to form,
4 foundation.

5 A. I would have no idea.

6 Q. Well, were you also aware that she was --
7 that Debra Rienbolt about this time was talking to a
8 federal marshal by the name of Sroka, S-R-O-K-A?

9 MR. MANCINI: Objection to form,
10 foundation.

11 A. I -- I don't know. I mean I became aware
12 of that, but I mean apparently, according to this
13 note, she brought it up. She was asked by Steidl's
14 attorney about federal marshals and she told that
15 attorney it was none of his business.

16 Q. Well, did you learn from her or from
17 anyone else in the next few days that she had told
18 the federal marshal that Slifer was present at the
19 murders?

20 MR. MANCINI: Objection as to form,
21 foundation.

22 A. I don't recall that.

23 Q. Did you ever learn that she had made that
24 statement concerning Slifer to a federal marshal?

1 A. I know the federal marshal executed an
2 affidavit regarding the substance of his
3 conversations with Ms. Rienbolt.

4 Q. And did he also subpoena her to a Grand
5 Jury?

6 MR. MANCINI: Objection to form,
7 foundation.

8 A. I do not know.

9 Q. And did the fact that he subpoenaed her to
10 a Grand Jury make it so that she was removed from
11 work release?

12 MR. MANCINI: Objection, form, foundation.

13 A. I don't recall.

14 Q. All right. Did you have a phone
15 conversation -- I'm sorry, a letter of July --
16 January 11th. Do you see that letter?

17 A. Yes.

18 Q. All right. And that's another letter --
19 that's Edgar County 00408. That's another letter
20 from Debra Rienbolt to you on January 11th; is that
21 right?

22 A. Yes.

23 Q. And she's telling you that Federal Marshal
24 Sroka has been messing with her; is that right?

1 A. I couldn't tell you. I would need time to
2 read the letter.

3 Q. All right. In order to save time, would
4 you say that -- would you agree with me that you
5 received this letter and the contents of the letter
6 sometime a few days after the letter is dated from
7 Debra Rienbolt?

8 A. I received the letter.

9 Q. All right. About that time?

10 A. Presumably so.

11 Q. All right. Now, do you see a letter dated
12 January 14th which is 00406?

13 A. Yes.

14 Q. And that is a letter dated the 14th of
15 January; is that right?

16 A. Yes.

17 Q. And she's saying that she is afraid to
18 tell you, but she wanted to tell you before it's too
19 late to do something about it. That Randy Steidl's
20 attorney at Dwight -- was at Dwight on Friday and
21 got her real nervous, scared, and had her sign a
22 paper that she should not have signed.

23 Do you see that?

24 A. Yes. She says: I'm already under

1 pressure and confused and he got me talking and had
2 me sign a paper I shouldn't have signed.

3 Q. All right. And she says: I'm sure you're
4 at this point ready to kill me. Right?

5 A. And I'll explain in detail, I'm sure
6 you'll see why.

7 Q. All right. And that she's -- she knows
8 you're ready to choke him[sic]. Did she then send
9 you the affidavit that she signed?

10 MR. MANCINI: I'm going to object to the
11 form of that question.

12 A. I know I got copies of the affidavits. I
13 would think that the signed affidavit would have had
14 to have come in pleadings because I would doubt that
15 Mr. Rotskoff left her a copy. She may have sent me
16 unsigned copies.

17 Q. Well, do you see on the 19th of January
18 you had a phone conference with her, is that right,
19 about the Rotskoff visit and what she had said to
20 him?

21 A. Hard to read, but let's see. Returning to
22 Gateway. I can't --

23 MR. ACKERMAN: Is there a Bates of what
24 we're looking at?

1 MR. MANCINI: 348 and 349.

2 Q. Do those appear to be notes having -- that
3 you took concerning a phone conference you had with
4 Debra Rienbolt on the 19th of January 1989?

5 A. She's there making reference to that, it
6 looks like from here, that Mr. Rotskoff may have
7 been trying to mislead her.

8 Q. All right. And -- but is that what she
9 told you on the phone?

10 A. I'd say whatever's on here, but that's my
11 interpretation.

12 Q. All right. And in fact --

13 A. It says: PR tried to get DR to admit RS
14 didn't kill anyone, but DR insisted RS there.

15 Q. So this is what you were going to kill her
16 about and choke her about; is that right?

17 MR. MANCINI: Objection.

18 Q. That she had told Rotskoff --

19 A. That those were her --

20 MR. MANCINI: Objection, form, and
21 mischaracterizes the testimony of who said what.

22 A. Those were her words to me and she's the
23 one who voluntarily wrote me and said that she had
24 basically been tricked into signing this.

1 Q. Okay. And the next letter that she sent

2 you was January 28th, Saturday, do you see that?

3 Dear Mike, here are the papers I promised you that

4 Mr. Rotskoff sent me. These are the originals.

5 Mike, if you possibly could, I need a favor. I was

6 told that since I was only brought back from Peoria

7 work release due to the federal subpoena that as

8 soon as -- do you see that?

9 A. Yes.

10 Q. All right.

11 MR. MANCINI: Phil, there's no Bates. We

12 have no Bates labels on that, at least from our

13 perspective.

14 MR. ACKERMAN: Jan, do you have a Bates?

15 MR. MANCINI: Jan has stepped out.

16 MR. ACKERMAN: Okay.

17 BY MR. TAYLOR:

18 Q. And so the Edgar County State's Attorney's

19 file 00405 is the affidavit. Do you see that?

20 A. Yes.

21 Q. All right. Is that an affidavit she sent

22 to you?

23 A. Apparently so.

24 Q. All right.

1 MR. TAYLOR: In order to save time, I
2 would be willing, if you would, to stipulate to
3 the -- that the remainder of the documents, if you
4 want to take a couple minutes and look at them, were
5 either letters that --

6 MR. MANCINI: Why don't I just --

7 MR. TAYLOR: -- he received or that he
8 sent or are notes of phone conferences that he had
9 with Ms. Rienbolt and that they accurately -- they
10 are accurate reflections of those letters and those
11 notes.

12 MR. MANCINI: I certainly would be willing
13 to do that after having time to review them, and
14 with the idea of expediting this, because we are now
15 at just after five o'clock and I agreed to provide
16 him from 9:00 to 5:00, I would ask to maybe do that
17 after the deposition, I don't see a problem with it
18 if that's the case, and allow whoever to ask other
19 questions in the remaining hour of time frame. I
20 don't think Flint was listening to me.

21 MR. TAYLOR: I heard you.

22 MR. KLING: I did. Thank you.

23 MR. MANCINI: I said Flint.

24 MR. KLING: I thought you said Kling.

1 Woke me up, thank you.

2 BY MR. TAYLOR:

3 Q. Do you know of a doctor named Patrick
4 Brophy?

5 A. Yes.

6 Q. A psychologist; is that right?

7 A. Yes.

8 Q. And he did competency evaluations at the
9 Edgar County court; is that right?

10 A. Yes.

11 Q. And did you have him see Debbie Rienbolt
12 after her release from the Lakeview Detox Center?

13 A. I don't recall.

14 Q. Did he report to you about what his
15 evaluation of Rienbolt was?

16 A. I don't recall.

17 Q. And did you make any disclosure of any
18 report that he gave to you to Whitlock or Steidl's
19 attorneys?

20 MR. MANCINI: Objection to form,
21 foundation.

22 A. If there was a report, it may have been
23 contained in the motion in limine.

24 Q. All right. And do you know where that

1 report is today?

2 A. Well, if it was contained in the motion in
3 limine, it would be part of the sealed records.

4 Q. Who knew about this report, if anyone,
5 other than Rienbolt and her attorney and Patrick
6 Brophy?

7 MR. MANCINI: Objection to the form of the
8 question. How can he know what other people knew?

9 A. Getting to that point, maybe those are the
10 only three people that knew.

11 Q. Would you tell us what else was in the
12 motion in limine other than this report?

13 A. Well, it would have been -- as I recall
14 off the top of my head, I believe it was a joint
15 motion, which I didn't see. Would have been
16 psychologicals on Whitlock. I don't know if there
17 was any medical records of Mr. Steidl that were also
18 involved. Would have included the polygraphs.
19 Certainly included -- if I recall, would have been
20 portions of the police reports that could be
21 segregated out that involved other persons of
22 interest.

23 Q. Okay. And let me show you --

24 A. And be medical records, I'm sorry, of

1 Rienbolt and Herrington probably also.

2 Q. What was your basis for taking the
3 position that these medical records and
4 psychological records of those two key witnesses
5 were -- should be kept in limine?

6 MR. MANCINI: Objection as to form,
7 foundation.

8 A. I imagine privilege, relevance and
9 whatever else would be stated and argued that should
10 be contained in the pleadings that weren't.

11 Q. Okay. Let me show you the group exhibit
12 and I'm showing you a news clip that's dated
13 Thursday, May 27th, 2004, the Springfield State
14 Journal Register.

