

EXHIBIT 51

RECEIVED IN
POST TRIAL
DISTRICT CLERK OFFICE

MAR 24 2016

Time:

Harris County, Texas

By:

Deputy

EX PARTE

Cause No. 903122-C

FILED

Chris Daniel
District Clerk

MAR 24 2016

Time:

Harris County, Texas

By:

Deputy

IN THE 179th DISTRICT COURT

§ OF

HERMILIO HERRERO, JR.,

§ HARRIS COUNTY, TEXAS

Applicant

AFFIDAVIT OF KELLY SIEGLER

My name is Kelly Siegler. I am fifty-three years old, a citizen of Harris County, Texas, and competent to compose this affidavit. The facts detailed below are true and correct and are recited to the best of my recollection.

During April 2002, I served as the lead prosecutor in the *State of Texas v. Hermilio Herrero*, cause no. 903122. This was a cold case murder in which the evidence showed that the complainant, Albert Guajardo, had his throat slit, was beaten on the head and torso, and left on the street in a rolled up carpet. The defendant was a prime suspect at the time the case went cold. I presented testimony from Jesse Moreno and Rafael Dominguez, two of Herrero's fellow inmates at the U.S. Bureau of Prisons facility at Beaumont, Texas, regarding confessions Herrero made to them about the manner and means by which he murdered Guajardo.

Moreno and Dominguez sought me out in order to inform me of Herrero's confessions. During my separate pre-trial interviews with both, I found their respective recounting of Herrero's confessions to be credible, and I would not have presented them as witnesses at trial if I had doubts about their truthfulness on this matter. They both possessed corroborated knowledge about Guajardo's manner and means of death. In addition, Dominguez was uniquely, and correctly, aware that Herrero was one of the last people seen with Guajardo and that he had been questioned by the police during the investigation.

Throughout trial I was forthright that, in return for their truthful testimony, the federal prosecutors handling Moreno's and Dominguez's cases would receive a letter from me detailing the assistance they provided to the State, and that Moreno and

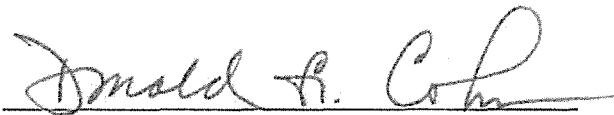
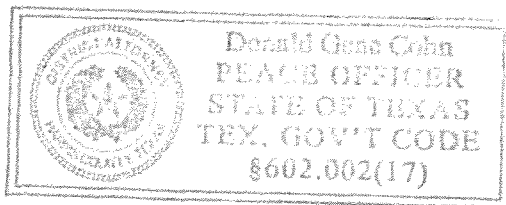
Dominguez might receive a sentence reduction in consideration. I also disclosed to defense counsel, Dan Cogdell, the audiotape of a pre-trial interview with Moreno, and he used this tape during his cross-examination of Moreno.

Prior to trial, I also interviewed Nathan Foreman who was another of Herrero's fellow inmates at the U.S. Bureau of Prisons facility at Beaumont. During the interview, Foreman recounted that Herrero confessed to him about murdering Guajardo. It is my understanding that Foreman now attests in an affidavit that Herrero was "set up for the Guajardo murder." He never told me this. Moreover, Foreman's affidavit suggests that Moreno may have been a guest in my house; that suggestion is absurd. Based upon my pre-trial interview with Foreman and the information he gave, I do not consider his January 11, 2016 affidavit to be credible.



Kelly Siegler

Subscribed and sworn to before me this 22 day of MARCH, 2016.



Peace Officer
State of Texas

EXHIBIT 52

Fact Witness Voucher

- Circle one
- ☒ I (was) (was not) a United States citizen at the time of attendance
 - ☐ I (was) (was not) a Government employee at the time of attendance
 - ☐ I (did) (did not) receive a cash or check advance. Total advance issued \$ _____ from _____

Witness Name: Kelly Seigler	Case Number: 96-20037-005
Social Security Number: 412-17-3417	Case Name: US v. Jesus Moreno
Address: 1201 Franklin Street, Suite 600	District: NDLA
City: Boston State: TX Zip: 77002	Court Location: Lafayette
Telephone No. (including area code): 713-755-6178	GTA ☐ Transportation ☐ Lodging ☐

PART I - Attendance Certification (by Government Official)		Object Class	Amounts (Dollars)
Retention of these fees is considered taxable income and reportable to IRS			
A. Attendance Fees			
Deposition Dates	\$40@ _____ days	1126	
Grand Jury/Trial Attendance Date (Including Travel)	08/22/02 \$40@ 1 days	1156	40.00
Pretrial Attendance Dates (Including Travel)	\$40@ _____ days	1194	
Detained Dates - Citizen/Visitor In Custody	\$40@ _____ days	1193	
Detained Dates - Deportable Alien In Custody	\$ 1@ _____ days	1195	
Total Fees			40.00

B. Attendance Attestation: I attest that the witness named above attended in the case or matter indicated and is entitled to the statutory allowance for attendance and travel. In proceedings before U.S. Magistrates where more than four witnesses were called, the Magistrate also attests that the approval and certificate of the U.S. Attorney were first obtained.

Signature: _____	Title of Authorized Government Official: Assistant U.S. Attorney	Date: 08/22/02

PART II - Allowances			
C. Travel by Carrier (Receipts required if paid by witness)	(DO NOT claim if paid by Government)		
Check one ☐ Train ☐ Bus ☐ Air		2191	
D. Travel by Privately Owned Vehicles: ☒ Auto/Truck/Van ☐ Motorcycle ☐ Airplane			
Round trip mileage 440 @ \$ 1.30 per mile			
Total number of trips 1			
Less advance received \$ _____		2192	\$167.90
E. Local Transportation & Other Expenses: (e.g., taxi, tolls, parking, etc.) (Receipts required for parking and expenses over \$25.00) (Tips and gratuities not reimbursed)			
List (item, date and amount)			
N/A		2193	

F. Meals and Lodging:			
1. Travel days (1/2 day's M&IE per day)	@ \$ N/A day(s) = \$ _____		
2. Days away from home (full day's M&IE per day)	@ \$ N/A day(s) = \$ _____		
3. Actual cost of lodging, not to exceed \$ _____	@ \$ N/A night(s) = \$ _____		
(DO NOT claim if paid by Government) (Receipts are required if paid by witness)			
Less advance received \$ _____		2194	

G. Witness Certification:			
I certify that this voucher is true and correct to the best of my knowledge and belief, and that payment or credit has not been received by me. (If not a citizen, present your Alien Registration Record with this form)			
Witness Signature: _____	Date: 08/22/02	Alien Registration Record No. _____	

H. Claim Verification: Based upon the above information and receipts furnished by the witness, I verify the above information is true and correct to the best of my knowledge.			
Signature: _____	Title of Authorized Government Official: Assistant U.S. Attorney	Date: 08/22/02	
		Net Amount Paid	\$207.90

PART III - Certification

THIS VOUCHER IS CERTIFIED CORRECT AND PROPER FOR USE BY 2016-000023

EXHIBIT 53

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RONALD JEFFREY PRIBLE

Petitioner,

v.

**LORIE DAVIS, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL
INSTITUTIONS DIVISION,
Respondent.**

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CASE NO. 4-09-CV-01896

DECLARATION OF GORDON HARPE

In accordance with the provisions of Section 1746 of Title 28, United States Code, I, the undersigned, Gordon Harpe, hereby make the following unsworn declaration, under penalty of perjury, pertinent to the above-styled and numbered cause:

During 1998-2002, I worked at FCI Beaumont Medium. I was a lieutenant for approximately a year before being promoted to Unit Manager.

I remember at one point a white inmate approached me and said he had information concerning a multi-victim homicide that occurred in Houston, Texas. He asked for my help in contacting the prosecutor responsible for the Houston murder case. To the best of my recollection, I was not this inmate's Unit Manager at the time; he told me he was coming to me because he did not trust one or more members of his own unit team.

At some point later, I learned that the prosecutor's name was Kelly Siegler. I remember that I either called Ms. Siegler's office myself to pass along the information, or I passed it on to the Special Investigative Services Department (SIS) and they contacted Ms. Siegler. If I referred it to SIS, my referral would have been documented. It would have been very uncommon for me to have contacted Ms. Siegler rather than deferring the matter to SIS, but I may have done so. I do remember speaking with Ms. Siegler on the telephone at some point during this time frame. I do not remember the substance of the call.

An FCI Beaumont inmate could call any attorney he wished from the regular inmate phones in the housing units, but those calls would be recorded. Under BOP policy, if an inmate desires to make an unmonitored call with an attorney, he would need the assistance of staff to do so. A staff member would determine whether the attorney was in good standing with his or her state bar association, and if there were no issues an unmonitored call would be arranged. Staff may also arrange for an unmonitored call to a prosecutor or other law enforcement official if an

inmate desires to share information about a case. The SIS Department would normally handle arranging an unmonitored call with a prosecutor's office or other law enforcement agency. This call may or may not be recorded.

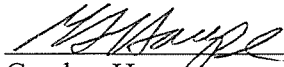
I never met Ms. Siegler face-to-face. I do not know if she met with the informant who reached out to me in person or not. If Ms. Siegler met face-to-face with an inmate in the Lieutenant's Office, that would have been very unusual. I do not know who the lieutenant would have been.

When an inmate is sentenced in federal court, he is first designated to a BOP facility, such as FCI Beaumont Medium. After the inmate arrives at the designated institution, the Designation Committee or Case Management Coordinator determines the inmate's housing unit. The BOP counselors determine the inmate's particular cell placement within that housing unit, and they have the ability to move the inmate to different cells as they see fit.

I recall speaking with Ms. Siegler again after some time had passed from my initial conversation with the inmate. She thanked me for not discounting the informant's claim during this call.

I declare, under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of June, 2017



Gordon Harpe

EXHIBIT 54

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RONALD JEFFREY PRIBLE,

PETITIONER,

V.

CASE NO. H-09-CV-1896

**LORIE DAVIS, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,**

RESPONDENT.

AFFIDAVIT OF JESSE OSCAR GONZALEZ

**STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

Before me, the undersigned Notary Public, on this day personally appeared Jesse Oscar Gonzalez, known to me, who being by me duly sworn upon his oath, deposed and said:

1. My name is Jesse Oscar Gonzalez. I am 46 years old and have personal knowledge of the facts stated herein and they are all true and correct.
2. I used to be an inmate in FCI Beaumont. I arrived in FCI Beaumont Medium sometime in the summer of 2000.
3. While at FCI Beaumont, I met an inmate named Jeff Prible. I knew Jeff before I went to prison. We lived in the same Houston neighborhood. A friend of mine was also a friend of Jeff's.
4. Jeff was in the Low but I remember in 2001 he was coming over to the Medium because of a case he was charged with. Before Jeff got to the Medium people in the Medium knew he was coming over there and they knew what had happened in his case. The word on the yard was that people had been shot and a house was set on fire and three little girls died in the fire. A news article came out before Jeff got to the Medium describing the murders. There was talk on the Medium about checking Jeff in as soon as he got on the yard because people believed he killed the three little girls.



5. Guys were talking about Jeff's case on the yard all the time. The guys were trying to put together information so they could give it to the prosecutor and get a time cut. They were saying that Jeff would be their ticket out of prison. I saw a photo dated 11/11/01 with Jeff and these guys. The photo is attached to this statement as **Exhibit A**. In the picture I'm kneeling at Jeff's right-hand side. I have a tattoo on my right arm.

6. We used to make a lot of homemade wine and drink it on the yard. Whenever there was wine the guys on the yard would try to get Jeff drunk to loosen his lips so he'd talk about his case. Sometimes he would get so drunk he couldn't walk back to his cell.

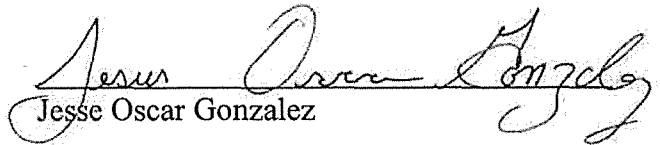
7. I remember the prosecutor on Jeff's case was named Kelly Siegler. I remember seeing her on television later because she was a big-time prosecutor. Siegler was well-known on the compound. The word was that if you helped Siegler, she would help you.

8. My dad Felix was doing 25 years in FCI Beaumont. I wanted to help him get his sentence lowered. One of the guys told me that I should contact Siegler. I remember going into the counselor's office with my dad once and talking with Siegler on the phone. I can't remember the counselor's name but I remember she was a woman. Siegler asked me my name and if I knew Jeff. I told her I did and she said she would be in touch. But I never heard from her after that.

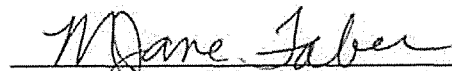
9. I remember writing a letter to Siegler saying I would testify against Jeff because I wanted to help my dad. I wrote the letter by hand. I do not type. I don't even use a computer or text. Someone else must have typed the letter from me to Siegler that is attached as **Exhibit B**. Whoever typed it changed the wording. I do remember signing it.

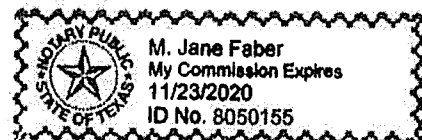
10. I have three little girls. In prison, there is nothing worse than killing kids. But Jeff never told me that he killed Steve, Nilda, or the three girls. I never heard him say that to anyone else either.

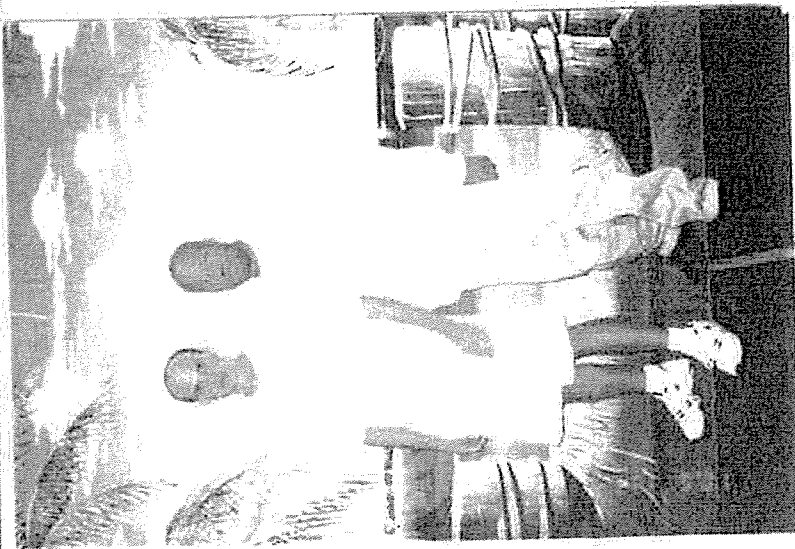
In witness whereof, this 30th day of January, 2017.


Jesse Oscar Gonzalez

SUBSCRIBED TO AND SWORN BEFORE ME, on the 30th day of January, 2017, to certify which witness my hand and official seal.


Notary Public in and for the State of Texas





EXHIBIT

A

tabbles

Jesse Gonzalez 87641-079
Felix Gonzalez 83154-079
P.O. Box 26040
Beaumont, TX 77720-6040

Kelly Siegler
1201 Franklin, Ste. 600
Houston, TX 77002

Re: Pribble

Ms. Siegler,

I'm writing this letter on behalf of myself and my father, Felix Gonzalez. We both have spoken to you on two previous occasions regarding the Pribble case. As I told you on the phone, I know Pribble from Woodgate subdivision where we lived; he was a neighborhood friend of mine. He used to visit my house often and hang out with us.

I'm familiar enough with him that my ex-wife and I found him to be somewhat of a mooch, and a little weird. But since we lived in the same neighborhood, we ended up seeing and hanging out with one another often. My house was one street over from Jeff's. There were a couple of other friends, John and Chip, that were around us also at that time.

My father met Jeff at my house when he and my mother used to come visit. At first we didn't want to give information against Jeff because I did consider him a friend; I know his mom and we have some mutual friends. The thought of testifying while our friends and his parents are there watching was making me uncomfortable. But after seeing the photo of Steve, Nelda, and their children in the newspaper recently, it reminded me of what that crazy, sick son of a bitch did. I truly hope he rots in hell for it.

A while back when my father was originally telling me about Jeff, and that Jeff knew us, I was unable to place him until I saw him when he came from the low-security facility. Once I saw him I remembered him from the neighborhood. One afternoon Jeff and my father were walking the track talking, so inmate Walker and I approached them to see what was going on. Jeff was worried that inmates Martinez and Dominduez might want to retaliate for Steve and Nelda. Jeff started to explain that Steve had screwed him out of some money so he did what he had to do but he didn't know the kids were there, that part was an accident. Jeff said that if Steve would have paid him his money he wouldn't have been there in the first place.

EXHIBIT

B

Walker and I went to talk with Martinez and Dominguez, and they stated that they just needed to have a word with Jeff to find out what really happened. We then called my dad and Jeff over to talk with us and we all listened as Jeff explained why he killed Steve. Once they heard what he said, they decided to let things alone, and Jeff began to hang out with all of us from Houston.

I have three little girls myself; Brittany is eleven, Ashley is seven, and Jessica is four. So I will do it for the little girls; Rachel, Valerie, and Jade. After Jeff began hanging around with us he started to tell us of a lot of crazy things he had done and gotten away with. My father and I are willing to testify to the things Jeff has told us. Please contact us if you need any additional information.

Sincerely,

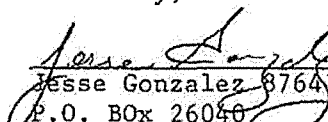

Jesse Gonzalez 87641-079
P.O. Box 26040
Beaumont, TX 77720-6040

EXHIBIT 55

Page 1

UNITED STATES DISTRICT COURT
for the
Southern District of Texas

RONALD JEFFREY PRIBLE, JR.)
Plaintiff)

v.) Civil Action No.
4:09-CV-01896

LORIE DAVIS, DIRECTOR, TEXAS)
DEPT OF CRIMINAL JUSTICE,)
INSTITUTIONAL DIV.)
Defendant)

ORAL DEPOSITION OF
RAFAEL DOMINGUEZ
APRIL 17, 2017

ORAL DEPOSITION OF RAFAEL DOMINGUEZ, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and numbered cause on APRIL 17, 2017, from 1:31 p.m. to 3:19 p.m., before Aubrea Hobbs, CSR, RPR, in and for the State of Texas, reported by computerized machine shorthand, at the offices of Hilder & Associates, P.C., 819 Lovett Boulevard, in the City of Houston, County of Harris, State of Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Page 2

A P P E A R A N C E S

FOR THE PLAINTIFF:
Mr. James G. Rytting, Esq.
HILDER & ASSOCIATES, P.C.
819 Lovett Boulevard
Houston, Texas 77006
E-mail: james@hilderlaw.com

FOR THE PLAINTIFF:
Ms. Gretchen N. Scardino, Esq.
REED & SCARDINO, LLP
301 Congress Avenue, Suite 1250
Austin, Texas 78701
E-mail: gscardino@reedscardino.com

FOR THE DEFENDANT:
Ms. Tina J. Miranda, Esq.
-and-
Mr. George A. d'Hemecourt, Esq.
ATTORNEY GENERAL OF TEXAS
P.O. Box 12548
Austin, Texas 78711-2548
E-mail: tina.miranda@oag.texas.gov
E-mail: george.d'hemecourt@oag.texas.gov

FOR RAFAEL DOMINGUEZ:
Ms. Mekisha Jane Walker, Esq.
ATTORNEY AT LAW
1714 Sunset Boulevard
Houston, Texas 77005
E-mail: walker@walkerlawhouston.com

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P R O C E E D I N G S

RAFAEL DOMINGUEZ,

Having been first duly sworn, testifies as follows:

D I R E C T E X A M I N A T I O N

BY MR. RYTTING:

Q. Mr. Dominguez, my name is James Rytting.

A. Okay.

Q. I represent Ronald Jeffrey Prible.

A. Okay.

Q. We're going to go first over a little bit about your background and just some basic questions.

A. Okay.

Q. Today are you under the influence of anything --

A. No.

Q. -- that might prevent you from testifying?

A. No.

Q. No? Okay. And could you state your name for us?

A. Rafael Dominguez.

Q. And Rafael, can -- Mr. Dominguez, can you tell us what your current address is?

A. [REDACTED]

Q. And is there a telephone number we can reach you if we need to?

Page 5 1 A. Yes. 2 Q. What? 3 A. 713-515-0752. 4 Q. And you're here with your attorney, and who is 5 she? 6 A. Jane Walker. 7 Q. Jane Walker. And is she currently 8 representing you? 9 A. Yes. 10 Q. And why is she representing you? 11 A. Because I chose her to accompany me here 12 today. 13 Q. Is there any other reason that she'd counsel 14 for any other reason? 15 A. No. 16 Q. Are you facing any charges? 17 A. No. My charge got dismissed. 18 Q. Very good. Congratulations. 19 And -- but you do have a criminal record, I 20 take it? 21 A. Yes. 22 Q. Can you -- what are those? 23 A. Drug trafficking. 24 Q. Drug trafficking. And when was that -- 25 charges?	Page 7 1 A. What did I do there? 2 Q. Were you an educational assistant, for 3 example? 4 A. I think I did teach English class. 5 Q. And are you bilingual? 6 A. Yeah. 7 Q. And while you're at Beaumont, did you ever 8 encounter a man named Ronald Jeffrey Prible? 9 A. I believe so. 10 Q. And this would have been in what year? 11 A. I have no idea. I've met a lot of people 12 there. I was there for a good while, so... 13 Q. Would you disagree if it was in 2001? 14 A. I mean, I can't say yes or no because I don't 15 know, so I mean, I can't -- 16 Q. And you were in the Medium unit, correct? 17 A. Correct. 18 Q. Let me show you some photographs that may help 19 your memory. And I'd like to mark this as Exhibit 1. 20 (Exhibit No. 1 marked.) 21 MR. RYTTING: We'll give you a copy of 22 this. I'm passing around the exhibits showing it to 23 opposing counsel. Would you take a look, Mekisha? 24 MS. MIRANDA: Thanks. 25 Q. (BY MR. RYTTING) Can you identify yourself in
Page 6 1 A. Back in -- I got indicted back in '98. 2 Q. And where were you sentenced? 3 A. Here, Houston. 4 Q. And to what facility? 5 A. I was all over the United States. I was at a 6 lot of different prisons in the United States. 7 Q. So when you were sentenced in the Southern 8 District of Texas -- 9 A. Uh-huh (Affirmative.) 10 Q. -- the first institution that you were sent 11 to -- 12 A. Was Beaumont. 13 Q. FCI-Beaumont? 14 A. Uh-huh (Affirmative.) 15 Q. And the sentence you faced at that time was 16 what? 17 A. At that time I had a life sentence. 18 Q. And let's see. What is your education? 19 A. High school. 20 Q. High school? 21 A. Uh-huh (Affirmative.) 22 Q. Did you graduate? 23 A. No. 24 Q. Did you teach any courses at the -- at 25 FCI-Beaumont?	Page 8 1 that photograph? 2 A. I'm in the -- that might be different back 3 then. I'm on the -- standing up, far right. 4 Q. Okay. 5 MS. MIRANDA: For clarification, there 6 are two photographs? 7 MR. RYTTING: Yes, there's two 8 photographs and you're -- 9 A. On the very top. 10 Q. (BY MR. RYTTING) You're speaking about the 11 top photograph? 12 A. Yeah. 13 Q. Okay. And the -- are you familiar with any of 14 the other individuals in that photograph? 15 A. Uh-huh (Affirmative.) Yeah. 16 Q. Can you name any? 17 A. Bo, Oscar, Mark and Eddie. Wait, hold on. 18 Yeah, that's Eddie. 19 Q. Okay. So Bo is who? 20 A. Bo is the black guy standing next to me. 21 Q. Okay. Is he also known as Nathan Foreman? 22 A. I don't know. We called him Bo. 23 Q. You called him Bo. All right. And is that a 24 picture -- 25 MS. MIRANDA: I'm sorry, I don't mean to

Page 9 1 interrupt. I just want to make sure that I've got -- 2 can you point in the picture to which one when you're 3 saying you're referring to yourself? 4 THE WITNESS: I'm right here. 5 MS. MIRANDA: Okay. All right. When you 6 say "Bo," to which one? 7 THE WITNESS: To my right. 8 MS. MIRANDA: Perfect, sorry. Thank you. 9 MS. SCARDINO: And so the record is 10 clear, Mr. Dominguez has identified himself in the 11 top -- the top photograph, the top row, the second 12 person from the right, correct? 13 THE WITNESS: Yeah. 14 MS. SCARDINO: Okay. 15 Q. (BY MR. RYTTING) And the person that's to 16 your left in the top row, is that Michael Beckcom? 17 A. I mean, I don't know. I don't remember him. 18 Q. Is it a -- is it a man that -- does the name 19 Rocco -- 20 A. Rocco makes -- 21 MS. MIRANDA: Objection, asked and 22 answered. 23 A. I mean, I don't recall. I don't recall his 24 name. Not that name anyways. 25 Q. (BY MR. RYTTING) Do you recall his face?	Page 11 1 Q. The name Carl Walker? 2 A. Huh-uh (Negative.) 3 Q. You don't remember that name? 4 A. No. 5 Q. And then there's someone with a beard who's 6 Hispanic that's -- 7 A. That's Eddie. 8 Q. That's Eddie? 9 A. Yeah. 10 Q. And kneeling to the right of Mr. Prible, who 11 is that? 12 A. Mark. 13 Q. And that's Mark Martinez? 14 A. Uh-huh (Affirmative.) 15 Q. Now let's see. I'm going to mark as Exhibit 2 16 a letter from Jesse Gonzalez to Kelly Siegler. First 17 off, Mr. Dominguez, are you familiar with a person named 18 Kelly Siegler? 19 A. Yeah. 20 Q. And how do you know Ms. Siegler? 21 A. Excuse me? 22 Q. How do you know Ms. Siegler? 23 A. Testified in a case for her. 24 Q. What case was that? 25 A. What's his name?
Page 10 1 A. No, not really. 2 Q. And the person kneeling? 3 A. Which one? There's three kneeling. 4 Q. There's three people kneeling. The person in 5 the center, do you recall who that is? 6 A. That's Jeff. 7 Q. Okay. So that's Mr. Prible. And he's in -- 8 you've identified Jeff as the person in the sweatshirt, 9 the gray sweatshirt in that photograph? 10 A. In the center. 11 Q. And down below there is another photograph. 12 A. Okay. 13 Q. And do you recognize the individuals in that 14 photograph? 15 A. That's Jeff and Bo. 16 Q. All right. To the left of Mr. Prible is whom? 17 Can you identify that person? 18 A. Oscar. 19 Q. And that's Oscar Gonzales, correct? 20 A. Uh-huh (Affirmative.) 21 Q. And immediately in back of Oscar, the African 22 American person, do you know who that is? 23 A. No. 24 Q. Does Carl Walker -- 25 A. No.	Page 12 1 Q. Hermilo Herrero? Hermilo, H-e-r-m-i-l-o, 2 Herrero. 3 I'm going to hand you what I've marked as 4 Exhibit 2. 5 (Exhibit No. 2 marked.) 6 Q. (BY MR. RYTTING) A letter from Jesse Gonzalez 7 to Ms. -- Ms. Siegler. And Jesse Gonzalez is also known 8 as Jesse Oscar Gonzalez, correct? 9 A. I call him Oscar. 10 Q. Oscar Gonzalez? And do you know his father, 11 Peter Gonzalez? 12 A. Uh-huh (Affirmative.) Yeah. 13 Q. And so if Jesse Gonzalez is also Oscar 14 Gonzalez, he'd be the person you identified in that 15 photograph? 16 A. Yeah. 17 Q. Okay. Okay. If you look down to the fourth 18 paragraph -- 19 A. Okay. 20 Q. -- and we -- and we start reading there, 21 there's a reference to you, isn't there, and 22 Mr. Martinez? 23 A. (Witness examines document.) 24 Q. Do you see your name? 25 A. Uh-huh (Affirmative.)

Page 13 1 Q. And it's in the sentence that says: Jeff was 2 worried that inmates Martinez and Dominguez might want 3 to retaliate for Steve and Nelda [sic.] 4 A. That's false because I don't even know them 5 people. 6 Q. You don't know who Steve and Nilda are? 7 A. Huh-uh (Negative.) 8 Q. You didn't know who the Herreras were? 9 A. Who the what? 10 Q. The persons that were -- 11 A. Huh-uh (Negative.) 12 Q. If I told you that Steve and Nilda Herrera 13 were the individuals that were killed -- 14 A. Okay. 15 Q. -- you have no idea -- 16 A. No. 17 Q. -- what that's about? You have no idea? 18 You've never heard of them? 19 A. Huh-uh (Negative.) By those names, no. 20 Q. Do you know him by the name Esteban Herrera? 21 A. No. 22 Q. Do you know her by the name of Nilda Tirado? 23 A. No. 24 Q. You said that you recognized Jeff. Do you 25 understand what he was accused of when he was -- when he	Page 15 1 type of activities you said? 2 Q. (BY MR. RYTTING) As adults you knew each 3 other too? 4 A. Uh-huh (Affirmative.) 5 Q. And you maintained friends as adults? 6 A. Yes. 7 Q. And did you have any business together? 8 A. No. 9 Q. None at all? Did you -- so if you would, just 10 please describe your relationship as an adult, as a 11 young adult with Mr. Martinez. 12 A. He's a very good friend of mine. 13 Q. So what type of things did you do with 14 Mr. Martinez? 15 A. I mean, I don't understand that question. 16 What do you mean, what do friends do? 17 Q. Well, just tell me. 18 A. We hang out, drink together, eat together. I 19 mean, what friends do. 20 Q. Okay. I'm going to mark this as Exhibit 3. 21 (Exhibit No. 3 marked.) 22 Q. (BY MR. RYTTING) And in your opinion, was it 23 common knowledge in FCI-Beaumont that Jeff was charged 24 with capital murder? 25 A. Yeah, I mean, there's a lot of people in
Page 14 1 was -- do you know that he was accused of murder? 2 A. Yeah, I know that. 3 Q. Okay. 4 A. Everybody knew that. 5 Q. But you have no idea of who he was accused of 6 murdering? 7 A. Huh-uh (Negative.) 8 Q. Now, how do you know Mr. Martinez, Mr. Mark 9 Martinez? 10 A. Childhood friends. 11 Q. Okay. Any other relationship with him? 12 A. Huh? 13 Q. Any other relationship with him? 14 A. No. 15 Q. What did you do as children? 16 A. What do you mean what did we do as children? 17 Q. You and Mark Martinez. 18 A. What children do, we grew up together. 19 Q. You grew up together? 20 A. Uh-huh (Affirmative.) 21 Q. I see. And did you engage in any adult-type 22 activities? 23 A. Any what? 24 Q. I mean, as adults, were you -- 25 THE REPORTER: I didn't understand what	Page 16 1 prison charged with capital murder. 2 Q. Okay. Did any of these individuals, did you 3 ever talk to them about -- with any of these individuals 4 about Jeff's case, about the murder case that he was 5 accused of? 6 A. I don't recall. 7 Q. You don't? 8 A. (Nods negatively.) 9 Q. Now when you were -- let me get back to 10 Exhibit 3. I'm going to show you -- 11 A. Which one is that one? 12 Q. -- a letter that has been -- 13 MS. WALKER: He hasn't showed it to you 14 yet. 15 THE WITNESS: Okay. 16 Q. (BY MR. RYTTING) That was from Mark Martinez. 17 A. Okay. (Witness examines document.) 18 Q. And so Mark Martinez apparently knew about -- 19 at least thought he had some information about the 20 murder; is that correct? 21 A. I don't know. I can't tell you what he's 22 thinking. 23 Q. You never talked to Mr. Martinez? 24 A. Not that I recall. 25 Q. You don't recall?

Page 17 1 A. It's over 20 years ago. I mean, I've heard a 2 lot of stories about murder, so... 3 Q. And you're both in FCI-Beaumont at the same 4 time? 5 A. Uh-huh (Affirmative.) 6 Q. What for? How did you get there at the same 7 time? 8 A. What do you mean how did he get there at the 9 same time? 10 Q. Was he -- 11 A. I was there before him. 12 Q. Uh-huh (Affirmative.) 13 A. He showed up, I don't know, a year later or 14 whatever. I don't know. 15 Q. So he wasn't charged with the same crime? 16 A. He was charged with drug trafficking too. 17 Q. Was it the same offense that you were charged 18 with? 19 A. I don't know his exact offense. 20 Q. Was it related to anything that you were 21 doing? 22 A. I'm in prison. He got picked up a year after 23 me or a year and a half after me, so what he's doing on 24 the street or not is none of my business. 25 Q. So you never discussed this case with --	Page 19 1 between him and Martinez and Dominguez. 2 What does that mean to you? 3 A. Don't mean anything to me. You've gotta ask 4 them why they keep on throwing my name in there. 5 Q. So you have no idea why your name would be in 6 there? 7 A. No. 8 Q. And there's also a reference that's to a 9 Mr. Martinez in the first paragraph, if you look at the 10 bottom couple of sentences, and to you again. 11 A. Where's my name in the first paragraph? Oh, 12 okay. Okay. 13 Q. Uh-huh (Affirmative.) And it says that Steve 14 and the family, the Herrera family that was killed. 15 A. Like I told you previously, I don't know these 16 people. 17 Q. Yeah. But they were friends of Martinez? 18 A. You gotta ask him that. I don't know. 19 Q. You don't know if they were friends of 20 Martinez? 21 A. No. 22 Q. You have no idea? 23 A. I have no idea. 24 Q. Did you grow up in the neighborhood that -- in 25 the same neighborhood as Jeff Prible?
Page 18 1 A. Not that I recall. 2 Q. Here's exhibit -- I'm going to mark it as 3 Exhibit 4. 4 (Exhibit No. 4 marked.) 5 Q. (BY MR. RYTTING) A letter from Carl Walker to 6 Kelly Siegler. 7 A. We were busy in Beaumont writing letters. 8 Q. Did you write any -- did you type any of these 9 letters for anybody? 10 A. Huh-uh (Negative.) 11 Q. The ones that you've seen out of Exhibit 1 or 12 2? 13 A. No. I don't even know how to type. 14 Q. Exhibit 2 or 3 or 4? You don't know how to 15 type? 16 A. Huh-uh (Negative.) 17 Q. Okay. All right. And this letter also 18 references you. Okay. If you look at the second 19 paragraph of this letter, it makes a reference to you, 20 correct? 21 A. Correct. 22 Q. Okay. And it says that he -- that Mr. Walker 23 claims to have been present on many occasions when Jeff 24 was telling his side of the story and this happened 25 after he had relaxed and the tension had died down	Page 20 1 A. No. 2 Q. Were you in the same neighborhood as Oscar and 3 Jesse Gonzalez? 4 A. No. 5 Q. So you have no idea why anyone would put your 6 name in these letters? None whatsoever? 7 A. No. 8 Q. So you've appeared in photographs with the 9 individuals that have written these letters? 10 A. Uh-huh (Affirmative.) 11 Q. And they all refer to you in the 12 correspondence with Ms. Siegler, but this is a mystery 13 to you? 14 A. Yeah. Why they're mentioning my name, I don't 15 know. 16 Q. Now isn't it true, Mr. Dominguez, that Mark 17 Martinez was a member of a gang, a Posse that you were 18 the leader of? 19 A. There was no gang called the Posse. That's 20 what the Feds said, so... 21 Q. So the PSI, that's in your PSI and that's 22 false? 23 A. Yeah. 24 Q. And Eddie Gonzalez, was he a member of your -- 25 A. He wasn't a member.

Page 21 1 Q. You didn't -- 2 A. There was no such organization as the Posse. 3 The informants, they just gave us that name and that's 4 all there was, but there was no such thing as a gang 5 called the Posse. 6 Q. There was no such gang as a gang called the 7 Posse? 8 A. No. We were drug traffickers. That's what we 9 did. 10 Q. So you and Mr. Martinez? 11 A. Huh? 12 Q. Mr. Martinez? 13 A. No, Eddie. 14 Q. You and Eddie, but Mr. Martinez wasn't a part 15 of that? 16 A. No. 17 Q. Now, you testified for Ms. Siegler, correct? 18 A. Correct. 19 Q. And how did you get in contact with 20 Ms. Siegler? Who -- why did you -- why did you contact 21 her? 22 A. What do you mean why did I contact her? 23 Q. Or did you contact her first? 24 A. I think she made -- I think she made contact 25 with me. I don't recall who made contact with who.	Page 23 1 A. Yeah. 2 Q. Do you know approximately when that was? 3 A. I don't recall. 4 Q. Did she go to FCI-Beaumont to interview you? 5 A. I don't recall. 6 Q. Now you said that you were familiar with Oscar 7 Gonzalez? 8 A. Uh-huh (Affirmative.) 9 Q. But you didn't know who Michael Beckcom was, 10 you had no idea? 11 THE REPORTER: What was the name? 12 MR. RYTTING: You didn't know who Michael 13 Beckcom was. And Beckcom is spelled B-e-c-k-c-o-m. 14 A. I don't recall him. 15 Q. (BY MR. RYTTING) You don't recall him? 16 A. Huh-uh (Negative.) 17 Q. You don't recall that he testified against 18 Jeff Prible? 19 A. No. 20 Q. And the person that you named Bo -- 21 A. Uh-huh (Affirmative.) 22 Q. -- you know him quite -- you knew him well, 23 right? 24 A. We hanged out. 25 Q. You hanged out. Were you part of any
Page 22 1 Q. So Ms. Siegler may have contacted you? All 2 right. 3 A. I'm not sure. 4 Q. You're familiar with a man named Jesse Moreno, 5 correct? 6 A. Yes. 7 Q. And how do you know Mr. Moreno? 8 A. Childhood friends too. We're all from the 9 same neighborhood. 10 Q. Uh-huh (Affirmative.) And you were also at 11 FCI-Beaumont with Mr. Moreno -- 12 A. Correct. 13 Q. -- at the same time; isn't that correct? 14 A. Yep. 15 Q. And do you know what he was in -- was he in 16 there for any activities that were related to your 17 offense? 18 A. No. 19 Q. He was not? Let's see. So when the first 20 contact, do you have any idea when you first contacted 21 Ms. Siegler or when she contacted you? 22 A. I have no idea. 23 Q. Your first communications? 24 A. I have no idea. 25 Q. Did she ever interview you?	Page 24 1 organization at the prison? 2 A. No. 3 Q. Were you part of any group together at the 4 prison? 5 A. No. 6 Q. Were you and Jesse Marino part of any group at 7 the prison? 8 A. No. 9 Q. Were you and Mr. Herrero, Mr. Hermilo Herrero, 10 part of an organization or a group at that prison? 11 A. Not an organization. It's all the Houston 12 guys. We all stick together in there. That's how it 13 is, but it's not something you would call like an 14 organization or, I mean, just all the guys from Houston, 15 we all got together. 16 Q. Were people elected to positions in that 17 organization? 18 A. Yeah. 19 Q. What positions -- so it is an organization? 20 A. No, it's not. You just got a speaker. 21 Q. A speaker? 22 A. Uh-huh (Affirmative.) 23 Q. Who speaks to whom? 24 A. What? 25 Q. Who speaks to whom?

Page 25 1 A. Anytime there's a problem, to avoid problems, 2 whatever, you got a speaker and he talks to the other 3 speaker and they figure it out to avoid any problems. 4 Q. The other speaker of what? 5 A. Huh? Of different -- different groups. If 6 you're from Houston, you're from Chicago, you're from 7 Dallas, I mean, even to speak with the cops in there. 8 Q. Someone is elected to speak with the cops? 9 Why would they be -- speak to the cops about what? 10 A. Because that's how it operates in there. If 11 you guys are acting up or whatever, the cops talk to the 12 speaker. Call the speaker in there and says, hey, tell 13 your guys to calm down. 14 Q. So you act as a group or you have an identity 15 within the prison, he's a -- is that correct? 16 A. I don't understand the question. Like I said, 17 it's just all the guys from Houston, we hang out, we got 18 somebody that speaks for us and that's it. 19 Q. Okay. 20 A. Now, that's very basic there, so I mean... 21 Q. Is the person -- is the speaker, does he have 22 any sort of position of power over the rest of you? 23 A. He just -- no. He just speaks for us. 24 Q. He's just elected to speak? 25 A. Uh-huh (Affirmative.)	Page 27 1 A. Huh? 2 Q. Guys from Beaumont? 3 A. No. 4 Q. They're not from -- 5 A. They're from Houston. 6 Q. What about Katy? 7 A. The what? 8 Q. How about if you're from Katy? 9 A. No. We probably ain't going to like Katy guys 10 either. We want the guys out of the city. 11 Q. Okay. West U, they're not allowed in? 12 A. I don't think West U's going to be in there. 13 Wanting to join us there. There's going to be too many 14 West U guys at Beaumont, but you never know. 15 Q. Okay. I'm going to have this marked as an 16 exhibit. 17 MR. RYTTING: I think we're up to -- 18 MS. WALKER: 5. 19 MR. RYTTING: -- Exhibit 5. 20 (Exhibit No. 5 marked.) 21 MR. RYTTING: And here. I'll show you 22 this one. And I'll give you a copy of it if you want to 23 gaze your eyes on it. 24 Q. (BY MR. RYTTING) And in Exhibit 5, can you 25 identify any of the individuals?
Page 26 1 Q. Is he not like a Mafia-type position? 2 A. No, no. 3 Q. He doesn't have power to -- to put hits on 4 people, does he, as a speaker of the all Houston group? 5 A. He may or may not. Depends. 6 Q. It may. You mean all Houston -- 7 A. It happens. 8 Q. The speaker of the all Houston group could 9 have power to -- has that type of power over its 10 members? 11 A. May. It could go outside. 12 Q. Okay. Could go outside? 13 A. Yeah, like outside of the group. Talk to 14 another group. 15 Q. Oh, I see. 16 A. I mean, there's a lot of different stuff that 17 goes on in there. 18 Q. All right. Let me see those photographs. 19 Now, was Carl Walker a member of the all Houston group, 20 he was from Houston? Is that what it was called? 21 A. No. There is no name for us. It's just the 22 Houston guys. 23 Q. Just the Houston guys? 24 A. Yeah. 25 Q. Okay. Did it include Beaumont guys too?	Page 28 1 A. Yeah. 2 Q. And who are they? 3 A. You want to go one by one? 4 Q. Yes, please. 5 A. Bottom row, Jay. 6 Q. And does he have another name besides Jay? 7 A. Jesse. 8 Q. Jesse Moreno? 9 A. Yeah, correct. 10 Q. And we're going from left to right? 11 A. Yeah. 12 Q. Okay. 13 A. In the middle it's Millie, we call him 14 Herrero. We call him Millie, but his last name is 15 Herrero. 16 Q. Okay. 17 A. And then that's going to be -- I know him but 18 I don't remember the name. 19 Q. Okay. Do you remember the name? Can you tell 20 your attorney -- 21 A. Huh? 22 Q. -- and get that to us? 23 A. I think it's going to be Castillo. 24 Q. Castillo? 25 A. I think that's what we used to call him. I

Page 29 1 think we used to call him by his last name. 2 Q. And if you start at the top left, that's -- 3 A. That's Marty. 4 Q. That's who? 5 A. Marty. 6 Q. Do you know his last name? 7 A. No. I don't know Marty's last name. 8 Q. And next to Marty -- 9 A. That's me. 10 Q. And then to the right of you -- 11 A. Henry. 12 Q. I'm sorry, is that to the right of you or to 13 the left? 14 A. To the right? No, this was Marty, then me, 15 and now we're on this guy. 16 Q. Okay. 17 A. That's Henry. 18 Q. So he's on your left-hand side? 19 A. Well, yeah. Well, my right, your left. 20 Q. Yeah. 21 MS. MIRANDA: I'm confused, I'm sorry. 22 THE WITNESS: Top row. 23 MS. WALKER: We're on the top row. This 24 is Marty. 25 MS. MIRANDA: Okay.	Page 31 1 A. Uh-huh (Affirmative.) 2 Q. For the Houston guys? 3 A. Houston guys. 4 Q. And so do you know of any speaking activities 5 that he did? 6 A. What do you mean? 7 Q. Who did he talk to? Was there any occasions 8 where Mr. Herrero had to go speak to somebody? 9 A. There's a whole bunch of occasions. 10 Q. What were they? Name some of them. 11 A. There's hundreds of them, but I mean, like an 12 example, say, one of the Houston guys owes a guy from 13 the valley money and he don't want to pay so to avoid a 14 big incident, what happens, the speaker, him, talks to 15 the speaker from the valley guys and they're, like, hey, 16 your guy owes my guy money, let's figure this out, work 17 it out, and it's done. 18 Q. Do you recall any incident where he did that? 19 A. Like I said, there's hundreds of incidences, 20 but I can't recall one specific one, not off the top of 21 my head right now. 22 Q. Did he ever have to intervene on your behalf? 23 A. Like where I had a problem -- 24 Q. Yeah. 25 A. -- and he intervened to solve my problem?
Page 30 1 MS. WALKER: This is him. 2 MS. MIRANDA: Okay. 3 MS. WALKER: Now we're going this way, 4 just like you would read a book. 5 MR. RYTTING: From left to right. 6 A. That's Henry (Indicating.) 7 Q. (BY MR. RYTTING) Any last name? 8 A. I'm not going to remember the last name. And 9 then I know him, too, but I can't think of the name 10 right now. He's going to be -- I'm not going to be able 11 to recall his name. 12 Q. Okay. 13 A. Yeah, I know him but I don't recall the name. 14 Q. And are -- is this a -- why did you take this 15 picture? Do you recall? 16 A. Huh? 17 Q. Why did you take the picture? 18 A. That's all the Houston guys, we took pictures 19 all the time. 20 Q. Is this representing a gang? 21 A. No, it's just the Houston guys. 22 Q. And is there any reason why the -- why 23 Mr. Herrero is sitting? 24 A. Well, because he's the speaker for us. 25 Q. Okay. He was the speaker at that time?	Page 32 1 Q. Yes. 2 A. Not that I recall. 3 Q. Okay. And -- 4 A. You're talking like to defend me, right? 5 Q. Yeah. 6 A. Okay. No, not that I recall. 7 Q. So -- and again, Mr. -- he doesn't -- the fact 8 that he's the speaker doesn't mean he's a mobster or 9 Mafia; is that right? 10 A. No, I wouldn't compare him to a mobster. 11 Q. All right. And so let's see. At some point 12 he was no longer the speaker; isn't that correct? 13 A. Yeah, at some point that's correct. 14 Q. He was voted out? 15 A. Huh? 16 Q. He was voted out? 17 A. He was voted out? 18 Q. You don't recall that? 19 A. I don't recall that. 20 Q. You didn't testify to that? 21 A. I don't recall. 22 Q. You don't recall but you may have testified to 23 that? 24 A. I might of. 25 Q. So actually the -- and that gives you -- you

Page 33 1 know, mobsters don't get voted out of their mobs, is 2 that -- do they? 3 A. Well, I mean, it's not a mob. 4 Q. Okay. And, in fact, the people that had 5 control or I guess a say on who was the speaker were 6 going to be members of this group, correct? 7 A. Yeah, correct. 8 Q. Let's see. When you testified against Hermilo 9 Herrero, the other person that testified against him was 10 Jesse Moreno, correct? 11 THE REPORTER: I'm having a hard time 12 understanding you. 13 MR. RYTTING: I'm sorry. 14 Q. (BY MR. RYTTING) When you testified 15 against -- you testified against Mr. Hermilo Herrero, 16 correct? 17 A. Correct. 18 Q. And the other FCI-Beaumont inmate that 19 testified against Mr. Herrero was whom? 20 A. Jesse. 21 Q. Jesse Moreno, all right. And what were you 22 promised by Ms. Siegler for your testimony? 23 A. Well, you don't get promised anything. I've 24 testified in many cases, all the prosecutor does is says 25 I can't promise you anything. The only thing I will do,	Page 35 1 Q. Did you keep in touch with Mr. Moreno after 2 you left -- after he left FCI-Beaumont? 3 A. Yes. 4 Q. How did you do that? 5 A. We used to write to each other. 6 Q. So he must have told you that he was leaving? 7 A. What do you mean "leaving"? 8 Q. That he was getting out. 9 A. Well, I mean, he was in the -- I don't know -- 10 because I think he ended up in California somewhere and 11 I ended up in -- think I ended up in Florida, but I 12 don't recall exact details about how much exact he got 13 off or whatever, but I think he -- I think they did a -- 14 he did get released. 15 Q. Uh-huh (Affirmative.) Are you familiar with 16 Mr. -- are you familiar with Mr. Moreno's classification 17 in FCI-Beaumont? 18 A. No. 19 Q. Do you know when he went into the SHU? 20 A. I mean, he was in the SHU a whole bunch of 21 times, so... 22 Q. Do you know why he went -- he was sent to the 23 SHU? 24 A. I don't recall. 25 Q. Okay. And the SHU is -- if you could identify
Page 34 1 submit a letter to your Judge and it's completely up to 2 him if he wants to give you a reduced sentence or not. 3 That's what you get. 4 Q. Did you know that Ms. Siegler went to 5 Louisiana and testified in Mr. Moreno's rule 35 hearing? 6 A. I have no idea. 7 Q. You never heard of it? 8 A. It might happen. I don't recall it. I mean, 9 I don't understand what that has to do with me. 10 Q. Did she testify for you? 11 A. No. 12 Q. Were you aware of the sentence reduction that 13 Mr. Moreno received? 14 A. Yeah. 15 Q. What was your understanding of that? 16 A. I mean, I don't recall exact details. I know 17 he got a reduced sentence. 18 Q. And -- 19 A. Or you know what? Actually I think they let 20 him go. I forgot what it was, something like that. 21 Q. They let him go, yes, you're correct. He got 22 78 out of 79 months off. 23 A. That, I can't answer that. I don't recall 24 that. What he got, he officially got, I mean, I don't 25 know.	Page 36 1 that for the record, is what? 2 A. Well, we call it the hole. That's where you 3 go if you're either acting up or they put you in 4 protective custody, either/or. 5 Q. So you're isolated from the general 6 population? 7 A. Uh-huh (Affirmative.) 8 Q. And it's called the -- is it segregated 9 housing unit or a separate housing unit? Is that a 10 familiar term? 11 A. Yeah. 12 Q. Okay. And at some point Mr. Moreno was moved 13 to Liberty County. Is that -- or moved out of 14 FCI-Beaumont; is that correct? 15 A. Yes, he was moved from Beaumont. 16 Q. Do you have any idea why? 17 A. At that time he left -- I think I was in the 18 SHU with him when they took him to Liberty. Oh, no, no, 19 no, I wasn't in the SHU with him when he went to 20 Liberty. I don't recall exactly why he went to Liberty. 21 Yeah, I wasn't in the SHU with him at that point. 22 Q. You were not? 23 A. Huh-uh (Negative.) 24 Q. Okay. 25 A. At that point, no.

Page 37 1 Q. He didn't tell you why he was going? 2 A. Huh? 3 Q. He didn't tell you why he was being 4 transferred? 5 A. Huh-uh (Negative.) 6 Q. No? And so -- 7 A. Not that I recall. He couldn't have told me 8 anyways because if he's in the SHU, I mean, we don't 9 have no communication with them, so... 10 Q. So you have no idea why he was transferred to 11 Liberty County? 12 A. No. 13 Q. When you -- let's see. Your PSI doesn't 14 reflect that you got a 5K1 departure, does it? 15 A. I don't remember, but it should be in there. 16 Q. Did you get one? 17 A. Yeah. 18 Q. Okay. And a 5K1 departure is what? 19 A. Cooperation with the federal government. 20 Q. The probation department, as you recall, 21 said there was no reason -- 22 A. What do you mean? 23 Q. -- that they knew of for a 5K1. 24 A. Of course they would have known about it. 25 It's probably in the PSI but I don't recall my PSI.	Page 39 1 indication that -- 2 A. I mean, I don't know. 3 Q. -- that you deserved a 5K1; is that correct? 4 A. I have no idea how they prepared their report. 5 Obviously the government thought I did because I went 6 from a life sentence to 22 years, so I think I got a 7 pretty good 5K1. 8 Q. But the point is, is your cooperation 9 reflected in this PSI? 10 A. Yeah, if you read all of it. I mean, the 11 addendum's really -- if you read my PSI it talks in 12 there that I cooperated. See, if you read No. 2 you see 13 what it says. I agree to cooperate fully with the 14 United States. On page 3. 15 Q. Yes, on page 3 you agreed to cooperate fully 16 with the United States. Actually the full -- what does 17 it say in full? 18 A. It says: The Plea Agreement states the 19 defendant agrees to cooperate fully with the United 20 States and maintains a limited right to appeal. The 21 Government will not oppose a two level adjustment for 22 acceptance of responsibility if applied by the probation 23 office. The Government reserves the right to file a 5K1 24 motion for downward departure based on defendant's 25 substantial assistance, and will dismiss Count 3 at time
Page 38 1 It's probably in there. They put everything in there. 2 Q. Do you have a -- let me find that. 3 I believe we're up to Exhibit 6. 4 (Exhibit No. 6 marked.) 5 Q. (BY MR. RYTTING) I'm showing you a copy of 6 Exhibit 6 which is -- can you identify that for the 7 record? 8 A. My PSI? 9 Q. It includes, too, at the back an addendum; is 10 that correct? 11 A. Yeah. 12 Q. I think it might be simpler just to turn to 13 the back -- the last two pages of the addendum, the last 14 two pages of the exhibit. 15 MS. WALKER: He's already there. 16 Q. (BY MR. RYTTING) And it says: Objection 17, 17 Counsel reiterates the defendant may be entitled to a 18 downward departure based upon a 5K1 motion from the 19 government. 20 A. Okay. 21 Q. And the response is: We don't have any 22 objection. We do note that absent a 5K1 motion, there 23 are no identified factures which would warrant a 24 departure under the guidelines. 25 So as far as probation goes, there was no	Page 40 1 of sentencing. 2 Q. So the right was reserved, it wasn't 3 guaranteed? 4 A. No, nothing's ever guaranteed. It's up to the 5 Judge. 6 Q. If you look at page 14. Can you read part E, 7 paragraph 73, what does that say? 8 A. The probation officer has no information 9 concerning the offense or the offender which would 10 warrant a departure from the prescribed sentencing 11 guidelines. 12 Q. So at least this probation officer is saying 13 from what information that he has -- 14 A. To me -- 15 Q. -- and he wrote the report -- 16 MS. WALKER: Objection, speculation. 17 Q. (BY MR. RYTTING) -- and he is indicating that 18 he had no information that -- that a departure was 19 warranted for cooperation? 20 THE REPORTER: Are you saying warranted 21 or wanted? 22 Q. (BY MR. RYTTING) That was warranted, that was 23 justified for cooperation? 24 A. I mean, I have no idea. You need to talk to 25 them. Call the prosecutor. Call Mr. Louis or call the

Page 41 1 FBI, DEA, they'll tell you. 2 Q. But the point is, the PSIR does not reflect -- 3 A. I don't prepare the report. The PSI prepared 4 the report. Talk to them. I could just tell you what 5 was my outcome. They gave me a 5K1 motion. I went from 6 a life sentence to 22 years. Now why that says that in 7 there, I mean, it might be a typo. I don't know. I 8 didn't prepare the report. Contact them, contact the 9 FBI, contact the DEA and all the other cases I assisted 10 in and they could tell you if I assisted or not. 11 Q. Uh-huh (Affirmative.) Okay. Why don't you 12 tell us about the cases you assisted in. 13 A. I don't recall them. It's a long time ago. 14 Q. Now, it may be that the DEA knew that you 15 cooperated and the FCI, but it's not reflected in the 16 PSIR. Can you explain that? 17 A. Like I say, I mean, we keep going around the 18 same question again. Why they prepared the report like 19 that, I have no idea. 20 Q. Okay. 21 A. Okay? 22 Q. All right. Now, at trial you testified that 23 you had to show Mr. Hermilo your PSI. 24 A. We always had to show your PSIs. That's why 25 we alter them.	Page 43 1 A. We all see each other's PSIs. 2 Q. And so he may have shown you his and so forth? 3 A. Yeah. 4 Q. Okay. And this is done mainly as a matter of 5 routine, right? 6 A. To make sure you're not a snitch. Nobody 7 wants to hang out with a snitch. 8 Q. Uh-huh (Affirmative.) You probably showed 9 this PSI to many other people in the -- 10 A. Wrong. Would have just been the Houston guys 11 and the speaker. Whoever's the speaker, they're the 12 ones that see the PSIs before anybody, and at that time 13 it was Hermilo. 14 Q. Hermilo. 15 MR. RYTTING: Can we take -- you mind if 16 we have a ten-minute break? 17 MS. MIRANDA: Sure, no problem. 18 (Off the record from 2:23 to 2:30.) 19 Q. (BY MR. RYTTING) We're back on the record. 20 Let's see. I have some questions about your testimony 21 in the Herrero case. 22 A. Okay. 23 Q. All right. It's Hermilo Herrero versus the 24 State of Texas. And that, for the record, is Cause No. 25 903122 in the District Court of Harris County, the 179th
Page 42 1 Q. Why would you have to alter this? 2 A. Because nobody -- because it says that I agree 3 to cooperate. 4 Q. It also says, according to the probation 5 officer that read all the information in the report, 6 that there is no reason to give you a departure. 7 A. A normal PSI is not going to have that 8 paragraph in there saying you agree to cooperate fully 9 with the government, okay. 10 Q. So how did you alter the PSI? Who did it? 11 A. I forgot who did it. There's some -- I 12 forgot. I don't recall. 13 Q. You don't recall? 14 A. Huh-uh (Negative.) 15 Q. Did you send it -- have it sent out? 16 A. I don't recall. 17 Q. Did you alter it yourself? 18 A. I don't recall. 19 Q. But someone that you -- somehow -- do you know 20 the method that was used? 21 A. I don't recall. 22 Q. Did you pay anybody to do it? 23 A. I don't recall. 24 Q. Did you show the PSI to anyone else besides 25 Mr. Hermilo Herrero?	Page 44 1 Judicial District, and we're talking about testimony on 2 the 26th day of April, 2002, which is in volume 5 of the 3 record. 4 Do you recall any of your testimony in this 5 case? 6 A. No. 7 MS. WALKER: It's missing a number, 1, 3, 8 122, it's missing a number. Case numbers are seven 9 digits. How long ago was this? 10 THE WITNESS: That's a long time ago 11 probably. 12 MS. SCARDINO: 15 years. 13 MS. WALKER: Maybe they ordered 6 then. 14 I don't know. Okay. 15 Q. (BY MR. RYTTING) Okay. So -- but at any 16 rate, the numbers that we have are 903122. You don't 17 recall your testimony in this case, do you? 18 A. No. 19 Q. All right. But you claim -- you do recall 20 that you said Mr. Hermilo Herrero confessed to you? 21 A. Uh-huh (Affirmative.) 22 Q. And he confessed on how many occasions? 23 A. I don't recall. 24 Q. You don't recall how many? 25 A. Huh-uh (Negative.)

