

In the Matter of:

In the Matter of April Arlene Sponsel

Reporter's Transcript of Recorded Proceedings [Day 6]

October 23, 2023



**G R I F F I N G R O U P
I N T E R N A T I O N A L**

3200 East Camelback Road, Suite 177
Phoenix, Arizona 85018

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF)	
THE STATE BAR OF ARIZONA,)	
)	PDJ 2023-9018
APRIL ARLENE SPONSEL,)	
BAR No. 023009)	
)	
)	
Respondent.)	
)	

Before the Honorable Margaret H. Downie
 Mark Sifferman, Volunteer Attorney Member
 Randall Clark, Volunteer Public Member

HEARING - DAY 6

Phoenix, Arizona
 October 23, 2023
 9:27 a.m.

REPORTED STENOGRAPHICALLY BY:
 MARY DAVIS, RPR
 Certified Reporter

(Certified Copy)



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A P P E A R A N C E S

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STATE BAR OF ARIZONA
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ALSO PRESENT:

April Sponsel, Respondent



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1 (Commencement of recorded audio)

2 * * * *

3 THE COURT: This is the time set for
4 hearing in PDJ 2023-9018. The record will reflect the
5 presence of the hearing panel.

6 Ms. Sponsel is presented with her
7 lawyers, Mr. Calderon and Mr. Echeveste.

8 And the State Bar is represented by
9 Mr. Henley and, probably, Ms. Shuman somewhere;
10 correct?

11 MR. HENLEY: Ms. Shuman should be here in
12 two minutes.

13 THE COURT: All right.

14 Before we get started with Respondent's
15 continued case-in-chief, any matters that we need to
16 discuss?

17 MR. CALDERON: Yes, Your Honor. We are
18 going to give the Court notice --

19 THE COURT: Your microphone, please.

20 MR. CALDERON: I'm sorry.

21 THE COURT: That's okay.

22 MR. CALDERON: We want to give the Court
23 notice that we received notice from Judge Stephens that
24 she objects to being recorded, and that there is a rule
25 on that, that she has the right to object. We, of



1 course, are just passing that along to the Court.

2 And then also we have listed a witness --

3 MR. ECHEVESTE: Lon Bartel.

4 MR. CALDERON: -- Lon Bartel, and he will
5 not be testifying in this hearing.

6 THE COURT: We have some scheduling
7 matters. I know we got an update from Mr. Echeveste
8 about today's proceedings.

9 So we're going to continue with
10 Ms. Sponsel's direct, cross, and redirect.

11 And then Sherry Stephens is available, I
12 think you said noon-ish; is that correct?

13 MR. ECHEVESTE: Correct.

14 THE COURT: And I didn't bring your email
15 in. And after that who are we expecting?

16 MR. ECHEVESTE: Nicholas Michaud at
17 approximately 1:30, Laura Reckart after that, and then
18 Larry Davis in close.

19 THE COURT: All right. So in terms of
20 Ms. Stephens, I think we're going to have to -- I mean
21 the rules allow me to order that photographic video
22 coverage of a witness not occur, but I have to have
23 some reason to do that. So I don't know whether you
24 want to let her know that I have to make specific
25 on-the-record findings about why that would be



1 appropriate.

2 So either she or you all, as her proxy,
3 would need to give me that information if that's her
4 request. Somebody might want to give her a heads-up.

5 MR. CALDERON: Sure. And just for the
6 record, we're not her proxy.

7 THE COURT: Yeah. I don't -- I know not
8 for all purposes, but I'm just saying, if you wanted to
9 present her position or if you want to leave it to her,
10 that's a more correct way to say it.

11 MR. CALDERON: Judge Stephens will
12 present her own position.

13 THE COURT: Okay. Very good.

14 Any other matters you wanted to raise?

15 State Bar? No?

16 MS. SHUMAN: None from me.

17 THE COURT: Then, Ms. Sponsel, if you
18 would go ahead and take a seat back in the witness
19 chair, and we'll continue with your direct examination.

20 And you are still under oath from Friday.

21 **THE WITNESS: Thank you.**

22 MR. CALDERON: May I proceed?

23 THE COURT: You may.

24 MR. CALDERON: Thank you, Your Honor.

25 ///



1 APRIL SPONSEL,
2 a witness herein, having been previously duly sworn by
3 the Court to speak the truth and nothing but the truth,
4 was examined and testified as follows:

5
6 DIRECT EXAMINATION (Cont'd)

7 BY MR. CALDERON

8 Q. April, when we last left off, we were
9 discussing the federal plea agreement when we last left
10 off.

11 And the question that was before you was what
12 did you do after Judge Hannah found that you knew about
13 the federal plea agreement?

14 A. So after that hearing, after I made that
15 connection between Allen Burns from 2014 and Allen
16 Burns with regards to Donald Rourke and Tina Martin and
17 seeing the plea agreement, I went specifically back to
18 my office because I wanted to see, you know, was there
19 a free talk agreement on -- that was signed by him.

20 Did we enter into a testimonial agreement
21 with Mr. Burns or anything like that, because I was
22 trying to recall, you know, what exactly happened
23 because I wanted to make sure I got it right.

24 Because when I was in court, my recollection
25 was, "You know what, oh, I remember that case now."



1 And it was because of the identification thing, and
2 that's what I had told Judge Hannah and defense
3 counsel, but I wanted to make sure I got it right.

4 So I went back to my office, and I went
5 through my emails because I -- I kept an archive folder
6 of all of the defendants that I had prosecuted for
7 many, many years, including Allen Burns. So I went
8 back into that email folder, did not find a testimonial
9 agreement, did not find a free talk agreement, found
10 nothing to that. Did not find any emails between
11 myself and any of the U.S. attorneys or any emails
12 between myself and Mr. McGroder -- McGruder. I always
13 get his name wrong.

14 So I didn't stop there. I --

15 Q. What did you do next?

16 A. I asked my secretary to order the closed files
17 from Iron Mountain because at that point not everything
18 had been uploaded into the case -- the PbK case
19 management system.

20 Q. Iron Mountain is a storage facility of some
21 sort?

22 A. Yes. That's the storage facility that the
23 Maricopa County Attorney's Office uses or is still
24 using.

25 So I asked them to put a rush on it and -- but



1 in the meantime, I still didn't -- I just didn't stop
2 there.

3 Q. What did you do next?

4 A. I reached out to Mr. Vercauteren, and I asked
5 him -- I said, "Hey, can you please go back through
6 your emails and see if there's any emails where we had
7 a conversation, and I agreed to put this -- that I
8 agreed to allow you to put that information in your
9 plea agreement."

10 Q. How did you reach out to Mr. Vercauteren?

11 A. I sent him an email asking him to call me.
12 And so he called me, and -- and we discussed
13 it. And his search came back with a negative --
14 negative result.

15 Q. But what does a negative result mean? He
16 didn't find anything?

17 A. Yeah. He said that he did not find any emails
18 that he could forward, you know, that we had had any
19 type of conversation regarding that. But, then again,
20 I didn't just stop there.

21 Q. What did you do then?

22 A. I then tracked down Mr. -- is it McGroder or
23 McGruder?

24 Q. It's McGroder.

25 A. McGroder. (Indiscernible) is going to yell at



1 me for getting it wrong.

2 I found where Mr. McGroder was working, at
3 Beus Gilbert, and I called him. And I said, "Hey," I
4 said -- you know, we talked about Allen Burns. And it
5 was a very short conversation because he is like, "I
6 can't" -- it's attorney-client privilege. And he was
7 all like -- we talked about --

8 MS. SHUMAN: Is this hearsay?

9 THE COURT: Yeah. If you could just
10 confine your testimony to your impressions or what you
11 learned without telling us the substance of
12 Mr. McGroder's statements.

13 A. Sure.

14 THE COURT: It will obviate some
15 objections.

16 A. Sure. Sorry.

17 So we had some very limited conversation. And
18 then he emailed me, which is the email that's part of
19 one of the exhibits, and I responded back to him. And
20 that was pretty much basically it.

21 And then because everything was coming up
22 negative -- and I even reached out to our IT department
23 to see if they could, you know, go and see if there was
24 something I missed in our archives; nothing came up
25 with regards to me sending an email to the U.S



1 Attorney's Office saying "Hey, you know what, you can
2 go ahead and put this in your -- in your plea
3 agreement"

4 Q. Did you find anything that would corroborate
5 the Court's finding that you agreed to dismiss the
6 State shoplifting case as part of the federal plea
7 agreement?

8 MS. SHUMAN: Objection, Your Honor, to
9 the extent that it's challenging the findings made by
10 the trial court.

11 THE COURT: I think the question as posed
12 is fine, so the objection is overruled.

13 A. No.

14 BY MR. CALDERON:

15 Q. Why didn't you seek a motion for
16 reconsideration of the Court's findings in this order?

17 A. So my bureau chief at the time, Gina
18 Godbehere, wanted me to do that. And --

19 Q. She want you to do what?

20 A. She wanted me to file a motion for
21 clarification. But then we went down and we spoke with
22 Jason Kalish, the division chief.

23 Q. Wait a minute. Jason Kalish. Earlier I asked
24 a question about him, and I promised the Court I would
25 tie him into this case.



1 He is on the -- on the County Attorney's
2 Ethics Committee?

3 **A. That's my understanding, and I believe he was**
4 **back then.**

5 Q. And then -- and they're a complainant in this
6 matter; correct?

7 **A. Correct.**

8 MS. SHUMAN: Objection; relevance.

9 THE COURT: Well, we've already
10 established that so let's move on.

11 BY MR. CALDERON:

12 Q. All right. Continue, please.

13 **A. So we went -- Gina and I went down to speak to**
14 **Mr. Kalish, to his office, and talked about the issue**
15 **with regards to the minute entry. And based on that**
16 **conversation, it was determined that we would just**
17 **leave it alone and not file a motion for clarification.**

18 Q. It was determined. Did you determine that?

19 **A. No.**

20 Q. Did Ms. Godbehere determine that?

21 **A. No.**

22 Q. Did Mr. Kalish determine that?

23 **A. Yes.**

24 MS. SHUMAN: Objection. Assumes facts
25 not in evidence.



1 THE COURT: Overruled.

2 A. Yes.

3 BY MR. CALDERON:

4 Q. There were some issues regarding disclosure of
5 Mr. Burns' priors and information about his substance
6 abuse. Do you recall that?

7 A. I do.

8 Q. And what can you tell us about that?

9 A. So that was one of the discovery requests by
10 the defense counsel relating to Mr. Burns with regards
11 to his prior convictions as well as the substance
12 abuse, so I'm going to talk about the substance abuse
13 first.

14 So normally in criminal law we don't do this,
15 this -- the way that I handled this. Normally in
16 criminal law we just call up somebody, you know, a case
17 agent, and say "Hey, did you know that this person was
18 under the influence of drugs when you were working with
19 them?" or something to that effect. And then we just
20 take their -- their verbal answer, and then we'll email
21 it out to the defense counsel and say, "Hey, this is
22 what we found," negative results or positive, and
23 that's pretty much basically it.

24 But, in this case, because everything had
25 become so contentious, I literally cut and paste her



1 request from the defense counsel's discovery motion and
2 emailed it specifically to Agent Santarsiero, as well
3 as Detective Krassow, kind of like in -- what they use
4 in civil proceedings is like -- kind of like an
5 interrogatory because in criminal you don't use
6 interrogatories.

7 Q. Who is Agent Santarsiero?

8 A. He's the -- he was the ATF agent that was
9 overseeing Allen Burns.

10 Q. So that's the Bureau of -- Federal Bureau of
11 Alcohol, Tobacco, and Firearms?

12 A. That is correct.

13 Q. So you sent them that. And the purpose for
14 that was?

15 A. To find -- to be able to comply with Judge
16 Hannah's discovery order about whether or not he --
17 they had information with regards to Allen Burns being
18 under the influence.

19 Q. A question just popped -- popped in my head.

20 Mr. Green testified that he did not seek
21 either an appeal or a motion to reconsider, and that
22 was one thing that flagged him to proceed in
23 investigating the matter.

24 Do you recall that?

25 A. Yes, but I believe that was after Judge Blair



1 dismissed the case.

2 Q. Okay. So that's not this situation we're --
3 this -- that's not the motion to reconsider involving
4 Mr. Kalish; correct?

5 A. Correct.

6 Q. Okay. Thank you. Go ahead.

7 A. Correct.

8 So I had sent it out specifically to both the
9 agent and the detective, and they both responded back
10 with a negative -- negative answer regarding the
11 drug -- drug issue.

12 Q. What is a negative answer?

13 A. They did not have any information with regards
14 to him using drugs.

15 And then -- and then the second part to that,
16 that you had asked me about, was his criminal history.
17 So --

18 Q. What did you find relative to criminal
19 history?

20 A. So normally the way that it works is that over
21 at the County Attorney's Office, whenever there is a
22 witness, the secretaries will run what's known as an
23 NCIC criminal history under the -- which is the
24 national database. And it's supposed to have all of
25 the federal -- federal and state convictions,



1 misdemeanor convictions. And so that's what we
2 would -- that's what we would do.

3 And then what we would do after that is, once
4 we got the printout, we would just normally just email
5 the defense counsel saying, "Hey, you know, these are
6 the priors for the witness," and just list them out,
7 and that's it.

8 But I had made it a practice of mine early on
9 that I would do an actual formal filing with the Court
10 just listing out the -- the criminal history. That's
11 it.

12 Q. So let me stop you there.

13 A. Sure.

14 Q. You didn't need to do that?

15 A. No. That was not -- and it's not a
16 requirement.

17 Q. Why did you do it?

18 A. I did it just because I wanted to protect
19 myself in the future because there had been a couple of
20 times that we had gone to trial, and we had found out
21 that a witness had got on the stand -- but prior to
22 getting on the stand, you know, I'll ask them, "Do you
23 have any, you know, misdemeanor priors or anything like
24 that?"

25 And, you know, this one particular person



1 disclosed that they had a shoplifting out of the City
2 of Mesa, but it didn't -- it did not come up on their
3 NCIC. And so after that, I made it a practice to go
4 ahead and do, like, a formal pleading showing what I
5 knew at that time.

6 And so that is what I had done in the Allen
7 Burns matter is that I listed out the priors, but I
8 went one step even further because I wanted to make
9 sure that we had everything. I went to
10 Mr. Vercauteren. It was either Mr. Vercauteren or
11 Mr. Church, over at the U.S Attorney's Office, and I
12 asked them if they could, you know, send me all of the
13 documents with regard to Allen Burns' federal priors,
14 which they did.

15 I reached out to the Salt River Indian
16 Community. And normally we are not entitled to this
17 stuff because it's sovereign nation. And I got a
18 printout of all of his convictions and arrests from the
19 Salt River Indian Community and -- and made copies of
20 that and disclosed it all to the defense counsel.

21 Q. How did you disclose it?

22 A. I did it on -- I had my paralegal Bates stamp
23 them and disclose them, but I also made them part of a
24 formal -- a formal pleading.

25 And it was my understanding at that time that



1 we had disclosed all of the federal priors and the Salt
2 River Indian Community stuff, because Salt River Indian
3 Community, their courts don't report to the NCIC
4 national database.

5 So I had thought I had disclosed every -- all
6 of them. But then whenever we went in front of Judge
7 Hannah, I found out that there was one federal prior
8 that was outstanding that was not on my list of
9 disclosures.

10 Q. How did you find that out?

11 A. So Judge Hannah had gone through and was
12 reading the plea agreement from 2014 that contained the
13 language that the State was going to dismiss the
14 shoplifting charges. And also in that plea agreement,
15 they listed out a couple of federal priors.

16 So he had pointed that out, and that was part
17 of one of his minute entries saying that I had avowed
18 that I had done the criminal history search. But that
19 was -- it turned out not to be true because it was
20 lacking.

21 Well, I had brought it up, and I had actually
22 filed a motion under seal with Judge Hannah, attaching
23 the NCIC printout for Allen burns that did not show
24 that prior that was the federal prior that was listed
25 in the plea agreement.



1 And it was a mistake on my part. I guess I
2 should have actually read the plea agreement and
3 compared it to what was on his NCIC; I didn't.

4 So -- but whenever I discovered that, I
5 brought it up to Judge Hannah's attention and --

6 Q. How did you do that?

7 A. I did it in a formal pleading. It was one of
8 the motions for in camera, and I also brought it up to
9 his attention at one -- at the end of one of the court
10 hearings.

11 Q. Okay.

12 A. And so based on that, I reached out --

13 MS. SHUMAN: I'm sorry to interrupt.

14 Could we place some dates or some times
15 on it. I'm kind of getting lost on the narrative.

16 THE COURT: Well, yeah. I think we need
17 to get a little bit back into question and answer
18 versus a narrative.

19 So why don't you ask your next question,
20 Mr. Calderon.

21 BY MR. CALDERON:

22 Q. So you provided Judge Hannah with a notice
23 both in writing and verbally. Why did you do that?

24 A. Because I wanted to let Judge Hannah know that
25 it wasn't on his NCIC printout, and that's what I look



1 at whenever I'm disclosing priors. So that's the
2 reason why.

3 Q. So you just testified to Herculean efforts in
4 trying to come up with any priors, any previous
5 information. I'd like to direct you now to some
6 testimony that occurred here. Two -- two prominent
7 attorneys, Mr. Walker and Mr. Faussette, raised the
8 issue of ATF laws. "ATF" standing for Alcohol,
9 Tobacco, and Firearms, specifically something called
10 NFORCE.

11 And I have it written out capital N-F force
12 logs that came to light during an interview of an
13 agent. Are you familiar with that?

14 A. I am.

15 THE COURT: So I just want to make sure
16 you know that paragraphs 41 and 42 of the joint
17 prehearing statement contain stipulations about this.
18 So I don't want to go over things that are stipulated
19 to.

20 MR. CALDERON: Yes, Your Honor.

21 BY MR. CALDERON:

22 Q. Were you aware of the NFORCE logs existed
23 before this interview?

24 A. I was not.

25 Q. Given the Touhy requirements, would you have



1 been able to request these NFORCE logs from ATF without
2 asking for them specifically?

3 A. No.

4 Q. Why not?

5 A. Because one of the things that I was finding
6 out in -- and this was even happening on the side with
7 regard to Keith Vercauteren as well, because he's got
8 regulations he has to follow.

9 So I had specifically asked the agent about
10 any logs, anything memorializing any contact with Allen
11 Burns and a list of that, like interrogatories that I
12 had sent him and Detective Krassow. And --

13 Q. Why did you do that?

14 A. Because I was trying to make sure. That was
15 one of the -- I literally cut and pasted from the
16 defense counsel's discovery request motion, and that
17 was one of the things that they were looking for was
18 logs or notes regarding Allen Burns.

19 Q. Did they respond to you?

20 A. They did, and it was in the negative, that
21 they did not have anything.

22 Q. That they did not?

23 A. Right. But it later turned that there was
24 this case management log that Agent Santarsiero had
25 on -- which is pretty much basically, like, little



1 notations, nothing of substance.

2 Q. All right. And I don't understand what you
3 mean by that.

4 Are you saying that it was recorded on his
5 separate system?

6 A. Yeah. It was recorded on a separate system
7 with regards to the case management system that ATF
8 uses.

9 Q. Okay. But ATF did not provide that to you in
10 response to your request; correct?

11 A. That is correct.

12 Q. And you didn't know that it even existed, did
13 you?

14 A. No. Not until Agent Santarsiero said in the
15 middle -- well, he was actually looking at it in the
16 middle of the interview to refresh his recollection.

17 Q. Mr. Faussette and Walker testified that the
18 revelation of these logs caused them to suspect that
19 there was even more undisclosed information out there.

20 What was your impression based on the review
21 of the NFORCE logs?

22 A. It was just pretty much basically just, like,
23 really quick notations. Like, I spoke to somebody over
24 at CoreCivic of America. I think that was one of the
25 notations. And opened a file here, you know, looked



1 at -- talked to Allen Burns here. But nothing of any
2 substance because that was memorialized in the police
3 reports.

4 Q. Did you have any additional information -- I'm
5 talking about the NFORCE logs situation. Did you have
6 any additional information that you refused to turn
7 over to attorneys Walker or Faussette?

8 A. With regards to the NFORCE log?

9 Q. Right. That's what their testimony was about.

10 A. Yeah. No. And, in fact, I asked Agent
11 Santarsiero in the middle of the interview if he would
12 please just go ahead and email me a copy of the logs.
13 And I specifically gave it to Mr. Faussette and
14 Mr. Walker during the interview. That interview was
15 about eight-hours long. And I even said to them -- I
16 said, "Look" -- I said "If you take a look at the
17 NFORCE log even longer, are you -- if more questions
18 come up, please, let me know. We'll set up another
19 interview."

20 Q. During -- during one of their testimonies,
21 they talked about you hiding the ball. Did you hide
22 the ball?

23 A. No. No. From the very beginning, we were
24 getting discovery out.

25 Q. I don't practice criminal law. I'm assuming



1 "Hiding the ball" means you're withholding information?

2 **A. That's what I would assume that it means.**

3 Q. By March of 2020, the defense had filed
4 another motion regarding the approximately 20 items
5 that they claimed had not been disclosed and that they
6 had previously requested. Do you recall that?

7 **A. Yes.**

8 Q. Did you -- did the parties discuss these
9 matters with Judge Hannah?

10 **A. We did.**

11 Q. And what was the substance of your discussion
12 with Judge Hannah?

13 **A. It was pretty much -- basically we went down
14 line by line during the hearing with regards to the
15 discovery request. And I believe many of those items,
16 if not all, had -- were denied by the -- by the judge.
17 But I'd have to look at the minute entry to see, but I
18 believe a majority of them were denied as items that
19 we -- were not in our possession which included the
20 cell phones that they were looking for and other items
21 such as that.**

22 Q. So when you say they were denied by the judge,
23 the judge -- the judge listened to both you and the
24 defense counsel and came to the conclusion that either
25 they didn't exist so they didn't need to be produced?



1 **A. Or we -- or they were not in the State's**
2 **possession.**

3 Q. So you weren't withholding any of those items?

4 **A. No.**

5 Q. Did Judge Hannah reach -- I'm talking about
6 March 13th, 2020, Complex Case Management Conference.
7 And you can look at Exhibit 183 if you'd like.

8 **A. Yes. The transcripts.**

9 Q. Did Judge Hannah reach any conclusions at that
10 hearing?

11 **A. If I may have one moment.**

12 Q. Certainly.

13 **A. I believe -- and I'll trying to find the**
14 **actual page with his ruling, but I believe it -- was it**
15 **this hearing, or was it March 27th? This hearing on**
16 **March 13th where he found that I had complied with the**
17 **rules of discovery.**

18 Q. Did Judge Hannah set a trial date at this
19 conference?

20 **A. He did. And everybody was in agreement that**
21 **the trial would definitely go on that date.**

22 Q. Did the case go to trial as scheduled?

23 **A. It did not because, unfortunately, COVID hit,**
24 **and everything was shut down.**

25 Q. The successor judge was Judge Blair; is that



1 correct?

2 **A. That's correct.**

3 Q. Once Judge Blair granted the motion to
4 dismiss, why didn't you appeal?

5 **A. So my supervisor at the time, Gina Godbehere,**
6 **was actually co-chairing me on this case because there**
7 **had been other motions filed, like disqualifying me**
8 **from the -- from the case as well as other motions to**
9 **dismiss filed early on in front of Judge Hannah.**

10 So she started to get into the case and she
11 was going to co-chair me. And when the dismissal came
12 down, she chose -- she went and spoke with appeals and
13 with Jason, and -- I believe it was Jason Kalish that
14 in her mind because --

15 MS. SHUMAN: Objection; speculation.

16 BY MR. CALDERON:

17 Q. Is this what -- how did you come to the
18 conclusion? What conclusion are you making?

19 **A. Just what I relied upon on why we didn't**
20 **appeal it.**

21 Q. Was it your decision that --

22 **A. It was not.**

23 Q. Whose decision was it?

24 **A. It was Gina's. Gina's and the -- Ryan Green,**
25 **I believe, was the head of appeals at that point.**



1 Q. Back to my confusion about Mr. Green's
2 testimony. He testified that he saw that you had
3 either filed a motion to reconsider or appeal or
4 something and that gave him pause which caused him to
5 move forward and investigate the matter.

6 Is this the point we're talking about?

7 **A. I believe so.**

8 Q. Once again, you had no -- you had no -- well,
9 let me know ask you this. Did you want to appeal?

10 **A. I did. I did. But Gina --**

11 Q. Well, did you tell your supervisor you wanted
12 to appeal? Gina?

13 **A. I did. When it first happened, we sat down
14 and we talked about it, and I wanted to appeal. And
15 she sat and -- I won't say what she said, but went
16 through her litany of reasons and --**

17 Q. Why did you want to appeal it?

18 **A. Because I felt as though Judge Blair made an
19 incorrect legal determination from my viewpoint with
20 regards to discovery. The stuff that the defense
21 counsel had -- had asked Judge Blair to order, such as
22 tax returns, the cell phones, things of that nature,
23 were previously already denied by Judge Hannah. So it
24 was like an interlocutory appeal that defense counsel
25 was asking for by trying to get Judge Blair to overrule**



1 **what Judge Hannah had already done.**

2 Q. So do you believe that Judge Blair made a
3 mistake by not following through with what Judge Hannah
4 had done?

5 **A. I do.**

6 Q. The next question is, as I understand it,
7 Judge Hannah had the case. And then there was a - I'll
8 call it a ministerial rotation. A new judge came in
9 and assumed Judge Hannah's calendar; is that correct?

10 **A. That is correct. Judge Blair rotated over**
11 **from criminal -- or, excuse me, civil. And this was**
12 **his first rotation on the criminal bench, and he had no**
13 **criminal background.**

14 Q. And -- and -- and perhaps he did not --
15 perhaps he inadvertently did not come up to speed on
16 what Judge Hannah --

17 MS. SHUMAN: Objection, Your Honor.

18 Q. -- previously ruled? Is that what --

19 THE COURT: Wait. Don't answer that
20 question.

21 What's the objection?

22 MS. SHUMAN: One, speculation about
23 whether the judge came up to speed on the case. And
24 then I think the Court has already ruled that we can't
25 attack the merits of the trial court's findings.



1 THE COURT: That's correct. The
2 objection is sustained.

3 BY MR. CALDERON:

4 Q. So this transition occurred, and there was no
5 recognition of Judge Hannah's findings?

6 THE COURT: So, Mr. Calderon, I am going
7 to interject because you are the one who has been the
8 main proponent of Handcock versus O'Neil. And
9 I've previously said that none of the judges' legal
10 rulings are binding on this hearing panel. None have
11 particular relevance except to the extent they ordered
12 Ms. Sponsel to do certain things.

13 The correctness or incorrectness of the
14 Court's rulings has really no relevance to what we're
15 doing here today. So I thought I had made that clear
16 before.