15 MR. MANCINI: For the record, it's
16 McFatridge Exhibit 2.

17 Q. And is that -- do you see that article?

18 A. Which one?

19 Q. It says: Convict expected to be released,
20 supporters cheer release, victims looking for
21 closure. And this is the date that Randy Steidl was
22 released. Did you make the quote that's attributed
23 to you, the county prosecutor, at the --

24 MR. MANCINI: Can you help us?

1 Q. -- time?

2 MR. MANCINI: Where?

3 Q. At the bottom. The county prosecutor at
4 the time, Mike McFatridge, said Wednesday that if
5 Steidl is released he hopes there's a retrial. Upon
6 conviction, Steidl can rejoin Whitlock in prison.
7 He said, meaning McFatridge, I believe that Steidl
8 was appropriately prosecuted in 1987 and I will
9 stand on the trial record and the subsequent
10 appeals.

11 Did you make that statement?

12 A. It's attributed to me. I have no reason
13 to doubt it.

14 Q. Was that your position in May of 19 -- in
15 May of 2004 upon Mr. Steidl's release that he should
16 re -- he hoped that -- you hoped that there's a
17 retrial and you hoped he would be convicted and he
18 could rejoin Whitlock in prison. Is that your
19 position?

20 A. My position is I stood on the trial record
21 and I hoped that there would be a retrial.

22 Q. And did you communicate that to the
23 Attorney General and the Appellate Prosecutor --

24 MR. MANCINI: Objection to form.

1 Q. -- who testified --

2 MR. MANCINI: Objection to form,
3 foundation.

4 A. I believe those are all subject to work
5 product also, what my communications were with them,
6 but it was their decision to make. Again, my
7 position was I wanted them to be fully informed of
8 the facts and make an informed decision whatever
9 that -- whatever that might be. There was nothing
10 that I was going to do to influence or make that
11 decision. I mean I just wanted to make sure as the
12 original prosecutor to make sure that the decision
13 makers were fully informed.

14 Q. Just prior to the release of Mr. Steidl,
15 were you made aware that according to the ISP there
16 was a threat on your life?

17 MR. MANCINI: Is that in the article,
18 Flint? You pointed.

19 MR. TAYLOR: No, it's not. I'm --

20 MR. MANCINI: Oh, okay.

21 MR. ACKERMAN: I'll object to the form.

22 MS. EKL: I join the objection.

23 Q. Alleged threat on your life about the time
24 Mr. Steidl was about to be released?

1 A. I need to confer with counsel on that.

2 MR. MANCINI: Okay. Can we take a short
3 break?

4 MR. TAYLOR: Yeah, and then we'll -- this
5 is my last area.

6 MR. ACKERMAN: We're taking a quick break?

7 MR. MANCINI: Yeah, a couple minutes
8 because there's only about 15 minutes left of
9 questions.

10 MR. ACKERMAN: Okay, thanks.

11 (Recess at 5:08 p.m. to 5:10 p.m.)

12 MR. TAYLOR: I don't anticipate Ms. Ortiz
13 is going to take over an hour and I'm only going to
14 take about five more minutes.

15 MR. MANCINI: Put on the record we've
16 extended it as long as we can. We're going to be
17 reasonable again, but if it goes beyond, much beyond
18 six o'clock, we're going to walk out because again I
19 gave you from 9:00 to 5:00.

20 MS. SUSLER: Okay, let's go.

21 MR. MANCINI: Do you remember the last
22 question?

23 A. If you could read it back please?

24 (Requested portion of the deposition was

1 read by the court reporter.)

2 MR. ACKERMAN: I'm also going to object to
3 lack of foundation.

4 A. I was advised that Mr. Steidl had
5 threatened my life.

6 Q. And who advised you?

7 A. I can't recall specifically.

8 Q. Was it Mr. Marlow?

9 A. I would say no.

10 Q. Was it someone from the ISP?

11 A. I really don't recall specifically. More
12 than likely.

13 Q. Was it Mr. Kaupus?

14 A. I don't know.

15 Q. Ken Kaupus?

16 A. It may have been, I don't recall.

17 Q. And what did they tell you specifically?

18 A. Told me that Mr. Steidl knew my vehicle
19 and that I should be careful and that he had
20 threatened to kill me.

21 Q. And did they tell you anything more than
22 that?

23 A. They were going to investigate.

24 Q. And did they tell you anything more than

1 that?

2 A. They were going to investigate.

3 Q. Did they -- did they report to you what --
4 on their investigation?

5 A. I know there was no arrest made.

6 Q. Did anything -- how long before Mr. Steidl
7 got out of jail did they inform you of this supposed
8 threat?

9 A. Certainly would have been within a few
10 days.

11 Q. All right. And where did you live at that
12 time? What town?

13 A. Paris.

14 Q. All right. And did you take any
15 precautions because of the communications you got
16 from the ISP?

17 MR. ACKERMAN: Just going to object to the
18 form and foundation.

19 A. Precautions. I would have been much more
20 aware of my situation.

21 Q. Did the ISP offer you any police
22 protection?

23 A. No.

24 Q. Pardon me?

1 A. No, not that I'm aware of.

2 Q. Did they give you anything in writing
3 concerning this alleged threat?

4 MR. ACKERMAN: Objection to the form and
5 foundation.

6 A. No.

7 Q. Did you see anything in writing?

8 A. Not that I recall.

9 Q. Would you ever -- did you ever receive any
10 results from the investigation that they said they
11 were doing?

12 MR. ACKERMAN: Object to the form.

13 A. Probably at some point it was told that
14 they weren't going to proceed to prosecution or --

15 Q. Did they give you any details about the
16 threat other than that they told you Mr. Steidl had
17 threatened your life?

18 A. I don't recall.

19 Q. All right.

20 A. Other than he knew my car, be careful
21 about going home.

22 Q. Nothing happened to you, right?

23 MR. MANCINI: You mean is he alive?

24 Q. No, no, I mean you weren't -- there was no

1 attempt on your life that you know of; is that
2 right?

3 A. That I'm aware of.

4 Q. And that as far as you know, there has
5 been no attempt on your life by Mr. Steidl or anyone
6 else from the time the ISP told you to the present.
7 Is that fair to say?

8 MR. ACKERMAN: Object to the form and
9 foundation.

10 MS. WADE: I join in that objection.

11 A. Well, I'm still here, that's all I can
12 say.

13 Q. So your answer would be no?

14 A. Well, I don't know that.

15 Q. You're not -- I asked you if you were
16 aware of any attempts or threats on your life?

17 A. Well, if I'm aware of any? No, I'm not
18 aware of any. I --

19 Q. Go ahead.

20 A. No, I'm sorry, yeah.

21 MR. TAYLOR: I have nothing further.

22 MS. SUSLER: All right. Trade chairs.

23 EXAMINATION BY

24 MS. ORTIZ:

1 Q. Good afternoon, Mr. McFatridge. My name
2 is Susana Ortiz and I'm one of Herb Whitlock's
3 attorneys, okay?

4 A. Okay.

5 Q. During the period of February 1987 to May
6 of 1987, how would you describe your quantity of
7 contact that you had with Debra Rienbolt?

8 MR. MANCINI: Objection to form.

9 A. It would have been part of -- from that
10 time would have been part of pretrial preparation.
11 I really can't speak beyond that. I know part of
12 the pretrial preparation, my recollection would have
13 been we brought her into the courtroom and -- you
14 know, to get her familiar with the surroundings of
15 the courtroom.

16 Q. And the officers, as far as you know, were
17 having daily contact with her after March of 1987,
18 correct?

19 MS. EKL: Objection, foundation.

20 MR. MANCINI: Join.

21 A. I would not recall.

22 Q. At some point, was Ms. Rienbolt's home
23 placed under surveillance by police?

24 MS. EKL: Objection, foundation.

1 A. I don't recall.

2 Q. Was there an issue with the fact that
3 either she complained that she didn't feel safe or
4 there had been some threats and the police personnel
5 either from Paris or ISP were stationed outside of
6 her home 24 hours a day?

7 A. That may have been.

8 Q. And, in fact, were Officers Parrish and
9 Eckerty and the other officers working on the case
10 informing you from time to time that they were
11 having problems with Ms. Rienbolt consuming large
12 quantities of alcohol and using drugs?

13 MR. MANCINI: Objection to form,
14 foundation.

15 A. I don't recall.

16 Q. But it's possible that they may have
17 informed you of that?

18 MR. MANCINI: Objection as to form.

19 A. I don't have any specific recollection of
20 that.

21 Q. So you don't recall during the period of
22 February through May of 1987 Ms. Rienbolt having
23 significant issues with alcohol and/or drugs?

24 MR. MANCINI: Objection.

1 MS. EKL: I'm sorry, I couldn't hear a
2 couple of your words with the sound of ripping. Can
3 you repeat that?

4 MS. ORTIZ: Can you repeat that please?

5 (Requested portion of the deposition was
6 read by the court reporter.)

7 A. She had a his --

8 MS. EKL: Objection, form.

9 MR. MANCINI: Join.

10 A. Well, it's documented she historically had
11 an issue with alcohol and drugs and that, in fact,
12 as documents that have been presented, she went
13 through counseling --

14 Q. I'm asking you --

15 A. -- in that period.

16 Q. Go ahead, finish.

17 A. Went through counseling during that
18 period.

19 Q. I'm asking you if you were aware of it at
20 the time.

21 A. I was aware she went to counseling.

22 Q. Because she was having issues with drugs
23 and alcohol?

24 MS. EKL: Objection, form.

1 MR. MANCINI: Join.

2 A. I don't know the specific reasons. She
3 had historical issues.

4 Q. At the time, in fact, you became aware
5 that she was taken to rehab and left rehab right
6 after she was dropped off, correct?