Page 45 1 Q. Do you recall who else was with you? 2 A. I mean, probably me, Jay, some of the other 3 Houston guys. I mean, we sit around and we tell crime 4 stories all day long, so... 5 Q. So this was just another crime story? 6 A. No, but I'm talking about we talk about our 7 crimes. When we walk down the street, you brag about 8 what you do. 9 Q. And why would he confess to you? Did he know 10 you well? 11 A. Yes. 12 Q. Hermilo knew you well? 13 A. Uh-huh (Affirmative.) 14 Q. You knew him outside? 15 A. We knew the same people out here. 16 Q. So when you said he knows you well but you 17 don't -- 18 A. We're from the same neighborhood. 19 Q. You and Hermilo are from the same 20 neighborhood? 21 A. Uh-huh (Affirmative.) All of us are, Jay, 22 we're all from the same neighborhood. And Albert too, 23 the one he clipped, he's from the same neighborhood too. 24 Q. Albert, the one that died? 25 A. Uh-huh (Affirmative.)	Page 47 1 Q. Why is that important? 2 A. It's very important. You might get caught up 3 in the middle of it. 4 Q. Uh-huh (Affirmative.) Was that a motive for 5 him -- is that what you claim is his motive for telling 6 you about this murder? 7 A. His motive why he said it, I don't know why he 8 said it. 9 Q. You don't know? 10 A. Huh-uh (Negative.) 11 Q. You have no idea why he would ever confess to 12 you? 13 A. Like I told you previously, I mean, we sit 14 around and brag about what we do out here. 15 Q. Okay. And then if we turn to page 19, 16 Ms. Siegler asked you a question. I'll just read it. 17 Mr. Dominguez, listen to my question. In this 18 conversation that was between you and defendant Eddie, I 19 want you to start with the part where the defendant made 20 a comment to Eddie about what he had done to Albert. 21 Start with that. 22 And you say? 23 MS. WALKER: Do you want him to read his 24 response? 25 Q. (BY MR. RYTTING) Yes, if you could, read your
Page 46 1 Q. All right. And let's see. In fact, you 2 testified that he confessed three times; is that 3 correct? 4 A. I don't recall. 5 Q. You don't recall? 6 A. I don't recall. 7 Q. If you would, turn to page 19. The page -- 8 maybe we should go to page 18 first. All right. So at 9 the top of page 18, Ms. Siegler asked you a question. 10 A. Okay. 11 Q. Okay. In this conversation you're fixing to 12 talk about between you and the defendant and Eddie, when 13 did it take place? And your answer is? 14 A. Around the summer of 2000. 15 Q. That's what you testified at trial. Do you 16 recall testifying to that? 17 A. I mean, I don't recall it, but if it's there, 18 I must have said it. 19 Q. Okay. And then you also said that there was 20 something unusual going on at the prison, correct? 21 A. Oh, yeah, I remember. At this time there 22 was -- I don't know, there was some riot with some of 23 the gangs there. 24 Q. Okay. So why is that important? 25 A. Huh?	Page 48 1 response. 2 A. He said you should have seen when I slit his 3 throat. I left him smile from ear to ear. 4 Q. And the question from Ms. Siegler is: How did 5 Eddie react? 6 A. He was, like, for real, you were doing it like 7 that on the streets? And he goes yeah, you don't know 8 me, Eddie. When you fuck with my money, I'm the devil. 9 Q. And you claim you heard that, that Hermilo 10 said? 11 A. Yeah. 12 Q. And -- 13 A. Obviously I said it, so yeah. 14 Q. And -- 15 A. I don't recall it, but yeah. 16 Q. And Mr. -- and Mr. Gomez was evidently 17 surprised? 18 A. I don't know. What do you mean by surprised? 19 Q. Well, he says: For real, you were doing it 20 like that on the streets? 21 A. That's just like a -- that's like a slam -- 22 like a slang term but I wouldn't say, like, you're 23 surprised about it. It's like you're -- like -- just 24 like slang talk or something you're saying, but... 25 Q. Was this -- but it sounds like this was the

Page 49 1 first time you heard this story? 2 A. Who? 3 Q. Gomez. 4 A. I don't know. I don't know if it was his 5 first time or third time, first time or not. I don't 6 know that. 7 MS. WALKER: Tylenol break. Does anybody 8 else need any? No? Do you want some? 9 THE WITNESS: Huh-uh (Negative.) 10 Q. (BY MR. RYTTING) How many times did you 11 hear -- did Mr. Herrero confess to you? 12 A. I don't recall. 13 Q. You don't recall? 14 A. Huh-uh (Negative.) 15 Q. You don't? And Mr. Moreno claims that he 16 confessed to them too -- 17 A. Yeah. 18 Q. -- and that you were present. 19 A. Yeah. 20 Q. And that you were present with Mr. Hermilo, 21 correct? 22 A. Yeah, that sounds correct. 23 Q. That sound correct? 24 A. Yeah. 25 Q. Okay. And you recall -- but you don't recall	Page 51 1 Albert and Herrero on the outside? 2 A. I mean, we all knew of each other. We're all 3 from the same neighborhood. 4 Q. Okay. 5 A. I mean, we run into each other at clubs or 6 whatever. I don't recall. 7 Q. You don't recall? 8 A. No. 9 Q. Okay. What type of business was Albert in? 10 Do you know? 11 A. Drugs. 12 MS. MIRANDA: I want to interrupt, and 13 I'm trying to give you guys a lot of leeway here, but 14 we're here on one case and we've spent the whole entire 15 deposition on another. And I know as far as objecting 16 but, I mean, to me, like we're way outside the scope of 17 the case that we're here on. 18 MR. RYTTING: Okay. Your objection is -- 19 MS. MIRANDA: Yeah, so we need to, 20 like -- if you could just help me understand where 21 you're going so that -- but otherwise, like -- 22 MR. RYTTING: This isn't a proper 23 objection. If you have an objection, please do. 24 MS. MIRANDA: Well, it is a proper 25 objection if you're going to go outside the scope of
Page 50 1 who else was there? 2 A. No. 3 Q. In a taped statement Mr. Moreno says that 4 Nathan Foreman was there when -- when Herrero confessed 5 for the first time. Does that sound right to you? 6 A. I don't recall. 7 Q. You don't recall? 8 A. Huh-uh (Negative.) 9 Q. Do you have any reason why he would talk about 10 a crime that could get him sentenced to life to 11 Mr. Foreman? 12 MS. WALKER: Objection, speculation. 13 Q. (BY MR. RYTTING) You don't have any idea? 14 A. No. 15 Q. It was just war stories as far as you know? 16 A. I mean, you're asking me questions to 17 understand how they're thinking when they're speaking. 18 I can't speak for them -- 19 Q. Okay. 20 A. -- why they do what they do. I mean, ask me 21 questions about myself. I can answer those. 22 Q. All right. 23 A. But you're asking me -- I mean, why they -- I 24 don't know why they do what they do. 25 Q. Uh-huh (Affirmative.) And you said you knew	Page 52 1 what the court granted discovery on. That absolutely is 2 a proper objection. You don't just get a deposition of 3 a person and get to ask them anything you want. You 4 have to stay within the scope of what the case is. 5 MS. SCARDINO: I disagree that this is 6 outside the scope. 7 MS. MIRANDA: And that's why I'm trying 8 to give you leeway and trying to explain to me maybe so 9 that I can understand that because -- 10 MS. SCARDINO: Well, let's keep our 11 objections just to form. Otherwise, we can get the 12 Judge on the phone, but this is all part of -- 13 MS. MIRANDA: Okay. I'll hold off for a 14 little bit, but otherwise, we will get him on the phone. 15 MS. SCARDINO: Okay. 16 MS. MIRANDA: Okay. 17 Q. (BY MR. RYTTING) Now, you claim that -- if 18 you look at your testimony, if you would, turn to page 19 11. Do you recall testifying at trial that some time in 20 March, Mr. -- Mr. Herrero confessed to you, Mr. Foreman, 21 and Moreno? 22 A. I mean, I don't recall it, but, I mean, if 23 it's there, it must have happened. 24 Q. Okay. 25 A. But I don't recall it today.

Page 53 1 Q. Does it look -- as you refresh your memory, 2 does it appear to you that at least you testified that 3 Mr. Foreman was the person -- was asking Mr. Herrero 4 questions about the crime? 5 A. Where does it say that? 6 Q. Line 13, if we start there. 7 A. So what's your question regarding that? 8 Q. So it's Foreman that's asking you questions 9 about -- 10 A. No, it doesn't say that. It says we're 11 telling our war stories. Foreman just finished telling 12 his story how he got kidnapped and tortured. And when 13 he finished, Alfredo made the comment of saying, "You 14 guys haven't put in no real work." Okay. 15 And Foreman's like, "What do you mean by real 16 work?" 17 And he goes, "Do you know Albert from the 18 neighborhood?" 19 And Foreman's like, "No, I don't know him." 20 He's like, "Well, I killed him." 21 And Foreman is like, "Oh, for real?" 22 And he is like, "Cat and Jay know." 23 Q. Okay. If we turn to page 12, the question is: 24 "And then what happened?" And you reply: "Okay." 25 A. And then Foreman asked him, "Well, what	Page 55 1 A. Excuse me? 2 Q. He heard the same testimony that you -- the 3 same confession that you did, that's what you claim? 4 A. Wait, wait, rephrase that question. You're 5 saying that -- 6 Q. Foreman was there? 7 A. I don't recall Foreman being there, okay? He 8 might have been there. I don't recall it. 9 Q. But your testimony is that he was? 10 A. I mean, like I said, I don't recall it today, 11 okay. That was over, what, 15, 18 years ago. I don't 12 recall that. But if it's there, then he must have been 13 hanging out with us. 14 Q. Okay. Let's see. Look, Mr. Dominguez. You 15 had 17 years to serve at that time, correct? 16 Approximately 17 years? 17 A. I don't recall. I'd have to do the math on 18 it. I don't recall it. 19 Q. And do you recall that you testified 20 Mr. Herrero said that he slit Albert Guajardo's throat? 21 A. Yeah. 22 Q. And that was in the back of the van? 23 A. I don't recall the exact details, but I know 24 that's how he clipped him. He slit his throat. 25 Q. And slit his throat. And then he beat him
Page 54 1 happened?" And he said that Albert had jacked him out 2 of some weed and he didn't want to pay, so -- that's the 3 question, the next one, right? You need to -- Albert 4 jacked him out of some weed and then one night they 5 caught him sleeping at a club. 6 Do you want me to keep on reading? 7 Q. No. The question was: It was Foreman who was 8 asking questions about his crime? He was the one that 9 was -- 10 A. I mean, I don't recall. 11 Q. That's what you testified to, right? 12 A. I mean, to us, I mean, we're just all there 13 talking. 14 Q. But your testimony indicates that -- 15 A. Yeah. 16 Q. -- that Foreman was asking questions? 17 A. Like I said, I don't recall, but at that 18 moment, that must have been what was happening, but I 19 don't recall it freshly today. But if it's there, it's 20 there. It must have happened. 21 Q. And so Foreman would be able to back you up, 22 correct? 23 A. I don't know. You gotta ask Foreman that. 24 Q. He heard the same thing that you did, that's 25 what you're claiming, right?	Page 56 1 with a hammer? 2 A. I don't recall the exact details. 3 Q. You testified to that, didn't you? 4 A. Well, then at that time -- that was 20 years 5 ago. 6 Q. Oh. 7 A. So at that time I know what was happening. 8 I'm not going to remember exactly exact details to that. 9 I mean, why would I want to remember something like 10 that? 11 Q. Well, it seems to be a very important event in 12 your life. 13 A. 15 years ago or 17 years ago when that was 14 happening, yeah, it was important. 15 Q. And did -- you testified that Mr. Herrero said 16 the man was still alive? 17 A. I don't recall. 18 Q. You don't recall? 19 A. No. 20 Q. But if the record reflects that -- 21 A. Then I said it and it must be true. I just 22 don't recall. I don't recall what I said 15, 18 or 23 whenever that happened years ago. 24 Q. Did Ms. Siegler show you any autopsy photos of 25 this case?

Page 57 1 A. No. 2 Q. You never saw any autopsy photos? 3 A. Not that I recall. 4 Q. Okay. 5 MR. RYTTING: Is it all right if we go 6 out of order and she finishes up with some questions? 7 MS. MIRANDA: Yeah, yeah, yeah, that's 8 fine. 9 MS. SCARDINO: Why don't I switch places. 10 MR. RYTTING: Sure. 11 EXAMINATION 12 BY MS. SCARDINO: 13 Q. Hi, Mr. Dominguez. Again, I'm Gretchen 14 Scardino and I represent Ronald Jeffrey Prible -- 15 A. Okay. 16 Q. -- who you knew as Jeff -- 17 A. Okay. 18 Q. -- at FCI-Beaumont. 19 Going back, you were in FCI-Beaumont in the 20 2000-2001 period? 21 A. Yeah, I was there. Yeah, I was there in that 22 timeframe. 23 Q. And when you were at FCI-Beaumont, were you in 24 the Medium the entire time? 25 A. Uh-huh (Affirmative.)	Page 59 1 A. I don't think we ever spoke one-on-one as in a 2 group, we used to hang out. 3 Q. In a group? 4 A. But I don't recall no one-on-one setting with 5 him. 6 Q. Okay. You recall what he looks like? 7 A. Yeah, obviously, yeah. 8 Q. Okay. Okay. Do you recall who was in the 9 group that you hung out with? 10 A. I mean, there's a whole bunch of us that 11 constantly always hang out, so I mean, it's hard to be 12 specific and say, oh, it was this person this day, 13 this -- I mean... 14 Q. Okay. 15 A. We always hang out. 16 Q. Do you recall there being a man, he was 17 Italian, a bodybuilder? 18 A. I may recall. I don't recall. I mean, he 19 was -- might have hanged out with us but he wasn't, 20 like, my buddy or one of my guys, so he might have 21 hanged out with us. I know a couple of bodybuilders 22 that were at Beaumont. 23 Q. And I don't want to know the -- I'm not asking 24 if he was a close friend or anything like that. 25 A. Yeah.
Page 58 1 Q. Okay. You were never in the Low? 2 A. No. 3 Q. And before you came to FCI-Beaumont, did you 4 know Jeff Prible? 5 A. No. 6 Q. You never knew him on the streets? 7 A. Huh-uh (Negative.) 8 Q. Didn't know him in the neighborhood? 9 A. No. 10 Q. Okay. 11 A. Well, he's not from our neighborhood. 12 Q. That's right. 13 A. I don't know where he's from, but he's not 14 from our neighborhood. 15 Q. Okay. What -- do you recall how you heard 16 about Mr. Prible or Jeff the first time? 17 A. I don't recall. 18 Q. Do you recall if you heard about him before he 19 arrived to FCI-Beaumont? 20 A. Don't recall. 21 Q. Or to the Medium? 22 A. Don't recall. 23 Q. Okay. Do you recall ever speaking -- or do 24 you recall speaking with Mr. Prible one-on-one once he 25 was at FCI-Beaumont?	Page 60 1 Q. But just if you recall a person that was in 2 this group that you would sometimes be in with Prible, 3 who was Italian, a bodybuilder from the Port Arthur 4 area. Does that ring a bell? 5 A. I mean, he used to always hang out with some 6 guy. It might have been the one you're talking about. 7 I don't exactly recall. But there was somebody he was 8 really close because they were always together. 9 Q. They were always together? 10 A. But I think he was always together really with 11 a black guy. 12 Q. Prible was? 13 A. Yeah, that's what I really recall seeing him a 14 lot with. 15 Q. And the black guy, would that have been Bo? 16 A. No, not Bo. 17 Q. Or Nathan Foreman? 18 A. Another black guy, dark, darker skinned. 19 Q. Maybe a man named Carl Walker? 20 A. I don't know him by the name. I think you had 21 him in that picture you showed me. 22 MS. SCARDINO: And I think to make the 23 record clear, it would be good if when we take a break, 24 if we could have the witness actually write the name on 25 the person or, you know, with an arrow so we'll have

Page 61 1 that clear. 2 A. Huh? Well, I mean, I don't know, but I mean, 3 that looks like one of the guys he was always with. 4 Q. (BY MS. SCARDINO) Is this -- this is -- and 5 this is Exhibit 1, the top photo, and the very top row, 6 left side, the African-American man, does he look like 7 the black man -- 8 A. Yeah, I would see them a lot together. 9 Q. Okay. He and Jeff? 10 A. Uh-huh (Affirmative.) 11 Q. Okay. Do you recall if that guy went to 12 church a lot? 13 A. I don't recall. 14 Q. Or were you -- 15 A. I don't even -- 16 Q. Yeah. 17 A. I'm not into that gig so I don't recall. 18 Q. You weren't one of the churchgoing groups -- 19 A. No, no. 20 Q. -- guys? Okay. Earlier when Mr. Rytting was 21 asking you if you knew a man by the name of Rocco, it 22 looked like it rang a bell but you weren't sure? 23 A. That name kind of sounds like something, 24 but... 25 Q. Okay. Is this man in the top row, again,	Page 63 1 Q. That's an unusual -- 2 A. That's an unusual one, but I don't recall. 3 Q. Okay. But the -- so you don't -- you think 4 this person in the middle, you said might be the Rocco 5 but he looks slim in that photo and the one you remember 6 is a bigger, beefier guy? 7 A. I remember a bigger guy. 8 Q. Okay. Okay. And you knew Nathan Foreman, you 9 called him Bo? 10 A. Yeah, we called him Bo. 11 Q. Do you recall Nathan Foreman's cellmate at 12 all? 13 A. Cellmate? I don't recall. I don't recall who 14 his celly was. 15 Q. Did you ever go into their cell to visit? 16 A. I don't recall. 17 Q. Is the setup at FCI-Beaumont where you can go 18 into other people's cells for a visit? 19 A. No. Everybody lives in different units so 20 they had -- I think Beaumont had like -- how many units 21 did they have there? Maybe, like, 12 different units, 22 but you're not allowed to go in another unit. 23 Q. Okay. But what unit were you in? Do you 24 recall? 25 A. I was in -- I don't know, the one closest to
Page 62 1 Exhibit 1, the top row, the middle, does he look like 2 the man named Rocco? 3 A. I can't be a hundred percent on that one. It 4 might be him. I don't know. 5 Q. Do you have any recollection at all about this 6 man? 7 A. No, it's kind of hard to tell because the guy 8 that comes to my head, he was a bigger guy. That guy 9 looks slim. 10 Q. Okay. So he was a bigger guy. Do you recall 11 what he was in prison for? 12 A. No. 13 Q. Do you recall knowing someone who was in 14 prison for murder of a witness, retaliation of a 15 witness? 16 A. Huh-uh (Negative.) 17 Q. Does that sound familiar? 18 A. Well, I mean, I can think of a lot of people 19 like that, but to put it to a specific person, no, but 20 I've met a lot of people that are in there for that. 21 Q. Okay. Did you know of anyone there that was 22 in there for retaliation of murder against a witness who 23 had murdered the person by putting him in a box and 24 putting a exhaust pipe in the box? 25 A. Hum.	Page 64 1 the cafeteria. 2 Q. Was it KB? 3 A. I don't recall. 4 Q. Or QB? 5 A. They do go by letters. It might have been -- 6 I think I had a B at the end of mine, so... 7 Q. So it might have been KB or QB? 8 A. Well, there's going to be a lot. Let me see. 9 I don't exactly recall. I just know it had a B in 10 there. 11 Q. Okay. And you said you weren't allowed to go 12 to other units, but could you go to other cells within 13 your unit? 14 A. Yes. 15 Q. Okay. So do you recall if these guys in this 16 picture on the top picture of Exhibit 1 were in your 17 unit? 18 A. Only ones that were in my unit was Oscar and 19 Eddie. 20 Q. They were the only ones in your unit? 21 MS. MIRANDA: I'm sorry, I'm sorry, I 22 didn't catch the second part. Sorry. 23 MS. SCARDINO: Eddie Gomez. 24 Q. (BY MS. SCARDINO) Eddie Gomez; is that 25 correct?

Page 65 1 A. Yes. 2 Q. Okay. The others were not in the unit? 3 A. No. 4 Q. Okay. So how would you be able to come in 5 contact and meet other people that weren't in your unit? 6 A. In the rec yard, cafeteria. 7 Q. Okay. 8 A. Education department. I mean, we're allowed 9 to mingle. We're just not allowed to go into a 10 dormitory that you're not assigned to. 11 Q. Okay. Okay. So this group of people that you 12 took -- 13 A. Unless you sneak in. 14 Q. Okay. Now the group of people in Exhibit 1, 15 still the top photo -- 16 A. Uh-huh (Affirmative.) 17 Q. -- those -- were those people that you hung 18 out with on the yard? 19 A. Some of them. 20 Q. Okay. Which ones? 21 A. I was always with Mark and Eddie. 22 Q. Always with Mark and Eddie? 23 A. Uh-huh (Affirmative.) 24 Q. Okay. 25 A. Oh, and Oscar used to hang out with us all the	Page 67 1 Q. Is that something the prison wants to keep 2 secret? 3 A. Yeah, they keep that secret. 4 Q. And why do you think they might keep it 5 secret? For security reasons? 6 A. Yeah, for security reasons. 7 Q. Okay. So you wouldn't actually know that 8 someone was coming to the Medium until they were at the 9 Medium? 10 A. The only way you might know is if they -- if 11 it's a friend or they got a family member over there and 12 they call their family and they send a letter and say, 13 hey, you know what? I'm on my way over there with you 14 guys. That's the only way you're going to know, if they 15 make it known. 16 Q. Like the inmate themselves? 17 A. The person being transferred. 18 Q. They would need to be -- 19 A. Yeah, because they know where they're going. 20 Q. Okay. We mentioned briefly Kelly Siegler 21 earlier -- 22 A. Uh-huh (Affirmative.) 23 Q. -- and her name rang a bell with you? 24 A. Correct. 25 Q. From the Herrero case?
Page 66 1 time too. 2 Q. And Oscar's dad? 3 A. Yeah, his dad -- well, it's his dad. His dad, 4 we all lived in the same unit. 5 Q. Okay. What year did you arrive at 6 FCI-Beaumont? 7 A. I got arrested in '98, so I probably got there 8 maybe like -- I don't know, end of '99, 2000, something 9 like that. 10 Q. Okay. When -- and you went straight to the 11 Medium -- 12 A. Uh-huh (Affirmative.) 13 Q. -- when you got there? Is it possible when 14 you're at FCI-Beaumont if you were in the Medium, like 15 you were -- 16 A. Uh-huh (Affirmative.) 17 Q. -- to know that another inmate was being 18 transferred to the Medium from a different level, like 19 from the Low, say, is it possible for you to have known 20 that in the Medium that someone was coming before they 21 got there? 22 A. No. 23 Q. And why is that? 24 A. I mean, how would we know it? It's not like 25 they advertise about it.	Page 68 1 A. Correct. 2 Q. Do you recall the first you ever knew of Kelly 3 Siegler, like when you first heard of her? 4 A. I don't recall how I ended up knowing Kelly 5 Siegler. 6 Q. Do you recall if it's prior to the Herrero 7 case? 8 A. What do you mean? 9 Q. Prior to you -- 10 A. No, when I met Kelly, I mean, it was involved 11 in the Herrero case. Now prior to that, I mean, I 12 didn't have no reason to have a relationship with her. 13 Q. Okay. So the Herrero case was the first 14 case -- 15 A. Yeah. 16 Q. Okay. 17 A. I used to get visited a lot in federal prison 18 by prosecutors, DEA, FBI, they were constantly going in 19 there to see me, so it's hard to keep track. 20 Q. Okay. And when they would come to see you, 21 where would you meet with them usually in prison? 22 A. Well, they sneak you off because nobody -- 23 what they'll do is they might call you to the 24 lieutenant's office, make it look like you did something 25 bad or they're sneak you off to the visiting room --

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1 Q. Uh-huh (Affirmative.)
2 A. -- so that they don't -- I mean, especially
3 like at the Medium, because they're hardcore places, so
4 everybody knows if it's a weekday why you're getting
5 called down to the front.
6 Q. Right.
7 A. So they make it look like you did something
8 wrong or -- they sneak you in back there. They'll call
9 you -- a lot of times what they would do to me, they'd
10 call me to the medical department and they sneak me
11 through a back door.
12 Q. Okay. And this is for your safety?
13 A. Yeah.
14 Q. Okay. And the -- you mentioned the lieutenant
15 earlier. Was there -- when you are working with the
16 prosecutor or being visited --
17 A. Prosecutors or --
18 THE REPORTER: I'm sorry, one person.
19 THE WITNESS: Oh, sorry about that.
20 MS. SCARDINO: Sorry.
21 THE REPORTER: Repeat your question
22 again.
23 Q. (BY MS. SCARDINO) Okay. Who in the prison
24 would arrange, would help arrange the visits between you
25 and the prosecutors?

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1 A. That would be the SIS department.
2 Q. Okay. And the SIS stands for, do you recall?
3 A. It's like -- it stands for --
4 Q. Is it supervisory investigative services?
5 A. I don't know. It has some weird -- it's like
6 the FBI inside the prison. They're watching everybody
7 and watching the cops too, but it's called SIS, but I
8 don't recall what it really stands for.
9 Q. Okay.
10 A. Something like that or special investigation.
11 I don't know, something like that.
12 Q. Okay. Do you recall who the SIS lieutenant
13 was at the time you were working with Ms. Siegler on the
14 Herrero case?
15 A. I don't recall that one. That would be --
16 yeah, I'm not going to recall the name.
17 Q. Okay. Do you recall the name of any SIS
18 officers at FCI-Beaumont?
19 A. No. That's too long ago.
20 Q. Does a Clark, Lieutenant Clark ring a bell?
21 A. That one might ring a bell.
22 Q. What about a --
23 A. I'm not a hundred percent sure though.
24 Q. Okay.
25 A. They're names I don't really want to remember.

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1 Q. Yeah, we're revisiting some bad stuff. Do you
2 recall the name of your counselor when you were at
3 FCI-Beaumont?
4 A. No.
5 Q. Does --
6 A. I think I got a couple there, I don't think
7 you really had one for too long.
8 Q. There's a lot of turnover with the counselors?
9 A. Yeah.
10 Q. Does a John Wilson sound familiar?
11 A. No.
12 Q. What about a Gordon Harpe?
13 A. No.
14 Q. Do you recall meeting Ms. Siegler face-to-face
15 at FCI-Beaumont?
16 A. I don't recall it. I know we met face-to-face
17 but I don't recall where it was at, if it was at FCI or
18 if it was when they brought me into the -- to the
19 county.
20 Q. And was that when you were awaiting the
21 trial --
22 A. Yeah, when they brought me for the trial of
23 Herrero.
24 Q. Okay. But you recall meeting her face-to-face
25 just once or more than once?

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1 A. I don't recall.
2 Q. But definitely once?
3 A. Yeah, of course once.
4 Q. Okay. Do you recall speaking with her on the
5 telephone?
6 A. I don't recall.
7 Q. So how -- how did you first communicate with
8 her then so she knew that you had information?
9 A. I don't recall. I don't recall. I don't know
10 if she contacted me, I contacted her, I don't recall.
11 Q. You just remember finding yourself in the
12 holding -- or in the county awaiting to testify against
13 Herrero and meeting Siegler?
14 A. Correct. Now I don't remember if I met her at
15 Beaumont or if I met her at Harris County. That I don't
16 recall.
17 Q. Do you recall speaking with anyone else at the
18 DA's office about Herrero's case on the telephone?
19 A. I don't recall.
20 Q. Another attorney at the DA's office?
21 A. I don't recall.
22 Q. What about an investigator at the DA's office?
23 A. I don't recall.
24 Q. Do you ever recall speaking with someone at
25 the DA's office named Johnny Bonds?

Page 73 1 A. Don't recall. 2 Q. When Ms. Siegler came to visit you at -- at 3 the face-to-face meeting, was anyone with her? 4 A. I don't recall. 5 Q. Did you write Ms. Siegler a letter about 6 Herrero's case? 7 A. I don't recall. 8 Q. Did you ever testify in front of a grand jury 9 here in Harris County? 10 A. That's like before the person gets indicted, 11 right? 12 Q. Yes. 13 A. I don't think I ever done one of those but I 14 don't recall. 15 Q. Were you aware that the individuals in 16 Exhibit 1 of which you are also in that photograph, were 17 you aware that these individuals were involved in 18 helping Ms. Siegler make a case against Mr. Prible? 19 A. No. I mean, nobody's -- when you're 20 cooperating with the law enforcement, you're not sharing 21 that information because you don't know who you can 22 trust so you don't make that public. 23 Q. But you-all in this group were working 24 together against the Herrero case, correct? 25 A. No. There's nobody in that group that	Page 75 1 A. Huh-uh (Negative.) 2 Q. When you met with Ms. Siegler face-to-face -- 3 A. Uh-huh (Affirmative.) 4 Q. -- do you recall what you discussed with her? 5 A. The Herrero case. 6 Q. And did she ask you questions about it? 7 A. Uh-huh (Affirmative.) 8 Q. Did you -- what did you tell her? 9 A. I mean, I don't exactly recall, but normally 10 like what every prosecutor, I mean, they ask you what 11 you know. 12 Q. And you don't recall if she first reached out 13 to you or if you first reached out to her? 14 MS. WALKER: Objection, asked and 15 answered. 16 A. Correct. 17 Q. (BY MS. SCARDINO) Do you recall a night at 18 the prison where the individuals in this photograph in 19 Exhibit 1 got Mr. Prible drunk on homemade wine on the 20 yard? 21 A. I don't recall that. 22 Q. Do you recall any nights when Mr. Prible was 23 so drunk that he couldn't walk back to his cell? 24 A. I don't recall that, and then I wouldn't be 25 able to see that. Remember, I'm not in their unit, so
Page 74 1 testified with me in the Herrero case. 2 Q. Okay. So Mr. Prible -- 3 A. Eddie got -- Eddie got -- he got subpoenaed, 4 too, for that case, but I don't think he testified. 5 Q. For Herrero? 6 A. Yeah. 7 Q. Did you ever speak about Herrero or Prible's 8 case with Eddie Gomez? 9 A. Huh-uh (Negative.) 10 Q. Do you recall what Prible told you-all about 11 his case, if anything? 12 A. I don't recall. 13 Q. Do you recall Mr. Prible ever confessing to 14 the murders for which he was charged? 15 A. I don't recall. 16 Q. Is that a no, he didn't ever testify -- or 17 didn't confess in your presence? 18 A. I don't remember. I don't remember. He might 19 have, he might have not. I don't remember. 20 Q. Okay. Do you know if any of these individuals 21 in this Exhibit 1 testified at the grand jury in 22 Mr. Prible's case? 23 A. No. 24 Q. And you did not testify at the grand jury for 25 Mr. Prible's case?	Page 76 1 if he's drunk and falling down in there, I wouldn't know 2 it. I don't live there. 3 Q. But if it was on the yard, you would have 4 been -- you could have on the yard? 5 A. Yeah, but I don't recall any. 6 Q. Okay. Do you recall hearing any inmates at 7 FCI-Beaumont telling you that Prible confessed to them? 8 A. I don't recall. 9 Q. You don't recall -- 10 A. Huh-uh (Negative.) 11 Q. -- any confession of Mr. Prible? 12 A. Huh-uh (Negative.) 13 Q. Okay. Were you ever in the SHU with 14 Mr. Moreno? 15 A. Yeah. 16 Q. Do you know the approximate timeframe? 17 A. I mean, we were in the SHU together a whole 18 bunch of times, but the last time we were together was 19 when Herrero found out we were going to testify against 20 him and he put a hit on us, so they put us in protective 21 custody. 22 Q. I'm sorry, I didn't understand. 23 A. Herrero -- well, yeah, Herrero. He found out 24 that me and Jesse were going to testify against him 25 because his lawyer showed him -- showed him the -- I

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1 don't know, the paper where it shows the names who's
2 testifying against him.
3 Q. Okay. And so then you went into the SHU?
4 A. Protective custody.
5 Q. To protective custody?
6 A. Yeah.
7 Q. Do you know about the date that that might
8 have been?
9 A. No.
10 Q. That's going back a long time?
11 A. Yes.
12 Q. Do you recall being in the SHU with -- or how
13 long you might have been in the SHU with Mr. Moreno?
14 A. We were there -- I don't recall, but it was a
15 long time. Maybe -- I don't recall how long.
16 Q. Like a year?
17 A. Might have been. It was a while.
18 Q. Okay. This would have been leading up to
19 Mr. Herrero's trial?
20 A. Yeah.
21 Q. Like in maybe the year 2001?
22 A. I don't recall.
23 Q. 2002?
24 A. I don't recall exact dates.
25 Q. Okay. Did you know about a meeting that

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1 Moreno had with Siegler when he reached out to her and
2 had information about Herrero's case? Were you aware of
3 that meeting?
4 A. Huh-uh (Negative.)
5 Q. Were you aware of any involvement that
6 Mr. Moreno had in Jeff's case?
7 A. No.
8 Q. Do you ever recall Mr. Moreno talking about
9 Jeff Prible's case?
10 A. No. He wouldn't even know him. He wasn't
11 even there when Jeff was there.
12 Q. He left before Jeff got there?
13 A. Yeah. He was never around the yard when Jeff
14 was there.
15 Q. Did Mr. Moreno know Mr. Foreman previously?
16 A. Yeah.
17 Q. And do you know if he knew these other
18 individuals in Exhibit 1 before he was shipped out?
19 A. I know he's going to know Oscar, Eddie and
20 Mark.
21 Q. Okay. When was the last time you spoke with
22 Ms. Siegler?
23 A. I don't recall.
24 Q. Did you speak -- did you assist her in any
25 other cases after Herrero?

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1 A. No.
2 THE REPORTER: Herrera?
3 MS. SCARDINO: Herrero.
4 THE REPORTER: Thanks.
5 MS. SCARDINO: Sorry.
6 Q. (BY MS. SCARDINO) Is that a no? Sorry.
7 A. Yeah, no.
8 Q. Did you ever speak to her ever again after
9 Mr. Herrero's trial?
10 A. No.
11 Q. Are you still in touch with Mr. Moreno?
12 A. Yeah.
13 Q. Was it a -- you said that you worked with a
14 lot of prosecutors over the years. Did you ever work
15 with anyone else at the DA's office other than Kelly
16 Siegler?
17 A. No.
18 Q. She was the only one?
19 A. Yeah.
20 Q. Was it common --
21 A. Well, I'm not --
22 Q. I'm sorry.
23 A. I don't recall, but, I mean, like I said, I
24 used to get a lot of visits.
25 Q. Was it common when you were helping a

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1 prosecutor with a case to write a letter to the
2 prosecutor outlining what you knew about the case?
3 A. That's hard to answer. Everybody works
4 differently.
5 Q. Did you ever do that in any of your cases?
6 A. Yeah, I think I did.
7 Q. Do you recall which case you might have done
8 it in?
9 A. No.
10 Q. Do you recall doing it in Herrero's case?
11 A. I don't recall.
12 Q. Okay.
13 MS. SCARDINO: I think if we can take a
14 short, five-minute break, I'll just look through and see
15 if there's anything else. So if we could go off the
16 record.
17 (Off the record from 3:10 to 3:11.)
18 Q. (BY MS. SCARDINO) Mr. Dominguez, earlier in
19 the deposition when we asked if you knew Jeff, you said
20 "Everyone knew Jeff was charged with murder." Do you
21 recall saying that?
22 A. I guess I might have said that.
23 Q. Okay. Do you know -- do you know why everyone
24 knew that?
25 A. Well, because we brag about your stuff in

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1 there.
2 Q. But you said that he never -- you never heard
3 him confess to the murders?
4 A. I said I don't recall.
5 Q. But do you recall him ever talking about the
6 case that he was charged with?
7 A. I don't recall.
8 Q. Do you recall ever reading anything in the
9 newspaper about his case?
10 A. No.
11 Q. Do you know how else you might have learned
12 about his case?
13 A. I don't recall.
14 Q. Hearing it from Moreno?
15 A. Like I said, Moreno wasn't even there, so he
16 won't even know that person, so...
17 Q. Did you communicate with Moreno after he left?
18 A. Huh?
19 Q. The prison? After he was switched to a
20 different prison, did you communicate with Moreno
21 through letters after he left FCI-Beaumont?
22 A. Sometimes we'd write each other.
23 Q. Okay. Okay.
24 MS. SCARDINO: I think that's all we
25 have. Thank you for being here.

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1 THE WITNESS: Thank you.
2 MS. MIRANDA: I just have one
3 clarification question. And I apologize because I know
4 we're going over the same ground.
5 EXAMINATION
6 BY MS. MIRANDA:
7 Q. I'm Tina, I'm from the Texas Attorney
8 General's Office, by the way.
9 When you were talking about your first contact
10 with Kelly Siegler, you said you did not recall when
11 that was, but I'm wondering if you recall in
12 relationship to the confession that you heard from
13 Mr. Herrero if it was prior to that or after that that
14 you first had contact with Kelly Siegler?
15 A. Whoa, whoa, whoa, wait, say that again. I got
16 confused.
17 Q. Do you recall if your first contact with Kelly
18 Siegler was before the confession that you heard from
19 Mr. Herrero or after?
20 A. No, it had to be after.
21 MS. MIRANDA: Okay. That's all I have.
22 MS. SCARDINO: Okay. No follow-up.
23 (Deposition concluded at 3:19 p.m.)
24 (Signature waived.)
25

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1 UNITED STATES DISTRICT COURT
2 for the
3 Southern District of Texas
4 RONALD JEFFREY PRIBLE, JR.)
5 Plaintiff)
6)
7 v.) Civil Action No.
8) 4:09-cv-01896
9 LORIE DAVIS, DIRECTOR, TEXAS)
10 DEPT OF CRIMINAL JUSTICE,)
11 INSTITUTIONAL DIV.)
12 Defendant)
13 REPORTER'S CERTIFICATION
14 DEPOSITION OF RAFAEL DOMINGUEZ
15 APRIL 17, 2017
16 I, Aubrea Hobbs, Certified Shorthand Reporter in
17 and for the State of Texas, hereby certify to the
18 following:
19 That the witness, RAFAEL DOMINGUEZ, was duly sworn
20 by the officer and that the transcript of the oral
21 deposition is a true record of the testimony given by
22 the witness;
23 That signature was WAIVED by the witness;
24 That the amount of time used by each party at the
25 deposition is as follows:
Mr. James G. Rytting: 1 hour, 10 minutes
Ms. Gretchen N. Scardino: 29 minutes
Ms. Tina J. Miranda: 1 minute
That pursuant to information given to the
deposition officer at the time said testimony was taken,
the following includes counsel for all parties of

Page 84

1 record:
2 Mr. James G. Rytting, Attorney for Plaintiff
3 Ms. Gretchen N. Scardino, Attorney for Plaintiff
4 Ms. Tina J. Miranda and Mr. George A. d'Hemecourt,
5 Attorneys for Defendant
6 Ms. Mekisha Jane Walker, Attorney for Rafael
7 Dominguez
8
9 That \$_____ is the deposition officer's
10 charges to the Plaintiff for preparing the original
11 deposition transcript and any copies of exhibits;
12 I further certify that I am neither counsel for,
13 related to, nor employed by any of the parties or
14 attorneys in the action in which this proceeding was
15 taken, and further that I am not financially or
16 otherwise interested in the outcome of the action.
17 Certified to by me this 28th of April, 2017.
18
19
20
21
22
23
24
25

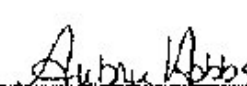

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EXHIBIT 56

In the Matter Of:
PRIBLE, JR vs DAVIS

4:09-cv-01896

VICTOR WISNER

September 20, 2017

Volume 1



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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD JEFFREY PRIBLE,
JR.,
Plaintiff,

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*
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*
*

VS.

* C.A. NO. 4:09-cv-01896

LORIE DAVIS, DIRECTOR,
TEXAS DEPARTMENT OF
CRIMINAL JUSTICE,
Defendant.

ORAL AND VIDEOTAPED DEPOSITION OF VICTOR WISNER

VOLUME 1

SEPTEMBER 20, 2017

ORAL AND VIDEOTAPED DEPOSITION of VICTOR WISNER,
produced as a witness at the instance of the Plaintiff,
and duly sworn, was taken in the above-styled and
numbered cause on September 20, 2017, from 9:03 a.m. to
11:26 a.m., before Carol Jenkins, CSR, RPR, CRR, in and
for the State of Texas, reported by machine shorthand,
at the offices of Hilder & Associates, 819 Lovett
Boulevard, Houston, Texas 77006, pursuant to subpoena
and the Federal Rules of Civil Procedure.

A P P E A R A N C E S:

FOR THE PLAINTIFF:

Ms. Gretchen Scardino
Reed Scardino
301 Congress, Suite 1250
Austin, Texas 78701
512.659.4470
gscardino@reedscardino.com

-AND-

Mr. James Rytting
Hilder & Associates
819 Lovett Boulevard
Houston, Texas 77006
713.655.9111
james@hilderlaw.com

FOR THE DEFENDANT:

Ms. Tina J. Miranda
Assistant Attorney General
Criminal Appeals Division
P.O. Box 12548
Austin, Texas 78711
512.936.1400
tina.miranda@oag.texas.gov

ALSO PRESENT:

The Videographer, Mr. Dwayne Smith of Esquire

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	Ms. Siegler's Letter of 5/1/02 to Ms. Batson	

1 THE VIDEOGRAPHER: Today's date is
2 September 20th, 2017. This is the beginning of file 1
3 in the deposition of Vic Wisner. The time is 9:03 a.m.
4 We are on the record.

5 Will the court reporter please swear in
6 the witness.

7 VICTOR WISNER,
8 having been first duly sworn, testified as follows:

9 EXAMINATION

10 BY MS. SCARDINO:

11 Q. Good morning, Mr. Wisner.

12 A. Good morning.

13 Q. My name is Gretchen Scardino. We just met out
14 in the hall for the first time. And along with James
15 Rytting, I represent Ronald Jeffrey Prible, someone that
16 you prosecuted back in 2002.

17 A. (Witness nods head.)

18 Q. Have you ever given previous deposition
19 testimony?

20 A. I do not think I have.

21 Q. Okay.

22 A. Possibly, but I don't think so.

23 Q. Okay. Well, you're -- you're an attorney, so
24 you know that we'll try not to talk over each other for
25 the court reporter.

1 A. (Witness nods head.)

2 Q. Did you do anything to prepare for this
3 deposition today?

4 A. Yes. I looked at the subpoena I got. I
5 searched for e-mails or correspondence I might have had
6 concerning the case that was compliant with the
7 subpoena.

8 Q. Okay. And you told me before the sub -- or
9 before the deposition began that there was some text
10 messaging with Ms. Siegler and some correspondence with
11 a Houston Press reporter; is that right?

12 A. Yes.

13 Q. Okay. Okay. And can --

14 A. But none of which dealt with the merits of the
15 case.

16 Q. Okay. Okay. Did you review the trial
17 transcript in this case before coming in today?

18 A. I did not.

19 Q. Okay. Did you review any notes of yours from
20 the file?

21 A. No, and I don't have any.

22 Q. Okay. Would you have had access to them if you
23 had contacted the DA's office to ask to see them?

24 A. I would assume so, yes.

25 Q. Okay. Did you have any conversations with any

1 attorneys at the DA -- currently at the DA's office
2 about this deposition today?

3 A. No, ma'am.

4 Q. Okay. What about with Ms. Miranda or anyone
5 else from the attorney general's office?

6 A. Just scheduling.

7 Q. Okay. Did you meet with --

8 A. No. It might have been a little bit more than
9 scheduling. I think she went through maybe a little bit
10 of the procedural issues going on in federal court, but
11 nothing in terms of merits.

12 Q. Okay. And is that in the e-mail correspondence
13 that you brought today or was that on the telephone?

14 A. That was over the phone.

15 Q. Okay. Did you meet with personal counsel
16 before coming in today?

17 A. No.

18 Q. Did you review any other documents,
19 correspondence, anything before coming in today?

20 A. No.

21 Q. And did you make contact with any witnesses in
22 the case?

23 A. No.

24 Q. Okay. You haven't spoken with Ms. Siegler over
25 the telephone?

1 A. The only thing, just so we're clear, is I sent
2 her a text because I saw that her show had come back on
3 television. And I said basically, this proves that
4 television is a wasteland if your show was coming back.
5 And she said, you know, we have to give a deposition.
6 And I said that I'd spoken with Ms. -- Ms. Miranda. She
7 seemed on top of it. And I don't even think that she
8 responded.

9 Q. Okay. So you were a prosecutor at the Houston
10 DA's office from when to when?

11 A. Actually, Harris. I don't want to be super
12 technical, but...

13 Q. Sorry, yeah, Harris County, Texas.

14 A. But from '84 to 2008.

15 Q. And was that your first job out of law school?

16 A. It was.

17 Q. Okay. And were you assigned to any particular
18 division at the DA's office when you were there?

19 A. I was assigned to many.

20 Q. Okay. Why don't you go through them with me.
21 I don't need specific dates.

22 A. Sure. I started off in the trial bureau and
23 made it up to chief in the trial court. When I was
24 promoted to provision chief, I think I went to police
25 integrity. Then I was assigned a series of courts as a

1 supervisor, maybe six courts. And my last assignment
2 there was head of major offenders, I believe.

3 Q. Okay. So when you prosecuted Jeff Prible back
4 in 2002, you had been on the job about 18 years?

5 A. That sounds right.

6 Q. Is that right? Okay.

7 When you worked at the DA's office, did
8 you receive any training on the Brady rule?

9 A. Yes.

10 Q. Okay. What was your understanding of the Brady
11 rule back in 2001, 2002 when you were prosecuting Mr.
12 Prible?

13 A. That we were to handle obviously any
14 exculpatory material, and exculpatory material could and
15 should include any matter that could be used for
16 impeachment.

17 Q. And if a witness was interviewed and had
18 information that would be favorable to the accused and
19 you decided not to use that witness -- not to call that
20 witness in your case, was it your understanding that the
21 prosecutor was obligated to reveal the identity of that
22 witness to the defense?

23 A. Of course.

24 Q. In other words, you couldn't keep the defense
25 in the dark about the existence of a witness that they

1 would otherwise not have known about?

2 A. Of course. And that would be what led to, you
3 know, the Michael Morton fiasco.

4 Q. Right. Do a prosecutor's obligations under
5 Brady depend on whether the witness to whom the evidence
6 relates is testifying or nontestifying?

7 A. No.

8 Q. Okay. It's the same across the board?

9 A. Yes.

10 Q. Okay. And when must Brady evidence be
11 disclosed?

12 A. As soon as possible.

13 Q. Okay. So what was the procedure -- so the --
14 excuse me, the burden is not on the defense, in other
15 words, to request the evidence? The onus is on the
16 prosecutor to produce it as -- as soon as possible?

17 A. Yes.

18 Q. Okay. What was the procedure at the DA's
19 office concerning the disclosing of evidence from the
20 case file to the defense?

21 A. We would always have an open file policy unless
22 there was some extraordinary need not to, but it would
23 not include our personal notes in preparation for trial.

24 Q. Work product as --

25 A. Right.

1 Q. -- as that is defined under the law?

2 A. Yes, ma'am.

3 Q. Work product, okay.

4 And how would the procedure go if a -- in
5 other words, you're saying you disclosed the whole file?
6 You had an open file policy other than work product?

7 A. (Witness nods head.)

8 Q. Would a defense lawyer come in -- have to come
9 into the office to examine it?

10 A. I don't follow your question, I'm sorry.

11 Q. Okay. So if a defense lawyer or if you needed
12 to disclose something to the defense counsel, would you
13 ask them to come into the office to examine the file, or
14 would you make copies and give the file to them?

15 A. Both. I think it would depend on the
16 circumstances or how far along or how close we were to
17 trial. I know once in trial or pretrial hearing, if a
18 Brady matter came up, I'd notify the judge before any --
19 before we bring in the jury, let me put something on the
20 record.

21 Q. Okay. And when you would release information
22 to the defense counsel, was it your practice to make a
23 note of what you had disclosed to them?

24 A. No.

25 Q. There would be no written record or any other

1 kind of record of what they had actually received from
2 you?

3 A. No, but they would know that anything other
4 than what I labeled as work product would have been
5 available to them.

6 Q. Okay. But ultimately, the only -- even under
7 an open file policy, the only individuals that truly
8 know everything that's in a file are those that are in
9 the DA's office, correct?

10 A. I would not agree with that.

11 Q. Well, because a DA -- if a defense attorney was
12 coming in to review the file, a DA could remove
13 something from the file before it was shown to defense
14 counsel, right?

15 A. That would -- that could even be a crime. I
16 don't --

17 Q. It could -- it could be, that's right. But --
18 and I'm not suggesting that you did that in this case.
19 I'm asking you, the term "open file policy" is somewhat
20 misleading because the DA is the only person who knows
21 what is in that file at all times? Would you agree?

22 A. In practice, I would not. That was not the way
23 the office ran. And if, for instance, Johnny Holmes had
24 the slightest hint that you did something like that,
25 you'd be immediately fired.

1 Q. Okay. You'd agree that that would be a crime
2 and a fireable offense to do something like that?

3 A. Crime I'd have to think about something for a
4 second, but definitely a fireable offense. And I -- I
5 never saw anything like that happen.

6 Q. Okay. What is your understanding of a
7 prosecutor's duty to disclose Brady information that
8 comes to light after a trial is over?

9 A. They would have to notify defense counsel or
10 appellate counsel.

11 Q. Okay. Even years later, right?

12 A. I would say so. But if I found out something
13 now, I don't know what I would do, you know, nine years
14 out of the office, but, yes. It just happened the other
15 day on a case that doesn't have anything to do with
16 this, and the prosecutor complied.

17 Q. Okay. Was it a case that you were a defense
18 counsel in in that matter?

19 A. Yes. What happened was I discovered an old
20 e-mail in a case that had dragged on a while indicating
21 that a witness had received Crime Stoppers compensation.
22 Several prosecutors later, and this is a messy
23 situation, not that they were doing anything wrong
24 intentionally, Crime Stop -- the prosecutor, pardon me,
25 was told opposite. I sent her the e-mail, I said you

1 need to notify defense counsel as soon as possible and
2 she did, which is what we would have done --

3 Q. Okay.

4 A. -- back when I was there.

5 Q. Okay.

6 A. She was fully compliant.

7 Q. Okay. So now, how long have you been on the
8 other side of the fence now? Since 2008?

9 A. Yeah, since the end of 2008.

10 Q. Okay. Okay.

11 A. I didn't practice for about the first six or
12 nine months after I left. I just taught.

13 Q. Okay. And have you encountered Brady
14 violations or Brady issues since you've been on the
15 other side of the defense working for accused
16 individuals?

17 A. I would say egregious no; but obviously, you
18 get a lot of frustrations on this side that you didn't
19 appreciate on the other side.

20 Q. On the other side.

21 A. But nothing horrible. Nothing to go to
22 somebody's boss.

23 Q. Sure. What are those just general frustrations
24 that you encounter?

25 A. Oh, it would depend on the individual case.

1 But obviously, prosecutors being unreasonable.
2 Prosecutors refusing to pursue leads that may be
3 inconsistent with their theory of the case. Not
4 dismissing cases when it would be in the interest of
5 justice and someone has a conviction in another county
6 and it would just cost the county money to bring them
7 back. But for the most part, those are few and far
8 between.

9 Q. Okay.

10 A. I think just the frustration on this side of
11 not having all the tools and all the accessed
12 information I had as a prosecutor.

13 Q. Right. You'll agree that as a prosecutor, you
14 do have access to a lot more information than defense
15 counsel does?

16 A. Yeah. When you're there, you think it's kind
17 of a, you know, 50/50. But when you're on this side,
18 you realize it's not.

19 Q. Did the district attorney's office have any
20 guidelines regarding the use of informants when you
21 worked there?

22 A. There might have been something in the office
23 policy manual. I am not sure.

24 Q. Okay. What was the office policy manual? Can
25 you describe that to me?

1 A. It was a binder. I'm not sure, it had been
2 recently updated. But just the basic practices, this is
3 what you do here, this is what you do there.

4 Q. Okay. And was every prosecutor given one of
5 those manuals when they went to work there?

6 A. I believe we were, but it wasn't a priority.

7 Q. Okay. But they were just guidelines that you
8 were supposed to follow that was -- I assume was
9 updated --

10 A. It was updated.

11 Q. -- by yourself?

12 A. But I'm not sure we really kept up with it.
13 And maybe when Chuck Rosenthal was elected, maybe we
14 decided to update it then. My memory is a little vague.
15 But there was an office policy manual. It might not or
16 might not have had a specific chapter on dealing with
17 informants.

18 Q. Okay. Do you recall whether an informant had
19 to meet any sort of eligi -- eligibility requirements
20 before they could work a case?

21 A. I think there were some rules that you might
22 have had to get a supervisor's approval if you went
23 outside the rules.

24 Q. Okay.

25 A. It seems to me I remember habitual offenders,

1 like for instance -- also, I forgot to tell you, I was
2 head of the drug -- drug task force for a while; and I
3 supervised the drug lawyers. We were not to make deals
4 with -- I think even you had to go above me, habitual
5 offenders or making a deal with someone who was charged
6 with an aggravated case, 400 grams or more. That's my
7 best memory.

8 Q. Okay. And at this point, you said go above
9 someone above you. What was your position at this time?

10 A. I think it's head of major offenders. I think
11 I was head of the drug prosecutors, or maybe I was just
12 head of the drug task force. And my best memory is if
13 someone was a true habitual offender or charged with an
14 aggravated case, 400 grams or more, which would have
15 been a 15-year minimum, our policy -- and there were a
16 lot more informants obviously in the drug world than in
17 the street crime world -- my best memory is that I
18 cannot get an okay. Maybe we had to go above me to my
19 boss, but I'm not positive.

20 Q. Okay. And who was your boss?

21 A. At that time, boy, probably Ted Wilson.

22 Q. Okay.

23 A. Maybe. But, I mean, in that job, you're
24 dealing with informants virtually every day. And
25 narcotics cops are coming to you virtually every day

1 wanting to make a deal with somebody to get somebody
2 higher up.

3 Q. Okay. Now, is there any sort of vetting
4 procedure that you as a prosecutor had to go through
5 with this informant before you decided that he would be
6 a trustworthy witness?

7 A. Vetting per se as standard procedure, I would
8 say no. But I think every prosecutor just has to use
9 their discretion and common sense because you have so
10 much power.

11 Q. Uh-huh.

12 A. You have power to help somebody, and you have
13 power to, you know, prosecute somebody.

14 Q. So a lot of it is going from your gut whether
15 this person might be telling the truth or not?

16 A. I don't know about that. I think it's
17 basically dealing with the officers. While most of the
18 time I did it, it would be an officer or a lawyer
19 bringing somebody to me.

20 Q. Okay. You would never go out and find an
21 informant yourself?

22 A. I would always have somebody with me, one of my
23 -- one of my investigators at least.

24 Q. Okay. Would you ever contact formants --
25 informants you had used in other cases to see if they

1 could recruit other informants for you?

2 A. Never.

3 Q. Okay. Would that have been improper?

4 A. It would depend on the circumstances.

5 Q. But you never did it?

6 A. No.

7 Q. Okay. Does the DA's office currently have an
8 open file policy?

9 A. Yes.

10 Q. Okay. Okay. When defense attorneys -- if
11 defense attorneys would have come in to review -- and
12 I'm talking about back in 2001, 2002 when you worked at
13 the DA's office, not in your position now as a defense
14 attorney. But when defense attorneys would come in to
15 review the file at the DA's office, would they be
16 allowed to make copies of any documents in that file?

17 A. No, unless it was their client's statement or
18 something extraordinary.

19 Q. Okay. So they would just have to look at the
20 file and make notes?

21 A. Yes.

22 Q. Okay. What was the policy of the office when
23 you were there about disclosing offense reports?

24 A. Always.

25 Q. You always had to disclose offense reports?

1 A. Yes.

2 Q. And all supplements?

3 A. Yes.

4 Q. Okay. And why is that?

5 A. Because it's the right thing to do, and it's
6 fair.

7 Q. Okay.

8 A. And we never tried to, you know, prosecute
9 anybody by ambush.

10 Q. Okay.

11 A. And I've dealt with that on this side, it's
12 very frustrating, when I first got into private
13 practice.

14 Q. Yeah. Well, Ms. Siegler testified at the
15 Temple case that she -- her practice was to disclose
16 only those reports from officers that testified. Do you
17 recall if that was the practice in this case, in the
18 Prible case?

19 A. I have no idea, to be honest with you.

20 Q. Okay. You can't deny that that was the case?
21 You can't remember?

22 A. I don't know if it's true or false or what she
23 did.

24 Q. Okay. What was the office's policy about
25 disclosing witness statements, including witnesses that

1 were nontestifying?

2 A. We would have to disclose a witness statement
3 after they testified, but we would usually virtually
4 always do it in advance just to save time during the
5 trial.

6 Q. And by advance, do you mean like right before
7 trial started or after the witness gave that written
8 statement?

9 A. I think it would depend on the circumstances.

10 Q. Okay.

11 A. But I don't remember issues of discovery
12 becoming adversarial really in any of the cases that I
13 had.

14 Q. Okay. But as a matter of course, it was -- you
15 would wait until the witness testified? That was the
16 norm -- the usual time --

17 A. I'd say generally no, because that would slow
18 up the trial, and the judge would get mad at you. So,
19 no.

20 Q. Okay. And again, Ms. -- Ms. Siegler testified
21 at the Temple case that that was her practice. Do you
22 know if it was the practice in this case to wait until
23 after a witness testified to produce the report -- or
24 the statement?

25 A. I do not.

1 Q. Okay. So the murder of Steve Herrera, Nilda
2 Tirado and their three young children occurred on
3 April 23rd, 1999. And I know we're bringing you way
4 back.

5 A. Uh-huh.

6 Q. But it was a horrific crime that probably comes
7 up pretty easily to your memory, even though it was so
8 long ago.

9 Mr. Prible was actually not charged in the
10 case until 2001, and he was tried in 2002. When did you
11 get involved in the case?

12 A. I would assume maybe a month or two before the
13 trial started. What probably happened, Kelly and I were
14 good friends, and we're still good friends. Probably
15 asked me, hey, I've got a good case. I need somebody to
16 sit me with me. Are you free during these two weeks
17 here or these five weeks here if we had to pick a jury?

18 Q. Okay. So this was a situation that you really
19 came in right before trial got up to speed and sat in
20 and tried the case with her?

21 A. Yes.

22 Q. Okay.

23 A. That would be a fair assessment.

24 Q. Okay. So you had no role in any decision to
25 charge Prible in 2001?

1 A. No.

2 Q. Okay. Do you know anything about the
3 circumstances of why he was finally charged two years
4 later?

5 A. No.

6 Q. You don't know what evidence had come to
7 light --

8 A. No.

9 Q. -- at that time? Okay.

10 And I assume you didn't have any role in
11 the Grand Jury process --

12 A. No.

13 Q. -- involving this case? Okay.

14 Do you have any knowledge of the Grand
15 Jury procedures in this case, when -- if it was
16 presented and when?

17 A. No.

18 Q. Okay. Do you know if any witnesses were
19 presented to the Grand Jury?

20 A. I have no idea.

21 Q. Okay. So within 24 hours of the murder, Mr.
22 Prible was a suspect in this case; and the Harris -- the
23 Harris County Sheriff's Office interviewed all
24 witnesses, submitted reports. And everything -- the
25 investigation was completed by 1999.