17 MR. CALDERON: May I be heard,
18 Your Honor?

19 THE COURT: Briefly, because this issue
20 has been resolved prehearing.

21 MR. CALDERON: Well, may I make an offer
22 of proof, Your Honor, to preserve the record?

23 THE COURT: You can do that later in an
24 offer of proof.

25 This was litigated beforehand. Whether



1 Judge Blair was --

2 MR. CALDERON: Your Honor.

3 THE COURT: Please let me finish.

4 Whether Mr. Blair was new to the
5 assignment, familiar with criminal law, engaged in a
6 horizontal appeal, none of that has relevance because
7 we are not giving Judge Blair's or Judge Hannah's legal
8 conclusions any relevance in our decision-making,
9 except to the extent that Ms. Sponsel was ordered to do
10 things. I did a detailed order on this.

11 Yeah. If you want to do an offer of
12 proof later, you can, but let's move on from this line
13 of questioning.

14 BY MR. CALDERON:

15 Q. Let's talk about the State shoplifting case
16 that was part of the federal plea agreement. Am I
17 phrasing it correctly?

18 A. Yes.

19 Q. Had you known about the State shoplifting
20 case, was there any -- any overriding reason why you
21 would not have made that part of the record?

22 A. No. And, in fact, in one of the hearings in
23 2020, early on, there was the motion to disqualify me
24 as the prosecutor on it because they wanted to call
25 me -- the defense counsel wanted to call me as a



1 witness to be able to talk about the language in the
2 federal plea agreement.

3 Judge Hannah denied that.

4 Q. Before you get to that -- sorry -- is it
5 common to have an adversary being called as a witness?

6 A. Yeah, it's very uncommon.

7 Q. All right. So they wanted to call you. What
8 did that have to do with your lack of disclosing this
9 had you known about it?

10 A. Right. So they -- so they wanted to call me
11 as a witness, and Judge Hannah denied that. But then
12 at that hearing there was a long conversation about
13 that -- look, you know what, ask Allen Burns if he
14 thinks that he got a benefit. You can ask him whatever
15 questions you want to ask him about the language. I'm
16 not going to say anything. I'm going to sit back. You
17 guys can test Allen Burns' credibility.

18 MS. SHUMAN: Your Honor, who is saying
19 all of this?

20 A. I'm saying this to the defense counsel and to
21 the court.

22 THE COURT: Okay. I guess the objection
23 is overruled.

24 But we really need to have questions and
25 answers. I'm lost as well.



1 MR. CALDERON: May I proceed, Your Honor?

2 THE COURT: Yes.

3 BY MR. CALDERON:

4 Q. Would the State, meaning Maricopa County
5 Attorney's Office, have received any benefit to
6 dismissing the shoplifting case as part of the federal
7 plea agreement?

8 A. No.

9 Q. At the time you decided to dismiss the case,
10 was there any way the county, meaning MCAO, could have
11 received a benefit in exchange for the testimony about
12 Rourke/Martin?

13 A. No.

14 Q. No?

15 A. No. Because Rourke and Martin wasn't even on
16 the radar at that point.

17 Q. When you mean on the radar -- what do you
18 mean, it wasn't on the radar?

19 A. The crime had not even occurred yet.

20 Q. The crime had not occurred?

21 A. That is correct.

22 Q. Well, I thought there was assertion that you
23 knew about this crime before the time frames I've asked
24 you about today. Am I correct?

25 A. Are you talking about the Donald Rourke and



1 the Tina Martin --

2 Q. Right.

3 A. -- in connection with when the Burns case was
4 dismissed?

5 Q. Right.

6 A. No. That crime did not come to fruition until
7 January of 2015 when the agents were alerted to Donald
8 Rourke calling Allen Burns, asking him to murder his
9 family members.

10 Q. So just to close that loop, how can you
11 disclose information about a crime that had yet to be
12 committed?

13 A. I would have to become a psychic medium, I
14 guess.

15 Q. You didn't have any sort of intelligence that
16 he was going to be committed or anything of that sort?

17 A. I had no idea. After I dismissed the Burns
18 case, I went back to my other cases and had no idea
19 about this whole entire conspiracy to commit
20 first-degree murder case.

21 Q. What is a 5K1?

22 A. So my understanding, after being schooled by
23 Judge Hannah on the 5K1s, those are documents that, I
24 guess, are filled out by U.S Attorney's Office on --
25 for a -- it's kind of like a sentencing memorandum



1 asking for a court to do a certain thing with a plea
2 agreement.

3 Q. At the time you were before Judge Hannah --
4 and we were talking about this -- were you aware of
5 what a 5K1 was?

6 A. I was not.

7 Q. And how did you learn what a 5K1 was?

8 A. Judge Hannah had asked me if I was -- if I had
9 disclosed or if I was familiar with the 5K1 memo or
10 report. And I was like "No, Judge, I'm not. Can you
11 tell me what that is?" And he did and ordered me to go
12 get it from the U.S. Attorney's Office.

13 Q. Is there anything in the State system -- I'm
14 assuming since you are more familiar with the State
15 system -- that would have caused you to believe that
16 something like a 5K1 existed?

17 A. No.

18 Q. Do you know in your interactions with your
19 supervisor, Ms. Godbehere, whether she knew what a 5K1
20 was?

21 A. No, she did not.

22 Q. How do you know that?

23 A. Because we had had a conversation about this
24 5K1. And I was, like, "Have you ever heard of these
25 things?"



1 Q. Were there any other instances where you
2 didn't know the specific information existed?

3 A. Yeah. So after I had asked Mr. Vercauteren
4 about the 5K1 report, he didn't -- he didn't say, "Hey,
5 oh, by the way, just to let you know, we were also
6 doing this, these types of aids, to the court" after
7 Mr. Burns was put on probation. He didn't say anything
8 about that.

9 I found out about that from talking to
10 Detective Krassow because he kept saying --

11 MS. SHUMAN: Judge, hearsay.

12 THE COURT: Yeah. Before you talk about
13 what he told you -- let's not talk about what he told
14 you and just talk about what you learned.

15 A. Well, I had learned that there were also these
16 status memos that were being filed by Mr. Vercauteren
17 relating to Allen Burns with the federal court.

18 BY MR. CALDERON:

19 Q. And you did not know they existed?

20 A. I did not.

21 Q. Did you have them in your possession?

22 A. I did not.

23 Q. Was there any way you could produce them?

24 A. No.

25 Q. The question was were there other instances --



1 is there any other instance that you didn't know that
2 more specific information existed?

3 **A. Other than the NFORCE log, no.**

4 Q. I'd like to shift gears and talk about Riley
5 Behrens again.

6 If my memory is correct, you testified earlier
7 that you were aware that the Federal Bureau of
8 Investigation had terminated the relationship with
9 Riley Behrens; is that right?

10 **A. Correct. Right. Before October 17th of 2020.**

11 Q. That information that Riley had been giving to
12 law enforcement had been vetted; is that right?

13 **A. That's my understanding, yes.**

14 Q. Did the vetting impact your assessment of the
15 information?

16 **A. It did.**

17 Q. So as I understand it, the FBI has said that
18 they terminated the relationship; nevertheless, Riley
19 Behrens' information had been vetted.

20 And what did you conclude about the veracity
21 of Mr. Behrens' -- of Riley Behrens' information?

22 **A. Prior to October 17th, because it had been**
23 **vetted and there was evidence to prove that what Riley**
24 **had been providing to law enforcement was true and**
25 **accurate, that it was good information.**



1 Q. In your experience, can a confidential
2 informant provide both inaccurate and accurate
3 information?

4 A. Yes.

5 Q. That's why you vet the information; correct?

6 A. That is correct.

7 Q. I'd like to refer you to Exhibit 190, please.

8 A. Okay.

9 Q. Based on your involvement in the case, how
10 much information did law enforcement get from
11 confidential informant Behrens?

12 A. Quite a bit.

13 Q. Is some of it captured in Exhibit 190?

14 A. Yes, it is. These are text messages that were
15 going back and forth between Riley Behrens and Steve
16 Denny with the FBI prior to the -- I believe it's prior
17 to the termination.

18 Q. Do you believe that, at least, some of that
19 information is accurate?

20 A. Yes.

21 Q. What is a testimonial agreement?

22 A. So a testimonial agreement is -- it's when you
23 work with a defense counsel and a defendant who has
24 pending criminal charges, and you agree to give them a
25 more favorable plea to have them testify in your



1 case-in-chief against codefendants.

2 Q. Did you try to put together a testimonial
3 agreement with Mr. Behrens and his defense counsel?

4 A. After the October --

5 MS. SHUMAN: Objection; relevance.

6 THE COURT: You're asking about a
7 testimonial agreement with Behrens after the protest;
8 is that correct?

9 MR. CALDERON: Yes.

10 THE COURT: Overruled.

11 A. Yes. So prior to the February 12th meeting --
12 because this is some of the stuff we talked about in
13 the February 12th meeting -- I had reached out to
14 Riley's defense counsel to talk about entering into a
15 test -- first of all, we needed to do a free talk with
16 Riley on --

17 BY MR. CALDERON:

18 Q. Once again, a free talk is?

19 A. A free talk is where you just -- you sit down
20 with an individual that's pending charges, who has
21 information that you want to -- that they want to
22 provide you or that you want to ask them. And based on
23 that information, then you make a determination if you
24 want to do a testimonial agreement.

25 So that was -- that was the first part that I



1 needed to do was to be able to do a free talk agreement
2 with Riley Behrens to be able to vet any of the
3 information provided after Riley was released from the
4 FBI, including the information from October 17th.

5 Q. It's my recollection -- and please correct me
6 if I'm wrong -- that Riley Behrens made statements that
7 Ryder Collins was not involved?

8 A. That is correct, to the officers that night.

9 Q. Were those statements about Ryder Collins
10 vetted in similar ways to the information that Behrens
11 had given information to law enforcement?

12 A. No. Nothing from October 17th because we
13 never got there.

14 Q. I don't understand that. Can you explain that
15 to me?

16 A. Because we were still working out trying to
17 get a free talk agreement through Riley's attorney, and
18 then we went to the executive meeting on February 12th,
19 and the cases were dismissed that afternoon, we didn't
20 get there. The cases were dismissed.

21 Q. It's my understanding, or perhaps
22 misunderstanding, that the State Bar asked you why you
23 didn't believe Behrens' statements about -- that you
24 didn't believe Behrens' statements about Collins when
25 you did find other information that came from Behrens,



1 to be reliable. Do you remember that?

2 **A. I do.**

3 Q. And can you explain that for the panel?

4 **A. That's because one of the things that I --**
5 **again, I wanted to do was I wanted to -- we needed to**
6 **vet the information, just like all the other**
7 **information that Riley had stated needed to be vetted**
8 **as well.**

9 **And we just -- again, we just never got there**
10 **to be able to find out because Riley's loyalties were**
11 **all over the place. One moment Riley is loyal to the**
12 **FBI. The next moment --**

13 MS. SHUMAN: Objection. I think
14 speculation.

15 THE COURT: I think the question has been
16 answered, so why don't you ask your next question.

17 BY MR. CALDERON:

18 Q. So it's my understanding that you didn't
19 believe that that information was as well vetted as you
20 would like?

21 **A. Correct. There were questions -- the specific**
22 **questions I had.**

23 Q. Would it have been logical for you to accept
24 Riley Behrens' statements about Ryder Collins at face
25 value but disregard all the information that law



1 enforcement received from Riley that was vetted?

2 A. No.

3 Q. Why not?

4 A. Because the other stuff was vetted and proven
5 by actual outside evidence above and beyond just
6 Riley's statements.

7 And here, October 17th, we were surprised that
8 Riley was even out there, to tell you the truth. When
9 Riley was arrested and the detectives called me, I was
10 all like, "Well, that's interesting." We did not get
11 the opportunity to vet that information, and I did have
12 questions.

13 Q. Let me switch gears on you. Let's talk about
14 bodycam and other video. Prior to these protest cases,
15 did you prosecute any cases that involved bodycam and
16 other video?

17 A. I -- with regards to bodycam, no, because
18 bodycam is relatively new, over the last couple of
19 years.

20 Surveillance videos, yes. And video from a
21 bomb robot in one case, yes. But bodycam, no.

22 Q. Did you ever receive any training from
23 Maricopa County Attorney's Office relative to how to
24 prosecute a case with a bodycam?

25 A. No.



1 Q. Do you know if your supervisors did?

2 A. I don't know.

3 Q. Do you know if there was a policy at -- from
4 the Maricopa County Attorney's Office relative to how
5 to prosecute cases using video and bodycam?

6 A. There was none relating to any type of
7 video -- video surveillance, any type of video.

8 Q. And just so we understand, what time frame are
9 we talking about?

10 A. Well --

11 Q. Up until -- up until when?

12 A. Until I -- well, to my knowledge, there was
13 nothing -- in fact, I don't even know if there is,
14 other than what people have said here, because I've
15 never seen a policy.

16 Q. Would it be reasonable for me to say that what
17 you're saying is, while you were employed or on
18 administrative leave with MCAO, you knew of no such
19 policy?

20 A. I knew of no such policy.

21 Q. Did officers' accounts always -- were they
22 precisely like the evidence you found on video?

23 A. No.

24 Q. Why not?

25 A. Because our brains perceive more than what the



1 body cameras do. And the training that -- the little
2 bit of -- so the little bit of training that I received
3 from an outside agency known as Force Science.

4 MS. SHUMAN: Objection, Your Honor. Can
5 counsel lay a foundation. This almost sounds like
6 expert testimony.

7 MR. CALDERON: We're talking about -- I
8 can lay a foundation, Your Honor.

9 THE COURT: All right. Go ahead and do
10 that.

11 BY MR. CALDERON:

12 Q. Based -- based on how you handled cases
13 involving bodycam or video or both and an officer's
14 accounts, you just testified that it was not unusual
15 for them to be different.

16 In your personal opinion as to how you
17 reviewed this information, what did you rely on?

18 A. So I relied on -- on the training that I have
19 received from institutions such as Force Science, which
20 is a week-long very intensive seminar that's mainly put
21 on for law enforcement, dealing with law enforcement
22 officers that do investigations into officer-involved
23 shootings.

24 And pretty much basically they break down how
25 bodycam is way slower than the human eye and how your



1 brain can perceive things or not perceive things
2 because of just particular situations.

3 Q. And you learned this from your independent
4 study with this outside entity; correct?

5 A. Correct.

6 Q. What -- how do you handle cases where you had
7 video or bodycam video and officers' testimony that
8 were inconsistent with each other?

9 A. I had to take them as a whole. I had to look
10 at everything and then present that to the jury, and it
11 was up to the trier of the fact to make the final
12 determination with regards to the credibility and what
13 they were seeing on the surveillance videos. Again,
14 I've never done one with bodycam.

15 MR. CALDERON: With the court's
16 permission, we'd now like to refer to some video.

17 THE COURT: All right.

18 MR. CALDERON: Let's start with the Bruce
19 Franks case. Let's start with Exhibit 267.2.

20 And I believe this involves an Officer
21 Woolagar, capital W-O-O-L-A-G-A-R.

22 Mr. Echeveste will try to make sure we
23 get this teed up right.

24 Mr. Echeveste, just let me know when
25 we're ready?



1 MR. ECHEVESTE: Sure. Give me a moment.

2 MR. CALDERON: Are we running,
3 Mr. Echeveste?

4 MR. ECHEVESTE: Yes.

5 MR. CALDERON: Let's stop it and go back
6 to the beginning. I'm just waiting for you to set it
7 up.

8 Ms. Sponsel, there -- I know there are
9 dozens, if not hundreds of hours of video. We're going
10 to show you two minutes. This relates to the Bruce
11 Franks case at Exhibit 267.2.

12 Marc, are you ready to let it go?

13 MR. ECHEVESTE: Yes.

14 MR. CALDERON: Ms. Sponsel, ready?

15 **THE WITNESS: Yes.**

16 MR. CALDERON: Go ahead.

17 (A video was played.)

18 **THE WITNESS: And just to let you know,**
19 **they're walking out from the east side of --**

20 MR. CALDERON: Okay. I have not asked
21 you a question. Just watch.

22 BY MR. CALDERON:

23 Q. Ms. Sponsel, can we describe what we just saw?

24 A. So the person with the skateboard that's
25 slamming it down on the ground, that's Richard Villa.



1 And as you can see, he walks up as the officers are
2 trying to push it up. And then he slams the fencing
3 back into the officers.

4 The - there's an officer that yells out
5 "that's a 245" or "He's good for a 245." 245 is the
6 radio code -- the radio code for an aggravated assault
7 on an officer that one of officers yelled out.

8 Q. What -- what was the event that this was a
9 video of?

10 A. So this is the -- this falls under the August
11 melee with Bruce Franks and Richard Villa, Jacquelyne
12 Avalon, and a whole bunch of the other ones.

13 MR. CALDERON: Let's now look at
14 Exhibit 267.9, please, Mr. Echeveste. Let me know when
15 you're ready to start it.

16 MR. ECHEVESTES: Ready.

17 MR. CALDERON: Let's watch this.

18 (A video was played.)

19 BY MR. CALDERON:

20 Q. Who is Officer Ray?

21 A. Officer Ray is one of the other officers that
22 was out there working on this day.

23 Q. Was he involved on that video?

24 A. I believe so.

25 Q. And can you just explain to us what we just



1 saw, please?

2 A. Again, it's just another view of Richard Villa
3 because we were trying to -- they had different views
4 of Richard Villa. And trying to get the most clear
5 views, unfortunately, these were the types of videos
6 that we would be getting.

7 Q. And these are -- I saw Axon up in the
8 right-hand corner. I assume these are bodycam videos?

9 A. That is correct.

10 MR. CALDERON: Let's take a look at
11 Exhibit 267.1, please.

12 MR. ECHEVESTE: Just a moment.

13 BY MR. CALDERON:

14 Q. In the meantime, do you know who Officer Lynch
15 is?

16 A. He's another officer that was out there. I've
17 never met -- I think with the exception of Officer
18 Woolagar I think I met once in my career. The rest of
19 them, I don't believe I've ever met.

20 MR. CALDERON: Let's watch Exhibit 267.1.
21 And, once again, it's only about a minute and a half.

22 (A video was played.)

23 BY MR. CALDERON:

24 Q. The tape -- somebody is yelling "skateboard."
25 I seem to think that's a police officer yelling



1 "skateboard."

2 **A. It is. And I believe it's this officer's --**
3 **officer. This is Officer Lynch.**

4 Q. And do you recognize the person with the
5 skateboard?

6 **A. Richard Villa.**

7 Q. And the officer then -- someone yells "245"
8 meaning?

9 **A. Aggravated assault on an officer.**

10 Q. And I could be wrong. I seem to have heard
11 that he linked the skateboard to the 245?

12 **A. No. I believe it's the fencing.**

13 Q. The fencing?

14 **A. Just the fencing.**

15 Q. Okay. And is there anything else you can tell
16 us about this video? Any way to describe it that I
17 might have missed?

18 **A. No, I don't believe so. Other than the big**
19 **loud bang that you're hearing is the -- I believe it's**
20 **the shotgun that they -- the flashbangs to try to**
21 **disperse the crowd.**

22 Q. When when you say "they," that's the --

23 **A. The police.**

24 Q. The police use that?

25 **A. Yes.**



1 Q. Okay.

2 MR. CALDERON: Maybe take a look at
3 Exhibit 267.10, please.

4 (A video was played.)

5 BY MR. CALDERON:

6 Q. Can you describe what we just saw?

7 A. Yeah. So the -- the individual that's in the
8 red shirt, that's Bruce Franks. The individual with
9 the dreads, that's -- dreadlocks, that is Defendant
10 Reed, I believe (indiscernible). Jonah Ivy is also in
11 this video. He's the one with the long blond hair in
12 the ponytail.

13 And this is pretty much basically an example
14 of the D arrest techniques that were used similar to
15 the October 17th arrests when they all went down to the
16 ground at the October 17 case.

17 But you can actually hear -- and we believe
18 it's Bruce Franks yelling, "Get around me." And then
19 that's when you start to see them all start holding on
20 to him so the officers can't grab him to arrest him for
21 the aggravated assault on the officers because what
22 they're doing is they're pushing into the officers'
23 shields.

24 Q. Do you know who Officer Palmer is?

25 A. Other than reading his reports, I do not know



1 who that officer is.

2 Q. Okay.

3 MR. CALDERON: Let's look at Exhibit
4 No. 267. There's no subsection to it, just 267. And
5 it's going to be about a minute and a half.

6 (A video was played.)

7 BY MR. CALDERON:

8 Q. Can you describe to us what we just saw,
9 please?

10 A. Again, it's just another -- it's just a
11 different view of the D arrest tactics that these guys
12 were utilizing throughout the summer, including an
13 example of the October 17th individuals that went --
14 went down. But you can see how they wrap their arms
15 around Bruce Franks so the officers can't effectuate
16 the arrest.

17 But you can also see -- at the beginning you
18 can see how the officer's shield is going back and
19 forth. It's because, according of the reports, they
20 are pushing on the shield because they're trying to get
21 past to join the 620.

22 MR. CALDERON: May we take a look at
23 Exhibit 267.8, please.

24 (A video was played)?

25 ///



1 BY MR. CALDERON:

2 Q. As I understand it, those loud booms, those
3 are police shots up into the air to disperse the group?

4 A. Yeah. I believe those are the flashbangs.

5 Q. Flashbangs. Thank you.

6 Can you please tell us what we just saw in
7 that video please?

8 A. Again, just another view of the D arrest
9 tactics. But also what's important about this, I
10 believe this is Officer Gallegos's bodycam. And the
11 bodycam, which was common, as you can see, it went
12 flying, hit the pavement. And, unfortunately, that's
13 all you hear is the just the yelling and screaming with
14 the rest of the video.

15 So that was a common -- a common issue not
16 only throughout these cases but as well as, you know,
17 just other regular cases where officers were victims or
18 they had to take action where there bodycams became
19 unsecured and then went flying, and we have to rely on
20 the reports.

21 MR. CALDERON: Let's take a look at the
22 Boird/Ivy case. May we look at Exhibit 135.1, please.

23 (A video was played)

24 MR. CALDERON: Is that all of it,
25 Mr. Echeveste?



1 MR. ECHEVESTE: No. That's Walker, not
2 for Ivy. My mistake with the question.

3 MR. CALDERON: So is this 135.1 Walker?

4 (A video was played.)

5 BY MR. CALDERON:

6 Q. Can you tell us what we just saw?

7 A. Yeah. And so this is the Walker case. This
8 is the one where the officer was stabbed with the pen.

9 On -- and I didn't see the timer up there,
10 but you can actually see -- Marc, can we go back a
11 little bit.

12 THE COURT: Okay. This needs to be
13 coming from you.

14 BY MR. CALDERON:

15 Q. With the Court's permission, what --
16 Ms. Sponsel, what point in the video do you want
17 Mr. Echeveste to go to?

18 A. I wanted to point out, because it happened so
19 quickly. By the notebook you'll see the pen there for
20 on -- you'll see it there for a little bit. And then
21 all of a sudden you see Walker's hand go out and then
22 the pen is gone. And then you hear the officer yell
23 out "ouch" or whatever he just yelled.

24 MR. CALDERON: Okay. Why don't we play
25 it one more time with the Court's permission.



1 THE COURT: Do we need to watch all of
2 this? Do we need to -- she has described it. We're
3 going to watch all of it again.

4 MR. CALDERON: Your Honor, you're not
5 watching a scintilla of the amount of video that we
6 have.

7 THE COURT: We will watch all of it.

8 MR. CALDERON: This would take weeks.
9 All we're trying to do, Your Honor, is --

10 THE COURT: We've seen it. We've heard
11 it described. I'm not sure -- we're going to review it
12 again.

13 MR. CALDERON: It's up to the Court if
14 you would like to preclude it.

15 THE COURT: I'm not precluding it. It's
16 in evidence. We're going to review the videos.
17 However many hours there are, we're going to review
18 them.

19 MR. CALDERON: Let's move on then.

20 BY MR. CALDERON:

21 Q. Would you describe the camera's perspective on
22 this? Was it close? Was it far?

23 A. It looks like it's really close. I mean,
24 they're on top of each other.

25 Q. Okay. Based on your experience reviewing



1 bodycam video and regular video, is it possible that
2 two different cameras from two different angles might
3 not capture the same images?

4 **A. Absolutely. It happens all the time.**

5 MR. CALDERON: Mr. Echeveste, what is
6 Exhibit 135.2?

7 MR. ECHEVESTE: It's the next one in this
8 case.

9 MR. CALDERON: I'm assuming the Court
10 does not want to see the next one -- video.

11 THE COURT: No. I don't object to seeing
12 them once. I don't think we need to see them more than
13 once was my point.

14 MR. CALDERON: With the Court's
15 permission we'd like to show 135.2, please.

16 (A video was played.)

17 BY MR. CALDERON:

18 Q. Ms. Sponsel -- April, what did we just see?

19 **A. That was the victim officer stating right
20 there on the scene that he was stabbed with something.**

21 Q. Let's talk about the February 12th, 2021,
22 incident review. Do you recall that?

23 **A. I do.**

24 Q. Did you make a presentation at that incident
25 review?



1 **A. I did.**

2 Q. And what was the substance of your
3 presentation?

4 **A. Pretty much basically talking about the gang**
5 **charges and why I believe the gang charges and the**
6 **other charges that were filed against the October 17th**
7 **defendants were viable in my training and experience,**
8 **as well as the backing of the expert testimony of Clint**
9 **Davis, from Sergeant McBride, as well as Chuck Roland**
10 **from the U.S. Marshal Service.**

11 Q. Would you look at Exhibit 120, please.

12 **A. Yes.**

13 Q. What is it?

14 **A. This is the PowerPoint that I put together**
15 **on -- it's pretty much basically my notes because there**
16 **was a heck of a lot more that was provided with each**
17 **slide other than me just going through and saying,**
18 **"Here, read this slide. Read this slide. Read this**
19 **slide."**

20 Q. And this was the presentation that was
21 relevant to the February 12th, 2021, incident review?

22 **A. That is correct.**

23 Q. And it's my understanding you put the
24 presentation together in a way so that it would be
25 more -- the audience would understand the connection



1 between the two?

2 **A. Yes, that is correct.**

3 MS. SHUMAN: Your Honor, just a point of
4 clarification. I'm confused. Are we at a stage where
5 counsel can lead?

6 THE COURT: No.

7 MS. SHUMAN: Then I'm going to object.

8 THE COURT: Sustained.

9 MS. SHUMAN: Thank you.

10 BY MR. CALDERON:

11 Q. Did anyone help you with the PowerPoint
12 presentation?

13 **A. Yes.**

14 Q. Who?

15 **A. Detective Clint Davis.**

16 Q. How long did it take you to prepare that
17 presentation?

18 **A. I had about three days to prepare it. So when
19 I wasn't doing court and stuff, I would say I probably
20 spent over 20 hours, a lot of that time after 5:00 p.m.
21 putting it together.**

22 Q. Did this PowerPoint presentation include
23 information about the group that calls itself All Cops
24 Are Bastards?

25 **A. It did.**



1 Q. And is it readily identifiable? Is there a
2 separate -- is there a Bates stamp number that we can
3 refer to?

4 A. Unfortunately there's not Bates stamps on it.

5 But just for the panel's edification, the ACAB
6 members are actually listed on two different slides
7 early on. And these are individuals that were
8 identified by law enforcement as well as by Riley
9 Behrens.