7 MR. MANCINI: Objection. It's been asked
8 and answered.

9 A. I said I didn't recall that. Was never
10 showed a document to that effect. I don't really
11 recall that. That I recall she received treatment.

12 Q. At any point after Ms. Rienbolt came
13 forward, were you ever concerned that the people she
14 was originally saying she was with that evening
15 prior to the murders weren't corroborating her
16 story?

17 MS. EKL: Objection, form.

18 MR. MANCINI: Join.

19 A. I don't think they completely
20 uncorroborated her story. I mean, for example, Ms.
21 Wakefield, you know, there was testimony that she
22 clocked herself in and out, and I know individuals
23 said, well, you can't do that, and in fact Ms.
24 Wakefield established, in fact, that that was

1 routine that you could clock yourself in and out.
2 Also we're dealing with a person who, as you've
3 pointed out, had a drug and alcohol problem, so
4 those type of memories, I mean not as a traumatic
5 event like a murder but of certainly peripheral
6 matters, would be at issue.

7 Q. So you weren't concerned with the fact
8 that she claimed to have been with Barb Furry that
9 night driving around smoking alcohol and at the
10 Legion with her, and in fact Barb Furry told you I
11 was never with Ms. Rienbolt that evening?

12 MR. MANCINI: Objection as to form.

13 MR. BALSON: Smoking marijuana.

14 Q. Smoking marijuana.

15 MR. BALSON: You said smoking alcohol.

16 A. Obviously that was an inconsistency in her
17 statement that was presented at trial to the trier
18 of fact who convicted her.

19 Q. Mr. McFatridge, my question was were you
20 at all concerned with the fact that people weren't
21 corroborating her, yes or no?

22 MR. MANCINI: Objection.

23 MS. EKL: Form.

24 MR. MANCINI: Form.

1 A. That was a matter that needed to be
2 addressed.

3 Q. And how did you address that?

4 A. Addressed it with through the
5 investigation.

6 Q. And how was it addressed with the
7 investigation?

8 A. Additional witnesses were called, she gave
9 additional statements, she was corroborated in other
10 ways. For example, she indicated that Herb Whitlock
11 has a red mark on his face and, you know, that she
12 gave -- that she got from Karen Rhoads -- that he
13 got from Karen Rhoads, and in fact there was a young
14 lady across the street who was like planning to run
15 away that saw an individual who matched the
16 description of Herb Whitlock confront Karen Rhoads
17 and get slapped in the face. That would seem pretty
18 corroborating to me. So no witness is perfect.

19 Q. How did that corroborate Debra Rienbolt,
20 Debra Rienbolt's whereabouts the evening of July
21 5th, 1986?

22 MR. MANCINI: Objection to form.

23 Q. Those things you just said.

24 MR. MANCINI: Objection to form. It's a

1 legal conclusion.

2 A. It certainly corroborated her credibility
3 regarding all the matters that she testified to.
4 She was in a position to be close enough to Mr.
5 Whitlock to know something that would be relatively
6 I guess intimate, for lack of a better term.
7 Something that people wouldn't know, in fact, she
8 knew it, and, in fact, it was corroborated by an
9 independent witness. That would bolster all of her
10 credibility.

11 Q. Well, did you or any of the other
12 detectives, particularly Detective Eckerty and
13 Officer Parrish, ever go to Debra Rienbolt and say
14 look, Debra, you're lying to us, you weren't with
15 Barb Furry that evening, she told us you weren't
16 with her, quit lying to us? Was that ever done?

17 MS. EKL: Objection, foundation as to what
18 the other officers stated.

19 MR. MANCINI: And as to form because you
20 personalized it. Mr. McFatrige has testified he
21 did not conduct the investigation.

22 A. Like he said, I didn't conduct the
23 interviews. I don't know.

24 Q. So you don't know if that was ever done.

1 A. I didn't do it.

2 Q. Have you become aware that Debra
3 Rienbolt's supervisor at the Paris Healthcare Center
4 has said that Debra Rienbolt was physically present
5 at work the night of the murders?

6 A. That was presented at trial.

7 Q. Paula Brklach Cooper testified that Debra
8 Rienbolt was personally present at work the night of
9 the murders?

10 A. I know somebody testified to that fact. I
11 remember they brought in a time card and I know that
12 the State presented Della Wakefield to say that, in
13 fact, you could clock in and clock out.

14 Q. My question was did Paula Brklach Cooper
15 testify that Ms. Rienbolt was physically present at
16 work that evening?

17 A. I don't recall. You'd have to look at the
18 trial transcript.

19 Q. Are you aware of the fact that she has
20 since said that Debra Rienbolt was physically
21 present at Paris Healthcare Center on the night of
22 the murders?

23 A. I don't recall.

24 Q. As the State's Attorney prosecuting this

1 case, am I correct that any knowledge possessed by
2 the police officers working on the case or the
3 investigation is imputed to you by law?

4 MR. MANCINI: Objection as to the form of
5 the question. It's a legal conclusion.

6 A. I don't know the current status of the
7 law.

8 Q. Well, back in 1987 you were the elected
9 State's Attorney of Edgar County, correct?

10 A. Yes.

11 Q. And you were aware of your obligations and
12 duties, correct?

13 A. Absolutely.

14 Q. And you were aware of the state of the
15 law, correct?

16 A. Yes.

17 Q. And you were aware that any knowledge or
18 information possessed by officers or agents of the
19 State of Illinois working under you was imputed to
20 you, correct?

21 MR. MANCINI: Objection. Mischaracterizes
22 his testimony and it's a legal conclusion.

23 A. You'd have to work under me and I didn't
24 have supervisory control over the police officers.

1 Q. Any information possessed by police or
2 agents of the State of Illinois under the law was
3 imputed to you.

4 MR. MANCINI: Is that a statement or --

5 Q. Are you disagreeing with that statement?

6 A. I --

7 MR. MANCINI: Objection as it's a legal
8 conclusion.

9 A. I don't know exactly what the law is. I
10 would have to research that point.

11 Q. So you didn't know at the time that any
12 knowledge on the part of the police working on this
13 case or gathering evidence on this case or any of
14 their agents was imputed to you under law?

15 MR. MANCINI: Objection as to the form of
16 the question.

17 A. The law was whatever the law was. I don't
18 recall if I ever looked at that point in the law in
19 1987.

20 Q. So if Darrell Herrington were taken for a
21 polygraph and he made certain statements during that
22 polygraph or during that polygraph interview, do you
23 agree or disagree that those statements or knowledge
24 of those statements was imputed to you at the time?

1 MR. MANCINI: Objection as to the legal
2 conclusion. It's been asked and answered. He said
3 he didn't know. If you want to waste your --

4 MR. BALSON: Can we take a quick break?

5 MR. MANCINI: -- 35 minutes asking
6 questions that have been asked and answered, feel
7 free.

8 MR. BALSON: Can we take two minutes?

9 (Brief pause.)

10 MR. MANCINI: Do you recall the question,
11 Mike?

12 MS. ORTIZ: I withdraw the question.

13 BY MS. ORTIZ:

14 Q. Earlier when Mr. Taylor was asking you why
15 it is that you didn't present Ms. Rienbolt and Mr.
16 Herrington before the Grand Jury, you said something
17 about why would you want to put your witnesses on
18 there or show your whole case, something to that
19 effect?

20 MR. MANCINI: Objection, mischaracterizes
21 his testimony.

22 A. After individuals are indicted, it's --
23 the sound trial strategy would be to have your
24 witnesses, witnesses favorable to yourself, make as

1 few statements as I'd say possible, but certainly
2 it's not in your best interest, because even if they
3 say the exact same thing, there's always going to be
4 minor inconsistencies. That's just the nature of a
5 statement. So any lawyer, any good prosecutor in
6 that situation would generally not put his own
7 witnesses in the Grand Jury. You just don't do
8 that.

9 Q. Well, at this point we weren't talking
10 after indictment. You didn't have an indictment.
11 In fact, you were presenting evidence before the
12 Grand Jury to secure an indictment, correct?

13 A. It's the same trial strategy.

14 Q. Are you also aware of the trial
15 strategy -- well, you could have gone one of two
16 ways in obtaining a charge in this case, correct?

17 A. That's correct.

18 Q. You could have conducted a preliminary
19 hearing.

20 A. That's correct.

21 Q. And that's where the witnesses would have
22 been subject to cross-examination by the defendant's
23 defense lawyer, correct?

24 A. That's right.

1 Q. But in a Grand Jury you could have
2 presented your witnesses to tell their full and
3 complete story without being subjected to
4 cross-examination, correct?

5 MR. MANCINI: Objection. Misstates the
6 law.

7 A. Well, you don't have to do that.

8 Q. I didn't say that you had to. I said you
9 could have, correct?

10 MR. MANCINI: Objection. Misstates the
11 law.

12 A. You can present anybody at the Grand Jury.

13 Q. Correct. And as prior counsel pointed
14 out, you just -- you chose to put on defense
15 witnesses or alibi witnesses so that they couldn't
16 later change their story, correct?