1 Do you recall this?

2 A. No.

3 Q. You don't recall. Okay.

4 A. (Witness shakes head.)

5 Q. And no charges were brought in 1999; no Grand
6 Jury heard the case in 1999. So we can presume that as
7 of '99, the DA did not believe there was sufficiently
8 legal -- legally admissible evidence to convict Mr.
9 Prible of the murders?

10 A. That's not true. And I can share a lot of
11 information with you on this, but not specifically as to
12 this case.

13 Q. Okay. Why is it not true?

14 A. Because there's so many people at the office
15 who are working intake. Some of whom are risk averse,
16 some of whom have never actually tried a case. I've had
17 situations where a case is perfectly good, but somehow,
18 some way -- and I can give you some specific examples --
19 some prosecutor tells an investigator, hey, we need
20 more; and then it's put on the shelf and the case was
21 perfectly good. And then they get busy on other stuff
22 and then it's like, oh, let's get back to this and we
23 need more. I can give you a good example.

24 There was a case that I prosecuted where
25 it's the best circumstantial case in the world. The

1 mother of two HPD officers killed her husband for
2 insurance purposes. Chuck Rosenthal decided it wasn't a
3 good case. Prosecuted her for bigamy because she was
4 married to someone else at the time. And then they
5 brought me the case 30 years later, like, I think this
6 is a mess. You need to prosecute this woman. And it
7 was a perfectly good case 30 years ago.

8 Q. Okay. So at least someone at the DA's office
9 thought back in 1999 that there was not sufficient
10 evidence to try him?

11 A. I don't know. I don't even know if the
12 sheriff's department brought the case over. But I'm
13 saying just because a case isn't accepted, doesn't mean
14 there wasn't enough. It's -- it's not -- it's not a
15 scientific process is what -- is what I'm trying to say.
16 It depends on the judgment, the way the officers present
17 the case.

18 Q. If the D -- if the DA didn't know about this
19 case as of April -- three days after the murder at
20 least, --

21 A. I don't know.

22 Q. -- does that change your mind? Okay.

23 A. I don't know.

24 Q. Okay.

25 A. I don't know who they spoke with; I don't know

1 who they dealt with.

2 Q. Okay. And this was a pretty horrible murder.
3 It was a murder of five people, including three young
4 children. This isn't exactly the type of case they
5 would probably forget about, right, and put on a shelf
6 for a couple of years --

7 A. You know what?

8 Q. -- if they could go ahead and get justice right
9 away?

10 A. I wouldn't say that.

11 MS. MIRANDA: Objection, form, calls for
12 speculation.

13 Q. (By Ms. Scardino) Go ahead, you can answer.

14 A. Should I answer?

15 Q. Yeah.

16 A. I would not say that.

17 Q. Okay.

18 A. There's all kinds of police officers who were
19 involved in all kinds of responsibility. Then some of
20 them had personal problems. It's just not a scientific
21 process getting a case to be prosecuted.

22 Q. Were you aware -- I know you got involved in
23 the summer or you said a couple of months before trial,
24 which was -- the trial was October 2002. Did you know
25 that in July 2001 or by July 2001 when Mr. Prible was

1 indicted for this case, that an informant had come
2 forward?

3 A. No.

4 Q. Okay. Were you invol -- or you weren't
5 involved. Sorry, I just -- I asked you that question
6 already.

7 So the case went to trial in October 2002.
8 By that time, you had been involved since
9 approximately --

10 A. Two or three months before maybe.

11 Q. Okay. And do you recall Michael Beckcom was
12 the star witness for the prosecution?

13 A. Now that you say his name, it sounds right.
14 But I didn't haven't any memory of his name.

15 Q. Okay. Do you remember anything about --

16 A. I wouldn't say star -- star witness. It seems
17 to me, based on my memory, that it was a very, very
18 strong circumstantial case with Mr. Prible's semen in
19 the dead woman's mouth. He just kind of lent -- lent
20 some color to, you know, understand the difference
21 between the parties. I wouldn't say he was a star
22 witness.

23 And I'm not trying to be difficult on
24 that. It just seemed like it was a very strong
25 circumstantial case without him.

1 Q. Well, do you know that the only informa -- new
2 information in 2001 when they indicted him was
3 information that they now have from an informant?

4 A. Right. But it's kind of like that case I told
5 you 30 years later with the mother of the two officers.
6 We didn't have any new information 30 years later, and
7 it was a good case.

8 Q. Do you recall ever meeting with Mr. Beckcom in
9 person?

10 A. I don't think I ever spoke with him. I don't
11 think I ever saw him except when he was on the witness
12 stand.

13 Q. Okay. At test -- at trial, Beckcom testified
14 that he met with you a couple of weeks before trial. Do
15 you have any -- and that Ms. Siegler was there as well.
16 Do you have any recollection of that meeting?

17 A. Maybe we went to speak with him at the jail.

18 Q. Uh-huh. Do you remember what you spoke with
19 him about?

20 A. I don't even remember meeting with him at the
21 jail. I'm just going by your word that he said I met
22 with him, so I assume maybe I did.

23 Q. Okay. Did you ever have any phone calls with
24 Mr. Beckcom?

25 A. To my knowledge, certainly not.

1 Q. Okay. And why -- you say certainly not. But
2 did you ever speak with informants on the telephone that
3 were --

4 A. One on one?

5 Q. -- from prison?

6 A. No. I'm not even sure I could have accepted
7 the call.

8 Q. Okay.

9 A. I guess I could.

10 Q. Could you have made a phone call to a --

11 A. Sure.

12 Q. -- prisoner at BOP?

13 A. Sure.

14 Q. Yeah. And how would that go about?

15 A. I think I might have done that once or twice.
16 I think it's just you have to call and hope that
17 somebody there is willing to take the time to put them
18 on the phone.

19 Q. Okay. Do you know if phone calls from BOP --
20 and Mr. Beckcom was housed in FCI-Beaumont during this
21 time?

22 A. Okay.

23 Q. But do you know if phone calls from the federal
24 prison are recorded?

25 A. I do not. I would assume they are.

1 Q. Okay.

2 A. But I do not know that for a fact.

3 Q. Okay. You would assume the ones maybe from the
4 inmate phones, the regular inmate phones, are recorded
5 or also --

6 A. I would assume so.

7 Q. Okay. Would you assume that the ones between
8 or from or to a unit manager, a BOP employee's personal
9 phone at the unit, would you think that those phone
10 calls would be recorded?

11 A. Their personal phone, I would not think so.
12 But really, I don't know.

13 Q. Okay. Do you recall that Beckcom testified at
14 trial that he became really close with Mr. Prible at
15 FCI-Beaumont Medium and after several weeks of them
16 bonding together, Prible came out and confessed to him?

17 A. I didn't realize it was Beaumont. I thought it
18 was a prison further east. In Mississippi maybe. But
19 if you're telling me it's Beaumont, I guess it was
20 Beaumont.

21 Q. It was Beaumont.

22 A. Okay.

23 Q. But do you remember that story at trial, that
24 that was the story at trial that he and Mr. Prible
25 really bonded over these few weeks that they were

1 together at this unit at FCI-Beaumont and only after
2 creating this close relationship, did Mr. Prible come
3 forward and confess everything to Mr. Beckcom?

4 A. That sounds right.

5 Q. And that was an important picture to paint for
6 the jury in terms of Mr. Beckcom's credibility, right?

7 A. Like I told you earlier, I'm not trying to be
8 difficult. I think we could have tried this case
9 without the informant. I just don't think -- I mean,
10 once his semen's in her mouth, I just don't see any
11 other --

12 MS. SCARDINO: Objection.

13 A. -- plausible theory.

14 MS. SCARDINO: Objection, nonresponsive.

15 A. I mean, I'm not trying to be difficult with
16 you. I just don't -- it's not like we didn't have any
17 evidence and the only evidence was the informant. We
18 could have tried it without the informant.

19 Q. (By Ms. Scardino) But you didn't try it
20 without the informant; you tried it with the informant,
21 right?

22 A. Yes.

23 Q. Yes. Okay. I'm going to show you a couple of
24 -- a couple of excerpts from Mr. Beckcom's testimony at
25 trial.

1 A. Thank you.

2 Q. Uh-huh. If you look at 80 -- page 85, line 15,
3 this is the defense counsel questioning Beckcom. And
4 the defense counsel says, "Throughout your conversations
5 with him" -- meaning Prible -- "nobody talked to you
6 about the case. You didn't know anything about it. It
7 was just everything, all the knowledge you acquired, you
8 acquired from Jeff Prible?"

9 And Beckcom says, "Yes."

10 Do you recall that?

11 A. Yes. If you're showing it to me.

12 Q. Okay. And then if you look on page 91, line
13 17.

14 A. 95?

15 Q. I'm sorry. Is 91 in there? Let me see. Well,
16 we can go straight to 95. We'll come back to 91.

17 A. Yes, ma'am.

18 Q. 95, she says, Ms. Siegler is questioning
19 Beckcom and she says, "Back when you initially called me
20 on this case, how did you not know or how did you know
21 that I wouldn't tell you, you know, get the hell out of
22 here. I've got the DNA evidence. I don't need your
23 help."

24 And Beckcom says, "I didn't."

25 And Ms. Siegler says, "In even calling me,

1 you ran the risk of being found out to be a witness for
2 the state and a snitch."

3 And Mr. Beckcom says, "Yes."

4 Do you see that?

5 A. I see that.

6 Q. Okay. Did you know that there was originally a
7 different informant in this case?

8 A. No.

9 Q. You did not know that?

10 A. (Witness shakes head.)

11 Q. Okay. His name was Nathan Foreman. Does that
12 name sound familiar?

13 A. I don't think so.

14 Q. He was a nephew of George Foreman.

15 A. Oh, no. I was thinking of another case that I
16 have.

17 Q. Okay. Did you know that back on August 8th,
18 2001, before Mr. Prible was even indicted that Ms.
19 Siegler and Johnny Bonds met with Foreman at
20 FCI-Beaumont, and he told them that Mr. Prible had
21 confessed to him?

22 A. No, because if they would have told me that
23 George Foreman's nephew had met with them, it would have
24 stuck out in my mind.

25 Q. Yeah. So you had no knowledge of this?

1 A. No.

2 Q. Okay.

3 A. Maybe they told me at the time, but it hasn't
4 stood out in my mind.

5 Q. Do you know that they figured out right away
6 that Foreman was lying?

7 A. No.

8 Q. Because he couldn't even describe what Jeff
9 looked like?

10 A. No.

11 Q. Okay. Did you know that they figured that
12 Foreman hadn't even met Jeff Prible at the time that he
13 said he heard he confessed?

14 A. No.

15 Q. Did you know that Siegler nevertheless kept in
16 communication with Mr. Foreman throughout the whole
17 period of time that Beckcom was befriending Prible and
18 attempting to elicit a confession from him?

19 A. No.

20 Q. Okay. Did you know, in fact, that Foreman was
21 Beckcom's cellmate?

22 A. No.

23 Q. Did you know that Foreman became Beckcom's
24 cellmate after you had already been talking with Siegler
25 about this case?

1 A. No.

2 Q. Did you know that when Foreman first made
3 contact with Siegler, he was in the segregated housing
4 unit but then shortly afterwards he was moved to
5 FCI-Beaumont Medium in the same unit as Mr. Prible was
6 moved to and in the same unit as Mr. Beckcom so that
7 they would all be housed together?

8 A. No.

9 Q. Okay. Do you think it was just a coincidence
10 of all the units that Mr. Prible could have been put
11 into and all the units that Mr. Foreman and Mr. Beckcom
12 could have ended up in, they were all moved into the
13 same spot?

14 A. I don't know.

15 MS. MIRANDA: Objection, form, calls for
16 speculation.

17 Q. (By Ms. Scardino) Does this trouble you as a
18 prosecutor with Brady obligations that you didn't know
19 this information?

20 A. No, because I wasn't in charge of the
21 information. I didn't have it. I couldn't be
22 responsible for Brady on something I didn't know.

23 Q. Is that your understanding of Brady that if you
24 didn't know that information existed, that you didn't
25 have an obligation to reveal it?

1 A. I don't follow what you're saying. You're
2 saying I should search out information that I don't know
3 about and --

4 Q. I'm asking you if that's your understanding of
5 your obligation under Brady.

6 A. I don't follow your question. Are you saying I
7 should ask a prosecutor I'm sitting with, do you have
8 any Brady information that you're not telling me, and I
9 need you to tell me so I can tell -- tell the defense?

10 Q. I'm asking you if you as a prosecutor are
11 charged with knowing of any Brady evidence that has come
12 to light either through your office or through law
13 enforcement investigation?

14 A. If something had come to my attention that was
15 Brady, I would have made sure that it was disclosed.
16 But I cannot read people's mind, and I don't have access
17 to information that I don't know.

18 Q. And likewise, a defense attorney couldn't read
19 a prosecutor's mind and know what they know if that
20 prosecutor hadn't revealed it to the defense; is that
21 correct?

22 A. Of course.

23 Q. Did you know that in addition to Mr. Beckcom
24 and Mr. Foreman, there were other inmates over there at
25 FCI-Beaumont who were auditioning for this role of

1 informant against Mr. Prible?

2 A. No.

3 Q. Okay. I'm going to show you an exhibit. This
4 is Exhibit 112. It's a letter from the father/son duo
5 of Jesse Gonzalez and Felix Gonzalez that was housed at
6 FCI-Beaumont Medium to Ms. Siegler. And it was written
7 around May 22nd, 2002. I'll give you a minute to read
8 it.

9 A. I'm sorry, are these the girls who were killed
10 or --

11 Q. Yes, they are.

12 A. Or are these the girls or the guy writing the
13 letter?

14 Q. No, this is an attachment to the letter, and
15 it's photographs of the victims in this case.

16 A. Okay.

17 Q. As well as a photograph of Mr. Prible at the
18 prison with Mr. Oscar and Mr. Felix Gonzalez.

19 A. With the father and the son?

20 Q. Yes.

21 A. And Prible is in the middle, I guess?

22 Q. And he's in the middle, right.

23 A. Okay.

24 Q. Okay. Is this the first time you've seen this
25 letter?

1 A. To my knowledge, yes.

2 Q. Okay. And in it, Mr. Gonzalez mentions that he
3 and his father have spoken with Ms. Siegler on previous
4 occasions regarding the Prible case, and then they wrote
5 this letter.

6 Is that a MO that you knew Ms. Siegler to
7 have about dealing with informants, first speak with
8 them on the phone and then have them write her a letter?

9 A. To be honest with you, and I'm not trying to --
10 I have no idea how she developed the informant or how
11 she came up with this case. I tried a lot of cases with
12 her. I helped her on a lot of cases. She helped me on
13 a lot of cases. And I really don't remember any other
14 case -- and we probably maybe tried 10 or 12 or 15
15 capital murders together -- any other case dealing with
16 an informant.

17 Q. Okay.

18 A. So any kind of practice or anything she would
19 do, I really don't know.

20 Q. Okay.

21 A. I just don't remember any of our other cases
22 really dealing with an informant like this.

23 Q. Okay. I'm going to show you another exhibit,
24 it's 113.

25 A. But also let me finish up on the question and

1 give you a full answer.

2 I don't remember her practice as being one
3 of these prosecutors who would only prosecute a case if
4 there was an informant or that was the specific type of
5 case that she liked to try. This was an outlier at
6 least in everything I had done with her, just the fact
7 that there was an informant from the federal prison
8 coming in. Or we might have had informants in other
9 cases.

10 Q. Okay. So she wasn't afraid to try a
11 circumstantial case that she thought she could win
12 without an informant, in other words?

13 A. She wasn't afraid to try any case, no.

14 Q. Okay. So if you could please read Exhibit 113.
15 This is a letter from Carl Walker to Ms. Siegler.

16 A. Yes, ma'am.

17 Q. Okay. And if you notice the first paragraph
18 there, it says, "As you may or may not know from
19 previous conversations with Nathan Foreman, myself, Mark
20 Martinez, Jesse Gonzalez, his father, Felix Gonzalez,
21 and Beckcom were all close friends with Prible."

22 Do you see that?

23 A. Yes.

24 Q. Okay. Have you ever seen this letter before?

25 A. To my knowledge, no.

1 Q. Okay. And again, this inmate is indicating
2 that he had had a previous conversation with Ms.
3 Siegler, and then he's writing her a letter about what
4 he knows about the case; is that correct?

5 A. Yes.

6 Q. And it also indicates that he and an entire web
7 it looks like of defendants or of informants have been
8 discussing this case at the prison, right?

9 MS. MIRANDA: Objection, form, calls for
10 speculation.

11 A. It appears from his letter that he's telling
12 Kelly that he and -- and the other people, pardon me,
13 spoke about the case.

14 Q. (By Ms. Scardino) I'm going to show you
15 Exhibit 114. This is a letter from Mark Martinez to Ms.
16 Siegler.

17 A. Is that part of the father/son duo?

18 Q. It is not. It's not.

19 Dated April 30th, 2002. If you'd read
20 this.

21 A. Yes, ma'am.

22 Q. Okay. Have you ever seen this letter before?

23 A. To my knowledge, no.

24 Q. Okay. And again, he talks about a conversation
25 that he has had with Ms. Siegler, and now he's writing

1 her a letter, right?

2 A. (Witness nods head.)

3 Q. It looks to be a pattern with these informants
4 and Ms. Siegler?

5 A. Yes. If I could say something, maybe it will
6 clarify and maybe you'll understand better.

7 I think the way the trial worked was,
8 Kelly said you take witnesses A, B, C and D. I'll take,
9 you know, E, F, G and H --

10 Q. Yes.

11 A. -- or whatever.

12 Q. Okay. I'm going to show you another Exhibit,
13 163. And these are various photographs at the prison of
14 Mr. Prible in the middle with all these informants that
15 are angling to testify against him.

16 A. I remember we used a photograph, I believe,
17 similar to this because I remember acting weird that
18 they had that beach motif in the photographs. It
19 seemed -- it didn't seem like it fit. It's kind of like
20 something you take when you got on a cruise.

21 Q. Right. So you do remember that?

22 A. I remember one -- one photograph, I think,
23 of -- if his name is Beckcom?

24 Q. Yes.

25 A. And Prible, I think.

1 Q. Okay. Now, knowing what you know now now that
2 you've seen these three letters and those photos and
3 that it appeared that there were no less than six
4 informants discussing the case among themselves with Mr.
5 Foreman and Mr. Beckcom --

6 A. Uh-huh.

7 Q. -- at the prison, does that cast doubt on the
8 veracity of Beckcom's story at trial that everything he
9 heard about this case he heard from Mr. Prible?

10 A. I would not agree with that.

11 Q. Why not?

12 A. I think you'd have to see what he knows. Just
13 cause there are a lot of people in a federal prison
14 trying to get help does not mean that he's -- meaning
15 your client, Mr. Prible, isn't telling a lot of people
16 what he did and why he did it, either to brag or stay
17 out of trouble with people who might seek to -- seek to
18 retaliate against him.

19 Obviously, in a perfect world, you'd want
20 somebody like Beckcom coming forward with absolutely no
21 access to any knowledge or the Internet or anything. A
22 guy told me this, and if it's true, I might be able to
23 help you. But we don't live in a perfect world.

24 Q. But now you're on the other side of the fence.

25 A. Right.

1 Q. And as a defense attorney, if you were
2 representing Mr. Prible, wouldn't you be able to use
3 these documents to impeach Mr. Beckcom's testimony at
4 trial?

5 A. Probably so. At least I'd try to, yes.

6 Q. I want you to put these three letters in front
7 of you so you can see them all at the same time.

8 A. Uh-huh.

9 Q. Exhibits 112, 113, and 114.

10 A. Uh-huh.

11 Q. And I have another letter to show you. This is
12 Exhibit 127.

13 A. Uh-huh.

14 Q. It's a letter from Michael Beckcom to Ms.
15 Siegler.

16 A. Uh-huh.

17 Q. If you could take a minute to read that.

18 A. Yes, ma'am.

19 Q. Okay. Now, looking at all four of these
20 letters together, they look like they were written by
21 the same person, the same formatting?

22 MS. MIRANDA: Objection, form, calls for
23 speculation.

24 A. I don't know. There may be some guy -- I don't
25 really understand how federal prison works that well. I

1 really haven't done any federal work. There may only be
2 one person who types. I don't know. But obviously, it
3 looks like there were a lot of people trying to get
4 help.

5 Q. (By Ms. Scardino) So if you had received
6 these, if these had been addressed to you, --

7 A. Uh-huh.

8 Q. -- it would at least cross your mind that the
9 same people might be typing up these letters or the same
10 person might be typing up all these letters?

11 A. It would occur to me that there's people in the
12 federal prison who are criminals who want to have their
13 sentence reduced as much as possible.

14 Q. Right. So the question is: Who was the person
15 that was masterminding these letters, typing them up for
16 people?

17 A. I don't follow --

18 Q. And --

19 A. -- your question, then.

20 Q. That was just a statement.

21 A. Okay. I'm sorry.

22 Q. Now's my question. That's okay. And I'm going
23 to show you Exhibit 180. This is a letter found in Mr.
24 Beckcom's case file from his state capital murder case.

25 A. Can I ask you something? Was this in a county

1 that was just north of Corpus?

2 Q. Yes, Port Aransas.

3 A. Yes, ma'am.

4 Q. And so lo and behold, it's the same formatting,
5 isn't it, of these other letters? Do you agree?

6 A. I guess so.

7 Q. Or at least it looks that way?

8 A. Yes, ma'am.

9 Q. Okay. So it looks as if Beckcom might have
10 been the mastermind behind these letters?

11 A. I have no idea.

12 MS. MIRANDA: Objection, form, calls for
13 speculation.

14 Q. (By Ms. Scardino) Okay.

15 A. Why would Beckcom want to help these other guys
16 out, though? I'm not -- I'm not trying to be -- be
17 flippant. I don't -- I don't follow the theory.

18 Q. Okay.

19 A. Why wouldn't he want all the credit for
20 himself?

21 Q. Well, I'm --

22 A. Okay.

23 Q. I'm going to continue on with my questions.

24 Okay. Were you aware that Ms. Siegler met
25 with three potential informants back to back on

1 December 10th, 2001, at FCI-Beaumont?

2 A. No.

3 Q. It sort of seemed to be the final callback for
4 the audition of the informants?

5 A. (Witness shakes head.)

6 Q. No?

7 And these informants were Wayne Jefferson.
8 Does that name ring a bell?

9 A. No.

10 Q. Okay. And Mr. Foreman and then Mr. Beckcom.
11 Does this sound familiar?

12 A. No.

13 Q. Okay. Let me show you Exhibit 174,
14 Exhibit 174 -- and you don't have to read the whole
15 thing unless you want to. But this is a handwritten
16 letter from Mr. Beckcom to -- that was handed to Ms.
17 Siegler and Johnny Bonds at their meeting with him on
18 December 10th, 2001. Does that look familiar to you?

19 A. I might have seen it. I can't say for sure.

20 Q. Okay. And do you recall, for lack of a better
21 word, that was the script that Beckcom and Ms. Siegler
22 used during their testimony in this case?

23 A. No. I don't know that one way or the other.

24 Q. Okay. Was that normal practice in the DA's
25 office if you have a witness, you're going to want to

1 pin down their statement in writing, right, before they
2 testify?

3 A. No.

4 Q. No?

5 A. I'd rather just speak with the witness and
6 make -- make my own notes, and I wouldn't want to give
7 them a script. I'd like them to speak the truth.

8 Q. But how would you know if they're going to
9 stick to their story that they've told you --

10 A. They don't have --

11 Q. -- unless you have something from them in
12 writing?

13 A. They don't have to stick to their story. I'm
14 not going to get rich or lose my life savings or my
15 family be on the street if I lose a trial. They do
16 their best. They tell the truth. If I don't think
17 they're telling the truth, I would impeach them or let
18 the court know or defense counsel know I don't think
19 they're telling the truth, but I would never give
20 anybody a script.

21 Q. Okay. Do you know what favors were given to
22 Beckcom as a result of his testifying in this case?

23 A. What he actually received, I don't know. I
24 would assume that Kelly wrote, and I may have even
25 co-signed a letter to the federal court. I think it's

1 called a 35B; is that right?

2 Q. Yes. A Rule 35.

3 A. Attestment? I'd assume that he got that, but I
4 don't know.

5 Q. Do you know if any favors were given to him
6 concerning state parole?

7 A. I do not.

8 Q. Okay.

9 MS. SCARDINO: Okay. If we can just take
10 a short break, --

11 MS. MIRANDA: Okay.

12 MS. SCARDINO: -- I can see where I am and
13 see if we can --

14 MS. MIRANDA: Yeah.

15 THE VIDEOGRAPHER: The time -- the time is
16 9:51. We're off the record.

17 (Recess taken from 9:51 a.m. to
18 10:08 a.m.)

19 THE VIDEOGRAPHER: This is the beginning
20 of file 2. The time is 10:08. We're on the record.

21 Q. (By Ms. Scardino) Mr. Wisner, were you aware
22 that back when Ms. Siegler picked up the Tirado/Herrera
23 murder case again in 2001, that a prison informant that
24 she had used in a case a few years before reached out to
25 her by the name of Jesse Moreno?

1 A. No, ma'am.

2 Q. Does that name sound familiar to you at all?

3 A. Not at all.

4 Q. Okay. I'm going to show you an exhibit, 52.

5 This is a handwritten letter from Jesse Moreno to Ms.

6 Siegler dated April 5th, 2001. If you could read it to
7 yourself, please.

8 A. Yes, ma'am.

9 Q. Thanks.

10 A. Yes, ma'am.

11 Q. Have you ever seen that letter before?

12 A. To my knowledge, no.

13 Q. Okay. I'm going to show you another Exhibit,

14 53. This is another handwritten letter to Ms. Siegler.

15 This one is from Celia Moreno, Jesse Moreno's mom. It's
16 dated April 10th, 2001. Just if you could read it to
17 yourself, please.

18 A. Yes, ma'am.

19 Q. Have you ever seen that letter before?

20 A. To my knowledge, no.

21 Q. Okay. And on July 3rd, 2001, after these
22 letters were received, Ms. Siegler met with Jesse Moreno
23 in person at the Beaumont marshal's office. Are you
24 aware of this meeting?

25 A. No, ma'am.

1 Q. Okay. And there's a transcript of that
2 meeting. Kelly recorded it. Was that common practice
3 to record interviews in prisons?

4 A. It would depend. I wouldn't --

5 Q. In what -- under what circumstance --

6 A. I would say that you would --

7 Q. -- would you want to record it?

8 A. I would say if practical, you would record a
9 witness.

10 Q. Okay. Do you know if different prisons had
11 different rules regarding the recording of witness
12 interviews?

13 A. I do not. I would assume they did, but I do
14 not know that for a fact.

15 Q. Okay. And you don't know if -- if -- what the
16 BOP rules were at this time?

17 A. I've met with witnesses in federal prison and
18 I've met with at least one witness in Beaumont but I
19 can't recall what the rules were.

20 Q. Okay. Did you know that at that July 3rd, 2001
21 meeting, Mr. Moreno talked to Ms. Siegler about his
22 friend, Nathan Foreman, who was in the SHU at that time?

23 A. No. I don't know anything about Nathan Foreman
24 because I don't know names. But if I had heard that
25 George Foreman's nephew was involved, that would have

1 stood out in my mind.

2 Q. You would have remembered. Okay.

3 So you didn't know that -- that Mr. Moreno
4 gave Ms. Siegler Nathan Foreman's name at this July 3rd,
5 '01 meeting?

6 A. Not to my knowledge, no.

7 Q. Okay. And did you know that at that July 3rd
8 '01 meeting, Mr. Moreno spoke with Ms. Siegler about a
9 murder confession he had heard from an inmate named
10 Hermilo Herrero?

11 A. No, ma'am.

12 Q. Does this name sound familiar, Hermilo Herrero?

13 A. To my knowledge, no.

14 Q. Okay. Mr. Herrero was convicted of the murder
15 of a man named Albert Guajardo by slitting his throat
16 ear to ear and then wrapping it in a carpet and throwing
17 it on the side of the road. Does this case ring a bell
18 to you?

19 A. Was that tried in a state court?

20 Q. It was. It was tried by Ms. Siegler during the
21 same time that she was working on this Prible trial.

22 A. I would watch her and we were close friends,
23 but I don't remember anything about a head that was cut
24 off and thrown out onto the street. That would have
25 stuck out in my mind, but maybe I was busy on something

1 else.

2 Q. Okay. And did you know that at this meeting
3 when Mr. Moreno is talking to Ms. Siegler about this
4 Herrero murder, that he told her that Nathan Foreman and
5 another inmate in FCI-Beaumont named Rafael Dominguez
6 had heard Mr. Herrero confess at the same time?

7 A. No, ma'am.

8 Q. Okay. So there's Mr. Foreman again appearing
9 as a -- as an informant in another -- in another matter
10 in addition to Mr. Prible?

11 A. If what you say is true, yes.

12 Q. Okay. Did you know after that meeting on July
13 5th, 2001, so two days later the DA's office accepted
14 charges against both Prible and against Mr. Herrero?

15 A. I don't know anything about it. I don't have
16 any knowledge about the facts or the circumstances of
17 filing -- filing charges on Prible. I was not involved.
18 As I said until maybe, you know, a couple of months
19 before, Kelly would have asked, hey, what are you doing
20 between, you know, this week and this week, I have a
21 real good case.

22 Q. Sure.

23 A. I need somebody to sit with me.

24 Q. Sure. Are you aware that on August 7th, 2001,
25 that Johnny Bonds printed out a criminal history for

1 Nathan Foreman in preparation for his and Kelly's visit
2 with them -- with him?

3 A. No.

4 Q. And you weren't aware you said earlier that Mr.
5 Bonds and Ms. Siegler met with Nathan Foreman in person
6 on August 8th, 2001, to discuss Mr. Prible's case?

7 A. I would say no, but I was aware that Johnny --
8 I believe at the time they worked on the case, I believe
9 Kelly was probably head of major offenders; and Johnny
10 would have been assigned to her. So I know that they
11 worked together.

12 Q. Uh-huh.

13 A. But in terms of what they did, I don't know.

14 Q. And so you didn't know that at this 8/8/01
15 meeting, Ms. Siegler and Mr. Bonds both came out of it
16 thinking that Mr. Foreman was a liar?

17 A. No, but you mentioned that to me earlier this
18 morning.

19 Q. As a defense attorney, would you have wanted to
20 know about all of these dealings between the prosecutor,
21 Mr. Moreno and Mr. Foreman in the setup of Mr. Prible?

22 A. I would say yes.

23 Q. Ms. Siegler tried the Herrero case in April
24 2002.

25 A. Let me stop for a second. I wouldn't say the

1 setup of Mr. Prible and the investigation of Mr. -- I
2 don't want to agree that he was set up.

3 Q. Okay. You would have wanted to know about her
4 communications with them leading up to her prosecution
5 of Mr. Prible?

6 A. Yes, but I think the main problem, I guess,
7 from Mr. Geiser, and I'm not sure who -- I think it was
8 Mr. Geiser, wasn't it?

9 Q. Yes.

10 A. And whoever sat with him, like I said, I
11 thought was going to be the semen in the dead woman's
12 mouth.

13 Q. Okay.

14 A. I mean, that was the main problem.

15 MS. SCARDINO: Objection, nonresponsive.

16 Q. (By Ms. Scardino) But -- okay.

17 A. I'm just trying to answer as --

18 Q. Sure.

19 A. -- best I can.

20 Q. Sure.

21 A. I'm not trying to be argumentative.

22 Q. No, no, no, I'm not -- I'm not saying you are.

23 So Ms. Siegler prosecuted Herrero, Hermilo
24 Herrero, in April 2002. Did you know that the same
25 snitches were involved in that case as well, Nathan

1 Foreman, Jesse Moreno, Rafael Dominguez and Carl Walker?

2 A. No, ma'am.

3 Q. Okay. Did you know that she -- and there was
4 an additional snitch as well named Eddie Gomez involved
5 in that Hermilo Herrero prosecution.

6 Were you aware that Ms. Siegler wrote
7 letters to the US attorneys on behalf of each of these
8 individuals, Nathan Foreman, Jesse Moreno, Rafael
9 Dominguez and Eddie Gomez as a result of their
10 assistance to her in the Herrero trial?

11 A. I don't know anything about that case or what
12 she did.

13 Q. You don't know anything about that. Okay.

14 Hermilo Herrero was convicted of murder in
15 April 2002, and he was sentenced to life in prison. And
16 so this is April 2002. In August 2002, did you know
17 that Ms. -- Ms. Siegler drove to Lafayette, Louisiana,
18 and testified in a Rule 35 sentence reduction hearing
19 for Jesse Moreno?

20 A. No.

21 Q. Did you know that as a result of her testimony,
22 he, I believe, got about 77 months knocked off his
23 remaining sentence so he would be released in a month?

24 A. No.

25 Q. Okay. As a defense attorney and knowing that

1 Mr. Moreno was the individual who put Mr. Foreman and
2 Ms. Siegler in contact together for the Prible case,
3 would you have wanted to know about all this background
4 of these snitches also working for her in the Herrero
5 case?

6 A. I guess so.

7 Q. Earlier you -- we were talking about the open
8 file policy at the DA's office.

9 A. Uh-huh.

10 Q. And you said that your practice was or the
11 practice there was that it was an open file unless
12 something was placed in a work product file.

13 Do you remember saying that?

14 A. No. You can't just place something in a work
15 product file. Work product has to be work product.

16 Q. Yes. Yes, I agree with you.

17 A. You can't just hide something in a work -- work
18 product file to absolve it from being Miranda. At least
19 I wouldn't.

20 Q. Right. The work product has to be actual work
21 product if you're going to keep it?

22 A. Of course.

23 Q. Yes. Were you aware that these letters that I
24 showed you, Exhibits 112 through 114, as well as some
25 other correspondence between Ms. Siegler and these

1 informants was found in her work product file for the
2 Prible case?

3 A. I have no idea where they were found.

4 Q. Okay. Would that surprise you if I told you
5 that they were found there? They don't appear to be
6 work product, do they, as that term is defined under the
7 law?

8 A. They would not be work product at least from my
9 classification of a file unless I made my own notes on
10 them. Maybe after I spoke with the witness or spoke
11 with the informant.

12 Q. And had actually put your work product on them?

13 A. Right.

14 Q. Okay.

15 A. But I don't know how they got there or why they
16 were there.

17 Q. Okay.

18 A. Or if they were there.

19 Q. Okay. Were you aware that Ms. Siegler, during
20 the lead up to Mr. Prible's trial, was speaking with Mr.
21 Beckcom and Mr. Foreman and possibly with these other
22 informants on unrecorded lines at BOP?

23 A. No, I had nothing to do with the work-up of the
24 case or whatever deal was made with Mr. Beckcom.

25 Q. Okay. So you don't know that she was speaking

1 with them on a man by the name -- on the phone, the
2 private phone at the BOP -- of a man by the name of
3 Gordon Hart? Does that name sound familiar?

4 A. No, ma'am.

5 Q. Okay. As a defense attorney, would you have
6 wanted to know that she was communicating with these
7 informants on unrecorded phone lines?

8 A. I would say yes, but as we spoke about earlier,
9 and I'm not trying to be flippant, that would have been
10 the least of my problems if I was representing Mr.
11 Prible in this case.

12 Q. Okay. But that -- you could have at least used
13 that to impeach Mr. Beckcom at trial or try to impeach
14 him at trial?

15 A. But even if he's impeached, there still has to
16 be some theory about the scientific evidence. I mean,
17 that's the main problem in the case.

18 Q. Okay.

19 A. I think juries are skeptical of informants.

20 Q. Well --

21 A. Juries are smart.

22 Q. And I'm -- and I'm asking specifically as a
23 defense attorney, would you have liked to have known
24 that she was speaking with these informants on
25 unrecorded lines? You could have made good use of that

1 at trial, wouldn't you agree?

2 A. I would have liked to. But like I said, that
3 was not the main issue if I was representing Mr. Prible,
4 even thinking about it then or thinking about it now.

5 Q. And you just mentioned that juries are smart,
6 they know about informants, you know, they can judge
7 them?

8 A. I think they cast -- cast a jaundiced eye.

9 Q. Yeah. And why is that?

10 A. Because they're not -- it's just like anybody
11 who's receiving money from Crime Stoppers or any kind of
12 reward, people should come forward in a perfect world
13 without receiving anything. But we don't live in a
14 perfect world.

15 Q. All right. And so these informants come in
16 with an automatic bias because every prisoner wants to
17 get out of prison, right?

18 A. Or people want money. I've had -- I've had
19 people turn in family members only once Crime Stoppers
20 was able to pay them an reward. It shouldn't happen,
21 but it does. It's just part of the world we live in.

22 Q. Yeah. I mentioned earlier that Johnny Bonds
23 testified that he immediately thought that Mr. Foreman
24 was a liar after speaking to him on August 8th, 2001,
25 and that Siegler thought he was lying as well.

1 Would you have wanted to know that as a
2 defense attorney if you were representing Mr. Prible if
3 the very first informant on this case trying to testify
4 against your client had not even known -- had never even
5 met your client at the time that he had first come
6 forward?

7 A. I'd want to know that, but I think it would be
8 -- and I'm not trying to argue with you at all, so
9 please don't take this wrong. It would be a lot more
10 important if the only evidence in this case was Beckcom,
11 but it just wasn't. It was just something to give color
12 to the case. If it was Beckcom was the only witness,
13 then obviously, because then that's all you have is the
14 testimony of somebody in federal prison, but you don't.

15 Q. Mr. Wis -- Wisner, --

16 A. Uh-huh.

17 Q. -- I'm going to read you just a brief excerpt
18 from your closing argument in this case.

19 A. Yes, ma'am.

20 Q. And this is on -- I don't have a copy for you
21 to read, but it's page 7, line 9. I'm not sure of the
22 volume either.

23 But you said, "We may bring you someone
24 who's seeking some sort of incentive in exchange for his
25 testimony. Just do us one favor, keep an open mind,

1 evaluate his testimony in light of the other witness'
2 testimony, in light of the physical evidence, then and
3 only then decide whether or not that person is telling
4 you the truth."

5 And you were referring there to Mr.
6 Beckcom, right?

7 A. Yes, I would assume so.

8 Q. Now that you know about all of these other
9 documents that were concealed in Ms. Siegler's work
10 product file, now that you know about her ongoing
11 communications with a web of informants that she was
12 working with on two cases simultaneously, do you feel
13 that a jury could have fully evaluated Beckcom's
14 testimony without knowing all that?

15 A. I would assume that they were skeptical. They
16 knew he was a federal inmate who was in custody on very
17 serious charges, and he wanted consideration for what he
18 did. So I would say I think they could have fully
19 evaluated him.

20 Q. If you had -- as a defense attorney, would you
21 have objected to that closing argument, knowing that you
22 had -- your client had not had access or the knowledge
23 of these other witnesses that Ms. Siegler had been
24 dealing with?

25 A. I would say no. I -- I don't -- I don't buy

1 into your theory. I'm sorry. I just don't.

2 Q. You don't have to apologize.

3 A. No, I'm not trying to -- I don't want to make
4 it seem like I'm being argumentative.

5 Q. And also in your closing argument on page 9,
6 line 12, you told the jury that "In order to find Prible
7 not guilty, they'd have to believe that, 'this defendant
8 is the unluckiest, unluckiest criminal defendant who has
9 ever set foot in a courtroom and there has been a
10 conspiracy to frame this defendant both in the free
11 world and prison so audacious it makes any frame-up that
12 has ever been conducted in the annals of crime look like
13 child's play.'"

14 A. (Witness nods head.)

15 Q. And when you said that, you weren't aware of
16 all this other information about Ms. Siegler setting him
17 up with these other informants, were you?

18 A. No, but I can answer that if you want.

19 Q. I'm just asking you if as a --

20 A. Do you want me to ans --

21 THE WITNESS: Am I supposed to answer
22 that?

23 Q. (By Ms. Scardino) That was a yes or no.

24 MS. MIRANDA: You have to answer her
25 question. I'm sorry.

1 A. I agree with what I said. I think it's a fair
2 argument. I think it stands up today, and I'll explain
3 why if you want.

4 MS. SCARDINO: I pass the witness.

5 MR. RYTTING: Can I ask a few questions?

6 THE WITNESS: Sure.

7 MS. MIRANDA: Yeah, sure.

8 MR. RYTTING: Or do you want me to go
9 after you?

10 MS. MIRANDA: No, no, no, that's fine. Go
11 ahead.

12 EXAMINATION

13 BY MR. RYTTING:

14 Q. Let's see. This is James Rytting for Ronald
15 Prible. A couple more questions on some of the evidence
16 that wasn't turned over to the defense counsel or some
17 of the -- some of the documents, whether you consider
18 evidence.

19 A. Yes, sir.

20 Q. Co-counsel Gretchen showed you a photograph of
21 several inmates surrounding Mr. Prible.

22 MR. RYTTING: Do we have that exhibit?

23 A. I've got a memory of the photograph.

24 Q. (By Mr. Rytting) Mine's not so good.

25 MS. SCARDINO: It's somewhere here in

1 these other --

2 MS. MIRANDA: Here.

3 MS. SCARDINO: -- exhibits. Okay. Thank
4 you.

5 A. Yes, sir.

6 Q. (By Mr. Rytting) Okay. And since I don't have
7 it, can you identify anyone in this photograph?

8 A. That's Prible there. Beckcom, I think.

9 Q. Okay. So that's Prible kneeling down?

10 A. Uh-huh.

11 Q. And that's Beckcom?

12 A. Uh-huh.

13 Q. Correct? Do you -- are you aware of the
14 identities of anyone else in that photograph?

15 A. To my knowledge, no.

16 Q. But you can't dispute the fact that this person
17 is or is not Carl Walker?

18 A. If you tell me so, yes.

19 Q. And Carl Walker was one of the individuals that
20 sent Kelly jail mail, a letter, seeking to inform on Mr.
21 Prible, correct?

22 A. Yes.

23 Q. Okay. That is Rafael Dominguez next to Mr.
24 Beckcom standing in the photograph on his left. Rafael
25 Dominguez. Do you understand that Rafael Dominguez was

1 a snitch that she used in the Herrero case that she was
2 prosecuting simultaneously?

3 A. I found that out this morning, yes, sir.

4 Q. And that is Nathan Foreman?

5 A. Yes, sir.

6 Q. Who was also angling in both cases --

7 A. Yes, sir.

8 Q. -- to inform on Mr. Prible and on Mr. Herrero?

9 A. Yes, sir.

10 Q. That is Jesse Gonzalez kneeling down to Mr.
11 Prible's left.

12 A. Yes, sir.

13 Q. Okay. And he was also as you understand
14 angling to inform on Mr. Prible?

15 A. Yes, sir.

16 Q. That is Mark Martinez, another person as we --
17 do you understand was trying to inform on Mr. Prible?

18 A. Yes, sir.

19 Q. This document -- you see the date on that
20 photograph?

21 A. Yes, sir.

22 Q. Can you read it for the record?

23 A. 11/11/01.

24 Q. So that would be November 11th, '01. You
25 realize that Mr. Beckcom testified that two weeks later,

1 Mr. Prible finally confessed to the murder?

2 A. Yes, sir.

3 Q. Okay. Would you as a defense attorney want to
4 have this photograph and want to know that these -- all
5 these defendants surrounding Mr. Prible were testi --
6 had angled to testify against him as a defense attorney?
7 That's all I'm asking.

8 A. I would say honestly, that would be the least
9 of my problems in this case.

10 Q. I'm not saying it's the least of your problems,
11 I'm saying does --

12 A. I'd want to have an --

13 Q. -- that have an answer you would want?

14 A. Of course, you'd want to have everything; but I
15 don't think it would change the outcome of the case.

16 Q. Would you want as a -- I know, but that's not
17 the question.

18 A. Yes, sir.

19 Q. The question is: Would you want this
20 information? Would you try to build a case as a defense
21 attorney that he was being set up by informants?

22 A. No. If I was the defense attorney, I would
23 have to come up with some sort of theory about how his
24 semen was found in the dead woman's mouth. Because if
25 not, he's guilty, we didn't even need any informants.

1 I'm just being honest with you.

2 Q. Okay. So what the theory of the defense was
3 what about that semen?

4 A. What's that?

5 Q. What was the defense's theory?

6 A. There isn't any theory, and that's why I'm
7 confident beyond any doubt that Mr. Prible is guilty.
8 As I understand the theory, as I think Craig Masilow
9 wrote in the article, in order for Prible to be not
10 guilty -- and tell me if I'm -- tell me if my memory is
11 hazy on any of the facts -- there's some theory that the
12 dead woman's husband fell asleep, and the dead woman
13 who's recently had sex with her husband, because the
14 husband's semen is found in her vagina and her anus,
15 with her husband who's a dangerous man in the next room,
16 decides that your client who's not very attractive,
17 doesn't seem to have any -- any personality, she just
18 has to perform oral sex on him. And then he leaves and
19 then someone else comes in and kills them with the semen
20 still in her mouth and sets the house on fire? I mean,
21 is that the theory?

22 Q. So are you saying that your theory is taken
23 from Mr. Masilow's article?

24 A. No. But I think he sets forward, --

25 Q. Let me --

1 A. -- and that was --

2 Q. Just a yes or no question, a yes or no answer.

3 That was a yes or no answer. I'll let you follow up if

4 Tina has questions.

5 A. I'm sorry.

6 Q. So the answer was no, you don't? You don't
7 take your theory of the case from Mr. Masilow's article?

8 A. He refreshed my memory as to the facts of the
9 case.

10 Q. Okay. All right. So there was a defensive
11 theory, wasn't there? The defensive theory, let's just
12 be simple about it, was that it was consensual sex?

13 A. But like in my argument, I mean, you wouldn't
14 even write something on television that was that crazy.

15 Q. And did you know anything about this woman's
16 sexual history?

17 A. No.

18 Q. Okay. You did not.

19 Did you have any independent information
20 that Mr. Prible had ever assaulted her --

21 A. I'm sorry?

22 Q. -- before? That he had ever assaulted her
23 before?

24 A. I'm sorry, the --

25 Q. Did you have any information that Mr. Prible

1 had -- any other information other than the -- than the
2 semen that she was assaulted by Mr. Prible?

3 A. No.

4 Q. Okay. So it's just the semen in her mouth?

5 A. It's very damning.

6 Q. And right. But he was -- and what's damning
7 about it is that it places him at the scene of the
8 crime, correct?

9 A. Yes.

10 Q. You cannot tell from the semen in the mouth
11 whether it was consensual or nonconsensual, can you, by
12 just that fact that if someone has semen in her mouth?

13 A. Just that fact or the surrounding
14 circumstances?

15 Q. Just that fact.

16 A. Of course not.

17 Q. Okay. And the surrounding circumstances you
18 say have to do with the fact that her husband was
19 present; is that correct?

20 A. Yes.

21 Q. And her husband had been doing cocaine and
22 doing -- and drinking heavily, correct?

23 A. I seem to remember there was cocaine and
24 alcohol in his system.

25 Q. In fact, you can't dispute now that there was

1 lots of cocaine and alcohol in this instance, in this
2 case and at that -- and had been consumed at that time?

3 A. I don't remember if she had anything in her
4 system or not offhand.

5 Q. He did. Is that -- is that your understanding?

6 A. That's my best memory, yes, sir.

7 Q. And the testimony is that they were arranging
8 for cocaine deals all during that night -- through that
9 night --

10 A. I don't remember.

11 Q. -- delivering cocaine?

12 A. I thought there was some sort of squaring up on
13 bank robberies, and that the dead man had set up the
14 bank robberies. That's my best memory.

15 Q. Oh. But you don't dispute the fact --

16 A. That's my best memory of the case.

17 Q. -- that both Herrera and Mr. -- and Mr. Prible
18 were calling Herrera's brother to deliver them eight
19 balls of cocaine through the night?

20 A. That may be true.

21 Q. And so they were both -- if the evidence -- if
22 I'm correct and if the record would show it, they were
23 both highly intoxicated?

24 A. Prible?

25 Q. Prible and Mr. Herrera.

1 A. I don't recall.

2 Q. But if -- let's suppose that the evidence shows
3 that.

4 A. Yes, sir.

5 Q. Okay. So there is an opportunity for
6 consensual sex in such a situation?

7 A. It seems very implausible to me. Like I said,
8 you wouldn't even write up -- write up a television
9 script like this.

10 Q. And you don't -- you don't -- in your history
11 as a defense attorney, you haven't come across
12 situations like this? Dysfunctional families where
13 affairs are carried on, where sex is rather easily
14 exchanged?

15 A. Not like this, no.

16 Q. You haven't?

17 A. That was a beautiful woman. Her husband is a
18 dangerous man who was passed out or fallen asleep. And
19 she decides to give this very unattractive man who seems
20 to have no personality at all oral sex. And then he
21 leaves and someone else comes in so fast and kills them
22 while semen is still in her mouth?

23 Q. It doesn't have to be so fast, does it?

24 A. Well, it seems --

25 Q. You don't -- you don't recall the timeline, do

1 you?

2 A. It would seem to be pretty fast if the semen
3 was still in her mouth.

4 Q. Okay. So that's the scientific evidence, I
5 mean, you're basing your judgments on; isn't that right?

6 A. Yes.

7 Q. That the semen would be -- okay.

8 A. Like I said, and I'm not trying to argue with
9 you, if all we had was a confession of Beckcom, what
10 you -- all of this would be extremely important to me
11 both as a prosecutor and defense attorney.

12 Q. Okay. Let's just go ahead.

13 A. But --

14 Q. Let's just make --

15 A. Okay.

16 Q. -- that assumption, you don't have the semen.

17 A. Okay.

18 Q. You don't have the semen, you just have
19 Beckcom's testimony.

20 A. Right.

21 Q. Then this becomes highly important?

22 A. Much more important without the semen.

23 Q. Much more important?

24 A. Of course.

25 Q. The letters from the other informants showing

1 that they were aware of Beckcom's -- aware of Beckcom
2 and that they were in communication about this case
3 together, that -- that becomes important?

4 A. Yes. But I'm not even sure the case is tried
5 if there isn't the semen in her mouth.

6 Q. Okay. That's -- that's fine. I'm just saying,
7 that's true. I'll admit that the case can't be -- I
8 will concede that the case probably wouldn't be tried
9 without the semen.

10 A. And I would have filed the case before any
11 informant came forward.

12 Q. Right. Right. I agree with that. So it
13 comes -- and I agree with that.

14 But I'm just saying, this is -- this has
15 heightened significance, these photographs.

16 Let me show you another that's been
17 attached here. That is a photograph of Nathan
18 Foreman --

19 A. Uh-huh.

20 Q. -- and Mr. Prible.

21 A. Yes, sir.

22 Q. Okay. And -- okay. And can you read the date
23 on that photograph? I believe it says November 3rd,
24 2001, correct?

25 A. I think you're right, sir.

1 Q. Okay. And I'll represent to you that this is
2 -- this antedates Mr. Prible's supposed confession which
3 Beckcom testified came pouring out on November 24th by
4 what, three weeks?

5 A. Yes, sir.

6 Q. Do you understand that?

7 A. The question, no, I don't follow the
8 significance.

9 Q. I'm just saying, do you understand that. I'm
10 not asking you to comment on significance yet.

11 Do you understand that that was -- you
12 don't question that Mr. Beckcom's testimony -- I know
13 you haven't read it in a while -- was that on
14 November 24th, Mr. Prible finally broke down and
15 confessed to him?

16 Do you under -- do you recall that?

17 A. Yes. Can I say one more thing about --

18 Q. No.

19 A. -- all this?

20 Q. Please don't. Please not.

21 A. Okay.

22 Q. So in Mr. Beckcom's testimony at trial, you
23 understand was that Nathan Foreman heard everything that
24 he did. He was there every step of the way.

25 A. I don't recall that. If you say so, I would

1 agree to it.

2 Q. Okay. So given that background, does it become
3 significant that Nathan Foreman, who is being used and
4 rewarded in another case, the Herrero case, is taking
5 photographs of -- with himself posing with Prible?

6 A. I don't think it's all that significant, to be
7 honest with you.

8 Q. Would you as a defense attorney supposedly with
9 no semen, want this photograph?

10 A. I would want it, but like I said, it would be
11 the least of my problems in this case.

12 Q. No, I'm saying without the semen.

13 A. Without the semen? Oh, yes.

14 Q. Okay. Fine. Thank you.

15 That's what -- that's the background
16 premise.

17 And do you understand that --

18 A. Without the semen, your whole job is attacking
19 the informant.

20 Q. That's right.

21 A. With the semen, it's just a side issue. With
22 the informant, it's just a side issue.

23 Q. Correct. And -- and do you understand that
24 before Mr. Prible's trial, a letter was written on
25 behalf of Mr. Foreman on behalf of other snitches in the

1 Herrero case who were all in FCI-Beaumont, this ring is
2 in FCI-Beaumont, seeking to assist them with Rule 35
3 reductions in the federal system?

4 A. Yes.

5 Q. Would it be important for you to know that Mr.
6 -- that Ms. Siegler was writing on behalf of this
7 informant who was now the cellmate of Michael Beckcom?
8 Would you have used that to impeach Michael Beckcom's
9 testimony?

10 A. I would have in either case, but it becomes
11 obviously a lot less important due to the physical
12 evidence which we had.

13 Q. Thanks. Okay.

14 But it -- it's the -- but as you said, it
15 becomes much more important if that physical evidence
16 was not present?

17 A. Yeah. But like I said in that case, I doubt
18 the case is even tried.

19 Q. Right. And one of the opinions as a defense
20 attorney you'd want to know is who sent you these
21 photographs; isn't that correct?

22 A. Sure.

23 Q. All right. Who sent you the photograph of Mr.
24 Prible surrounded by one, two, three, four, five, six,
25 seven other people that were being used by Ms. Siegler

1 in another case or in this case to inform on Mr. Prible
2 or on Mr. Herrero?

3 A. Yes, sir.

4 Q. Okay. That would be -- given there was no --
5 the physical evidence was not significant, if you didn't
6 have the semen, that would be an extremely important
7 piece of information for you to have?

8 A. Right.

9 Q. Okay.

10 A. But as we spoke about, I don't see how this
11 case gets tried just with a federal informant.

12 Q. And, in fact, you would want to know that Mr.
13 Foreman and perhaps even call him to the stand if you
14 were -- if you knew his role in this -- knew what the
15 prosecutor, Ms. Siegler, knew about Mr. Foreman in this
16 case?

17 A. I guess so, but, I mean, it just seems like in
18 order to represent Prible, you've got to come up with
19 some sort of plausible theory for the physical evidence.

20 Q. Correct.

21 A. If not, you're just impeaching really almost
22 extraneous issues or extraneous people.

23 Q. Right. Okay.

24 MS. SCARDINO: I might have some follow-up
25 after Tina, but I'll go ahead and pass.

1 A. Can I -- can I say the one thing I wanted to
2 say or it -- or it isn't allowed?

3 MR. RYTTING: No, no, no. Let them -- let
4 them --

5 MS. MIRANDA: Wait. Let them answer --
6 ask their questions.

7 MS. SCARDINO: Yeah. I think I can wrap
8 up if I get just a quick 10-minute break.

9 MR. RYTTING: No, I may have some more
10 questions --

11 MS. SCARDINO: Some more? Okay.

12 MR. RYTTING: -- after the break.

13 THE VIDEOGRAPHER: The time is 10:42.
14 We're off the record.

15 (Recess taken from 10:42 a.m. to
16 10:51 a.m.)

17 THE VIDEOGRAPHER: This is the beginning
18 of file 3. The time is 10:51. We are on the record.

19 Q. (By Mr. Rytting) Okay, Mr. Wisner, let's just
20 -- let me just set the stage, some of the assumption for
21 these questions.

22 As before, the supposition is that semen
23 isn't conclusive as you believe it is.

24 A. Uh-huh.

25 Q. That -- and instead, you're relying on Michael

1 Beckcom's testimony.

2 A. Uh-huh.

3 Q. So as a defense attorney, you -- you pursued
4 leads, correct?

5 A. Yes, sir.

6 Q. Okay. And as a defense attorney, you would
7 want to know the identity of persons who have
8 information about the case?

9 A. Yes, sir.

10 Q. Okay. Individuals who may be in and around Mr.
11 Prible at the time that he confessed, supposedly
12 confessed?

13 A. Yes, sir.

14 Q. Okay. So as a defense attorney, you would want
15 to interview the individuals that sent the jail mail to
16 Mr. -- to Ms. Siegler, correct?

17 MS. MIRANDA: I'm sorry, I didn't hear
18 that part.

19 A. We're back in the hypothetical situation --

20 Q. (By Mr. Rytting) That's correct.

21 A. -- where there isn't any semen?

22 Q. That's where we're not -- we're assuming that
23 the physical evidence is not conclusive.

24 A. Okay.

25 Q. Would you pursue these -- would you pursue

1 those leads? Would you seek to interview Carl Walker,
2 Jr., for example, as a defense attorney?

3 A. I would say yes, but I think we're getting far
4 afield.

5 Q. Okay. I know we're getting far afield. But
6 under the assumption of what they have -- what the --
7 what the state has is a snitch case, a snitch case, and
8 the physical evidence is not conclusive, that you're as
9 a prosecutor worried that the physical evidence is not
10 conclusive?

11 A. I'm not -- I'm not sure I can answer.

12 Q. I'm just asking.

13 A. Okay.

14 Q. What? You've had cases like that; you've seen
15 cases like that, correct?

16 A. I don't really follow what you're trying to
17 say. To me, just to be clear, it seems like we're
18 getting into an argument over whether the car that
19 Prible drove there was red or green. I mean, it doesn't
20 -- it's hypothetical. I don't think we would try the
21 case without physical evidence linking Prible to the
22 scene. So every question you're asking me is just --
23 it's very hard for me to answer.

24 Q. Well, he was at the -- at the scene, and you
25 have that from other information, correct?

1 A. Prible?

2 Q. Yeah.

3 A. I would assume so. I can't recall the facts.

4 Q. I mean, he was at that house?

5 A. Yes, he was at the house, yes.

6 Q. And he never denied that?

7 A. Yes. Well, he never -- he never took the
8 stand. He never gave a statement, I don't think.

9 Q. He gave two statements to the police.

10 A. I don't recall that, but I trust you on that.
11 What did he say about the sex?

12 Q. He admitted that he had oral sex.

13 A. And that he left?

14 Q. Correct.

15 A. Right. So the theory is that she kept the
16 semen in his mouth and the real shooters came in and he
17 doesn't know anything about who the real shooters were?
18 That just is --

19 Q. That is correct.

20 A. It's implausible.

21 Q. Okay. That's -- that's your opinion of that
22 situation?

23 A. No. I think any person with common sense would
24 say it's implausible.

25 Q. All right.

1 A. It could have happened; it didn't happen.

2 Q. That, of course, is a question about
3 materiality, and it's for the judge to decide, correct?

4 A. No. I don't think that's an arguable point.

5 Q. Okay. So, but getting back to the premise
6 which is, you know, the premise that there is the
7 physical evidence is not conclusive, that you need that
8 snitch, that he's the main attraction, the main show.
9 You'd want to interview Carl Walker, correct, as a
10 defense attorney?