10 Q. I'm not going to have you go through the
11 exhibits, as the Court will be reviewing it in-depth.
12 But are there any other points in the PowerPoint that
13 you believe need to be mentioned that particularly
14 describe the case?

15 A. Yeah. So just a -- just a couple of really
16 quick points.

17 Q. And after each point, if you could break, and
18 then let me ask the question. That way we won't have
19 an objection.

20 A. Sure. I think it's pretty self-explanatory.

21 As the PowerPoint goes along, I break down the
22 seven criteria. I break down the gang statute under
23 A.R.S. 13-105.8 first. And Detective Davis was there
24 to talk about, you know, formal and informal
25 association of individuals.



1 And then we move on to breaking down each
2 individual and what criteria they met on October 17th
3 for A.R.S. 13-105.9 for the criteria.

4 Q. Have you ever been asked to review protest
5 cases prior to the 2020 protest?

6 A. Protest cases outside of 2020, yes. I was
7 asked to review one in 2020 after the First Responders
8 Bureau began.

9 Q. How do you review -- when you're asked to
10 review a case, how do you review a case from your own
11 perspective, your own state of mind? Are you -- are
12 you an instrument of law enforcement? Are you an
13 instrument of the court?

14 MS. SHUMAN: Objection; leading?

15 MR. CALDERON: I'm just asking questions.

16 BY MR. CALDERON:

17 Q. As you review cases, how do you approach
18 reviewing a case?

19 A. So rarely are -- rarely are we asked to review
20 other individuals' cases; sometimes we are.

21 So normally what I'll do is I'll just pull up
22 the reports. I'll read the reports. And then if I
23 need to get any other further information, such as
24 watching surveillance video or bodycam video, I'll go
25 and watch the surveillance video, bodycam. And then



1 I'll usually staff with my bureau chief or other
2 attorneys in our bureau because this is a re-review of
3 another attorney's -- at another attorney's request.

4 Q. Do you recall who has requested you to review
5 these protest cases prior to 2020?

6 A. Yeah. So Tom Van Dorn, after he got over --
7 And, again, this is after the First Responders Bureau
8 got put into place. He specifically asked me to review
9 a --

10 MS. SHUMAN: Objection; hearsay and
11 relevance.

12 BY MR. CALDERON:

13 Q. Okay. So Tom Van --

14 THE COURT: Okay.

15 MR. CALDERON: I'm sorry, Your Honor.

16 THE COURT: There's an objection.

17 MR. CALDERON: I apologize.

18 THE COURT: Let me rule on it.

19 I'm going to sustain the objection.

20 BY MR. CALDERON:

21 Q. You were asked by Tom Van Dorn; correct?

22 A. Yes.

23 Q. Did anybody else ask you to review?

24 A. No.

25 Q. And who is Tom Van Dorn?



1 **A. He was in our --**

2 MS. SHUMAN: Relevance.

3 THE COURT: Well, it is relevant. But we
4 know who he is because several witnesses have already
5 testified about him.

6 Let's go ahead and do it one more time.

7 BY MR. CALDERON:

8 Q. What was the outcome of the case?

9 **A. I felt as though there was no reasonable
10 likelihood of conviction so I turned the case down.**

11 Q. I want to try to clear up my understanding
12 about the Ryder Collins cell phone.

13 Are you aware of when Ryder Collins' cell phone
14 was released?

15 **A. Yes. After Friday's session when Ms. Shuman
16 asked me if --**

17 Q. Let's not refer to -- let's not personalize it
18 to see when the State Bar asked you.

19 **A. Okay. Sorry.**

20 When the State Bar asked me if I was aware
21 that Ryder Collins' cell phone had been released a
22 couple days after the October 17th arrest, my answer
23 was "I wasn't aware of that."

24 It didn't seem right. So I went back and I
25 looked at the property release for Ryder Collins, and



1 that's not true. They -- his --

2 Q. When you say "the property release," is this a
3 form of some sort?

4 A. This is a form that is filled out by the
5 Phoenix Police Department. And when they release items
6 of evidence back to a civilian or whomever, they have
7 them sign off on it, acknowledging that they picked up
8 the items.

9 Q. And what did you find?

10 A. Ryder Collins' cell phone was not released
11 until March 2nd of 2021. It wasn't one of the ones
12 that was early on in the arrests.

13 Q. You previously testified that not all of the
14 October 17th, 2020, defendants were members of ACAB.
15 Am I stating that correct?

16 A. That is correct. The only one that was not
17 identified as meeting two of the criteria -- because in
18 order to be documented as a member of a gang, you have
19 to meet at least two of the criteria under
20 A.R.S. 13-105.9. And the only person that did not meet
21 two criteria was Ryder Collins.

22 So there was no gang member identification
23 card, also known as a GMIC card, that was filled out on
24 him.

25 Q. My notes say A.R.S. 13-105.8.



1 **A. It's 8 or 9 with regards to the definitions.**

2 Q. Okay. I just want to make sure.

3 **A. Yeah.**

4 Q. Okay.

5 How many gang members does assisting the
6 criminal street gang statute require?

7 **A. At least one who is a documented member.**

8 Q. And this is the gang statute not prepared by
9 you, not prepared by the Maricopa County Attorney's
10 Office, by the legislature; correct?

11 **A. That is correct.**

12 MR. CALDERON: I pass the witness,
13 Your Honor.

14 THE COURT: Redirect?

15 MS. SHUMAN: Yes, ma'am.

16

17 CROSS-EXAMINATION

18 BY MS. SHUMAN:

19 Q. And I'll probably work my way backwards. So I
20 apologize if it sort of bebops around.

21 So first of all -- so Ryder -- your testimony
22 is that Ryder Collins' cell phone was not released
23 until March 2021; correct?

24 **A. That's what the property sheet says.**

25 Q. So you had between October 17th of 2020 to the



1 date that you were placed on administrative leave to
2 obtain information from that cell phone; correct?

3 **A. I asked the officers to --**

4 Q. It's a yes-or-no question.

5 You had between October 17th and the date that
6 you were placed on administrative leave to take steps
7 to get that information out of Ryder Collins' phone
8 correct?

9 **A. And I did. I asked the officers to write the**
10 **warrants and get the cell phones downloaded.**

11 Q. But you didn't get that information; correct?

12 **A. I'm at the mercy of the law enforcement agency**
13 **at that point, after the request goes in.**

14 Q. Oh. So as a prosecutor, you have to defer in
15 your investigation of your case to what the police
16 officers are doing; is that correct?

17 **A. They're the ones that process the items of**
18 **evidence, and it takes time to get these items of**
19 **evidence processed. I can only ask.**

20 Q. And so then working my way backward, you said
21 that -- I believe that Riley -- that Riley Behrens
22 identified who was a member of ACAB, A-C-A-B, and that
23 you relied on that information; correct?

24 **A. That and the information that officers had**
25 **determined was true and accurate with regards to their**



1 portion of what they investigated.

2 Q. But you rejected his statements that Ryder
3 Collins was not a member of ACAB; correct?

4 A. I don't believe Riley was ever asked if he was
5 a member of ACAB.

6 Q. Well, then let me be more specific.

7 But you rejected Ryder -- Riley Behrens'
8 statements that Ryder Collins was not a part of the
9 group that was arrested on October 17th, 2020?

10 A. Yes, because we were in the process of trying
11 to get the information vetted.

12 Q. Looking at Exhibit 120, which is the
13 PowerPoint that you presented to the review hearing on
14 February 12th of 2021, in the section -- and, again,
15 it's not Bates-stamped, but there is a page in here
16 that has a list of everybody that, I'm assuming, you
17 were saying were a part of the book club. Would that
18 be accurate?

19 It's identified as book club. It's maybe one,
20 two -- it would be four, five -- it's six pages in on
21 Exhibit 120. And at the top of the page it says: ACAB
22 numbers book club.

23 A. That is correct.

24 Q. Okay. So so Ryder Collins is not listed as a
25 member of book club; correct?



1 **A. No. Because -- yes, ma'am.**

2 Q. Jacquelyne Alcaraz is not listed as a member
3 of book club; correct?

4 **A. No.**

5 Q. Neither is Amy Kaper?

6 **A. No.**

7 Q. Benji Llanes?

8 **A. No.**

9 Q. In your presentation, in this PowerPoint that
10 you presented on February 12th of 2021, there is no
11 photograph of a sharpened umbrella; correct?

12 **A. The uncropped one was not -- or, excuse me.
13 A cropped one missing that umbrella was included.**

14 Q. There's -- you have a picture in here of a
15 sharpened umbrella?

16 **A. I -- no. No. No. I said there's a cropped
17 one that we later learned that there could be a
18 sharpened one in there, if I didn't crop it
19 incorrectly.**

20 Q. But in your presentation on February 12th, you
21 didn't have a picture of a modified tip to an umbrella;
22 correct?

23 **A. Correct. Because I missed that.**

24 Q. Okay. So it's your testimony that one exists?

25 **A. When you go back and you take a look at the**



1 other photograph that we found, I had cropped it out.
2 I didn't -- I missed it. I didn't see that. That one
3 tip does not appear to be the same as the other golf
4 umbrella tips.

5 Q. Okay. There are no pictures of anyone with
6 sharpened fingernails, are there?

7 A. There are no pictures of -- I don't think I
8 did individual fingernails, no.

9 Q. Without replaying the video, the last one that
10 was shown, that's 135.2, during that altercation the
11 officer, when asked about any potential injuries, said
12 "No biggie;" is that correct?

13 A. I don't recall hearing that. If he said it,
14 that's...

15 Q. In the video that was played, 135.1, which was
16 with respect to my notes show the June 24th, 2020,
17 arrest, the officer was asked, "Did he just bite you?"

18 There's no allegation that the officer was
19 bitten; correct?

20 A. Are you talking about when they were all down
21 on the ground trying to get Mr. Walker into custody?

22 Q. The question was "Did he just bite you?"

23 A. Yes, I heard that.

24 Q. Okay. But you didn't allege that against
25 Mr. Walker?



1 **A. No, because the injury wasn't consistent with**
2 **a bite.**

3 Q. And there were questions about the officers.
4 And I'm looking at, again, videos that were played.
5 For example, 267.1, where apparently the officer -- you
6 hear someone say "245." And you testified that that
7 was an officer saying -- that means aggravated assault?

8 **A. That's the code -- my understanding, that's**
9 **the code for aggravated assault.**

10 Q. Okay. But you, as the prosecutor, make the
11 decision as to what is to be charged, not the police
12 officer; correct?

13 **A. Yeah. Absolutely.**

14 Q. And can we agree that, generally speaking,
15 just because you can charge someone as a prosecutor,
16 that doesn't necessarily that you should?

17 **A. I take a look at the reports. And if I feel**
18 **as though that in my training and experience that I am**
19 **able to meet every element beyond a reasonable doubt,**
20 **even though the charging standard is (Indiscernible)**
21 **conviction, I take a look at it as whether or not I'm**
22 **going to be able to prove it.**

23 Q. Right.

24 **A. Yeah.**

25 Q. It was --



1 **A. I don't --**

2 Q. -- the question was, though, just because you
3 can charge someone doesn't mean you necessarily should;
4 correct?

5 **A. I don't agree with that statement.**

6 Q. Okay. In the videos that we were shown about
7 that incident with Mr. Franks and, really, Mr. Villa, I
8 counted five times that the skateboard hit the ground.

9 Can you agree that the skateboard hit the
10 ground and not the fencing?

11 **A. I heard it hit the ground. I can't tell you**
12 **if it hit the fencing because I can't see the video,**
13 **but I definitely heard it hit the ground.**

14 Q. And let's see. Okay.

15 MS. SHUMAN: I apologize, Your Honor.
16 I'm just looking back through the notes to see.

17 BY MS. SHUMAN:

18 Q. So it's my understanding from your testimony
19 on Friday that as of February 12th, 2021, which was
20 that review hearing, that you were only -- and I think
21 your word was "delving" into social media to make
22 connections between the folks who were arrested; is
23 that accurate?

24 **A. That is correct, that I was having the**
25 **officers logged in. I was also looking with my very**



1 **limited social media skills.**

2 Q. So they were arrested on October 17th. And as
3 of February 12th you were still delving into social
4 media to find out if there was a connection between all
5 of those individuals?

6 **A. We were -- we don't have to establish a
7 previous connection.**

8 Q. Right. But you were delving into it.

9 **A. And I would continue to go through all the way
10 up until trial looking at social media to show the
11 ongoing association.**

12 Q. Right. But you had not established that
13 association as of February 12th, 2021, at least through
14 social media connections; correct?

15 **A. Through social media connections, yes, but
16 their association was solidified on October 17th.**

17 Q. Your testimony -- you testimony -- sorry.

18 You testified about not understanding -- not
19 knowing what a 5K1 was, not knowing -- not knowing what
20 an NFORCE log was, other pieces of evidence I think
21 your counsel had taken you through that maybe you
22 didn't know about.

23 But at the time that -- at -- that this
24 occurred, you were a 17-year prosecutor; correct?

25 **A. That is correct.**



1 Q. And you had been prosecuting criminal cases
2 that entire time?

3 **A. That is correct.**

4 Q. At the Maricopa County Attorney's Office?

5 **A. Yes.**

6 Q. Okay. And did I hear you correctly that it
7 is -- I don't want to misstate it -- that it is rare
8 for motions to disqualify the MCAO to be filed by
9 defense counsel?

10 **A. I had heard of it. But in my cases, I had
11 only seen it one time on an unlawful flight case; this
12 case, the Donald Rourke and Tina Martin case; and then
13 the one filed by Dave Erlichman relating to the October
14 17th case.**

15 Q. But in your 17 years at the County, you
16 weren't aware of any other motions to disqualify MCAO?

17 **A. Oh. I'm sure I was aware of them. I'm
18 talking about in my cases. Yeah.**

19 Q. So they are not rare?

20 **A. I rarely heard of them, rarely heard about
21 them. It's not like it's something that happens every
22 single day.**

23 Q. There was testimony about the need for Touhy
24 letters and, I think, difficulty in getting information
25 from the federal agencies. Would that be accurate?



1 **A. Yes.**

2 Q. But today you've testified on a number of
3 points, at least in my notes, that you made calls to
4 folks like Keith Vercauteren and got returned calls and
5 got answers to your questions.

6 Would that be an accurate characterization of
7 your testimony today?

8 **A. Yes.**

9 Q. And did you have to use Touhy letters for each
10 of those calls?

11 **A. The Touhy letter had already been filed and
12 granted by Washington, D.C.**

13 Q. And when was that?

14 **A. That was in December, I believe, on -- Keith
15 Manning sent it out in December of 2000 and -- it's one
16 of the exhibits.**

17 Q. That's okay, because I'm going to take you
18 through that real quick because I'm confused about the
19 timeline that you laid out.

20 So it's your testimony that once you get a
21 general Touhy letter that you're then free to call the
22 fed agents at any time to get the information that you
23 need?

24 **A. That is correct.**

25 Q. Okay.



1 I'll do that timeline. Okay. I just want to
2 go through this timeline because it confused me. So I
3 want to make sure that we have this -- this correct in
4 the record.

5 So let's see here. So if you look at
6 Exhibit 170, which is at Bates 005396.

7 **A. Okay.**

8 Q. So is that the Touhy letter that you're
9 talking about that was sent to the Alcohol, Tobacco,
10 Firearms and Explosives, a letter dated December 10th,
11 2018?

12 **A. That is correct.**

13 Q. Okay And that was sent by -- I think you had
14 testified it was your understanding that had to go --
15 had to come from Keith Manning at the County?

16 **A. That is correct.**

17 Q. Okay. And that was sent at your request?

18 **A. Yes, I had asked Mr. Manning to send the Touhy
19 letter to wherever it needed to go.**

20 Q. And that letter does reference that it's
21 needed pursuant to State vs. Giglio.

22 And that -- is that -- my understanding from
23 your testimony is that is a case that's related to your
24 obligations as a prosecutor to make disclosures.

25 **A. Yes, that's what that letter says.**



1 Q. Okay. So now turning to Exhibit 169, which
2 starts at 005394.

3 A. Yes.

4 Q. And these are -- tell me what these are.

5 A. Hold on one second.

6 So these are emails -- hold on one second.

7 So these are emails that I had sent to Brian
8 Larson who is the ATF attorney for the Phoenix
9 division.

10 Q. And so these emails are dated December 10th,
11 which is the same date that the Touhy request was sent;
12 correct?

13 A. Yep. It looks like it. I believe -- it's my
14 understanding that the -- on one of the emails it looks
15 like the Touhy letter was -- I thought it was sent out
16 on Friday, but it looks like it was sent out on the
17 10th.

18 Q. And so on the same day that the Touhy letter
19 is dated, you are already engaging in communication
20 with the federal agents who -- about getting the
21 information you needed; correct?

22 A. Correct. Because I'm trying to comply with
23 the Court's order as soon as I possibly can.

24 Q. So now going to -- and then if you would turn
25 to Exhibit 171, which starts at Bates number 005398.



1 **A. Yes.**

2 Q. And can you tell me what this is?

3 **A. This is the -- it looks as though this is the**
4 **emails going back between myself and David Byrd, who is**
5 **now the assigned case agent for the ATF. And we're**
6 **setting up a meeting so I can go and get the documents.**

7 Q. And so as soon as January 4th, you're being
8 invited to 201 West Washington Street to go review
9 their files; correct?

10 **A. That's correct -- file.**

11 Q. And I'm told that was kitty corner to where
12 the MCAO was at the time?

13 **A. Yeah. I believe so.**

14 Q. Yeah. Pretty close.

15 Okay. So now let's go to Exhibit 122, and
16 that starts at Bates number 4094.

17 I want to look at page -- I'm just going to
18 draw your attention to a couple pages in here at
19 Bates number 4112.

20 **A. Hold on one second.**

21 Q. Sure. The binders.

22 **A. Sorry. It just fell apart.**

23 **I'm sorry. What page?**

24 Q. That's okay. So I'm looking at Bates
25 number 00 and then 4112. This is part of the



1 January 16th, 2019, transcript from --

2 **A. Okay.**

3 Q. -- the Complex Case Management Conference.

4 So I'm looking at lines 15 through 17.

5 **A. Yes.**

6 Q. So at that time, you agreed that Bigelow
7 applied to Mr. Burns; correct?

8 **A. Yes, because I am now calling him as a**
9 **testifying witness.**

10 Q. So your testimony is that Bigelow only -- only
11 applies if he is called as a testifying witness?

12 **A. That is my understanding.**

13 Q. So now if you look at paragraph 4 -- or, I'm
14 sorry, Bates page 4113.

15 **A. Okay.**

16 Q. And I'm looking at lines 5 through 8. Can you
17 read those lines, please?

18 **A. Do you want me to read them out loud?**

19 Q. Yes, please.

20 **A. I need one moment.**

21 Q. Absolutely.

22 **A. It says: Ms. Sponsel. Yes, Judge. And if I**
23 **may answer your question, I met with Mr. Burns --**
24 **excuse me, with Mr. Byrd, as well as Mr. Larson, and**
25 **went through the file. This is the file. This is all**



1 that is contained in the file other than some internal
2 documents.

3 Q. And I think we've established that Mr. Byrd
4 and Mr. Larson are with ATF; correct?

5 A. That is correct.

6 Q. Okay. And so you relied on them to provide
7 you with the file; correct?

8 A. That is correct.

9 Q. Did you ask them if there were any other
10 files?

11 A. I asked them, "Is this what you guys have on
12 Allen Burns?" and that's what they told me.

13 Q. We have too much paper.

14 Okay. And so then looking at page 004114.

15 A. Okay.

16 Q. Were you -- and let me jump back a minute.

17 Were you aware at the time that there were
18 other CI files for Mr. Burns?

19 A. I was not. This is what I was provided, did
20 not know about any other -- I guess my question is
21 that -- can you define what you mean by "CI files"?

22 Q. Well, the Court made clear -- and I'm looking
23 at page 4113, at lines 16 and 17 -- that it's your
24 obligation, you're the prosecutor, to get this
25 information; right?



1 **A. Yes.**

2 Q. So -- so were there other files related to
3 Mr. Burns?

4 **A. Later on, yes, there were. I was told at this**
5 **time that this is the file that they had. And then**
6 **later on, I believe it was either Agent Byrd or**
7 **Mr. Larson that emailed and said, "Oh, we found the**
8 **receipts. They were in a completely different**
9 **management system."**

10 Q. And when was that?

11 **A. I don't recall when that was.**

12 Q. Do you remember what year?

13 **A. I believe it was the same year.**

14 Q. So now looking at 004114.

15 **A. Yes.**

16 Q. Let's go to the next one. Sorry. Trying to
17 streamline this.

18 So if you look at Exhibit 34. And I don't
19 know if that's in the same binder or not.

20 **A. Yes.**

21 Q. It's a minute entry from March 15th.

22 **A. Okay.**

23 Q. And this is the March 15th, 2019, minute entry
24 that I think there's been a lot of testimony about from
25 Judge Hannah -- it was in front of Judge Hannah --



1 excuse me.

2 And so I'm looking at page 000143 of that
3 minute entry.

4 **A. Just a point of clarification. I believe**
5 **the -- oh, go ahead and ask your question and then --**

6 **Q. Oh, no. Feel free.**

7 **A. Well, I think that the other minute entry that**
8 **we were talking about previous to that, I might have --**
9 **might not be on the same wavelength, was also March of**
10 **2020.**

11 **Q. Right.**

12 **A. Where the judge found that we had complied.**

13 **Q. We're talking about 2019.**

14 **A. All right. Just wanted to make sure.**

15 **Q. I want to get all of our years correct.**

16 **A. Okay.**

17 **Q. So in March 15th of 2019 -- and I'm looking at**
18 **page 00143.**

19 **A. Yes.**

20 **Q. And at the top of that minute entry, the court**
21 **specifically -- made specific orders about what you**
22 **were to obtain from the Bureau of Alcohol, Tobacco,**
23 **Firearms and Explosives and disclose to the defendants;**
24 **correct?**

25 **A. Yes.**



1 Q. Also that you were to disclose to the
2 defendants the entire -- the complete State file;
3 correct. That's at paragraph 4.

4 **A. Allen Burns, yes.**

5 Q. And then in the third paragraph, that you
6 shall disclose -- shall not withhold from the
7 defendants any information the disclosure of which is
8 required by this order; correct?

9 **A. Correct.**

10 Q. Okay. So now let's move to Exhibit 42.

11 **A. I'm there.**

12 Q. Okay. So Exhibit 42 starts at Bates 00186.
13 And in particular I'd like to -- at 000192 -- I'm
14 sorry. Are you there?

15 **A. Yes.**

16 Q. And in this order, the Court again orders
17 that -- and this time with a date on or before August
18 19th, 2019, the Bureau of Alcohol, Tobacco, Firearms
19 and Explosives shall produce the items in this minute
20 entry by delivering them to the State of Arizona
21 through the Maricopa County Attorney, which would be
22 you; right? Because you're the assigned prosecutor;
23 correct?

24 **A. Yes.**

25 Q. And that you were ordered then to turn those



1 over to the defendants; correct?

2 **A. Yes.**

3 Q. Okay. And that order incorporates items that
4 you were directed to provide to defense counsel in the
5 March 19th -- the previous minute entry that we were
6 just discussing; correct? That's Exhibit 31.

7 **A. Yes. Some items, yes.**

8 Q. Okay. Now I'm going to turn to Exhibit 45,
9 which is a big exhibit, but I'll direct you to the
10 specific pages. So that starts at 000199.

11 **A. Yes.**

12 Q. And so -- and on that first page -- and what
13 is this? I think you testified to it, but generally
14 what is this?

15 **A. So Judge Hannah asked that I file a notice of
16 compliance just so he could see what we were disclosing
17 in complying with his order.**

18 Q. And on the first page of it it says: The
19 assigned DCA has taken the following steps to comply
20 with the Court's order dated July 17th, 2019.

21 **A. Correct.**

22 Q. Right? Okay.

23 So now turning to page -- and it's within this
24 same exhibit -- 000230.

25 **A. Yes.**



1 Q. And so -- and this -- this notice of
2 compliance was intended to -- to outline all of your
3 efforts to comply with the Court's orders; correct?

4 A. Correct.

5 Q. Okay. So on this page, 00230, what are these?
6 What are these emails that we're looking at?

7 A. So these are what I was describing earlier
8 with Mr. Calderon.

9 So what I had done is -- I know that we had --
10 that I had previously talked to Detective Krassow on
11 the phone relating to the Court's orders and things,
12 but I wanted to get it down in writing so I could just
13 go ahead and just attach it to the -- to the pleading
14 and ask them to write things down under each of the
15 questions.

16 And so like, for instance, on the bottom of
17 230, number 1, where it says "written documentation of
18 all payments," blah, blah, blah, blah, that was
19 taken directly from the defense counsel's motions. And
20 I would just plug it in and say, "Hey, can you
21 please -- I know we talked about this at length before,
22 but can you please just do this?"

23 Q. But you didn't put this in writing until
24 August 21st of 2019; correct?

25 A. That is correct because I was still in the



1 process --

2 Q. (Indiscernible.)

3 A. I'm sorry.

4 Q. So we've got a March order. We've got a July
5 order. And the first time -- I'm just looking at these
6 emails -- that you put this in writing to the federal
7 folks is dated August 21st of 2019; correct?

8 A. Yes. But I had previous conversations with
9 them about it.

10 Q. And -- oh, just for clarity's sake, Mr. -- I'm
11 sorry. I don't know if he is an officer or sergeant.
12 But Krassow -- Scott Krassow was included on these, but
13 he was with the Mesa PD; correct?

14 A. Correct. He was Detective Scott Krassow.

15 Q. And then you testified about the interview
16 with -- and I'm not going to say that either
17 correctly -- Santarsiero. Santarsiero.

18 A. Santarsiero.

19 Q. Siero. Thank you.

20 And at that time is when you learned of the
21 NFORCE log?

22 A. That is correct.

23 Q. That actually didn't take place until April of
24 2020, did it?

25 A. That is correct, despite the fact that I had



1 been asking for a couple years for them to do an
2 interview.

3 MS. SHUMAN: No other questions,
4 Your Honor.

5 THE COURT: Is your redirect going to be
6 brief?

7 MR. CALDERON: Three questions. Request
8 permission.

9 THE COURT: Go ahead.

10

11 REDIRECT EXAMINATION

12 BY MR. CALDERON:

13 Q. April, you were questioned on cross about a
14 book club and ACAB membership, and you started to give
15 an answer and you were cut off. What was your answer
16 going to be?

17 A. So the names of the ACAB book club people,
18 this was under a SIGNAL message. That's how they --
19 that's how these guys listed themselves.

20 The reason why I found that it was very
21 important, pursuant to State v. Baldenegro, even though
22 these individuals may have not been involved in the
23 October 17th, the State, as well as the gang expert,
24 under the rules of evidence can take these types of
25 things into consideration in coming to their expert --



1 expert opinion. And so that's why we were still
2 showing other members of ACAB were in existence to meet
3 the definition, even though they weren't arrested on
4 October 17th.