17 MR. MANCINI: Objection. It's asked and
18 answered.

19 A. Again, it's sound trial strategy when you
20 have a potentially adverse witness to your side,
21 again the whole emphasis changes. It's not
22 abdicating the duties of the State's Attorney or the
23 duties of a prosecutor who represents the People of
24 the State of Illinois, including the defendant,

1 protects his constitutional rights, but at that
2 point the emphasis changes. At that point you've
3 made your decision that, in fact, there is
4 reasonable grounds to prosecute. You're now seeking
5 a conviction. You're now in the trial strategy
6 mode, and it would be -- sound trial strategy would
7 be to, let's just use the term, lock in witnesses
8 that may be adverse to your position and not lock in
9 witnesses that are favorable to your position.
10 That's -- that's -- every lawyer should do that.

11 Q. Well, it also might have been sound trial
12 strategy given the unreliability and drug and
13 alcohol problems of Herrington and Rienbolt to lock
14 them in at that time, correct? That could have been
15 a sound trial strategy, yes or no?

16 MR. MANCINI: Objection as to the form.

17 A. No, they were credible and apparently were
18 found credible at trial.

19 Q. Yes or no, it could have been a sound
20 trial strategy to lock them in at the Grand Jury so
21 they could not later change their stories or take
22 their statements back.

23 MR. MANCINI: Objection. He's answered
24 that question. And the court reporter can repeat it

1 if you'd like. He said no.

2 MS. ORTIZ: Did he answer?

3 (Requested portion of the deposition was
4 read by the court reporter.)

5 BY MS. ORTIZ:

6 Q. Well, you also said that you didn't put
7 Debra Rienbolt to testify before the Grand Jury
8 because she wasn't going anywhere, correct?

9 MR. MANCINI: Objection, misstates the
10 testimony, but go ahead.

11 A. I don't -- she wouldn't -- she was a
12 resident of Paris, she wasn't going to leave the
13 area, but it would be certainly some consideration,
14 but again the major issue for any attorney in that
15 situation, certainly any prosecutor in that
16 situation, would be you would tend to lock in people
17 that are potentially unfavorable and you wouldn't
18 present your own people.

19 Q. But you didn't know due to her extensive
20 drug and alcohol use, including the variety of the
21 cocktails she was on on the night of the murders,
22 whether you might lose her to drug issues at that
23 time? You didn't know that, yes or no, did you?

24 MR. MANCINI: Objection as to the form of

1 the question. Go ahead.

2 A. Again, disavowing your first point because
3 you're just making stuff up, my point is that's the
4 trial strategy. If you don't accept it, that's
5 great. That was a sound trial strategy. That was
6 my trial strategy. If you -- quite frankly, if you
7 want to hear the trial strategy, you know --

8 Q. Sir, I'm not asking you --

9 A. Okay, okay.

10 Q. Sir, I'm not asking you about trial
11 strategy. I'm asking you specific questions about
12 what you could or could not have done in the Grand
13 Jury. Do we understand each other?

14 A. Apparently not.

15 Q. When did you leave your term as prosecutor
16 for Edgar County?

17 MR. MANCINI: Objection, asked and
18 answered.

19 A. I believe -- my last day I believe was
20 December 31st, 1991.

21 Q. And since that time, you have either
22 worked in private practice or for another government
23 agency as an attorney?

24 A. Yes.

1 Q. At no time after 1991 were you recalled by
2 any law enforcement agency of the State of Illinois,
3 correct?

4 MR. MANCINI: Objection as to form, may
5 invoke a work product privilege, but if you can
6 answer.

7 A. Law enforcement agencies ask my input into
8 cases like any good law enforcement agency would ask
9 for the input of a former prosecutor. If recalled,
10 did I actually receive a paycheck from the county or
11 the state? No.

12 Q. Have you ever been deputized or asked in
13 any of the Whitlock and Steidl matters to act as a
14 special prosecutor?

15 A. Actually I was asked if I would consider
16 being a special prosecutor, but I -- under the
17 circumstances, that would have been inappropriate.

18 Q. You did not accept any appointment as a
19 special prosecutor.

20 A. That's correct.

21 Q. So in any dealings that you have had with
22 any of the representatives of the State of Illinois
23 after 1991, you are acting in the capacity of a
24 private citizen, correct?

1 MR. MANCINI: Objection to the form. It's
2 a legal conclusion.

3 A. I believe that would be a legal matter. I
4 was acting as the former prosecutor with privileged
5 information regarding a prosecution and certainly
6 would have acted under that color of authority or
7 guise as having been the elected State's Attorney,
8 having been the one who prosecuted this case, and
9 then assisting law enforcement agencies regarding
10 the further prosecution/appeal proceedings in this
11 case. That seemed to be a continuation of my duties
12 and responsibilities to me.

13 Q. In a majority of the contact that you have
14 had with state agencies, the Edgar County State's
15 Attorney, the Attorney General of Illinois, the
16 State's Attorney's Appellate Prosecutor, in how many
17 of those instances have you initiated the contact?

18 MR. MANCINI: Objection to form,
19 foundation.

20 A. I would have no idea.

21 Q. Did you ever see a police report that was
22 prepared in connection with the Herrington
23 polygraph?

24 A. I believe I testified I would routinely

1 receive the polygraph reports, but that I had never
2 seen the three page attachment.

3 Q. My question, sir, was did you ever see a
4 police report written by law enforcement in
5 connection with the Herrington polygraph?

6 A. I thought I just answered that.

7 Q. My question was did you ever see a police
8 report written by law enforcement in connection with
9 the Herrington polygraph?

10 MR. MANCINI: I guess --

11 Q. Prior to the trial.

12 MR. MANCINI: For clarity, are you saying
13 that Mark Murphy is not a police officer and his
14 report is not a police report?

15 MS. ORTIZ: Absolutely at this point.

16 MR. MANCINI: With that condition, okay.
17 Do you understand the question?

18 MS. EKL: I'm sorry. I object to the
19 form. I don't understand. We were -- is this a
20 hypothetical? We're assuming that Mark Murphy is
21 not a law enforcement officer and we're assuming
22 that his polygraph report is not a police report?
23 I'm sorry, I just --

24 MS. ORTIZ: I'm going to withdraw the

1 question and rephrase it.

2 BY MS. ORTIZ:

3 Q. Prior to the trial of Whitlock and Steidl
4 in 1987, did you ever see a police report written
5 either by the Illinois State Police, Jack Eckerty,
6 or any of the other Illinois State Police officers
7 who were working in conjunction with him on the
8 Rhoads homicides concerning the polygraph of Darrell
9 Herrington?

10 MR. MANCINI: Objection. It's asked and
11 answered.

12 A. As far as my understanding, Mark Murphy
13 would be part of the Illinois State Police.

14 Q. So you saw that prior to the trial in
15 1987?

16 A. That report?

17 Q. Yes.

18 A. I think -- we've testified, I believe, it
19 was part of a motion in limine.

20 Q. So you saw his three page report with the
21 notes on it prior to trial in 1987?

22 MR. MANCINI: Objection, asked and
23 answered. You misstated his testimony.

24 A. I specifically asked you whether you were

1 referring to the two page report that a State's
2 Attorney routinely gets and I specifically separated
3 out the three other pages and specifically stated
4 that the first time I saw those three pages, if
5 that's what we're talking about and I have no clue,
6 is -- I have not seen until today.

7 Q. Let me try to make it a little more
8 simple. Earlier Mr. Taylor showed you a number of
9 police reports written either by Illinois State
10 Police Officer Eckerty or Paris Police Officer James
11 Parrish.

12 A. Yes.

13 Q. Narratives --

14 A. Yes.

15 Q. -- of things that were occurring,
16 interviews that they were conducting.

17 A. Yes.

18 Q. Did you ever see a police report similar
19 to one of those reports written by either one of
20 them in connection with the polygraph of Darrell
21 Herrington prior to trial in 1987?

22 A. I don't recall.

23 MR. MANCINI: For the record, the
24 reference was to Ray Exhibits 2 and 9 as to the

1 police reports. Would you like him to review those?

2 MS. ORTIZ: No.

3 Q. The first time that Debra Rienbolt talked
4 to the police, she lied, correct?

5 MR. MANCINI: Objection as to form,
6 foundation.

7 A. She gave an incomplete version of events.
8 I guess it depends if half truths or half lies. I
9 guess it would be stuff that you would talk to your
10 spouse about, I don't know. I mean I don't know how
11 you would characterize it. I mean it was a natural
12 progression of events, so you say I -- if you say I
13 -- if one night I did A, B, C and D, and in the
14 first statement you said, well, I did A, and the
15 next statement said A and B, you're not lying
16 because you're again including A; next statement say
17 I did A, B and C, well, you included A and B and now
18 C, you know, so I guess that's just a matter of
19 perspective.