11 A. The way I'd answer your question, sir, is that
12 Beckcom is inherently dislikable --

13 Q. Just yes or no.

14 A. -- as is.

15 Q. Just yes or no. Do you chase around --

16 A. To further impeach someone who's in federal
17 prison on a serious case to make it even worse, I'd say
18 yes.

19 Q. Yes, right.

20 A. But he looks bad to start with.

21 Q. Correct. Correct. So too with Nathan Foreman.
22 You'd want to interview Nathan Foreman?

23 A. I guess so.

24 Q. And you'd want to interview the other
25 informants that are working for -- that are angling to

1 testify against Mr. Prible?

2 A. Just to be clear, probably everybody in that
3 federal prison is angling to get out earlier, one way or
4 another.

5 Q. Okay. But these are -- if they're identi --
6 especially if you have to put the evidence together, if
7 you had this photograph and you knew that each one of
8 those persons, individuals, had contacted Mr. Siegler
9 about -- Ms. Siegler to testify in a case, you'd want to
10 try to --

11 A. I'd make the opposite argument of you, sir. I
12 would say since we're all working together, I don't want
13 to be seen with you other guys around Prible. Let's
14 just stay apart and only meet with him one on one
15 because a smart lawyer like Mr. Rytting one day in the
16 future is going to figure out that we were all in on
17 this together. So I think it's the opposite of what
18 you're suggesting.

19 Q. Okay. But you need to find out what these
20 people know or don't and what they know about Beckcom?

21 A. In the hypothetical situation, yes.

22 Q. Okay. Thank you.

23 Let's see. And do we have the -- there
24 was an exhibit, I can describe it for you because it may
25 take some time to find, but let me try to do it.

1 It was a letter written by Beckcom to Ms.
2 Siegler asking her to -- regarding -- and it referred to
3 a person named Antone Davi.

4 Do you remember that exhibit coming up?

5 A. Was that the script letter or was that one of
6 the other letters?

7 MS. SCARDINO: It was another letter.

8 MR. RYTTING: Do we have that --

9 MS. SCARDINO: Yeah.

10 MR. RYTTING: We have that exhibit? Can
11 you find that?

12 A. And by script, I mean the one that you called
13 the script.

14 Q. (By Mr. Rytting) No, I understand.

15 MS. SCARDINO: Exhibit 79.

16 THE WITNESS: Yes, ma'am.

17 Q. (By Mr. Rytting) Have you read it?

18 A. Yes, I have. I have it.

19 Q. And in that letter, which is Exhibit 79, --

20 A. Yes, sir.

21 Q. -- this is one of the letters. This is a
22 letter that -- Exhibit 79 shows that action was taken by
23 the HS -- Harris County District Attorney's Office to
24 contact Antone Davi and Michael Beckcom, correct?

25 A. Yes, sir.

1 Q. Okay. So, and it was to permit Kelly Siegler
2 and Investigator Johnny Bonds into the facility to
3 interview them, correct?

4 A. Yes, sir.

5 Q. Okay. And do we have the letter from Michael
6 Beckcom asking that Ms. Siegler contact him about
7 Antone -- the information that he and Antone -- Antone
8 Davi had?

9 MS. SCARDINO: I just can't find it. Is
10 it this one?

11 MR. RYTTING: Let me see it.

12 Q. (By Mr. Rytting) Okay. It is. It's
13 Exhibit 127.

14 A. Yes, sir.

15 Q. And I'll let you read that.

16 A. I've read it already, yes, sir.

17 Q. Okay. You've read this one already?

18 A. Uh-huh.

19 Q. And in this letter, Michael Beckcom is
20 expressing concern that he may not get the Rule 35
21 reduction that he wants, does he not?

22 A. Yes, sir.

23 Q. And he proposes a solution to Ms. Siegler;
24 isn't that correct, in the third full paragraph?

25 A. Yes, sir.

1 Q. These problems were referring to his concerns
2 about the Rule 35 reduction that he hopes to get,
3 correct?

4 A. I think -- let me read it again. He says that
5 he thinks the federal judge hasn't been fair to him in
6 the past, and he's worried about the 35(b); is that
7 right?

8 Q. That's correct. Correct. And he says, "If you
9 assist me in making contact" -- and he asks for help to
10 assist her -- to assist him in making contact with the
11 DA and FBI agent, correct?

12 A. Yes, sir.

13 Q. Do you know if that ever happened?

14 A. I don't, sir.

15 Q. Okay. Well, we have a letter that shows that
16 she did end up assisting him, didn't she, don't we, that
17 is Exhibit 73?

18 (Exhibit 73 marked.)

19 A. I don't see how this letter proves this, but it
20 might. But I don't -- I don't --

21 Q. (By Mr. Rytting) Well, he asked for her to
22 meet with him.

23 A. Yes.

24 Q. And she does about this matter.

25 A. Is this -- is this after the trial?

1 Q. No, this is before the trial.

2 A. I'm sorry, sir, I don't follow your question.

3 Q. It shows that she did follow up on this letter,
4 and she did meet with him about the exact solution that
5 he proposed.

6 A. I'm not sure I follow your theory on this.

7 Q. Did -- does he not mention -- does it not say
8 that she's going to meet with Mr. Beckcom and Antone
9 "Davis"?

10 A. Davi, I thought it was.

11 Q. Davi.

12 A. Yes.

13 Q. And that is the same person, Anthony Davi,
14 that's referred to in this letter; isn't that correct?
15 And the letter being Exhibit 127.

16 A. Yes, sir. I'm not sure I follow your theory on
17 this.

18 Q. That's all right. I'm just asking you
19 questions.

20 A. Okay.

21 Q. You don't need to follow the theory. You can
22 answer the questions. They're simple questions.

23 A. I don't think that this letter proves that.

24 Q. Okay. That's fine. That's fine.

25 But a reasonable -- this is another --

1 this is evidence that another deal is being at least
2 contemplated?

3 A. I don't think it is. I don't understand why
4 she and Johnny were meeting with him. It may have been
5 in preparation for this trial. I don't know.

6 Q. Look, did it not say -- does he not request her
7 presence or request her assistance specifically to help
8 him contact the DA and FBI so he can solve his Rule 35
9 problems? Is that not correct?

10 A. I guess it is.

11 Q. Is that a fair reading of that?

12 A. I thought it says, "I may end up getting
13 screwed, so I may need another way for you to help me
14 receive consideration for the testimony I'm about to
15 give."

16 Q. So he's seeking a favor from Kelly Siegler,
17 correct?

18 A. Right. But if --

19 Q. It seems like --

20 A. It seems like he would wait until --

21 Q. Please, if you could just answer the question
22 yes or no. Right was a perfectly good answer.

23 A. No, I don't -- I don't think I can answer that
24 yes or no. Do you want me to answer it or not?

25 Q. Would you want this as a defense attorney to

1 know that he sought additional favors from Kelly
2 Siegler, would you try to make that argument as a
3 defense attorney, and that she rewarded it?

4 A. I thought the letter says in case I don't get
5 my 35(b), I have another idea.

6 Q. Right. And he asks for her assistance --

7 A. It seemed like he would wait to see if he got
8 the 35(b) first, and then use the other idea. What's
9 the sense of blowing it before you even know if you're
10 going to get the 35(b) adjustment?

11 Q. That's a -- that's a question that may go --
12 forever go unanswered, Mr. Wisner. But that is --

13 A. Yeah. That's why I didn't understand what you
14 were asking.

15 Q. But that's not the question I was asking. The
16 question I was asking was A: So a reasonable defense
17 attorney, is he seeking another favor from Kelly
18 Siegler? Is that what a reasonable defense attorney
19 would think?

20 A. No. He's just saying in case -- he's saying I
21 want consideration for helping you and I want it either
22 this way or if I can't get it this way, I have another
23 way.

24 Q. Okay. And at trial, do you recall that Kelly
25 Siegler said the only benefit that she offered Mr.

1 Beckcom was to write his AUSA seeking a Rule 35 for
2 assistance in this case?

3 A. I don't have a photographic memory of the
4 trial, but I'll take your word for it.

5 Q. Okay. And that is not an accurate statement
6 given this correspondence, is it, Mr. Wisner?

7 A. I disagree. He's just saying I have another
8 idea in case the 35(b) doesn't work out.

9 Q. And you don't think that's seeking another
10 favor? Are you saying as a defense attorney sitting
11 there right now that you don't think that this witness
12 was seeking an additional favor?

13 A. No. I think he's saying in case the 35(b)
14 doesn't work out, don't abandon ship on me. I have
15 another idea. I want credit. I want to get out of
16 prison as soon as I can.

17 Q. And you're -- and you're to help me do it? I
18 want your assistance helping me do it?

19 A. He just says I have another idea. Don't
20 abandon me if the 35(b) doesn't work. The judge may not
21 help me.

22 Q. Mr. Wisner, do you see anywhere in this
23 document where he says that, those words?

24 A. No.

25 Q. Thank you.

1 A. You're asking me for my opinion of what the
2 letter was for.

3 Q. Yeah, I didn't ask about your opinion.

4 A. I gave you my best opinion.

5 Q. I asked you specifically if those words were in
6 that letter, and the answer is no, correct?

7 A. What words were in there?

8 Q. The words which is I have a problem, here's an
9 alternative. I have a -- let's -- maybe we could go
10 back on the record. I'm not sure.

11 A. Right. But it doesn't make sense -- pardon me,
12 that granola bar got stuck in my throat.

13 Q. Uh-huh.

14 A. But it doesn't make sense to play that card
15 until he knows how the Rule 35(b) is going to come out.
16 So I --

17 Q. Mr. Wisner, do you know when the -- how -- do
18 you know when he's going to know when the Rule 35(b) is
19 going to come out?

20 A. After the trial.

21 Q. That's correct.

22 A. Okay. I just don't understand your theory on
23 this. We'll just have --

24 Q. He wants --

25 A. -- to agree to disagree.

1 Q. Okay.

2 A. Why would she give him a benefit before --
3 before the trial.

4 Q. That is what -- wouldn't a defense attorney
5 want to know that?

6 A. No, because he can turn around and say, you
7 asked me to lie, this guy is a good guy, blah, blah,
8 blah. Why would he ask for something before the trial?
9 He asked for something after the trial.

10 Q. He did ask for something before trial, didn't
11 he?

12 A. Right. But why would you even want to spend
13 that card before -- I'm just losing you on this.

14 Q. I guess so, Mr. Wisner, because you know that
15 lots of defendants ask for benefits before the trial,
16 don't you? As a prosecutor and a defense attorney you
17 know that?

18 A. They ask for benefits or they ask for you to
19 show them consideration after the trial, right. But you
20 wouldn't do anything --

21 Q. They don't --

22 A. -- before somebody testified.

23 Q. You don't ask that before? What -- you don't
24 think favors are given to -- to snitches before the
25 trial?

1 A. Before -- before they testify?

2 Q. Have you never heard of a snitch being paid?

3 A. Yes.

4 Q. Okay. Did that happen before the trial?

5 A. Yes, but not --

6 Q. Thank you.

7 A. -- with a live witness who can turn around and
8 testify --

9 Q. So it's --

10 A. -- Prible is innocent, you guys are stooges, I
11 got my deal already. I just made up stuff because you
12 wanted to hear it. You told me to lie. I don't follow
13 it.

14 Q. But he's not -- but you're assuming that this
15 benefit would be given to him before trial?

16 A. I think he is --

17 Q. And that he anticipated it would happen before
18 trial?

19 A. You're asking me a lot of hypothetical
20 questions.

21 Q. Is that correct? Your whole premise is that
22 this -- this -- that this benefit, and that's what it
23 is, would be given to him before trial?

24 A. I don't understand why he wrote that letter.

25 Q. Is that correct?

1 A. If it was me, I would have kept the cards close
2 to my vest until the 35(b) didn't work out. And then
3 said, Kelly, --

4 Q. Yeah, I'm --

5 A. -- I helped you, it didn't work out for me, I
6 want you to help me another way.

7 Q. Mr. Wisner, I didn't ask about what you would
8 do in Mr. Beckcom's situation.

9 A. Okay.

10 Q. I asked you about the evidence that we're
11 presenting in this case.

12 A. But unless I give you my best -- best judgment
13 of how things work, I don't think I can answer your
14 question.

15 Q. No, you can. You can ask me -- you can answer
16 simple questions like was this --

17 A. But you're not asking simple questions.

18 Q. The simple question was this a request for a
19 benefit?

20 A. I would say no. It's telling her that if the
21 benefit that I hope to receive doesn't work out, I have
22 something else I want to use. That's the way I read it.
23 Unless you want me to read it again, I'll read it again.

24 Q. Okay. That's fine. It's clear from the --
25 clear from the -- clear from the text when he says can

1 you assist me in making contact with the DA and FBI
2 agent because I have a solution to the problem of what?

3 A. I think he's worried that the judge is not
4 going to give him a 35(b).

5 Q. Yeah. And so he wants additional assistance
6 from Kelly Siegler to make sure that happens --

7 A. No.

8 Q. -- after trial?

9 A. He wants consideration for helping her --
10 helping us in the trial, one way or the other.

11 Q. Okay. Fine. That's good enough.

12 A. Okay.

13 Q. Just a couple of questions about the physical
14 evidence.

15 A. Yes, sir.

16 Q. You maintain that Mr. Herrera was a dangerous
17 man?

18 A. No, you said that.

19 Q. Mr. -- I thought you said that he was -- when
20 you -- you -- when were describing why it was
21 implausible for there to have been consensual sex, you
22 maintain, you asserted that Mr. Herrera was a dangerous
23 man.

24 A. I think any man would be dangerous if his wife
25 was providing oral sex to somebody in the next room.

1 Q. What do you know about Mr. Herrera's sexual
2 practices?

3 A. Apparently, he had sex with his wife sometime
4 before they were both killed.

5 Q. Okay. Do you know anything about whether they
6 had an open arrangement or a closed arrangement?

7 A. No.

8 Q. Did you have any of that information at trial?
9 Is it in the record?

10 A. No.

11 Q. No.

12 A. To my knowledge.

13 Q. So you're speculating that he would be --

14 A. I'm using common sense.

15 Q. No, you were -- common sense for one man is
16 speculation for another.

17 A. Right.

18 Q. Do you have any --

19 A. It's common sense for me; it's speculation for
20 you.

21 Q. Do you have any evidence, evidence, that he
22 would take violent action against someone that had an
23 affair with his wife?

24 A. Start -- start over again.

25 Q. Do you have any evidence, proof, that he was a

1 jealous man even?

2 A. I thought there was testimony at trial, I may
3 be wrong, that he was a dangerous man, that he had
4 arranged a series of bank robberies.

5 Q. Okay.

6 A. I think.

7 Q. Okay. But you --

8 A. Isn't that right?

9 Q. -- know nothing whether he's jealous about his
10 wife's sexual activity?

11 A. So he would wake up with his wife giving oral
12 sex --

13 Q. I'm just asking you the facts.

14 A. No, you're not letting me finish.

15 Q. It's a yes or no question. Please. Please.

16 A. You're not letting me finish.

17 Q. It's a yes or no question.

18 A. No, it's not a yes or no question. You're
19 claiming that he would wake up with his wife giving
20 somebody oral sex in the next room and not be mad?

21 MS. MIRANDA: I think we need -- I think
22 we need a time out or something.

23 MR. RYTTING: Just a second.

24 Q. (By Mr. Rytting) Let's -- no, let's set some
25 ground rules. You can answer yes or no. And then if

1 you want to follow up with a question, she can.

2 A. You're not asking me yes or no questions.

3 Q. Yes, I asked -- here's the yes or no question.

4 Do you have any evidence that he was a -- that he was
5 supremely jealous or jealous at all about his wife's
6 sexual activity?

7 A. I don't have any evidence regarding his
8 feelings regarding his wife's sexual activity.

9 Q. Correct.

10 A. I just used common sense.

11 Q. Correct. Now, at trial, both you and Ms.
12 Siegler --

13 A. Uh-huh.

14 Q. -- maintain that a spermatozoa deposit had to
15 be -- would have had to have been proximate to this
16 woman's death, that the oral sex had to happen proximate
17 to death, correct?

18 A. Yes.

19 Q. Within minutes, correct?

20 A. I don't know if he said minutes, but proximate
21 is a good term.

22 Q. Within minutes was the testimony of Ms.
23 Siegler.

24 MS. MIRANDA: I'm sorry?

25 A. She didn't testify. She could only argue.

1 Q. (By Mr. Rytting) Was her argument. Her
2 argument was within minutes, if not seconds.

3 A. I seem to remember -- maybe even I might have
4 asked one of the forensic people --

5 Q. Uh-huh.

6 A. -- about how long you would anticipate having
7 sperm or semen in a woman's mouth after they had
8 performed oral sex with the male ejaculating in her
9 mouth. I seem to remember asking that because it was
10 important. I'm not positive.

11 Q. Uh-huh. Yes. And I'll make the representation
12 that the testimony was not that it only lasts for
13 minutes or seconds.

14 A. Okay.

15 Q. Okay. So who came up with this theory that it
16 could only be minutes or seconds or it had to have been?

17 A. I don't know that we had a specific theory. It
18 seemed that it was common sense, and it seemed like what
19 we argued was consistent --

20 Q. Uh-huh.

21 A. -- with what the experts testified to.

22 Q. Okay. So you thought --

23 A. It seemed like it was both a combination of
24 expert testimony and common sense.

25 Q. Expert testimony and common sense. All right.

1 And have you looked since at any of the
2 literature on or read any of the studies that have been
3 done about the retention of spermatozoa in the oral
4 cavity after -- after --

5 A. No, but --

6 Q. -- after voluntary sex? Have you?

7 A. No, but I think --

8 Q. That's all I need to know.

9 A. Okay.

10 MR. RYTTING: I'll pass the witness.

11 MS. MIRANDA: Before or you want to --

12 MS. SCARDINO: No, go ahead. Go ahead.

13 MS. MIRANDA: Okay.

14 EXAMINATION

15 BY MS. MIRANDA:

16 Q. I don't know that I have much. Just give me a
17 second.

18 So during your -- your testimony, there
19 were a couple of instances where you indicated that you
20 wanted to clarify or say something more. I'm not sure
21 if we're going to be able to go back and recreate those,
22 but I'll at least ask to make sure that there wasn't
23 something else that you wanted to -- to add to your
24 testimony.

25 A. One of the things I wanted to mention, if I

1 could answer.

2 MS. SCARDINO: Excuse me, objection,
3 nonresponsive, because there's not a question pending.

4 Q. (By Ms. Miranda) Yeah, let -- let --

5 A. Okay.

6 Q. Yeah. Yeah. Let me just --

7 A. Sorry.

8 Q. I've got to follow up, so let me ask a
9 question.

10 I'm trying to find the instances. All
11 right. I believe the first one or one of them was when
12 you were looking at -- and again, we may not be able to
13 recreate this, I'm just trying to give you the
14 opportunity.

15 If you do recall, you were looking at the
16 photograph of Mr. Prible with some of the other inmates,
17 and you indicated can I just say one more thing.

18 Do you recall what that was?

19 A. I think I --

20 MS. SCARDINO: Objection, form.

21 THE WITNESS: I'm sorry.

22 MS. SCARDINO: Go ahead.

23 A. I think I actually said it. I think my point
24 was I would not want the photograph if I was involved in
25 some sort of widespread -- spread prison conspiracy

1 because it would prove the conspiracy.

2 Q. (By Ms. Miranda) Okay.

3 A. You'd want to keep everybody separate just
4 like, you know, the Mafia does. Only meet if you have
5 to.

6 Q. Okay. And then I believe again, when you were
7 discussing the closing arguments about the unluckiest
8 person and that you were asked whether it was a fair
9 assessment, and you indicated there was something else
10 you wanted to add.

11 Was there anything else you wanted to add
12 in response to that?

13 A. I would --

14 MS. SCARDINO: Objection, form. Go ahead.

15 THE WITNESS: I'm sorry, ma'am.

16 MS. SCARDINO: That's okay.

17 A. I think I was just going to say the arguments
18 are as valid now as they were then. I stand by them.
19 They've got to come up with some sort of theory for his
20 semen in her mouth.

21 Q. (By Ms. Miranda) Okay.

22 A. Otherwise, he's guilty. You don't even need
23 the informants.

24 Q. All right. I think that you were asked --
25 actually, you were asked a lot of questions about what

1 you would like to have access to as a defense attorney
2 that was in the possession of the prosecutor.

3 As a defense attorney, is there anything
4 the prosecution has that you would not want, that you
5 would say no thank you?

6 A. No.

7 Q. Would you prefer to see everything they have?

8 A. Of course.

9 MS. MIRANDA: I think that's all I have.

10 A. We were speaking about one other thing.

11 MR. RYTTING: Pardon me. There's no
12 question.

13 MS. SCARDINO: There's no question.

14 THE WITNESS: I can't -- I can't speak to
15 counsel?

16 MR. RYTTING: No, there's no question.

17 MS. SCARDINO: There's not a question
18 pending.

19 But have you passed the witness?

20 MS. MIRANDA: Not yet.

21 MS. SCARDINO: Okay.

22 MS. MIRANDA: Can I see those letters?

23 MS. SCARDINO: Which of these?

24 MS. MIRANDA: Because I -- at least one of
25 them was mine that I handed over.

1 MS. SCARDINO: 127?

2 MS. MIRANDA: Well, I don't have it to
3 look at. That's why I meant that.

4 THE WITNESS: Am I allowed to pass her a
5 note?

6 MS. SCARDINO: Is she representing you?

7 THE WITNESS: Are you?

8 MS. MIRANDA: No, no.

9 THE WITNESS: Okay.

10 MS. MIRANDA: I'm not.

11 MR. RYTTING: Even so.

12 MS. MIRANDA: And that was -- the other
13 was 79. If I could just have a minute.

14 MS. SCARDINO: This? 79?

15 MS. MIRANDA: Yeah.

16 Q. (By Ms. Miranda) Do you have a copy of 79?

17 A. Yes, ma'am.

18 Q. Okay. And also I'm handing you what's marked
19 as 127. It's upside-down, I believe.

20 Is there a date on Exhibit 127?

21 A. I was looking for one. I didn't see one.

22 Q. Okay. And then looking at 79, could you tell
23 us what that is?

24 A. To be honest with you, I didn't know this was
25 necessary; and I'm not sure why it had to come from Ted.

1 But apparently, they needed an okay to go in and visit.

2 Q. Okay. So then if you'll just --

3 A. Yes.

4 Q. -- just tell us what -- what it is you're
5 looking at.

6 A. It's a letter from Ted Wilson to a, it looks
7 like, a lieutenant at FCC-Beaumont saying that Johnny
8 Bonds, who I wanted to mention to you earlier, and Kelly
9 needed to go to the facility to interview Michael
10 Beckcom and Antone Davi.

11 Q. Okay. And you were asked to make assumptions
12 based on Exhibit 79 about what happened. Is there
13 anything in that document that indicates whether that
14 meeting actually took place?

15 A. No, ma'am.

16 Q. Is there anything in that document that
17 indicates what conversations may have occurred had the
18 meeting actually taken place?

19 A. No.

20 Q. Is there anything in that document that
21 indicates that Ms. Siegler and Mr. Beckcom discussed a
22 deal --

23 A. No.

24 Q. -- in that document?

25 A. (Witness shakes head.)

1 Q. Is there any conclusion that you can recall or
2 that you can make based on 79 as to what actually
3 happened between Ms. Siegler and Mr. Beckcom?

4 A. No, ma'am.

5 Q. Okay.

6 MS. MIRANDA: That's it. I'll pass.

7 MS. SCARDINO: Okay. I have just a very
8 short couple of follow-up questions.

9 THE WITNESS: Yes, ma'am.

10 FURTHER EXAMINATION

11 BY MS. SCARDINO:

12 Q. Earlier you said a few times that Mr. Beckcom
13 really wasn't all that important in this case, he wasn't
14 even needed, he just added color to the case; is that
15 right?

16 A. I'm not sure if I'd say it like that. I was
17 asked a bunch of questions, a series of questions, I
18 should say, regarding how I would approach the case now
19 that I've been on this side for eight and a half years.
20 And I would have to come up with a theory for the
21 physical evidence.

22 I think if you spend -- you know, you
23 could spend all your time attacking Beckcom, but it's
24 kind of ignoring the elephant in the room, I guess, was
25 the point I was trying to make.

1 Q. Okay. But you did say that he just added
2 color, right, and that he wasn't even necessary in your
3 opinion to try this case --

4 A. If Beckcom --

5 Q. -- in the first place?

6 A. I'm sorry.

7 Q. I'm sorry. Go ahead.

8 A. I spoke over you.

9 If they would have brought the case to me
10 just with the evidence they had, I would have tried it.
11 It could have been tried without any informant in my
12 opinion.

13 Q. Okay. Did you ever know Ms. Siegler to have
14 referred to Beckcom as her star witness in this
15 prosecution?

16 A. No, but she might have.

17 Q. That wouldn't have surprised you if she had,
18 given that you thought he only added a little bit of
19 color to the proceedings?

20 A. I'd have to know the context that term was used
21 in.

22 Q. Okay.

23 MS. SCARDINO: No further questions.

24 MS. MIRANDA: Nothing further.

25 MR. RYTTING: I just have one that just

1 has bothered me for a long time.

2 FURTHER EXAMINATION

3 BY MR. RYTTING:

4 Q. You mentioned that one reason that you thought
5 it would have been plausible for the oral sex between
6 Nilda and -- consensual sex between Nilda and Mr. Prible
7 was his appearance.

8 A. He did not give off the appearance of somebody
9 who would be seen as attractive to a female, though,
10 that's just --

11 Q. So that's a wild -- that's a wild speculation
12 on your part, isn't it?

13 A. No. I think pretty much anybody would look at
14 him or be -- or be around him, he came off as very cold,
15 and he's very unattractive.

16 Q. Did you have any --

17 A. He gives -- he kind of gives you the creeps, to
18 be honest with you.

19 Q. So that was your basis, you had some sort of
20 feeling that he was creepy?

21 A. If he was a handsome, tall, muscular,
22 charismatic person, it may lead me to a different
23 conclusion, or it may seem possibly plausible.

24 Q. Oh, I see.

25 A. And I don't need the sarcasm in your voice, but

1 thank you.

2 Q. I see, Mr. Wisner.

3 So you were making judgments about whether
4 she was sexually assaulted based on your opinion of his
5 physical appearance; isn't that correct?

6 A. I'd say as one of many factors, yes.

7 Q. Oh, okay. As one of many factors. And you
8 haven't heard of some beautiful women falling for rather
9 homely men? That hasn't happened -- you don't know of
10 that in your experience?

11 A. Is that a question?

12 Q. Yeah, that is a question.

13 A. It happens very rarely, unless they have a lot
14 of money.

15 Q. And what is the basis for that opinion?

16 A. 60 years of life on earth.

17 Q. Oh, 60 years of life.

18 A. But thank you for the sarcasm again.

19 Q. You're -- you're welcome.

20 A. Just because I give you an answer that you
21 don't like, I don't try to insult you with a tone.

22 Q. No, I like -- I actually like that answer.

23 A. I don't try to insult you with a tone in my
24 voice. You don't need to do so.

25 Q. I actually like your answer, Mr. Wisner.

1 A. Thank you.

2 Q. It was something that I'm quite happy to have
3 on the record.

4 A. I'm glad.

5 Q. And so questions about materiality were being
6 based on your assumption on that Mr. Prible was
7 unattractive to Nilda Herrera?

8 A. That and the circumstances of her husband being
9 in extremely close proximity, yes.

10 Q. Okay. Correct. Fine. That's fine.

11 A. Okay. Thank you.

12 MR. RYTTING: No more further questions.

13 THE WITNESS: Can I say something else --

14 MR. RYTTING: No.

15 THE WITNESS: -- or am I allowed to speak?

16 MR. RYTTING: When you have a question,
17 you can say something else.

18 THE WITNESS: Okay. I just wanted
19 to accommodate Mr. --

20 MR. RYTTING: Hey, hey, hey.

21 MS. MIRANDA: We're not on the --

22 MR. RYTTING: We can go off the record
23 now.

24 MS. MIRANDA: We're not on the record.

25 MR. RYTTING: No more questions of the

1 witness.

2 THE WITNESS: Just trying to tell you the
3 truth, sorry.

4 THE VIDEOGRAPHER: Waiting on --

5 MS. MIRANDA: I have no more questions.

6 MS. SCARDINO: We pass the witness.

7 THE VIDEOGRAPHER: The time is 11:26.
8 We're off the record.

9 (Deposition concluded at 11:26 a.m.)

10 (Signature waived.)
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1 COUNTY OF HARRIS

2 STATE OF TEXAS

3 REPORTER'S CERTIFICATE

4
5 I, CAROL JENKINS, Certified Shorthand
6 Reporter in and for the State of Texas, hereby certify
7 that this transcript is a true record of the testimony
8 given by the witness named herein, after said witness
9 was duly sworn by me. The witness was not requested to
10 review the deposition. The total examination time by
11 Ms. Gretchen Scardino was 1:07; Mr. James Rytting, 44
12 minutes; Ms. Tina Miranda, 6 minutes.

13 I further certify that I am neither
14 attorney nor counsel for, related to, nor employed by
15 any of the parties to the action in which this testimony
16 was taken. Further, I am not a relative or employee of
17 any attorney of record in this cause, nor do I have a
18 financial interest in the action.

19 SUBSCRIBED AND SWORN TO by the undersigned
20 on this the _____ day of _____, _____.

21 

22
23 CAROL JENKINS, CSR, RPR, CRR
Certificate No. 2660
Date of Expiration: 12/31/2018
24 Esquire, Firm Registration No. 03
1001 McKinney, Suite 560
25 Houston, Texas 77002
713.524.4600

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EXHIBIT 57

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD JEFFREY PRIBLE,
Petitioner,

VS.

LORIE DAVIS,
Respondent.

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) CIVIL ACTION NO.
) 4:09-CV-1896
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) 10:00 A.M.
)
)

EVIDENTIARY HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
APRIL 29, 2019
VOLUME 1

APPEARANCES:

FOR PETITIONER:

MS. GRETCHEN N. SCARDINO
Scardino L.L.P.
401 Congress Avenue, Suite 1540
Austin, Texas 78701
(512)659-4470

MR. JAMES GREGORY RYTTING
Hilder & Associates, P.C.
819 Lovett Boulevard
Houston, Texas 77006
(713)655-9111

FOR RESPONDENT:

MS. TINA DETTMER MIRANDA
MR. GEORGE A. D'HEMECOURT
Office of the Attorney General
Criminal Appeals Division
P.O. Box 12548
Capitol Station
Austin, Texas 78711
(512)936-1400

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 APPEARANCES CONTINUED:

2 **COURT REPORTER:**

Heather Alcaraz, CSR, FCRR, RMR

3 Official Court Reporter

515 Rusk, Suite 8004

4 Houston, Texas 77002

(713)250-5584

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I N D E X

EVIDENTIARY HEARING - VOL. 1

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1 (Call to Order of the Court.)

10:00:45 2 **THE COURT:** Thank you. Please be seated.

10:00:45 3 Good morning, everyone, and welcome.

10:00:47 4 We'll turn to Prible versus Thaler, and we'll take
5 appearances of counsel beginning with the petitioner.

10:00:54 6 **MS. SCARDINO:** Your Honor, Gretchen Scardino for
7 petitioner, Ronald Jeffrey Prible.

10:01:00 8 **MR. RYTTING:** James Rytting for petitioner.

10:01:00 9 **THE COURT:** Thank you.

10:01:01 10 **MS. MIRANDA:** Tina Miranda for the director,
11 Your Honor.

10:01:04 12 **MR. D'HEMECOURT:** George d'Hemecourt for the director.

10:01:06 13 **THE COURT:** Thank you-all very much for your
14 attendance.

10:01:08 15 Has anybody heard from Ms. Siegler?

10:01:11 16 **MS. MIRANDA:** Yes, Your Honor. I reached out to her
17 via e-mail to inform her, as you instructed in your hearing,
18 that you were anticipating that she would show up and that you
19 were disappointed that she wouldn't be here and that you
20 expected her to be here, and she responded and just said that
21 she would be out of town until late May.

10:01:29 22 **THE COURT:** Well, she knows how to deal with a problem
23 like that. You file a motion with the Court explaining
24 unavailability, and then we generate options about how we deal
25 with that, whether we have a video interview or Skype or

1 whatever. I mean, the fact somebody's out of town is no longer
2 an all-purpose excuse for not being available.

10:01:51 3 **MS. MIRANDA:** Absolutely, Your Honor. I'm not
4 disputing that that is the proper course of action or that that
5 is the way that you would handle it. All I can do is just come
6 to the Court and represent --

10:01:59 7 **THE COURT:** Is there a reason -- is it a family
8 medical problem?

10:02:02 9 **MS. MIRANDA:** As far as her being out of town?

10:02:04 10 **THE COURT:** Her unavailability.

10:02:05 11 **MS. MIRANDA:** No. I don't believe that --

10:02:07 12 **THE COURT:** Is it her television --

10:02:08 13 **MS. MIRANDA:** I do believe that would be correct. I
14 mean, she didn't mention that in her e-mail, but based on past
15 conversations, I do believe that she's out of town for her TV
16 show.

10:02:25 17 **THE COURT:** I wish she would cover this case on her
18 TV show and explain to the nation why she couldn't be present.

10:02:30 19 **MS. MIRANDA:** Your Honor, I understand your
20 disappointment, and all I can do, on behalf of the director, is
21 to just express what my communications are with her, that -- I
22 mean, we communicated to her that there would be a hearing. We
23 communicated that we anticipated that she would testify, and
24 that's the response that we received from her.

10:02:49 25 **THE COURT:** Well, I don't have much choice but to

1 assume that her testimony would have been unfavorable to the
2 director.

10:03:00 3 **MS. MIRANDA:** Well, Your Honor, we do have her
4 deposition testimony, and, typically, in a federal habeas case,
5 if a witness is unavailable, the deposition is what you go to,
6 to look at.

10:03:08 7 **THE COURT:** The deposition provided an opportunity to
8 ask Ms. Siegler questions at the time. It did not provide me
9 with a chance to ask her any questions, and a lot has happened
10 since the deposition. We have a lot more information about this
11 case since the deposition. A deposition's not a satisfactory
12 alternative to her showing up for this hearing.

10:03:32 13 Does the government -- does the petitioner wish to say
14 anything?

10:03:36 15 **MS. SCARDINO:** No, Your Honor, other than we agree
16 with you and wish that she would have been here. We attempted
17 to serve her and were unsuccessful. So we are prepared today in
18 the event that she showed up. Alternatively, we just have her
19 deposition testimony, but that's all --

10:03:54 20 **THE COURT:** Okay.

10:03:55 21 **MS. SCARDINO:** -- I know to do.

10:03:56 22 **THE COURT:** Moving on from that temporarily, have you
23 discussed among yourselves how you wish to proceed?

10:04:04 24 **MS. SCARDINO:** Yes. Yes, Your Honor. Many of our
25 witnesses are going to be called by videotape deposition

1 testimony. We have two live witnesses that are here this
2 morning to be called, and so I -- I assume that you would want
3 to see the depositions in the courtroom, but I don't -- if you want --

10:04:19 4 **THE COURT:** Yes. I want to see them in the courtroom,
5 yes.

10:04:22 6 **MS. SCARDINO:** Okay.

10:04:22 7 **THE COURT:** As opposed to what, just reading them?

10:04:25 8 **MS. SCARDINO:** No, no, no. Just as opposed to if you
9 wanted to view them in chambers at a later time.

10:04:30 10 **THE COURT:** No. I want to see them now.

10:04:30 11 **MS. SCARDINO:** Okay.

10:04:31 12 **THE COURT:** You want to start with those?

10:04:32 13 **MS. SCARDINO:** Your Honor, actually, we would like to
14 start with our first -- I have an opening statement, briefly, if
15 I could have that.

10:04:37 16 **THE COURT:** Okay. That's fine.

10:04:38 17 Is that agreeable, to start with opening statements?

10:04:41 18 **MS. MIRANDA:** Sure, Your Honor.

10:04:42 19 **MS. SCARDINO:** Okay.

10:04:43 20 **THE COURT:** Okay.

10:05:22 21 **MS. SCARDINO:** Your Honor, as you'll recall, the
22 murder of the Herrera/Tirado family happened 20 years ago --

10:05:27 23 **THE COURT:** Yes.

10:05:27 24 **MS. SCARDINO:** -- in April 1999. Nilda Tirado and
25 Steve Herrera were shot execution style in their home. Their

1 house was set on fire, and their three children died of smoke
2 inhalation.

10:05:37 3 Jeff Prible was a friend of Mr. Herrera and
4 Ms. Tirado, and he emerged as a suspect because he had been at
5 their house earlier that night and because people told the
6 police that he had been robbing banks to fund a business venture
7 with Mr. Herrera.

10:05:53 8 **THE COURT:** Could you move the mic a little closer to
9 you --

10:05:55 10 **MS. SCARDINO:** I'm sorry. Yes.

10:05:55 11 **THE COURT:** -- or move yourself closer -- okay. That
12 would be good.

10:05:58 13 **MS. SCARDINO:** Okay.

10:05:59 14 Hours after the murders, Jeff went to the police
15 station, was extensively photographed, and no wounds, burns or
16 suspicious marks of any kind were found on him. He signed a
17 voluntary consent to search his room and his car. He gave his
18 clothes and shoes to be tested for bloodstains, fire accelerant,
19 trace evidence. Nothing was found.

10:06:21 20 The police ordered all evidence recovered from the
21 Herrera house to be sent for fingerprint testing. None of the
22 prints turned out to be Mr. Prible's. This was a very messy
23 crime scene, yet nothing, no blood, no gasoline, no other fire
24 accelerant, no singe marks, no skin irritations, no soot, no
25 smoke was found on Mr. Prible's bodies, clothes or shoes, and he

1 gave two statements to the police within hours of the murders.

10:06:47 2 In the first statement, he said that he had been at
3 their house the night before and that Steve Herrera had dropped
4 him off at his house early that morning. He also gave a second
5 statement saying that he and Ms. Tirado had engaged in
6 consensual oral sex that night. He voluntarily provided a DNA
7 sample to the police.

10:07:11 8 Forensic testing was completed within a couple of
9 weeks, and a microscopic amount of Mr. Prible's DNA was found in
10 Ms. Tirado's mouth consistent with his statement. An alibi
11 witness, who was a next-door neighbor of Mr. Prible's, came
12 forward, and she said that she looked out of her window in the
13 middle of the night and saw Steve Herrera dropping Jeff off at
14 home prior to the murders, corroborating Jeff's statement to the
15 police.

10:07:34 16 No one was charged in the murders in 1999, and the
17 case went cold. And it is important to note that within six
18 weeks of the April 1999 murders, the state had developed all of
19 the evidence that it would eventually introduce against
20 Mr. Prible at trial except for the testimony of a jailhouse
21 informant.

10:07:54 22 This jailhouse informant popped up after Kelly Siegler
23 took over the case two years later in the spring of 2001. We
24 know from a fax in the DA's file that Ms. Siegler and her
25 investigator, Johnny Bonds, had the Prible case on their radar

1 at least by March 1st, 2001, and they needed to act quickly on
2 it because the prime suspect, Mr. Prible, was set to be released
3 later that year from the federal prison in Beaumont, where he
4 had been living since pleading guilty to the bank robberies back
5 in 1999.

10:08:31 6 And as Ms. Siegler was looking through the case file,
7 she jotted down what she referred to in her deposition as some
8 initial "to-dos" and "random thoughts." And those were,
9 "defendant in Beaumont pen, potential federal prison
10 roommate" --

10:08:45 11 **THE COURT:** "Potential federal prison..."

10:08:47 12 **MS. SCARDINO:** Prison roommate.

10:08:49 13 **THE COURT:** Roommate. I'm sorry.

10:08:50 14 **MS. SCARDINO:** Yes, Your Honor.

10:08:50 15 And as she's contemplating a potential federal prison
16 roommate for Mr. Prible, on April 4th, 2001, one of her old
17 informants from a previous murder case writes her a letter. The
18 informant's name is Jesse Moreno, and this is a very fortuitous
19 letter because Jesse happens to be in prison in FCI Beaumont,
20 the same federal prison as Mr. Prible.

10:09:14 21 Moreno writes that he has information that would be
22 helpful to her on an unsolved murder case, and he would be
23 willing to help her out if he could be assured to get a little
24 credit for his efforts. He tells her he's in the hole, so she
25 would need to call the prison to speak with him. So Siegler

1 gets in touch with Moreno, and they make plans to meet in prison
2 in person.

10:09:35 3 On July 3rd, 2001, Ms. Siegler met with Jesse Moreno
4 at the federal detention center in Beaumont. She recorded part
5 of the meeting, and Moreno tells her about his friend, Nathan
6 Foreman, who's also in the hole. Moreno says that a prisoner
7 named Hermelio Herrero has made a murder confession to him,
8 Foreman, and another inmate named Rafael Dominguez.

10:09:57 9 *(Audio played as follows.)*

10 "JM: Well, right before, about, we had the riot in
11 '99 of December at the Medium. So like the beginning
12 of December, there was three of us there. There was
13 me, him, ah, Dominguez -- Ralph Dominguez, and ah, ah,
14 Nathan Foreman, the one that I was asking you about,
15 were sitting in the middle of the compound talking,
16 you know, and all the guys from Houston in prison,
17 you know, Houston (UI)...

18 KS: Who was there when he said that to you that day,
19 the first time you heard it?

20 JM: Ah, Dominguez and -- and Nathan Foreman.

21 KS: Okay. What is Dominguez's whole name?

22 JM: Raphael Dominguez.

23 KS: And he's here -- he was in Beaumont Medium, too,
24 at the time?

25 JM: Yeah.

1 KS: Where is he now?

2 JM: He's still in Beaumont. See, when I was in the
3 hole, he went -- he got in the hole first and charged
4 something, right, so (UI) he got in the hole and
5 tells me.

6 KS: Dominguez?

7 JM: Yeah, Dominguez. I know Dominguez -- we went to
8 school together, too. We all from the neighborhood.

9 KS: Okay. And who was the other guy there? Nathan
10 Foreman?

11 JM: Nathan Foreman. He...

12 KS: Is he from Houston?

13 JM: Yeah. We're all from Houston.

14 KS: Beaumont Medium, too?

15 JM: Yeah. He's in the hole, and, ah, Raphael
16 Dominguez is on the compound.

17 KS: Okay. So in the hole, does that mean in Liberty,
18 too?

19 JM: No, he's. No, they're both in Beaumont.

20 KS/JM: Beaumont Medium.

21 JM: Yeah.

22 KS: Okay. How do you spell Foreman's last -- last
23 name?

24 JM: Foreman.

25 KS: F-O-R-E-M-A-N?

1 JM: Yeah.

2 KS: White guy?

3 JM: Black guy.

4 KS: Black guy. How old is he?

5 JM: 35.

6 KS: Okay."

10:11:27 7 **MS. SCARDINO:** And during this conversation,
8 Ms. Siegler and Moreno also discussed how the point system in
9 federal prison works and how, based on your points, you move
10 between various security levels in the prison.

10:11:38 11 *(Audio played as follows.)*

10:11:41 12 "JM: Yeah. I was -- I was at the High, right across
10:11:41 13 the street. I'm at the Medium. They got High,
10:11:41 14 Medium and Low.

10:11:41 15 KS: Yeah, I had just found that out. What's the
10:11:41 16 difference?

10:11:41 17 JM: It's higher security.

10:11:41 18 KS: And how did you get from high to medium? What
10:11:41 19 changed?

10:11:41 20 JM: Ah, my points (UI).

10:11:53 21 KS: Okay.

10:11:53 22 JM: My good time, and I got that detainer on that
10:11:55 23 other murder charge.

10:11:57 24 KS: Mine?

10:11:58 25 JM: (UI).

10:11:58 1 KS: Where you were a witness?

10:11:59 2 JM: Yeah, I got it dropped off. I got it dropped.

10:12:01 3 KS: From high to medium?

10:12:03 4 JM: Yeah. So, they dropped me."

10:12:06 5 **MS. SCARDINO:** Siegler leaves the prison after the
6 meeting, drives back to Houston, and two days later, on
7 July 5th, 2001, accepts murder charges against Hermelio Herrero,
8 having no evidence against him other than Moreno's confession
9 story.

10:12:21 10 The same day, assured that she had willing informants
11 in FCI Beaumont, she also prepared charges against Mr. Prible.
12 Once Prible was charged with the murders, his points went up,
13 and he was moved from the low to the medium on July 25th, 2001.
14 That same day, Foreman was moved from the hole back into the
15 medium's general population.

10:12:44 16 On August 8th, 2001, Siegler and Bonds met with
17 Foreman at the prison. Foreman will testify that he was told
18 about Prible's case by Jesse Moreno, who had heard about it from
19 Siegler. We know about the August 8th meeting only because
20 Your Honor found Siegler and Bonds work product notes of the
21 meeting in 2017 during an *in camera* Brady review of their file.

10:13:08 22 And at this August 8th meeting, Foreman tells them
23 that he had heard Prible confess to the Herrera/Tirado murders.
24 But Siegler and Bonds will testify, and did testify at their
25 deposition, that right away, they could tell that Foreman was

1 lying. Foreman couldn't even describe what Prible looked like,
2 let alone give a convincing account of a confession. Siegler
3 said at her deposition that she and Bonds walked out of that
4 meeting not believing a word Foreman had to say, but as we will
5 see, this did not stop Siegler from continuing to cultivate
6 Foreman as a snitch and eventually reward him for his assistance
7 with a Rule 35 letter to his federal prosecutor.

10:13:51 8 Siegler presented Prible's and Herrero's cases to the
9 same grand jury on the same day, August 29th, 2001. She did not
10 present any evidence in either case, did not present any
11 witnesses in either case, and did not have either of the
12 proceedings recorded. Consequently, there's no record
13 whatsoever of what she told those two grand juries about the two
14 cases. She walked out of the grand jury with two indictments.

10:14:19 15 Johnny Bonds will testify that he thought the new
16 evidence they had to get the indictment against Prible was a
17 jailhouse conform- -- confession to an informant.

10:14:29 18 And even though it was blatantly obvious to her and
19 Bonds that Foreman was a liar, Siegler continued to communicate
20 with him and his attorney -- his attorney about Prible's and
21 Herrero's cases throughout the fall of 2001. On September 28th,
22 2001, Prible was appointed counsel to represent him in the
23 murder case.

10:14:49 24 Shortly --

10:14:49 25 **THE COURT:** By this point, the grand jury had already

1 returned an indictment?

10:14:53 2 **MS. SCARDINO:** Yes, Your Honor.

10:14:54 3 Shortly after he was appointed counsel, Siegler began
4 talking about Prible's case with Foreman's cellmate, a convicted
5 murderer named Michael Beckcom. Michael Beckcom had murdered a
6 federal witness against him in a fraud case by forcing the
7 victim into a metal toolbox, attaching a hose to the muffler of
8 his car, and suffocating him with carbon monoxide. He was a
9 very skilled informant who was able to finagle a very lenient
10 ten-year sentence for capital murder by testifying against his
11 codefendants.

10:15:28 12 According to Siegler's statements at a pretrial
13 hearing in Prible's case, Beckcom got her name from Foreman and
14 first called her in October 2001. According to Beckcom's
15 deposition testimony, this is how the wheels got set in motion.

10:15:42 16 In November 2001, after getting another letter from
17 Foreman's attorney saying that Foreman could lead them to the
18 murder weapon, Bonds sent a fax to FCI Medium asking permission
19 for Siegler and him to visit with Foreman face-to-face on
20 December 10th, 2001.

10:16:02 21 A few days later, on November 26th, 2001, Siegler and
22 Bonds sent another letter to FCI Beaumont asking to meet with
23 Michael Beckcom "after we talk with Foreman." So on
24 December 10th, 2001, Siegler and Bonds met with Foreman and
25 Beckcom in back-to-back meetings at the lieutenant's office in

1 FCI Beaumont to talk about Prible's case.

10:16:28 2 We know about this meeting only because of the
3 evidence that Your Honor found during that *in camera* Brady
4 review. Bonds' notes from the meeting showed that Foreman's
5 name came up while they were speaking to Beckcom. At some
6 point, Beckcom gave Siegler and Bonds a ten-page handwritten
7 letter describing Prible's confession, which he claimed was made
8 to him and Foreman on November 24th, 2001.

10:16:57 9 It's hard to read this, Your Honor, but on the left it
10 says, "November 24th." That was the day that the confession
11 came out, and --

10:17:05 12 **THE COURT:** Whose handwriting is this?

10:17:07 13 **MS. SCARDINO:** This is Michael Beckcom's handwriting.

10:17:10 14 On that same day, November 24th, Beckcom, Foreman,
15 Prible and their parents took a photo at visitation together, a
16 photo which Beckcom will testify was taken in order to
17 corroborate the date of the alleged confession. In addition to
18 Beckcom and Foreman, there were several other informants at FCI
19 Beaumont chomping at the bit to testify against Prible.

10:17:36 20 Letters from these informants to Kelly Siegler were
21 not discovered until years after Prible's trial in a folder in
22 Siegler's file marked "Work product." These other informants
23 are featured in this photo, dated 11/11/01, 13 days before
24 Prible's alleged confession, and the gentlemen in this
25 photograph are, in the back row from left to right: Carl

1 Walker, Eddie Gomez, Michael Beckcom, Rafael Dominguez, and
2 Nathan Foreman. And in the front row: Oscar Gonzalez,
3 Mr. Prible, and Mark Martinez.

10:18:17 4 Siegler convicted Hermelio Herrero of the murder of
5 Albert Guajardo in April 2002 and got him a life sentence.
6 Moreno testified against him at trial. Foreman did not testify,
7 but Siegler wrote him a Rule 35 letter anyway.

10:18:32 8 As for Moreno, she did way more than write a letter.
9 She drove to Lafayette, Louisiana, on August 22nd, 2002, to
10 testify in person at his Rule 35 hearing. The Court shaved
11 77 months off of Moreno's remaining 78-month sentence. This
12 happened two months before Mr. Prible's trial but was never
13 revealed to Prible's counsel despite the fact that Moreno had
14 provided Siegler with her original informant in Prible's case,
15 Nathan Foreman.

10:19:03 16 Siegler tried Prible for capital murder in
17 October 2002. The prosecution's theory at trial was that
18 Beckcom had coincidentally come into contact with Prible, who
19 confessed to him and Nathan Foreman after the three of them had
20 become close, and that everything Beckcom knew about the murders
21 he had learned from Prible, and Prible alone.

10:19:24 22 The prosecution further argued that the oral sex
23 between Ms. -- Mr. Prible and Ms. Tirado could not have been
24 consensual unless Prible somehow had, quote, magic sperm,
25 because semen deposited in the mouth disappears almost

1 immediately. According to Siegler's closing argument, the fact
2 that any of Prible's DNA was found in Ms. Tirado's mouth, no
3 matter how microscopic the amount, could only mean that as soon
4 as he ejaculated, he executed her.

10:19:56 5 But this was not the only explanation, and Ms. Siegler
6 knew it, because she had spoken with Pam McInnis, the head of
7 the Harris County crime lab, before Prible's trial, and
8 Ms. McInnis had told her that semen can live in the mouth up to
9 72 hours. This note, like others that I've mentioned, was only
10 discovered during Your Honor's *in camera* review of Ms. Siegler's
11 work product file.

10:20:27 12 Siegler testified at her deposition that Mr. Prible's
13 defense attorneys got to see her entire file in this case, that
14 it was her practice never to withhold anything from the defense,
15 including her notes. Yet her cocounsel, Vic Wisner -- Wisner,
16 testified he never saw any of the informant letters, never even
17 knew any of these other informants were involved. She wants us
18 to believe that she told Prible's defense attorney things that
19 she hadn't even shared with her cocounsel.

10:20:56 20 Jeff Prible was convicted of capital murder and
21 sentenced to death on October 25th, 2002. You will see Beckcom
22 testify that Siegler led him to believe that if he testified
23 against Prible, he would walk right out of prison. This is a
24 far cry from what she and Beckcom led the jury to believe, that
25 the most she could do was call or write a letter to Beckcom's

1 federal prosecutor, and that it would be completely out of her
2 hands whether to give him a time cut or not. Beckcom did get a
3 year off of his sentence for testifying against Prible, and he's
4 now living as a free man in Florida with absolutely no
5 restrictions.

10:21:33 6 **THE COURT:** A year off out of how much remaining?

10:21:35 7 **MS. SCARDINO:** I'm sorry?

10:21:36 8 **THE COURT:** He got a year off his remaining sentence
9 out of how many months?

10:21:40 10 **MS. SCARDINO:** I believe it -- maybe he had eight
11 left.

10:21:44 12 **THE COURT:** Eight years?

10:21:45 13 **MS. SCARDINO:** Eight years left.

10:21:45 14 **THE COURT:** And he got one year off?

10:21:47 15 **MS. SCARDINO:** I believe -- I believe that's right. I
16 know the one year.

10:21:49 17 As Your Honor already knows, Mr. Beckcom threatened to
18 kill me and Mr. Rytting if we tried to test- -- or depose him in
19 this case.

10:21:59 20 This is only part of the sordid backstory of Jeff
21 Prible's prosecution, which his trial attorneys were never
22 informed about, and it may never have come to light if one of
23 the informants that Siegler decided not to use, spilled the
24 beans on the ring of snitches in 2010. His name is Carl Walker,
25 and he will testify at this hearing.

1 We will also call Nathan Foreman, who will testify
2 that Beckcom's story of him and Foreman hearing a confession
3 from Prible was not true. We will call Mr. Prible's lead trial
4 attorney, Terry Gaiser, who will testify as to all the Brady
5 evidence that was concealed from the defense team by the state.
6 And, finally, we will call Kelly Siegler.

7 Ms. Siegler will not appear in this courtroom in
8 person to testify. Her testimony will be presented by videotape
9 deposition, and the reason is because she appears to have
10 avoided service of a subpoena in this case. She knows this
11 hearing is happening, and there's only one reason she would
12 avoid being here in person today to clear her name, and that is
13 because her name can't be cleared.

14 The evidence of prosecutorial misconduct in this case
15 is overwhelming, and our hope, Your Honor, is that you will
16 determine, after this hearing is over, that Mr. Prible is
17 entitled to habeas relief.

18 **THE COURT:** Thank you very much.

19 **MS. SCARDINO:** Thank you, Your Honor.

20 **THE COURT:** Ms. Miranda?

21 **MS. MIRANDA:** May it please the Court?

22 Without question, if taken at face value, the
23 allegations that Prible has lodged in this case are troubling.
24 I think the Court granted discovery and held this evidentiary
25 hearing to afford Prible the opportunity to provide the evidence

1 that he needed to support those allegations, and at the heart of
2 Prible's claim is his allegation -- this is a quote from his
3 petition, "That the State utilized [sic] a ring of informants
4 who were engaging in a collective, coordinated effort to secure
5 sentence reductions in return for providing the State with
6 incriminating evidence in the form of manufactured confessions."

10:24:11 7 Now, that's a single sentence, but it's packed full of
8 allegations against the state in this case, and they are,
9 indeed, very serious.

10:24:19 10 I -- we believe -- and I'm not going to make this
11 lengthy because I think a lot of this is already in the briefing
12 before the Court. But after the evidence that is heard today,
13 there are still large unsubstantiated inferences that Mr. Prible
14 and his attorneys draw to get to that conclusion. There are
15 gaping holes in his allegations with respect to Kelly Siegler.

10:24:44 16 First, that the state was operating this ring or, even
17 if they weren't, that they were aware of this ring that was
18 operating within the FCI Beaumont Medium. Now, just to begin,
19 we just heard from her that during the July 3rd, 2001,
20 interview, Kelly Siegler got Mr. Foreman's name. And that is,
21 indeed, correct, and the transcript shows that Mr. Moreno told
22 Kelly Siegler about Foreman, but not in response to Prible or
23 not in relation to Prible's case.

10:25:16 24 In fact, if you read that entire transcript, there is
25 absolutely no mention of Prible. Now, she claims, in her

1 opening statement, that only part of that interview was
2 recorded, but we don't have any testimony or any evidence
3 anywhere showing that other statements were made during that
4 interview. So that is a huge assumption. Now, what they have
5 cited in the past in briefing is a brief reference in
6 Ms. Siegler's deposition where she was asked, without context,
7 "And Moreno talked to you about Herrero and Prible?" And he
8 says, "Yes," and that's all you have.

10:25:50 9 You don't have a date that conversation happened. You
10 don't have content about that conversation. You have no context
11 about where it happened, and the only thing he mentioned is
12 Prible's name.

10:26:00 13 He absolutely does not mention Foreman's name, and in
14 order for the whole rest of the sequence to work, right, you
15 have to assume, based on this one noncontextual statement, that
16 Moreno told Kelly Siegler about Nathan Foreman, not just about
17 who he was, but about the fact that he had information on
18 Prible, and there's no evidence of that fact.

10:26:24 19 And then they claim in their petition that two days
20 later, based on the information that Nathan Foreman would inform
21 against Prible, they charged him in an indictment. Again, you
22 have no proof that Moreno told her about Nathan Foreman with
23 respect to Prible, and you have no proof that she made the
24 indictment -- I'm sorry. I apologize. Not the indictment, but
25 they charged him with capital murder based on this information.

1 In fact, if you look at --

2 **THE COURT:** Not too fast. Not too fast.

3 **MS. MIRANDA:** I know. I apologize, Your Honor.

4 If you look at Herrero's probable cause complaint --
5 so she went and she spoke with Herrero. He told her that he
6 would inform -- Moreno said, "I will inform against him." She
7 files a probable cause affidavit mentioning that informant.

8 There is no informant mentioned in Prible's probable
9 cause affidavit because they didn't have one. They didn't know
10 about one, contrary to what they say. So he's charged.

11 **THE COURT:** Which way does that cut? I mean, to
12 file -- to do that without having more evidence seems -- it
13 seems, to me, disturbing.

14 **MS. MIRANDA:** To do that without more evidence with
15 what respect?

16 **THE COURT:** Ms. Prible's guilt.

17 **MS. MIRANDA:** So you're -- to do that with -- based on
18 the evidence in the probable cause affidavit?

19 **THE COURT:** Yes.

20 **MS. MIRANDA:** Okay. Except that Ms. Siegler testified
21 that she believed the evidence -- she didn't get involved until
22 later, but when she reviewed the case -- the detective came to
23 her, said, "Hey, will you look at this?" She looked at that,
24 and she believed that evidence was sufficient to file a probable
25 cause affidavit.

10:27:50 1 **THE COURT:** Without Beckcom's statement?

10:27:52 2 **MS. MIRANDA:** She didn't even know about Beckcom. She
3 didn't know about Foreman with respect to Prible.

10:27:56 4 **THE COURT:** Why did it become worth charging at that
5 point when it hadn't been worth charging for two years?