5 Q. You were asked a question, April, about the
6 fact that all the way over at February 12th of 2023 you
7 were still searching emails or Facebook.

8 Why would you be continuing to investigate the
9 case?

10 A. Because to continue just to solidify, even a
11 little bit more the -- even though we had the ongoing
12 association from October 17th, because you can tell
13 there were association in the video, I wanted to just
14 shore up some more social media things.

15 Because one of the things that Riley Behrens
16 was telling us about -- and, for example, in
17 Exhibit 190, on Bates 6224, there is a social post
18 prior to October 17th by Kaleb Martin, who was one of
19 the October 17th individuals who called themselves the
20 1312 Collective, the ACAB Collective. And he wasn't
21 the only person on -- with regards to these individuals
22 that refer to themselves as ACAB.

23 So I found that that's important to again show
24 the ongoing association.

25 Q. Last question for you, April. It was noted



1 that you were an experienced 17 year state prosecutor,
2 but yet didn't know anything about 5K1 or NFORCE.

3 Are 5K1 and NFORCE part of the State
4 prosecutorial system?

5 **A. No, they are not. I had never even heard of**
6 **the 5K1 until this case. I really try to stay away**
7 **from the feds.**

8 Q. You were never a federal prosecutor, were you?

9 **A. No, I was not.**

10 MR. CALDERON: No other questions,
11 Your Honor.

12 THE COURT: So the hearing panel likely
13 has some questions for Ms. Sponsel, but let's go ahead
14 and take a morning recess. It's 11:25. We'll
15 reconvene at 11:35.

16 And, hopefully, that will work well with
17 Judge Stephens' appearance which is set for around
18 noon; is that right?

19 Is she very lengthy? I'm trying to
20 figure out when we're going to take a lunch break.

21 MR. CALDERON: I don't -- I don't think
22 she is, Your Honor.

23 THE COURT: Okay.

24 Yeah. And just by -- and I understand
25 that it's up to her to present her position on media



1 coverage. But if I am seriously considering granting
2 her request, I do have to give the media a chance to be
3 heard, which I will do. And I'm inclined to grant her
4 request, but she'll need to set forth the reasons
5 supported by Rule 122 that would allow me to make
6 specific individualized on-the-record findings about
7 the items listed.

8 So it's a fairly high hurdle, but I will
9 allow the media to be heard if I'm inclined to grant
10 her request.

11 So we'll take a break and reconvene at
12 11:35.

13 **THE WITNESS: All right.**

14 (At recess 11:25 a.m. to 11:35 a.m.)

15 THE COURT: Okay. After our recess, this
16 is the time when hearing panel members have the
17 opportunity to ask questions of Ms. Sponsel.

18 And, Mr. Sifferman, would you like to go
19 first?

20 PANEL MEMBER SIFFERMAN: Do I have a
21 choice?

22 THE COURT: Sure. You can say no.

23

24 EXAMINATION

25 PANEL MEMBER SIFFERMAN: Ms. Sponsel, I



1 apologize if I jump around a little bit. It's the
2 nature of my note-taking.

3 When was the first time you heard of
4 Riley Behrens?

5 **THE WITNESS:** I would say Riley's name
6 came up through Jeff Howell. I would say maybe June,
7 July.

8 **PANEL MEMBER SIFFERMAN:** And when was the
9 first time you actually saw some information provided
10 by Kyle Behrens?

11 **THE WITNESS:** Jeff Howell was showing us,
12 like, snippets of information, but I really didn't
13 delve into it because it wasn't -- it wasn't important
14 to me at the time. I would say it wasn't until after
15 the October 17th arrest mainly dealing more with
16 Detective Burchett.

17 **PANEL MEMBER SIFFERMAN:** Okay. You said
18 you were given snippets of information from a
19 detective; is that correct?

20 **THE WITNESS:** Correct. Officer Jeff
21 Howell, who was in communication with Detective
22 Burchett over at Gilbert PD. So whenever I say
23 "snippets of information," it's more like, you know,
24 "Hey, this is what we're finding out. This is what
25 we're learning." I'm like, "Oh, okay. Sounds good,"



1 because they're going to memorialize their stuff in
2 their reports and things of that nature.

3 PANEL MEMBER SIFFERMAN: Did you ever vet
4 Riley Behrens' information?

5 THE WITNESS: No. I relied on the law
6 enforcement officers to do that. That's their job to
7 vet the information and then present it to us as a
8 potential confidential -- as a potential testifying
9 confidential informant after criminal charges are
10 memorialized because we don't get into the
11 investigative aspect. They just give us input -- or
12 information.

13 PANEL MEMBER SIFFERMAN: After listening
14 to the testimony and reviewing all of the documents,
15 it's your belief that it's still an open question
16 whether Ryder Collins committed any of the crimes that
17 he was ultimately charged with; is that correct?

18 THE WITNESS: Yes. Because one of the
19 things that I wanted to verify -- and that's when we
20 were trying to do the free talk -- is how come he --
21 how come Riley kept using Ryder's name. And was
22 Ryder -- or, excuse me, was Riley trying to cover up
23 for Ryder. So that's what we were trying to get to the
24 heart at -- heart of because of the interview.

25 PANEL MEMBER SIFFERMAN: So tell me what



1 information you would want to hear or see before you
2 would conclude that Ryder Collins was not guilty of the
3 charge -- crimes that he was charged with?

4 THE WITNESS: So the information that I
5 wanted to glean from Riley Behrens was that if we were
6 able to do the free talk -- and that's one of the
7 things we talked about in the February 12th meeting
8 that I talked with the executive team about was sitting
9 down and finding out, "Okay, first of all, where are
10 your loyalties now?" That's number one. "What
11 information did you have prior to October 17th that
12 this was going to happen?"

13 And second of all, "How do you know Ryder
14 Collins? At one moment you're using Ryder's name. The
15 next moment you're saying you don't know Ryder," which
16 is common from the other investigations that I have
17 participated in with regards to other prosecutions with
18 large scale -- with a large number of defendants, where
19 some individuals will downplay another individual's
20 involvement.

21 So that's why we kind of have to take it
22 at a step back and then delve more down into it to see
23 what that information is. And that's --

24 PANEL MEMBER SIFFERMAN: What other
25 information or evidence would you -- did you think you



1 needed to gather other than having a free talk with
2 Riley Behrens --

3 **THE WITNESS: I was also --**

4 **PANEL MEMBER SIFFERMAN: -- for you to**
5 **believe -- sorry. Sometimes I don't finish.**

6 **THE WITNESS: No. I'm sorry. That was**
7 **mine. I cut you off.**

8 **PANEL MEMBER SIFFERMAN: What other**
9 **information or evidence would you want to see or hear,**
10 **other than a free talk with Riley Behrens, that you**
11 **wanted to see or hear before you concluded that Ryder**
12 **Collins was not guilty of the crimes that he was**
13 **charged with?**

14 **THE WITNESS: I also wanted to make it**
15 **through, with the help of law enforcement, because I**
16 **had specifically asked Jeff Howell to help me out to**
17 **start going through all of the bodycams to make sure**
18 **that we don't -- that we didn't have Ryder Collins near**
19 **the group. Were they in the park?**

20 **Because these guys all met in a park**
21 **previously to going down on -- down to start walking**
22 **down the streets. So I wanted to see if we had any**
23 **video from there, and I wanted to -- and that's why I**
24 **was asking Jeff Howell, help me. Let's see where we**
25 **can put Ryder Collins.**



1 Because Ryder Collins, in his interview,
2 admitted that he was around the group, that he was
3 taking photographs of the group and things of that
4 nature. And so that's what we were trying to vet.
5 That's what we were trying to find out.

6 PANEL MEMBER SIFFERMAN: So when did you
7 tell persons in Phoenix PD to go through the videos to
8 confirm what Ryder Collins was doing on the 17th of
9 October?

10 THE WITNESS: When we received the motion
11 to remand back from the -- the -- excuse me.

12 When we received the motion to remand
13 regarding Ryder Collins, that's whenever I asked them,
14 "Hey, we need to focus in on this." I had previously
15 already asked them to start getting the individuals
16 identified by the clothing prior to that, shortly after
17 the indictments came down.

18 PANEL MEMBER SIFFERMAN: What -- when did
19 you see the AZ Patriots video?

20 THE WITNESS: I did not -- I saw the
21 AZ Patriots video, the snippets of the ones that I had
22 found on YouTube, just very briefly. And I gave them
23 over to my secretary -- or my paralegal to ask her to
24 disclose them.

25 But to actually, like, delve into them



1 and look at them? When I first found them, I wouldn't
2 know who I was looking for anyway because I didn't know
3 any of these individuals, didn't have any of the
4 photographs or anything at that point, whenever I first
5 charged them.

6 PANEL MEMBER SIFFERMAN: My question is
7 when is the first time you became aware of Arizona
8 Patriots video?

9 THE WITNESS: I became aware of it
10 whenever I found it a couple days after the arrests.
11 But actually watching it, I didn't watch it until
12 January, like, delving into it, until the motion
13 remand.

14 PANEL MEMBER SIFFERMAN: Sorry to be
15 dense, but --

16 THE WITNESS: No, you're fine.

17 PANEL MEMBER SIFFERMAN: -- how did
18 you -- how did you know it had anything to do with
19 October 17th if you didn't look at it?

20 THE WITNESS: Because it was -- it was
21 the same date. And whenever I looked it up, I could
22 see it was -- there was some images that were
23 consistent with the master theme that Phoenix was
24 telling me about with them walking down the middle of
25 the street.



1 PANEL MEMBER SIFFERMAN: Would you take a
2 look at Exhibit 107? It starts with Bates number
3 002234. It's a declaration of Karl Martin.

4 **THE WITNESS: Yes.**

5 PANEL MEMBER SIFFERMAN: Have you seen
6 this declaration of Mr. Martin before?

7 **THE WITNESS: I'm -- I don't recall if I**
8 **have or not. I think this might have been tied to the**
9 **Stymie report. I'm not sure though.**

10 PANEL MEMBER SIFFERMAN: Okay. He
11 references a meeting on September 28, 2020, with Vince
12 Goddard, yourself, and Mr. Martin.

13 Do you remember the meeting itself on
14 28th where Vince Goddard asked you to come in and talk
15 about a priority project?

16 **THE WITNESS: Yes.**

17 PANEL MEMBER SIFFERMAN: And after that
18 meeting, did you and Mr. Martin go meet with the
19 Phoenix police, Jeff Howell?

20 **THE WITNESS: Yes. So -- yes.**

21 PANEL MEMBER SIFFERMAN: Not necessarily
22 that day, but at some point after that; right?

23 **THE WITNESS: Yeah. I don't know -- I**
24 **don't believe I was at the meeting with Jeff Howell. I**
25 **think that might have just been Jeff Howell and Karl**



1 Martin because I know that they had been working
2 together quite a bit.

3 PANEL MEMBER SIFFERMAN: Now, would you
4 agree with me that the incident reports prepared by the
5 Phoenix police for the October 17, 2020, event
6 recommended for Ryder Collins to be charged with
7 obstruction of a thoroughfare, hindering prosecution,
8 and riot, and nothing else?

9 THE WITNESS: Yes. Those were the
10 charges that were recommended for him and the others.

11 PANEL MEMBER SIFFERMAN: What evidence
12 did you look at from the time of the direct complaint
13 and the grand jury indictment that caused you to change
14 the crimes that Ryder Collins was being charged with?

15 THE WITNESS: So I looked at the reports
16 and the -- master collective video that we had seen
17 before, and that's what I was relying upon was the
18 reports and that relating to Ryder Collins, as well as
19 my conversations with Sergeant McBride. And I don't
20 think I had any with Mr. (Indiscernible) or Officer
21 Ray, but Sergeant McBride.

22 PANEL MEMBER SIFFERMAN: Do you know what
23 kind of videos that were used to create the compilation
24 video for October 17th? That doesn't make any sense,
25 probably.



1 So there is a compilation video. Do you
2 know what kind of videos were used to come up with the
3 compilation?

4 **THE WITNESS:** Yes. It was a combination
5 of the Strongwatch video, which is a boom camera on the
6 back of a vehicle that follows after. There was the
7 body-worn camera by the individual officers. And I
8 believe that there at the end there was also a light
9 rail platform video. I can't say 100 percent certain,
10 but I think that's what it says on the compilation
11 video. So these were the three mediums that were used.

12 PANEL MEMBER SIFFERMAN: Do you know if
13 anybody went and interviewed the people from the
14 Arizona Patriots about what happened on October 17th?

15 **THE WITNESS:** No. Not that I -- not that
16 I'm aware of.

17 PANEL MEMBER SIFFERMAN: You didn't ask
18 anyone to go interview the people from Arizona
19 Patriots, did you?

20 **THE WITNESS:** No.

21 PANEL MEMBER SIFFERMAN: That's all I
22 have. Thank you.

23 THE COURT: Thank you, Mr. Sifferman.

24 ///

25 ///



EXAMINATION

1
2 THE COURT: Ms. Sponsel, I have a few
3 questions too. I'm going to start with some questions
4 regarding Count 1.

5 In your answer, you state that you
6 decided to dismiss the Burns shoplifting charge based
7 on identification concerns on August 14th of 2014.
8 That's accurate.

9 **THE WITNESS: About that time, yes.**

10 THE COURT: So my question is, what did
11 you do as of that date to pursue the dismissal based on
12 identification concerns?

13 **THE WITNESS: So I recall I had a**
14 **conversation with Detective Krassow. And based on the**
15 **information that I learned from him, he had requested**
16 **that we hold off because of the threat to Allen Burns'**
17 **life. Because if we would have dismissed it around**
18 **that time, he would have then been sent back to federal**
19 **custody and sent back to CoreCivic of America in**
20 **Florence to be housed (Indiscernible).**

21 THE COURT: As of August 14th, 2014,
22 Mr. Burns was in federal custody; correct?

23 **THE WITNESS: That is correct. He was in**
24 **federal custody, but he was being held over in CSO**
25 **custody.**



1 THE COURT: And he wasn't released from
2 federal custody until November; correct?

3 THE WITNESS: That is correct.

4 THE COURT: So I'm not understanding.
5 Since he was going to be in federal custody until
6 November, why wouldn't you have dismissed his State
7 shoplifting charges in August when you made the
8 decision to do so?

9 THE WITNESS: Because he would have been
10 put in jeopardy if we would have dismissed the charges.
11 That means MCSO would have released him from the State
12 custody and would have transported him back to the
13 federal custody.

14 So the Detective Krassow had asked, "Can
15 you hold off on dismissing the charges until we
16 finalize what we're doing over in the feds because we
17 don't want him to be killed while he's in federal
18 custody."

19 THE COURT: And you're sure that
20 communication occurred in the August time frame with
21 Detective Krassow.

22 THE WITNESS: I'm sure that it did. We
23 had several conversations, and I know that I had talked
24 to Mr. McGroder about the safety concerns.

25 THE COURT: Yeah. That certainly came



1 later. There is an email between you and Mr. McGroder
2 in November for the safety concerns that were raised.

3 But what communications did you have with
4 Mr. McGroder between August 14, 2014, when you made the
5 decision to dismiss the State shoplifting charges and
6 later in November when he wanted to move things along
7 and you then did apprise him of the safety concerns of
8 Detective Krassow?

9 **THE WITNESS:** I'm sure that I had
10 conversations with Mr. McGroder. It was common that we
11 talked on the phone. It was common that I would see
12 him in the hallway and everything. I should have
13 memorialized it a heck of a lot better. This is the
14 first time that we had ever dealt with -- that I had
15 ever dealt with anything like this, so I'm sure
16 Mr. McGroder and I had conversations of why I was
17 keeping him in custody.

18 **THE COURT:** If you would look at Exhibit
19 11. That's a minute entry from a September 18, 2014,
20 comprehensive pretrial conference of Mr. Burns'
21 shoplifting case. And I'm going to ask you about some
22 language that appears in that minute entry?

23 **THE WITNESS:** Okay. I'm there.

24 **THE COURT:** If you look at page 2 of the
25 minute entry at the very top, it says: Plea



1 negotiations in this matter are subject to resolution
2 of matters pending in federal court. Time is needed
3 for that process to be completed and for defendant to
4 be afforded opportunities for settlement herein.

5 So there's clearly some linking between
6 your State court prosecution and the federal case.

7 What is that linkage?

8 THE WITNESS: It was on -- we were
9 planning on -- prior to the identification issues, we
10 were planning on offering Mr. Burns probation on these
11 cases. But then whenever I sat down and talked to my
12 bureau chief, and we talked about the issues, I don't
13 know if I knew of him already entering in the plea
14 agreement at that -- the federal plea agreement. I
15 don't recall knowing that he had entered into the
16 federal plea agreement. So we had -- so on my --

17 (Loud noise.)

18 THE COURT: Sorry.

19 THE WITNESS: My comprehensive pretrial
20 conference statement, I had put that the plea
21 negotiations were still ongoing because we were still
22 trying to figure out exactly what we were going to do
23 with regards to his custody status. That was the main
24 thing. But prior to that, I knew I was going to
25 dismiss. So I just didn't know when they were going to



1 finish up their stuff with the feds.

2 THE COURT: And that's part of my
3 concern, what you said towards the latter part of your
4 answer.

5 So this is five weeks after you've made
6 the decision to dismiss the charges against Mr. Burns.
7 And so I'm kind of puzzled as to why that's not what
8 was set forth in the minute entry rather than plea
9 negotiations basically going on?

10 THE WITNESS: I don't know why I used
11 that term compared to saying that we're going to
12 dismiss because of identification issues. I don't know
13 why I used that one. Probably because I just didn't
14 want to make -- because the CBTC forms are filed with
15 the Court, and I didn't want to put Mr. Burns in
16 jeopardy because he's in State custody. And there's
17 always questions with regards to the chain and things
18 of that nature, and I wasn't covering this one. I just
19 sent my form.

20 So I was probably just -- I don't know
21 why I used that instead of just putting on the form,
22 "Hey, we're going to dismiss. We just don't know when
23 we're going to dismiss."

24 THE COURT: Shifting gears a little bit,
25 still regarding Count 1. I think it's a stipulated



1 fact, and it's clear from all the testimony, including
2 your own, that Mr. Burns served as a confidential
3 informant for a joint task force that was comprised of
4 the Mesa Police Department and ATF; correct?

5 **THE WITNESS: Correct.**

6 THE COURT: And Detective Krassow was the
7 individual from the Mesa Police Department who was your
8 primary contact as part of the task force. Is that
9 accurate?

10 **THE WITNESS: That's correct.**

11 THE COURT: So what I'm trying to figure
12 out because Mr. Faussette testified that the Detective
13 Krassow had acknowledged that all of the Mesa Police
14 Department task force members had ATF laptops and ATF
15 information.

16 Do you know if that's accurate?

17 **THE WITNESS: It is accurate. But in the**
18 **interview by -- was Detective Krassow, he said he never**
19 **used them, because they were difficult to use.**

20 THE COURT: Did you make any attempt to
21 get information from Detective Krassow that,
22 presumably, would have been much easier than going
23 through the federal system?

24 **THE WITNESS: Yes. Every question I**
25 **asked Detective Krassow was asked of him first, and**



1 then Agent Santarsiero, if not at the exact same time.

2 So I would go to Detective Krassow
3 saying, "Hey, do you have this? Do you know of any of
4 this?" and everything and stuff like that. And he
5 would refer me to Agent Santarsiero because they are
6 the holders of the evidence -- ATF was.

7 THE COURT: But do we think that
8 Detective Krassow actually had the information on an
9 ATF laptop but just didn't know how to use it?

10 THE WITNESS: I don't know. You'd have
11 to ask him. I asked him for the -- for the
12 information, and he would tell me, "Go see Agent
13 Santarsiero."

14 THE COURT: If you would, take a look at
15 Exhibit 22. This is a Notice of Disclosure and Request
16 for Disclosure that you filed in the Martin case.

17 And if you look at -- Bates 00072, you
18 list Allen Burns as a witness. And then the language I
19 wanted to ask you about -- I see the language in my
20 notes. I'm looking for where it appears in this
21 document.

22 The statement is there is -- there was
23 electronic surveillance. There was a search warrant.
24 There was an informant whose existence the defendant is
25 entitled to know under Rule 15.4(b)(2).



1 Do you see that language?

2 **THE WITNESS: Hold on one second.**

3 THE COURT: I see it. It on 000075, the
4 next to last paragraph.

5 **THE WITNESS: Yes, I do see that.**

6 THE COURT: And then I want to compare
7 that to Exhibit 24, which is a Notice of Disclosure and
8 Request for Disclosure you filed in Mr. Rourke's case.
9 And that one also lists Mr. Burns as a witness. It
10 says: There was no electronic surveillance. There was
11 a search warrant. There was no informant whose
12 existence the defendant is entitled to know under Rule
13 15.4(b)(2).

14 And that appears -- that language appears
15 on Bates 000084. Is that an accurate statement?

16 **THE WITNESS: So may I explain these --**
17 **these -- these motions here and how they're generated?**

18 THE COURT: Well, can I just ask: Is
19 that accurate or not?

20 **THE WITNESS: I guess it wouldn't be**
21 **accurate because there was an informant.**

22 THE COURT: That's really the only
23 question I had about that.

24 You mentioned that you didn't contact
25 Keith Vercauteren to talk about any plea negotiations



1 or plea agreement in the federal case.

2 As I recall Vince Kirby actually signed
3 the plea agreement. Did you have any communications or
4 attempted communications with him?

5 **THE WITNESS: I did not.**

6 **THE COURT:** Okay. Now I want to move to
7 Count 2.

8 There was mention, I believe it was
9 Friday, of an allegation that appears in your answer in
10 these proceedings that Mr. Collins had Antifa
11 paraphernalia with him when he was arrested.

12 What was the factual basis for that
13 assertion?

14 **THE WITNESS:** So that was a mistake
15 because the way that the -- and I should have -- I
16 should have caught it when we filed it, and I didn't.

17 The way that the photographs were put in
18 the camera roll -- or the file by Phoenix PD, is that
19 you're going along, going along, and then you see
20 Collins' camera case and everything and stuff like that
21 and then the next picture you see is the America. And
22 then I think it's a couple pictures after that, that's
23 when they flip it over, and it's actually attributed to
24 Jacob Weiss. That was a mistake. I should have caught
25 that, and I didn't.



1 I had it, and I -- it's in my PowerPoint
2 that you see that I attributed it to Jason Weiss in my
3 PowerPoint that was provided to the executive team on
4 February 12th.

5 THE COURT: So are you saying that you
6 didn't advise others at MCAO that Mr. Collins had
7 Antifa paraphernalia in his possession when arrested?

8 THE WITNESS: That is correct. So what's
9 in my PowerPoint is what I showed with regards to Ryder
10 Collins. And the America sign is clearly attributed to
11 Jacob Weiss in my PowerPoint.

12 THE COURT: Before you were placed on
13 administrative leave, how much of the bodycam video had
14 you reviewed?

15 THE WITNESS: Not very much in the
16 October 17th because I was making my way to that case.
17 I was in the process of looking at the bodycams in the
18 Bruce Franks one because that one occurred earlier on,
19 so I was prioritizing my cases.

20 THE COURT: And can you pinpoint when you
21 first asked anyone, presumably Phoenix PD, to process
22 Mr. Collins' camera?

23 THE WITNESS: That was on -- it was early
24 on, after everybody was arrested. I had asked Sergeant
25 McBride -- and I don't know if I had talked to Jeff



1 Howell specifically. But I said, "Hey, can we go ahead
2 and start getting all of this stuff processed? The
3 cell phones, the camera, and things of that nature."
4 So I did have a conversation with them about that.

5 At that point, they were dealing with who
6 was going to be the case agent, who was going to be the
7 assigned case agent. And later on, I think it was in
8 January, mid-January, that they assigned Adam Legere as
9 the case agent, and that's when I had further
10 conversations with him about, "Hey, we need to get
11 working on the search warrants. If you guys can, you
12 know, start doing that so we can start processing the
13 stuff."

14 THE COURT: So if I understand correctly,
15 early on, meaning soon after the October 17th arrests,
16 you asked Phoenix PD, specifically McBride, to process
17 Ryder camera -- Ryder Collins' camera, and then you
18 didn't hear anything more about that until January?

19 THE WITNESS: Yeah. Because it just --
20 because of the time frames and things of that nature.
21 I asked them to do it. They are usually normally good
22 about doing it, and I just wait for the disclosures to
23 come.

24 THE COURT: I think you previously
25 testified that, as to the camera cards that were taken



1 from Mr. Collins' camera, you never reviewed all of the
2 downloaded photos. You just reviewed the ones from the
3 protest; is that correct?

4 **THE WITNESS: I was only -- I was already**
5 **put on administrative leave when --**

6 THE COURT: That's fine.

7 But my question is the only photos you
8 ever reviewed from the downloads were from the
9 protests; correct?

10 **THE WITNESS: Correct.**

11 THE COURT: Do you have any reason to
12 disbelieve Ms. Meshkowitz's testimony that the earlier
13 photos, which were dated and time-stamped, showed
14 Mr. Collins arriving in downtown Phoenix, taking
15 various CityScape pictures, pictures of homeless
16 people, pictures of the light rail?

17 **THE WITNESS: No, I don't.**

18 THE COURT: And had you known that, would
19 that have been a factor that weighed on your decision
20 about whether to continue to charge Mr. Collins?

21 **THE WITNESS: Yes. That would have been**
22 **one of the factors that -- I would have sat down after**
23 **we talked to Riley Behrens at the free talk that I**
24 **would have had, the conversation with regards to**
25 **dismissing the felony cases, but not the misdemeanor**



1 case -- not the misdemeanor charges. Excuse me.

2 THE COURT: When did you learn that
3 Officer Groat had acknowledged that his previous
4 reports about Ryder Collins' actions on October 17 were
5 inaccurate?

6 THE WITNESS: Not until I was placed on
7 administrative leave. It was part of the discovery.

8 THE COURT: In Exhibit 160 there's a
9 statement that I want to ask you about, so if you can
10 find that. I will tell you that it's on Bates 005208.

11 THE WITNESS: I'm sorry.

12 THE COURT: Exhibit 160, Bates 005208.

13 THE WITNESS: Okay.

14 THE COURT: I'll locate the exact place
15 on that page where this language appears.

16 So the next to last paragraph on that
17 page, second -- well, third sentence says: Ms. Sponsel
18 had conversations about that, Ryder Collins' mere
19 presence defense, with Sergeant McBride and the
20 assigned Phoenix PD case agent.

21 THE WITNESS: Yes.

22 THE COURT: Actually, I wanted to ask you
23 about a language a little bit farther down in that same
24 paragraph: One of those conversations she had with
25 Sergeant McBride was the possibility that Mr. Collins



1 was potentially misidentified.

2 When did that conversation with Sergeant
3 McBride occur, if you remember?

4 **THE WITNESS:** It had to have been right
5 after the motion to remand because I believe I emailed
6 him the motion to remand to also take a look at on --
7 because of the mere presence defense.