20 Q. Well, she said I wasn't in the house.
21 That was a lie, correct?

22 MR. MANCINI: Objection as to form.

23 A. It was inconsistent with her later version
24 of events.

1 Q. It was a lie at the time she told it,
2 correct?

3 MR. MANCINI: Objection, form.

4 A. Again, consistent with her later
5 statements.

6 Q. If Debra Rienbolt in an interview in the
7 presence of the State's Attorney's Appellate
8 Prosecutor sometime in late 2004 or early 2005 at
9 their offices in Springfield said that in April of
10 1987 I was drinking like crazy and that she had been
11 to rehab shortly before that time in March but had
12 left and that McFatridge then told her if you don't
13 stay in rehab this time I'm going to further charge
14 you in the Rhoads matter, would that be the truth or
15 a lie?

16 MR. MANCINI: Objection as to the form.

17 A. That would be incorrect.

18 Q. Would that be a truth or a lie?

19 MR. MANCINI: Objection as to form. Asked
20 and answered.

21 A. It would be incorrect.

22 Q. Are you aware that State's Attorney's
23 Appellate Prosecutor David Rands stipulated to that
24 fact in Mr. Whitlock's evidentiary hearing in April

1 of 2005?

2 MR. MANCINI: Objection to form. As to
3 the fact that Debra Rienbolt said that?

4 MS. ORTIZ: Yes.

5 A. I'm not saying she didn't say that if
6 that's what he said. I'm saying it's incorrect.

7 Q. Are you aware that David Rands stipulated
8 to that?

9 A. No.

10 Q. And during that period of time, according
11 to your work product log in April of 2005 and late
12 2004, you were having substantial amounts of contact
13 with Mr. Rands concerning Mr. Whitlock's evidentiary
14 hearing, correct?

15 MR. MANCINI: Objection as to form. Don't
16 know what you're talking about. We don't have the
17 log in front of us, so --

18 Q. Do you understand my question, sir?

19 A. Can I see the log?

20 MR. MANCINI: I thought I would be able to
21 find it here. Let me use the actual one. Here it
22 is. What dates were these again, I'm sorry?

23 MS. ORTIZ: Late 2004 through the spring
24 of 2005, the time of Mr. Whitlock's postconviction

1 proceedings.

2 MR. MANCINI: I think the emails -- the
3 emails you're referring to, right?

4 MS. ORTIZ: Contact of any kind.

5 MR. MANCINI: Okay.

6 MS. ORTIZ: Significant amounts.

7 MR. MANCINI: Go back to the first page
8 and see if there's any time frame that you were
9 contacted during that time frame.

10 THE WITNESS: Late 2004 to the spring of
11 2005?

12 MR. MANCINI: Right.

13 A. I think it says -- specifically to Mr.
14 Rands? Most of this stuff indicates just State's
15 Attorney's Appellate Prosecutor and some of it's
16 undated.

17 Q. Well, you would agree that you were having
18 regular contact with their office regarding Mr.
19 Whitlock's postconviction proceedings, correct?

20 A. I had --

21 Q. Without getting into --

22 A. I had contact with their office, correct.

23 Q. Yet you weren't aware of that stipulation.

24 A. That's correct.

1 Q. Did they tell you whether they were going
2 to call you as a witness to testify at the
3 postconviction proceeding?

4 MR. MANCINI: Mr. Whitlock's?

5 A. Mr. Whitlock's?

6 Q. Yes.

7 A. As a potential witness.

8 Q. Do you know the reason that you didn't
9 testify?

10 MR. MANCINI: Objection to form,
11 speculation.

12 A. That would have been Mr. Rands' decision.

13 Q. Did you want to testify?

14 A. I -- that would have been fine with me. I
15 have no objection to testifying.

16 Q. Did you want to make sure everyone was
17 fully informed?

18 A. That's what I'm doing here today.

19 Q. Well, you're here because you're a
20 defendant in a lawsuit, correct?

21 A. Also here hopefully to fully inform
22 individuals.

23 Q. Back at the time that Ms. Rienbolt
24 admitted her accountability in the murders of Dyke

1 and Karen Rhoads, there was no limit on how many
2 people you could charge with the murder, was there?

3 MR. MANCINI: Objection as to form.

4 A. I -- you could charge anybody who had
5 criminal culpability for the murders.

6 Q. And that certainly was Ms. Rienbolt
7 according to the story that she told you on April
8 13th of 1987, correct?

9 MR. MANCINI: Objection, asked and
10 answered.

11 A. She could have been charged.

12 Q. And you never charged her with first
13 degree murder. That's already been established,
14 correct?

15 A. That's correct.

16 Q. What was the need to negotiate a deal with
17 Ms. Rienbolt right off the bat?

18 MS. EKL: Objection, form, foundation.

19 MR. MANCINI: Join.

20 A. She came forward in February. The plea
21 agreement wasn't entered until the end of April.
22 That would -- she at that time was represented by
23 counsel who when you would have somebody -- once
24 she's represented by counsel, then you couldn't, you

1 know, enter a plea agreement, so I didn't -- I would
2 not then call that off the bat.

3 Q. Well, why not on April 13th of 1987 go,
4 holy heck, she just admitted to participating in a
5 murder. But for her, Karen Rhoads might have been
6 able to run out that room, but she held her down.
7 I'm going to charge her with murder and put some
8 pressure on her.

9 MR. MANCINI: Objection as to form.

10 Q. And then, you know, who -- why were you
11 thinking about reducers at that point? What was
12 your -- what was your thought process regarding
13 that?

14 MR. MANCINI: Objection to form,
15 foundation.

16 A. As Edgar County State's
17 Attorney/prosecutor, as any good prosecutor in a
18 situation like that, unfortunately the reality of
19 the criminal justice system is you have to negotiate
20 with witnesses that -- you know, culpable witnesses
21 like in that scenario. The decision has to be made
22 who is most culpable. Based upon the facts as
23 presented by Ms. Rienbolt, she was culpable of
24 murder, but the most culpable individuals were the

1 ones who initiated the murder, the ones who had the
2 motive for murder, and that would have been Mr.
3 Whitlock and Mr. Steidl.

4 Q. Well, did she say to you give me a deal or
5 I'm not talking, I'm not testifying at their trial?
6 Did she ever say that to you?

7 A. If she didn't, her attorney -- I don't
8 know, I don't recall specific conversations with her
9 attorney, but she was represented by counsel.

10 Q. Well, not at the time that she told you
11 she participated in the murders she wasn't
12 represented by counsel, correct?

13 A. At the statement on April 13th she had an
14 attorney present.

15 Q. Prior to giving you the statement.

16 A. Yes. That's what the record said. If the
17 record --

18 Q. I'm not asking you about the record. I'm
19 asking you about your recollection.

20 MR. MANCINI: Wait a second. Your
21 question pointed to April 13th --

22 MS. ORTIZ: Right.

23 MR. MANCINI: -- as being why didn't you
24 charge her that day.

1 MS. ORTIZ: Yes.

2 MR. MANCINI: He's saying that day she was
3 represented by counsel, Peter Boyle or Dole.

4 THE WITNESS: Peter Dole.

5 MS. ORTIZ: That wasn't part of his
6 answer.

7 Q. Go ahead.

8 MR. MANCINI: What?

9 A. I said he was -- I said at the statement
10 she had her attorney present at the time.

11 Q. Can you answer the question as to why at
12 that -- I'm sorry, on April 11th of 1987 when she
13 admitted her part as being accountable in the
14 murders by holding Karen Rhoads down so she couldn't
15 leave the room, why didn't you charge her with
16 murder?

17 MR. MANCINI: Objection to form,
18 foundation.

19 A. The same reasons that I've stated. As
20 prosecutor you need to make decisions, and you need
21 to make the decision -- hopefully prosecutors make
22 the decision that you attempt to convict -- in this
23 case they had already been indicted, let's not
24 forget that, Steidl and Whitlock had already been

1 indicted for the murders. So you're wanting to
2 convict the individuals who are most culpable. If,
3 in fact, that entails the dirty business of plea
4 agreements, that's part of the criminal justice
5 system.

6 Q. Well, she didn't say give me a plea
7 agreement or cut me a deal or I'm not going to
8 testify against these guys, did she? Yes or no.

9 MR. MANCINI: Objection as to form,
10 foundation.

11 A. First of all, there's no requirement that
12 answers be yes or no and you should know that.
13 Second of all --

14 Q. I don't need you to instruct me on the
15 law, sir. You're the deponent here. Please answer
16 the question.

17 A. Okay, thank you. The -- she was
18 represented by counsel.

19 Q. The question was did she ever say to you
20 after she confessed to being a participant in the
21 murder I'm not going to testify, give me a deal now
22 or I'm not saying another word?

23 MR. MANCINI: Objection to the form and
24 foundation. He's already testified that he --

1 MR. BALSON: Don't make a speaking
2 objection.

3 MR. MANCINI: Okay. Well --

4 A. Okay, I don't --

5 Q. Did she say that?

6 MR. MANCINI: -- why don't you cut it off
7 because you guys are going to waste time.

8 A. I don't recall her ever saying that.

9 Q. Have you ever been arrested by any police
10 agency?

11 MR. MANCINI: Objection, asked and
12 answered.

13 MS. EKL: Objection, asked and answered.

14 A. No. Other than traffic citations.

15 Q. Have you ever had anything of any type,
16 even a local ordinance violation, expunged from your
17 record?

18 MS. EKL: Objection, asked and answered.

19 MR. MANCINI: Objection.

20 MS. WADE: I join the objection.

21 MR. MANCINI: Join.

22 A. Not that I mean -- I mean I guess I may
23 have gotten court -- not expunged because I got
24 court -- I mean I got court supervision on a traffic

1 citation, but I never got it expunged, so I don't
2 recall anything being expunged.