10:28:01 6 **MS. MIRANDA:** Because she had not been involved
7 previously. So we don't know. We obviously don't know who
8 originally looked at that case and what they thought of that
9 case. What we do know, from Ms. Siegler's testimony, is that
10 when the detective brought the case to her, and she looked at
11 it, she thought there was enough there to charge him.

10:28:19 12 **THE COURT:** Okay. But what we have is somebody in the
13 district attorney's office looked at it and thought there's no
14 indictment here.

10:28:25 15 **MS. MIRANDA:** We don't know what they thought. We
16 don't have any testimony.

10:28:27 17 **THE COURT:** There was not an indictment?

10:28:29 18 **MS. MIRANDA:** No. That's what we know. We know that
19 somebody --

10:28:31 20 **THE COURT:** Ms. Siegler, at a detective's urging, does
21 look at it and decides there should be an indictment.

10:28:36 22 **MS. MIRANDA:** Absolutely.

10:28:37 23 **THE COURT:** Then -- and then, later, did she go out
24 and find Mr. Beckcom?

10:28:41 25 **MS. MIRANDA:** That would happen later, yes,

1 Your Honor. And if I may continue --

10:28:44 2 **THE COURT:** Well, that is precisely why she needs to
3 be here to explain this narrative.

10:28:49 4 **MS. MIRANDA:** And she did do that in her deposition,
5 Your Honor.

10:28:52 6 **THE COURT:** Okay. All right.

10:28:53 7 **MS. MIRANDA:** All right. So Ms. Siegler does not even
8 meet with Mr. Foreman until August 8th, okay? Mr. Foreman is
9 housed in the SHU in isolation until July 25th. And so their
10 next allegation is not only did they charge him knowing that
11 Foreman would be an informant, which she did not know, but then
12 they also claim that she charged him intentionally because she
13 knew, based on the point system, that somehow that would put him
14 within reach of the rest of these informants.

10:29:24 15 And, again, because we don't know that she knew about
16 who Foreman was, she don't -- she did not know that Foreman was
17 willing to testify -- and there is no evidence that she knew
18 that if Prible was charged with capital murder, that he would be
19 moved from low to high, all right? Now, he -- we did see part
20 of the interview with Mr. Moreno saying that he was moved from
21 high to low, but there's no evidence that she knew what would
22 happen when she was charged with capital murder.

10:29:52 23 In fact, all right, the evidence in this case shows
24 that she believed that Prible was still in low when she filed
25 the detainer, which was before she met with Mr. Foreman.

10:30:02 1 On August 3rd -- and you'll see that paperwork is
2 going to be introduced in this hearing. That paperwork is going
3 to show that she signed it on August 3rd, and that paperwork was
4 addressed to Mr. Prible on September 4th, when it was finally
5 sent after the indictments, and it was sent and addressed to him
6 in low. She had no idea he had been moved to medium, and so all
7 of the allegations that she manipulated the system to move him
8 within the ring of informants is entirely based on speculation,
9 and it's not supported by the facts.

10:30:36 10 In fact, she prepared to move Mr. Prible out of FCI
11 Beaumont before she even met with Foreman. So she was already
12 putting in the works for him to be moved and to be removed from
13 FCI Beaumont and to be removed to Houston before she even met
14 with Mr. Foreman. And, again, she testified in her deposition
15 that she did not mention to the grand jury that she had an
16 informant in Mr. Prible's case.

10:31:00 17 She did say that she mentioned that in Mr. Herrero's
18 case because she did, in fact, have an informant in
19 Mr. Herrero's case. She did not have one in Mr. Prible's case,
20 and she did not mention that during the indictment -- during the
21 grand jury.

10:31:16 22 And then, later, they claim that Mr. Foreman was the
23 point person, that he was the one. Mr. Walker, in his
24 statements, have said -- and they have alleged in their petition
25 that he was their -- she just said he was their informant that

1 they were cultivating this whole time. There's no evidence of
2 that in the record. We have deposed Rafael Dominguez. We have
3 deposed Michael Beckcom. We have an affidavit from Jesse
4 Gonzalez. We have -- we have an affidavit from Foreman, and
5 he's going to come in here and testify. And he has not yet, to
6 this point, said in any statement that he was the point person
7 for the state.

10:31:53 8 In fact, he sort of kind of backs off and hands off,
9 and "I just gave the number to Kelly Siegler." The only person
10 who does allege this is Carl Walker, who, in a statement, says
11 he doesn't really know, but he's just assuming. And we know
12 that the state court found that his statement was almost
13 entirely either speculation or hearsay and of little evidentiary
14 value.

10:32:14 15 So they don't have proof of what they say they have
16 proof of, and I believe that what you end up with, at the end of
17 the day, is still disturbing, right? I think what is consistent
18 across the board with what we have discovered during discovery
19 is that these inmates were very active in attempting to obtain
20 Mr. Prible's confession.

10:32:35 21 That's the consistency that we play out. What we
22 don't have is proof that the state put them up to that, proof
23 that the state knew that they were being active. The fact that
24 multiple inmates would send a letter to try to get -- I think
25 she said a piece of the pie, does not mean that the prosecutor

1 knew what they were doing.

10:32:56 2 **THE COURT:** What was the alternative thesis? Why
3 would these inmates become so enthusiastic about trying to pin a
4 capital crime on Mr. Prible?

10:33:03 5 **MS. MIRANDA:** I think there's testimony all over the
6 record that this is what they do. This is what -- I mean,
7 they're -- they want an opportunity to get out of jail sooner,
8 to get other perks, whatever it is. There's nothing unusual
9 about federal inmates coming forward --

10:33:18 10 **THE COURT:** So at any time we can assume that federal
11 prisons are full of people trying to pin heinous crimes on their
12 roommates and fellow prisoners?

10:33:29 13 **MS. MIRANDA:** I think that the testimony -- now, I'm
14 not going to make that personal statement. I don't. But I do
15 believe that we have testimony from a judge and from the
16 prosecutors and people who work in the system to say that
17 absolutely that -- that inmates -- not just federal, but state
18 inmates are -- it is not uncommon for them to inform against
19 roommates or cellmates. It's not an uncommon practice.

10:33:53 20 **THE COURT:** Doesn't that suggest that the
21 prosecution's sensitivity should have been particularly aroused
22 by this form of proof that these people, who are in the business
23 of coming up with confessions of their cellmates and roommates,
24 are at it again? Wouldn't that tend to cause a seasoned
25 prosecutor to be especially wary about this kind of evidence?

10:34:14 1 **MS. MIRANDA:** I think so, Your Honor. I think so, and
2 I think that Ms. Siegler talks about that in her deposition. In
3 fact, when she receives -- she testified when she received
4 those -- the other letters from the three -- the inmates from
5 Mr. Martinez, Mr. Gonzalez, and then Mr. Walker, that was
6 precisely what she thought.

10:34:31 7 And I think the record's going to demonstrate
8 Mr. Gonzalez testified that she followed up in the sense she
9 called him, said, "Do you know him?" He said, "Yes," and then
10 she never -- he never heard from her again, and that's precisely
11 why, because her assumption was that this is not necessarily
12 credible information. I don't know that they have it. These
13 are just more federal inmates attempting to get in on the pie.

10:34:55 14 And I think Johnny Bonds testifies about how they are
15 naturally wary of it and the things that they try to do to make
16 sure that they're testifying for the truth. And I will
17 acknowledge, Your Honor, and I understand that for many,
18 including, probably, this Court, this type of testimony is
19 disturbing simply for that reason, that I think there is a
20 perception out there regarding its reliability because of the
21 intense motive that these inmates have to do this, all right?

10:35:21 22 But the question before this Court is -- is very
23 narrow, and the question is: Did Ms. Siegler -- even if you
24 disagree personally with her use of this testimony, the question
25 is: Did Ms. Siegler violate the Constitution in using that

1 testimony? And that comes down to the question of: Did she put
2 them up to it? Was she using them as state agents?

10:35:43 3 And they absolutely have the burden of proving that,
4 and then the other would be, obviously, if she knew that this
5 confession was false and she -- or she had reason to know that
6 it was false.

10:35:53 7 **THE COURT:** Well, Mr. Siegler -- Ms. Siegler did worse
8 than that, didn't she? Didn't she choreograph a --
9 conversations with Mr. Prible after she knew he was represented
10 by counsel?

10:36:09 11 **MS. MIRANDA:** I'm sorry. Choreographed conversations
12 with Mr. Prible?

10:36:13 13 **THE COURT:** By cellmates and fellow inmates, when she
14 knew Mr. Prible was represented by counsel.

10:36:20 15 **MS. MIRANDA:** I don't believe there's evidence of that
16 in the record, Your Honor. I believe that what the evidence is
17 going to show is that these inmates got information, and maybe
18 they targeted Mr. Prible. Maybe they set him up to confess.

10:36:30 19 I do think there's some consistency there with respect
20 to the fact that they went after him, but I think what the
21 record shows is that they contacted Ms. Siegler, let her know
22 that they had information, and then she made a decision about
23 whether she would use that information or not. That is not
24 orchestrating information with respect to what a *Massiah*
25 violation is.

1 And, again, understanding from Your Honor's
2 perspective the fact that they came to her, and she decided to
3 use that, may be upsetting or troubling to you, but it -- it
4 does not rise --

5 **THE COURT:** It isn't constitutional, you're saying.

6 **MS. MIRANDA:** It doesn't rise to the level of a
7 constitutional violation, which is what they have to prove in
8 this case. And at the end of the day, the most I think that you
9 end up with, with the evidence is potentially additional
10 impeachment evidence against Michael Beckcom with respect to who
11 he knew was talking about this case, the fact that more inmates
12 were talking about this than he let on during his testimony.

13 And -- but that is simply incremental with respect to
14 the way that Mr. Beckcom was impeached in this case. He wasn't
15 just an ordinary snitch. In fact, the defense attorney argued
16 during closing arguments that it was a craft that he was
17 practiced at.

18 So the jury heard not only is he coming in here with a
19 motive, but he's done it before, and he's done it well, and, oh,
20 by the way, did you know he previously lied under oath to a
21 federal judge? He's a quadruple felon. He's a capital
22 murderer.

23 They had all of this. They -- they brought in
24 witnesses who testified that they knew Beckcom, and they thought
25 he was opportunistic and that he would commit perjury and that

1 he would do the very sort of thing that they were accusing him
2 of. They also brought in witnesses to show that he could have
3 gotten this information from other sources.

10:38:17 4 So at the end of the day, the most that you have is
5 incremental impeachment that is not enough to get you to where
6 you can, on federal habeas, with the deference that's afforded
7 here, to overturn his conviction.

10:38:29 8 **THE COURT:** Thank you, Ms. Miranda.

10:38:33 9 Want to call your first witness?

10:38:34 10 **MR. RYTTING:** Yes, Your Honor. We'll call Nathan
11 Foreman.

10:38:37 12 **THE COURT:** Mr. Foreman.

10:38:49 13 **MR. RYTTING:** May I question from the table, or would
14 you --

10:38:51 15 **THE COURT:** Table is fine. Just make sure the
16 microphone is near your -- where you're speaking.

10:38:56 17 **MR. RYTTING:** Yes, Your Honor.

10:39:22 18 **MS. SCARDINO:** Your Honor, may I ask Art to help me
19 turn -- I think I'm plugged in correctly, but...

10:39:29 20 *(Sotto voce discussion between Ms. Scardino and the case*
10:39:29 21 *manager.)*

10:39:51 22 **THE COURT:** Yes, sir. Good morning. If you could
23 make your way up here to the seat nearest me.

10:39:55 24 Up here this way (indicating), sir.

10:40:01 25 Good morning. Before you take your seat, Mr. Rivera

Mr. Rytting Direct of Nathan Foreman

will administer the oath, if you would raise your right hand.

(Witness sworn.).

THE COURT: Thank you very much.

Okay. You may inquire.

NATHAN FOREMAN, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MR. RYTTING:

Q Nathan, could you identify yourself for the court, please?

A Yes. My name is Nathan Foreman.

Q Okay. And we've met before, have we not?

A Yes, sir.

Q Okay. And, in fact, in 2016, I believe -- January of 2016, I met you at the Byrd Unit; is that correct?

A That is correct.

MS. MIRANDA: Objection, Your Honor, leading.

THE COURT: Rule 611 doesn't prohibit leading testimony. It just suggests it be used cautiously. I think, given where we are in this evidence, and when I'm sitting without a jury, I'm not going to be too strict on leading or not leading. I'll allow it.

THE REPORTER: I'm sorry. If you could just pull the microphone a little closer.

THE WITNESS: Yes.

BY MR. RYTTING:

Q And in 2016, you provided me -- you provided an affidavit at

Mr. Rytting Direct of Nathan Foreman

1 that time. You signed an affidavit; is that correct?

10:41:19 2 **A** That is correct.

10:41:20 3 **Q** Okay. And were you represented by counsel at that point?

10:41:25 4 **A** Yes, I was.

10:41:26 5 **Q** Who? Do you recall?

10:41:28 6 **A** Alan Percely.

10:41:31 7 **Q** And at -- you were incarcerated in FCI Beaumont, correct?

10:41:39 8 **A** That is correct.

10:41:40 9 **Q** And do you recall what times that was?

10:41:45 10 **A** Oh, man. I know I started in 2000, I think.

10:41:48 11 **Q** Is -- February 28th of 2000?

10:41:50 12 **A** It may be. I'm not sure.

10:41:52 13 **Q** Correct?

10:41:53 14 Okay. And when you first got to FCI Beaumont, where were
15 you housed? Was it in general population?

10:42:02 16 **A** Yes, when I first got there.

10:42:04 17 **Q** And how long were you in general population?

10:42:06 18 **A** Maybe a few months. I'm not sure.

10:42:08 19 **Q** And after -- after you were in general population, where did
20 you go when you were in FCI Beaumont?

10:42:13 21 **A** I went to the SHU.

10:42:14 22 **Q** And why did you go to the SHU?

10:42:18 23 **A** Disciplinary action.

10:42:19 24 **Q** Okay. And -- and the SHU is what?

10:42:23 25 **A** Special housing unit.

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10:42:24 1 Q Okay.

10:42:26 2 THE COURT: Why don't you walk him through why that --
3 that term is used.

10:42:30 4 BY MR. RYTTING:

10:42:30 5 Q Why -- why is the term "SHU" used?

10:42:33 6 A Well, it stands for special housing unit. It's for
7 disciplinary action.

10:42:37 8 Q Okay.

10:42:38 9 A Punishment.

10:42:39 10 MS. MIRANDA: Your Honor, I apologize for
11 interrupting, and I should have done this previous to the first
12 witness being called, but can we ask if there are any other
13 witnesses in the courtroom, and then invoke the rule at this
14 time, if there are?

10:42:54 15 MS. SCARDINO: No. There aren't.

10:42:58 16 THE COURT: Experts, normally, are not subject to the
17 rule. Are there any fact witnesses still in the courtroom?

10:43:04 18 MR. RYTTING: No, there's not. We have a fact witness
19 outside the courtroom.

10:43:06 20 MS. MIRANDA: Thank you, Your Honor.

10:43:07 21 THE COURT: Do you have all your fact witnesses
22 outside the courtroom, too?

10:43:10 23 MS. MIRANDA: We don't have our witnesses. They're
24 all depositions.

10:43:12 25 THE COURT: Okay.

Mr. Rytting Direct of Nathan Foreman**BY MR. RYTTING:**

Q Okay. Can you explain for the Court what the SHU is?

A Well, it's a place they put you when you get in trouble, disciplinary action.

Q Okay. And so it's apart from the general population, correct?

A Yes, it is. Yes, sir.

Q And how is the SHU set up?

A Well, it's -- it's like, somewhat, solitary, but only difference is there you have, like, two other cellmates. So...

Q So you're not in a single cell isolated from other inmates?

A No. They changed that because -- due to population, I guess. I don't know.

Q So you may have roommates. You have -- you may have cellmates in the unit that's called the SHU?

A Yes.

Q Okay. And did you have any particular assignments or duties while you were in the SHU?

A I was assigned -- I was an orderly. Yeah. I was a -- I kept the -- I fed other inmates, and I swept up, cleaned up.

Q So you were able to go from cell to cell and talk with other inmates, if you --

A Yes. I would move around.

Q Uh-huh.

And how long were you in the SHU?

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1 **A** Well, I did approximately -- maybe a little over a year.
2 I'm not sure.

3 **Q** And while you were in the SHU, did you meet someone named
4 Jesse Moreno?

5 **A** Yes.

6 **Q** And who is Jesse Moreno?

7 **A** Well, Jesse, he was another inmate that was there with me,
8 also.

9 **Q** And did you know Jesse Moreno from any other -- from the
10 outside world?

11 **A** Yes. We grew up in the same neighborhood.

12 **Q** Uh-huh.

13 **THE COURT:** You knew him beforehand, or you -- you
14 established later that you were from the same neighborhood?

15 **THE WITNESS:** We -- well, we established, while we
16 were in there, we were from -- well, I knew Jesse from the
17 neighborhood.

18 **THE COURT:** Okay. That's what I meant.

19 **THE WITNESS:** I'm sorry.

20 **BY MR. RYTTING:**

21 **Q** And why was Jesse in the SHU, if you recall?

22 **A** I don't recall.

23 **Q** Okay. So while you were in the -- did you have any
24 discussions about Mr. Prible with Jesse Moreno while you were in
25 the SHU?

Mr. Rytting Direct of Nathan Foreman

10:45:24 1 A Yes. I think so, I believe.

10:45:25 2 Q And what was the discussion over?

10:45:29 3 A Well, it was -- he brought something to my attention about a
4 time cut or something, you know, if we could get this guy to...

10:45:37 5 Q For what?

10:45:41 6 A Excuse that? Ask that again?

10:45:43 7 Q Was it a time cut for testifying?

10:45:45 8 A Yes --

10:45:45 9 Q Okay.

10:45:46 10 A -- testify.

10:45:47 11 Q And did Jesse Moreno know something about the Prible case?

10:45:50 12 A Yes, he did.

10:45:52 13 Q And did he explain how you might get a time cut?

10:45:57 14 A Yes, he did.

10:45:58 15 Q And what was that? What did he -- what did he suggest you
16 might do?

10:46:07 17 A This guy to say that he, you know, killed somebody or
18 something.

10:46:11 19 Q Okay. And did Mr. -- but Mr. Moreno had some facts about
20 this case already about Prible?

10:46:18 21 A Yes, he did.

10:46:18 22 Q Did he -- who did he say for you to get in contact with?

10:46:22 23 A Kelly Siegler.

10:46:23 24 Q Okay. So you both discussed Kelly Siegler while you were in
25 the SHU?

Mr. Rytting Direct of Nathan Foreman

10:46:28 1 **A** Yes.

10:46:29 2 **Q** Do you know who Kelly Siegler is?

10:46:32 3 **A** Well, I didn't at the time, but as I realized, yeah, she was
4 a prosecutor out of Houston.

10:46:38 5 **Q** Okay. Now, you said you were in the SHU for over a year,
6 and that means you got out somewhere in July, is that -- of
7 2001; is that correct?

10:46:51 8 **A** I knew it was -- it was a long time after that. You know,
9 I'm not sure.

10:46:55 10 **Q** So maybe late summer?

10:46:56 11 **A** Maybe, yeah.

10:46:57 12 **Q** Uh-huh.

10:46:58 13 **A** You could say that.

10:47:01 14 **Q** And while you were in the SHU, did you ever come across
15 Jeff Prible, actually?

10:47:07 16 **A** You know, I came across a lot of people, but I don't -- you
17 know, because I go from door to door. I don't remember inmates
18 by --

10:47:15 19 **Q** Uh-huh.

10:47:16 20 **A** -- you know --

10:47:16 21 **Q** So you're not sure whether you saw --

10:47:18 22 **A** No.

10:47:18 23 **Q** You're not sure now whether you saw Mr. Prible in the SHU?

10:47:20 24 **A** No.

10:47:21 25 **THE COURT:** What's your earliest memory of Mr. Prible?

Mr. Rytting Direct of Nathan Foreman

THE WITNESS: I think I -- I probably ran across him
in the SHU.

THE COURT: Okay.

THE WITNESS: I'm just not sure. It's been over
20 years ago. So, you know...

BY MR. RYTTING:

Q And so you got out of the SHU sometime in the summer of
2001?

A That's correct.

Q Did you -- do you know why Mr. Prible was in the SHU?

A No, I don't.

Q Okay. And did Mr. Prible get out of the SHU about the same
time?

A I don't -- I didn't -- you know, I didn't keep up with when
he got out. I just know we ran into each other on the compound.

Q Okay. But you did run into each other on the compound.
What is "the compound"?

A It's an open area for inmates to walk around. It's just
open. You know, you have the right to move around. So...

Q Uh-huh. You're housed --

A It's called "the yard."

Q Well, let's go a little bit about how the FCI Beaumont
prison is set up.

You have a yard or a compound, correct?

A Well, we call it "the yard" and "the compound." So it's

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1 either -- either/or. So...

10:48:38 2 Q And what's on the yard or compound?

10:48:41 3 A Well, you got the rec area. You got a track. You got a
4 football field. You got a handball field. You know, you got --
5 it's just recreation.

10:48:48 6 Q Okay. And so -- but you're also housed in the particular
7 unit, correct?

10:48:56 8 A Yes.

10:48:57 9 Q Okay. Were you housed in the same unit as Mr. Prible?

10:49:00 10 A No. I don't think so.

10:49:01 11 Q Okay. Could you go from unit to unit?

10:49:07 12 A Well, you could walk, but you can't -- you weren't allowed
13 to go inside the units.

10:49:13 14 Q So you couldn't meet with Mr. Prible in his cell?

10:49:15 15 A No. No, I could not.

10:49:16 16 Q And he couldn't meet with you in his -- in your cell?

10:49:19 17 A No.

10:49:19 18 Q Because you were in different units?

10:49:21 19 A Correct.

10:49:21 20 Q Okay. All right. When you -- do you recall -- do you
21 recall your first encounter -- encounter with Mr. Prible on the
22 yard?

10:49:33 23 A Man, that's -- that's too -- too far back to remember.

10:49:39 24 Q Okay. But you already knew something about his case,
25 correct?

Mr. Rytting Direct of Nathan Foreman

10:49:45 1 **A** Yes, I did. Yeah.

10:49:47 2 **Q** And when you did meet him on the yard, you knew he was -- he
3 was the guy that --

10:49:53 4 **A** Yeah.

10:49:53 5 **Q** -- was facing this -- facing the murder case; is that
6 correct?

10:49:56 7 **A** That's correct.

10:49:57 8 **Q** And you were interested, at the time, in -- in what, getting
9 a time cut?

10:50:09 10 **A** Yes, I was.

10:50:10 11 **Q** Okay. What is a time cut?

10:50:12 12 **A** Well, it's when they take some of your sentence away from
13 the time that you have. They'll take it off of your sentence or
14 whatever.

10:50:21 15 **Q** Uh-huh. For informing on --

10:50:24 16 **A** Yes.

10:50:24 17 **Q** -- providing the government with information?

10:50:26 18 **A** Yes.

10:50:26 19 **Q** Okay. And you -- did you ever act on Jesse Moreno's
20 suggestion that you contact Kelly Siegler?

10:50:42 21 **A** I did.

10:50:43 22 **Q** Okay. So at some point you did contact Siegler?

10:50:46 23 **A** I did.

10:50:46 24 **Q** Do you recall when that was?

10:50:47 25 **A** I can't recall.

Mr. Rytting Direct of Nathan Foreman

10:50:49 1 Q Do you recall meeting with Kelly Siegler?

10:50:50 2 A Yes.

10:50:51 3 Q Okay. When -- where did that occur?

10:50:54 4 A Man, I -- I -- only meeting I remember was at FCI -- F- --
5 FDC Downtown.

10:51:01 6 Q So in the federal detention center here in Houston, Texas?

10:51:04 7 A Yeah.

10:51:06 8 Q Do you recall approximately what time that meeting took
9 place, what month?

10:51:11 10 A No, I can't.

10:51:11 11 Q All right. And, again, it's because of 20 years?

10:51:14 12 A Yeah.

10:51:19 13 Q Do you recall what the purpose of that meeting was?

10:51:21 14 A It was about Jeff Prible.

10:51:25 15 Q Okay. And what were you -- do you recall what you may have
16 told Ms. Siegler at this meeting?

10:51:36 17 A No. I --

10:51:37 18 Q But you did discuss the Prible case?

10:51:39 19 A Yes, I did.

10:51:42 20 Q And was this the only contact that you had with Ms. Siegler,
21 or were you able to contact her by telephone?

10:51:48 22 A We were able to contact her by telephone.

10:51:50 23 Q And when you say "we," who are you talking about?

10:51:56 24 A All the inmates that were on this -- supposedly involved in
25 this case.

Mr. Rytting Direct of Nathan Foreman

10:52:01 1 Q And who were they? Can you name some of the inmates who
2 were involved?

10:52:06 3 A Jesse Moreno, Mike Beckcom. Man...

10:52:13 4 Q Was Rafael Dominguez wring --

10:52:14 5 A Yes. Yes.

10:52:15 6 MS. MIRANDA: Objection, Your Honor. I understand
7 that leading is somewhat permissible, but at this point we're
8 talking about substance and content of the testimony, and I
9 think -- given the nature of these proceedings, I do believe
10 that the witness ought to be the one that's supplying the
11 information.

10:52:28 12 THE COURT: As to individuals you've just named, do
13 you have a clear recollection that they contacted Ms. Siegler by
14 telephone, or is that just your best guess?

10:52:38 15 THE WITNESS: No, they also did.

10:52:41 16 THE COURT: Okay.

10:52:43 17 BY MR. RYTTING:

10:52:43 18 Q And how were they able to contact her by telephone?

10:52:47 19 A I think the unit manager would allow us to use his phone.

10:52:52 20 Q Was there another system for making phone calls?

10:52:58 21 A Your own -- your own phone that you had to -- that you had.

10:53:06 22 Q Was it -- so, and the -- how had -- there was a phone
23 system, correct, that you --

10:53:10 24 A That's correct.

10:53:10 25 Q Okay. And you have a number -- your own, say, like a PIN

Mr. Rytting Direct of Nathan Foreman

1 number and identifying number that you put in the phone system?

10:53:16 2 **A** That's correct.

10:53:17 3 **Q** Did you have to do that with the unit manager?

10:53:19 4 **A** No.

10:53:20 5 **Q** Okay. And do you recall who the unit manager was?

10:53:26 6 **A** Harpe -- Harpe something.

10:53:31 7 **Q** And was Ms. Siegler able to contact you through -- or --

10:53:35 8 **A** Yes, she was.

10:53:36 9 **Q** -- and other inmates through Ms. Harpe's -- Mr. Harpe's
10 phone?

10:53:39 11 **A** Yes, she was.

10:53:39 12 **Q** And do you recall whether that happened or not?

10:53:42 13 **A** I don't recall at the minute.

10:53:56 14 **Q** Now, at some point you became cellmates with Mr. Beckcom; is
15 that correct?

10:54:01 16 **A** That's correct.

10:54:01 17 **Q** Okay. Do you recall when that occurred?

10:54:05 18 **A** No. No, I can't.

10:54:08 19 **Q** Was Mr. -- Mr. Prible was still on the compound; is that
20 correct?

10:54:12 21 **A** That's correct.

10:54:13 22 **Q** Okay. And did you and Mr. Beckcom meet with Mr. Prible?

10:54:17 23 **A** Yes.

10:54:18 24 **Q** And where did that occur?

10:54:19 25 **A** On the rec yard.

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Q Okay.

THE COURT: I'm sorry. I didn't hear. On the radio?
On the what?

THE WITNESS: Recreational yard.

THE COURT: Oh, recreation. Okay.

THE WITNESS: Yeah.

BY MR. RYTTING:

Q And how often did you meet Mr. Prible?

A Sometimes -- every day sometimes, you know.

Q Okay.

A Everyone would go to rec every day.

Q Was it just you and Mr. Beckcom, or were there others?

A Sometimes me and Mike -- me and Beckcom. Sometimes other
few guys -- few more guys around.

*(Sotto voce discussion between Mr. Rytting and
Ms. Scardino.)*

MR. RYTTING: Your Honor, I'm showing on the screen
Exhibit 32.

THE COURT: Okay.

BY MR. RYTTING:

Q Mr. Foreman, can you identify any of the people in that
photograph?

A Yeah.

Q And starting with the left-hand back row, can you tell us
how they are?

Mr. Rytting Direct of Nathan Foreman

10:55:42 1 **A** I think that's Walker, and the next one is Eddie.

10:55:53 2 **Q** Would that be Eddie Gomez?

10:55:54 3 **A** Yes. That's correct.

10:55:56 4 And the center is Mike Beckcom.

10:55:59 5 **Q** And he was your cellmate, correct?

10:56:00 6 **A** Yes, he was.

10:56:04 7 Cat was Dominguez.

10:56:07 8 **Q** "Cat" was the nickname for Dominguez?

10:56:09 9 **A** Yes. Yes.

10:56:10 10 **Q** And next to Mr. Dominguez is...

10:56:12 11 **A** Me, myself.

10:56:14 12 **Q** Okay. And on the bottom row?

10:56:16 13 **A** That's, I think, Oscar.

10:56:20 14 **Q** That's Oscar Gonzalez, correct?

10:56:21 15 **A** Yes, it is.

10:56:24 16 **Q** And in the center is...

10:56:27 17 **A** Prible.

10:56:28 18 **Q** Okay. And do you recognize Mr. Prible in the courtroom?

10:56:31 19 **A** It's kind of hard, but yeah, I recognize him now.

10:56:35 20 **Q** Okay.

10:56:35 21 **A** I recognize him.

10:56:36 22 **Q** And on the right -- the last person, do you know who the

23 last person is right there?

10:56:41 24 **A** I think it was Mark or Mike Martinez, one of the two. I

25 don't remember his name too well.

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Q And were all these people -- were every -- was everyone in that picture, as far as you know of, in contact with Kelly Siegler?

A A few of them. I don't know if everyone was. I can't say.

Q So who was? Who was able, that you know of, to -- you believe contacted or spoke with Ms. Siegler?

A Myself, Mike, I think Walker, Gomez. Maybe Dominguez. I don't remember if the rest of them was. I can't say.

Q All right. And what were -- what were these individuals who are all surrounding Jeff Prible in this picture interested in doing?

A Getting time cuts.

Q And how were they going to do that?

A By rolling over on Jeff.

Q Okay. And by "rolling over on Jeff," what do you mean?

A Snitching on him. Lying on him, rather.

Q Okay. And do you know how -- did you -- did you send this picture to the district attorney's office?

A I don't remember if I did or someone else did. I can't.

Q Now, what was the purpose of taking this picture?

A To show that we all were affiliated with each other.

Q Okay.

A That we knew each other.

Q Now, Mr. Foreman, you never did testify against Mr. Prible, did you?

Mr. Rytting Direct of Nathan Foreman

A No, I didn't.

Q But at the time, you were willing to testify; is that correct?

A Yes. That's correct.

Q And it's your understanding that Mr. Beckcom did testify --

A Yes.

Q -- against --

A Yes.

Q -- Mr. -- Mr. Prible, correct?

A Yes, sir.

Q And you've had an opportunity to read his -- the statement that he gave to the prosecutor, correct, or go over that statement in which he describes Jeff Prible's supposed confession; is that correct?

A That's correct.

Q Okay.

(Sotto voce discussion between Mr. Rytting and Ms. Scardino.)

BY MR. RYTTING:

Q Do -- and do you recognize that handwriting?

A No.

Q Okay. But that -- you were told that was a letter written by Jeff -- by Michael Beckcom, correct?

A That's correct.

Q And who informed you that that was a letter written to

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1 Ms. Siegler by -- or statement written by Michael Beckcom?

10:59:53 2 **A** Mr. Rytting did.

10:59:55 3 **Q** And that's me?

10:59:58 4 **A** That's you.

10:59:59 5 **Q** And I read most, if not all, of that letter to you, did I
6 not?

11:00:03 7 **A** That is correct.

11:00:05 8 **Q** So -- and it's your understanding that in that letter,
9 Mr. Beckcom says that you were present when Mr. Prible talked
10 about his murder case, correct?

11:00:18 11 **A** That's correct.

11:00:19 12 **Q** And did -- did Mr. Prible sometimes talk about what he was
13 accused of?

11:00:26 14 **A** Not really. He just, you know, said, you know -- he didn't
15 really talk about what he was accused of. You know, he said
16 they were trying to accuse him for something that he didn't do.

11:00:36 17 **Q** Okay.

11:00:36 18 **A** But that's as far as it went.

11:00:42 19 **Q** So if we go through some of the -- go through this statement
20 here -- now, it says here that -- that Mr. -- Mr. Beckcom claims
21 that he learned of Prible through his exercise partner, Bobby
22 Williams, and he says that: Prible would approach us -- and
23 he's talking about you and Beckcom -- during our workout
24 occasionally. And we'd pull -- and pull Bobby off to the side.

11:01:18 25 Do you recall any of these meetings, as you sit here?

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11:01:20 1 **A** No, I don't.

11:01:20 2 **Q** Was -- was it always Prible that was approaching you, or did
3 you and Beckcom come up to Prible?

11:01:26 4 **A** You know, it wasn't always him approaching us. We all just
5 met out there, you know. So it was -- how do you say, an
6 agreeance thing, you know. That was just our --

11:01:36 7 **Q** So you meet with a group of people, perhaps?

11:01:37 8 **A** Just meet with a group of people.

11:01:40 9 **Q** Was -- so Mr. Prible wasn't sitting around waiting for you
10 to get out of your unit, was he?

11:01:46 11 **A** No, man.

11:01:47 12 **Q** And that was "no"?

11:01:49 13 **A** That was "no."

11:01:49 14 **Q** Okay. So -- and if we go on through this statement, it says
15 that -- that at: (Reading) Some months later, around late
16 October or early November, Prible approached myself and Nathan
17 Foreman while we were on the yard, sitting on some bleachers.
18 Prible and I began talking casually and then realized that we
19 both worked in the same industry at competing businesses. I ran
20 Gold's Gym, and he ran World Gym. Both knew some of the same
21 people from that industry and traveled in some of the same
22 circles.

11:02:36 23 Do you recall that conversation about the --

11:02:39 24 **A** I don't.

11:02:39 25 **Q** -- gym?

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11:02:39 1 A I don't recall that.

11:02:41 2 Q Okay. And it says, you know, late October or early November
3 in that letter. Did you not give Michael Beckcom, Kelly
4 Siegler's telephone number in October?

11:02:54 5 A I don't recall. I may have. I don't remember.

11:02:56 6 Q And you became cellmates in early October, did you not?

11:03:00 7 A Right. Right.

11:03:00 8 Q And that was about the time that you gave him the -- the --
9 the telephone number?

11:03:06 10 A If I remember giving it to him, I don't --

11:03:08 11 Q Okay.

11:03:09 12 A -- I don't remember.

11:03:12 13 Q But any rate, when Mr. Beckcom and you started meeting with
14 Mr. Prible, he had already been in contact with Mr. Siegler, if
15 it was October or November that he first --

11:03:21 16 A He probably was. I'm not sure.

11:03:23 17 Q Okay. So -- and if we go on through this letter, it says
18 that -- and -- again, and you're present. (Reading) At some
19 point Prible said that he had a state case and that he had heard
20 that I fought the same charge -- Beckcom's talking about himself
21 -- at one time.

11:03:47 22 (Reading) I asked him if he had a capital charge, and he
23 said, "I thought you knew." I had heard something to the effect
24 but didn't really know who it was. He then starts to ask me
25 some questions about the things I went through during my capital

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1 case.

11:04:06 2 Had you already discussed Mr. Prible with Beckcom before?

11:04:13 3 **A** You know, we -- we were cellmates, so I'm pretty sure. I
4 just don't know when, if -- you know.

11:04:18 5 **Q** Was Mr. Beckcom interested in testifying against Mr. Prible?

11:04:21 6 **A** Yes, he was.

11:04:21 7 **Q** And so you already had facts about Mr. Prible's case, did
8 you not?

11:04:25 9 **A** Yes, I did.

11:04:25 10 **Q** And did you relay those to Mr. Beckcom?

11:04:29 11 **A** For what I was told, yeah.

11:04:31 12 **Q** Okay. What you were told by -- what you had learned
13 already?

11:04:34 14 **A** Yeah.

11:04:35 15 **Q** Okay.

11:04:40 16 *(Sotto voce discussion between Mr. Rytting and*
17 *Ms. Scardino.)*

11:04:44 18 **BY MR. RYTTING:**

11:04:45 19 **Q** And, again, what had you learned already about that case?

11:04:49 20 **A** He was just being accused of murder. That's it, you know.

11:04:55 21 **Q** Did you know any -- any more details about that murder,
22 about who was killed and the girls that were suffocated?

11:05:02 23 **A** Somewhat, but, you know...

11:05:03 24 **Q** And where did you get that information?

11:05:05 25 **A** I got that from Jesse Moreno and Kelly Siegler.

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Q All right. Okay.

If we go further into -- into this statement, I'll just read it.

He said: (Reading) I asked Prible -- that's -- or I asked him -- this is -- again, this is Beckcom's writing -- what evidence they had on him, and he said "nothing." Then he said the only thing they have on him is some DNA from the girl, but that everyone knew he was messing around with her. He said that the police were looking for a .38 that he had that they believed is the murder weapon, but that gun he had sold, and his father had already gotten the gun back from the girl he sold it to and that it was clean.

Do you recall hearing Mr. Prible saying any of that?

A No, sir.

Q Okay. And, Mr. Foreman, there was a reference to DNA in -- that I read, correct?

A Yes, sir.

Q Okay. Did you know anything about the DNA or semen in this case?

A Other than what Kelly Siegler told me.

Q And what did she tell you?

A She was -- you know, he asked -- she asked me about him, and I said, "Well, you know" -- "you know, him and the girl were dating or had a relationship. That's all he had ever said, you know."

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Q Uh-huh.

A So -- and that was pretty much -- and she said, "Well, did he tell you that his semen was found in her mouth?"

Q Okay. And was this in FDC --

A Yes, it was.

Q -- Beaumont?

So by that time you already -- by the time you're talking to Jeff on the yard, you already had that information, correct?

A I can't recall.

Q Okay. Was this something you would have discussed with Michael Beckcom, your roommate?

A I don't think I ever discussed that with Mike.

Q Okay.

(Sotto voce discussion between Mr. Rytting and Ms. Scardino.)

BY MR. RYTTING:

Q We're going to turn to some of the parts where Foreman is -- where you're mentioned in this letter.

And I'll -- again, I'll read this. This is from Beckcom's statement.

And just to give it some context for the Court, this -- on -- on this statement, it has a date on the first page of 12/10/2001 with two initials, JB, which, as you'll find -- which we believe stands for -- well, do stand for Johnny Bond [sic].

And it says: (Reading) After this, it became a daily

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1 occurrence that Prible would wait for Foreman and myself to come
2 outside so we could talk. He started to become very attached to
3 us. We began to talk about a business he had been involved in,
4 the asphalt business. I knew a little about this industry, so
5 we started to make some plans to go into business together on
6 the outside.

11:08:49 7 (Reading) He told us all about the money he had made, all
8 cash money. About taking this topless dancer, Shay, to Vegas
9 and blowing 100,000.

11:09:02 10 So do you recall this conversation with Mr. Prible at all?

11:09:04 11 **A** I don't remember.

11:09:05 12 **Q** Were you interested in his asphalt business?

11:09:07 13 **A** Well, we talked about it.

11:09:08 14 **Q** All right. So you remember talking about something like
15 that?

11:09:10 16 **A** Yeah. We talked about his business that he was doing.

11:09:12 17 **Q** Did you believe he had any real business, seeing he was in
18 prison?

11:09:19 19 **A** Well, you know, I couldn't say if he did or not because, you
20 know, I don't know what he had, you know, prior to being in
21 prison.

11:09:25 22 **Q** What did you know he had done illegally to get himself into
23 prison?

11:09:30 24 **A** Bank robbery or something. Rob a bank or something.

11:09:33 25 **Q** What, if anything, crossed your mind about whether someone

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1 who was running a successful business needed to rob banks?

11:09:41 2 **MS. MIRANDA:** Objection, Your Honor. At this point,
3 he's speculating. He just testified he didn't know.

11:09:46 4 **THE COURT:** Have you had any conversations with
5 Mr. Beckcom [sic] about why he felt the need to rob banks?

11:09:53 6 With Mr. Prible about why he needed to rob banks?

11:09:58 7 **THE WITNESS:** No. I never really, you know, asked him
8 why.

11:10:05 9 **THE COURT:** Did he say anything about -- in particular
10 about the asphalt business? Was he making a lot of money? Was
11 he not making money?

11:10:13 12 **THE WITNESS:** No. He just said, you know, it was a
13 good business, you know. It was a good business.

11:10:18 14 **THE COURT:** So you're assuming it was a successful
15 business?

11:10:20 16 **THE WITNESS:** Yeah. I thought it was, yeah. Well,
17 from what he told me.

11:10:32 18 *(Sotto voce discussion between Mr. Rytting and*
19 *Ms. Scardino.)*

11:10:35 20 **BY MR. RYTTING:**

11:10:35 21 **Q** Okay. So turning again to another conversation that Beckcom
22 reports having, it says: (Reading) At first, when talking about
23 the murder case, Prible was taking a position of innocence. He
24 said that Steve Herrera was his best friend. He said that he
25 had been screwing Nilda, and that she and Steve had an open

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relationship. He said that he admitted to being at Steve's house that day, but that she [sic] had driven him home --

THE COURT: "Steve" had driven him home.

BY MR. RYTTING:

Q (Reading) Steve had driven him home, and that he had a witness who saw him being dropped off. I later found out that this witness was then 12- or 13-year-old neighbor who had gotten up to use the restroom.

So do you recall any of this conversation? Not at this moment?

A No, I don't recall that.

Q Okay.

Now, it says here -- and then he keeps talking about you.

It says: (Reading) Foreman and I began to encourage Prible to be honest with us. If we were going to do -- to do business together, there couldn't be any lying to one another. I could tell he was struggling with opening up, but I could tell that he wanted to. We told him that we had -- that he had to be sure that we could trust him, that he was down with us. He would then tell us about some of his military training, that he knows things that nobody knows.

And -- and, Mr. Foreman, you're supposed to be there during this entire conversation. Do you recall anything of this sort being said by Mr. Prible?

A No. I don't recall any of that.

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1 11:12:28 1 Q Well, do you think it could have happened, or you think
2 that's just -- did -- is something that Mike Beckcom made up?

1 11:12:33 3 A Well, you know, after reading this -- this letter, I guess,
4 it sounds like it's been pretty much thought about, you know,
5 scripted or something.

1 11:12:44 6 Q Scripted --

1 11:12:44 7 **MS. MIRANDA:** Objection. Again, Your Honor, I would
8 just ask that he testify only to what he knows, not to what he's
9 speculating or what he believes.

1 11:12:52 10 **BY MR. RYTTING:**

1 11:12:52 11 Q Were you --

1 11:12:53 12 **THE COURT:** Well, he's -- he's our best witness as to
13 Mr. Beckcom, and his -- what he said is he thinks it's scripted,
14 and that's an opinion, but it's an opinion that all of us can
15 evaluate based on other things he said. I don't think it
16 crosses a line. I'm going to allow it.

1 11:13:13 17 **BY MR. RYTTING:**

1 11:13:13 18 Q What do you mean by "scripted"?

1 11:13:15 19 A Well, none of this is true in here, you know. I don't
20 recall -- you know, even -- you know, sometimes, you know,
21 you'll know what's said and what's not said, and if -- I've --
22 would have heard certain things, I probably would have
23 remembered certain things that -- you know, that was told to me.

1 11:13:36 24 Q And you were -- and just to go back, you were interested at
25 this time, when Prible is talking with you, in getting a time

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1 cut, correct?

11:13:44 2 **A** Yes.

11:13:46 3 **Q** You would be listening to any sorts of confessions he might
4 make?

11:13:49 5 **A** Yes. I would have listened to that.

11:13:50 6 **Q** Okay. And did -- you were -- and you were also
7 Mr. Beckcom's cellmate?

11:13:57 8 **A** Yes, I was.

11:13:58 9 **Q** Did you ever see him -- did he ever talk about this letter
10 with you?

11:14:06 11 **A** No. He never spoke about this letter.

11:14:08 12 **Q** Did you ever see him writing things down about Prible?

11:14:12 13 **A** I can't recall that.

11:14:14 14 **Q** You never -- did you ever -- what -- did you ever see him
15 composing anything like this letter?

11:14:19 16 **A** No.

11:14:20 17 **Q** Did you ever talk to him about what to go in this letter?

11:14:25 18 **A** Excuse me?

11:14:26 19 **Q** Did you ever talk to him about what might go in this letter,
20 such as this?

11:14:30 21 **A** No. I've never --

11:14:31 22 **Q** Okay. Now, it says here that Mr. -- again...

11:14:47 23 **MR. RYTTING:** Go up.

11:14:48 24 **BY MR. RYTTING:**

11:14:48 25 **Q** Beckcom writes: (Reading) Once, when I was walking the

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1 track with him, he said, "Rock, I'm not a sane man. Your
2 deepest, darkest reaches of your worst nightmare doesn't come
3 close to me, to what I'm capable of." He then said, "If you" --
4 "if you tell me, Jeff, I've got a problem with this person or
5 that person, by 10:00 o'clock tomorrow night you can be having
6 dinner with your family at a restaurant, and your problem is
7 solved. It will go away."

11:15:21 8 Do you ever recall Mr. Prible ever saying anything like
9 that?

11:15:26 10 **A** No, sir.

11:15:26 11 **Q** Does this sound like it was made up by Mr. Beckcom?

11:15:29 12 **A** Yes, sir.

11:15:29 13 **Q** Okay. Did Mr. Prible ever suggest that he could have people
14 killed for you?

11:15:36 15 **A** No.

11:15:38 16 **Q** And that's a "no"?

11:15:38 17 **A** That's a "no."

11:15:52 18 **Q** We'll turn to another passage.

11:16:04 19 *(Sotto voce discussion between Mr. Rytting and*

11:16:05 20 *Ms. Scardino.)*

11:16:09 21 **BY MR. RYTTING:**

11:16:09 22 **Q** Okay. At some point, Mr. Beckcom writes as follows in his
23 statement: (Reading) At this point -- and we're not sure what
24 time -- I quit speaking to him in terms of his innocence. I
25 plainly said, Where did you leave them -- and talking about the

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1 bodies -- where they -- where were they found? He said that
2 Steve was shot in the pool room in the garage and that Nilda was
3 face down on the couch shot in the back of the head and that she
4 was partially clothed. I asked how the kids died, and he said
5 from smoke inhalation.

11:16:50 6 (Reading) I didn't press any further at this point, but now
7 I knew that he would reveal more in the days to come.

11:16:57 8 Did -- do you recall Mr. Prible ever saying that he shot
9 the victims in this case?

11:17:02 10 **A** No, I don't.

11:17:03 11 **Q** Was that something that you would remember?

11:17:05 12 **A** Yes.

11:17:06 13 **Q** Why?

11:17:07 14 **A** Because that -- I would have said it then.

11:17:11 15 **Q** You would have informed on him then?

11:17:13 16 **A** I would have informed on that.

11:17:15 17 **Q** Did you -- did you ever tell Ms. Siegler that -- well, did
18 you contact Ms. Siegler about any of the things that Mr. Beckcom
19 has talked about?

11:17:25 20 **A** No. No, no, no.

11:17:27 21 **Q** Did you ever tell Mr. -- Ms. Siegler anything that resembles
22 what Ms. -- Mr. Beckcom is talking about?

11:17:34 23 **A** Not that I recall, no.

11:17:40 24 **Q** And if we scroll down, it says: (Reading) Over the next few
25 weeks, Foreman and I didn't bring up the murder case or mention

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1 it unless Prible made mention of it -- made mention of it.

2 During this time, Prible told us that he loved us as brothers

3 and trusted us. He said that he was told -- he has told us

4 things that only he and God know. So I asked how he got in and

5 out without being seen or heard. At this point, all he said was

6 it was -- and then quotation marks, A high-intensity, low-drag

7 maneuver, close quotation marks.

11:18:24 8 What is your understanding of that, Mr. Foreman?

11:18:29 9 **A** Well, all I could say is that he should have been a book
10 writer or something.

11:18:36 11 **Q** That is -- in other words, that's fiction?

11:18:38 12 **A** That's not true.

11:18:38 13 **Q** That's not true?

11:18:39 14 **A** That's not true.

11:18:40 15 **Q** Is that something you would have remembered?

11:18:43 16 **THE COURT:** Was it the habit of inmates to discuss
17 their crimes with one another?

11:18:49 18 **THE WITNESS:** Your Honor, not really.

11:18:50 19 **THE COURT:** Because I would think, if -- if counsel's
20 right, Ms. Miranda's right, that a lot of people are looking for
21 alleviation from a harsh sentence, you would be very careful
22 about telling other inmates --

11:19:04 23 **THE WITNESS:** That is correct.

11:19:05 24 **THE COURT:** Yeah.

11:19:05 25 **THE WITNESS:** That is correct, you know. So...

Mr. Rytting Direct of Nathan Foreman**BY MR. RYTTING:**

Q Would they talk about things maybe they had been sentenced for?

A Correct. That's --

Q But people don't usually talk about what they're accused of?

A People don't usually do that unless it's a -- it's a crime that -- that doesn't amount up to anything.

Q And Mr. Beckcom continues. (Reading) I asked him if he was sure that they didn't have any other evidence, and he said, "Trust me." He told Foreman and me that he was trusting us with his life. He did mention at one point that a detective was telling him that they found blood on his shoe, but that it turned out to be ketchup.

Did Mr. -- what about that statement, Mr. Foreman, about -- do you -- did that statement ever -- did Prible ever make those statements?

A Sir, I never -- no. He never made those statements.

Q Would -- did he ever say he was going to trust you with his life?

A Not that I recall.

Q Okay.

A I mean --

Q And -- and you realize he -- there was -- by now you knew that -- what did you know about the crime, that there was two victims plus three children?

Mr. Rytting Direct of Nathan Foreman

11:20:25 1 A Yes.

11:20:26 2 Q And what would happen to somebody on the yard if they
3 confessed to killing three children?

11:20:31 4 A Well, they wouldn't be on the yard.

11:20:34 5 Q What would happen to them?

11:20:35 6 A They would be in protective custody, I think, called "PC."

11:20:41 7 Q Okay. And what would happen if they stayed on the yard?

11:20:43 8 A Well, I hate to say. I don't know. It wouldn't be good.

11:20:48 9 Q Okay. They would -- might end up facing a violent end?

11:20:52 10 A Right. Correct.

11:20:54 11 Q So -- so, again, this statement that Mr. Prible told you --
12 told you, Mr. Foreman, that he was trusting you with his life
13 with the facts of the crime, that is fiction?

11:21:16 14 A It is. It's not true.

11:21:18 15 Q It's not true. Okay.

11:21:27 16 And if we continue on, Mr. Beckcom said he asked Mr. Prible
17 again -- "I asked him again" -- I'll read. (Reading) I asked
18 him again how he got in and out without notice, and he said,
19 "Anybody that can go in a house, take out a whole family and get
20 out clean, is a bad in motherfucker. I'm that kind of
21 motherfucker."

11:22:02 22 What is your understanding -- first off, do you recall
23 that -- did that statement -- did Mr. Prible ever make that
24 statement, that you recall?

11:22:13 25 A I don't -- I can't recall that, no.

Mr. Rytting Direct of Nathan Foreman

11:22:15 1 Q No.

11:22:15 2 Well, would you, if someone you were interested in
3 testifying against made a statement like that?

11:22:23 4 A If this gentleman would have said anything as what I'm being
5 told he said, I would remember that.

11:22:37 6 Q All right. Do you recall Mr. Prible ever talking about his
7 service record?

11:22:43 8 A I didn't know he was in Special Ops until I had read this
9 letter, or even in the military. I never remember -- I can't
10 recall that.

11:22:58 11 Q So --

11:22:59 12 A I never knew that.

11:23:00 13 Q And if we get into this, it says that Mr. Prible told you
14 that he was in Special Ops and that he had carried out secret
15 missions in which he killed other people for the government.

11:23:22 16 A No, that's not true. That's not true.

11:23:26 17 Q That is, you were -- you were -- you did not hear that?

11:23:29 18 A No, I didn't hear that.

11:23:30 19 Q So if Mr. Beckcom is saying you were present when Mr. Prible
20 confessed to -- said he was in Special Ops and killed others,
21 that is a -- that's false; is that correct? You were not
22 present?

11:23:42 23 A That is false.

11:23:46 24 *(Sotto voce discussion between Mr. Rytting and*

11:23:47 25 *Ms. Scardino.)*

Mr. Rytting Direct of Nathan Foreman**BY MR. RYTTING:**

Q Well, here -- and just to be sure, this is -- to be clear for the record, if we go up to the statement that Mr. Beckcom said Prible made about his...

(Sotto voce discussion between Mr. Rytting and Ms. Scardino.)

BY MR. RYTTING:

Q Is says here Mr. -- Mr. Beckcom writes that: (Reading) Mr. Prible [sic] told me that he had done many secret missions for the government. He said, "I've gone to other countries and maimed, killed and mutilated people to look like some other cartel had done it. I did this for my country. Things we're not supposed to know about.

(Reading) He told me about a time when --

Well, just -- I'll just stop with that. And, again, did Mr. Beckcom make this up, in your opinion?

A Yes. Most definitely.

Q Okay. You never heard Mr. Prible say anything like this?

A No.

Q Okay. Now, you -- do you -- you probably -- do you remember taking a photograph -- a photograph with Mr. Prible, his mother and your mother?

A Yes.

Q And Beckcom's mother?

A Yes, I do.

Mr. Rytting Direct of Nathan Foreman

Q Correct? You recall doing that?

You -- did you arrange for that photo, do you recall?

A I don't -- I think we all did.

Q And by "all," you mean Beckcom -- Mr. Beckcom and you?

A Beckcom. I think Prible did, too. I think just all of us, you know.

Q Okay.

A I don't think it was just one person planned it or...

Q Uh-huh. But what was the purpose of that?

A Show we was all affiliated with each other. We were...

Q Okay. And that was for -- to -- to show that you knew Mr. Prible, correct?

A Yes.

Q Okay. And Mr. Prible had only been on the yard for how long?

A I don't know.

Q It was only a couple months, correct, that you were in contact with Mr. Prible?

A I don't recall how long it was.

Q Okay. And at that -- that night, according to Mr. Beckcom, after that picture was taken, he says that: (Reading) Prible then took Foreman and me for a walk to get away from everyone. We walked out to the football field and sat down on the ground. At this point he -- meaning Mr. Prible -- was stressing his loyalty to us and the issue of trust. He seemed to change

Mr. Rytting Direct of Nathan Foreman

1 suddenly, to get very edgy and intense. He was thinking back to
2 the night of the murders.

11:26:56 3 (Reading) He said, "There isn't anything I wouldn't do for
4 you." He said either his personal or his unit's cadence was,
5 "Your Honor, don't convict me. I learned to murder in the
6 USMC!"

11:27:18 7 (Reading) He said that he loves us and would do anything
8 for us, anything! He then pulled us very close and looked
9 around to be sure no one was within earshot, and said, "Steve
10 fucked me. I gave him 250,000 of my hard-earned money to buy
11 some jacked drugs so we could make a lot more money."

11:27:44 12 And you were supposedly present for this conversation. Did
13 this conversation actually happen?

11:27:51 14 **A** I can't recall that conversation. I don't recall --

11:27:54 15 **Q** Would this be something that you would recall, if you were
16 interested in informing on Mr. Prible?

11:27:59 17 **A** Yes.

11:27:59 18 **Q** Okay. But you never -- you don't...

11:28:02 19 **A** No, sir --

11:28:03 20 **Q** Do you --

11:28:03 21 **A** -- I don't.

11:28:04 22 **Q** What did -- do you -- did your roommate make this --
23 cellmate, Mr. Beckcom, make this up, to the best of your
24 knowledge?

11:28:14 25 **A** It -- it's -- I know it's made up.

Mr. Rytting Direct of Nathan Foreman

11:28:17 1 Q Okay. What really happened on the night -- on the day of
2 the 24th? Do you recall?

11:28:22 3 A I don't recall.

11:28:22 4 Q Was there anything -- was there any point, though, around
5 this time that the picture was taken that alcohol got involved?

11:28:30 6 A Well, you know, I think alcohol got involved more than one
7 time out on the yard --

11:28:34 8 Q Okay. Well, tell us --

11:28:34 9 A -- so it wasn't just that one time, probably.

11:28:38 10 Q Tell us about alcohol in the prison system.

11:28:43 11 A Well, it's --

11:28:44 12 Q What do you know -- what do you know about it?

11:28:46 13 A It's homemade wine. So...

11:28:48 14 Q And could -- and was it available on the yard?

11:28:51 15 A All the time.

11:28:52 16 Q All the time.

11:28:53 17 And was Mr. Prible given wine?

11:28:56 18 A I'm -- yeah, I think he drank -- he's drunk with us before.

11:29:00 19 Q And what was the purpose of giving Mr. Prible wine?

11:29:04 20 A Well, trying to get him to confess.

11:29:08 21 Q So it was to loosen him up?

11:29:10 22 A Yeah.

11:29:11 23 Q And on one point, maybe it would -- you don't recall if it
24 was the 24th, but it was -- you -- how drunk did Mr. Prible get?

11:29:22 25 A Well, he -- I had to escort him back to his unit.

Mr. Rytting Direct of Nathan Foreman

Q So was he -- did he confess -- ever confess, even though he was drunk?

A No. He didn't say anything.

Q Okay. And do you know who made the wine?

A Oscar.

Q Oscar was known as the wine -- a winemaker?

A He was known as the winemaker.

Q What type of wine was it?

A I can't remember what kind it was.

Q Was it grape? Was it tomato paste? Was it --

A It was wine.

Q Okay.

A It was wine.

Q And was -- did -- in your opinion, was it -- what was the quality of the wine, at least on this one occasion?

A Well, I had to help him back to his unit. So...

THE COURT: He was inebriated, right? Definitely had that effect that wine has?

THE WITNESS: It had the effect. It was alcohol. Right.

BY MR. RYTTING:

Q And how would you get the wine on the yard?

A Well, we had, in the feds -- federal penitentiary, you have Igloo, like thermals -- water thermals.

Q Uh-huh.

Mr. Rytting Direct of Nathan Foreman

1 11:30:30 1 A And so we would put it in there and walk it out.

1 11:30:33 2 Q Okay. And where was it made?

1 11:30:38 3 A I guess in the unit, I guess.

1 11:30:40 4 Q In the cells?

1 11:30:41 5 A Yeah, sometimes.

1 11:30:41 6 Q Okay.

1 11:30:56 7 *(Sotto voce discussion between Mr. Rytting and*

1 11:30:57 8 *Ms. Scardino.)*

1 11:31:04 9 **BY MR. RYTTING:**

1 11:31:04 10 Q Turning again to Mr. Beckcom's statement, he says:

11 (Reading) Prible was getting very agitated now, almost spitting
12 as he spoke. He said that Steve then wanted to take Prible for
13 a ride, and he said that, "This motherfucker" -- referring to
14 Steve -- "stole my money. Now he thinks he's gonna take me for
15 a ride and kill me. Fuck him. That was my money."