8 THE COURT: There's been some
9 testimony -- I think primarily it originated with
10 Mr. DuPont about SIGNAL. Do you know what SIGNAL is?

11 **THE WITNESS:** I do.

12 THE COURT: What is it?

13 **THE WITNESS:** It's a -- it's an app where
14 you can do text messaging back and forth, an
15 encryption-type thing.

16 THE COURT: And Mr. DuPont testified that
17 he believed you were using SIGNAL to communicate with
18 the Phoenix Police Department personnel on August 17th
19 of 2020.

20 Was that accurate?

21 **THE WITNESS:** No, I was not using SIGNAL
22 to communicate with the Phoenix Police Department.

23 THE COURT: In the joint prehearing
24 statement, one of the stipulations is that on February
25 10th, 2021, there was a text exchange between you and



1 Mr. Green, Ryan Green, where Mr. Green says -- this is
2 February 10th, 2021 -- "I don't see any cell phone
3 evidence in the evidence tab, and it seems like it
4 should have been done months ago."

5 And then you respond "some phones have
6 been processed."

7 What phones had been processed at that
8 point?

9 **THE WITNESS: Britney Austin's cell phone**
10 **had been processed.**

11 THE COURT: Others?

12 **THE WITNESS: Jonah Ivey's and Ryan**
13 **Tice's.**

14 And we were still waiting for the other
15 cell phones from the other arrests to also be processed
16 from, like, the Bruce Franks, from that group of
17 individuals, as well as the October 17th.

18 THE COURT: And then I think this is my
19 last question, but watching some of the bodycam video
20 this morning, I noticed, for example, that somebody is
21 waving the big yellow flag that says "Don't tread on
22 me."

23 And that leads into my next question
24 because there's evidence in the record both from
25 Ms. Kaper, but also in some attachments to, I believe,



1 your civil litigation, one of our exhibits, that talks
2 about ACAB, All Cops Are Bastards, originating in the
3 1940s with striking workers in England. They actually
4 said "All Coppers Are Bastards," and that it's used as
5 a political slogan of people opposed to the police.

6 Do you have any reason to disbelieve
7 those origins of ACAB?

8 **THE WITNESS: I don't. I've never looked**
9 **into it.**

10 THE COURT: Any questions?

11

12 EXAMINATION

13 PANEL MEMBER CLARK: Yes. Just a few,
14 Mr. Sponsel -- maybe just one.

15 Walk me through the October 17th
16 protesters. The protest occurs. The arrests are made.
17 The Form 4s are filed. You go to the grand jury.

18 Were all -- I'm sure this exists
19 somewhere, but I'm trying to follow the thread. Were
20 all of the protesters charged with felonies?

21 **THE WITNESS: They were all charged with**
22 **the same thing, yes.**

23 PANEL MEMBER CLARK: Those were all
24 charged with felony 5?

25 **THE WITNESS: So they were charged**



1 with -- are you talking about aggravated assault?

2 They were charged with conspiracy to
3 commit aggravated assault, as well as some other felony
4 offenses, along with the assisting a criminal street
5 gang.

6 PANEL MEMBER CLARK: Were -- any in that
7 original charging decision, were any of them charged
8 with felony 2?

9 THE WITNESS: Yes. That was the
10 conspiracy, because part of the conspiracy -- the
11 highest on -- the way that -- the way that it was set
12 up in the charging document is I charge them with
13 conspiracy to commit several different predicate
14 offenses.

15 So it would be up to the jurors to make a
16 determination as to which predicate offenses they
17 believed each individual or the group as a whole would
18 have committed.

19 So, like, for instance, so conspiracy to
20 commit participating in a criminal street gang is a
21 Class 2 for organizing, which I would have focused in
22 on Suvarna Ratnam because she's the one that brought
23 some of the smoke bombs and things of that nature, as
24 well as Kaleb Martin because of the brick and the
25 things that he had on his -- on his person, as well as



1 the text message on -- contained in Exhibit 190 on
2 6224, where Kaleb Martin tells everybody, "We're going
3 to be doing this. It's not going to be peaceful. We
4 don't want to mislead anybody. Bring an umbrella, come
5 prepared, come in bloc. More information at 1312
6 collective." I mean, they were calling themselves
7 ACAB.

8 So I would have been focusing in on those
9 guys for the participating because that's the highest
10 class felony. That's what the conspiracy for that
11 particular one would fall under.

12 Now, let's say, for instance, the
13 aggravated assault that you -- that you reference.
14 They were all charged with conspiracy to commit
15 aggravated assault against a police officer because,
16 again, of the violent nature. They are planning on
17 doing this. Kaleb Martin has already said that that's
18 what they're were going to do, and then the implements
19 and the weapons that Kaleb Martin had, as well as
20 Britney Austin, to show that -- agreement that these
21 guys are going to, you know, commit these crimes.

22 So that's how it was set up. Not one
23 individual was like, "Hey, this person is charged with
24 conspiracy to commit aggravated assault." It was just
25 kind of like an umbrella for everybody. That's how we



1 normally set up any conspiracy count for any -- any
2 type of conspiracy case.

3 I hope that makes sense. I know it's --
4 it's a little bit difficult because I --

5 THE COURT: Counsel are entitled to ask
6 any questions based on what the hearing panel
7 questioned Ms. Sponsel about.

8 Mr. Calderon, anything additional you
9 want to ask your client about along those lines?

10 MR. CALDERON: None, Your Honor.

11 THE COURT: And State Bar?

12 MS. SHUMAN: None, Your Honor.

13 THE COURT: None.

14 All right. Thank you, Ms. Sponsel.
15 You're free to resume your seat next to Mr. Echeveste.

16 And it is 12:15. I'd like to at least
17 resolve the issue of Judge Stephen's request of media
18 coverage not be allowed of her testimony.

19 I don't know how long -- I don't want to
20 pin you down precisely, but do you have a guesstimate
21 as to the length of her examination? I'm trying to
22 decide if we can do it before lunch or not.

23 MR. CALDERON: Your Honor, I'm hopeful it
24 will be maybe 15 minutes for me. A lot will depend
25 on --



1 THE COURT: Can you pull that closer?

2 MR. CALDERON: I'm sorry. Excuse me,
3 Your Honor.

4 THE COURT: Is she a character witness?

5 MR. CALDERON: Yes.

6 THE COURT: Well, that doesn't seem too
7 lengthy probably.

8 MR. CALDERON: I don't think so, but
9 cross-examination (Indiscernible).

10 THE COURT: Okay. I think we'll give it
11 a shot.

12 Is she here? Do we know?

13 MR. CALDERON: Yes. She's outside
14 waiting.

15 THE COURT: Okay. We'll bring her in,
16 and then she can make her request about the media. And
17 I'll allow the media to be heard if she -- if I'm
18 inclined to grant her request.

19 Good afternoon. You're going to sit
20 right there. But before you have a seat, if you would,
21 please raise your right hand, and I'll swear you in.

22 (Witness sworn.)

23 THE COURT: Thank you.

24 Please have a seat, and pull that
25 microphone close when you get settled, please.



1 I don't feel like I really need to make a
2 disclosure, but Judge Stephens and I overlapped to some
3 extent as judges on the Superior Court. I don't think
4 we've spoken in 10 years, but, anyway, I wanted to make
5 that disclosure.

6 So I always call retired judges "Judge."
7 I'm going to call you "Judge."

8 Mr. Calderon indicated that you wanted to
9 make a request not -- well, let me back up.

10 I have granted a media request by ABC 15.
11 They are here videotaping the proceedings. And you
12 probably know Rule 122 almost as well as I do. There
13 is a presumption that all disciplinary proceedings will
14 be public. And before I can exclude the media from any
15 portion of the hearing, I have to make specific
16 findings on the record which establish a fairly high
17 bar, but I wanted to give you the opportunity, if it is
18 your request that media not cover your testimony, to
19 tell me why so that, if I can, I would make the
20 findings under the rule.

21 **THE WITNESS: I don't have any objection**
22 **to the media covering my testimony. My concern is my**
23 **visual image because of personal safety concerns.**
24 **So...**

25 THE COURT: You're kind of out there a



1 lot on the video, aren't you?

2 THE WITNESS: I am. But my concern is
3 it's been misused, and I just don't want to give anyone
4 any opportunity to misuse it in the future in this
5 proceeding, so that's my concern. I'm not suggesting
6 in any way that my testimony shouldn't be public. I
7 fully understand it will be.

8 THE COURT: I understand your concerns.
9 Let me just refresh my recollection of the rule because
10 I'm not sure that I'm going to be able to deny
11 coverage.

12 You know, they are right there. They are
13 not going to be --

14 THE WITNESS: Right.

15 THE COURT: -- facing you.

16 THE WITNESS: Okay. I don't want to make
17 a bigger deal out of it than it needs to be. I just --
18 in my hearings in Superior Court, we had a policy that
19 if a witness did not want their visual image broadcast,
20 then we would -- then we required the media to put a
21 dot over their face so that they couldn't be seen, but
22 their testimony would still be public.

23 THE COURT: Yeah. As I read 122 it says:
24 Upon request of a witness, the judge may limit coverage
25 after making specific on-the-record findings based on



1 the factors in paragraph (d)(1), which are the impact
2 of coverage on safety and well-being likely to disrupt
3 proceedings.

4 If there is anything else you want to
5 tell me -- I mean, I'm sensitive to your concern, but I
6 don't think I can make a finding that the rule --

7 **THE WITNESS: That's fine**

8 THE COURT: Okay. Thank you.

9 Mr. Calderon, you may proceed.

10

11

SHERRY STEPHENS,

12 a witness herein, having been first duly sworn by the
13 Court to speak the truth and nothing but the truth, was
14 examined and testified as follows:

15

16

DIRECT EXAMINATION

17 BY MR. CALDERON:

18

Q. Good afternoon, Judge Stephens. Would you
19 please introduce yourself to the panel?

20

A. Yes. My name is Sherry Stevens.

21

Q. And I called you "Judge Stephens." Are you a
22 former judge?

23

A. I am. I retired in September of 2021.

24

Q. And you retired from what bench?

25

A. Maricopa County Superior Court.



1 Q. And how long were you on the bench?

2 A. A little over 20 years.

3 Q. Before you were on the bench, what did you do?

4 A. I work for the Arizona Attorney General's
5 Office for about 22 years.

6 Q. And in what capacity? What division?

7 A. I worked in the criminal division in organized
8 crime and fraud and special prosecutions.

9 Q. And before you were at the Attorney General's
10 Office where else -- where did you practice -- or did
11 you?

12 A. I -- I did not. I was a law student, law
13 clerk, and I had various jobs.

14 Q. And where did you go to law school?

15 A. Arizona State University.

16 Q. And you served as a law clerk. Do you recall
17 what firm or what office you served at?

18 A. Yes. I worked for the Arizona Prosecuting
19 Attorney's Advisory Council. I worked for the Attorney
20 General's Office. And I worked for a small law firm
21 called Burton, Phelps, McMahon and Whiteman.

22 Q. Thank you.

23 Do you know April Sponsel?

24 A. I do.

25 Q. Could you tell us how you met her?



1 **A.** When I was assigned to the criminal bench, she
2 was an attorney here in my court on a regular basis.

3 **Q.** Were you -- as a city judge were you familiar
4 with the quality of her work?

5 **A.** Yes.

6 **Q.** Were you familiar with her honesty?

7 **A.** Yes.

8 **Q.** Were you familiar with her practice
9 management, how she treated other counsel?

10 **A.** Yes.

11 **Q.** Were you just acquainted with all of that, or
12 were you very well aware of all of that?

13 **A.** For three years I was on the special
14 assignment criminal calendar. Ms. Sponsel had many
15 cases that were assigned to my court because they were
16 complex, they were multi-defendant cases, conspiracy,
17 drug trafficking cases, and so I saw her very regularly
18 in the courtroom during trial. And also I conducted
19 many settlement conferences in which she was one of the
20 parties representing the State.

21 **Q.** During the settlement conferences, was she a
22 reasonable litigant?

23 **A.** Yes.

24 **Q.** I'm not going to ask you to tell me the exact
25 number, but would it be fair to say that you had at



1 least dozens of cases involving your direct interaction
2 with Ms. Sponsel?

3 A. Yes.

4 Q. If you have an opinion, could you just please
5 describe what your opinion would be of Ms. Sponsel's
6 reputation?

7 A. She was a zealous advocate for the State. She
8 was professional. She was prepared. She went to trial
9 often. She had cases that involved difficult issues,
10 multi-defendant cases, cases in which defendants had
11 prior criminal histories, cases that were difficult
12 trial cases.

13 Q. Did you have an opinion as to her character?

14 A. Yes.

15 Q. What is that opinion, please?

16 A. She -- in my dealings with her, she was always
17 honest and forthright. She was concerned about doing a
18 good job. She maintained a good relationship with
19 court staff and with the opposing counsel most of the
20 time. Obviously, there will always be some conflicts
21 among lawyers for personality reasons.

22 But I did a lot of settlement conferences with
23 her. So we would be sitting in a small room with
24 opposing counsel, a defendant, usually Ms. Sponsel and
25 her case agent, and my staff. We would be in a small



1 room talking about the case -- the issues, and she was
2 always willing to listen to the defendants, to the
3 defense attorneys.

4 If she didn't have an answer, then she would
5 get that answer. She consulted with the victims and/or
6 police officer before agreeing to make any changes to
7 existing plea offers and made sure to always obtain
8 permission from her supervisors at the County
9 Attorney's Office. But I would say we were able to
10 resolve many, many, many cases through the settlement
11 conference process.

12 Q. Thank you.

13 I have not practiced criminal law, but, as I
14 understand it, there's a variety of deadlines,
15 requirements for disclosure of information, timelines,
16 et cetera. I'm going to lump all that into -- into
17 diligence.

18 Do you believe -- do you have an opinion as to
19 Ms. Sponsel's diligence in her practice of law?

20 **A. I never had any issue with her diligence.**

21 Q. Did you ever -- was a matter ever brought to
22 you saying that she was less than diligent and you
23 would have to counsel her?

24 **A. No. Not that I can recall. I'm not saying**
25 **that there may not have been an issue, but typically**



1 the lawyers in those kinds of cases where you're
2 dealing with more complex issues, they resolve those
3 issues among themselves. So if there had been an
4 issue, unless it was brought to my attention, I
5 wouldn't have known about it, but I don't have any
6 specific recollection of there being any issues.

7 Q. Same question, but let's insert the
8 trustworthy rather than diligence.

9 What was your opinion relative to her
10 trustworthiness based on your personal experiences with
11 her?

12 A. I felt she was extremely trustworthy. When
13 she would tell me something, I would believe it. I had
14 no reason not to believe it.

15 Q. Do you believe she took her oath as a lawyer
16 seriously?

17 A. Yes.

18 Q. Did you ever have any accusation relative to
19 Ms. Sponsel failing to disclose information to the
20 opposing counsel?

21 MR. HENLEY: Your Honor, at this point
22 I'm going to have to object. Ms. -- Judge Stephens was
23 disclosed for her character and reputation, and I think
24 we're getting into a little bit of the weeds here.

25 THE COURT: Well, I think the questions



1 so far have been appropriate, couched, and whether she
2 had issues with her diligence. I think that's part of
3 character and reputation.

4 And now you're asking a different
5 question about what, Mr. Calderon?

6 MR. CALDERON: Just to -- just if
7 there -- if Judge Stephens had experienced anyone
8 bringing a complaint to her about Ms. Sponsel's lack of
9 diligence in disclosure.

10 THE COURT: That question is fine. You
11 can answer that.

12 **A. Not that I recall. I do recall that there was**
13 **one self-representative defendant who was always**
14 **raising issues, and I think he raised those issues, but**
15 **in my opinion, they were without validity.**

16 MR. CALDERON: No further questions,
17 Your Honor.

18 THE COURT: Cross-examination?

19 MR. HENLEY: No questions.

20 THE COURT: Judge Stephens, before we
21 excuse you, there probably are not questions from the
22 hearing panel, but perhaps.

23 Mr. Sifferman?

24 PANEL MEMBER SIFFERMAN: No. Thank you,
25 Judge



1 THE COURT: Mr. Clark.

2 PANEL MEMBER CLARK: Asked and answered.

3 THE COURT: This is our member of the
4 public who has gotten a crash course in everything
5 legal, and he has done very well.

6 Well, thank you, Judge Stephens, for
7 coming down to testify.

8 **THE WITNESS: Thank you.**

9 THE COURT: I really do have to again
10 brag on my hearing panel members. They are among --
11 well, they're not among. They are the most diligent
12 panel members I've ever had. I appreciate that on a
13 case like this, especially a public member.

14 All right. So I understand Mr. Michaud
15 is our next witness, but not here until about 1:30; is
16 that right?

17 MR. CALDERON: Yes, Your Honor.

18 THE COURT: That gives us a really long
19 lunch recess. Any chance he might be here a little
20 earlier?

21 MR. CALDERON: I can make a call.

22 THE COURT: If you find that he can be
23 here -- I mean, not before 12 -- or 1:15. But if it's
24 possible for him to get here a little earlier, that
25 will get us out of here earlier today, not in time for



1 the Diamondbacks game though.

2 MR. CALDERON: I will make ever effort,
3 Your Honor.

4 THE COURT: Do you want to take credit
5 for Friday night's win?

6 MR. CALDERON: Actually, I share credit
7 was Mr. Henley.

8 MR. HENLEY: And my son who I really
9 think is the good luck charm.

10 THE COURT: Were either of you to blame
11 for the next game?

12 MR. CALDERON: In that regard, Mr. Henley
13 and I have stipulated that Ms. Shuman and Mr. Echeveste
14 were responsible.

15 UNKNOWN SPEAKER: Well played.

16 THE COURT: Well, if you can let us know
17 if Mr. Michaud is here -- can be here before 1:30,
18 we'll start before 1:30. If he can't be, we'll
19 reconvene at 1:30.

20 And we'll stand at recess until then.

21 (Lunch recess 12:29 p.m. to 1:16 p.m.)

22 THE COURT: Who is here? (Indiscernible)
23 is here. Mr. Calderon is here, but he's not yet made
24 his way into the hearing room, but I presume he will
25 shortly.



1 So as I understand it, we have
2 Mr. Michaud, Judge Reckart, and -- is it Clint Davis?

3 MR. ECHEVESTES: Larry Davis.

4 THE COURT: Larry Davis. Okay.

5 (Indiscernible.)

6 We didn't do anything without you,
7 Mr. Calderon. We just talked about you in your
8 absence.

9 MR. CALDERON: I was hoping you did.

10 I just went out and checked. Kelley
11 Jancaitis from the Broening Oberg firm is Mr. Michaud's
12 attorney, and she is waiting for him to show up. He's
13 racing here, she says.

14 THE COURT: All right. What do you want
15 to talk about in the mean time?

16 Oh. You know, one thing I was thinking
17 about with your written closing arguments. I remember
18 telling the lawyers, I think, at the final hearing
19 management conference, there was a possibility I would
20 ask for proposed findings of fact and conclusions of
21 law. And the good news is I'm not going to ask you for
22 those, but, to the extent in your closing arguments you
23 can cite to exhibits or even generically to, say,
24 Faussette testimony or whatever -- none of us will have
25 a transcript, so I recognize you can't be real



1 specific. But where you can refer to an exhibit or
2 hearing testimony, I think it will be helpful, which is
3 a lot easier for you all than proposed findings of fact
4 and conclusions of law. So I'm now thinking that's a
5 good thing.

6 MS. SHUMAN: Thank you.

7 MR. CALDERON: Thank you, Your Honor.

8 THE COURT: While we're waiting, I know
9 you all may not know the exact order for tomorrow, but
10 do you know who we are anticipating tomorrow?

11 MR. ECHEVESTE: Yes. I just sent that to
12 Jan a few minutes ago.

13 THE COURT: Oh, you did. Okay.

14 MR. ECHEVESTE: Yes. I can tell it to
15 you.

16 THE COURT: Yeah. I'm curious.

17 MR. ECHEVESTE: Sure.

18 MR. CALDERON: Tomorrow at 9:30 in the
19 morning we have Paul Charlton.

20 THE COURT: Okay.

21 MR. CALDERON: At 11:00 a.m. Lieutenant
22 Ben Moore. At 1:30 p.m. Lieutenant Detective Scott
23 Krassow. At 2:00 p.m. Attorney Gina Godbehere. At
24 3:00 p.m. Officer Clint Davis. And at 4:00 p.m.
25 Lieutenant Hester.



1 THE COURT: We already had Hester?

2 MR. CALDERON: Yes. We just have to --
3 well, we didn't call them; they called him.

4 THE COURT: And he's coming back. I'm
5 sorry. What time is Hester? 4:00?

6 MR. CALDERON: 4:00.

7 THE COURT: Okay.

8 MR. CALDERON: It should be relatively
9 brief.

10 THE COURT: All right. It seems like --
11 and maybe -- I may not have a full understanding of
12 Mr. Charlton's testimony, but an hour and a half
13 between his testimony and the next witness. Is that a
14 lot of time?

15 MR. CALDERON: We are anticipating
16 significant cross-examination.

17 THE COURT: All right. You all know
18 better than I at this point.

19 MR. HENLEY: I'm not sure that we will.

20 MS. SHUMAN: Huh-uh.

21 THE COURT: I mean, based on our
22 prehearing discussions, it didn't seem like his
23 testimony was very expansive.

24 MR. HENLEY: And the limitation on the
25 proffer, I'm not sure -- I am looking at this for the



1 first time, and that catches my eye as well.

2 THE COURT: Yeah. You all may want to
3 talk. And if that's so, maybe re-juggle just because,
4 based on our conversations in a ruling, I didn't think
5 his testimony would be very expansive either direct or
6 cross.

7 MR. ECHEVESTE: We can ask if Lieutenant
8 Moore can be earlier.

9 THE COURT: Yeah. You know, it's just
10 not desirable to have a significant gap. If it's a 15,
11 20-minute gap, that's no big deal. But if it 30, 45
12 minutes, it's just dead time, wasted time. And I don't
13 want us to get all jammed up so that, for example, by
14 the time we get to Officer Hester we're bumping up
15 against 5:00 and can't finish him.

16 MR. ECHEVESTE: I don't foresee that,
17 but --

18 THE COURT: Yeah.

19 MR. ECHEVESTE: -- that's a possibility.

20 THE COURT: Yeah. I just -- if you can
21 avoid significant gaps between the witnesses, that's
22 preferable, but you'll do the best you can on that.

23 And maybe speak with Bar counsel because
24 it doesn't sound like they anticipate much cross with
25 Mr. Charlton at all.



1 Do you know yet whether the Bar will have
2 he rebuttal witnesses?

3 MR. HENLEY: At this point, we don't, but
4 we've talked about it, and I don't know that we will.

5 THE COURT: Okay. So it is possible that
6 we would conclude at the end of the day tomorrow;
7 correct?

8 MR. CALDERON: Your Honor, that's --
9 that's what we're shooting for.

10 MR. HENLEY: (Indiscernible) absolutely.

11 THE COURT: Well, I think everybody would
12 be happy if that happened.

13 Is somebody monitoring Mr. Michaud's
14 arrival?

15 MR. CALDERON: Would you like me to step
16 out and just double check?

17 THE COURT: Well, if you think somebody
18 is going to bring him in when he's here, no need, but
19 you certainly can.

20 MR. HENLEY: Judge, I just wanted to make
21 sure that you were aware of something also. We have an
22 ICMC tomorrow in an unrelated case.

23 THE COURT: I know we do, yeah. At
24 8:00 a.m.

25 MR. HENLEY: And I'm anticipating



1 probably being on the way in, so I just wanted to make
2 sure that Jan has my cell phone number.

3 JAN: No, I don't. Let me have it.

4 MR. HENLEY: It's --

5 THE COURT: Do you want to tell
6 everybody?

7 (Multiple speakers - Indiscernible.)

8 MR. HENLEY: I don't answer the phone
9 so...

10 THE COURT: They'll lead with the story
11 with your cell phone number.

12 Mr. Henley and I have an 8:00 initial
13 case management conference tomorrow in a totally
14 unrelated case, and that will be telephonic.

15 I was rooting for the Astros to win last
16 night just so we wouldn't have an early baseball game
17 today.

18 MR. CALDERON: Your Honor, Ms. Jancaitis
19 is waiting for him and will bring him in immediately as
20 soon as --

21 THE COURT: (Indiscernible).

22 If the Astros had closed out their
23 series, then the Diamondbacks would have played an
24 evening game, and we could all watch.

25 MR. CALDERON: That would be nice.



1 UNKNOWN SPEAKER: Do they have to win
2 every game now?

3 (Multiple speakers - Indiscernible.)

4 MR. ECHEVESTE: It looks like Lieutenant
5 Moore will be able to be here by 10:30.

6 THE COURT: That will help. Thank you.

7 You all know better than I. But if he
8 comes at 10:30 and we don't have another witness
9 scheduled until 1:30 -- there will be a lunch break in
10 there, but it's -- again, scheduling is difficult. If
11 this is a way to avoid just big blocks of down time,
12 that's better.

13 MR. CALDERON: Your Honor, we are going
14 to try to see if we can get Detective Krassow here
15 earlier tomorrow.

16 THE COURT: Okay. That would be great.

17 It kind of has a Domino effect, you know,
18 to some extent. If you could move Hester up earlier in
19 the day --

20 MR. CALDERON: I asked that question.

21 THE COURT: You did. Okay.

22 MR. CALDERON: It seemed to be a
23 negative.

24 THE COURT: All right.

25 MR. ECHEVESTE: Ideally, we would be able



1 to have Ms. Godbehere come a little earlier, but she's
2 not able to.

3 THE COURT: It's two minutes to the
4 original time.

5 MS. JANCAITIS: Hi. Kelly Jancaitis here
6 for Nick Michaud.

7 THE COURT: Good afternoon.

8 Mr. Michaud, you're ultimately going to
9 sit in the witness chair right there. So if you'll
10 make your way over there and raise your right hand, I
11 will swear you in.

12 (Witness sworn.)

13 THE COURT: Please have a seat. And once
14 you get settled, pull the microphone closer to you so
15 that we get a good recording and also amplification of
16 sound.

17 There are some binders in front of you,
18 and the lawyers may ask you questions about exhibits in
19 those binders. If they do they will help you try to
20 find them because there are obviously a lot of binders.

21 And then there is some water in front of
22 you. I understand that your lawyer is with you. And
23 if at any time you need to consult with your lawyer,
24 tell us that, and you'll be allowed to do that.

25 THE WITNESS: Thank you.



1 THE COURT: With that, Mr. Calderon you
2 may proceed.

3 MR. CALDERON: Thank you, Your Honor.
4

5 NICHOLAS MICHAUD,
6 a witness herein, having been first duly sworn by the
7 Court to speak the truth and nothing but the truth, was
8 examined and testified as follows:
9

10 DIRECT EXAMINATION

11 BY MR. CALDERON:

12 Q. Mr. Michaud, can you please introduce yourself
13 to the panel.

14 A. **Good afternoon, everyone. My name is Nick**
15 **Michaud. I'm a licensed attorney here in Arizona.**

16 Q. Mr. Michaud, we never actually met, but we've
17 spoken before. Would you object to me calling you
18 Nick?

19 A. **Please do. That's fine.**

20 Q. And you could -- you could call me Ernie.
21 Where did you go to law school?

22 A. **University of Arizona.**

23 Q. And what year did you graduate?

24 A. **2011.**

25 Q. And after -- after law school, what did you



1 do? What was your first (Indiscernible) job?