3 Q. Did Robert Morgan ever contribute to your
4 political campaigns back when you were running for
5 State's Attorney?

6 A. Not to my knowledge.

7 Q. Did anyone connected to Robert Morgan ever
8 contribute to your political campaign back when you
9 were running for State's Attorney?

10 MR. MANCINI: Objection, form, foundation.

11 A. Not to my knowledge.

12 Q. And what is your basis of knowledge
13 regarding campaign contributions?

14 A. It would be my general recollection, and
15 in this particular case, since Mr. Morgan is a
16 person of interest, I perhaps would think harder
17 about that, and I just don't recall any
18 contributions from Mr. Morgan --

19 Q. Have you --

20 A. -- or any of his associates.

21 Q. Have you ever reviewed your campaign
22 contribution records prior to the murders or after
23 the murders to see if he ever contributed to your
24 campaign?

1 A. I still have some of them and I may have
2 glanced at them, but I don't recall.

3 MR. MANCINI: Just for the record, I
4 believe they've been tendered in discovery.

5 Q. In September of 1986 after Mr. Herrington
6 first talked about the murders, was there anything
7 done to obtain a search warrant for the vehicle of
8 Mr. Whitlock or Mr. Steidl?

9 A. In terms of search warrants, the record
10 would speak for itself and I -- my general
11 recollection is that cars were looked at, but again
12 that would all be contained in the police reports.

13 Q. And as far as you know, did you ever give
14 advice to the investigators or did they ever ask for
15 search warrants of the home of either Mr. Whitlock
16 or Mr. Steidl to possibly seek physical evidence?

17 A. I don't recall, but it's certainly
18 possible they were no longer living in their same
19 homes.

20 Q. The question was were search warrants ever
21 sought to gather evidence, potential evidence from
22 their homes?

23 A. And my answer was I don't recall.

24 Q. Do you know of any reason -- do you know

1 who Marie Tellschow was?

2 A. Yes.

3 Q. She was Debra Rienbolt's landlord,
4 correct?

5 A. I believe so.

6 Q. Do you know of any reason she would have
7 sent a letter to Detective Parrish asking him for
8 back rent of Debra Rienbolt dating back to May of
9 1987 when she was testifying at the trial?

10 MR. MANCINI: Objection.

11 MS. EKL: Objection, form.

12 MR. MANCINI: Form. Speculation.

13 A. I would imagine that she owed the rent.

14 Q. Do you know why she would be letting a
15 detective know that she owed back rent?

16 MR. MANCINI: Objection to form,
17 speculation.

18 A. She was a court reporter. She would have
19 knowledge of what was going on. I don't know. I
20 mean maybe she felt that was the best way to get
21 ahold of Ms. Rienbolt, I don't know. I don't know.
22 I mean that would -- you'd have to ask her.

23 Q. So if any citizen in Paris, Illinois, if
24 someone was back due in their rent, they would send

1 a letter to the local police officer to try to
2 collect back rent?

3 MS. EKL: Objection, foundation.

4 MR. MANCINI: Form and foundation.

5 A. This is a small town and a local
6 courthouse where everybody knows each other in the
7 courthouse. I mean I -- that's just the way it is.

8 Q. So there was no particular reason in
9 connection with the Rhoads homicides that Ms.
10 Tellschow would have sent that letter to Detective
11 Parrish as far as you know.

12 MR. MANCINI: Objection, form, foundation.

13 A. I don't recall.

14 Q. Earlier in your testimony you
15 characterized your understanding of the Jim and Ed
16 statement when you made it as casual, correct? That
17 it was just said casually by Mr. Herrington.

18 A. I don't know if I characterized it as
19 casual. I know I expressed what was represented to
20 me about the context of the conversation or
21 interview or however you want to characterize it,
22 but yes, I mean what's -- I don't know the question.
23 What's the question?

24 Q. How do you know that it was casual?

1 A. That's what I was told.

2 Q. What made you remember that it was casual?
3 Was there anything in particular about it?

4 MR. MANCINI: Objection to form.

5 A. I wasn't there. I relied upon the
6 representations of the investigators that -- again,
7 that it was said to Gene Ray, "don't ask me about
8 the murders. Who did you tell? I was there with
9 Jim and Ed. Who was Jim and Ed? Well, Whitlock and
10 Steidl. So, okay, what happened?" I mean that's
11 the way the version it was explained to me. That's
12 all I can tell you.

13 Q. Had you dealt with Mr. Tulin, Mr.
14 Whitlock's attorney, on prior occasions to the
15 Rhoads homicide?

16 A. Yes.

17 Q. In fact, Mr. Tulin was representing Mr.
18 Whitlock on a narcotics charge?

19 A. Yes.

20 Q. And you felt that Mr. Tulin was a good
21 attorney?

22 A. Yes.

23 Q. A competent attorney?

24 A. Yes.

1 Q. Felt that he did a good job representing
2 Mr. Whitlock at the trial?

3 A. Yes.

4 Q. And, in fact --

5 MS. ORTIZ: Can I have 30 seconds please?

6 (Brief pause.)

7 BY MS. ORTIZ:

8 Q. Are you aware that Detective Parrish
9 testified at his deposition that he told you the
10 details of the Herrington interview that you weren't
11 at on September 19th of 1986 --

12 MR. MANCINI: Objection, form, foundation.

13 Q. -- to the next day on September 20th,
14 1986?

15 MR. MANCINI: Objection, form, foundation.

16 A. Like I said, as I indicated to you before,
17 obviously was told that Mr. Herrington had knowledge
18 reference the murders, that -- you know, that for me
19 to come out there to the house, but I don't recall
20 any specific detailed conversation other than to
21 come out and be present at an interview.

22 Q. Earlier you said that from your experience
23 as a seasoned criminal defense attorney, I believe,
24 that the Jim and Ed comment was de minimis, correct?

1 MR. MANCINI: Objection.

2 Q. Didn't matter.

3 MR. MANCINI: I'm sorry. Finish your
4 question.

5 MS. ORTIZ: I'm finished.

6 MR. MANCINI: No, you get to finish.

7 MS. ORTIZ: No, I finished.

8 MR. MANCINI: Okay. I'm going to object
9 to the characterization. It mischaracterizes the
10 prior testimony.

11 A. In the context as presented to me,
12 presumably the testimony of the witness would be,
13 yeah, I initially -- assuming it was brought to full
14 fruition, said, "yeah, I initially said those
15 because I really didn't want to get Mr. Steidl or
16 Mr. Whitlock in trouble because those are the people
17 I associate with, but I didn't do it and I had to
18 state this, I had to tell the truth." So I mean it
19 would have just been something that would have been
20 addressed, and when the dust settled, it wouldn't
21 have made a difference in that context.

22 Q. Well, you've read the Fourth District's
23 Appellate Court opinion granting Mr. Whitlock a new
24 trial, haven't you?

1 A. Yes.

2 Q. And you're aware of the fact that the
3 Appellate Court held that Herrington was crucial to
4 the State's case. The fact that he originally
5 identified two other perpetrators, Jim and Ed, was
6 relevant and material to impeach his credibility.
7 You're aware of that fact, correct?

8 MR. MANCINI: Objection.

9 Q. That that's what the Appellate Court held.

10 A. Yes, but I don't know how again it was
11 argued at the postconviction because if it was --
12 again, on its surface, it would appear significant,
13 but in reality, I don't -- in my mind, it's not that
14 significant in reality, but, you know, again that's
15 -- they made their decision, but I don't know how it
16 was presented at a hearing.

17 Q. So you're saying that the State's
18 Attorney's Appellate Prosecutor didn't present an
19 effective case before the Fourth District Appellate
20 Court?

21 MR. MANCINI: Objection as to form.

22 A. All I said, I don't know how it was
23 presented.

24 Q. Well, obviously they didn't present it

1 effectively enough because the Appellate Court
2 disagreed with them. Is that your opinion?

3 MR. MANCINI: Objection as to form,
4 foundation.

5 A. That's what the Appellate Court indicated.
6 I'm not sitting on the Appellate Court, so I --
7 that's what they indicated.

8 Q. When -- you disagreed with Lisa Madigan's
9 decision not to pursue the appeal of Mr. Steidl's
10 federal habeas relief, correct?

11 A. Did I disagree with that?

12 Q. Yes.

13 A. Yes.

14 Q. And, in fact, in explaining her decision
15 for not pursuing the appeal, Ms. Madigan indicated
16 not that she wasn't pursuing it because of
17 ineffectiveness of counsel, but because in fact the
18 police and the prosecutor had failed to turn over
19 Brady material to Mr. Steidl and his attorneys.
20 You're aware of that, correct?

21 A. I'm aware of her statement.

22 Q. You disagree with that?

23 A. Do I disagree with that?

24 Q. Yes.

1 A. Yes.

2 MR. MANCINI: Just for the record, by my
3 calculation, I think we're at six o'clock which was
4 in the neighborhood of 14 hours. So if you have
5 more questions, feel free, but we're coming to an
6 end.