1 11:31:36 16 Do you recall Mr. Prible ever saying that he was -- that
17 Steve was going to kill him?

1 11:31:44 18 A No, sir, I don't.

1 11:31:45 19 Q What -- how did he usually talk about Steve, if you recall?

1 11:31:50 20 A As far as I know, they were friends.

1 11:31:52 21 Q And did he ever say -- so he never said that Steve was his
22 enemy in any sense?

1 11:31:58 23 A No, not -- not that I can remember.

1 11:32:01 24 Q Okay. Let me turn -- let me just read one -- another
25 passage from this letter. Again, it's -- starts with:

Mr. Rytting Direct of Nathan Foreman

1 (Reading) Prible said, "Only you and God know this. You two are
2 the only ones who could convict me, and I know you're my
3 brother. I love you. I will do anything for you. If you call
4 me and say, 'Jeff, I have a problem with this guy, I'll take
5 care of it. No one will ever know. Steve fucked me. I knew he
6 was going to kill me."

1 1:32:43 7 (Reading) I was wondering why he thought Steve would kill
8 him -- okay. Well, let me just stop right there.

1 1:32:49 9 So, again, you and Mr. Beckcom were still intent on -- were
10 interested in informing on Mr. Prible?

1 1:32:58 11 **A** Yeah.

1 1:32:59 12 **Q** Correct?

1 1:32:59 13 And -- but you -- was this ever said to you, anything like
14 this?

1 1:33:04 15 **A** No, sir, it wasn't.

1 1:33:06 16 **Q** And did you tell anybody, whether it was -- that anything
17 like this was -- that you heard anything like this from
18 Mr. Prible?

1 1:33:14 19 **A** Yes, I would have.

1 1:33:16 20 **Q** You would have done it, if you had heard it?

1 1:33:18 21 **A** If I had heard it.

1 1:33:18 22 **Q** Okay.

1 1:33:19 23 **THE COURT:** Mr. Foreman, does this look like
24 Mr. Beckcom's handwriting?

1 1:33:24 25 **THE WITNESS:** Your Honor, I can't -- I --

Mr. Rytting Direct of Nathan Foreman

THE COURT: What --

THE WITNESS: I've never seen his handwriting.

THE COURT: Okay. But it's written with -- all the words are spelled correctly. All the grammar seems to be correct. Is that representative of the way he talked? Was he -- was he grammatical and accurate in the matter in which he spoke?

THE WITNESS: Excuse me?

THE COURT: I'm -- this -- this -- lawyers and judges always worry, when they get an affidavit, as to whether it was written by the person whose name appears at the bottom or whether it was written by a lawyer.

And this -- this document has all the words spelled correctly. The grammar is correct. Is that the kind of statement that Mr. Beckcom could have given without any assistance.

THE WITNESS: No.

BY MR. RYTTING:

Q Well, Mr. Foreman, was Beckcom a -- did he have any jobs at the -- in FCI Beaumont?

A I can't remember. I don't -- I'm sure he did. Everyone had a job. So...

Q Well, did he teach a class?

A I don't know.

Q You don't know if he taught investment banking? You can't

Mr. Rytting Direct of Nathan Foreman

1 recall --

1 1:34:34 2 **A** No, I can't recall.

1 1:34:35 3 **Q** Or investments?

1 1:34:36 4 **A** I can't recall.

1 1:34:37 5 **Q** No. Okay.

1 1:34:38 6 And was he -- did he have any other talents? Was he a
7 guitar player?

1 1:34:46 8 **A** He played guitar, yeah.

1 1:34:48 9 **Q** In a band?

1 1:34:50 10 **A** I guess.

1 1:34:51 11 **Q** But did you -- again, you never saw him write anything out,
12 correct?

1 1:34:54 13 **A** I've never seen him -- I never saw him write anything.

1 1:35:10 14 **Q** Again, turning to this letter, it says: (Reading) To push
15 him on a little further, I told him -- meaning Prible -- that he
16 was a sneaky motherfucker, and I asked how the hell he got over
17 there and in and out without any witnesses. He said his mom's
18 house was a couple of miles from there. That's what he was
19 trained for, high-speed, low drag, in and out. He said, "I'm a
20 ghost."

1 1:35:42 21 What -- you're laughing, and why is that?

1 1:35:46 22 **A** It's -- no. I've never heard that one. I never heard that,
23 and it's really sounds like he got it off television.

1 1:35:55 24 **Q** Okay. And safe to say you never told anything like this to
25 Mr. -- Ms. Siegler?

Mr. Rytting Direct of Nathan Foreman

A No, I never told anything like that.

Q Okay. But you did talk to Ms. Siegler at least on one occasion, and maybe two; is that correct?

A Maybe.

Q And you talked to her over the telephone --

A Yeah.

Q -- correct?

And you were interested in informing on Mr. Prible at the time?

A At the time I was, yeah.

Q You weren't called to -- to testify, though, correct?

A That's correct.

Q Okay. And do you recall what you told her?

A I can't recall. It -- obviously, it wasn't anything because I --

Q Because you weren't called to testify?

A Right.

Q Correct.

(Sotto voce discussion between Mr. Rytting and Ms. Scardino.)

THE COURT: How close are you to being finished with your direct examination?

MR. RYTTING: Um...

THE COURT: The reason I'm asking is we need to take a break at some point.

Ms. Miranda Cross of Nathan Foreman

MR. RYTTING: Well, I could take a break now, if
that's --

THE COURT: Ten-minute break.

(Recess taken from 11:37 a.m. to 11:49 a.m.)

THE COURT: Please be seated, everybody.
Yes, sir, if you would come back, Mr. Foreman.
Do you need any more water or anything? You got
enough?

THE WITNESS: Yes, sir.

MR. RYTTING: And, Your Honor, I've decided to pass
the witness.

THE COURT: Any questions of this witness?

MS. MIRANDA: Yes, Your Honor. May I proceed?

THE COURT: You may. You may. Just get the
microphone near your mouth, and that'll work.

CROSS-EXAMINATION

BY MS. MIRANDA:

Q All right. Sorry, Mr. Foreman. We're --

THE COURT: No. A little bit closer.

MS. MIRANDA: Is that better?

THE COURT: Much better.

BY MS. MIRANDA:

Q All right. Mr. Foreman, my name is Tina Miranda from the
Attorney General's office. Have we ever met before?

A No, ma'am.

Ms. Miranda Cross of Nathan Foreman

11:50:34 1 Q Okay. Can you see me okay?

11:50:35 2 A Yes, ma'am.

11:50:36 3 Q All right. I just want to go over some of the things that
4 you testified to earlier, and I'm going to try to start
5 chronologically so we can make it make sense.

11:50:44 6 Now, you testified that Mr. Moreno knew about Prible and
7 his crimes; is that correct?

11:50:50 8 A Yes.

11:50:51 9 Q All right. What facts did he know specifically? Do you
10 recall those?

11:50:56 11 A No. I can't recollect exactly.

11:50:58 12 Q And then when did Mr. Moreno start talking to you about
13 Prible's case?

11:51:06 14 A I can't recall, but it was -- I don't know if it was in the
15 SHU or on the compound. I think it was in the SHU.

11:51:12 16 Q Okay. And when did you go into the SHU? Would it have
17 been -- and I know -- I understand you testified you don't
18 recall the exact dates, but do you remember a season? Was it
19 winter? Was it spring? Was it summer?

11:51:23 20 A I can't recall.

11:51:24 21 Q You can't recall?

11:51:25 22 A No.

11:51:32 23 Q Let's talk for a second about your meeting with Ms. Siegler.

11:51:38 24 Is it your testimony that you recall meeting with her one
25 time?

Ms. Miranda Cross of Nathan Foreman

11:51:43 1 **A** I can't recall how many times it was, you know.

11:51:45 2 **Q** Okay. But you recall at least one?

11:51:47 3 **A** I can recall one. Yes.

11:51:49 4 **Q** All right. And do you recall whether that meeting was --
5 and, again, I understand that you testified that you don't
6 recall the exact date, but was it shortly after you got out of
7 the SHU? Was it before the SHU? Was it a long time after the
8 SHU?

11:52:04 9 **A** I don't remember.

11:52:05 10 **Q** You don't remember?

11:52:06 11 **A** No, ma'am.

11:52:06 12 **Q** All right. What -- what do you recall about that meeting?

11:52:09 13 Now, you testified that you contacted her and that you met
14 at Houston -- in Houston at the federal detention center; is
15 that right?

11:52:16 16 **A** Yes.

11:52:17 17 **Q** All right. What do you recall about the content of that
18 meeting? What did y'all discuss during that meeting?

11:52:23 19 **A** Well, we discussed, I guess, what -- what happened.

11:52:33 20 **Q** Okay. What happened?

11:52:35 21 **A** Whatever we were talking about with Mr. Prible, I guess.

11:52:39 22 **Q** Okay.

11:52:39 23 **A** That's all we were discussing was Prible, I think.

11:52:42 24 **Q** You didn't --

11:52:42 25 **A** I don't recall.

Ms. Miranda Cross of Nathan Foreman

1 11:52:43 1 Q You don't -- okay. You don't recall talking --

1 11:52:45 2 A Exactly what we talked about or how we talked about it, you
3 know.

1 11:52:48 4 Q Okay.

1 11:52:48 5 A I know we talked.

1 11:52:49 6 Q That's fair enough, and I understand that.

1 11:52:52 7 But I'm just trying to --

1 11:52:54 8 A Yes, ma'am.

1 11:52:54 9 Q -- figure out, as much as we can, what was -- what was said
10 during that meeting.

1 11:52:59 11 Now, you did discuss Mr. Prible during that meeting; is
12 that correct?

1 11:53:03 13 A I'm pretty sure we did. Yes, ma'am.

1 11:53:05 14 Q Did you discuss Mr. Herrero -- Hermelio Herrero during that
15 meeting?

1 11:53:10 16 A I don't remember. I can't recall.

1 11:53:11 17 Q All right. Did you tell Ms. Siegler, during that meeting,
18 that you had already met Mr. Prible?

1 11:53:17 19 A I believe I -- I don't recall.

1 11:53:19 20 Q All right. Do you recall telling her that you believe the
21 contact was around January of 2001? Does that sound familiar?

1 11:53:27 22 A No.

1 11:53:28 23 Q Okay.

1 11:53:29 24 A I don't recall that.

1 11:53:30 25 Q All right. Do you recall telling Ms. Siegler that

Ms. Miranda Cross of Nathan Foreman

1 Mr. Prible told you that he killed this family and that he
2 showed no remorse?

1 1:53:39 3 **A** No.

1 1:53:39 4 **Q** Okay.

1 1:53:40 5 **A** I don't recall that.

1 1:53:41 6 **Q** All right. Did you tell Ms. Siegler that you had actually
7 talked to Prible?

1 1:53:44 8 **A** Yes. I -- because I talked to him. So...

1 1:53:48 9 **Q** Okay. And then what -- what did you tell Ms. Siegler about
10 your conversations, then, with Mr. Prible?

1 1:53:56 11 **A** Well, the only thing I knew was that he knew the guy -- or
12 the family, and he used to date the girl, you know.

1 1:54:04 13 **Q** Okay. Did you tell Ms. Siegler whether anyone else was
14 present during the conversations that you had with Mr. Prible?

1 1:54:14 15 **A** I don't recall.

1 1:54:33 16 **Q** Did you testify at the grand jury in this case for
17 Mr. Prible?

1 1:54:36 18 **A** No, I didn't.

1 1:54:45 19 **Q** How many times did you -- I apologize.

1 1:54:48 20 How many times did you talk to Ms. Siegler on the
21 telephone?

1 1:54:52 22 **A** I can't -- I don't remember.

1 1:54:54 23 **Q** You don't remember?

1 1:54:54 24 **THE COURT:** Did you -- did Ms. Siegler ever do you any
25 good? Did you ever get a reduction in sentence because of

Ms. Miranda Cross of Nathan Foreman

1 something she did?

11:55:00 2 **THE WITNESS:** No.

11:55:08 3 **BY MS. MIRANDA:**

11:55:09 4 **Q** Now, that picture that we saw earlier with, I believe you
5 indicated, among others, Mr. Beckcom, Mr. Dominguez, Mr. Gomez,
6 Mr. Gonzalez, how did y'all know each other?

11:55:26 7 **A** Well, me and Beckcom were cellies, and the majority of those
8 guys were from Houston.

11:55:35 9 **Q** Okay.

11:55:35 10 **A** So, you know --

11:55:36 11 **Q** So y'all would hang out because you were from Houston?

11:55:39 12 **A** Yeah.

11:55:47 13 **Q** Did you ever talk to other inmates about Mr. Prible's case?

11:55:54 14 **A** Just the ones that were in that -- other than Beckcom or --

11:56:01 15 **Q** So you didn't talk to --

11:56:03 16 **A** And Jesse.

11:56:04 17 **Q** So you talked to Mr. Moreno about Prible's case. You talked
18 to Mr. Beckcom.

11:56:08 19 Did you talk to Mr. Gonzalez?

11:56:13 20 **A** I can't recall.

11:56:14 21 **Q** Did you talk to Carl Walker?

11:56:17 22 **A** No. I can't recall that.

11:56:20 23 **Q** Do you know who Carl Walker is?

11:56:22 24 **A** Well, it took me a minute to figure out who he was until I
25 seen his face. Like I say, it's been over...

Ms. Miranda Cross of Nathan Foreman

1 11:56:27 1 Q Okay. But you don't ever recall talking to Mr. Walker about
2 Prible's case?

1 11:56:30 3 A No. No.

1 11:56:36 4 Q Do you recall an inmate, Mr. -- I'm not sure if I say his
5 name -- Lied-key?

1 11:56:42 6 THE COURT: Spell it, please.

1 11:56:44 7 MS. MIRANDA: L-I-E-D-T-K-E.

1 11:56:46 8 THE COURT: I think that's Lid-key.

1 11:56:48 9 MS. MIRANDA: Lid-key.

1 11:56:48 10 BY MS. MIRANDA:

1 11:56:48 11 Q Do you recall Mr. Liedtke?

1 11:56:50 12 A No.

1 11:56:50 13 Q Okay. You didn't know him?

1 11:56:52 14 A I don't recall him, not by his name, so --

1 11:56:56 15 Q Okay. Is it your testimony that Mr. Prible did not --
16 within your hearing, that Mr. Prible did not talk about his case
17 much?

1 11:57:06 18 A That's true.

1 11:57:07 19 Q Okay. So did you ever hear Mr. Prible talk about his case?

1 11:57:16 20 A Other than, like I said, he was being accused of something
21 that he didn't do. That's it.

1 11:57:22 22 Q Okay. Did he talk about the specifics of the case?

1 11:57:25 23 A No.

1 11:57:26 24 Q Did he show you a probable cause affidavit?

1 11:57:29 25 A No.

Ms. Miranda Cross of Nathan Foreman

1 Q All right. So if there's testimony in the record at trial
2 that Mr. Prible liked to talk about his case and talk to a lot
3 of people about his case, that did not happen within your
4 hearing or seeing; is that correct?

5 A No, it didn't.

6 Q And you testified earlier about what the potential
7 ramifications were of an inmate having killed young children or
8 three young children on -- on the yard. Do you recall --

9 A Yes.

10 Q -- that testimony?

11 All right. Is it safe to say that those people were not
12 highly regarded in prison?

13 A That's true.

14 Q Okay. Is it safe to say that -- that people might try to
15 inform on -- on someone who committed that type of crime, such
16 as yourself, for instance?

17 A That's true.

18 Q All right.

19 A You could say that.

20 Q Now, when you were in prison, did you talk about the facts
21 of your crime?

22 A Sometimes.

23 Q Okay. If you were charged with a crime, but had not been --
24 but you had not actually been to trial in that, would you go
25 around prison talking about the facts of your case?

Ms. Miranda Cross of Nathan Foreman

A No.

Q Tell me why.

A It depends on what the crime was.

Q Okay. Well, what would your concern be?

THE COURT: If it were a serious crime?

THE WITNESS: No.

BY MS. MIRANDA:

Q Okay. Murder?

A No.

Q Would you go around talking about that?

A No.

Q Why not?

A Really, it wouldn't be nothing to talk about because it wouldn't be no one's business, if that was -- the case was.

Q Okay. Would you be concerned that if you talked about your case, that people might inform against you?

A Yes.

Q You testified that you were interested in informing on Mr. Prible; is that correct?

A That's correct.

Q Did you speak to your attorney and ask your attorney to contact Ms. Siegler for you?

A I did.

Q Okay. And why did you ask your attorney to contact Ms. Siegler?

Ms. Miranda Cross of Nathan Foreman

11:59:53 1 **A** To see if I would get a time cut.

11:59:57 2 **Q** Okay. And what information did you have at the time that
3 you were going to offer Ms. Siegler?

12:00:04 4 **A** That he dated -- that he used to mess around with the girl,
5 and he and the guy were good friends. That's, you know --

12:00:11 6 **Q** Okay.

12:00:11 7 **A** That's the best I could do.

12:00:13 8 **Q** Do you recall ever telling your attorney to let Ms. Siegler
9 know that you knew about the murder weapon?

12:00:20 10 **A** No, I don't recall that.

12:00:22 11 **Q** Okay. So you don't recall that, or it didn't happen?

12:00:25 12 **A** I don't think I did that.

12:00:26 13 **Q** You don't think you did that?

12:00:28 14 **A** No.

12:00:29 15 **Q** So if your attorney wrote a letter to Ms. Siegler indicating
16 that you had information about the murder weapon in this case,
17 that would be false?

12:00:39 18 **A** If I didn't know about it. A murder weapon? No.

12:00:45 19 **Q** Okay. Now, prior to today's testimony, how many times have
20 you met with Mr. Rytting or Ms. Scardino?

12:01:14 21 **A** I believe two or three times, maybe.

12:01:16 22 **Q** All right. And during those meetings, were you shown any --
23 any documents?

12:01:24 24 **A** I can't recall.

12:01:25 25 **Q** You don't recall?

Ms. Miranda Cross of Nathan Foreman

A No, I can't recall.

Q Is it possible?

A Yeah.

Q How long did you meet with them?

A I met Mr. Rytting maybe -- this may be my third time meeting him -- third or fourth time meeting him, but maybe my second time meeting Ms. -- I can't say her name, so...

Q Scardino?

A Scardino, yeah.

MS. MIRANDA: May I have a moment, Your Honor?

THE COURT: Yes, you may.

*(Sotto voce discussion between Ms. Miranda and
Mr. D'Hemecourt.)*

BY MS. MIRANDA:

Q I apologize for going back over this, but do you recall meeting with Ms. Siegler in December of 2001 towards the end of the year.

A I -- like I said, I met with her. I just -- I can't --

Q You don't recall?

A I can't give you the dates. So...

MS. MIRANDA: We'll pass the witness, Your Honor.

THE COURT: Thank you.

Any redirect?

MR. RYTTING: Yes, Your Honor, just a couple of questions.

Mr. Rytting Redirect of Nathan Foreman
REDIRECT EXAMINATION

BY MR. RYTTING:

Q Ms. Miranda asked if you were shown any documents. Were you shown any -- any papers or anything with any writings by me?

A Yes, I was.

Q Okay. And --

A Okay. Yes.

Q -- is that -- so by "documents," were you thinking of things like, oh, official documents?

A Yeah.

Q Okay. Were you shown any photographs?

A Yes.

Q Okay.

*(Sotto voce discussion between Mr. Rytting and
Ms. Scardino.)*

MR. RYTTING: No further questions.

THE COURT: Okay. Mr. Foreman, thank you very much.
You may step down. You're free to go. Thank you.

THE WITNESS: Thank you.

THE COURT: Do you wish to call another witness? Do
you wish to call another witness?

MR. RYTTING: Yes, Carl Walker.

THE COURT: Mr. Walker.

Is someone going to get Mr. Walker, or are you going
to be calling him by depo?

Mr. Rytting Direct of Carl Walker

MR. RYTTING: No. He -- someone's going to be getting Mr. Walker.

THE MARSHAL: Someone went outside, Your Honor.

THE COURT: Okay.

Mr. Walker, good afternoon, sir. We're going to have you in this seat nearest me up here (indicating).

THE WITNESS: Okay.

THE COURT: Yes, sir. Before you take your seat, Mr. Rivera will administer the oath, if you could raise your right hand.

(Witness sworn.)

THE COURT: Okay. You may have a seat. Try to adjust the mic so you speak directly into it, if you would, Mr. Walker.

Okay. You may inquire.

MR. RYTTING: Thank you, Your Honor.

CARL WALKER, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MR. RYTTING:

Q Mr. Walker, would you just identify yourself for the Court?

A Yes. My name is Carl Walker, Jr.

Q Okay. And what are your presently -- what's your present occupation?

A I'm an entrepreneur.

Q And what do you -- and what is your business?

A I own a cell phone, tablet and computer repair company.

Mr. Rytting Direct of Carl Walker

Q Okay. And how many employees do you have?

A Five. Well, five including myself.

Q Okay. And what type of company is it? I mean, is it a corporation?

A Yes, it is.

Q So you're incorporated?

A Yes. It's an LLC.

Q And what is the nature of the business?

A The industry I'm in?

Q Yes.

A Repair -- we sell accessories, repair phones, tablets, computers and things of this sort.

Q Okay. And what else do you do as part of your occupation?

A We do onsite services. We go out to businesses and customers' homes to do repairs or -- what do you call that -- consulting.

Q Do you do any teaching?

A Yes, I do teach.

Q What do you teach?

A I teach people how to be technician.

Q Okay. And do you travel for that?

A Yes, I do. I travel to San Antonio, Dallas, all over Texas.

Well, those two cities, I mean. Excuse me.

Q Okay. And when did you get out of FCI Beaumont?

A I believe that was after the hurricane. I don't know, maybe

Mr. Rytting Direct of Carl Walker

1 2005 or so.

12:06:30 2 Q When did you get out of FCI Beaumont?

12:06:33 3 A When I got out of F- --

12:06:34 4 Q I'm sorry, not -- when did you get out of BOP, the federal
5 prison system?

12:06:40 6 A December 22nd of '15 -- 2015.

12:06:45 7 Q So in four years, you've started your own business?

12:06:47 8 A Yes.

12:06:48 9 Q Okay. And you're now teaching --

12:06:51 10 A Yes.

12:06:51 11 Q -- others how to start their own companies?

12:06:55 12 A Either start their business or be in the profession.

12:06:58 13 Q Okay. Turning back to Beaumont FCI, when did you arrive at
14 Beaumont FCI?

12:07:08 15 A I want to say maybe around the summer of 2000.

12:07:11 16 Q And how old were you at the time?

12:07:14 17 A I believe I was either 26 or 27. I think I just turned 27,
18 matter of fact.

12:07:20 19 Q And what was your -- what were you convicted of?

12:07:24 20 A I was convicted of conspiracy to possess with intent to
21 distribute crack cocaine and possession with intent to
22 distribute crack cocaine.

12:07:33 23 Q And how much time were you facing?

12:07:35 24 A 360 months.

12:07:42 25 **THE COURT:** 360 months?

Mr. Rytting Direct of Carl Walker

THE WITNESS: Yes, sir.

THE COURT: Thank you.

BY MR. RYTTING:

Q And -- and that time was reduced, correct?

A Yes, it was.

Q And why was it -- how was it reduced?

A Due to the change of law. The crack law, I believe in 2000- -- want to say '08, and then again in 2011.

Q And when you got into prison, what was -- you were only 26 years old, correct?

A Twenty-six or 27. I'm not sure, but no older than 27.

Q And so you were facing how much time in -- relative to your age?

A I would have did as much time as I was alive in prison as I -- as I -- if I -- I would do at least 26, 27 years. So half my life would have been incarcerated.

Q Before you got out?

A Before I got out. Yes.

Q So -- and do you recall the general frame of mind that you were in when you first got in?

A Well, to say I was frightened, nervous, terrified, depressed, I mean, the -- it was a whole wealth of feelings, you know. That was my first time being in prison, so I didn't know what to expect. I didn't know how to -- you know, it was just a lot at that age.

Mr. Rytting Direct of Carl Walker

Q So do you recognize, in the courtroom, Mr. Jeffrey Prible?

A I do.

Q Okay. And just for purpose of identifying him, where is he sitting?

A Behind you.

Q Okay. And he's wearing?

A Glasses, a striped white shirt --

Q Okay.

A -- I guess.

Q So when did you first hear of Mr. Prible?

A I think it was in 2001 or so.

Q Okay. And where were you when you learned about Mr. Prible?

A I was in Beaumont --

Q Okay.

A -- medium/high.

Q And what did you learn about him?

A I learned that he was coming over from the low facility, and he was under investigation for several murders.

Q Okay. Do you remember any particular details about those murders?

A I remember a lot of details about those murders.

Q And were you aware of those -- how were you -- how did you learn about those?

A When I first got to prison, I was, like I said, very depressed and afraid and all that. So I kind of turned to

Mr. Rytting Direct of Carl Walker

1 religion, and I was going to church a lot and all that kind of
2 stuff -- all that kind of stuff.

1 2:10:35 3 And I had become acquaintances with some people that also
4 was going to that church at that time -- or the chapel, and I
5 was kind of approached or recruited, if you will, if I wanted a
6 blessing, opportunity to get out of jail without having to do
7 all that sentence.

1 2:10:55 8 Q Okay. And you referred to a "blessing." And so who
9 approached you about this blessing?

1 2:11:04 10 To the best you recall.

1 2:11:08 11 A I want to say it was Mr. Foreman, but it could have been one
12 of three people. But I want to say either Mr. Foreman or
13 Mr. Beckcom, but it could have also been Oscar.

1 2:11:22 14 Q Now, and -- Oscar Gonzalez?

1 2:11:24 15 A Yes.

1 2:11:25 16 Q Okay. And were the -- did -- who -- whoever approached you,
17 did they already have some information about Mr. Prible's case?

1 2:11:39 18 A Oh, they had a plethora of information about Mr. Prible's
19 case. They had details, locations, what was found, where the
20 body was, what happened. I mean, they had everything about
21 Mr. Prible.

1 2:11:52 22 Q And that was -- was this before you even saw Mr. Prible?

1 2:11:55 23 A This is before I even met him.

1 2:12:06 24 **THE COURT:** The information about Mr. Prible was about
25 the murders he had not been convicted of, not the bank robberies

Mr. Rytting Direct of Carl Walker

1 he had been convicted of?

1 2:12:15 2 **THE WITNESS:** Yes, sir. The bank -- me -- I didn't
3 discover about the bank robberies until later on when I -- maybe
4 after I met Mr. Prible or right before I met Mr. Prible about
5 what his actual case was being in the federal system was.

1 2:12:29 6 **THE COURT:** But he was known in connection with the
7 murder case?

1 2:12:32 8 **THE WITNESS:** Well, I was approached with the
9 information about the murder case.

1 2:12:38 10 **BY MR. RYTTING:**

1 2:12:40 11 **Q** So you knew, early on, that Mr. Prible was coming over, and
12 he had serious charges against him?

1 2:12:45 13 **A** Yes, I did.

1 2:12:46 14 **Q** And you knew the details of those -- some details about
15 those -- those murders?

1 2:12:50 16 **A** Yes, I did.

1 2:12:51 17 **Q** And the source of those -- that information was not
18 newspapers. It was other inmates?

1 2:12:56 19 **A** No. It -- it -- the only -- I mean, my opinion at the time,
20 the only people that could have known that is the individual
21 that either done it or the people that was on the scene when
22 they recovered the bodies.

1 2:13:09 23 **Q** Okay. So when you were approached or, as you say,
24 recruited --

1 2:13:17 25 **A** Uh-huh.

Mr. Rytting Direct of Carl Walker

Q -- now, you were recruited to do what?

A Well, I was basically presented with a proposition that if I didn't want to do all my time, I could be given this information to use to reduce my time, if I testified.

Q And just to -- just to clarify, the proposition was that there was a way for you to reduce your -- your federal sentence?

A Right. I mean, there's no parole or nothing like that in the federal system. So you do about 87 percent of your time. So at 27 years old, I can imagine what getting out at 52 would look like.

So the proposition was, you know, this is a bad guy. He's a bad person, this, that and the third. It doesn't matter, you know. They did this, that and the third, you know. You need to take this opportunity and save yourself.

Q And by being part of a group that -- and by saving yourself, were you recruited to get information from Mr. Prible?

A No. There was no information they needed to get. All the information was already presented to me.

Q Was it to convince -- what was -- what was the purpose, then, of -- I mean, how would you -- well, what were you told to do in order to make this blessing come to life?

MR. D'HEMECOURT: Objection, Your Honor, hearsay.

THE COURT: I'm concerned that what the petitioner has sketched is a conspiracy, and as a conspiracy, the statements of the coconspirators are admitted notwithstanding rules of

Mr. Rytting Direct of Carl Walker

1 hearsay. So I'm going to allow it.

1 2:15:14 2 **A** If --

1 2:15:16 3 **BY MR. RYTTING:**

1 2:15:16 4 **Q** So --

1 2:15:17 5 **A** Yeah. Could you repeat?

1 2:15:18 6 **Q** How were you going -- what was your understanding of what
7 you needed to do in order to --

1 2:15:23 8 **A** To --

1 2:15:23 9 **Q** -- to make this blessing --

1 2:15:25 10 **A** Right. To -- the blessing part was just how it was
11 presented to me because of my religious, you know, endeavors at
12 the time. But, basically, it was a group of individuals in
13 there that were all in the same unit -- some of us was not in
14 that unit -- that was all aware of what was going on with
15 Mr. Prible's case.

1 2:15:49 16 And in regards to what we were expected to do was
17 collaborate as if we became prison buddies or pals or et cetera,
18 and then he, all of a sudden, feel compelled to confess all
19 these horrific things. And then at that point, we supposed to
20 have written letters to the prosecutor asking to be a witness
21 or -- or volunteering to be a witness because we was just so
22 overwhelmed about the information he supposedly give us.

1 2:16:27 23 **Q** Uh-huh. So this was a plan that was discussed amongst
24 several people?

1 2:16:31 25 **A** Yes. It was discussed, strategized, platted out. I mean,

Mr. Rytting Direct of Carl Walker

1 there was things in play before they even came to frutation
2 [sic]. It was already mapped out.

1 2 : 1 6 : 4 3 3 Q You mean -- "mapped out," you mean it was discussed on the
4 yard, for example?

1 2 : 1 6 : 4 6 5 A Yeah. It was discussed on the yard what the intentions
6 were. Like, prior to getting him intoxicated. Prior to having
7 him in photo shoots. Prior to getting him drugs.

1 2 : 1 6 : 5 8 8 Any- -- anything -- most of the things that was done to
9 Mr. Prible or to stage the appearance of being close to
10 Mr. Prible was already preordained.

1 2 : 1 7 : 0 9 11 Q "Preordained" meaning talked about and planned out?

1 2 : 1 7 : 1 2 12 A Yes.

1 2 : 1 7 : 1 2 13 Q And who was involved in that planning?

1 2 : 1 7 : 1 5 14 A The two main individuals was Mr. Beckcom and Mr. Foreman.

1 2 : 1 7 : 2 1 15 Q Were there any others that were part of the discussions?

1 2 : 1 7 : 2 5 16 A There were several others. It was Cat, Oscar -- I mean,
17 everybody that was in that small group knew, but everybody
18 didn't actively discuss. Sometimes it was just informative,
19 like FYI.

1 2 : 1 7 : 4 2 20 **THE COURT:** And where did this plan originate? Did it
21 originate with Ms. Siegler or with Mr. Beckcom, or where did it
22 come from?

1 2 : 1 7 : 5 0 23 **THE WITNESS:** To be honest, Your Honor, I don't -- I'm
24 not sure, but I never thought Mr. Beckcom or Mr. Foreman knew --
25 I mean, was the orchestration of it.

Mr. Rytting Direct of Carl Walker

THE COURT: Somebody else was the quarterback?

THE WITNESS: Yeah. Because the details they knew and how they knew what they knew was so vivid or so in depth that, like I say, I knew before he got there, and they knew even more than I knew.

THE COURT: I see. I see.

THE WITNESS: So I don't know. I just assumed it was definitely more -- I was given instructions, a phone number to a prosecutor, Ms. Siegler, and I was instructed to call her and -- and, you know, tell her what I supposedly knew or found out. But I hadn't -- hadn't even had a conversation with the man.

BY MR. RYTTING:

Q And was that -- and you wrote down that -- that phone number, correct?

A Yes. It was in my prison phone book. You could buy phone books in commissary to keep track of all the numbers and names, and I had one -- I don't know. I may have had that book at least ten years or longer.

So I -- I mean, I don't know how long I had it, but I kept it for many, many, many years, and just as I gathered numbers, I would put them in there.

(Sotto voce discussion between Mr. Rytting and Ms. Scardino.)

BY MR. RYTTING:

Q On the screen is Exhibit 32. Have you seen that photograph

Mr. Rytting Direct of Carl Walker

1 before?

12:19:56 2 **A** Yes, I have.

12:19:57 3 **Q** And who showed you that photograph?

12:20:01 4 **A** I think I seen that paragraph while I was in prison.

12:20:04 5 **Q** And did I also show you that photograph?

12:20:06 6 **A** Yes. You also showed me that photograph.

12:20:08 7 **Q** And were you able -- are you able to identify who's in that
8 photograph?

12:20:11 9 **A** I am.

12:20:12 10 **Q** And who is there? Who's in -- who's present?

12:20:15 11 **A** Okay. On the first row, you got Oscar. You have Jeff. You
12 have Mark. Behind Mark, you have Foreman. You have Cat. You
13 have Beckcom. The guy in between Beckcom and me, I'm not sure
14 of his name, but yeah.

12:20:32 15 **Q** Do you know -- did you ever come across a man named Eddie
16 Gomez?

12:20:35 17 **A** Eddie Gomez, yes.

12:20:37 18 **Q** Is that -- does that look like him?

12:20:39 19 **A** Yes. That may be Eddie.

12:20:41 20 **Q** Okay. And then -- but you're in the photograph as well?

12:20:44 21 **A** Yes, I am.

12:20:45 22 **Q** Okay. And -- and in the middle is Mr. --

12:20:50 23 **A** Prible.

12:20:50 24 **Q** -- Prible?

12:20:51 25 **A** Yes.

Mr. Rytting Direct of Carl Walker

Q Okay. And you say you may recall seeing this photograph before?

A Yes, sir. I'm pretty sure I did.

Q Okay. Of course, you were -- you were in the middle of that photograph. You may have gotten a copy of it, even?

A I may have, but that wasn't the purpose of that photograph, for me to get a copy.

Q What was the purpose of that photograph?

A The purpose of that photograph is -- either 95 or 100 percent of everybody in that photograph was in the plot against Mr. Prible.

Q Including yourself at the time?

A Including myself at the time.

Q And the plot against Mr. Prible, again, was...

A To take the information that we were given to try to get some type of sentence reduction for our sentences.

THE COURT: Who took the photo?

THE WITNESS: The photo was taken by the photographer -- the prison photographer. What happens is when you go to commissary, you prebuy photo tickets, and then on the weekend or whatever appropriate date they allow us to take photos, we take photos.

So all the tickets that's in the photos for what was for Mr. Prible was already prebought because they already had an agenda for those tickets.

Mr. Rytting Direct of Carl Walker

THE COURT: So it was arranged by whoever arranged the whole effort against Mr. Prible?

THE WITNESS: Right. So, I mean, those wasn't my photo tickets, but I can't say if they were Beckcom's photo tickets or Foreman's or whomever. But everybody was instructed to be there to be part of that group.

THE COURT: Okay. Thank you.

BY MR. RYTTING:

Q So it wasn't a spontaneous photograph?

A No.

THE COURT: Did Mr. Prible think it at all odd that you -- just was a group photo that came together so easily?

THE WITNESS: In my opinion, Your Honor, Mr. Prible was very naive in that picture. If anybody'd stick out, it would be him. He's --

THE COURT: Okay.

THE WITNESS: He's the only one that probably don't really fit.

BY MR. RYTTING:

Q Okay. You mentioned Kelly Siegler, the prosecutor. And you were given her phone number?

A I was.

Q Were you aware of whether other people had her phone number?

A I think just about everybody in that photo had her phone number with the exception of Jeff.

Mr. Rytting Direct of Carl Walker

Q And so they talked about Ms. -- everybody in that photo, to your knowledge --

A At some point in time discussed either them calling, needing to call, suggesting you call. It -- at one point, it became an issue about solidifying your position because it was feared, I guess towards the end, that Mr. Beckcom and Foreman wasn't as totally forthcoming as we initially expected, and you might get left out of the opportunity, if you will. So...

Q Uh-huh. So -- and the opportunity was to --

A Have a chance to get your sentence reduced.

Q By?

A Testifying on the murder case.

Q Now, were you in the same pod as -- or pod or unit as Mr. Prible?

A No, I was not.

Q Who were you housed with?

A I was housed with Mr. Beckcom, Mr. Foreman and Oscar. And I believe at one point his dad was in the unit with us, as well, Felix.

Q And was Oscar ever your cellmate?

A Yes, he was.

Q When you talked about Prible's case, then, with -- did you ever talk with Foreman and Beckcom in their -- near or in their prison cells?

A Because we was in the same unit, there was different

Mr. Rytting Direct of Carl Walker

occasions where I would talk with either Foreman or Beckcom.

Beckcom was also like a teacher or instructor of some sort. So I had opportunity to speak with him on various occasions because he was, like, into stock or something.

I knew he had kind of lost a lot of money that was his mom's retirement or something to that effect. He would get these monthly printouts of all the money he was losing. So he was really adamant in -- in -- what's the word you would use? He was just really adamant about making this thing out.

Q So he could --

A So he can get to help his mom because I think he had messed off the whole retirement or something. It was like -- it was a few hundred thousand, to my recollection.

Q Okay. So there was some -- do you recall the exact number, or are these numbers that you heard from Beckcom?

A No. I seen it on the paperwork myself. It was like, maybe, 2-, \$300,000. I just know at one point or something, he said they had a restaurant, and he was like -- it was -- the money was entrusted to him from his mother, and he was getting these reports from wherever he was doing his trading, and he was just hemorrhaging, and he's like, "I got to get home. I got to get home."

(Sotto voce discussion between Mr. Rytting and

Ms. Scardino.)

BY MR. RYTTING:

Mr. Rytting Direct of Carl Walker

Q Do you recall Mr. Prible ever -- well, let me put it this way: Was Mr. Prible a mark?

A In every sense of the word.

Q And what is -- what sense of the word are you talking about?

A In the sense that he was going to be a scapegoat for several individuals to have an opportunity to get out of prison sooner than later.

THE COURT: Did you know of any other prisoner who was in, the same time as you, who was the same kind of mark?

THE WITNESS: There was one other person. I wasn't part of that --

THE COURT: Okay.

THE WITNESS: I wasn't directly linked to that like I was directly linked to Prible. It was a Hispanic gentleman that the same group of -- some of the members of the same group took part in a little bit before Prible.

THE COURT: Was Ms. Siegler involved with that, too?

THE WITNESS: That's a good question. I want to say yes, but I don't recall.

THE COURT: Okay.

BY MR. RYTTING:

Q And the name of this person was -- is Hermilio Herrero the name of this person?

A That is the person. That is the person.

Q And do you recall who was involved in informing on

Mr. Rytting Direct of Carl Walker

Mr. Herrero?

A I remember a person named Jesse. I think Cat had something to do with that. I don't know if Foreman or Beckcom was involved, but they was aware. It was more than aware.

MR. D'HEMECOURT: Objection, Your Honor, hearsay.

THE COURT: Same ruling. It's a conspiracy, and as part of a conspiracy, such statements are admissible.

BY MR. RYTTING:

Q Now, was there any discussion or any talk about what you might call as getting a twofer?

A You know, it was those opportunities. At that time, Mr. Herrero hadn't been sentenced yet. So -- but he wasn't on the yard. He wasn't on the yard at the time with Mr. Prible.

But, again, that -- that little thing I couldn't be -- personally be a part of that, you know. I wasn't necessarily prompted or offered to be part of that. They was part of the discussions. Everybody knew some of the details involved in that. The ones that was already involved in that, you know, did that, but me, myself --

MR. D'HEMECOURT: Objection, I think this is getting into speculation given that he wasn't a part of the Herrero testimony.

THE COURT: Let's see. You said this was part of the discussion.

MR. D'HEMECOURT: I think it is what happened to

Mr. Rytting Direct of Carl Walker

1 Mr. Herrero. He said he wasn't involved in any planning against
2 Mr. Herrero.

12:30:08 3 **THE COURT:** You said everybody knew some of the
4 details involved.

12:30:11 5 **THE WITNESS:** Well, yes, sir. It was discussed, but I
6 wasn't a participant of --

12:30:16 7 **THE COURT:** So you heard it from somebody else?

12:30:17 8 **THE WITNESS:** I heard from the same individuals in
9 this case. We discussed what was happening. Some of them were
10 working on the twofer aspect --

12:30:22 11 **THE COURT:** Okay. All right.

12:30:22 12 **THE WITNESS:** -- but the twofer aspect wasn't one --
13 applicable to me.

12:30:25 14 **THE COURT:** Okay. Hold on just a second.

12:31:01 15 Yeah. I'm going to allow it.

12:31:02 16 Go ahead. Your next question, Mr. Rytting?

12:31:08 17 **BY MR. RYTTING:**

12:31:12 18 **Q** You mentioned that all the -- we showed you the former --
19 the previous photograph, Exhibit 32, and you said that
20 100 percent, if -- or close to that were informing against --
21 interested in informing against Mr. Prible --

12:31:27 22 **A** Yes.

12:31:28 23 **Q** -- correct?

12:31:29 24 Okay. And they all -- who -- and who was the prosecutor
25 that they, each one, was in contact with, in your opinion?

Mr. Rytting Direct of Carl Walker

1 2:31:41 1 **A** Well, some of it is really not my opinion. I would just say
2 Kelly Siegler because I was given the phone number either by
3 Mr. Beckcom or Oscar, and I know for a fact that -- I could
4 pretty much say 95 percent of those people called her because it
5 was always discussing, "Did you call? What was going on?" It
6 was like updates. It was always updates.

1 2:32:05 7 So anybody could check the prison phone records, and you
8 would see that there was communication back and forth between --

1 2:32:13 9 **MR. D'HEMECOURT:** Objection, Your Honor, speculation.
10 He doesn't seem to have person knowledge of what the phone
11 records say.

1 2:32:18 12 **THE COURT:** Anybody could check the phone records.
13 You could see there was communication back and forth.

1 2:32:23 14 How do you know that, sir?

1 2:32:24 15 **THE WITNESS:** Because when we -- I know for a fact
16 because, when I was in prison, they -- they held the records for
17 four to five years. And because I was in the -- in discussion
18 with them, I was in the unit with Beckcom, Foreman, and Oscar,
19 and I knew at times when they actually went to the phone and
20 called because all of us was in the unit together.

1 2:32:42 21 **THE COURT:** Okay. I'm going to allow it.

1 2:32:44 22 **THE WITNESS:** So I witnessed them making calls.

1 2:32:46 23 **THE COURT:** I'm going to allow it.

1 2:32:47 24 **BY MR. RYTTING:**

1 2:32:47 25 **Q** You witnessed them making calls to Mr. Siegler?

Mr. Rytting Direct of Carl Walker

1 2:32:50 1 A Well, they said that's who they were calling. I mean, I
2 wasn't standing beside them, but when they'd come back from the
3 conversation from the phone, you know, we would have
4 conversations in reference to.

1 2:33:00 5 Q Okay. Were they all -- could they call from their
6 counselors' phones?

1 2:33:05 7 A They could.

1 2:33:07 8 Q And were -- did you?

1 2:33:08 9 A No. I wasn't privy to what was going on because that's -- I
10 wasn't, no.

1 2:33:13 11 Q Okay. Now, on the...

1 2:33:32 12 *(Sotto voce discussion between Mr. Rytting and*
1 2:33:33 13 *Ms. Scardino.)*

1 2:33:52 14 **BY MR. RYTTING:**

1 2:33:59 15 Q I'm going to show you another -- another exhibit, Exhibit --
16 again, this is Exhibit 32. I guess it's a group exhibit. And
17 have you seen this -- this photograph before?

1 2:34:12 18 A No, but I knew about that photograph.

1 2:34:15 19 Q Okay. And how did you know about that photograph?

1 2:34:17 20 A Before that photograph was even taken, there was discussed
21 that that was -- that particular photograph was going to be
22 taken to establish how close netted [sic] the group was. It was
23 like -- and that was either between Beckcom and Foreman -- maybe
24 me and Oscar both was there.

1 2:34:38 25 It was a group, and they had discussed that they were going

Mr. Rytting Direct of Carl Walker

1 to take pictures with each one of their mother or family member
2 or something in the visiting room. So I never seen this actual
3 photo until now, based on my recollection, but I knew that this
4 event took place.

1 2 : 3 4 : 5 5 5 Q Okay. And can you identify some of the people in that
6 photograph?

1 2 : 3 5 : 0 3 7 A Only three. Mr. Foreman, Mr. Beckcom and Mr. Prible.

1 2 : 3 5 : 1 1 8 Q So when you say this was discussed beforehand --

1 2 : 3 5 : 1 5 9 A Right.

1 2 : 3 5 : 1 6 10 Q -- would it -- would it have to be discussed, you know,
11 hours beforehand or days?

1 2 : 3 5 : 2 0 12 A No. It was discussed way prior than I was -- the discussion
13 went something like -- the whole plot or the plan was to create
14 a picture of close intimacy with Mr. Prible, a close connection.
15 So the -- the way you create -- the way it was being created was
16 to show that, like, his family was with their family, or we all
17 was in group pictures or individuals with him.

1 2 : 3 5 : 4 7 18 It was -- it's to create -- it was all to create -- I don't
19 know. A picture is the best way I can describe it. You're
20 trying to show that he would be comfortable enough or confident
21 enough in your friendship to give you this information.
22 Otherwise, it was -- there was no basis, you know.

1 2 : 3 6 : 0 6 23 Q For him to confess?

1 2 : 3 6 : 0 7 24 A Exactly.

1 2 : 3 6 : 1 4 25 Q Now, why do you remember this -- was there any other --

Mr. Rytting Direct of Carl Walker

1 anything else that was -- any other activities that were part of
2 the plan in -- of showing Prible's friendship and camaraderie
3 that was connected with this photo op?

1 2 : 3 6 : 4 2 4 **A** I don't know if it's -- necessarily was connected with the
5 photo op, but there was plans to get him intoxicated --

1 2 : 3 6 : 4 8 6 **Q** Okay.

1 2 : 3 6 : 4 8 7 **A** -- you know.

1 2 : 3 6 : 4 9 8 **Q** And that -- and were you part of those plans?

1 2 : 3 6 : 5 2 9 **A** I was part of those plans.

1 2 : 3 6 : 5 3 10 **Q** And who else was part of those plans?

1 2 : 3 6 : 5 6 11 **A** Oscar. Oscar -- Oscar and I used to make hooch, or wine, in
12 the prison system.

1 2 : 3 7 : 0 3 13 **Q** And how is that possible?

1 2 : 3 7 : 0 7 14 **A** It's not as hard as one would think. Some really hot water,
15 some sugar and some fruits or potatoes or tomatoes, and it'll
16 fester, given enough time.

1 2 : 3 7 : 2 1 17 **Q** Oh, so what you had to do was conceal it --

1 2 : 3 7 : 2 4 18 **A** Right.

1 2 : 3 7 : 2 4 19 **Q** -- while it was brewing?

1 2 : 3 7 : 2 5 20 **A** Conceal it. We would have to hide it and conceal it while
21 it was brewing, yes.

1 2 : 3 7 : 3 0 22 **Q** And was a particular batch of alcohol made for the purpose
23 of giving it to Mr. Prible?

1 2 : 3 7 : 3 5 24 **A** As a matter of fact, there was. There was some grape wine
25 made for Mr. Prible.

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Q And what's significant about grape wine?

A I don't know it's significant. One of the things about the grape wine is -- from being a person that made wine, it takes longer to form it than any other one. Any -- the average wine takes maybe ten days or so given -- give or take. But grape wine takes about 30 days. It takes -- it takes a while for it to ferment because it has the natural sugars, and then it has all the sugars that you put into it.

So you can't make it in bulk. You can't make a whole lot of it. Where we would make two, three, maybe 4 gallons of some of the other kind of wine, this one you would have to make maybe a gallon or real small amount because it took so long to ferment, trying to hide it for a month is a very difficult task versus trying to hide it for 10 days or 12 days or something.

Q Okay. And what are some of the other things that you said you could make wine out of? Potatoes?

A Yes. We, actually, could make white lightening. You could actually make a distillery and distill the alcohol off the wine and make liquor.

Q And by wine you mean just anything that's fermented. It's not -- not like grape wine or anything like that, but there's --

A Yeah. We had guava --

Q -- like --

A Yeah. Guava wine. They sold guava paste on the commissary, so we used guava paste. We used -- you could use ketchup. You

Mr. Rytting Direct of Carl Walker

1 can use tomato paste. You can use orange juice. You can use
2 oranges. Any fruit, any -- all kinds of stuff will ferment and
3 make wine.

1 2 : 3 9 : 0 6 4 **Q** So when it came to making this batch of wine, was it
5 understood, basically from the beginning, that it was going to
6 be for Mr. Prible?

1 2 : 3 9 : 1 1 7 **A** The grape wine was specifically for Mr. Prible.

1 2 : 3 9 : 1 5 8 **Q** Okay. And was it your understanding that Foreman and
9 Beckcom knew this and were going to --

1 2 : 3 9 : 2 1 10 **A** Everybody was aware of it. Everybody was under the gazebo.
11 Everybody was, you know, drinking or participating. Mr. Prible
12 got really drunk where he needed assistance, but everybody
13 participated.

1 2 : 3 9 : 3 4 14 It was -- again, you're painting a picture here like you're
15 good buddies, prison buddies, drinking buddies, taking-pictures
16 buddies. It's all to establish that he would trust you enough
17 to confide.

1 2 : 3 9 : 4 9 18 **Q** Was it the point to get his -- well, you know, when people
19 get drunk, they sometimes forget themselves and say things they
20 shouldn't. Was that part of the motive?

1 2 : 4 0 : 0 1 21 **A** I think that was definitely part of the motive, but it
22 really didn't matter if he got drunk and decided to confide or
23 not because even before he was -- before all that even took
24 place, the knowledge was already there, you know. That was more
25 of a formality, like, you would go through the motions. You

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1 would set it up.

12:40:21 2 So it's just to establish a closeness that, Hey, we go out.
3 We drink. We hang out, you know, do this, do that. So it's --
4 if he would have confessed, I mean, what -- it was done to
5 establish the intimacy of our group.

12:40:40 6 **Q** But to your knowledge, did he ever confess?

12:40:42 7 **A** To my knowledge, Mr. Prible never confessed.

12:40:45 8 **Q** Okay.

12:40:49 9 **THE COURT:** Did Ms. Siegler or any other prosecutor
10 ever do you any good in terms of shortening your time?

12:40:55 11 **THE WITNESS:** No, sir. Prior to the Prible case
12 coming to a head, I --

12:41:02 13 **THE COURT:** You got your time shortened. I know that.

12:41:05 14 **THE WITNESS:** No. No, no, no. It wasn't -- I got my
15 time shortened years after the Prible deal from the change of
16 law. But prior to that situation, I was just kind of cut out of
17 the loop or -- not necessarily cut out of the loop, but I kind
18 of just fell to the wayside, for lack of a better word.

12:41:24 19 **THE COURT:** Was it because you were not fully
20 enthusiastic about the process or because you weren't as close
21 to Mr. Prible, or for some other reason?

12:41:31 22 **THE WITNESS:** No, it was that I was wasn't fully
23 enthusiastic about the process. I mean, we had many
24 conversations trying to rationalize or justify what was being
25 done or why it was okay. But even though I was fearful and,

Mr. Rytting Direct of Carl Walker

1 initially, I was on board, at some point it -- it just -- I
2 don't know. I just exactly -- exactly what -- how to describe
3 it. It just didn't work out.

1 2 : 4 2 : 0 4 4 **THE COURT:** Okay.

1 2 : 4 2 : 1 2 5 **BY MR. RYTTING:**

1 2 : 4 2 : 1 2 6 **Q** Now, you -- you mentioned that part of the -- the plans was
7 to -- to write a letter to Ms. Siegler?

1 2 : 4 2 : 2 3 8 **A** Yes.

1 2 : 4 2 : 2 3 9 **Q** Okay. And did -- did you ever write one yourself?

1 2 : 4 2 : 2 9 10 **A** No. I signed one, but I didn't -- I didn't actually write
11 it.

1 2 : 4 2 : 3 3 12 **Q** Okay. And was this letter sent sometime in May of 2000- --

1 2 : 4 2 : 3 8 13 **A** It may have been. I don't exactly remember the time it was
14 sent.

1 2 : 4 2 : 4 1 15 **Q** Okay. Of 2002, I mean. You don't recall the time?

1 2 : 4 2 : 4 3 16 **A** Yeah. I don't recall the times.

1 2 : 4 2 : 4 5 17 *(Sotto voce discussion between Mr. Rytting and*
1 2 : 4 2 : 4 6 18 *Ms. Scardino.)*

1 2 : 4 2 : 4 7 19 **BY MR. RYTTING:**

1 2 : 4 2 : 4 7 20 **Q** Okay. And I'm putting up on the screen the letter that
21 you...

1 2 : 4 3 : 2 4 22 **A** Uh-huh.

1 2 : 4 3 : 2 4 23 **Q** And if we scroll down, do you recognize this letter?

1 2 : 4 3 : 2 7 24 **A** I do.

1 2 : 4 3 : 2 9 25 **Q** And if we --

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MR. RYTTING: Keep scrolling.

BY MR. RYTTING:

Q Okay. In this -- and is that your signature?

A It is.

Q Okay. So -- but you say you did not type up this letter?

A No. I didn't type it, nor did I write it, per se.

Q Did you --

A It was discussed what was the contents of the letter and what it would say. If you go to the top of the letter, how you see all the individuals' names, Mr. Foreman, Mark, the whole idea of the structure is this letter is for everybody to be kind of like a confirmation of the other person, right?

So one could justify, one could solidify the other's thing. You know what I mean? I don't know if I'm saying it correctly.

THE COURT: So you'd corroborate one another's story?

THE WITNESS: Right. That's what I'm trying to say.

A It's set up -- the letter was written as if we all can corroborate each other's story. It's not like, for instance, Mr. Prible came and confessed to me, or he came and confessed it to somebody. It was always one of us or somebody had to be there to corroborate what the other one is saying or what everybody's saying we heard or seen.

So it's always a mention or some type of something, you know. That's how it was told to be constructed.

BY MR. RYTTING:

Mr. Rytting Direct of Carl Walker

Q Or that's how you agreed to construct it?

A Right.

Q And getting back to the -- the photograph of the --
Exhibit 32, which was of Prible's mom and -- well, you
identified three persons, Prible --

A Right.

Q -- and Mr. Beckcom and Mr. Foreman. And is it your
understanding, now, that these were their relatives or parents?

A It is.

Q Uh-huh.

And this was -- we have a -- and this was -- can you see
the date down there? It says November 24.

A Uh-huh.

Q Do you have -- do you recall approximately when this was
taken, or no?

A No, I do not.

Q Okay. But you don't have any -- but so that -- the date
might be correct, though?

A It may be correct. It may not. I'm not sure.

Q Okay. Was this one of the last things that was done in the
conspiracy, that you recall?

A Again, I wasn't present for this photo. I knew about the
photo. If it was the last thing or not, I'm not sure because,
like I stated, at one point towards the -- as things was coming
to a head, Mr. Beckcom and Mr. Foreman started being real

Mr. Rytting Direct of Carl Walker

1 close-knit. They wasn't as forthcoming as initially.

1 2:46:39 2 Q Okay.

1 2:46:39 3 A And towards the end, I kind of fell to the wayside.

1 2:47:20 4 Q You were in FCI Beaumont for -- you know, until 2005,
5 correct?

1 2:47:25 6 A Correct.

1 2:47:25 7 Q And what happened then?

1 2:47:31 8 A A hurricane hit the prison, and I was shipped -- I was
9 shipped to Yazoo, Mississippi.

1 2:47:39 10 Q Okay.

1 2:47:40 11 THE COURT: Another federal prison?

1 2:47:42 12 THE WITNESS: Yes, sir, another federal prison.

1 2:47:43 13 BY MR. RYTTING:

1 2:47:43 14 Q And how many inmates from Beaumont were shipped to Yazoo?

1 2:47:47 15 A My recollection is between 6-, maybe 800 of us. It was a
16 large portion. The whole prison was evacuated and divided into
17 mini prisons.

1 2:47:56 18 But I remember when we got to Yazoo, a lot of units was not
19 even open yet, and it may have been, like, 2- or 300 people on
20 the yard. But when we got there, the population jumped up to,
21 maybe, 800 or -- it was a lot. It was several hundred of us.

1 2:48:11 22 Q Okay. And was one other person that was transferred a
23 former roommate of yours?

1 2:48:19 24 A No. He wasn't a roommate of mine. He was a -- a friend of
25 mine, associate of mine, but we was never roommates.

Mr. Rytting Direct of Carl Walker

1 2:48:28 1 Q What was his name?

1 2:48:29 2 A I knew him as Smiley. In jail, people really didn't use
3 their government names. They used nicknames. So -- but his
4 last name is Wilson. I don't know his first name.

1 2:48:39 5 Q Okay. So you just knew him as Smiley Wilson?

1 2:48:42 6 A That's all.

1 2:48:43 7 Q Okay. And he was with you at FCI Beaumont, correct?

1 2:48:46 8 A He was. Correct.

1 2:48:47 9 Q And then he -- and he was one of the group transferred to
10 Yazoo?

1 2:48:53 11 A He was definitely one of the people transferred to Yazoo.

1 2:48:55 12 Q And at some point did he approach you in Yazoo about
13 Mr. Prible?

1 2:49:00 14 A He did.

1 2:49:00 15 Q Okay. What was that about?

1 2:49:03 16 A Mr. Wilson had some information about what had happened to
17 Mr. Prible. Due to our relationship, I had revealed some things
18 to him about it. None that really put me in a bad light, but I
19 kind of revealed some things to him about the case.

1 2:49:23 20 And he had another -- I believe the other Walker was his
21 roommate or in his unit, that was getting letters from an
22 attorney with information, the details that he remembered that I
23 had discussed with him.

1 2:49:38 24 Q So Mr. Smiley informed you that another Walker was --

1 2:49:41 25 A Yes.

Mr. Rytting Direct of Carl Walker

1 2:49:43 1 Q Does the name Larry Walker --

1 2:49:45 2 A Larry Walker, yes.

1 2:49:46 3 Q And so Prible's attorneys were trying to contact a Walker,
4 but they were writing a Larry Walker?

1 2:49:51 5 A That was writing the wrong Walker. They were writing Larry
6 Walker. Correct.