2 **A. My first job was with the Maricopa County**
3 **Attorney's Office.**

4 Q. And what division or what function did you
5 perform with the County Attorney's Office?

6 **A. So when I started in 2012, my first assignment**
7 **would have been the standard introductory assignment**
8 **with our pretrial division -- or what it was called**
9 **back then was the pretrial division. Then I would have**
10 **been promoted and spent years in our Community-Based**
11 **Prosecution Bureau. And then from that I spent several**
12 **years in our Drug Enforcement Bureau.**

13 Q. Would -- let's start with -- with the first
14 leg of it. When you talk about the introductory, what
15 type of cases did you handle there?

16 **A. Those -- that would be all sorts of cases.**
17 **And what it would typically be is a lawyer for pretrial**
18 **where we would handle cases at the initial stages.**
19 **Sometimes that would be pretrial probable cause**
20 **hearings, but other times that would be working with**
21 **the defense attorneys on the cases to determine if**
22 **pretrial resolution was appropriate.**

23 Q. Did that function involve exchanging
24 information with defendants' lawyers?

25 **A. Of course.**



1 Q. Would it involve complying with criminal rules
2 and local rules, et cetera?

3 **A. Absolutely.**

4 Q. Your second leg was with?

5 **A. What was referred to at the time, and may
6 still be referred to, was Community-Based Prosecution
7 Bureau.**

8 Q. And what types of cases did you do for
9 community-based prosecution?

10 **A. Yeah. That would be all sorts of cases.
11 Really any case that didn't fall into one of our
12 specialty prosecution bureaus. Those would be things
13 like maybe -- a lot of times, it would be drug
14 possession cases; it would be standard felony assault
15 cases; cases involving things like resisting arrest; or
16 things involving, for instance, organized retail theft;
17 property crimes; victim crimes of that nature.**

18 Q. And did that stint have -- provide you with
19 the experience of reviewing police reports and police
20 testimony?

21 **A. Absolutely.**

22 Q. And the last stint you mentioned?

23 **A. The drug enforcement.**

24 Q. Okay. And did drug enforcement involve the
25 two categories we talked about earlier, discovery



1 exchanges with opposing counsel and also relying on
2 police?

3 **A. Yes, sir. Absolutely.**

4 Q. And so you have been at the County Attorney's
5 Office now for over 20 years -- oh. You were at -- you
6 were at the County Attorney's Office for, what, 20
7 years; correct?

8 **A. No. So I started in 2012, and then I left in
9 2021.**

10 Q. 2021. And where did you go?

11 **A. I went to the firm that I'm currently working
12 at, a tax litigation firm by the name of Kaczmarek &
13 Jojola.**

14 Q. I'm very familiar with that firm. It's a very
15 fine firm.

16 When did you first meet April Sponsel?

17 **A. I would have met her rather early into my
18 career with the Maricopa County Attorney's Office. I
19 can't put an exact date on it, but it would have been
20 early in my tenure with the County Attorney's Office.**

21 Q. Why are you so certain that it was early in
22 your tenure?

23 **A. I feel as if I've known her my whole career.**

24 Q. And how would you -- how would you define your
25 working relationship with Ms. Sponsel?



1 **A. Positive.**

2 Q. Did you collaborate on cases with her?

3 **A. Yes.**

4 Q. Did the two of you talk to each other about
5 cases?

6 **A. Certainly, yes.**

7 Q. Did the two of you talk to each other about
8 responding to discovery requests or interacting with
9 opposing counsel?

10 **A. Certainly, yes.**

11 Q. Did you two counsel each other?

12 **A. Certainly. I would say yes.**

13 Q. Are you generally aware of her reputation and
14 character?

15 **A. Yes.**

16 Q. And what can you tell us in that regard?

17 **A. April's reputation is very positive. I have
18 found, and I think that those who know her also find
19 her to be a person of high integrity, a person of high
20 character, and a person who approaches her job with the
21 utmost care.**

22 Q. Have you seen anything in your personal
23 interaction and experiences with her that would be
24 contrary to the reputation you just -- just described?

25 **A. No.**



1 Q. Would you describe Ms. Sponsel's either
2 diligence, or lack of diligence, in preparing and
3 prosecuting her cases based on your personal
4 observations.

5 A. I always found her to be diligent. I always
6 found her to have great attention to detail. I found
7 her to take an approach that anticipated case issues or
8 evidence issues, and that's something that I have found
9 consistently throughout the time that I've known

10 Ms. Sponsel.

11 Q. Would -- would those same morals apply to how
12 she handled discovery with opposing counsel?

13 A. Yes.

14 Q. Are you aware of anything -- once again, this
15 is based on your personal experience -- that would lead
16 you to believe that Ms. Sponsel is not trustworthy?

17 A. Absolutely not.

18 Q. Why are you so definitive?

19 A. Because I've known her for well over 10 years
20 now, and I've worked with her closely.

21 Q. Based on your personal experience, do you have
22 any information that would lead you to believe that
23 April Sponsel would try to withhold evidence from
24 defense counsel?

25 A. No. The opposite.



1 Q. The opposite meaning what?

2 A. I've found her to make full disclosures in
3 cases the we've worked with -- together with.

4 Q. What is the first responders group?

5 A. The first responders group was a group that
6 the former county attorney started. I suppose it would
7 have been started at the very end of 2019, but really
8 started the beginning of the year 2020. Its purpose
9 was to focus on crimes that victimized or were
10 committed against first responders, whether those be
11 police officers, firefighters, emergency responders,
12 paramedics.

13 Q. Were you ever part of the first responders
14 group?

15 A. I was.

16 Q. Do you recall the time frame you were there?

17 A. Yeah. I would have been there from the start
18 of the bureau, which would have been, again, 2019, but
19 effectively the beginning of 2020, through to when the
20 group was disbanded.

21 Q. Thank you.

22 Do you have any familiarity regarding an
23 August 9th, 2020, protest?

24 A. The prosecution arising from August 9th, yes,
25 I'm familiar with it.



1 Q. And how are you -- how are you familiar with
2 it?

3 A. It was a case that I rather early on became
4 involved with, yes.

5 Q. When you say "became involved with," were you
6 assigned to handle the case? Explain how you became
7 involved.

8 A. Yeah. The case was -- and this is the best of
9 my recollection.

10 My recollection is that the case was initialed
11 assigned to Ms. Sponsel given, I guess, the scope of it
12 and the volume of it. But it quickly became apparent
13 that I was going to be -- that she was going to need
14 assistance, and I was the person who was -- came on,
15 the person that eventually became that assistance. And
16 it started with the grand jury proceeding.

17 Q. You stated due to the scope of the case that
18 was assigned to her. Was she regularly assigned
19 complex cases?

20 A. Yes.

21 Q. But the case became so complex that she needed
22 your assistance; correct?

23 A. I'd say so.

24 Q. Did she appreciate that assistance?

25 A. I'd say so.



1 Q. Were there any other prosecutors involved in
2 that case?

3 A. So -- and the way that the First Responders
4 Bureau operated is that we collaborated in large part
5 on a lot of our cases. I think that Ms. Sponsel and
6 myself were probably the ones who bore most of the
7 workload. But given the number of defendants, the
8 number -- or the amount of video evidence, the amount
9 of charges that were relevant to these proceedings, it
10 was certainly something that we would have collaborated
11 with the larger group about, including our supervisors.

12 Q. Did this case ever make it to the grand jury?

13 A. Yes.

14 Q. Before it went to the grand jury, was there
15 something prepared called a grand jury checklist?

16 A. Yes.

17 Q. Do you recall who prepared it?

18 A. My recollection is that Ms. Sponsel prepared
19 it.

20 Q. Did you have an opportunity to speak to
21 Ms. Sponsel regarding the grand jury checklist?

22 A. I would have, yes.

23 Q. And you say "would have." Can you explain?
24 What do you mean, you would have?

25 A. I don't have a specific memory, but it is



1 inevitable that we would have spoken about it. I
2 reviewed it certainly.

3 Q. Do you recall if she explained -- if she
4 explained to you how she came to that checklist?

5 A. I'm certain that that conversation happened.

6 Q. And you're certain because that was your
7 standard practice?

8 A. Yes.

9 Q. Who presented the case to the grand jury?

10 A. I did.

11 Q. If Ms. Sponsel prepared the checklist, why did
12 you present it to the grand jury?

13 A. I don't recall the specifics, but I believe
14 she was out of office that day. And I'm uncertain
15 right now what the particular reason was.

16 Q. What did you do to prepare for your
17 presentation to the grand jury?

18 A. So like I mentioned previously, I reviewed it.
19 And having seen it more recently, I remember very
20 specifically that in my review I could tell that the
21 language that was in that checklist was directly from
22 the police reports we had received.

23 So I -- oh, go ahead.

24 Q. No, please.

25 A. I reviewed the checklist. I read the police



1 reports. I compared the checklist to the police
2 reports, and I compared both of those to the draft
3 (Indiscernible), and I found that they were consistent.

4 Q. Did you review any evidence?

5 A. Well, I consider the police reports to be the
6 evidence, and that was the primary evidence that I
7 reviewed.

8 Q. Was there bodycam video evidence involved in
9 the case?

10 A. There was.

11 Q. And when did you become aware of the bodycam
12 evidence?

13 A. Well, I always knew that body camera evidence
14 existed; the question of when I was able to review it
15 might be difficult.

16 Q. Okay. Do you recall when you were able to
17 review it?

18 A. My recollection is that I wouldn't -- I
19 personally wouldn't have been available to review the
20 evidence until after the indictment.

21 Q. Why not?

22 A. Well, I believe it was over 100 hours of
23 footage, first of all. Second of all, sitting here
24 right now, I'm not certain that I can recall if it was
25 available to us at the time.



1 Q. Are you working under a deadline or a time
2 frame? That's why you couldn't look at the video? I'm
3 trying to figure out --

4 A. Yes, that's exactly right. The grand jury
5 process and the indictment process have certain
6 procedural rights that require these cases to be
7 brought before the grand jury before a certain time has
8 elapsed.

9 Q. After the -- let's shift time frames.
10 After the grand jury returned the indictment,
11 did you review any of the video?

12 A. Eventually, yes.

13 Q. Do you know if Ms. Sponsel reviewed any of the
14 video?

15 A. Yes.

16 Q. Same time frame?

17 A. (No verbal response.)

18 Q. Do you recall if you discussed your review of
19 the video with Ms. Sponsel?

20 A. Yes.

21 Q. Is there anything in particular you recall
22 relative to that discussion?

23 A. Anything in particular that stands out --

24 Q. Yes.

25 A. -- in reference to that?



1 **Not in particular as it relates to our**
2 **discussions.**

3 Q. I'm going to refer you to Exhibit 228, and
4 Mr. Echeveste is going to help you find that. There's
5 a bunch of --

6 **A. 228?**

7 MR. CALDERON: -- binders. It's
8 Exhibit 228.

9 MR. ECHEVESTE: Just a moment, please.

10 MR. CALDERON: Just let me know when
11 you've found it.

12 **THE WITNESS: Okay.**

13 BY MR. CALDERON:

14 Q. Is it a spreadsheet, for lack of a better
15 description?

16 **A. It is.**

17 Q. Have you ever seen this spreadsheet before?

18 **A. I've certainly seen versions of this. I think**
19 **I can say yes.**

20 Q. What kind of spreadsheet is it? What is it
21 relevant to?

22 **A. Yeah. It refers to body-worn camera videos**
23 **that were generated that reference this case -- or**
24 **reference these arrests, and it has descriptions of**
25 **what the video -- what a particular video clip entails.**



1 It has a description of whether or not redactions were
2 necessary, and it designates which ones were important
3 to the case.

4 Q. Based on my review, there's approximately four
5 entries that reflect fencing being thrown. Does that
6 seem familiar?

7 A. Yeah. I see those on the page Bates-stamped
8 007427.

9 Q. Before today, had you seen that before?

10 A. I have no reason to think that I did not.

11 Q. Did you see the video relative to the charges
12 of fencing being thrown?

13 A. Yes.

14 Q. Do you believe the video supported those
15 charges?

16 A. The video clearly shows Mr. Villa assaulting
17 those officers with the fencing.

18 Q. If the video had not supported the charges,
19 would you have discussed this with Ms. Sponsel?

20 A. Absolutely.

21 Q. What would you have told her?

22 A. I would have told her what you just said in
23 about as many words, but that's not the case.

24 Q. It's my understanding -- is my understanding
25 correct, that there were officers that described the



1 event differently in various police reports?

2 **A. Yeah.**

3 Q. Is that a common occurrence, that officers --
4 different officers would describe things differently?

5 **A. Sure. Yeah. I mean, that's the nature of**
6 **eyewitness testimony. And it's the nature of testimony**
7 **when people are involved in high-intensity**
8 **adrenaline-filled situations.**

9 Q. The State Bar has raised a distinction between
10 the fencing being thrown versus the fencing being
11 pushed. Is that a distinction that you would subscribe
12 to?

13 Do you know the different between the fencing
14 being thrown or the fencing being pushed?

15 **A. Yeah.**

16 Q. How would you define that, your understanding?

17 **A. Well, in my mind, "throwing" means airborne**
18 **and "pushed" means shoved.**

19 Q. And so the fencing was shoved at the police
20 officers?

21 **A. Yeah. My review of the video showed that the**
22 **fencing was shoved which is, again, aggravated assault**
23 **against a police officer.**

24 MR. CALDERON: I have no further
25 questions, Your Honor.



1 THE COURT: Cross-examination?

2 MS. SHUMAN: I wasn't going to, but now
3 I'm confused.

4
5 CROSS-EXAMINATION

6 BY MS. SHUMAN:

7 Q. So in the checklist and looking at page
8 007808. Are you there?

9 A. What exhibit is it?

10 Q. Yeah. So it's Exhibit 124, the grand jury
11 checklist.

12 A. Okay.

13 Q. And it's at 007808. I'm sorry if I --

14 A. I think it's a different folder. 124? Is
15 that right?

16 Q. 2 -- if I said that, I apologize. It's
17 Exhibit 249.

18 A. 249.

19 Q. And it's the grand jury (indiscernible)
20 checklist.

21 A. 249?

22 Q. 249.

23 A. Is that it? Oh. It's right here.

24 Sorry about that, everyone.

25 Q. No worries. So --



1 **A. 249?**

2 Q. Yep. And then if you could go to 007808.

3 **A. 08. Sure.**

4 Q. Okay. So I think you just testified that the
5 fencing was pushed, which you equated to shoved.

6 **A. Uh-huh.**

7 Q. Right? Okay. So if you could look at the
8 paragraph in the middle regarding Richard Villa. It
9 says that he -- "he," meaning Richard Villa, then
10 picked up the fencing, throwing it towards the four
11 officers.

12 **A. Right.**

13 Q. So how do you -- how do you align those two
14 statements? Because in the checklist, it says that
15 they picked it up and threw it.

16 **A. Uh-huh.**

17 Q. But you've just said it was pushed, which you
18 would equate to shove.

19 **A. Yeah.**

20 Q. So which one was it?

21 **A. Sure. Not a problem.**

22 Q. Okay.

23 **A. So this language was pulled directly from one
24 of the police reports. And I remember that because I
25 compared it to the language from the police reports**



1 which, again, that's all that we had at the time -- or
2 that's all that I had at the time at least.

3 So that's why that was presented to the grand
4 jury. That's why that's in this checklist, because
5 that's the language from the police report.

6 Earlier on, just a few moments ago, when I was
7 asked about the push or the thrown versus shoved
8 distinction --

9 Q. Yes.

10 A. -- what I was telling you about was my own
11 impression of the video that I reviewed.

12 Q. And so -- and we've looked at a bunch of the
13 road. We're not going to replay it, I'm sure, to
14 everybody's relief.

15 So sitting here today, do you maintain that
16 based on your review of the video that Mr. Villa picked
17 up the fencing and threw it towards the officers?

18 A. Like I've been saying, I think this is
19 probably a matter of opinion, but my opinion was that
20 it was a shove.

21 Q. Based on the videos?

22 A. Yeah.

23 Q. Okay. The only other question I had is it's
24 my understanding that at some point you were named a
25 defendant in a pending federal case that was filed by,



1 I believe, a number of the protesters; is that
2 accurate?

3 **A. Yeah, that's right.**

4 Q. Are you still involved in that case? Are you
5 still a named defendant, or have you been dismissed
6 out?

7 **A. I've been dismissed.**

8 Q. Okay. And then I think we covered this, but
9 when you left the Maricopa County Attorney's Office in
10 2021, you left criminal law behind you entirely;
11 correct?

12 **A. That's right.**

13 Q. Okay. And so now you're tax litigation?

14 **A. Yes, ma'am.**

15 Q. Which hopefully none of us needs.

16 MR. CALDERON: Perfect. That's all I
17 have.

18 THE COURT: Redirect?

19 MR. CALDERON: Nothing, Your Honor.

20 THE COURT: Mr. Michaud, before you --
21 before we excuse you, the hearing panel members have
22 the opportunity to ask questions.

23 Mr. Sifferman, any questions for
24 Mr. Michaud?

25 PANEL MEMBER SIFFERMAN: No questions,



1 Your honor.

2 THE COURT: Mr. Clark?

3 PANEL MEMBER CLARK: No questions.

4 THE COURT: I don't have any questions
5 for you either, sir, so thank you for coming down and
6 testifying. You're free to leave.

7 **THE WITNESS: Okay. Thank you very much.**

8 MS. JANCAITIS: Can you confirm that he's
9 released from the subpoena?

10 THE COURT: He is released from the
11 subpoena.

12 MS. JANCAITIS: Great. Thank you.

13 THE COURT: Thank you. Nice to see you
14 again.

15 She was a law clerk during the time I was
16 at the (Indiscernible). It's been a while.

17 MS. JANCAITIS: Hopefully this will be
18 the only time I see you.

19 THE COURT: All right. And next we have
20 Laura Reckart?

21 MR. CALDERON: Laura Reckart.

22 Your Honor, with your permission, may I
23 go in the hallway and check?

24 THE COURT: Of course.

25 MR. CALDERON: Thank you.



1 I'm sorry, Your Honor. I looked high and
2 low to no avail.

3 MR. HENLEY: Don't you have another
4 witness?

5 THE COURT: What time was she scheduled
6 to be here?

7 MR. ECHEVESTE: I believe 2:30. We can
8 try to --

9 THE COURT: Yeah.

10 MR. ECHEVESTE: -- see where she is.

11 THE COURT: And what time is Larry Davis
12 supposed to be here?

13 MR. ECHEVESTE: 3:00.

14 MR. CALDERON: Why don't we, with the
15 Court's permission, allow Mr. Echeveste to try to reach
16 both of them and try to get them to come in earlier.

17 THE COURT: Yeah. And I think tomorrow
18 you probably -- if you can, tighten up the witnesses.
19 I mean, I don't like to have witnesses sitting around
20 waiting, but it's better than everyone in this room
21 sitting around waiting.

22 So we'll take a break then until you tell
23 us that our next witness is present.

24 (At recess from 1:56 p.m. to 2:10 p.m.)

25 THE COURT: We're back on the record.



1 I understand your next witness has arrived.

2 MR. CALDERON: Judge Reckart, you need to
3 stand.

4 **THE WITNESS: Oh, yes. Okay.**

5 THE COURT: Thank you.

6 Before you have a seat, if you would
7 please raise your right hand, and I'll swear you in.

8 (Witness sworn.)

9 THE COURT: Thank you.

10 Please have a seat. And once you get
11 settled, if you would pull the microphone a little
12 closer to you so we get a good recording and sound
13 amplification.

14 There's some binders to your right that
15 the lawyers may ask you questions about. And if they
16 do, they'll help you locate the exhibit they are
17 discussing. And there's a fresh bottle of water in
18 front of you.

19 **THE WITNESS: Great.**

20 THE COURT: Do you want to get organized
21 before we start?

22 MR. ECHEVESTE: Yes. There's just one
23 exhibit.

24 THE COURT: That's fine.

25 MR. CALDERON: Judge, for the sake of



1 timing, does the Court want me to (Indiscernible.)

2 THE COURT: I can hear you, but I don't
3 think that's coming out.

4 MR. CALDERON: For timing sake, does the
5 Court want me to accredit her as an expert, go through
6 her CV and all of her experience, or cut to the chase?

7 THE COURT: I would say the latter, but
8 is the State Bar content with that?

9 MR. HENLEY: We're content with that,
10 Your Honor.

11 THE COURT: All right. Then you can cut
12 to the chase, as you say.

13 All right. You may proceed?

14
15 LAURA RECKART,
16 a witness herein, having been first duly sworn by the
17 Court to speak the truth and nothing but the truth, was
18 examined and testified as follows:

19
20 DIRECT EXAMINATION

21 BY MR. CALDERON:

22 Q. Good afternoon, Judge Reckart. We've known
23 each other for a while, and it's good to see you again.

24 Would you please introduce yourself to the
25 panel?



1 **A. Yes. Good afternoon. My name is Laura**
2 **Reckart.**

3 Q. And I called you Judge Reckart. Why did I
4 call you "Judge"?

5 **A. Well, I was a judge for seven years, and I**
6 **just retired on December 31st, 2022.**

7 Q. And what kind of a judge were you other than a
8 fine judge? What bench?

9 **A. I was with the Maricopa County Superior Court.**
10 **I started out in family court. And then when I**
11 **retired, I was on the criminal bench.**

12 Q. Would you look at Exhibit 238?

13 **A. Yes.**

14 Q. Is that your -- your curriculum vitae or
15 r sum ?

16 **A. Yes, it is.**

17 Q. It has all your experience and the like?

18 **A. Yes, it does.**

19 MR. CALDERON: Your Honor, we present
20 Judge Reckart as an expert witness.

21 MR. HENLEY: No objection.

22 THE COURT: All right. So established.

23 BY MR. CALDERON:

24 Q. Judge Reckart, are you receiving a fee in
25 exchange for your testimony today?



1 **A. I am not.**

2 Q. Have you received a fee for any of your work
3 on this case?

4 **A. No, I have not.**

5 Q. Where did you go to law school?

6 **A. I went to ASU law school.**

7 Q. And when did you graduate from Arizona State?

8 **A. 1985.**

9 Q. And when did you start practicing law?

10 **A. In 1989.**

11 Q. And where did you start practicing?

12 **A. The first place that I was an attorney at was**
13 **at the Maricopa County Attorney's Office. And I**
14 **started there June 5th, 1989.**

15 Q. And do you recall how long you were there? I
16 understand you were there for several stints.

17 **A. Correct. I left in February of 1999, so just**
18 **under 10 years.**

19 Q. For lack of a better name, I'm going to call
20 it the first stint. What types of cases did you
21 prosecute during the first stint at Maricopa County
22 Attorney's Office?

23 **A. Certainly the first year I was in what was**
24 **called felony trial group A, which was just general**
25 **felonies. At that time, the County Attorney's Office**



1 was much smaller. And although we had a small grand
2 jury unit, as an attorney in that bureau you actually
3 did charging and you presented preliminary hearings.
4 So it was much smaller, and you had a lot more duties.

5 So there really wasn't a specialized, at least
6 child molestation, sex crimes bureau at that time, so
7 you also did sexual assaults, armed robberies, a myriad
8 of things. Again, it wasn't as particularized back in
9 those old days.

10 Q. And during that those days, did you have
11 experience working with State law enforcement entities?

12 A. Yes. And, again, that was just -- that was my
13 first two years or year with the County Attorney's
14 Office.

15 Q. During that same time frame, did you have any
16 experience working with federal law enforcement
17 entities?

18 A. Not really during that time.

19 Q. You returned to the Maricopa County Attorney's
20 Office in January of 2006?

21 A. In 2000 -- January 2006, yes.

22 Q. And then you returned -- what was your
23 position when you returned to the County Attorney's
24 Office?

25 A. When I returned, they assigned me to the grand



1 jury or charging bureau where you presented grand
2 juries and did returns and all of those things, the
3 process of charging cases and, again, presenting grand
4 juries. I was there until May of 2006 when they then
5 developed the trial group, the general felony trial
6 groups that I was just in back in 1985 and '86.

7 They had assistant bureau chiefs that they
8 then basically appointed to each of the individual
9 bureaus. And the assignment as an assistant bureau
10 chief somewhat changed, and they wanted the assistant
11 bureau chiefs to be more of a mentor to the attorneys
12 in the bureau.

13 Q. When you talk about grand jury, did you
14 prepare grand jury checklists before you appeared in
15 front of a grand jury?

16 A. Oh, yes. I've done that on the first -- on my
17 first stint with Maricopa County, presented them.
18 Because for a long time I was in sex crimes in my first
19 stint, and so sometimes I would not have time to
20 present those. We would have to do a grand jury
21 checklist there. I did grand jury checklists as a
22 grand jury attorney or a charging attorney, and also --
23 not my time in the homicide bureau because usually you
24 did those on your own.

25 Q. And the information on the grand jury -- the



1 evidentiary information on the grand jury checklist
2 would come from where?

3 A. Whatever information you might have, which
4 might be a little or nothing.

5 Q. From?

6 A. Form 4s, from discussions with police
7 officers, whatever reports you might have.

8 Q. So it came from law enforcement?

9 A. Correct.

10 Q. And the types of cases during the second
11 stint, is there any way to label them?

12 A. No. So let's see. From January until May, I
13 was in the charging bureau. I then went to the felony
14 trial group -- again, that's general felonies -- from
15 May until February.

16 In August of 2006, while I was in the felony
17 trial group, I conducted the emergency wiretap for the
18 Dale Hausner Sam Dieteman case, also known as "the
19 serial shooters." And so that was conducted at that
20 time.

21 As a result of that wiretap, they then moved
22 me into gangs actually, gang (Indiscernible) unit in
23 February of 2007. There I became the assistant bureau
24 chief and I had also done that stint as assistant
25 bureau chief in my first stint, and then stayed with



1 gang repeat offender until September.

2 And then I moved to the homicide bureau which
3 at that time the homicide bureau did both capital and
4 noncapital cases. And then later on, in the last year
5 of my -- of my employment with the Maricopa County
6 Attorney's Office, they changed that to the capital
7 bureau. So if you did work, you either did capital
8 cases or noncapital cases.

9 Q. I'll ask you the same question I asked
10 about the first stint on the second one. During the
11 second stint, did you have experience working with
12 State law enforcement authorities?

13 A. Yes. Absolutely.

14 Q. During your second stint, did you have any
15 experience working with federal law enforcement
16 employees?

17 A. Numerous times.

18 Q. Did you know April Sponsel during your tenure
19 at the County Attorney's Office?

20 A. I did.

21 Q. How did you know her?

22 A. I met April when I became the assistant bureau
23 chief in the trial group. They transferred me in May
24 of 2006. She was one of the attorneys in the felony
25 trial group.