7 MS. ORTIZ: Okay. A couple.

8 MR. TAYLOR: Just I think the record
9 should be clear that we're more in the area of 13
10 hours than we are 14 hours.

11 MR. MANCINI: Well, I'm -- you want to go
12 off and determine that?

13 MR. TAYLOR: No.

14 MR. BALSON: I don't think she has much.

15 MR. MANCINI: Okay, by my calculation,
16 I've got a different number, so --

17 BY MS. ORTIZ:

18 Q. In the spring of 1986 were you aware of or
19 did you know a person by the name of Sandy
20 Greathouse?

21 MR. MANCINI: Objection, asked and
22 answered.

23 MS. EKL: Objection, asked and answered.

24 A. I knew who she was.

1 Q. And she was an informant working for local
2 police authorities?

3 MR. MANCINI: Objection, asked and
4 answered.

5 A. One, I don't recall, and two, if in fact
6 she was, I think there's certain -- even now would
7 be certain rules regarding the disclosure of
8 informants, but I don't recall.

9 Q. Well, you're aware that transcripts of
10 interviews and pleas of Sandy Greathouse have been
11 tendered to the parties in this case, correct?

12 A. No.

13 MR. MANCINI: Objection, asked and
14 answered.

15 A. I'm sorry, no.

16 MR. MANCINI: Withdraw my objection.

17 A. No, I'm not aware of that.

18 Q. Did you present an affidavit in support of
19 an overhear between Sandy Greathouse and Mr.
20 Whitlock back in the spring of 1986?

21 A. The record -- go ahead, I'm sorry.

22 MR. MANCINI: Objection, that was asked
23 and answered, but go ahead.

24 A. The record would speak for itself.

1 Q. Were you involved in some sort of drug
2 enforcement traffic force -- I'm sorry, I withdraw
3 that. Were you directing a drug enforcement traffic
4 force?

5 MR. MANCINI: Objection as to form.

6 Q. At the time.

7 A. I don't recall directing one. I know
8 there was and I don't recall all the dates. I mean
9 at one time there was a multi-agency, perhaps a
10 multi-county drug task force, but I certainly didn't
11 direct it. I mean we would have been members of it,
12 but I don't recall -- I don't even recall the exact
13 title of it and I don't recall, you know, what
14 agencies would have participated.

15 Q. And it was you who were the prosecutor
16 against Mr. Whitlock involving the transaction with
17 Sandy Greathouse?

18 A. Yes. He pled guilty.

19 Q. Are you aware that after that fact Mr.
20 Whitlock and Mr. Steidl went to the FBI to make
21 various complaints about criminal activity not being
22 prosecuted in and around the Paris area?

23 MR. MANCINI: Objection. It's been asked
24 and answered.

1 A. As I testified before, I first became
2 aware of that by reading an FBI report that was
3 attached as an exhibit to either Steidl or
4 Whitlock's postconviction pleadings is the first
5 time I learned about that.

6 Q. Have you been contacted by Special Agent
7 Marlow of the Illinois State Police regarding the
8 Rhoads homicides?

9 MR. MANCINI: Objection as to form,
10 foundation.

11 MS. WADE: I join the objection.

12 A. Have talked to him.

13 Q. When was the last time you talked to him
14 regarding this case?

15 A. Oh, geez.

16 Q. The Rhoads homicides.

17 A. I understand. The last time I talked to
18 him regarding this case would have been there was an
19 Appellate Prosecutor meeting with the state police,
20 and I was invited to attend.

21 Q. Who invited you?

22 A. I don't recall specifically.

23 Q. When did that occur?

24 A. I don't recall.

1 Q. Who else was present?

2 MR. MANCINI: Objection. It's been asked
3 and answered.

4 A. Members of the state police --

5 MR. ACKERMAN: I'm going to object.

6 A. -- and members of the Appellate
7 Prosecutor.

8 Q. Do you remember specifically which ones?

9 MR. MANCINI: Objection. It's been asked
10 and answered.

11 MS. WADE: I join.

12 MR. ACKERMAN: Same objection.

13 A. I remember Ed Parkinson and Mike Vujovich.

14 Q. Do you remember if Jack Eckerty was there?

15 A. He was not there that I recall.

16 Q. And that was at the Springfield office of
17 the State's Attorney Appellate Prosecutor?

18 A. Yes.

19 Q. Okay. Earlier you said that whether
20 Rienbolt said it was a vase or a lamp didn't really
21 matter in the grand scheme of things, correct?

22 MR. MANCINI: Objection. Mischaracterizes
23 his testimony.

24 A. Well, if we're quoting the Appellate

1 Court, the Fourth District didn't even mention that
2 aspect in its opinion.

3 Q. Well, I'm going to show you what I'll have
4 marked -- what number are we at?

5 (McFatrige Exhibit No. 11 was marked by
6 the court reporter.)

7 BY MS. ORTIZ:

8 Q. As McFatrige 11. And I'm going to direct
9 your attention to page 49. For the record, it is
10 the Illinois Appellate Court Fourth District order
11 in the appeal from the Circuit Court of Edgar
12 County, Mr. Whitlock's postconviction denial and the
13 order granting him a new trial.

14 MS. EKL: Do you have copies?

15 MS. ORTIZ: I do.

16 MR. ACKERMAN: Is there a Bates on there?

17 MS. ORTIZ: Edgar County Circuit Clerk
18 file 05541 through 90.

19 MR. ACKERMAN: Thank you.

20 MS. ORTIZ: You're welcome.

21 MR. MANCINI: I should take one.

22 MS. ORTIZ: I don't have many.

23 BY MS. ORTIZ:

24 Q. I'm going to direct your attention to page

1 50, middle of the page.

2 A. Yes.

3 Q. It says: Had Tulin been aware of evidence
4 suggesting that the lamp Rienbolt had described was
5 not broken prior to the fire, he could have argued
6 that Rienbolt's only knowledge of a broken lamp came
7 from crime scene photos and the jury could have so
8 concluded. His failure to consult a forensic
9 pathologist and arson expert prejudiced the
10 defendant. So he did mention it, correct?

11 MR. MANCINI: Objection, it's improper use
12 of a document, but go ahead. Does it refresh your
13 recollection, Mike?

14 A. Well, no. What I referenced is the
15 argument whether it was a vase or a lamp. Whether
16 it was broken or not is a different issue. I mean
17 the statement when I said it was insignificant was
18 the argument whether this was a vase or a lamp.
19 When you have a generic vase and then you have at
20 the crime scene in the same spot a generic
21 vase-shaped lamp, I said that was insignificant.
22 The significance whether it was broke or not before
23 the fire, that could be argued.

24 Q. Well, in fact, if there were two items,

1 let's say a vase and a lamp, that would be
2 significant, wouldn't it?

3 MR. MANCINI: Objection as to form.
4 Speculative.

5 A. I don't know.

6 Q. One, the lamp in the bedroom could have
7 been broken after the fire and perhaps she saw a
8 vase somewhere else in the house, so it did matter.

9 MR. MANCINI: Objection as to form.
10 Perhaps it's speculative.

11 A. Well, I think the reports make reference
12 to a vase and a lamp, and I think the statement of
13 facts that's attached to the plea agreement is vase
14 and lamp.

15 Q. But she testified at trial and you
16 specifically asked her to describe and identify that
17 lamp for the jury, didn't you?

18 MR. MANCINI: Objection as to form,
19 foundation.

20 A. And as I've indicated, whether it was a
21 lamp or a vase was not even mentioned. It was
22 argued in your postconviction with Mr. Whitlock,
23 but -- the fact whether it was broken or not, the
24 court, the Appellate Court found significant, but

1 the fact whether it was a broken lamp, it was a
2 broken vase-shaped lamp or a broken vase, they
3 didn't find significant.

4 Q. But you argued to the jury in Mr.
5 Whitlock's trial that it was a lamp, correct?

6 MR. MANCINI: Objection as to form,
7 foundation.

8 A. Argument is based upon the evidence. If
9 the witness had testified that I recall a --

10 Q. The question --

11 A. No, I'm answering your question. If a
12 witness had already said, stated -- in my case
13 stated "I remember a broken vase at X spot," and, in
14 fact, it was a vase-shaped lamp, that would be
15 consistent with that person's testimony. I would be
16 thrilled with that. That would be something that
17 would be, as a prosecutor, said that's
18 corroborative. She said -- you know, this witness
19 said, yeah, I remember this on the floor, this vase,
20 and in fact on the floor at that spot was a
21 vase-shaped lamp, that would be consistent. I mean
22 it's not perfect, but it's certainly corroborative,
23 it's consistent, that would be a good thing.

24 Q. But that's not what she said at trial.

1 She said it was a lamp.

2 MR. MANCINI: Objection to form,
3 foundation.

4 A. Again, argument is based upon the
5 evidence.

6 Q. Correct?

7 A. That's what she said.

8 Q. And you didn't correct her.

9 A. And she's reaffirmed --

10 Q. And you didn't correct her. You didn't
11 say, Ms. Rienbolt, don't you mean vase/lamp,
12 correct?

13 MR. MANCINI: At trial?

14 A. I don't even know what you're saying.

15 Q. Yes, at trial. The duty of a prosecutor
16 to correct, yes?

17 MR. MANCINI: Objection to that statement.

18 MS. ORTIZ: Objection to your statement.

19 MR. MANCINI: I think we're getting late
20 in the day. Are you coming to an end because now
21 we're badgering the witness.