1 2:49:55 7 Q Okay. And these -- the letters -- some of these -- did you
8 -- did Mr. Smiley eventually give you some of these letters, or
9 did Larry Walker do it?

1 2:50:03 10 A No. I think, based on my recollection, me and Smiley talked
11 about it. He grabbed one of the letters from Larry and end up
12 bringing me the -- bringing me the letter or giving me the
13 letter.

1 2:50:20 14 Q Okay. And was this letter written to Larry in Beaumont?

1 2:50:25 15 A Best of my recollection. I'm not sure, exactly. I don't
16 recall the address that it was sent to, whether it was Beaumont
17 or Yazoo. But best of my recollection, it was -- it was
18 Beaumont.

1 2:50:37 19 Q Okay. And when you read the letter, was it clear that
20 Mr. --

1 2:50:41 21 A I automatically knew what it was, who it was. I knew the
22 whole thing.

1 2:50:48 23 Q And that his attorneys were trying to reach --

1 2:50:50 24 A Yeah.

1 2:50:50 25 Q -- someone named Walker?

Mr. Rytting Direct of Carl Walker

A I automatically knew. So I -- I kind of played it off like it wasn't no real big deal to Smiley. Like, Oh, yeah, I think I know this guy, wa, wa, wa. And I think I may have eventually contacted Prible's attorney or reached out to him or something like that letting him know I was the right Walker, and they were communicating with the wrong Walker.

Q Okay. And was this the first communication the first time you reached out to Mr. Prible, that you can recall?

A That is, based on my recollection, the first time I ever reached out.

(Sotto voce discussion between Mr. Rytting and Ms. Scardino.)

THE COURT: Are you fairly near your -- the end of this testimony?

MR. RYTTING: I am near the end of his testimony, yes, Your Honor.

THE COURT: Okay. Just try to wind it up. We'll take our lunch break.

MR. RYTTING: Okay.

(Sotto voce discussion between Mr. Rytting and Mr. Scardino.)

MR. RYTTING: Your Honor, I'll pass the witness.

THE COURT: Okay. We'll adjourn till 1:30.

(Lunch recess taken from 12:52 p.m. to 1:33 p.m.)

THE COURT: Okay. With regard to Ms. Siegler, please

Mr. D'Hemecourt Cross of Carl Walker

1 communicate with her that I'd like her to contact you or the
2 Court and set a time where she can be available to answer
3 questions. If she's doing TV work, it ought to be especially
4 easy for us to rig up some kind of connection, video or
5 otherwise.

1 3 : 3 4 : 0 3 6 The only time that's unavailable this week, for
7 certain, is Friday morning. Any other time will be workable.
8 And I'm sorry to inconvenience everybody else, but I think
9 it's -- it's necessary. We need to hear from her.

1 3 : 3 4 : 2 2 10 Okay. You're going to cross?

1 3 : 3 4 : 2 7 11 **MR. D'HEMECOURT:** Yes, Your Honor.

1 3 : 3 4 : 2 8 12 **THE COURT:** Please proceed.

CROSS-EXAMINATION

1 3 : 3 4 : 2 9 14 **BY MR. D'HEMECOURT:**

1 3 : 3 4 : 3 0 15 **Q** My name's George d'Hemecourt. I'm with the Attorney
16 General's office.

1 3 : 3 4 : 3 3 17 First of all, have we ever spoken before?

1 3 : 3 4 : 3 6 18 **A** Not to my knowledge, no.

1 3 : 3 4 : 3 7 19 **Q** Have you had any conversations with anyone at our office?

1 3 : 3 4 : 4 1 20 **A** I don't know where your office is, so no.

1 3 : 3 4 : 4 3 21 **Q** With anyone at the Attorney General's office?

1 3 : 3 4 : 4 5 22 **A** Not to my knowledge, no.

1 3 : 3 4 : 4 6 23 **Q** Thank you.

1 3 : 3 4 : 4 8 24 You testified a little bit about Hermelio Herrero. Have
25 you met Mr. Herrero?

Mr. D'Hemecourt Cross of Carl Walker

A I have.

Q Have you spoken about Mr. Herrero's case or Mr. Prible's case with Mr. Herrero?

A I have.

Q And how many conversations have you had with him?

A I would say not many. I can't recall the exact number.

Q Do you know how you came in contact with Mr. Herrero?

A Based on my memory, I had went back to the state court because I was on probation when I caught my federal case, and I had got the probation dismissed. And in the transit back from the Harris County going back to Beaumont prison, Mr. Herrero was on that bus with me.

Q And what did you talk about with Mr. Herrero?

A Initially, we didn't talk about nothing until we realized who we were. Then, once we realized who we were, and we realized we knew the same people, and he told me his name, then I knew who he was, and, you know, I was like, Wow.

Q Okay. And did he try to get you to write an affidavit for his case?

A He did.

Q Did you do that?

A No, I did not.

Q Why did you not write an affidavit for his case?

A Beaumont Medium is a very volatile, violent place, and if anyone was suspected of telling on somebody, told on somebody,

Mr. D'Hemecourt Cross of Carl Walker

1 or involved in that, it could have repercussions and
2 consequences. I had a 30-year sentence, and I didn't know what
3 he was going to do with that. I mean, I was always skeptical on
4 my involvement.

13:36:36 5 **Q** Okay. And you testified that you did sign a letter that was
6 sent to Ms. Siegler; is that correct?

13:36:44 7 **A** I did.

13:36:45 8 **Q** And did you have any in-person conversations with
9 Ms. Siegler or any phone calls with Ms. Siegler?

13:36:51 10 **A** I called Ms. Siegler, based on my recollection, I don't
11 know, maybe once or twice. I don't recall if I talked to her
12 directly. I can't say. It's been a while.

13:37:02 13 But I do know for a fact that I made more than at least one
14 attempt to reach out to Ms. Siegler because that's what I was
15 instructed to do.

13:37:15 16 **Q** And did she give you any -- any details about Mr. Prible's
17 case?

13:37:20 18 **A** She, personally? No, she did not.

13:37:22 19 **Q** Did she offer you any sort of deal?

13:37:24 20 **A** She, no, did not.

13:37:26 21 **Q** Did she ask you to --

13:37:27 22 **THE COURT:** Well, you're not sure you even spoke with
23 her. So --

13:37:30 24 **THE WITNESS:** Right.

13:37:30 25 **THE COURT:** So she couldn't have offered you a deal,

Mr. D'Hemecourt Cross of Carl Walker

1 if you didn't speak.

13:37:33 2 **THE WITNESS:** Right.

13:37:33 3 **THE COURT:** Okay. All right.

13:37:34 4 **BY MR. D'HEMECOURT:**

13:37:35 5 **Q** Well, to clarify, do you recall if you spoke with her?

13:37:37 6 **A** No. I have no recollections of actually speaking with her.

7 I only know that I did make an attempts to contact her, but I
8 don't -- I don't remember if we spoke or not.

13:37:46 9 **Q** Okay. And not to retread any of your previous testimony,
10 but do you recall when you were first approached by another
11 inmate about Mr. Prible's case?

13:38:09 12 **A** I want to say it was in 2001.

13:38:12 13 **Q** Okay.

13:38:14 14 **A** I -- the exact month or time, I would be speculating if I
15 was to try to pinpoint.

13:38:19 16 **Q** And do you recall who approached you?

13:38:23 17 **A** I know it was one of three people. The reason I can't --
18 can't be sure about the individual is because we were all in the
19 same unit. Oscar and I were cellies, so we were closer than me
20 and the other guys. And some of the other people were already
21 involved in the Herrero deal.

13:38:44 22 So I'm not sure exactly who told me what. I was just being
23 fed the information of who gave me the opportunity. Beckcom
24 used to go to church. Foreman used to go to church. Oscar
25 didn't go to church that much. His dad would come and see me

Mr. D'Hemecourt Cross of Carl Walker

1 sing in the choir or something sometimes, but, you know, I'm
2 just not sure on which one presented me directly.

13:39:10 3 Q And was Mr. Foreman there initially when you were first
4 approached? I don't know if -- even if he didn't necessarily
5 first approach you, was he -- was he present when you were first
6 approached?

13:39:24 7 A I don't recall if he was present. I'm not sure he's not the
8 person that initially initiated me being involved. So I'm not
9 sure.

13:39:33 10 Q And you testified that you had some specific details about
11 Mr. Prible's crime, correct?

13:39:39 12 A I did. I do.

13:39:40 13 Q When did you get those details?

13:39:44 14 A I think the details came into play once I agreed to take
15 part of the -- the deal. Whatever you call it.

13:39:57 16 Q And do you recall around when that was?

13:40:04 17 A It was before I met Mr. Prible. That's for sure.

13:40:07 18 Q Do you recall when you met Mr. Prible?

13:40:14 19 A No, not exactly.

13:40:16 20 Q I believe you testified that you had a conversation with
21 Foreman and Beckcom in their shared cell?

13:40:24 22 A Yes. And I did have a conversation with either or both of
23 them at various times in their cell.

13:40:31 24 Q Did -- do you recall if that's when you first got details of
25 the -- of the crime?

Mr. D'Hemecourt Cross of Carl Walker

13:40:42 1 **A** First? I don't know if that's when I first got it. I
2 can't -- I can't say that's when I first got it. I know I
3 did -- we did discuss details at -- in their cell because those
4 are the type of things you couldn't discuss openly. So you
5 would have to discuss it somewhere in private.

13:40:57 6 So, you know, it's not like we could walk on the yard and
7 risk being overheard, or in the chow hall and somebody
8 listening.

13:41:05 9 **Q** And do you recall what specific details were conveyed to
10 you?

13:41:12 11 **A** I was told about how people died or where their body was or
12 what evidence that linked Mr. Prible to the crime, who died in
13 the fire, stuff like that.

13:41:28 14 **Q** Okay. And did Mr. Prible ever give you any details about
15 his crime, or did he ever ask you for any legal advice?

13:41:38 16 **A** No, sir.

13:41:40 17 **Q** How many times did you speak with Mr. Prible?

13:41:45 18 **A** I can't put a number on that. I don't --

13:41:48 19 **THE COURT:** More than a dozen, or less than a dozen?

13:41:50 20 **THE WITNESS:** I would probably say less than a dozen.

13:41:55 21 **BY MR. D'HEMECOURT:**

13:41:55 22 **Q** And did he ever show you a probable cause affidavit from his
23 case?

13:41:58 24 **A** Mr. Prible?

13:42:00 25 **Q** Yes.

Mr. D'Hemecourt Cross of Carl Walker

13:42:00 1 **A** I don't recall him doing that.

13:42:04 2 **Q** Okay. Were you aware that Mr. Prible asked for legal advice
3 from any other inmates?

13:42:11 4 **A** I think so. I think so. I'm not sure.

13:42:14 5 I knew there was a guy there that used to be an attorney
6 that used to help people out, but I'm not sure if Mr. Prible
7 asked him for his help or not, but it's possible.

13:42:23 8 **Q** Is that a Mr. Liedtke? Does that sound familiar?

13:42:28 9 **A** Could be. I don't remember the guy's name verbatim, but
10 it's possible.

13:42:34 11 **Q** Were you aware if you were ever on a witness list for
12 Mr. Prible's case?

13:42:41 13 **A** I am aware that I was on a witness list for Mr. Prible's
14 case, yes.

13:42:48 15 **MR. D'HEMECOURT:** May I have a moment, Your Honor?

13:42:49 16 **THE COURT:** Yes, you may.

13:42:50 17 *(Sotto voce discussion between Mr. D'Hemecourt and*
13:42:51 18 *Ms. Miranda.)*

13:42:53 19 **BY MR. D'HEMECOURT:**

13:42:53 20 **Q** How did you know you were on the witness list?

13:42:58 21 **A** The same guy that I say may have known Mr. Prible -- or you
22 asked me did he ask -- Mr. Prible ask somebody for help. That
23 gentleman actually told me he seen my name on a witness list.

13:43:18 24 **Q** Okay.

13:43:19 25 **A** Uh-huh.

Mr. Rytting Redirect of Carl Walker

Q And you testified about Oscar Gonzalez, correct?

A Uh-huh.

Q Did you recall that Mr. Gonzalez knew the victims in Mr. Prible's case?

A He may have.

Q Okay. But do you have any specific recollection of that?

A I think he did. I'm pretty sure he did, but I can't say for sure. I think if he didn't have direct knowledge of them, I think, for sure, Mark did, or maybe him and Mark. I'm not sure.

It was one or the other or both. I'm not sure which one of them knew the family personally.

Q And you know they knew Prible or the family -- or the victim's family from their childhood. Is that what you understand?

A No. I don't know if it's from -- I don't know if they knew him from child- -- I don't know how long they knew them. I just know one or the two or both was aware of the family.

Q Okay.

MR. D'HEMECOURT: I'll pass the witness.

THE COURT: Thank you.

Any redirect?

MR. RYTTING: Just a couple of questions, Your Honor.

REDIRECT EXAMINATION

BY MR. RYTTING:

Q You mentioned that you -- you believed that you were on a

Mr. Rytting Redirect of Carl Walker

1 witness list, correct?

13:44:34 2 **A** Yes --

13:44:35 3 **Q** Okay.

13:44:35 4 **A** -- I do.

13:44:37 5 **Q** Did you -- I mean, did you ever see a witness list with your
6 name on it?

13:44:41 7 **A** Not that I can recall, no.

13:44:42 8 **THE COURT:** Did anybody talk to you about what your
9 testimony would have been? It doesn't sound like you would have
10 anything to contribute to a trial of Mr. Prible.

13:44:48 11 Did anybody talk to you about why you were being on a
12 witness list?

13:44:56 13 **THE WITNESS:** Did anybody talk to me why I would?

13:44:58 14 **THE COURT:** Yeah. Did anybody say, "What kind of
15 testimony can you provide?"

13:45:02 16 **MR. RYTTING:** May --

13:45:04 17 **THE WITNESS:** No. I don't -- I don't know. No. Did
18 anybody ask me what type of testimony -- like anybody from
19 where, like the prisoners?

13:45:11 20 **THE COURT:** No, from the government's office.

13:45:14 21 **THE WITNESS:** No. Nobody on the government office,
22 that I can recollect, spoke to me --

13:45:19 23 **THE COURT:** Okay.

13:45:19 24 **THE WITNESS:** -- directly, no.

13:45:21 25 **THE COURT:** Okay.

Mr. Rytting Redirect of Carl Walker

BY MR. RYTTING:

Q I just have one -- one question.

You mentioned the letters that you wrote --

A Uh-huh.

Q -- and you saw the letter that you signed?

A Yes.

Q And you said that you did not type that letter, correct?

A No, absolutely did not.

Q Do you know who did?

A I believe it was Mr. Beckcom. It could have been -- because the thing about the letters is, you can't type a letter like that in open. The only place to type letters is either in the law library, or maybe if you, like, a teacher or instructor or something teaching a class, you could have privacy or you'll have the exclusivity to have access to a typewriter.

If you type it anywhere else, you could be in the open. Somebody could see you or look over your shoulder or see what's being typed. So I know absolutely I did not type that letter.

Q Was there anyone in that -- well, going back to Exhibit 32, the picture with Mr. Prible surrounded by yourself, Mr. Foreman, Mr. Dominguez, Mr. Martinez, Oscar Gonzalez, and Mr. Beckcom --

A Uh-huh.

Q -- was there anyone besides Beckcom that was -- that would have typed that record -- that letter?

A I guess it's possible it could have been Mr. Foreman. It's

Mr. Rytting Redirect of Carl Walker

1 also possible it could have been -- I don't know. It's a
2 stretch, but it may have been Oscar. But I don't even think
3 Oscar would have did that.

13:47:17 4 It had to be somebody, like I said, to have -- have enough
5 privacy where you don't have to worry about getting seen with
6 those letters or get seen typing those letters. I mean, you
7 just can't walk into -- in the law library, you're -- your back
8 is to everybody else. You're facing the typewriter.

13:47:37 9 So it's not like you got -- you can't, like, hide.

13:47:42 10 Q And are people interested in what you're writing when they
11 go through the law library?

13:47:46 12 A Well, sometimes. Sometimes people just being nosy. But the
13 thing of it is, is if you get caught or if someone is exposed
14 participating in those type of activities, there could be
15 serious repercussions to that.

13:48:01 16 Q Okay. Did anyone -- you recall anyone handing you that
17 letter for your signature?

13:48:09 18 A Now, that definitely could have been Oscar because he was my
19 cellie, or Beckcom. I don't recall. I -- I mean --

13:48:15 20 Q Okay.

13:48:16 21 A -- to put a name on the exact person -- because it's four of
22 us was in the same building; four of us was in communication at
23 the same time. I mean, out of the group, the only four of us
24 was in that building. So I can't be -- it's been, like, almost
25 20 years. So I don't know exactly when I did them.

Video Deposition of Johnny Bonds

MR. RYTTING: No further questions.

THE COURT: Anything further?

MR. D'HEMECOURT: I have nothing further.

THE COURT: You may step down. Thank you very much,
Mr. Walker.

MS. SCARDINO: Your Honor, petitioner calls Johnny
Bonds by deposition.

THE COURT: Very well.

MS. SCARDINO: Johnny Bonds is the investigator for
the DA's office.

THE COURT: Okay.

(Video deposition of Johnny Bonds played as follows.)

EXAMINATION

Q Back in 2001 and 2002, when you were working on the Prible
case, what was your understanding of the Brady rule?

A On exclusion?

Q On having to return over Brady evidence.

A Anything that -- that would tend to show that the person was
innocent, you're supposed to turn it over.

Q Okay. What about anything that tended to be favorable to
that defendant?

A Well, it would be falling in the same category. If you --
if it tended to show the innocence, which would be favorable,
you're supposed to turn it over.

Q Okay. But innocence would be a much higher standard than

Video Deposition of Johnny Bonds

1 just something that was favorable, right?

13:49:40 2 **A** I suppose.

13:49:42 3 **Q** Okay. Back in 2001 and 2002, the DA's office had an open
4 file policy; is that correct?

13:49:49 5 **A** As far as turning over the files to the defense attorneys?

13:49:52 6 **Q** Yes.

13:49:55 7 **A** You know, to be honest with you, I don't know.

13:49:57 8 **Q** Okay. Do you recall hearing that term "open file"?

13:50:04 9 **A** Not so much earlier. More so later after -- after I
10 retired. I don't -- you know, I think that was a big issue in
11 2008, 2009 in the elections at that time, but not so much before
12 then.

13:50:23 13 **Q** Okay. So you don't recall, back when you were there in 2001
14 and 2002, the DA having an open file policy?

13:50:29 15 **A** I know we turned files over. I'm -- I'm sure that there
16 were some things in the files that weren't turned over.

13:50:35 17 **Q** Okay. Do you know if the defense attorneys were able to
18 make copies of any information out of the file?

13:50:44 19 **A** I would -- I would say if -- if they needed copies and asked
20 to have them done, they probably would have been allowed to, but
21 I don't know if that would -- again, I had nothing to do with
22 them sitting in there. I know they -- I have seen them doing
23 exactly what this gentleman is doing, taking a lot of notes.

13:51:03 24 I don't -- I actually don't know the -- the policy on
25 making copies. I know that -- that we did have a policy of not

Video Deposition of Johnny Bonds

1 turning over offense reports because they were not our work
2 product.

13:51:20 3 Q Okay. So were you privy -- as an investigator at the DA's
4 office, were you and Ms. Siegler privy to all the supplemental
5 reports that the sheriff's office was making on a case?

13:51:30 6 A Yes.

13:51:31 7 Q Okay. But it was the policy of the DA's office not to turn
8 over those supplemental reports --

13:51:37 9 A They --

13:51:37 10 Q -- to defense counsel?

13:51:38 11 A Not to copy.

13:51:39 12 Q Not to copy?

13:51:40 13 A Yes. They were allowed to read -- read the reports. But as
14 far as making a actual Xerox copy of the offense report and
15 giving it to them, it is my -- it is my recollection that we did
16 not do that.

13:51:53 17 They were allowed to read everything in the file, but as
18 far as Xeroxing or making a copy, we never -- we never -- to my
19 knowledge, I don't recall ever copying a complete offense report
20 and giving it to the defense attorney. They may have been
21 allowed to copy one or two pages, but as far as the whole
22 report, I don't think so.

13:52:13 23 Q Would that have been improper, in your mind, if -- if
24 supplemental reports had been left out of the offense report
25 given to the defense counsel?

Video Deposition of Johnny Bonds

13:52:23 1 **A** You know, I don't know. I don't -- I don't personally think
2 it should have been a problem, but I don't know. I can't say
3 what -- what the attorneys think. I'm not -- you know.

13:52:40 4 **Q** And ultimately you'd agree, I think, that the prosecution
5 team are the only individuals that have a complete knowledge of
6 what is in that file -- their file at the DA's office, right?

13:52:51 7 **A** I would think so, yes.

13:52:53 8 **Q** Because an attorney -- a defense attorney could come in to
9 review the file, but the only thing stopping someone from taking
10 something out of that file would be that own DA's honesty or
11 integrity, correct?

13:53:07 12 **A** That would prevent the defense attorney from taking
13 something out?

13:53:10 14 **Q** That would prevent the prosecutor from not -- from taking a
15 document out. In other words, there's no way for the defense
16 attorney, who's coming in to view the file, to know whether a
17 defense -- or a prosecutor has taken anything out of that file?

13:53:22 18 **A** Well, I think -- I think there probably would be. Seems
19 like I recall there were times that there were some, I need to
20 see this, and, No, you're not allowed to see that.

13:53:33 21 And I can't believe specific on this case or any other
22 case, but I do recall now that there were times that there were
23 some disagreement on what they were allowed to see.

13:53:45 24 **Q** Okay. What if it --

13:53:47 25 **A** So I'm not real sure exactly what it was, but there were

Video Deposition of Johnny Bonds

1 some -- some things they were not allowed to see or take copies
2 of.

13:53:54 3 **Q** Was there any written policy at the district attorney's
4 office about dealing with informants?

13:53:59 5 **A** Not to my knowledge.

13:54:02 6 And that's another thing. This is for cops, for
7 investigators, and this is a new deal. When they did away with
8 federal parole, it was a whole new field of information.

13:54:15 9 And -- and, you know, because that's the only way -- and
10 this -- to be honest with you, this is the first case --
11 Prible's case was the first one I had ever been involved in
12 where I found out that they could get their sentence reduced. I
13 did not know that could happen.

13:54:32 14 **Q** Would you ever talk to different informants about the same
15 case? Maybe not in the same room, but is there ever a time when
16 you might be talking to more than one informant about the same
17 murder case?

13:54:46 18 **A** Not -- not -- no. No, not like having them lined up out in
19 the hall and bring them in one at a time. No, no, no, no.

13:54:58 20 **Q** What if another prisoner that you've used in the past as an
21 informant instructs an inmate to call you, saying this guy got
22 me a deal -- or this -- this prosecutor got me a deal in the
23 past, you need to contact her, see if you can help her out in
24 this case?

13:55:15 25 **A** You know --

Video Deposition of Johnny Bonds

13:55:17 1 Q Would that raise a red flag?

13:55:20 2 A Yeah, possibly. And I know where you're going with this,
3 and I might be able to make this a lot clearer for everybody.

13:55:27 4 Q Let's go back to the credibility of snitches that we were
5 talking about a minute ago.

13:55:30 6 What if a snitch came to you and said he heard a confession
7 from another prisoner, okay, and we'll call that snitch that
8 came to you snitch No. 1, okay? And then later his cellmate
9 reached out to you, and he said he heard it, too, and he wanted
10 in on the action. Okay. That's Cellmate No. 2.

13:55:51 11 Would you be concerned that maybe the second snitch didn't
12 actually hear it from the criminal's mouth, he heard it from the
13 cellmate?

13:55:59 14 A That's possible, yes.

13:56:01 15 Q Okay.

13:56:05 16 What if you asked that second snitch if he talked to his
17 cellmate about the confession, and he said, No, I didn't know
18 the guy confessed to my cellmate. Would you believe that?

13:56:15 19 A Well, here again, one of the things you do is look at the --
20 you know, Nathan Foreman, that's -- that's exactly what you're
21 talking about. And he contacts our office, I think, by letter
22 to Kelly, I'm not real sure. And we talked to him one time.
23 And it didn't happen in Beaumont. It happened here in Houston.

13:56:42 24 And, you know, and that's -- and he goes -- he starts
25 telling us basically he did it, you know, and he couldn't give

Video Deposition of Johnny Bonds

1 us any details. That's one of the reasons I'm saying I could
2 make this a whole lot shorter. And two minutes into his
3 conversation, I'm like, This guy is lying. He doesn't know
4 anything about this case.

13:57:00 5 Then I asked him to describe Prible. He's like, What? I
6 said, What does he look like? And he couldn't give me a
7 physical description. And at that point, I don't think he -- at
8 that time we talked to Nathan Foreman, I don't think he had ever
9 met Prible. He may have talked to somebody else and knew -- and
10 at the time we talked to Nathan Foreman, I think Beckcom had
11 already come forward with his information. And I've never
12 talked to Beckcom.

13:57:26 13 Q Okay.

13:57:27 14 A I've never talked to him. The only two people in this case
15 that I've talked to are Nathan Foreman and Prible.

13:57:34 16 Q You never talked to Beckcom?

13:57:35 17 A I never talked to Beckcom. I never met him.

13:57:37 18 Q And you said a moment ago you had only had one face-to-face
19 visit Foreman; is that right?

13:57:41 20 A That's it. That was this day.

13:57:43 21 Q And that was the one you just described a moment ago, the
22 fed- -- and it was at the Federal Detention Center here in
23 Houston?

13:57:47 24 A In Houston. I never saw him in Beaumont.

13:57:49 25 Q Okay. And by then, you said Beckcom had come -- already

Video Deposition of Johnny Bonds

1 come forward?

13:57:53 2 **A** I'm pretty sure Beckcom -- the information from Beckcom was
3 already known to Kelly. I -- I -- to my knowledge, I've never
4 met or seen Beckcom. I don't even think I saw him in the
5 courtroom because I didn't go in the courtroom to listen to his
6 testimony.

13:58:10 7 **Q** Okay.

13:58:14 8 **A** But it was real obvious, after talking to Foreman for a few
9 minutes, he was just lying. And, basically, we confronted him
10 with it.

13:58:21 11 **Q** And you determined that -- or what did you say when you
12 confronted him with it?

13:58:26 13 **A** You know -- you know, You're wasting our time, you know.
14 The bottom line is, we told him we don't need people lying to
15 us, you know. If you have good information, that's fine. But
16 don't come to us with a bunch of lies because we're not going to
17 be able to use lies and --

13:58:45 18 **Q** What --

13:58:45 19 **A** -- and then blew him off.

13:58:46 20 And I'll tell you something. He kind of -- I remember he
21 kind of like, Well, is it worth a try. I mean, he was -- he was
22 trying to get in on the bandwagon, you know, get some of this
23 good time. And it was obvious he knew that it wasn't working.

13:59:00 24 **Q** Were there other people trying to get on this bandwagon?

13:59:03 25 **A** I don't know of any others, no. I never talked to anybody

Video Deposition of Johnny Bonds

1 except him and Prible, and that's it.

13:59:09 2 Q Him and Prible. No other --

13:59:11 3 A Inmates.

13:59:11 4 Q -- prisoners --

13:59:13 5 A No.

13:59:13 6 Q -- about this case?

13:59:15 7 A No.

13:59:15 8 Q Okay.

13:59:15 9 A You know, and his -- his reaction, I remember he kind of
10 smirked like, Well, didn't work.

13:59:23 11 Q What lie did you catch him -- Nathan Foreman in?

13:59:27 12 A Well, he just couldn't give any details. He was kind of
13 vague in information. It was real obvious that he had not
14 talked to Prible. And, in fact, I was under the impression he
15 hadn't even met him because he couldn't give me -- or if he'd
16 met him, he couldn't describe him, you know.

13:59:43 17 Q So if you look at these notes that you took at that meeting
18 with Foreman, it says, "Wife shot, two babies in fire."

13:59:49 19 I suppose that was maybe the infor- -- what you were just
20 saying that he wasn't telling the truth or it was obvious he
21 hadn't talked to Prible?

13:59:57 22 A He may have -- you know, that's just -- I don't know if I
23 put that down as something that he didn't know or if that's all
24 he knew because two babies isn't right. It was three.

14:00:06 25 Q Right.

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1 14:00:06 **A** And, you know, it was -- anything he could have gotten -- it
2 wasn't anything that he couldn't have gotten from the newspaper
3 or talking to somebody else that knew something.

1 14:00:18 **Q** Yeah. And when you --

1 14:00:20 **A** But I got the impression that he didn't actually have any
6 information that he got directly from Prible.

1 14:00:25 **Q** Okay. So charges were not accepted against Prible in '99,
8 right?

1 14:00:29 **A** Not to my knowledge, no.

1 14:00:30 **Q** Okay. Do you know why that DNA match would not be enough to
11 have charged him with the -- the murders?

1 14:00:37 **A** It's my understanding that he came forward and said that,
13 Yeah, yeah, that's my DNA because we had voluntary sexual
14 relations. So that -- that was -- I think he said that right
15 from the very beginning. You know, so if he had denied it, I
16 think maybe they would have filed charges, but he -- he admitted
17 it.

1 14:00:56 **Q** Okay. So in 1999, the evidence was so weak at that point
19 that the DA's office determined they couldn't even present it to
20 the Grand Jury, let alone get an indictment or convince a jury
21 beyond a reasonable doubt, right?

1 14:01:10 **A** I don't know if that was presented to the Grand Jury or not,
23 so I don't know.

1 14:01:14 **Q** Was it your practice when -- or your experience, when you
25 were at the DA's office, that if there was probable cause, the

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1 case would be presented to the Grand Jury? It wouldn't just sit
2 around going cold, right?

1 4 : 0 1 : 2 7 3 **A** True.

1 4 : 0 1 : 2 7 4 **Q** So the case was put aside, and no more leads were developed.
5 All the evidence, it sounded like that they had it in 1999. But
6 in 2001, the DA's office started looking at it again, right?

1 4 : 0 1 : 4 3 7 Do you recall that?

1 4 : 0 1 : 4 4 8 **A** Yes. And I -- I don't -- I can't say exactly why. I can
9 assume that it was because Beckcom came forward. I don't know
10 that, but I'm thinking that's why it was reactivated.

1 4 : 0 2 : 0 2 11 **Q** Okay. And do you recall how Beckcom came forward? Was it
12 by a phone call?

1 4 : 0 2 : 0 9 13 **A** I don't know.

1 4 : 0 2 : 1 0 14 **Q** A letter?

1 4 : 0 2 : 1 1 15 **A** I don't know.

1 4 : 0 2 : 1 1 16 **Q** You can't recall?

1 4 : 0 2 : 1 2 17 **A** I know -- I know that federal inmates are allowed to make
18 phone calls.

1 4 : 0 2 : 1 5 19 **Q** Okay.

1 4 : 0 2 : 1 6 20 **A** Which was surprising.

1 4 : 0 2 : 1 8 21 **Q** When you spoke with Foreman, and -- and I believe you
22 said -- did you also meet -- Foreman's the only informant in
23 this case that you met with in Beaumont, right?

1 4 : 0 2 : 2 9 24 **A** Correct. No, and I didn't -- not Beaumont, Houston.

1 4 : 0 2 : 3 1 25 **Q** In Houston?

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1 4 : 0 2 : 3 2 1 **A** Yeah.

1 4 : 0 2 : 3 2 2 **Q** Okay. Okay.

1 4 : 0 2 : 3 3 3 **A** And it was very short. We weren't with him for 10 minutes.

1 4 : 0 2 : 3 6 4 **Q** Okay. So you never went to any meetings with any informants
5 in FCI Beaumont?

1 4 : 0 2 : 4 1 6 **A** No.

1 4 : 0 2 : 4 1 7 **Q** Mr. Bonds, when we left off, we were talking about how the
8 case got picked up again by you and Ms. Siegler in 2001.

1 4 : 0 2 : 5 1 9 And you -- you thought it might have picked up because you
10 got a call from Beckcom?

1 4 : 0 2 : 5 5 11 **A** Not me. I'm assuming that she got information. I don't
12 know whether it was a call or a letter. I don't know -- I don't
13 know --

1 4 : 0 3 : 0 2 14 **Q** Okay.

1 4 : 0 3 : 0 2 15 **A** -- how.

1 4 : 0 3 : 0 3 16 **Q** And when you and Kelly picked this case back up in 2001, was
17 this one of those cases where we talked about earlier, it wasn't
18 an issue of solving the case from scratch. It was you had a
19 suspect, and it's a matter of building the case now so you could
20 bring charges against that suspect?

1 4 : 0 3 : 2 2 21 **A** Well, yeah. Yeah, basically, that's the way it would work.

1 4 : 0 3 : 2 6 22 **Q** Exhibit 52 is a handwritten letter from Jesse Moreno to
23 Ms. Siegler on April 4th, 2001. If you could take a look at
24 that letter and let me know if you've ever seen it before.

1 4 : 0 3 : 4 5 25 **A** I don't recall ever seeing this before.

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1 4:03:48 1 Q Okay. I'm going to show you Exhibit 53.

1 4:03:51 2 Exhibit 53 is another handwritten letter dated April 10th,
3 2001, and this one is from Celia Moreno to Ms. Siegler.

1 4:04:06 4 Can you take a look at that letter and let me know if you
5 ever saw it?

1 4:04:10 6 A I've never seen it before.

1 4:04:13 7 Q Now, in July 3rd, 2001, Ms. Siegler went to meet with Jesse
8 Moreno in person.

1 4:04:22 9 A I have no idea.

1 4:04:24 10 Q You have no -- no knowledge of that meeting?

1 4:04:26 11 A I wasn't part of that, no.

1 4:04:27 12 Q Okay. And that meeting was recorded. You've never seen a
13 recording of that meeting?

1 4:04:31 14 A I have no idea.

1 4:04:32 15 Q Okay. And she spoke with him primarily about the Hermilio
16 Herrero case. Does that case ring a bell?

1 4:04:39 17 A Not at all.

1 4:04:40 18 Q Now, do you know if, at that July 3rd, 2001, meeting
19 Ms. Moreno -- Mr. Moreno told Ms. Siegler about his friend,
20 Nathan Foreman, who was in the hole with him at that time?

1 4:04:50 21 A I have no idea.

1 4:04:51 22 Q Okay. You don't recall ever hearing that from Ms. Siegler?

1 4:04:55 23 A No.

1 4:04:55 24 The only time I made contact with him was at the unit here
25 in Houston, downtown Houston. But I don't know how he contacted

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1 our office. I don't know if it was by a phone call or a letter.
2 I don't have any idea. It wasn't from me. I didn't have any
3 direct contact with him until we went to talk to him.

1 4:05:11 4 Q Now, before Foreman reached out to you and Kelly about -- or
5 to Kelly, I guess, about Mr. Prible's case, had you-all ever
6 worked with him previously in a case?

1 4:05:22 7 A Foreman?

1 4:05:22 8 Q Uh-huh.

1 4:05:23 9 A I never met him until -- the only time I ever talked to that
10 guy was in August of 2001. I never talked to him before or
11 since.

1 4:05:30 12 Q Okay. Do you know if -- if Ms. Siegler had had a previous
13 relationship with him?

1 4:05:34 14 A I don't think she had because -- I'm pretty sure she had
15 not.

1 4:05:43 16 Q Okay. And in that -- let me see. In the transcript of the
17 July 3rd, 2001, meeting, which I can give you the entire thing
18 to read at the break, if you want, but it's -- it's pretty
19 thick.

1 4:06:01 20 But on page 12, she said Nathan -- sorry-- Jesse Moreno
21 says to Ms. Siegler, quote, Nathan Foreman, the one that I was
22 asking you about.

1 4:06:11 23 And it sounds as if Ms. Siegler, at that point, had not
24 known who Mr. Foreman was. Does that comport with your
25 recollection?

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1 4:06:20 1 **A** You know, my recollection is, is when we went to meet him at
2 the federal prison here in Houston, that was first time either
3 one of us had ever met him.

1 4:06:30 4 **Q** Okay. Okay. But you don't recall who told him to contact
5 your office?

1 4:06:33 6 **A** No, I have no idea.

1 4:06:34 7 **Q** Okay. Because the inmates wouldn't just know who at the --
8 at the DA's office to contact. They would have to have an idea
9 of who was working on a specific case, right?

1 4:06:44 10 **A** Well, I'm -- I'm assuming that he knew that Kelly was
11 working on this case. I don't know how he knew.

1 4:06:51 12 **Q** You see in that Exhibit 55 that charges were accepted
13 against Herrero that day based entirely on Jesse Moreno's word?

1 4:06:59 14 You see that?

1 4:07:01 15 **A** Well, I see the charges were filed, yeah.

1 4:07:03 16 **Q** Okay. And charges were also filed against Prible that very
17 day. Did you know that?

1 4:07:08 18 **A** No, I did not.

1 4:07:09 19 **Q** On July 5th, 2001?

1 4:07:10 20 Okay. Do you know why charges were all of a sudden
21 accepted against Prible? What new evidence came to light?

1 4:07:18 22 **A** Well, the new evidence, I'm assuming, was Beckcom. That --
23 that, combined with the DNA evidence and, you know, the other
24 circumstances. I mean, I think Beckcom was the icing on the
25 cake.

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1 4:07:30 1 Q Okay. Is it possible that at that July 3rd, '01, meeting
2 with Moreno, that Ms. Siegler discussed Prible's case with
3 Moreno, who was old friends with Nathan Foreman?

1 4:07:42 4 A I -- you know, I have no idea. I can't say.

1 4:07:49 5 Q Okay.

1 4:07:49 6 A I have no idea.

1 4:07:50 7 Q You can't deny it?

1 4:07:51 8 A No, but I -- I don't know.

1 4:07:52 9 Q You don't know.

1 4:07:53 10 So we talked about that newspaper article in April 15th,
11 2001, when Curtis Brown said someone needs to come forward with
12 information about this before we can make any arrests, and
13 saying that they didn't have probable cause at that time to
14 arrest. That was April 15th, 2001.

1 4:08:12 15 By July 5th, 2001, they now have found probable cause to
16 arrest Mr. Prible, right?

1 4:08:17 17 A Apparently.

1 4:08:18 18 Q Okay. What was that new information?

1 4:08:21 19 A Well, it's not in -- I don't see it in here.

1 4:08:24 20 Q I know.

1 4:08:24 21 A I'm assuming it's Beckcom, but there's no mention of Beckcom
22 in this --

1 4:08:28 23 Q Okay.

1 4:08:29 24 A -- in this probable cause.

1 4:08:29 25 Q On August 7th, 2001, you printed out a document about Nathan

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1 Foreman that is Exhibit 88. I'm going to ask you what this
2 document is. There's lots of them in the file. Is that the
3 NCIC?

1 4:08:41 4 **A** No, this is a criminal history.

1 4:08:43 5 **Q** Okay. And it looks like you printed that out on August 7th,
6 2001?

1 4:08:53 7 **A** It would be the day before we went to talk to him.

1 4:08:55 8 **Q** Uh-huh. And are those criminal histories, are they
9 available to the general public or just law enforcement?

1 4:09:01 10 **A** They are not. They're law enforcement. They're
11 confidential.

1 4:09:03 12 **Q** Okay. Do you know of anyone else testifying before the
13 Grand Jury in Prible's case?

1 4:09:07 14 **A** No, I don't.

1 4:09:08 15 **Q** You don't think anyone else testified --

1 4:09:10 16 **A** I don't --

1 4:09:10 17 **Q** -- or anyone testified?

1 4:09:11 18 **A** I don't know.

1 4:09:12 19 **Q** You don't know one way or the other?

1 4:09:13 20 **A** Huh-uh. I don't know if she just took it in or, you know,
21 if she took one of the detectives in. I don't know.

1 4:09:19 22 **Q** Okay. And how does that work if you just take it in? Like,
23 what does that mean?

1 4:09:22 24 **A** Well, she presents it and asks for an indictment.

1 4:09:24 25 **Q** Okay. In the Temple case, Ms. Siegler testified that her

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1 practice was to withhold witness statements from the defense
2 until after the witness testified. And then the defense
3 could -- would have to read them during a break in the trial.

1 4 : 0 9 : 3 6 4 Do you recall what the situation was in Mr. Prible's case,
5 if witness statements were provided to the defense?

1 4 : 0 9 : 4 4 6 **A** I have no idea.

1 4 : 0 9 : 4 5 7 **Q** Or when they were provided to the defense?

1 4 : 0 9 : 4 7 8 **A** I don't know.

1 4 : 0 9 : 4 8 9 **Q** Okay. So you don't -- you couldn't deny that they were
10 withheld? You don't know if they were withheld, either --
11 either way?

1 4 : 0 9 : 5 4 12 **A** I don't -- I don't have any idea one --

1 4 : 0 9 : 5 5 13 **Q** Okay.

1 4 : 0 9 : 5 5 14 **A** -- way or the other.

1 4 : 0 9 : 5 6 15 **Q** Do you recall this being her practice?

1 4 : 1 0 : 0 1 16 **A** I know that Kelly didn't give up anything she didn't have to
17 give up. I know she followed the law. I never saw her do
18 anything that was -- was in violation of the rules, so...

1 4 : 1 0 : 1 4 19 **Q** Okay.

1 4 : 1 0 : 1 5 20 **A** But I know she never gave anything away. She made them --
21 she made them -- she made the defense earn what they got.

1 4 : 1 0 : 2 0 22 **Q** Okay. Do you know if the rules about disclosing witness
23 statements changed depending on whether that was a testifying
24 witness or not?

1 4 : 1 0 : 3 1 25 **A** I know there were some changes after I retired. I'm not

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1 real sure what the changes are about disclosure. But I know
2 there have been some changes.

1 4 : 1 0 : 4 0 3 Q Like within the -- the policy at the DA's office?

1 4 : 1 0 : 4 4 4 A No, I'm talking about the state law.

1 4 : 1 0 : 4 6 5 Q The state law?

1 4 : 1 0 : 4 7 6 A Yeah.

1 4 : 1 0 : 4 7 7 Q Right. Okay. So back in 2001, 2002, do you recall if it
8 was prac- -- if it was common practice to withhold statements
9 unless the witness was testifying?

1 4 : 1 1 : 0 0 10 A You know, I don't know the exact rule. I know that
11 everything we did was in compliance with state law.

1 4 : 1 1 : 0 8 12 Q Okay.

1 4 : 1 1 : 0 8 13 A We didn't -- we didn't do anything that was in violation of
14 state law.

1 4 : 1 1 : 1 1 15 Q Okay. And I'm asking what your -- what the practice was.

1 4 : 1 1 : 1 4 16 A I don't know what the practice was.

1 4 : 1 1 : 1 5 17 Q What Ms. Siegler's practice was.

1 4 : 1 1 : 1 7 18 A I think -- I think -- you know, actually, I think probably
19 some -- some prosecutors had different -- different practices
20 than others. So I don't -- I don't know. But to my knowledge,
21 nobody did anything they weren't supposed to do.

1 4 : 1 1 : 2 9 22 Q Okay. Do you know if Ms. Siegler's practice was to withhold
23 witness statements from witnesses who did not testify?

1 4 : 1 1 : 3 6 24 A I don't know.

1 4 : 1 1 : 4 0 25 Q So you can't deny that that was her practice, you just don't

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1 know?

1 4 : 1 1 : 4 3 2 **A** I don't know.

1 4 : 1 1 : 4 3 3 **Q** And was it your practice at the DA's office to disclose
4 these reports to the defense attorneys?

1 4 : 1 1 : 4 8 5 **A** Well, I would think -- I don't know if it was our practice.
6 I think that we'd, you know -- we'd disclose if there was -- if
7 there was any problem with credibility, that we'd disclose it.
8 I don't know that it was a -- we would not just say, Here.
9 Here's his criminal history.

1 4 : 1 2 : 0 4 10 **Q** All of these criminal history reports that we just went
11 through and this --

1 4 : 1 2 : 0 8 12 **A** Offense report.

1 4 : 1 2 : 0 8 13 **Q** -- offense report, as a matter of course, would those have
14 been disclosed to defense counsel or not?

1 4 : 1 2 : 1 9 15 **A** I would think that if they were witnesses, yes, that they
16 would have been.

1 4 : 1 2 : 2 2 17 **Q** Okay.

1 4 : 1 2 : 2 3 18 **A** I don't know.

1 4 : 1 2 : 2 4 19 **Q** But not if they weren't witnesses?

1 4 : 1 2 : 2 6 20 **A** Not if they're not witnesses.

1 4 : 1 2 : 2 7 21 **Q** Okay. We talked earlier in the deposition about how,
22 ultimately, it's the prosecution team that really knows
23 everything that's in a -- in a particular case file. And it's
24 up to them to show the defense counsel everything that defense
25 counsel is entitled to under the law, right?

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1 4 : 1 2 : 4 4 1 **A** Under the present law, yes.

1 4 : 1 2 : 4 6 2 **Q** Yeah. Okay. And one way a prosecutor could conceal Brady
3 evidence would be by taking it out of the file before the file
4 is given to the defense attorney. That's one way that it could
5 be done, right?

1 4 : 1 2 : 5 9 6 **A** Well, I'm sure, yeah.

1 4 : 1 3 : 0 1 7 **Q** Okay. Another way is by putting evidence in the file marked
8 work product or privileged, right?

1 4 : 1 3 : 0 6 9 **A** That's possible, yes.

1 4 : 1 3 : 0 8 10 **Q** Okay. In Ms. Siegler's work file were the following
11 documents. I'll go through it with you. And these -- these
12 were a work product file for the Prible case.

1 4 : 1 3 : 2 4 13 First is Exhibit 112. If you could read that to yourself.

1 4 : 1 3 : 2 8 14 **A** Okay.

1 4 : 1 3 : 3 0 15 **Q** And we'll come back to discuss this more in detail later.
16 But for now, I just want to ask if you recall ever seeing that
17 letter?

1 4 : 1 3 : 3 8 18 **A** No.

1 4 : 1 3 : 3 9 19 **Q** You never saw that letter?

1 4 : 1 3 : 4 1 20 **A** I don't recall ever seeing it.

1 4 : 1 3 : 4 2 21 **Q** Okay. I'm going show you another item that was found in
22 Ms. Siegler's work product file, Exhibit 113.

1 4 : 1 3 : 5 8 23 That's a letter from Carl Walker to Ms. Siegler.

1 4 : 1 4 : 0 3 24 **A** Okay.

1 4 : 1 4 : 0 4 25 **Q** Did you ever see that letter?

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A No, I don't remember it.

Q Okay. Exhibit 114 is a letter from Mark Martinez to Ms. Siegler dated April 30th, 2002.

Did Ms. Siegler show you that letter?

A I've never seen it before.

Q Why do you think Ms. Siegler didn't show you these letters from the Prible case?

A I have no idea. I mean, these are dated well past the times that we were working before the indictment.

Did any of these people testify?

Q They did not, no.

A Okay. Well, I guess she decided she didn't need them or didn't believe them.

Q Okay. And so if it was -- if she didn't believe a witness, was there -- was it her practice not to disclose that witness's statement to the other side?

A I don't see anything exculpatory in these statements for the defendant. They're all saying he confessed to doing it. So I don't see where it would help him.

Q Would it have been exculpatory if -- for the defense to have known that there was a web of informants auditioning for this role to testify against Mr. Prible?

A No, they don't -- I don't know -- I don't -- you know, I can't say that. Again, the -- doing away with federal parole just opened up a whole bag of worms in the federal prisons.

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1 4 : 1 5 : 2 8 1 Q Okay.

1 4 : 1 5 : 2 8 2 A I mean, they were all looking for an out. So I don't know,
3 you know, that defense attorneys were aware of this in 2001. We
4 were becoming aware of it, you know, the prosecution. It was
5 somewhat of a new phenomenon for us because normally, you don't
6 get that many convicted felons coming forward from a unit from a
7 prison.

1 4 : 1 5 : 5 1 8 Q So defense attorneys might not even be aware that this new
9 phenomenon --

1 4 : 1 5 : 5 6 10 A At the time, maybe, maybe not. I don't know.

1 4 : 1 5 : 5 7 11 Q Okay. Exhibit 163 is photographs -- various photographs
12 with Jeff Prible with the informants that had written to
13 Ms. Siegler.

1 4 : 1 6 : 0 9 14 A Okay.

1 4 : 1 6 : 0 9 15 Q And the informants -- the informant that originally --
16 eventually testified against Mr. Prible at trial.

1 4 : 1 6 : 1 8 17 Do those look familiar?

1 4 : 1 6 : 2 2 18 A I -- I saw these in the paperwork you filed in your
19 documents. Prior to that, I had never seen these before.

1 4 : 1 6 : 2 8 20 Q Okay. Was that Ms. Siegler's practice when working with
21 informants, to have them take photographs with the defendant to
22 show a close relationship?

1 4 : 1 6 : 3 8 23 A I would say no. No.

1 4 : 1 6 : 4 1 24 Q You don't -- it's not something you've --

1 4 : 1 6 : 4 3 25 A No.

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14:16:43 1 Q -- ever seen a lot of defendant --

14:16:44 2 A No. Discussing or ever hearing of, no.

14:16:47 3 Q Okay.

14:16:47 4 A No, absolutely not.

14:16:48 5 Q Now, if it turns out that at least one of the informants in
6 this photograph in Exhibit 163 is Nathan Foreman --

14:16:56 7 A Okay.

14:16:58 8 Q Now, if it turned out, as it did, that Nathan Foreman was
9 lying about a confession that he had gotten from Prible --

14:17:06 10 A Well, now, see, we talked to him in August of '01. These
11 are dated November of '01. This would have been three months
12 after -- at least three months, yeah. November the 11th, '01.

14:17:17 13 We talked to him on August the 8th. I don't have any idea
14 where these were made. So they were in separate units when we
15 talked to him. They weren't even in the same facility.

14:17:27 16 Q Okay. So when you -- when you first talked to Foreman, he
17 hadn't even met Prible. He was in a separate facility?

14:17:32 18 A He claimed he had met him.

14:17:33 19 Q Okay.

14:17:33 20 A After talking to him, I don't think he had ever met him
21 because he couldn't physically describe him, and I don't think
22 you could forget him, you know.

14:17:41 23 Q Okay. Do you think the identity of Nathan Foreman and that
24 he had come forward with false information about this crime was,
25 in itself, Brady information that should have been turned over

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1 to the defense?

14:17:57 2 **A** You know, I've never thought about it, but, no. You've got
3 somebody trying to say he confessed. That certainly doesn't
4 help the defendant. So, no, I never considered it to be Brady.

14:18:11 5 **Q** Okay. Even if he was later made cellmates with Michael
6 Beckcom, who was the person that ended up confessing -- or
7 testifying?

14:18:21 8 **A** See, I -- I don't know -- I don't know that.

14:18:22 9 **Q** You don't know that he was his cellmate?

14:18:24 10 **A** No, I have no idea.

14:18:25 11 **Q** You don't recall that he was his --

14:18:26 12 **A** No.

14:18:26 13 **Q** -- cellmate at all?

14:18:27 14 **A** I don't.

14:18:28 15 **Q** Okay.

14:18:28 16 **A** And I've never heard that.

14:18:29 17 **Q** Are you denying that he was his cellmate?

14:18:32 18 **A** I don't know.

14:18:32 19 **Q** You don't know? Okay.

14:18:33 20 **A** Okay.

14:18:33 21 **Q** If you heard that that was -- that Michael Beckcom was his
22 cellmate, would that raise a red flag since he had been talking
23 with Nathan Foreman about the case since August?

14:18:44 24 **A** You know, apparently, Foreman had some information from
25 somebody that Prible was the suspect and that, you know, that he

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1 possibly could get some leverage by saying he confessed to me.

1 4 : 1 8 : 5 7 2 Q Okay.

1 4 : 1 8 : 5 7 3 A Now -- so he knew about Prible. I don't know how he knew
4 about Prible. I don't know if he got it from Foreman or from --
5 I mean, from Beckcom or somebody else. I don't know where he
6 got the information. But he did know about Prible.

1 4 : 1 9 : 0 9 7 Q Okay.

1 4 : 1 9 : 0 9 8 A So I have no idea how.

1 4 : 1 9 : 1 1 9 Q Okay. Do you know where these were made?

1 4 : 1 9 : 2 0 1 0 A At FCI Beaumont.

1 4 : 1 9 : 2 1 1 1 Q Okay.

1 4 : 1 9 : 2 4 1 2 A So apparently, he ended up -- Foreman did end up in
13 Beaumont.

1 4 : 1 9 : 2 7 1 4 Q Yes.

1 4 : 1 9 : 2 7 1 5 A I mean, there he is, okay, because when we talked to him, he
16 was not at Beaumont.

1 4 : 1 9 : 3 0 1 7 Q Right. Okay. In August 2001?

1 4 : 1 9 : 3 1 1 8 A In August 2001.

1 4 : 1 9 : 3 2 1 9 Q Okay. So I want to talk with you a little bit about how we
20 went from using Foreman to using Beckcom instead as a witness.

1 4 : 1 9 : 4 3 2 1 So you -- you testified, I believe, that you had met or
22 somehow communicated -- you and Kelly had communicated with
23 Beckcom before July --

1 4 : 1 9 : 5 4 2 4 A Not no.

1 4 : 1 9 : 5 4 2 5 Q -- 5th, 2001?

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1 4 : 1 9 : 5 5 1 **A** No, I never talked to him.

1 4 : 1 9 : 5 7 2 **Q** Not you?

1 4 : 1 9 : 5 7 3 **A** Yeah.

1 4 : 1 9 : 5 7 4 **Q** Okay. But Kelly must have --

1 4 : 2 0 : 0 0 5 **A** Apparently, she had.

1 4 : 2 0 : 0 1 6 **Q** -- communicated with him?

1 4 : 2 0 : 0 1 7 **A** Yes. Yes.

1 4 : 2 0 : 0 2 8 **Q** Okay. Because that was the information they needed -- they
9 needed -- or she -- that informant information was what was used
10 to get the probable cause affidavit?

1 4 : 2 0 : 1 0 11 **A** As far as I know, he -- his information was very detailed.
12 It fit the crime. He had information that only the -- the
13 defendant would have known.

1 4 : 2 0 : 1 8 14 **Q** Okay.

1 4 : 2 0 : 1 9 15 **A** You know, it was very apparent that Foreman did not. I
16 mean, he -- he was just guessing.

1 4 : 2 0 : 2 6 17 **Q** Exhibit 77 is a fax from you to Lieutenant Robert Clark at
18 FCI Medium sent on November 20th, 2001. And you're asking to
19 visit -- for you and Ms. Siegler to be able to visit Nathan Ray
20 Foreman on December 10th, 2001. Take a look at that for me.

1 4 : 2 0 : 4 9 21 **A** Well, this is actually a letter from Tom Wil- -- Ted Wilson,
22 who was the bureau chief.

1 4 : 2 0 : 5 4 23 **Q** Uh-huh. I believe your name is on the fax.

1 4 : 2 0 : 5 6 24 **A** Yeah. My name is on -- also on this letter.

1 4 : 2 0 : 5 9 25 **Q** Uh-huh.

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1 4:20:59 1 **A** And this is -- this is my handwriting in here.

1 4:21:02 2 **Q** Yes.

1 4:21:07 3 **A** But I did not talk to Nathan Foreman other than that one
4 time. He may have requested that we be allowed to, but I did
5 not --

1 4:21:14 6 **Q** Go to a separate -- second meeting?

1 4:21:16 7 **A** No. No. I've only talked to him one time.

1 4:21:20 8 Now, you remember me saying earlier that we went over
9 there, and there were several of us that did different things?
10 Kelly may have talked to him again while I went to the state
11 prison to talk to an inmate, but I did not talk to Nathan
12 Foreman but one time. And I'm --

1 4:21:36 13 **Q** And that was August 8th, 2001?

1 4:21:39 14 **A** Yeah.

1 4:21:41 15 **Q** I'm going to show you Exhibit 109-7.

1 4:21:45 16 **A** Again, this is my handwriting. It's dated 12/10/01.

1 4:21:49 17 **Q** So it looks like do you, in fact, meet with Mr. Foreman
18 again in October -- or on December 10th, 2001.

1 4:21:54 19 **A** Well, these -- these are notes, but I sure don't remember
20 talking to him again. The only time I remember talking to him
21 was in -- in here. I've got his name right here, and these are
22 my notes.

1 4:22:08 23 **Q** But way back in August when you spoke with him, you
24 determined right away he was just not a --

1 4:22:12 25 **A** He was lying.

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1 4 : 2 2 : 1 4 1 Q A liar?

1 4 : 2 2 : 1 4 2 A Yeah.

1 4 : 2 2 : 1 5 3 Q Okay.

1 4 : 2 2 : 1 5 4 A I don't see -- in fact, I'm kind of at a loss of why we
5 would want to talk to him again. This fax.

1 4 : 2 2 : 2 2 6 Q Exhibit 78 was a November 26th, 2001, letter from you to
7 Lieutenant Clark. Again, you say that you will be at FCI
8 Beaumont on 12/10/01 to see Foreman, and you need to see Beckcom
9 after Foreman. Here's Exhibit 78.

1 4 : 2 2 : 3 9 10 A You know, the only thing I can tell you is I -- this is the
11 time I told I went over there a second time, and I went to the
12 state prison. I may have taken Kelly over there, and she went
13 in by herself or went with somebody else. But I -- I don't
14 recall talking to these guys.

1 4 : 2 2 : 5 6 15 Q So you're saying you didn't go with Kelly to that -- to the
16 meeting on December 10th, 2001, with Foreman and Beckcom?

1 4 : 2 3 : 0 2 17 A I don't recall ever talking to Beckcom. And the only time I
18 ever remember talking to Foreman was here in Houston, and I felt
19 like he was lying.

1 4 : 2 3 : 1 0 20 Q Uh-huh.

1 4 : 2 3 : 1 1 21 These look to be notes that you took about the meeting with
22 Beckcom on December 10th, '01. If you could read those into the
23 record, please.

1 4 : 2 3 : 2 3 24 A Michael Beckcom, Nathan never -- Nathan never told Mike
25 about Kelly and Bonds. Prible came to Beckcom, knew he had been

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1 charged with capital murder.

1 4 : 2 3 : 3 6 2 Q That note, what do you mean when you say Nathan never told
3 Mike about Kelly and Bonds?

1 4 : 2 3 : 4 1 4 A I don't know.

1 4 : 2 3 : 4 4 5 Q Was that something Mike --

1 4 : 2 3 : 4 6 6 A That would be something --

1 4 : 2 3 : 4 7 7 Q -- told to Kelly?

1 4 : 2 3 : 4 8 8 A I mean, Kelly might have said that, you know, Did Nathan
9 ever talk to you about the meeting us earlier? And he said no.
10 So I -- that doesn't ring a bell with me unless she told me that
11 because I didn't ask him that.

1 4 : 2 3 : 5 9 12 Nathan never told Mike about Kelly and Bonds. So I guess
13 Kelly asked him, Did Nathan Foreman tell you he had talked to
14 us? I don't know.

1 4 : 2 4 : 1 0 15 Q Okay. Let's go back to the page before, 109-7.

1 4 : 2 4 : 1 7 16 A Uh-huh.