1 Q. How would you describe your professional
2 relationship?

3 A. With regards to a professional relationship, I
4 sat in with her on trials, co-chaired some cases with
5 her, assisted her in whatever way I could. And I found
6 her to be respectful and energetic and happy to have
7 her job. She enjoyed her job.

8 Q. Did she -- did she act professionally with
9 you?

10 A. Yeah. Absolutely.

11 Q. At the end of your second stint with the
12 Maricopa County Attorney's Office, you were elevated to
13 the Superior Court bench?

14 A. Yes.

15 Q. Who appointed you to the bench.

16 A. Excuse me. Governor Doug Ducey.

17 Q. Governor Doug Ducey. And do you recall the
18 year that happened?

19 A. Yes. It was May 2015.

20 Q. You probably remember what you were wearing
21 the day he called you. That's kind of a momentous call
22 when you get that.

23 A. Actually, I was on a plane to New Orleans when
24 he called, so I missed the call.

25 Q. As a Superior Court judge, did you have any



1 tenure on the criminal side of the -- of the County
2 case law?

3 **A. Yes. I was -- let's see. I was appointed in**
4 **May, but I was not able to take the bench until**
5 **November of 2015. And then I was in -- on the family**
6 **court bench your three years, six months, and two**
7 **weeks, I believe, and then went to the criminal bench**
8 **until I retired.**

9 Q. And so, generally speaking, how many years did
10 you spend adjudicating criminal cases?

11 **A. As a Superior Court judge, it would have been**
12 **about three and a half years.**

13 Q. Dozens of cases?

14 **A. Yes.**

15 Q. Hundreds of cases?

16 **A. Well -- yeah, that ended up appearing before**
17 **me, sure.**

18 Q. Have you ever heard of Rule 15.1?

19 **A. Yes, I have.**

20 Q. Have you heard of Rule 15.2?

21 **A. Yes, I have.**

22 Q. I'd like to ask you about -- about both of
23 them.

24 What is Rule 15.1?

25 **A. Rule 15.1 and 15.2 collectively deal -- are**



1 the Arizona Rules of Criminal Procedures dealing with
2 discovery obligations of both sides. 15.1 State's
3 obligations; 15.2 for the defense.

4 Q. So as I understand what you're saying, 15.1
5 prescribes what the prosecution needs to turn over to
6 the defense?

7 A. Correct.

8 Q. And 15.2 prescribes what the defense needs to
9 turn over to the prosecution?

10 A. Correct.

11 Q. Did you review Rule 15.1 or 15.2 before coming
12 today?

13 A. I did.

14 Q. Did you review any other cases -- any cases or
15 anything else relative to 15.1 or 15.2?

16 A. None that were -- I mean, did I review? Yes.
17 Within the last couple of days -- I can't recall, but
18 I've reviewed them in preparation for my deposition
19 which I gave earlier.

20 Q. So you're not solely relying on your past
21 experience on the bench. You actually refreshed your
22 recollection?

23 A. Oh, yes.

24 Q. Thank you.

25 Rule 15.1. Does Rule 15.1 require a



1 prosecutor to make a physical copy of material that
2 they are required to disclose?

3 A. No, it does not.

4 Q. Do you know why not?

5 A. Well, the purpose of the disclosure rules, or
6 the discovery rules are so that there are no surprises
7 at trials. And so one of the tenets within Rule 15.1
8 talks about how you can -- the Court could compel the
9 prosecution to provide information to the defense if
10 they are requesting, if the defense doesn't have any
11 reasonable means of getting it or causing due hardship.
12 So technically, language is made available.

13 Now, of course in this day and age of
14 high-tech stuff, it's a little bit easier to try and
15 provide physical copies, but it's not necessarily
16 required.

17 Q. Based on your experience, both as a prosecutor
18 and as a judge, would -- would a prosecutor fall within
19 the Rule 15.1 if they didn't produce something in
20 writing, but they allowed the information to be
21 reviewed by opposing counsel?

22 A. That's totally acceptable, and that's actually
23 quite common practice. At least in the old days before
24 high-tech, things were available -- when I was in sex
25 crimes, just to give you an example, I prosecuted



1 several child pornography cases. Back in those days it
2 was magazines. An individual had a deck of playing
3 cards and videotapes. Now, of course, it's all on the
4 computer. But so as not to copy those, so you're not
5 reproducing child pornography, we would have review of
6 that evidence by the defense.

7 Q. If a prosecutor made that information or any
8 information available to a defense attorney for
9 inspection, shall we say, I think that's -- I'll -- I'm
10 just labeling what you said, "for inspection," but the
11 defense lawyer does not come to look at it, has the
12 prosecutor complied with Rule 15.1?

13 A. Yes.

14 Q. Does it have to be a written statement saying,
15 "You can come look at it"?

16 A. Not to my knowledge.

17 Q. Okay. You said no. Not to your knowledge?

18 A. Yeah. Right. Not to my knowledge.

19 Q. Do you have -- did you see lawyers -- strike
20 that.

21 Did you monitor lawyers' compliance with
22 Rule 15.1 and 15.2 deadlines?

23 A. I had -- as a Superior Court judge you mean?

24 Q. Yes.

25 A. I had a few cases, yes, where that was raised,



1 and there would be deadlines. I wasn't monitoring them
2 so much. It was somebody was filing a motion to
3 dismiss for failure to comply, and so I was getting in
4 after the fact. And then there was an issue that was
5 before me was whether I should dismiss the case as a
6 result of the alleged noncompliance. But obviously,
7 the first step is to find out whether there was
8 noncompliance and then go from there.

9 Q. And in exercising your judgment as a jurist,
10 was there any sort of a litmus test you placed or any
11 sort of a way you would look at the cases to determine
12 if someone was late three days, was that as bad as
13 somebody late 30 days? Of if somebody is just late,
14 maybe, perhaps, it's strict liability.

15 How would you look at that?

16 A. Well, I think the case on the Rules of
17 Criminal Procedure all say that, you know, what you
18 have to look at is whether or not prejudice actually
19 occurred and how that -- how the affronted party has
20 been -- has been hurt by the late disclosure.

21 So a lot of times you'll see cases where the
22 defense claimed on appeal that there was a late
23 disclosure and they suffered from it, but then you'll
24 see in the fact pattern that actually there was no
25 prejudice that they suffered because they actually



1 asked for a continuance at the same time.

2 So there's other cases where, yeah, the late
3 disclosure has been -- has affected them, but you try
4 and do the de minimis penalties, for lack of a better
5 term, in order to, again, not dismiss the case. That
6 is the ultimate thing.

7 A judge can continue a case as a result of it
8 on their own motion, if they feel that will assist. So
9 there's all sorts of remedies, and you want the least
10 oppressive remedy discovery violation.

11 Q. Who has the duty to educate the Court that a
12 prejudice has occurred due to the fact that there's
13 been an untimely compliance with 15.1 or 15.2?

14 A. That would be the affronted party.

15 Q. And do they actually file a motion or appear
16 in front of the judge? How does that happen?

17 A. Oh, yes. They file a motion to dismiss for
18 late disclosure. Sometimes a motion for sanctions is
19 another remedy they will request. So they are the ones
20 that -- you know, they can ask for whatever remedy they
21 want, and then the Court goes from there.

22 Q. If some -- if a party missed the deadline by a
23 few days, was that a common thing that you saw as a
24 judge?

25 A. As a judge and as a prosecutor, sure. I saw



1 it happen all the time. Things just -- things just
2 happen.

3 Q. Do you know any prosecutors who never missed a
4 deadline?

5 A. No. I don't think so.

6 Q. Do you know any defense attorneys who never
7 missed a deadline?

8 A. No. I don't think so.

9 Q. Is it common that people make mistakes and
10 miss deadlines?

11 A. Sure. It happens all the time.

12 Q. And that's where the discretion you talked
13 about comes into play?

14 A. Correct.

15 Q. And I'm assuming that discretion includes you
16 would weigh out the number of days it's been late, what
17 the prejudice is, what the reason is?

18 A. Right. And that's something I failed to
19 mention earlier. Something very important to consider
20 is whether or not, you know, this is an intentional
21 delay, in other words, causes prejudice which causes a
22 delay and -- to cause a delay in the trial. Was this
23 intentional, or was there a good reason for it?

24 Q. I'd like to shift gears to motion practice.
25 What about -- what about filing a late



1 response to a motion? Does your -- does the judge's
2 discretion enter into how you would evaluate that?

3 A. Sure. Absolutely.

4 Q. And how would you?

5 A. Again, you look at basically the same factors
6 as you would on discovery: What prejudice has
7 occurred?

8 It's one thing if you, as a judge, have
9 ordered that you have to file a response by a
10 particular day. And if they don't, that's kind of an
11 affront on the Court. But if it's just within the
12 Rules of Criminal Procedure timeline-wise, it's really
13 difficult to calculate sometimes Rule 8 and how many
14 days a person actually has. And you get all sorts of
15 different numbers when people are calculating Rule 8 or
16 how many days you have to respond. So the rules say
17 one thing, but exactly how you calculate them, people
18 will come up with different numbers.

19 So, again, you look at what the prejudice --
20 let's say you had a hearing. You were going to have an
21 evidentiary hearing, and a party was late in filing
22 their motion, the response, or their reply, that might
23 affect the hearing, especially if this's more
24 disclosures within it.

25 So, again, you look at the prejudice. Was it



1 intentional? Sometimes things just happen, and, you
2 know, you need to take that into consideration.

3 Q. Once again, I've never practiced criminal law.

4 Would it be fair for me to conclude that, just
5 as in missing a Rule 15.1 or 15.2 deadline, it is
6 common, not a prudent -- not looked upon favorably, but
7 common that both prosecutors and defendants sometimes
8 fail to respond to motions or fail to comply timely
9 with the motion practice?

10 A. Correct.

11 Q. And in that situation, you would apply the
12 judicial discretion you have; correct?

13 A. Correct.

14 Q. And that's why governors pick judges because
15 they pick judges with good judgment.

16 A. One would hope.

17 Q. Yes. Rule 15.1 discusses whether the material
18 is within the State's possession or control. What does
19 that mean, "State's possession or control"?

20 A. Obviously, whether the State has physical or
21 actual copies would be the possession of or control
22 over -- if you look further on in the rule, what it
23 says is anything that a law enforcement agency has in
24 its -- not in its possession or control, but a law
25 enforcement agency involved in an investigation, that



1 the prosecutor has dominion or control -- I'm
2 forgetting the words.

3 Q. It was possession or control.

4 A. Right. That's the first part of it. Right.
5 And then it goes on later on to talk about, you know,
6 what is considered the possession or control.

7 Q. Were you ever involved in a
8 multi-jurisdictional law enforcement case?

9 A. Numerous times.

10 Q. When you have multiple parties, let's say
11 we've heard testimony -- I think in one situation there
12 was the City of Gilbert Police, there was Phoenix
13 police, there was the Federal Bureau of Investigation,
14 there was Department of Homeland Security, and there
15 might have been one or two others involved in the same
16 case. Who has possession? Is there one entity that
17 says, "Okay, we're in charge. We're taking possession.
18 We are the custodian"?

19 A. Well, when you're bringing in federal
20 agencies, it's a whole different ball game. And so if
21 you're talking about a multi-agency -- I'll give you an
22 example.

23 I regret having to bring this up all the time.
24 But let's say in the serial shooter investigation, we
25 had both federal and local investigation -- excuse



1 me -- law enforcement agencies involved. So it was --
2 and, again, there were numerous -- because there were
3 crimes that occurred in Tolleson, there were crimes
4 that occurred in Mesa. Phoenix was the main agency,
5 but we also had federal agencies. Put those aside for
6 now.

7 So Phoenix -- one of the local law enforcement
8 agencies, if you're only dealing with the local law
9 enforcement agencies, one of them will be designated
10 the person. Even if you're working with a federal
11 agency -- if Phoenix PD, for example, is taking over
12 the investigation, even though it's jurisdictional,
13 sorry, it was -- Phoenix PD will still be the go-to
14 person, but they might not have access to all of the
15 other things in the federal possession, if that makes
16 any sense.

17 Q. Well, why wouldn't -- in a
18 multi-jurisdictional task force, why wouldn't Phoenix
19 have access to all of the information the feds have?

20 A. Well, because federal law usurps State law due
21 to the Supremacy Clause. And the FBI, DO -- or FBI and
22 ATF, all the other federal agencies are actually
23 controlled by Department of Justice.

24 Q. Do the federal authorities promptly provide
25 the -- let's say because of the U.S. Department --



1 based on your experience, both as a prosecutor and as a
2 judge, does the Justice Department or federal agency
3 always let the State agency know what they're doing and
4 what evidence they have?

5 **A. Absolutely not.**

6 Q. And you said "Absolutely not" with certainty.
7 Why do you say that with certainty?

8 **A. Well, because the Code of Federal Procedures**
9 **precludes them from doing so.**

10 Q. Would you explain that?

11 **A. Sure. The Code of Federal Procedures. So**
12 **those are the procedures that are -- it's kind of like**
13 **our Rules of Criminal Procedure, but it's the code.**
14 **And it is a specific -- it has specific procedures that**
15 **an employee of an agency has to follow in order to**
16 **provide information to anyone who is requesting it,**
17 **including State judges -- it mentions those. And if**
18 **they decide that they don't have to turn it over, then**
19 **it doesn't have to be turned over, and that's it.**

20 Q. Well, if you were a federal prosecutor as you
21 once were --

22 **A. Not a federal prosecutor.**

23 Q. I'm sorry. If you were a State prosecutor --
24 I'm sorry. My mistake.

25 If you were a State prosecutor, as you once



1 were, and wanted to know what was in federal
2 possession, how would you find out?

3 **A. You have to do what's called a Touhy letter.**

4 Q. And what is a Touhy letter? We've heard a
5 little bit about it so just --

6 **A. Sure. A Touhy letter was generated by the**
7 **prosecutor. My recollection, the last one that I could**
8 **find that I did involved my supervisor at the time.**
9 **And so it's a letter -- and I can't remember who**
10 **generated it. But looking at the letter, it looked**
11 **like I had to provide a lot of information. You have**
12 **to detail, I mean, specific exactly what information is**
13 **you want. The tricky thing about that is, if you don't**
14 **know what's in there or you don't know what they have,**
15 **then you don't know what to ask for. And they will not**
16 **provide you -- and it's kind of laid out in the**
17 **procedures. They will not say, "Oh, is this what you**
18 **want? Because what you're asking for is this." I**
19 **mean, they will never proffer any information.**

20 Q. So there aren't clear channels of reciprocity
21 relative to "We have this information. We'll share it
22 with you. You have that information. Would you share
23 it with us?"

24 **A. Yeah. Absolutely not.**

25 Q. And you have to go through this Touhy



1 procedure?

2 A. Right. And, again, if you don't know what it
3 is you're looking for, they're not going to tell you.

4 Q. It's like looking at a dictionary trying to
5 spell a word when you don't know how to spell the word?

6 A. Exactly.

7 Q. Well, what about -- what about just going
8 to -- what about just going to -- if I was a State
9 prosecutor, just going to you as a judge and ask you to
10 compel the Federal Bureau of Investigation to turn over
11 their file?

12 A. Well, that's interesting. In the procedures,
13 as I was just mentioning, it even talks about even if
14 there is a State court order, they will not provide it,
15 nor will the feds insinuate that they will cooperate
16 even with a court order. So it doesn't matter.

17 Again, under the Supremacy Clause, the federal
18 laws usurp the State laws. And there's nothing in
19 those procedures that states in any section where a
20 federal agency has a system, the State law enforcement
21 agency, then we will provide information. I mean,
22 there is no exception. It's just they have to go
23 through this procedure; then it has to go through this
24 supervisor.

25 At least it used to have to go all the way to



1 a D.C. DOJ to get approved.

2 Q. When you when you say "D.C.", the District of
3 Columbia --

4 A. Yes.

5 Q. -- Department of Justice?

6 A. Sorry. Washington, D.C. Yes.

7 Q. If a federal agency then doesn't provide you
8 with information that perhaps you don't know exists,
9 how does the State prosecutor get that federal
10 information?

11 A. They don't.

12 Q. Simple as that?

13 A. Simple as that.

14 I mean, the other thing is that the defense
15 can also write their own Touhy letter to the agency.

16 So it not just the state. If the defense
17 thinks there is something there that they want, they
18 can right the Touhy letter. It doesn't have to come
19 just from the State.

20 Q. And just to tie up one end, if a Touhy letter
21 is written and you ask for information, has it been
22 your experience as a State prosecutor that the federal
23 government will provide you with all the information
24 they have on that topic?

25 A. Absolutely not.



1 Q. Why not?

2 A. Because everything is -- all I can say is,
3 well, the Supremacy Clause. It's not their job to
4 cooperate is how I look at it. And that's what they
5 think is that they don't need to cooperate, and they're
6 not going to.

7 Q. So let's talk about the life of a Touhy
8 letter. If I write a Touhy letter -- I'm a State
9 prosecutor and I write -- I get somebody in my office
10 to write the Touhy letter. And the Touhy letter goes
11 to the federal agency and the federal agency provides
12 some information, does that federal agent -- does that
13 Touhy letter stand in perpetuity? If they get more
14 information, more evidence, do they have to turn that
15 over?

16 A. No. No. It's limited to just what the
17 request is. Again, they're not going to share any
18 information, tell you that, "Hey, this is more here."
19 It's -- it's just not going to be shared.

20 Q. So I would have to go to the same person that
21 wrote the first Touhy letter periodically and have them
22 right another Touhy letter?

23 A. Correct.

24 And keep in mind it's discretionary with the
25 person that's reviewing that. If they decide it's not



1 relevant, based on the information that you've
2 provided, then that ends it. It's totally up to them
3 on whether or not it is relevant or not.

4 Q. Is there any way -- I'm frustrated in my mind
5 as a -- as a State prosecutor today.

6 Is there any way I can fashion language in a
7 Touhy letter that would somehow bind the federal
8 government to provide me with whatever information they
9 have that might affect the case I have?

10 A. No.

11 Q. Is it relative easy to get information from
12 the federal government via the Touhy process?

13 A. Absolutely not.

14 Q. Can you secure it at will?

15 A. No.

16 Q. That's based on your experience?

17 A. Based on my experience.

18 Q. There was an assistant U.S. Attorney who
19 testified here, Mr. Keith Vercauteren, and he testified
20 about a confidential informant. And this was in
21 Count 1 involving Allen Burns. He didn't mention him
22 by name.

23 As a prosecutor, would it surprise you that
24 when -- strike that. I'm sorry.

25 Let's go to your deposition. In your



1 deposition you testified that you reviewed April
2 Sponsel's Response to the Defense's February 14th,
3 2020, Motion for Supplemental Request for Disclosure.
4 Is that accurate?

5 **A. That sounds correct.**

6 Q. In that response that you reviewed, did
7 Ms. Sponsel detail her attempts to obtain items that
8 the Court ordered her to produce from various federal
9 agencies?

10 **A. That's my recollection. It's been a while**
11 **since I reviewed it.**

12 Q. So that I understand it, the Court ordered her
13 to get information from the federal agency. And in her
14 response, you saw enough that she was trying to get the
15 information from the federal agencies?

16 **A. Yes. Yes.**

17 Q. And you assessed that not only as a -- being a
18 former prosecutor; correct?

19 **A. Correct.**

20 Q. And as being a former Superior Court judge;
21 correct?

22 **A. Correct.**

23 Q. Would you take a look at Exhibit 178, please.
24 We're looking specifically at Exhibit C.

25 **A. 177. I was close.**



1 MR. CALDERON: Mr. Echeveste should help
2 you find that.

3 BY MR. CALDERON:

4 Q. Would you look at the documents that are
5 Bates-stamped 5615.

6 **A. Give me one second here. The binder was open.**

7 Q. Sure.

8 **A. Bates 5615 did you say?**

9 Q. Yeah. 5615 through 5631. I'll give you a
10 moment to sort of scan through it.

11 **A. Okay.**

12 Q. Generally speaking, what are -- what did you
13 just review? What are they?

14 **A. It's Respondent's response, I believe, to
15 discovery requests that the defense is making.**

16 Q. That the defense was making?

17 **A. Yes.**

18 Q. Based on -- based on your previous review of
19 information in preparation for your deposition, the
20 materials you reviewed in preparation for today, the
21 exhibit in front of you, do you believe that -- and
22 your experience as a prosecutor and as a jurist, do you
23 believe that April Sponsel displayed the reasonable
24 diligence necessary to attempt to obtain federal
25 materials the Court ordered her to produce?



1 **A. Yes, I do.**

2 MR. CALDERON: No further questions,
3 Your Honor.

4 THE COURT: Cross-examination?

5 MR. HENLEY: Briefly.

6

7 CROSS-EXAMINATION

8 BY MR. HENLEY:

9 Q. You testified that you believe that -- based
10 on the 2020 response by the Respondent, you believe
11 that Ms. Sponsel used reasonable diligence to obtain
12 the requested documents from the defense.

13 This response is in -- is in response to just
14 one request; correct?

15 **A. I believe so.**

16 Q. Are you aware of how many requests were made
17 by the defense for documents and information?

18 **A. I know there were numerous requests. I don't**
19 **know how many.**

20 Q. Do you know when the first request for
21 documents occurred?

22 **A. It was pretty early on in the case is my**
23 **recollection. Again, I wasn't going through a timeline**
24 **to specify the time.**

25 Q. You provided a lot of testimony about the



1 Touhy letter and the Touhy process.

2 Do you know if Ms. Sponsel actually submitted
3 a Touhy letter to the federal agencies?

4 **A. That's my recollection based on what was set
5 forth in the complaint, I believe, filed by the State
6 Bar. I believe that was in there.**

7 Q. I'm sorry. I didn't hear you.

8 **A. I think she did. I believe she did. And I --
9 but I was thinking that came from the complaint, but it
10 might have been elsewhere. I'm sorry.**

11 Q. In fact, when you were deposed in this matter
12 as an expert, you testified that your knowledge of
13 Ms. Sponsel's efforts regarding her attempts to comply
14 with the Court orders and the number of obligations
15 under Rule 15 and Brady and Giglio was based solely on
16 the State Bar's complaint; right?

17 **A. I don't think it was based -- well, maybe her
18 efforts. But then I reviewed minute entries and
19 rulings and things to that effect.**

20 Q. Let's just make sure we're clear on this
21 point.

22 In response to questions by me, I asked
23 first "The sole source of your information or knowledge
24 is based on the State Bar's complaint; correct?"

25 You respond: "Correct."



1 "Are you relying on anything that Ms. Sponsel
2 has told you as to her efforts?"

3 "No. We had no discussions."

4 "Have you seen any documents at all which
5 would suggest that Ms. Sponsel took any action to
6 contact the F -- ATF or obtain any of the requested
7 information prior to the November 2018 hearing?"

8 "Not to my recollection."

9 Then skip down to: "In 2018, do you know if
10 Ms. Sponsel took any actions to contact the ATF or
11 obtain any documents?"

12 "I personally do not know that."

13 "And that would be the only contact that
14 you're aware of that Ms. Sponsel had with the ATF?"

15 "Again, I'm relying completely on what's in
16 the complaint so..."

17 **A. Correct. I have no direct knowledge of what
18 actions Ms. Sponsel specifically took.**

19 Q. So if you -- if you don't know -- could I
20 interpret your responses that, if you don't know if
21 Ms. Sponsel submitted a Touhy letter to the federal
22 agencies, you don't know if they ever responded to the
23 Touhy letter?

24 **A. And so to be clear, my testimony is I believe
25 that she did file a Touhy letter. I can't recall where**



1 I gained that information. That's all I know.

2 Q. Well, do you know if they -- the federal
3 agencies responded to the Touhy letter?

4 A. I do not know.

5 Q. So I take it from your answer that you
6 wouldn't know how long it took or whether there were
7 any -- was any delay in their response?

8 A. I would not know.

9 Q. You testified that -- that complying with a
10 Touhy letter, or even requesting a Touhy letter, is
11 totally up to them. And I'm assuming you're referring
12 to the federal agencies; is that accurate?

13 A. That's correct. And I misspoke. The request
14 obviously comes from -- I'll just use the State
15 prosecutor as an example. The State prosecutor has to
16 request it. You have to go to a supervisor. And then
17 eventually the letter is drafted, and then it goes
18 to -- obviously to the federal contact person.

19 Q. During your prosecution of State cases and all
20 of these federal agents, did you reach out to the
21 federal agents themselves to see if they would
22 voluntarily provide you with information or documents?

23 A. We would always ask.

24 Q. And did you ever receive a favorable response?

25 A. Pretty much no. It was -- and there's several



1 agents, federal agents that I worked with that I have
2 high respect for. But, I mean, the answer that they
3 have to give is they didn't do it through a Touhy
4 letter.

5 Q. And your first response to the question was
6 "pretty much no" that they wouldn't give you a
7 favorable response. But were there incidents or
8 events, cases, where they did voluntarily provide you
9 with information?

10 A. There was one case where -- yeah. Special
11 agent with the FBI. I don't recall right at this
12 moment, but it was a federal agency who didn't realize
13 that he had to get permission to go through an
14 interview, and he then was interviewed by the defense
15 and gotten in trouble afterwards as a result. So
16 that's the one situation I can think of.

17 Q. Would you agree that Rule 15 of the Arizona
18 Rules of Criminal Procedure and Brady and Giglio
19 operate conjunctively?

20 A. Sure.

21 Q. Is it your belief that a prosecutor's duty to
22 comply with Rule 15, Brady or Giglio is obviated if the
23 documents or information are just too difficult to
24 obtain?

25 A. Oh, no. Absolutely not.



1 Q. They still maintain that obligation; correct?

2 **A. Sure.**

3 Q. Have you recovered any of the court orders
4 that were issued in the Rourke and Martin case ordering
5 production by Ms. Sponsel?

6 **A. Yes, I have reviewed evidentiaries.**

7 Q. And you're aware the case was ultimately
8 dismissed due to Ms. Sponsel's disclosure violations;
9 correct?

10 **A. Yes, I am.**

11 Q. You testified earlier that Rule 15 allows for
12 a number of sanctions for disclosure violations. I
13 think you mentioned continuance of the case and a
14 number of other things.

15 Did you ever dismiss a case due solely to a
16 disclosure violation?

17 **A. As a judge?**

18 Q. Yes.

19 **A. No.**

20 Q. How rare is that?

21 **A. It's supposed to be rare.**

22 Q. Do you know the number of orders that were
23 rendered against -- or issued ordering Ms. Sponsel to
24 comply with her disclosure obligations?

25 **A. I do not know the order -- or the number.**



1 MR. HENLEY: Judge, I have no further
2 questions.

3 THE COURT: Re-direct?

4 MR. CALDERON: Very briefly, Your Honor.

5

6 REDIRECT EXAMINATION

7 BY MR. CALDERON:

8 Q. Judge Reckart, would you take a look at
9 Exhibit 170, please?

10 Mr. Echeveste will come to your aid.

11 **A. Okay.**

12 Q. Is Exhibit 170 a Touhy letter?

13 **A. I would not call it a Touhy letter.**

14 Q. What is it?

15 **A. It's just a formal -- an in-writing request**
16 **for documents. That's all it is. I would not call it**
17 **a Touhy letter.**

18 Q. Back to Rule 15.1. And once again, I'm not a
19 criminal defense attorney.

20 Do you have a duty -- does the prosecutor have
21 a duty -- once again, based on your experience as a
22 prosecutor and as a judge reviewing discovery disputes,
23 does a prosecutor have a duty to disclose a
24 non-testifying witness to the other side?