22 MS. ORTIZ: I am not badgering the
23 witness. I am asking him questions. The fact that
24 he refuses to answer is a different story.

1 MR. MANCINI: I don't think it's a story.

2 Q. Are you aware that --

3 MR. MANCINI: He's been patient and sat
4 through 14 hours of questioning.

5 Q. -- in February of 2004 Debra Rienbolt had
6 a videotaped interview with the Attorney General of
7 Illinois where she said that you and Detectives
8 Parrish and Eckerty were yelling at her telling,
9 asking -- telling her that she had to say it was a
10 lamp at trial?

11 MR. MANCINI: Objection, form, foundation.

12 Q. Are you aware of that?

13 MR. MANCINI: Objection, form, foundation.

14 A. I'm aware that was attached to pleadings.

15 Q. And you're aware that that videotape
16 exists, correct?

17 MR. MANCINI: Objection, form, foundation.

18 A. That's what it's supposed to be and it was
19 presented to the court in the postconviction.

20 Q. The question was are you aware of it?

21 A. Yes.

22 Q. And if Debra Rienbolt says that, is that
23 the truth or a lie?

24 MR. MANCINI: Objection to form.

1 A. I would say she was incorrect.

2 Q. Well, you don't want to call her a liar,
3 do you?

4 MR. MANCINI: Objection to form. It's
5 argumentative.

6 A. I would say that she was incorrect.

7 Q. Well, did you or did you not tell her to
8 say that she needed to say it was a vase -- a lamp
9 rather than a vase?

10 MR. MANCINI: Objection, asked and
11 answered.

12 A. I don't recall.

13 Q. So you might have.

14 MR. MANCINI: Objection. That's improper
15 form.

16 A. I indicated that she was incorrect. That
17 that's the way it would have been presented.

18 Q. So she lied.

19 MR. MANCINI: Objection as to form.

20 A. I indicated she was incorrect.

21 MS. ORTIZ: Can I have a moment?

22 (Brief pause.)

23 MS. ORTIZ: We're done.

24 MR. MANCINI: Okay. I would like to just

1 put something on the record. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 MR. BALSON: [REDACTED]
13 MR. MANCINI: [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] be
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED]
24 MR. RAUB: Mr. Zorn?

1 MR. MANCINI: I think it's only respectful
2 but --

3 MR. BALSON: It will be a few days before
4 this is written up --

5 MR. MANCINI: Do you want to think about
6 it?

7 MR. BALSON: -- and we want to consider
8 it.

9 MR. MANCINI: Okay. And again, it's just
10 so that it's not distributed until a trial or
11 whatever else. I just don't want --

12 MR. BALSON: No, I understand that.

13 MR. MANCINI: It's a personal matter and I
14 think -- you know, obviously we're not giving
15 anything to the media as relates to this case, and I
16 don't think you will either, but we'd like to have
17 that in seal, so --

18 MR. BALSON: Yeah, all right. Well, you
19 know, we'll talk about it and we'll respond to you.

20 MR. MANCINI: Thank you.

21 MR. BALSON: Certainly this is not going
22 to be typed up overnight.

23 MR. MANCINI: Can I just ask that it not
24 be distributed then until that issue has been

1 resolved with the court reporter?

2 MR. BALSON: Distribute to whom?

3 MR. MANCINI: To anybody in the case until
4 we resolve the issue of seal.

5 MR. BALSON: What do you mean by anybody
6 in the case?

7 MR. RAUB: Outside the case he meant.

8 MR. MANCINI: No. Well, okay, even
9 outside the case, that's fine.

10 MR. BALSON: Well, outside the case and in
11 the case are two different things.

12 MR. MANCINI: Well, all I'm saying is if
13 you get the transcript in the next couple of days
14 and we haven't resolved the issue of seal, I'm
15 requesting that you hold from distributing it in any
16 way, shape or form consistent with the protective
17 order until that issue is resolved.

18 MR. BALSON: I don't know who we would
19 distribute it to.

20 MR. MANCINI: Then you should agree.

21 MR. BALSON: Well, I mean do you mean
22 distributing it to our witnesses, to our expert
23 witnesses, I mean to --

24 MR. MANCINI: Consistent with the

1 protective order that's in place presently. There's
2 a protective order in place, so I'm just asking that
3 until the issue is resolved --

4 MR. BALSON: That it be subject to the
5 protective order, is that what you're asking?

6 MR. MANCINI: Until it's resolved as to
7 whether or not you'll agree, yes.

8 MS. EKL: The protective order allows you
9 to show it to your expert.

10 MR. BALSON: Yeah, if what you're asking
11 is that we treat that in conformance with the
12 protective order, I don't think I have a problem
13 with that.

14 MR. MANCINI: Just until you'll
15 either agree to it --

16 MR. BALSON: I don't intend to send it to
17 Eric Zorn if that's what you mean.

18 MR. MANCINI: Until you either -- you
19 agree to the inclusion under the protective order or
20 your disagreement, and then we have to litigate that
21 issue, that's all I'm asking.

22 MS. SUSLER: Well, we can agree to keep it
23 eyes only until we resolve it.

24 MR. MANCINI: That's all I'm asking.

1 MS. SUSLER: Or we decide if we're going
2 to oppose you putting it under seal.

3 MR. BALSON: Seal is a different thing,
4 and if you want to say would we treat it as
5 something which is subject to the protective order,
6 I think that's -- we would.

7 MR. MANCINI: I misspoke. I did not
8 intend it to be sealed but rather sealed consistent
9 with the protective order is what I'm referring to.

10 MS. EKL: Kept confidential.

11 MR. MANCINI: Kept confidential under the
12 protective order is a better way to say it.

13 MR. BALSON: Yes, I would agree to treat
14 that as though it were subject to the confidential
15 order in this case.

16 MS. SUSLER: And then we also have to iron
17 out the stipulation as to the exhibit about the
18 exchange of --

19 MR. MANCINI: I will do that within 24
20 hours, by end of business tomorrow. I looked at
21 them tonight, I don't think there's an issue, I just
22 want to talk to Mike about a couple of things.

23 MR. BALSON: I have another matter, but we
24 don't need --

1 MR. MANCINI: Can I just -- can we get rid
2 of the court reporter? We'll reserve signature.

3 MR. RAUB: No offense, June.

4 MR. TAYLOR: I'd like one more thing on
5 the record.

6 MR. MANCINI: Okay. We're going to
7 reserve signature so it's clear.

8 MR. TAYLOR: That the deposition is
9 subject to any motion -- to be reconvened subject to
10 any motions on the work product assertions that were
11 made, and also if for some reason there's some issue
12 on the letters, then we reserve the right to reopen
13 to question him about the letters that I didn't get
14 a chance to question him on.

15 MR. MANCINI: As relates to the work
16 product privilege that was asserted, I don't agree
17 with that because that should have been resolved
18 well before his deposition. You had those documents
19 at least two years ago. As for these letters that
20 are outstanding, I agree if you have an issue with
21 any of those, you will be entitled to ask him any
22 questions about those specific letters with which we
23 will not stipulate as to them being in his file or
24 received from Debra Rienbolt.

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MR. BALSON: Signature?

MR. MANCINI: I already reserved it, but
I'll do it again.

(Adjourned at 6:16 p.m.)

1 STATE OF ILLINOIS)
) SS
 2 COUNTY OF FORD)

3
 4 I, Deann Parkinson, a Notary Public in and
 for the County of Champaign, and June Haeme, a
 5 Notary Public in and for the County of Ford, State
 of Illinois, do hereby certify that MICHAEL
 6 McFATRIDGE, the deponent herein, was by me first
 duly sworn to tell the truth, the whole truth and
 7 nothing but the truth, in the aforementioned cause
 of action.

8 That the following deposition was taken on
 behalf of the Plaintiff at the offices of Area Wide
 Reporting Service, 301 West White Street, Champaign,
 9 Illinois, on August 19th and 20th, 2009.

10 That the said deposition was taken down in
 stenograph notes and afterwards reduced to
 typewriting under my instruction; that the
 11 deposition is a true record of the testimony given
 by the deponent; and that it was agreed by and
 12 between the witness and attorneys that said
 signature on said deposition would not be waived.

13 I do further certify that I am a
 disinterested person in this cause of action; that I
 14 am not a relative, or otherwise interested in the
 event of this action, and am not in the employ of
 15 the attorneys for either party.

16 IN WITNESS WHEREOF, I have hereunto set my
 hand and affixed my notarial seal this 28th day of
 17 August, 2009.

18 DEANN PARKINSON, CSR
 NOTARY PUBLIC

19
 20 JUNE HAEME, CSR, RMR, CRR
 NOTARY PUBLIC

21 "OFFICIAL SEAL"	"OFFICIAL SEAL"
22 Ann Parkinson	June Haeme
Notary Public	Notary Public
23 State of Illinois	State of Illinois
My Commission Expires:	My Commission Expires:
24	September 27, 2012