25 **A. No.**



1 Q. If a judge perceives that a prosecutor has not
2 complied with disclosure requirements, acted
3 unethically, does a judge have a duty to report this to
4 the State Bar?

5 **A. Yes.**

6 MR. HENLEY: Objection; relevance.

7 THE COURT: I don't think we need
8 assistance on interpreting ER 8.3.

9 MR. CALDERON: I didn't hear you, but
10 that's my last question, Your Honor.

11 THE COURT: Okay. Before we excuse you,
12 let me see if the hearing panel members have any
13 questions, and I have one just to follow up on an
14 answer you just gave.

15
16 EXAMINATION

17 THE COURT: You were asked whether a
18 prosecutor has a duty to disclose non-testifying
19 witnesses, and you sort of answered unequivocally "No."

20 But that wouldn't always be true, would
21 it? What if the non-testifying witness were -- had
22 Brady material or exculpatory information?

23 **THE WITNESS: I guess I can't imagine a**
24 **situation where -- I mean, how would you know that**
25 **witness had that information unless they were going**



1 to -- maybe I should have asked for clarification on a
2 testifying witness, because you can disclose a person
3 as a witness who may not be called, and obviously they
4 might have information.

5 But I can't think of a situation where
6 you would have -- somebody would have Brady material
7 that would be a non-testifying witness.

8 THE COURT: Well, that's sort of my
9 question. If you, as a prosecutor, knew that a person
10 out there had exculpatory information that you, as the
11 prosecutor, certainly didn't plan to call that person,
12 would you have a duty to disclose that to the defense?

13 THE WITNESS: Okay. Phrased that way, I
14 would say yes, then you would, because, as a
15 prosecutor, I mean, that's your duty. If you find
16 Brady material, you have to disclose that.

17 THE COURT: That's what I thought you
18 meant, but I wanted to clarify because --

19 THE WITNESS: Okay.

20 THE COURT: -- because I found the
21 question and answer to be confusing, but I think we're
22 on the same wavelength now.

23 Mr. Sifferman, any questions that you
24 have?

25 PANEL MEMBER SIFFERMAN: I have no



1 questions.

2 THE COURT: Mr. Clark?

3 PANEL MEMBER CLARK: No questions.

4 THE COURT: All right. Thank you very
5 much.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you for testifying.
8 You're free to leave.

9 THE WITNESS: Thank you.

10 MR. CALDERON: Your Honor, we'll call
11 Larry Davis.

12 THE COURT: Before you sit down, if you
13 would please raise your right hand and I'll swear you
14 in.

15 THE WITNESS: To you, ma'am?

16 THE COURT: Yes.

17 (Witness sworn.)

18 THE COURT: Thank you.

19 Please have a seat. And when you get
20 settled, pull the microphone close so that we get a
21 good recording and sound amplification.

22 There's a fresh bottle of water in front
23 of you. And there's some binders to your right. And
24 if the lawyers ask you questions about those, they will
25 help you locate the exhibits because there are a lot of



1 them.

2 **THE WITNESS: "Some" binders?**

3 THE COURT: Yeah. Well, some, yes.

4 **A lot.**

5 **Mr. Calderon, you may proceed.**

6

7 **LARRY DAVIS,**

8 **a witness herein, having been first duly sworn by the**

9 **Court to speak the truth and nothing but the truth, was**

10 **examined and testified as follows:**

11

12 **DIRECT EXAMINATION**

13 **BY MR. CALDERON:**

14 Q. Good afternoon. It's Sergeant Davis; correct?

15 **A. No longer. I retired.**

16 Q. You retired. May I call you Sergeant Davis

17 anyway?

18 **A. That's fine.**

19 Q. We've met before, I think, perhaps in a

20 deposition or something.

21 **A. Correct.**

22 Q. Can you please introduce yourself to the

23 tribunal, please?

24 **A. It's Special Agent Larry Davis now.**

25 Q. And you're a special agent for what?



1 **A. The Arizona Attorney General's Office.**

2 Q. Can you tell us about your educational
3 background, please?

4 **A. I have a bachelor's degree from Northern**
5 **Arizona University.**

6 Q. And what is that bachelor's degree in?

7 **A. Career technical education.**

8 Q. How long were you -- did you serve with the
9 Phoenix Police Department?

10 **A. My entire law enforcement career up to this**
11 **point, yes.**

12 Q. And how long was that term of service with the
13 City of Phoenix?

14 **A. Just over 27 years.**

15 Q. Did you ever have experience while serving
16 with the Phoenix Police Department working on gang
17 issues?

18 **A. Yes.**

19 Q. What was that experience?

20 **A. I was an investigation supervisor in the gang**
21 **unit for over 14 years.**

22 Q. What is the gang unit?

23 **A. Sorry?**

24 Q. What is the gang unit?

25 **A. Gang unit is just a unit within the police**



1 department, an investigation unit specializing in
2 gang-motivated crimes.

3 Q. When did you first meet April Sponsel?

4 A. Some point during my tenure during within the
5 gang unit. I don't remember what year specifically.

6 Q. How would you describe your relationship with
7 her?

8 A. Good.

9 Q. How would you describe your professional
10 relationship with her?

11 A. Good.

12 Q. I want to talk to you about a case involving
13 Jonah Ivey and Kristen Boird. Does that sound -- do
14 those names sound familiar?

15 A. Yes, sir.

16 Q. Can you tell me a little bit about that case?
17 Just give us a flavor of what it was about.

18 A. I don't know what specific case you're talking
19 about. I think there's more than one case.

20 Q. Can you tell us -- well --

21 A. I can give you information about a case I was
22 involved in.

23 Q. Yes, please.

24 A. Okay. What would you like to know?

25 Q. Would you tell us what the case was about?



1 A. My unit was working the protests during 2020
2 as a function of the Phoenix Police Department. It was
3 part of our job function on the side of the gang cases.

4 Q. And this was the gang unit?

5 A. Yes. We were directed by the team leader for
6 the tactical response unit of the Phoenix Police
7 Department to contact and arrest a subject who was
8 involved in some violations of the law earlier in the
9 evening.

10 And when we made contact to make an arrest of
11 one of those subjects, that's how I came into contact
12 with Mr. Boird and Mr. Ivey.

13 Q. And the subject you were asked to arrest, was
14 that Mr. Boird or Mr. Ivey?

15 A. Mr. Boird.

16 Q. Mr. Boird. And what was the alleged crime
17 that he -- that had occurred earlier?

18 A. I believe it was obstructing a public
19 thoroughfare, and then we did another one as well.

20 Q. Were Mr. Boird and Mr. Ivey in a vehicle when
21 you came up on them?

22 A. Yeah. There were myself and three other
23 detectives from my unit initiated a traffic stop on the
24 vehicle driven by an unknown female. Mr. Boird was the
25 driver-side rear passenger. Mr. Ivey was the front



1 seat passenger of that vehicle.

2 Q. Do you recall the names of the other officers
3 involved?

4 A. In my car on the traffic stop initially would
5 have been myself, Detective Moore, Detective Bent, and
6 Detective Porianda, P-O-R-I-A-N-D-A.

7 Q. Have you ever heard of an Officer Contreras?

8 A. Officer Contreras?

9 Q. Yes.

10 A. Yeah.

11 Q. Was he involved in this incident?

12 A. Detective Contreras was involved in this
13 incident, yes.

14 Q. Was he attempting to make an arrest?

15 A. He was.

16 Q. And did you witness his attempt to make the
17 arrest?

18 A. I did.

19 Q. What happened?

20 A. Detective Contreras was not the first person
21 to attempt the arrest. So as I indicated, it was
22 myself and three other detectives who walked up to the
23 car and initially made contact with Mr. Boird.

24 Detective Moore would have been on the
25 driver's side, rear passenger's side. He contacted



1 Mr. Boird, asked Mr. Boird to step out of the vehicle
2 and informed him that he was under arrest. Mr. Boird
3 refused. I was on the passenger's side rear. I then
4 leaned in and informed Mr. Boird he was under arrest
5 and needed to exit the vehicle. He refused to do so
6 and then physically began to resist being taken from
7 the vehicle, at which point additional detectives came
8 to help extract him from the vehicle, and that's where
9 Detective Contreras came in.

10 Q. You said he -- he resisted leaving the
11 vehicle. He did he do that? Did he just sit there?

12 A. No. He physically turned his body. And using
13 his legs, pressed up against the B pillar on the inside
14 of the car, to forcibly push himself away from the
15 officers and keep from being pulled out of the vehicle.

16 Q. The B pillar. What is a B pillar?

17 A. Is there anywhere I can draw something?

18 Q. I don't see anything, but maybe --

19 A. Okay. So if you are looking at a car from the
20 side. You got the front door, four-door sedan. You
21 have the front door, a rear door, and then the trunk
22 and the engine compartment; right?

23 Q. Right.

24 A. So that front part of the windshield where the
25 frame comes up, that's the A pillar. The B pillar is



1 the one between the doors. And the C is the back
2 window pillar of the car. Does that make sense?

3 Q. Got it.

4 Detective Contreras put together his account
5 of the -- of the difficult arrest. Did you review it?

6 A. I don't think -- I don't know if I ever
7 reviewed his report, but I was this. I watched him.

8 Q. Were any of the officers wearing bodycam
9 video?

10 A. We all were, as far as I know. We're required
11 to.

12 Q. Was Mr. Ivey, one of the -- one of the
13 suspects, did he also make a video of the encounter?

14 A. He was using his phone to video the encounter
15 as was Mr. Boird.

16 Q. So the police officers have their bodycam.
17 And the two, I'll call them suspects were also using
18 their cell phones to videotape?

19 A. That's correct.

20 Q. Did you review all the video, the bodycam in
21 the case?

22 A. Did I review all the -- no.

23 Q. Did you review your own?

24 A. I may have when I wrote my report. But
25 because I wasn't the assigned case agent, I didn't



1 review everybody's body camera or any of the video.

2 Q. Did you review Mr. Ivey's?

3 A. No.

4 Q. You didn't review the other person,
5 Mr. Boird's video either?

6 A. I did not -- not -- not following the arrests.
7 And after the cameras were downloaded, I didn't have
8 anything to do with the forensic part of that.

9 Q. When an officer bodycam video is operating,
10 which way is it facing? I'm not saying northwest,
11 eastwest, but which way is it facing?

12 A. It kind of depends on the officer's placement
13 of the camera on his body. You're supposed to place it
14 in the middle so you can get the best camera angle
15 because it's a wide-angle view. Some officers put it
16 to one pocket or the other, so it will turn one way or
17 the other.

18 Q. Generally speaking, it's -- it's photographing
19 things in front of the officer?

20 A. Correct. And it's a wide-angle view.

21 Q. Does the bodycam video pick up everything that
22 is transpiring in an arrest?

23 A. No. Probably not. And if you've ever watched
24 a body camera video or Ridiculousness or any YouTube
25 videos, if you can picture a camera on a moving object,



1 a person's body, it moves side to side, up and down.

2 Sometimes they fall off.

3 Q. Is it possible for a police officer to have a
4 body -- bodycam -- this is based on your experience
5 pursuant to the arrests you made.

6 Is it possible for a police officer to have a
7 bodycam video facing forward, but the police officer
8 himself or herself to physically have peripheral vision
9 to see something outside of the scope of the bodycam?

10 A. Yeah. Absolutely.

11 MR. HENLEY: I'm going to object. We're
12 getting into speculative testimony.

13 THE COURT: Well, I think the answer is
14 obvious. I think we're spending time on things that
15 are obvious. Bodycam only captures what it's pointed
16 at.

17 BY MR. CALDERON:

18 Q. Do you recall Detective Contreras's placement
19 of his camera?

20 A. On that evening, no, I don't.

21 Q. Are you aware that the case against Mr. Boird
22 and Mr. Ivey were ultimately dismissed?

23 A. I was.

24 Q. When did you become aware of that?

25 A. After we received notification of the



1 dismissal. So I don't know how long that would have
2 been afterwards.

3 Q. And how did you receive notification of the
4 dismissal?

5 A. I honestly don't remember. I don't remember
6 if it was just notified through word of mouth or -- but
7 I do know it was dismissed.

8 Q. Did you speak with anyone at the Maricopa
9 County Attorney's Office about the dismissal?

10 A. I did.

11 Q. Who did you speak to?

12 A. Deputy County Attorney Ryan Green.

13 Q. And what did you tell Mr. Green?

14 A. We had a meeting at the County Attorney's
15 Office, and I disagreed with the dismissal of the
16 charges against Mr. Boird and Mr. Ivey.

17 Q. And what was the basis of your disagreement
18 with that decision?

19 A. Because the crimes alleged occurred.
20 Mr. Boird resisted arrest after being given a lawful
21 order to exit the vehicle and being told he was under
22 arrest. And then Mr. Ivey assaulted Detective
23 Contreras, contributing to the resisting arrest portion
24 for Mr. Ivey, as Detective Contreras was trying to take
25 Mr. Boird into custody.



1 Q. Did Mr. Green provide you -- I'm not saying to
2 tell me exactly what he said or anything, but did he
3 provide you with any sort of a contra-opinion as to why
4 the case should have been dismissed?

5 **A. It wasn't captured on the body camera.**

6 Q. So that was -- that was the reason?

7 **A. Yes.**

8 Q. From your past experiences with the Maricopa
9 County Attorney's Office, is this decision to dismiss
10 this type of a case consistent with past practices you
11 observed?

12 **A. I've been part of cases that the County has**
13 **dismissed previously, and they give reasons for that.**
14 **No reasonable likelihood of conviction is one that's**
15 **used on a regular basis. That's one of the biggest**
16 **ones that I've seen, so it's not uncommon for the**
17 **County to dismiss cases in that regard.**

18 Q. To this day, do you still believe that the
19 case should not have been dismissed?

20 **A. Absolutely.**

21 Q. Why not? Why shouldn't it have been
22 dismissed?

23 **A. Because these two subjects committed crimes.**
24 **They resisted arrest, and one assaulted an officer.**
25 **That case should never have been dismissed.**



1 MR. CALDERON: Thank you.

2 No more questions, Your Honor.

3 THE COURT: Cross-examination?

4 MR. HENLEY: Very briefly.

5

6 CROSS-EXAMINATION

7 BY MR. HENLEY:

8 Q. What were the crimes that Mr. Ivey and
9 Mr. Boird were charged with?

10 A. On the night, I'm sure it would have been
11 the --

12 Q. Not would have been. What were they charged
13 with. Do you know?

14 A. It would have been obstructing of public
15 thoroughfare and then -- this is just going off -- I
16 don't know specific. This is just going off of my
17 memory.

18 I would have charged them with resisting
19 arrest and the assault on the detective, at minimum.

20 Q. And what grade classification are those
21 crimes?

22 A. The obstructing of a thoroughfare, I think, is
23 a 2 misdemeanor. And then the resisting arrest would
24 have been a 6, I think. And then the aggravated
25 assault on the officer probably would be a 4.



1 Q. Are you a lawyer?

2 **A. I'm sorry?**

3 Q. Are you a lawyer?

4 **A. No, sir.**

5 Q. Have you ever been licensed to practice law?

6 **A. No.**

7 Q. Are you familiar with any of the MCAO policies
8 or procedures regarding the ethical prosecution of
9 criminal cases?

10 **A. No.**

11 Q. You understand that the Maricopa County
12 Attorney's Office is the proper entity to determine
13 when and how they will prosecute cases; correct?

14 **A. Correct.**

15 Q. While you have an opinion or disagree with
16 their decision, you understand that the MCAO is
17 ultimately obligated to make the ultimate decision as
18 to how a case is going to be resolved; correct?

19 **A. Correct. It's their obligation to discharge
20 their duties.**

21 Q. Did you testify at the grand jury presentation
22 in the Ivy/Boird case?

23 **A. No.**

24 Q. Did you attend any of the hearings in the
25 Ivy/Boird case?



1 **A. No.**

2 Q. Did you have any conversations with
3 Ms. Sponsel in the -- regarding the Ivy/Boird case?

4 **A. Not that I recall.**

5 Q. Did you participate in any meetings with any
6 other MCAO attorneys other than Ryan Green regarding
7 their decision to dismiss the Ivy/Boird case?

8 **A. No.**

9 MR. HENLEY: I have no further questions.

10 THE COURT: Any re-direct?

11 MR. CALDERON: None.

12 THE COURT: Sir, before I excuse you, let
13 me see if our hearing panel members have any questions
14 for you.

15 Mr. Sifferman?

16 PANEL MEMBER SIFFERMAN: Yes.

17

18 EXAMINATION

19 PANEL MEMBER SIFFERMAN: In this case,
20 the lawyers with the State Bar and Ms. Sponsel's
21 attorneys have stipulated to certain facts. And
22 there's some facts that they stipulated to regarding
23 Boird and Ivey.

24 In fact, 130 says on July 11, 2020, a
25 protest was held in downtown Phoenix. That afternoon



1 Phoenix Police Department officers made a traffic stop
2 and arrested the driver, Kristen Boird, and passenger
3 Jonah Ivey. Is that the incident you're talking about?

4 **THE WITNESS:** I don't believe that's the
5 same incident. I could be wrong.

6 This was a female driving the vehicle
7 that day, and Mr. Ivey was the front seat passenger.
8 Mr. Boird was the back seat passenger. That's the
9 incident I'm speaking about.

10 **PANEL MEMBER SIFFERMAN:** So okay. Was
11 the driver a female, Kristen Boird?

12 **THE WITNESS:** No. No. No. No. Kristen
13 Boird -- it's Kristen. It's confusing, but he is a
14 male, a black male.

15 **MR. SIFFERMAN:** Kristen.

16 **THE COURT:** Can I ask the State Bar to
17 clarify whether the comprehensive -- or the joint
18 pretrial statement that Mr. Sifferman is referring to,
19 starting with paragraph 130, does talk about Kristen,
20 K-R-I-S-T-E-N, Boird, B-O-I-R-D, and Jonah Ivey (July
21 11th protest).

22 Is that different from what we've just
23 been hearing about?

24 **MR. HENLEY:** There are two charges
25 against -- against Mr. Boird and Jonah Ivey. The first



1 is the July 11th, and that is the one where -- oh, it
2 does look as though that may have been a -- it looks
3 like the driver is in fact -- is an uncharged person.

4 THE COURT: Can you pull the microphone
5 closer.

6 MR. HENLEY: Yes. I'm sorry. I'm sorry,
7 Judge.

8 Yeah. That is the -- that is the protest
9 that we're speaking about.

10 THE COURT: Then how should paragraph 130
11 in the joint prehearing statement?

12 MR. HENLEY: Yeah. I'm not sure exactly
13 how that -- the driver -- the traffic stop was effected
14 and the two people that were you arrested were Kristen
15 Boird and passenger Jonah Ivey. Both were passengers,
16 however.

17 THE COURT: And is it Kristen?

18 MR. HENLEY: Kristen.

19 PANEL MEMBER SIFFERMAN: Is a male?

20 MR. HENLEY: Is a male.

21 PANEL MEMBER SIFFERMAN: Kristen.

22 THE COURT: Thank you.

23 Go ahead, Mr. Sifferman.

24 THE WITNESS: Yeah. My apologize for any
25 confusion.



1 PANEL MEMBER SIFFERMAN: Sir -- never
2 mind.

3 I'm wondering why stipulated fact 135
4 would say Boird and Ivey were arrested without
5 incident. From what you testified, it was an incident.

6 **THE WITNESS: So I don't know where the**
7 **"without incident" language comes from. I don't know**
8 **if it's from the State side or Ms. Sponsel's side. But**
9 **"without incident" normally means there is no injury,**
10 **nobody was hurt, nobody was shot, nobody was**
11 **hospitalized, things like that.**

12 PANEL MEMBER SIFFERMAN: Thank you.

13 THE COURT: Mr. Clark, any questions?

14 PANEL MEMBER CLARK: Yes.

15

16 EXAMINATION

17 PANEL MEMBER CLARK: You testified that
18 there were four officers there the day of the arrest
19 that you participated in.

20 **THE WITNESS: Yes. Four including me.**
21 **So three detectives and then myself as a supervisor.**

22 PANEL MEMBER CLARK: And the case was
23 dismissed because of no bodycam footage?

24 **THE WITNESS: I don't know why the County**
25 **Attorney's Office dismissed it. I can speculate why.**



1 But I was told by Ryan Green that the alleged assault
2 and the resisting part wasn't captured on the body
3 camera so no reasonable likelihood of conviction.

4 PANEL MEMBER CLARK: How is there no
5 bodycam footage from four officers surrounding the car.

6 THE WITNESS: That's a great question,
7 sir.

8 PANEL MEMBER CLARK: Thank you.

9 THE COURT: All right. I think those are
10 all the questions for you, sir.

11 Thank you for coming down to testify, and
12 you're free to leave.

13 THE WITNESS: Thank you.

14 THE COURT: I think that is your final
15 witness for today; correct?

16 MR. CALDERON: Yes, Your Honor.

17 THE COURT: All right. So we're
18 scheduled to start at 9:30 in the morning. And
19 hopefully we will proceed expeditiously and finish
20 tomorrow.

21 Is there anything else we need to discuss
22 or put on the record today?

23 MR. HENLEY: Nothing from the State Bar.

24 THE COURT: Thank you. Then we will
25 stand at recess until 9:30 tomorrow.



1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

3

4 BE IT KNOWN that I certify that the foregoing
 5 pages were prepared from an electronic recording; that
 6 research was performed on the spelling of proper names
 7 and utilizing information provided, but that in many
 8 cases, the spellings were educated guesses; that the
 9 transcript was prepared by me or under my direction and
 10 was done to the best of my skill and ability.

8

9 I CERTIFY that I m in no way related to any of
 10 the parties hereto nor am I in any wy interested in
 11 the outcome hereof.

10

11 I CERTIFY that I have complied with the ethical
 12 obligations set forth in ACJA 7-206(F)(3) and ACJA
 13 7-206(J)(1)(g)(1) and (2). Dated in Phoenix, Arizona,
 14 this 8th day of November 2023.

13

14

15 /s/ Mary Davis

16

 Mary Davis
 AZ Certified Reporter No. 50271

17

18

19 I CERTIFY that GRIFFIN GROUP INTERNATIONAL, has
 20 complied with the ethical obligations set forth in ACJA
 21 7-206(J)(g)(1) through (6).

21

22

23

/s/ Pamela A. Griffin

24

 GRIFFIN GROUP INTERNATIONAL
 Registered Reporting Firm
 Arizon RRF No. R1005

25



<p>(d)(1) 118:1</p> <p>0</p> <p>00 74:25</p> <p>000075 103:3</p> <p>000084 103:15</p> <p>000143 78:2</p> <p>000192 79:13</p> <p>000199 80:10</p> <p>000230 80:24</p> <p>00072 102:17</p> <p>00143 78:18</p> <p>00186 79:12</p> <p>002234 93:3</p> <p>00230 81:5</p> <p>004114 76:14 77:14</p> <p>005208 108:10,12</p> <p>005394 73:2</p> <p>005396 72:6</p> <p>005398 73:25</p> <p>007427 148:8</p> <p>007808 150:8,13 151:2</p>	<p>08 151:3</p> <hr/> <p>1</p> <p>1 81:17 96:4 100:25 181:21</p> <p>10 116:4 140:19 159:18</p> <p>100 95:9 145:22</p> <p>107 93:2</p> <p>10:30 133:5,8</p> <p>10th 72:10 73:10,17 109:25 110:2</p> <p>11 98:19 207:24</p> <p>11:00 128:21</p> <p>11:25 85:14 86:14</p> <p>11:35 85:15 86:12,14</p> <p>11th 208:21 209:1</p> <p>12 125:23</p> <p>120 55:11 64:12,21</p> <p>122 74:15 86:5 116:12 117:23</p> <p>124 150:10,14</p> <p>12:15 114:16</p> <p>12:29 126:21</p> <p>12th 38:11,13 39:18 54:21 55:21 64:14 65:10,20 68:19</p>	<p>69:3,13 84:6 89:7 105:4</p> <p>13-105.8 57:23 61:25</p> <p>13-105.9 58:3 61:20</p> <p>130 207:24 208:19 209:10</p> <p>1312 84:20 113:5</p> <p>135 210:3</p> <p>135.1 51:22 52:3 66:15</p> <p>135.2 54:6,15 66:10</p> <p>13th 25:6,16</p> <p>14 98:4 195:21</p> <p>14th 96:7,21 182:2</p> <p>15 75:4 114:24 116:10 130:10 185:15 188:17,22 189:11</p> <p>15.1 165:18,24,25 166:2,4,11,15,25 167:7,19 168:12, 22 170:13 173:5, 17 190:18</p> <p>15.2 165:20,25 166:3,8, 11,15 168:22 170:13 173:5</p> <p>15.4(b)(2) 102:25 103:13</p> <p>15th 77:21,23 78:17</p> <p>16 76:23</p> <p>160 108:8,12</p>	<p>169 73:1</p> <p>16th 75:1</p> <p>17 49:16 70:15 75:4 76:23 85:1 94:5 108:4</p> <p>17-year 69:24</p> <p>170 72:6 190:9,12</p> <p>171 73:25</p> <p>177 182:25</p> <p>178 182:23</p> <p>17th 36:10,22 39:4,12 41:7 49:15 50:13 55:6 58:2 60:22 61:14 62:25 63:5 64:9 69:2,16 70:14 80:20 83:23 84:4, 12,18,19 87:15 89:11 91:8 92:19 94:24 95:14 105:16 106:15 109:18 110:17 111:15</p> <p>18 98:19</p> <p>183 25:7</p> <p>190 37:7,13 84:17 113:1</p> <p>1940s 111:3</p> <p>1985 159:8 161:6</p> <p>1989 159:10,14</p> <p>1999 159:17</p> <p>19th</p>	<p>79:18 80:5</p> <p>1:15 125:23</p> <p>1:16 126:21</p> <p>1:30 5:17 125:15 126:17,18,19 128:22 133:9</p> <p>1:56 155:24</p> <hr/> <p>2</p> <p>2 98:24 104:7 112:8, 21 150:16 205:23</p> <p>20 24:4 56:20 119:2 138:5,6</p> <p>20-minute 130:11</p> <p>2000 71:15 160:21</p> <p>2006 160:20,21 161:4 162:16 163:24</p> <p>2007 162:23</p> <p>201 74:8</p> <p>2011 135:24</p> <p>2012 136:6 138:8</p> <p>2014 7:15 18:12 96:7,21 98:4,19</p> <p>2015 33:7 164:19 165:5</p> <p>2018 72:11 186:7,9</p> <p>2019 75:1 77:23 78:13, 17 79:18 80:20 81:24 82:7 141:7, 18</p>
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