1 4 : 2 4 : 1 9 17 Q I had a couple of questions about that. You already read it
18 into the record. But it says, "Steve and Nilda, 12-year-old
19 witness saw them together night of the murder."

1 4 : 2 4 : 3 1 20 So as early as December 10th, 2001, y'all knew about an
21 alibi witness, right?

1 4 : 2 4 : 3 7 22 A Steve and Nilda, 12-year-old saw them together night of
23 murder. Christine. I have that underlined, and I have the
24 arrow pointing to bill of sale.

1 4 : 2 4 : 5 5 25 Q Do you remember when you-all learned about the alibi

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1 witness?

1 4 : 2 5 : 0 4 2 **A** You know, this -- other than this, no, I don't.

1 4 : 2 5 : 0 7 3 **Q** Okay.

1 4 : 2 5 : 0 8 4 **A** There was a girl that supposedly saw them outside.

1 4 : 2 5 : 1 1 5 **Q** Uh-huh.

1 4 : 2 5 : 1 2 6 **A** Yeah. No, I -- no, I don't remember any other mention of
7 it.

1 4 : 2 5 : 2 0 8 **Q** So was this alibi witness discussed with Nathan Foreman --

1 4 : 2 5 : 2 4 9 **A** I don't know.

1 4 : 2 5 : 2 4 10 **Q** -- on December 10th, 2001?

1 4 : 2 5 : 2 6 11 **A** I don't know. I didn't -- I wasn't part of that
12 conversation. I'm telling you, I never talked to this guy
13 again.

1 4 : 2 5 : 3 1 14 **Q** Okay. This could be you telling you what -- what -- or
15 writing down what Kelly told you she and Nathan had talked
16 about?

1 4 : 2 5 : 3 8 17 **A** It could be.

1 4 : 2 5 : 3 9 18 **Q** Okay.

1 4 : 2 5 : 3 9 19 **A** And to be honest with you, I'm kind of assuming that's what
20 it is.

1 4 : 2 5 : 4 3 21 **Q** Do you recall meeting with Jonathan Wayne Jefferson on
22 December 10th, 2001?

1 4 : 2 5 : 4 9 23 **A** I don't recall it, no.

1 4 : 2 5 : 5 0 24 **Q** Okay. Why would you have written down this first line,
25 "Prible 7/25/01 transferred to medium till 11/29/01"?

Video Deposition of Johnny Bonds

1 4 : 2 5 : 5 8 1 **A** That would be medium. Instead of medical, it's medium,
2 yeah.

1 4 : 2 6 : 0 1 3 **Q** Yeah.

1 4 : 2 6 : 0 4 4 **A** Probably trying to verify which unit he was in.

1 4 : 2 6 : 0 9 5 **Q** And the reason you would have wanted to verify is to make
6 sure that Jefferson was actually in the same unit with him?

1 4 : 2 6 : 1 9 7 **A** Yeah, yeah. If somebody says they're with somebody and
8 talking to him, I want to make sure they're in the same unit
9 together.

1 4 : 2 6 : 2 4 10 **Q** Right.

1 4 : 2 6 : 2 4 11 **A** You know.

1 4 : 2 6 : 2 4 12 **Q** And that's exactly what you had -- what you determined was
13 not true about Nathan Foreman's --

1 4 : 2 6 : 2 8 14 **A** You know, I don't recall whether we actually looked at his
15 records and showed that they had never been together. My
16 opinion on Foreman was, is this -- he wasn't able to even
17 describe Prible.

1 4 : 2 6 : 4 0 18 **Q** Yeah.

1 4 : 2 6 : 4 1 19 **A** And that -- I based that on just when I asked him what he
20 looked like, and he couldn't tell me. I said, Brown eyes, blue
21 eyes? He goes, "Hmm." You know, he couldn't -- he didn't -- I
22 don't think he had even met Prible when we talked to him in
23 August.

1 4 : 2 6 : 5 4 24 **Q** You think he just heard about his case from somebody?

1 4 : 2 6 : 5 5 25 **A** I think he heard about it, and he was just jumping on trying

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1 get -- to get something to help him out.

1 4 : 2 6 : 5 8 2 Q Yeah.

1 4 : 2 7 : 0 5 3 A Now, obviously, he ended up back in Beaumont, and they were
4 together at some time. He had pictures of them together, so he
5 may have gone after him. I don't know.

1 4 : 2 7 : 1 2 6 Q Okay. And by going after him, do you mean he may have got
7 the --

1 4 : 2 7 : 1 5 8 A Tried to get information from him, yeah.

1 4 : 2 7 : 1 6 9 Q Okay.

1 4 : 2 7 : 1 7 10 Mr. Bonds, you mentioned earlier you and Ms. Siegler went
11 to visit Mr. Prible in prison in May 2001?

1 4 : 2 7 : 2 5 12 A Well, it was in 2001. I'm not real sure of the date.

1 4 : 2 7 : 2 7 13 Q Of the date. Okay.

1 4 : 2 7 : 2 8 14 Do you recall that meeting?

1 4 : 2 7 : 2 9 15 A Yeah. Yeah. He was amazingly cooperative.

1 4 : 2 7 : 3 3 16 Q He was amazingly cooperative?

1 4 : 2 7 : 3 5 17 A Yeah. Yeah. Very talkative and didn't hesitate to answer
18 questions.

1 4 : 2 7 : 3 9 19 Q Uh-huh. Why'd that surprise you?

1 4 : 2 7 : 4 0 20 A Well, he's a suspect in a capital murder where five people
21 were killed, and he's the suspect and he's in prison, you know.
22 I would think anybody that had any sense would say, "I want a
23 lawyer," or, "I don't want to talk," and he didn't.

1 4 : 2 7 : 5 6 24 Q Did you-all inform him at the time that you spoke with him
25 that he was a suspect?

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1 4:28:00 1 A I'm sure we did, yeah. He knew he was a suspect. He had
2 been a suspect since it happened.

1 4:28:05 3 Q When was the purpose of that meeting?

1 4:28:06 4 A I think to verify his statement, see if he told the same
5 story he told in '99 to see -- see if he had changed it any.

1 4:28:13 6 Q Uh-huh. And --

1 4:28:14 7 A See if there were any changes.

1 4:28:15 8 Q And he hadn't changed it any, had me?

1 4:28:17 9 A No, nothing -- I don't remember anything significant.

1 4:28:19 10 Q And did you witness Mr. Beckcom's testimony at Prible's
11 trial?

1 4:28:23 12 A No, I did not.

1 4:28:24 13 Q Okay. Did you know that his testimony at trial went
14 straight off of this letter as if it were a script?

1 4:28:30 15 A No, I did not.

1 4:28:31 16 Q Would that surprise you?

1 4:28:32 17 A No, and I'll tell you why. When somebody tells the truth,
18 they don't have to remember it.

1 4:28:37 19 You have to remember a lie. You don't have to remember the
20 truth.

1 4:28:45 21 Q And you also wouldn't have to remember something if you had
22 written it down, right?

1 4:28:49 23 A Yeah.

1 4:28:50 24 Q So if this -- if this informant had written down something,
25 he wouldn't then have to remember this convoluted story, and

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1 instead, he could look at his written words and remember it,
2 right?

1 4 : 2 8 : 5 9 3 **A** If he thought it was necessary. I mean, did he have this to
4 rehearse from? I don't know.

1 4 : 2 9 : 0 6 5 **Q** Well, I'm just wondering why he gave this statement --

1 4 : 2 9 : 0 8 6 **A** Well, if he gave a statement --

1 4 : 2 9 : 1 0 7 **Q** -- to you in this -- one second. Let me finish the
8 question --

1 4 : 2 9 : 1 2 9 **A** Okay.

1 4 : 2 9 : 1 2 1 0 **Q** -- real quick.

1 4 : 2 9 : 1 3 1 1 I just want to know why he would have given this statement
12 to you and Ms. Siegler on December 10th, 2001.

1 4 : 2 9 : 1 7 1 3 **A** I don't know. I don't know. But here's -- here's something
14 else. If he gave us this statement in December and he didn't
15 testify till ten months later in October of 2002, he didn't have
16 this to rehearse from. So he had to remember it.

1 4 : 2 9 : 3 6 1 7 **Q** So you don't think Ms. -- or Ms. Siegler had given him any
18 copy of what he -- or let him keep a copy of his notes?

1 4 : 2 9 : 4 4 1 9 **A** You know, she may have. I don't know.

1 4 : 2 9 : 4 7 2 0 **Q** Okay.

1 4 : 2 9 : 4 7 2 1 **A** She may have.

1 4 : 2 9 : 5 1 2 2 **Q** Now, on the very first page of Exhibit 174, the second
23 paragraph, it says, "Some months later around October or early
24 November, Prible approached myself and Nathan Foreman while we
25 were on the rec yard sitting on some bleachers."

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1 4 : 3 0 : 0 6 1 **A** Okay.

1 4 : 3 0 : 0 6 2 **Q** Now, as we've -- you and I have discussed earlier, by this
3 time, Nathan Foreman was Michael Beckcom's cellmate.

1 4 : 3 0 : 1 3 4 **A** Okay.

1 4 : 3 0 : 1 4 5 **Q** And you're saying you did not know that till today?

1 4 : 3 0 : 1 8 6 **A** I did not know that until you told me that, no.

1 4 : 3 0 : 2 1 7 **Q** Okay. Okay. So is it -- do you find it somewhat suspicious
8 that Mr. Beckcom is now coming to you as if he's gotten this
9 confession out of the blue when, in fact, you-all had been
10 speaking with his informant -- his cellmate about this case
11 since four months previously? Does that throw up any red flags
12 to you?

1 4 : 3 0 : 4 3 13 **A** Well, it sounds like they're might have -- they might have
14 colluded to get more information. Yes, it does sound like they
15 probably said, Hey, let's see if we can milk him for some more
16 information.

1 4 : 3 0 : 5 3 17 My -- best of my recollection, we knew about Beckcom
18 before -- way before December of 2001. I'm not sure of the
19 date, but I'm thinking we knew about him before we went and
20 talked to Prible, but I'm not sure.

1 4 : 3 1 : 0 7 21 **Q** And you've worked with prisons a lot over -- or in, you
22 know, in the prison system not as an employee, but --

1 4 : 3 1 : 1 3 23 **A** I've been there many times.

1 4 : 3 1 : 1 5 24 **Q** You've been there many times.

1 4 : 3 1 : 1 7 25 And it's important for the prison system to keep a tight

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1 lid on the movement of prisoners to various units --

1 4 : 3 1 : 2 5 2 **A** That's --

1 4 : 3 1 : 2 5 3 **Q** -- I would think.

1 4 : 3 1 : 2 6 4 **A** That's -- you know, I know the state is very, very good and
5 proficient at doing that. Their documentation is excellent, and
6 they make sure that the wrong people aren't together.

1 4 : 3 1 : 3 8 7 **Q** Uh-huh.

1 4 : 3 1 : 3 8 8 **A** I'm not so sure about the federal system. I don't know. At
9 this point, I don't know how good they were about that.

1 4 : 3 1 : 4 3 10 **Q** Okay. But at least as far as you know in the state system,
11 that -- it would be unusual for an inmate to know that another
12 inmate was about to come to his unit before he actually got
13 there?

1 4 : 3 1 : 5 6 14 **A** I would say yes, in the state system, it would be.

1 4 : 3 1 : 5 9 15 **Q** The second full paragraph, his letter says, quote, after
16 this, it became a daily occurrence that Prible would wait for
17 Foreman and myself to come outside so we could talk. He started
18 to become very attached to us, end quote.

1 4 : 3 2 : 1 5 19 Now, does this throw up a red flag for you, again, like we
20 talked earlier, because Foreman's known about this case since
21 four months previously?

1 4 : 3 2 : 2 4 22 **A** Well, what throws up a red flag to me, if I remember
23 right -- what was the date he was filed on for capital murder?
24 Was that --

1 4 : 3 2 : 3 1 25 **Q** July 5th, 2001.

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1 4 : 3 2 : 3 2 1 **A** So at this point in December, he knows he's filed on for
2 capital murder.

1 4 : 3 2 : 3 7 3 **Q** Uh-huh.

1 4 : 3 2 : 3 7 4 **A** What throws up a red flag for me is I think this
5 information -- and here again, I don't know if Foreman had been
6 in that unit prior to the time we talked to him in August. I
7 don't know where he was in June, July of 2001. I don't know if
8 he had been there before.

1 4 : 3 2 : 5 2 9 But -- but my feeling on this information is that this --
10 this came out before he was indicted for the capital case
11 because I'm pretty sure we knew about this before the
12 indictment.

1 4 : 3 3 : 0 4 13 **Q** You think this statement came out before the indictment?

1 4 : 3 3 : 0 8 14 **A** I think -- I think this information -- and I'm -- again, I'm
15 assuming because I don't have the documents, and I don't recall
16 seeing when the documents came in. I think Kelly knew about
17 Beckcom's information prior to the time we went to talk to him.

1 4 : 3 3 : 2 3 18 **Q** Okay. And do you think that because it would have been
19 improper to obtain an indictment on a defendant knowing that you
20 have informant in hand but never having spoken to that informant
21 yet about what they knew, right? That would have been improper?

1 4 : 3 3 : 3 7 22 **A** No. No. What I'm -- what I'm saying is I don't think
23 Prible would have talked like this after he was indicted. I
24 think he was not really a brilliant person.

1 4 : 3 3 : 4 6 25 But I think when the case is pending, he knows he's

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1 indicted for capital murder and we're going to seek the death
2 sentence, that he probably not -- would not, at that point, be
3 talking about his crime to other inmates. I think prior to
4 that, he probably would. But after he's indicted and knows this
5 case is pending, I don't think he would talk to them.

1 4 : 3 4 : 0 5 6 **Q** In the second paragraph on that same page, it says, quote,
7 Foreman and I began to encourage Prible to be honest with us.
8 If we were going to do business together, there couldn't be any
9 lying to one another. I could tell he was struggling with
10 opening up, but I could that he wanted to, end quote.

1 4 : 3 4 : 2 1 11 Now, it sounds there that Foreman and Beckcom are
12 describing attempts to elicit incriminating statements from
13 Mr. Prible.

1 4 : 3 4 : 2 8 14 **A** It does.

1 4 : 3 4 : 2 9 15 **Q** If they had done that after they had spoken with Ms. Siegler
16 the first time about this case, about working as an informant in
17 that case, would that throw up a red flag to you?

1 4 : 3 4 : 4 0 18 **A** If she'd have asked them to go after him, that would have
19 been improper, yeah.

1 4 : 3 4 : 4 4 20 **Q** Now, when you and Kelly interviewed Foreman back in
21 August 8th, '01, and you immediately found the guy to be just a
22 liar, did Kelly agree with you?

1 4 : 3 4 : 5 2 23 **A** Uh-huh. Absolutely.

1 4 : 3 4 : 5 3 24 **Q** Okay. What did she say at that time?

1 4 : 3 4 : 5 5 25 **A** Basically, you know, Look, you're wasting our time. Don't

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1 be calling us if you don't know what you're talking about. You
2 know, we know what you're trying to do, and it's not working.

1 4 : 3 5 : 0 5 3 Q Uh-huh. Uh-huh. If he had called you back later with
4 information that was -- that he had gotten from Prible, would
5 that have been a different story, or would you have
6 automatically sort of --

1 4 : 3 5 : 1 6 7 A I -- I -- you know, my feeling about him was his credibility
8 was not -- he had no credibility.

1 4 : 3 5 : 2 4 9 Q Was shot?

1 4 : 3 5 : 2 4 10 A Yeah. So, you know, it's possible that he did get new
11 information. I'm not saying that didn't happen.

1 4 : 3 5 : 3 2 12 Q Uh-huh.

1 4 : 3 5 : 3 3 13 A Apparently, he did befriend him because they got a picture
14 together in November of '01.

1 4 : 3 5 : 3 7 15 Q Uh-huh.

1 4 : 3 5 : 3 8 16 A So he may have gone and got more information. I mean, we
17 basically told him at that time, Don't come with us when you
18 don't know anything.

1 4 : 3 5 : 4 4 19 Q Well, Foreman was eventually moved to the very unit in
20 medium where Prible --

1 4 : 3 5 : 4 9 21 A Prible was?

1 4 : 3 5 : 5 0 22 Q -- was moved?

1 4 : 3 5 : 5 2 23 A Okay. Well, yeah, obviously.

1 4 : 3 5 : 5 4 24 Q Okay. Now, do you think that was just a coincidence that
25 they both ended up there?

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1 4:35:58 1 **A** You know, I have no idea. I know we didn't request that
2 they be put together. I had -- I know that I did not request
3 that they be put together. I think if that had happened, I
4 would have been party to it.

1 4:36:09 5 **Q** Okay. Does that sometimes happen?

1 4:36:10 6 **A** We do it in the county jail. I've -- I've seen times in the
7 past where we want to keep people separate or let's put these
8 people together and see what happens, you know. But never --
9 never in prison and never in a federal -- never in a state jail
10 or -- or a federal prison. Most of the time, it's keep them
11 separate.

1 4:36:31 12 **Q** Mr. Bonds, in those cases where you did arrange for two
13 prisoners to be put together --

1 4:36:38 14 **A** Uh-huh.

1 4:36:38 15 **Q** -- how would you go about making that request?

1 4:36:41 16 **A** You know, I'm -- I'm thinking back. It's probably in the
17 city jail when I was working HPD where we'd have two -- we'd
18 have codefendants together in custody.

1 4:36:50 19 **Q** Uh-huh.

1 4:36:50 20 **A** And we'd play them against each other, you know, like, Hey,
21 so-and-so is fixing to drop you in the grease. You just as well
22 go ahead and give it up. Whoever talks first gets the best
23 deal, you know.

1 4:37:02 24 So we'd play them against each other like that in the city
25 jail, which I did back in the '70s. That wasn't unusual to do

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1 that.

1 4 : 3 7 : 0 9 2 Q Uh-huh.

1 4 : 3 7 : 0 9 3 A I don't recall ever doing that at the DA's office, asking
4 that we put two of them together. Just the opposite. We'd ask
5 to keep people separate so they wouldn't be talking to each
6 other.

1 4 : 3 7 : 2 1 7 Q Was there anything stopping y'all from putting them in -- or
8 putting in that request to the prison?

1 4 : 3 7 : 2 8 9 A To the jail?

1 4 : 3 7 : 2 9 10 Q Yeah.

1 4 : 3 7 : 3 2 11 A No, I can't say that there was --

1 4 : 3 7 : 3 4 12 Q Provision to stopping?

1 4 : 3 7 : 3 8 13 A -- any prohibition, yeah.

1 4 : 3 7 : 3 8 14 Q Yeah. Yeah. So it might have been done, you just can't --

1 4 : 3 7 : 4 0 15 A Nah.

1 4 : 3 7 : 4 0 16 Q -- remember anything specific?

1 4 : 3 7 : 4 0 17 A Huh-uh.

1 4 : 3 7 : 4 1 18 Q Okay. Now, earlier in the deposition, I asked if you ever
19 had a case where you were talking to several informants about
20 the same case at the same time, and you said -- I won't get the
21 quote exactly right, but you said something like it's not as if
22 we have them lined up in the hall bringing them in one at a
23 time.

1 4 : 3 8 : 0 3 24 A Uh-huh.

1 4 : 3 8 : 0 4 25 Q Do you remember when you said that?

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1 4:38:05 1 **A** Uh-huh.

1 4:38:05 2 **Q** Okay. So if you could look at Exhibit 109-6. Those are
3 your notes from the December 10th, 2001, interview with
4 Jefferson, right?

1 4:38:24 5 **A** Uh-huh. Uh-huh.

1 4:38:25 6 **Q** And then the following page, Exhibit 109-7, those are your
7 notes from the meeting the same day with Foreman, right?

1 4:38:35 8 **A** Except I didn't meet with him.

1 4:38:37 9 **Q** Kelly met with him?

1 4:38:38 10 **A** Okay.

1 4:38:38 11 **Q** Right?

1 4:38:39 12 **A** As far as I know, yeah.

1 4:38:40 13 **Q** Okay. And the following -- the following page, 109-8, those
14 are notes from that same day with -- from a meeting with
15 Beckcom, right?

1 4:38:50 16 **A** That's what it looks like, yeah.

1 4:38:52 17 **Q** Okay. So in that case, that does look like they were lined
18 up in the hall coming in one at a time?

1 4:38:56 19 **A** It looks like they were talked to on the same day.

1 4:38:58 20 **Q** But it looks as if three different informants --

1 4:39:03 21 **A** Were questioned on the same day.

1 4:39:04 22 **Q** -- were the interviewed on the same day back to back, right?

1 4:39:07 23 **A** Whoever is in the separate unit. Jefferson's in low. He
24 would not know that she talked to the other two people in
25 medium.

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1 4:39:12 1 Q But the other -- the two people in medium would know?

1 4:39:14 2 A Would know that -- would probably know, hey -- yeah,
3 especially if they're cellmates, they'd know.

1 4:39:18 4 Q If you notice, attached to this letter is a picture that's
5 in black and white. It's difficult to -- to see. But you'll
6 see a picture of three inmates, the middle one being Jeff
7 Prible?

1 4:39:33 8 A I didn't know that's him. I remember seeing a color
9 photograph that's a lot clearer.

1 4:39:38 10 Q Right.

1 4:39:38 11 A Yeah. Yeah.

1 4:39:38 12 Q Okay.

1 4:39:39 13 A Okay.

1 4:39:39 14 Q And I'll represent to you that that's a picture of him with
15 Felix and Oscar Gonzalez --

1 4:39:43 16 A Okay. I didn't know who they were.

1 4:39:45 17 Q And then the second part that is -- sticks out to me is that
18 Mr. Gonzalez knew about Mr. Prible and his case before Prible
19 even got to the medium from the low.

1 4:39:57 20 A Okay.

1 4:39:59 21 Q Okay. Now, how would Gonzalez and his dad have known about
22 Jeff's case before he came to the medium?

1 4:40:04 23 A Well, if they were neighbors, knew he was a suspect in
24 '99 -- I mean, they -- if they -- he's a neighborhood kid and he
25 killed somebody else in the neighborhood, they had visitation

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1 from family.

1 4 : 4 0 : 1 5 2 I don't know how he -- how long either one of these guys
3 had been in prison. I don't know if they were in prison in '99
4 when it happened, or if they were out on the street. If they
5 lived in the neighborhood and knew about it, they would have
6 known he was a suspect.

1 4 : 4 0 : 2 6 7 Q But the question is not how they would have known he was a
8 suspect, but how they knew that he was coming to their
9 particular unit of the prison --

1 4 : 4 0 : 3 4 10 A I don't have a clue.

1 4 : 4 0 : 3 4 11 Q -- before he got there?

1 4 : 4 0 : 3 6 12 A I don't know.

1 4 : 4 0 : 3 6 13 Q Someone would have had to have given that information,
14 right?

1 4 : 4 0 : 3 8 15 A If -- if that's true that they knew. You know, I don't know
16 that they did.

1 4 : 4 0 : 4 2 17 Q Uh-huh.

1 4 : 4 0 : 4 3 18 A And then, also, his motivation in here about why he's coming
19 forward, I don't believe that either.

1 4 : 4 0 : 4 8 20 Q Yeah. So if this was not believable, you would have just
21 tossed this aside?

1 4 : 4 0 : 5 3 22 A Well, no, the information -- some of the information may be
23 right. But his motivation about why he's giving the
24 information, I don't believe that.

1 4 : 4 0 : 5 9 25 Q Yeah. Yeah.

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1 4:40:59 1 **A** He's wanting -- he's wanting to get out of jail early. I
2 mean, that's what all of them are motivated by.

1 4:41:04 3 **Q** Is it apparent, from reading these letters, that inmates in
4 Beaumont were talking about this case with each other pretty
5 freely?

1 4:41:10 6 **A** It seems they were, yes.

1 4:41:12 7 **Q** Yeah. Yeah.

1 4:41:13 8 **A** From reading these letters.

1 4:41:14 9 **Q** Do you know, at trial, that Beckcom testified that he wasn't
10 talking about Jeff's case with other inmates over at FCI
11 Beaumont?

1 4:41:21 12 **A** I did not know that.

1 4:41:22 13 **Q** Does that surprise you to hear that he's testified that way?

1 4:41:25 14 **A** No, it didn't. I mean -- you know, I mean, the -- you know,
15 this -- these guys know that once they testify, everybody in
16 prison is going to know they're a snitch.

1 4:41:36 17 **Q** Uh-huh.

1 4:41:36 18 **A** And so I could see him trying to be as low keyed about it as
19 he possibly could at that point because he knows he's in danger
20 once he goes back.

1 4:41:44 21 **Q** So you can see him lying on the stand to protect himself
22 later when he goes back?

1 4:41:47 23 **A** Yeah, I could.

1 4:41:48 24 **Q** Okay. And it seems pretty incredible that he would not be
25 talking to anyone about it when Nathan Foreman is his cellmate,

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1 right?

1 4 : 4 1 : 5 6 2 **A** Well, I think they did talk about it. I think they did.

1 4 : 4 2 : 0 1 3 **Q** Now, another thing I noticed about these informant letters,
4 Exhibits 112 through 114 -- and you're the detective, so I want
5 to get your take on this, but -- do you have 113 right there?

1 4 : 4 2 : 1 6 6 **A** No.

1 4 : 4 2 : 1 7 7 **Q** Let me get you 113.

1 4 : 4 2 : 1 9 8 **A** I don't think I do.

1 4 : 4 2 : 2 6 9 **Q** I'll get you 113 so you can look at them all together.

1 4 : 4 2 : 3 6 10 Now, any detective could see right away that these look
11 like they're all written by the same person.

1 4 : 4 2 : 4 1 12 **A** It looks like they're typed on the same type writer. The
13 form is exactly the same.

1 4 : 4 2 : 4 5 14 **Q** Right. The format?

1 4 : 4 2 : 4 6 15 **A** Uh-huh.

1 4 : 4 2 : 4 6 16 **Q** Uh-huh. Okay.

1 4 : 4 2 : 4 9 17 **A** Maybe they had a secretary. It is a federal prison, you
18 know.

1 4 : 4 2 : 5 5 19 **Q** And if you had seen these letters at the time they were
20 sent, it would have popped out to you pretty quick these guys
21 were all write- --

1 4 : 4 3 : 0 1 22 **A** They -- they all looked identical.

1 4 : 4 3 : 0 3 23 **Q** The same person was writing them?

1 4 : 4 3 : 0 4 24 Yeah. Okay.

1 4 : 4 3 : 0 7 25 **A** And you know --

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1 4 : 4 3 : 0 7 1 Q And now that --

1 4 : 4 3 : 0 7 2 A The signatures are different, but I'm guessing, you know,
3 they may have had somebody else type these up for them.

1 4 : 4 3 : 1 4 4 Q Okay. And if you look at Exhibit 180.

1 4 : 4 3 : 1 8 5 A It looks to be the same format.

1 4 : 4 3 : 2 2 6 Q And Exhibit 180 was a letter from Michael Beckcom that was
7 found in his case file in his Port Aransas case?

1 4 : 4 3 : 2 9 8 A Okay.

1 4 : 4 3 : 3 0 9 Q Okay. So now that you see all these together, it's pretty
10 parent that Michael Beckcom was the one that typed these letters
11 up, right?

1 4 : 4 3 : 4 0 12 A It's apparent to me that the -- that the same person typed
13 these up. I don't know who it was.

1 4 : 4 3 : 4 4 14 Q Right.

1 4 : 4 3 : 4 5 15 A It's someone that's pretty proficient, I think, at typing.
16 Much better than I am.

1 4 : 4 3 : 5 0 17 Q Right.

1 4 : 4 3 : 5 0 18 But the point is, Mr. Beckcom wrote up this letter,
19 Exhibit 180, and sent it in for a state case.

1 4 : 4 4 : 0 0 20 A Okay.

1 4 : 4 4 : 0 0 21 Q And now, obviously, the other informants involved in
22 Prible's case would have had nothing do with his state case.

1 4 : 4 4 : 0 5 23 A No.

1 4 : 4 4 : 0 5 24 Q So he must have written -- typed this up himself?

1 4 : 4 4 : 0 8 25 A Right. Right.

Video Deposition of Johnny Bonds

1 4 : 4 4 : 0 9 1 Q Mr. Beckcom, you'll recall, was convicted of capital murder
2 for locking a friend in a toolbox, closing the door, putting a
3 exhaust pipe from his car in there and turning it on for about
4 15 minutes and killing the guy.

1 4 : 4 4 : 2 2 5 Do you remember that?

1 4 : 4 4 : 2 3 6 A I didn't know the details till later, but yes, I do remember
7 he killed somebody. It was over a dope deal, if I remember
8 correctly.

1 4 : 4 4 : 3 0 9 Q It was -- it was over, actually, a -- the person he killed
10 was an informant against him and some friends in a scheme. I
11 think it was an insurance fraud scheme.

1 4 : 4 4 : 4 0 12 A Oh, okay. Okay.

1 4 : 4 4 : 4 0 13 Q Does that sound familiar?

1 4 : 4 4 : 4 2 14 A I didn't --

1 4 : 4 4 : 4 2 15 Q Okay.

1 4 : 4 4 : 4 3 16 A -- remember what it was, but I knew he killed somebody.

1 4 : 4 4 : 4 5 17 Q Right. Right.

1 4 : 4 4 : 4 5 18 A Yeah. And I remember the details. It was pretty gruesome,
19 pretty intentional.

1 4 : 4 4 : 4 9 20 Q Pretty -- yeah. Yeah.

1 4 : 4 4 : 5 1 21 And were you aware that he -- he served as an informant in
22 that very case against his codefendants?

1 4 : 4 4 : 5 7 23 A No, I did not.

1 4 : 4 4 : 5 8 24 Q Okay. Did you know that he was found to have perjured
25 himself by the federal judge at that trial?

Video Deposition of Johnny Bonds

1 4:45:06 1 **A** No, I did not.

1 4:45:07 2 **Q** Okay. Would these things have raised a red flag to you as
3 to his credibility in testifying in Prible's trial?

1 4:45:16 4 **A** Well, it's always going to be something. I mean, that's
5 something -- and Kelly and I have had these discussions on other
6 trials. Like, you need to tell the jury this upfront. This guy
7 is a convicted felon. He's come forward because he wants
8 something out of this. You know, he's not an upstanding
9 citizen. And tell them the criminal history, and tell them what
10 they did.

1 4:45:34 11 So unfortunately, again, sometimes we have to use people
12 that we really don't like as witnesses, but they have
13 information we need. And the only way to get to it is by
14 working a deal with them.

1 4:45:45 15 **Q** Okay. But that presupposes that you, yourself, believe what
16 that witness is saying, right?

1 4:45:50 17 **A** I believe he told the truth in the trial, yes.

1 4:45:52 18 **Q** Okay. You believe he testified truthfully?

1 4:45:55 19 **A** Yes, I do.

1 4:45:55 20 **Q** Were you -- and you were not at that trial to watch him
21 testify?

1 4:45:59 22 **A** No, but I -- I know what he testified to. I heard what he
23 testified to. And, basically, it fit -- it fit the facts of the
24 crime. So I think he testified truthful.

1 4:46:06 25 **Q** Did you ever review the transcript of his trial testimony?

Video Deposition of Johnny Bonds

1 4 : 4 6 : 0 8 1 **A** No.

1 4 : 4 6 : 0 9 2 **Q** Okay. So sitting here today, how can you say that he
3 testified truthfully if you can't --

1 4 : 4 6 : 1 3 4 **A** Just from what Kelly told me, and that he got up there, he
5 told the truth, he told her everything that happened.

1 4 : 4 6 : 1 8 6 **Q** Okay. From what Ms. Siegler says?

1 4 : 4 6 : 2 0 7 **A** Yeah.

1 4 : 4 6 : 2 0 8 **Q** Okay. Whose responsibility was it at the DA's office to
9 provide defense counsel with discovery?

1 4 : 4 6 : 2 8 10 **A** Well, I mean, if -- if they file discovery motions and, you
11 know, the court rules in their favor, if they filed the motions,
12 we have to comply. So it would be the prosecutor that handles
13 that case. It would be the prosecutor's responsibilities, not
14 the investigator.

1 4 : 4 6 : 4 3 15 **Q** Is it your experience, also, that inmates, informants in
16 prison don't necessarily care if the person they are setting up
17 actually did what they said they did?

1 4 : 4 6 : 5 2 18 **A** If they think they can get by with -- with, you know,
19 getting something for themselves, yeah, they'll -- they'll cut
20 somebody else's throat in a heartbeat. They don't care.

1 4 : 4 7 : 0 1 21 *(Conclusion of video deposition.)*

1 4 : 4 7 : 0 8 22 **THE COURT:** Are we about to have another long
23 deposition?

1 4 : 4 7 : 1 0 24 **MS. SCARDINO:** Your Honor, we have a 30-minute
25 deposition we could play or -- if you want to take a break now.

Video Deposition of Vic Wisner

THE COURT: I'm just asking you the -- those of you assembled, we want to break now, or you want to try to do something else? Okay. Let's go ahead. Go ahead.

MS. SCARDINO: Your Honor, petitioner calls Vic Wisner, who's the cocounsel of Ms. Siegler at the trial.

THE COURT: Okay.

MS. SCARDINO: And Mr. Wisner's deposition is almost 30 minutes, I think.

(Video deposition of Vic Wisner played as follows.)

EXAMINATION

Q What was your understanding of the Brady rule back in 2001, 2002, when you were prosecuting Mr. Prible?

A That we were to handle, obviously, any exculpatory material, and exculpatory material could and should include any matter that could be used for impeachment.

Q Okay. And if a witness was interviewed and had information that would be favorable to the accused, and you decided not to use that witness -- not to call that witness in your case, was it your understanding that the prosecutor was obligated to reveal the identity of that witness to the defense?

A Of course.

Q Okay. In other words, you couldn't keep the defense in the dark about the existence of a witness that they would otherwise not have known about?

A Of course. And that would be what led to, you know, the

Video Deposition of Vic Wisner

1 Michael Morton fiasco.

1 4 : 4 8 : 4 0 2 Q Right. Do a prosecutor's obligations under Brady depend on
3 whether the witness to whom the evidence relates is testifying
4 or nontestifying?

1 4 : 4 8 : 5 2 5 A No.

1 4 : 4 8 : 5 4 6 Q Okay. It's the same across the board?

1 4 : 4 8 : 5 6 7 A Yes.

1 4 : 4 8 : 5 6 8 Q Okay. And when must Brady evidence be disclosed?

1 4 : 4 8 : 5 9 9 A As soon as possible.

1 4 : 4 9 : 0 0 10 Q Okay. So what was the procedure -- so the -- excuse me.

11 The burden is not on the defense, in other words, to request the
12 evidence? The onus is on the prosecutor to produce it as -- as
13 soon as possible?

1 4 : 4 9 : 1 1 14 A Yes.

1 4 : 4 9 : 1 1 15 Q Okay. What was the procedure at the DA's office concerning
16 the disclosing of evidence from the case file to the defense?

1 4 : 4 9 : 2 5 17 A We would always have an open file policy unless there was
18 some extraordinary need not to, but it would not include our
19 personal notes in preparation for trial.

1 4 : 4 9 : 3 8 20 Q Work product as --

1 4 : 4 9 : 3 9 21 A Right.

1 4 : 4 9 : 3 9 22 Q -- as that is defined under the law?

1 4 : 4 9 : 4 2 23 A Yes, ma'am.

1 4 : 4 9 : 4 2 24 Q Work product. Okay.

1 4 : 4 9 : 4 6 25 And when you would release information to defense counsel,

Video Deposition of Vic Wisner

1 was it your practice to make a note of what you had disclosed to
2 them?

1 4 : 4 9 : 5 2 3 **A** No.

1 4 : 4 9 : 5 4 4 **Q** There would be no written record or of any other kind of
5 record of what they had actually received from you?

1 4 : 4 9 : 5 9 6 **A** No, but they would know that anything other than what I
7 labeled as work product would have been available to them.

1 4 : 5 0 : 0 6 8 **Q** Would you ever contact formants -- informants you had used
9 in other cases to see if they could recruit other informants for
10 you?

1 4 : 5 0 : 1 2 11 **A** Never.

1 4 : 5 0 : 1 2 12 **Q** Okay. When defense attorneys -- if defense attorneys would
13 have come in to review -- and I'm talking about back in 2001,
14 2002 when you worked at the DA's office, not in your position
15 now as a defense attorney.

1 4 : 5 0 : 2 4 16 But when defense attorneys would come in to review the file
17 at the DA's office, would they be allowed to make copies of any
18 documents in that file?

1 4 : 5 0 : 3 3 19 **A** No, unless it was their client's statement or something
20 extraordinary.

1 4 : 5 0 : 3 7 21 **Q** Okay. So they would just have to look at the file and make
22 notes?

1 4 : 5 0 : 4 0 23 **A** Yes.

1 4 : 5 0 : 4 0 24 **Q** Did you ever have any phone calls with Mr. Beckcom?

1 4 : 5 0 : 4 5 25 **A** Not to my knowledge, certainly not.

Video Deposition of Vic Wisner

1 4:50:47 1 Q Okay. And why -- you say "certainly not." But did you ever
2 speak with informants on the telephone that were --

1 4:50:53 3 A One on one?

1 4:50:54 4 Q -- from prison?

1 4:50:55 5 A No. I'm not even sure I could have accepted the call.

1 4:50:58 6 Q Could you have made a phone call to a --

1 4:51:00 7 A Sure.

1 4:51:00 8 Q -- prisoner at BOP?

1 4:51:02 9 A Sure.

1 4:51:03 10 Q Yeah. And how that would go about?

1 4:51:04 11 A I think I might have done that once or twice. I think it's
12 just you have to call and hope that somebody there is willing to
13 take the time to put them on the phone.

1 4:51:13 14 Q But do you know if phone calls from the federal prison are
15 recorded?

1 4:51:16 16 A I do not. I would assume they are.

1 4:51:19 17 Q Okay.

1 4:51:19 18 A But I do not know that for a fact.

1 4:51:21 19 Q Okay. You would assume the ones maybe from the inmate
20 phones -- the regular inmate phones are recorded or also --

1 4:51:26 21 A I would assume so.

1 4:51:27 22 Q Okay. Would you assume that the ones between -- or from or
23 to a unit manager or BOP employee's personal phone at the unit,
24 would you think that those phone calls would be recorded?

1 4:51:39 25 A Their personal phone, I would not think so. But really, I

Video Deposition of Vic Wisner

1 don't know.

1 4 : 5 1 : 4 5 2 Q Do you remember that story at trial, that that was the story
3 at trial, that he and Mr. Prible really bonded over these few
4 weeks that they were together at this unit at FCI Beaumont, and
5 only after creating this close relationship did Mr. Prible come
6 forward and confess everything to Mr. Beckcom?

1 4 : 5 2 : 0 0 7 A That sounds right.

1 4 : 5 2 : 0 3 8 Q Okay. And that was an important picture to paint for the
9 jury in terms of Mr. Beckcom's credibility, right?

1 4 : 5 2 : 0 9 10 A I mean, I'm not trying -- trying to be difficult with you.
11 I just don't -- it's not like we didn't have any evidence, and
12 the only evidence was the informant. We could have tried it
13 without the informant.

1 4 : 5 2 : 1 9 14 Q But you didn't try it without the informant. You tried it
15 with the informant, right?

1 4 : 5 2 : 2 3 16 A Yes.

1 4 : 5 2 : 2 4 17 Q Did you know that there was, originally, a different
18 informant in this case?

1 4 : 5 2 : 2 9 19 A No.

1 4 : 5 2 : 3 0 20 Q You did not know that? Okay.

1 4 : 5 2 : 3 3 21 His name was Nathan Foreman. Does that name sound
22 familiar?

1 4 : 5 2 : 4 2 23 A I don't think so.

1 4 : 5 2 : 4 4 24 Q Okay. Did you know that back on August 8th, 2001, before
25 Mr. Prible was even indicted, that Ms. Siegler and Johnny Bonds

Video Deposition of Vic Wisner

1 met with Foreman at FCI Beaumont, and he told them that
2 Mr. Prible had confessed to him?

1 4 : 5 2 : 5 5 3 **A** No, because if they would have told me that George Foreman's
4 nephew had met with them, it would have stuck out in my mind.

1 4 : 5 3 : 0 2 5 **Q** Yeah. So you had no knowledge of this?

1 4 : 5 3 : 0 4 6 **A** No.

1 4 : 5 3 : 0 4 7 **Q** Did you know that they figured out right away that Foreman
8 was lying --

1 4 : 5 3 : 0 7 9 **A** No.

1 4 : 5 3 : 0 8 10 **Q** -- because he couldn't even describe what Jeff looked like?

1 4 : 5 3 : 1 1 11 **A** No.

1 4 : 5 3 : 1 1 12 **Q** Okay. Did you know that they figured out that Foreman
13 hadn't even met Jeff Prible at the time that he said he heard he
14 confessed?

1 4 : 5 3 : 1 8 15 **A** No.

1 4 : 5 3 : 1 8 16 **Q** Okay. Did you know that Siegler, nevertheless, kept in
17 communication with Mr. Foreman throughout the whole period of
18 time that Beckcom was befriending Prible and attempting to
19 elicit a confession from him?

1 4 : 5 3 : 2 8 20 **A** No.

1 4 : 5 3 : 2 8 21 **Q** Okay. Do you know, in fact, that Foreman was Beckcom's
22 cellmate?

1 4 : 5 3 : 3 4 23 **A** No.

1 4 : 5 3 : 3 6 24 **Q** Did you know that Foreman became Beckcom's cellmate after he
25 had already been talking with Siegler about this case?

Video Deposition of Vic Wisner

1 4 : 5 3 : 4 1 1 **A** No.

1 4 : 5 3 : 4 2 2 **Q** Okay. Do you know that when Foreman first made contact with
3 Siegler, he was in the segregated housing unit, but then shortly
4 afterwards, he was moved to FCI Beaumont Medium in the same unit
5 as Mr. Prible was moved to and in the same unit as Mr. Beckcom
6 so that they would all be housed together?

1 4 : 5 4 : 0 0 7 **A** No.

1 4 : 5 4 : 0 1 8 **Q** Okay. Do you think it was just a coincidence that of all
9 the units that Mr. Prible could have been put into and all the
10 units that Mr. Foreman and Mr. Beckcom could have ended up in,
11 they were all moved into the same spot?

1 4 : 5 4 : 1 4 12 **A** I don't know.

1 4 : 5 4 : 1 6 13 **UNIDENTIFIED SPEAKER:** Objection.

1 4 : 5 4 : 1 9 14 **Q** Does this trouble you as a prosecutor with Brady obligations
15 that you didn't know this information?

1 4 : 5 4 : 2 1 16 **A** No, because I wasn't in charge of the information. I didn't
17 have it. I couldn't be responsible for Brady on something I
18 didn't know.

1 4 : 5 4 : 2 7 19 **Q** Is that your understanding of Brady, that if you didn't know
20 that information existed, that you don't have an obligation to
21 reveal it?

1 4 : 5 4 : 3 5 22 **A** I don't follow what you're saying. You're saying I should
23 search out information that I don't know about and --

1 4 : 5 4 : 4 2 24 **Q** I'm asking you if that's your understanding of your
25 obligation under Brady.

Video Deposition of Vic Wisner

1 4 : 5 4 : 4 6 1 **A** I don't understand follow your question. Are you saying I
2 should ask a prosecutor I'm sitting with, Do you have any Brady
3 information that you're not telling me, and I need you to tell
4 me so I can tell -- tell the defense?

1 4 : 5 4 : 5 8 5 **Q** I'm asking you if you, as a prosecutor, are charged with
6 knowing of any Brady evidence that has come to light either
7 through your office or through law enforcement investigation?

1 4 : 5 5 : 0 9 8 **A** If something had come to my attention that was Brady, I
9 would have made sure that it was disclosed. But I cannot read
10 people's minds, and I don't know have access to information that
11 I don't know.

1 4 : 5 5 : 2 0 12 **Q** And, likewise, a defense attorney couldn't read a
13 prosecutor's mind and know what they know if that prosecutor
14 hadn't revealed it to the defense; is that correct?

1 4 : 5 5 : 2 9 15 **A** Of course.

1 4 : 5 5 : 3 4 16 **Q** Did you know that in addition to Mr. Beckcom and
17 Mr. Foreman, there were other inmates over there at FCI Beaumont
18 who were auditioning for this role of informant against
19 Mr. Prible?

1 4 : 5 5 : 4 3 20 **A** No.

1 4 : 5 5 : 4 5 21 **Q** So if you could please read Exhibit 113. This is a letter
22 from Carl Walker to Ms. Siegler.

1 4 : 5 5 : 5 3 23 **A** Yes, ma'am.

1 4 : 5 5 : 5 4 24 **Q** Have you ever seen this letter before?

1 4 : 5 5 : 5 6 25 **A** To my knowledge, no.

Video Deposition of Vic Wisner

1 14:55:58 Q Okay. I'm going to show you Exhibit 114. This is a letter
2 from Mark Martinez to Ms. Siegler.

1 14:56:12 3 Have you ever seen this letter before?

1 14:56:15 4 A To my knowledge, no.

1 14:56:17 5 Q Now, knowing what you know now, now that you've seen these
6 three letters and those photos and that it appeared that there
7 were no less than six informants discussing the case among
8 themselves with Mr. Foreman and Mr. Beckcom --

1 14:56:34 9 A Uh-huh.

1 14:56:35 10 Q -- at the prison, does that cast doubt on the veracity of
11 Beckcom's story at trial, that everything he heard about this
12 case he heard from Mr. Prible?

1 14:56:44 13 A I would not agree with that.

1 14:56:45 14 Q Why not.

1 14:56:47 15 A I think you'd have to see what he knows. Just 'cause there
16 are a lot of people in a federal prison trying to get help does
17 not mean that he's -- meaning your client, Mr. Prible, isn't
18 telling a lot of people what he did and why he did it, either to
19 brag or stay out of trouble with people who might seek to --
20 seek to retaliate against him.

1 14:57:11 21 Obviously, in a perfect world, you'd want somebody like
22 Beckcom coming forward with absolutely no access to any
23 knowledge or the Internet or anything. A guy told me this, and
24 if it's true, I might be able to help you. But we don't live in
25 a perfect world.

Video Deposition of Vic Wisner

1 4:57:26 1 Q But now you're on the other side of the fence.

1 4:57:29 2 A Right.

1 4:57:29 3 Q And as a defense attorney, if you were representing
4 Mr. Prible, wouldn't you be able to use these documents to
5 impeach Mr. Beckcom's testimony at trial?

1 4:57:36 6 A Probably so. At least I'd try to, yes.

1 4:57:44 7 Q And were you aware that Ms. Siegler met with three potential
8 informants back to back on December 10th, 2001, at FCI Beaumont?

1 4:57:53 9 A No.

1 4:57:54 10 Q I'm going to show you an exhibit, 52. This is a handwritten
11 letter from Jesse Moreno to Ms. Siegler dated April 5th, 2001.
12 If you could read it to yourself, please?

1 4:58:20 13 A Yes, ma'am.

1 4:58:21 14 Q Thanks.

1 4:58:23 15 A Yes, ma'am.

1 4:58:24 16 Q Have you ever seen that letter before?

1 4:58:25 17 A To my knowledge, no.

1 4:58:26 18 Q Okay. I'm going to show you another exhibit, 53. This is
19 another handwritten letter to Ms. Siegler. This one is from
20 Celia Moreno, Jesse Moreno's mom. It's dated April 10th, 2001.
21 Just if you could read it to yourself, please.

1 4:58:43 22 A Yes, ma'am.

1 4:58:43 23 Q Okay. Have you ever seen that letter before?

1 4:58:45 24 A To my knowledge, no.

1 4:58:47 25 Q Okay. And on July 3rd, 2001, after these letters were

Video Deposition of Vic Wisner

1 received, Ms. Siegler met with Jesse Moreno in person at the
2 Beaumont marshal's office. Are you aware of this meeting?

1 4 : 5 9 : 0 0 3 **A** No, ma'am.

1 4 : 5 9 : 0 1 4 **Q** Okay. Did you know that at that July 3rd, 2001, meeting,
5 Mr. Moreno talked to Ms. Siegler about his friend, Nathan
6 Foreman, who was in the SHU with him at that time?

1 4 : 5 9 : 0 9 7 **A** No.

1 4 : 5 9 : 1 0 8 **Q** Okay.

1 4 : 5 9 : 1 1 9 **A** I don't know anything about Nathan Foreman because I don't
10 know names. But if I had heard that George Foreman's nephew was
11 involved, that would have stood out in my mind.

1 4 : 5 9 : 2 0 12 **Q** And did you know that at that July 3rd, '01, meeting,
13 Mr. Moreno spoke with Ms. Siegler about a murder confession he
14 heard from an inmate named Hermilio Herrero?

1 4 : 5 9 : 3 1 15 **A** No, ma'am.

1 4 : 5 9 : 3 1 16 **Q** Does this same sound familiar, Hermelio Herrero?

1 4 : 5 9 : 3 4 17 **A** Not to my knowledge, no.

1 4 : 5 9 : 3 5 18 **Q** And you weren't aware, you said earlier, that Mr. Bonds and
19 Ms. Siegler met with Nathan Foreman in person on August 8th,
20 2001, to discuss Mr. Prible's case?

1 4 : 5 9 : 4 5 21 **A** I would say no, but I was aware that Johnny -- I believe --
22 at the time they worked on the case, I believe Kelly was
23 probably head of major offenders, and Johnny would have been
24 assigned to her. So I know that they worked together.

1 4 : 5 9 : 5 8 25 **Q** Uh-huh.

Video Deposition of Vic Wisner

A But in terms of what they did, I don't know.

Q And so you didn't know that at this 8/8/01 meeting, Ms. Siegler and Mr. Bonds both came out of it thinking that Mr. Foreman was a liar?

A No, but you mentioned that to me earlier this morning.

Q Okay. As a defense attorney, would you have wanted to know about all of these dealings between the prosecutor, Mr. Moreno, and Mr. Foreman in the setup of Mr. Prible?

A I would say yes.

Q So Ms. Siegler prosecuted Herrero -- Hermilio Herrera in April 2002. Did you know that the same snitches were involved in that case as well, Nathan Foreman, Jesse Moreno, Rafael Dominguez, and Carl Walker?

A No, ma'am.

Q Okay. As a defense attorney and knowing that Mr. Moreno was the individual who put Mr. Foreman and Ms. Siegler in contact together for the Prible case, would you have wanted to know about all this background of these snitches also working for her in the Herrero case?

A I guess so.

Q And you said that your practice was -- or the practice there was that it was an open file unless something was placed in a work product file.

Do you remember saying that?

A No. You can't just place something in a work product file.

Video Deposition of Vic Wisner

1 Work product has to be work product.

15:01:29 2 Q Yes. Yes, I agree with you.

15:01:31 3 A You can't just hide something in a work -- work product file
4 to absolve it from being -- from being disclosed. At least I
5 wouldn't.

15:01:39 6 Q Right. The work product has to be actual work product if
7 you're going to keep it --

15:01:44 8 A Of course.

15:01:44 9 Q Yes.

15:01:45 10 Were you aware that these letters that I showed you,
11 Exhibits 112 through 114, as well as some other correspondence
12 between Ms. Siegler and these informants, was found in her work
13 product file for the Prible case?

15:02:00 14 A I have no idea where they were found.

15:02:02 15 Q Okay. Would that surprise you if I told you that they were
16 found there? They don't appear to be work product, do they, as
17 that term is defined under the law?

15:02:08 18 A They would not be work product, at least from my
19 classification of a file, unless I made my own notes on them
20 maybe after I spoke with the witness or spoke with the
21 informant.

15:02:22 22 Q And had actually put your work product on them?

15:02:24 23 A Right.

15:02:25 24 Q Yeah.

15:02:25 25 I mentioned earlier that Johnny Bonds testified that he

Video Deposition of Vic Wisner

1 immediately thought that Mr. Foreman was a liar after speaking
2 to him on August 8th, 2001, and that Siegler thought he was
3 lying as well.

15:02:42 4 Would you have wanted to know that as a defense attorney,
5 if you were representing Mr. Prible, if the very first informant
6 on this case trying to testify against your client had not even
7 known -- had never even met your client at the time that he had
8 first come forward?

15:03:01 9 **A** I'd want to know that, but I think it would be -- and I'm
10 not trying to argue with you at all. So please don't take this
11 wrong.

15:03:07 12 It would be a lot more important if the only evidence in
13 this case was Beckcom, but it just wasn't. It was just
14 something to give color to the case. If it was Beckcom was the
15 only witness, then, obviously, because then that's all you have
16 is on the testimony of somebody in federal prison, but you
17 don't.

15:03:25 18 **Q** But you said, quote, we may bring you someone who's seeking
19 some sort of incentive in exchange for his testimony. Just do
20 us one favor, keep an open mind, evaluate his testimony in light
21 of the other witness' testimony, in light of the physical
22 evidence. Then and only then decide whether or not that person
23 is telling you the truth. End quote.

15:03:45 24 And you were referring there to Mr. Beckcom, right?

15:03:48 25 **A** Yes, I would assume so.

Video Deposition of Vic Wisner

15:03:50 1 Q Okay. Now that you know about all of these other documents
2 that were concealed in Ms. Siegler's work product file, now that
3 you know about her ongoing communications with a web of
4 informants that she was working with on two cases
5 simultaneously, do you feel that a jury could have fully
6 evaluated Beckcom's testimony without knowing all that?

15:04:15 7 A I would assume that they were skeptical. They knew he was a
8 federal inmate who was in custody on very serious charges, and
9 he wanted consideration for what he did. So I would say I think
10 they could have fully evaluated him.

15:04:29 11 Q If you had -- as a defense attorney, would you have objected
12 to that closing argument, knowing that you had -- your client
13 had not had access or the knowledge of these other witnesses
14 that Ms. Siegler had been dealing with?

15:04:57 15 A I would say no. I -- I don't -- I don't buy into your
16 theory. I'm sorry. I just don't.

15:05:03 17 Q You don't -- and also in your closing argument, on page 9,
18 line 12, you told the jury that in order to find Prible not
19 guilty, they'd have to believe that, quote, this defendant is
20 the unluckiest, unluckiest criminal defendant who has ever set
21 foot in a courtroom, and there has been a conspiracy to frame
22 this defendant, both in the free world and prison, so audacious
23 it makes any frame-up that has ever been conducted in the annals
24 of crime look like child's play, closed quote.

15:05:33 25 And when you said that, you weren't aware of all this other

Video Deposition of Vic Wisner

1 information about Ms. Siegler setting him up with these other
2 informants, were you?

15:05:39 3 **A** No, but I can answer that if you want.

15:05:41 4 **Q** The question is: Would you want this information? Would
5 you try to build a case, as a defense attorney, that he was
6 being set up by informants?

15:05:49 7 **A** No. If I was the defense attorney, I would have to come up
8 with some sort of theory about how his semen was found in the
9 dead woman's mouth. Because if not, he's guilty. We didn't
10 even need any informants. I'm just being honest with you.

15:06:01 11 **Q** Okay. So there was a defensive theory, wasn't there? The
12 defensive theory, let's just be simple about it, was that it was
13 consensual sex?

15:06:10 14 **A** But like in my argument, I mean, you wouldn't even write
15 something on television that was that crazy.

15:06:15 16 **Q** And did you know anything about this woman's sexual history?

15:06:18 17 **A** No.

15:06:19 18 **Q** Did you have any information that Mr. Prible had -- any
19 other information other than the -- than the semen that she was
20 assaulted by Mr. Prible?

15:06:27 21 **A** No.

15:06:27 22 **Q** Okay. So it's just the semen in her mouth?

15:06:30 23 **A** It's very damning.

15:06:31 24 **Q** And -- right. But he was -- and what's damning about it is
25 that it places him at the scene of the crime, correct?

Video Deposition of Vic Wisner

15:06:37 1 **A** Yes.

15:06:38 2 **Q** You cannot tell from the semen in the mouth whether it was
3 consensual or nonconsensual, can you, by just that fact that if
4 someone had semen in her mouth?

15:06:47 5 **A** Just that fact or the surrounding circumstances?

15:06:49 6 **Q** Just that fact.

15:06:49 7 **A** Of course not.

15:06:50 8 **Q** So they were both -- if the evidence -- if I'm correct and
9 if the record would show it, they were both highly intoxicated?

15:06:59 10 **A** Prible?

15:07:00 11 **Q** Prible and Mr. Herrera.

15:07:03 12 **A** I don't recall.

15:07:03 13 **Q** But if -- let's suppose that the evidence shows that.

15:07:08 14 **A** Yes, sir.

15:07:08 15 **Q** So there is an opportunity for consensual sex in such a
16 situation?

15:07:12 17 **A** It seems very implausible to me. As I said, you wouldn't
18 even write up -- write up a television script like that.

15:07:19 19 **Q** And you don't -- you don't -- in your history as a defense
20 attorney, you haven't come across situations like this?
21 Dysfunctional families where affairs have take- -- carried on,
22 where sex is rather easily exchanged?

15:07:33 23 **A** Not like this, no.

15:07:35 24 **Q** You haven't?

15:07:36 25 **A** That was a beautiful woman. Her husband is a dangerous man

Video Deposition of Vic Wisner

1 who was passed out or fallen asleep, and she decides to give
2 this very unattractive man, who seems to have no personality at
3 all, oral sex. And then he leaves, and someone else comes in so
4 fast and kills them while semen is still in her mouth?

15:07:53 5 Q Well, it doesn't have to be so fast, does it?

15:07:55 6 A Well, it seems --

15:07:56 7 Q You don't -- you don't recall the timeline, do you?

15:07:58 8 A It would seem to be pretty fast if the semen was still in
9 her mouth.

15:08:01 10 Q Okay. So that's the scientific evidence I mean, you're
11 basing your judgments on; isn't that right?

15:08:05 12 A Yeah.

15:08:06 13 Q That the semen would be -- okay.

15:08:08 14 A Like I said, and I'm not trying to argue with you, if all we
15 had was a confession of Beckcom, what you -- all of this would
16 be extremely important to me both as a prosecutor and defense
17 attorney.

15:08:20 18 Q Okay. Let's just go ahead --

15:08:21 19 A But --

15:08:23 20 Q Let's just make --

15:08:23 21 A Okay.

15:08:23 22 Q -- that assumption. You don't have the semen.

15:08:25 23 A Okay.

15:08:25 24 Q You don't have the semen. You just have Beckcom's
25 testimony.

Video Deposition of Vic Wisner

A Right.

Q Then this becomes highly important?

A Much more important without the semen.

Q Much more important?

A Of course.

Q The letters from the other informants showing that they were aware of Beckcom's -- aware of Beckcom and that they were in communication about this case together, that -- that becomes important?

A Yes. But I'm not even sure the case is tried if there isn't the semen in her mouth.

Q So in Mr. Beckcom's testimony at trial, your understanding was that Nathan Foreman heard everything that he did. He was there every step of the way.

A I don't recall that. If you say so, I would agree to it.

Q Okay. So given that background, does it become significant that Nathan Foreman, who is being used and rewarded in another case, the Herrero case, is taking photographs of -- with himself posing with Prible?

A I don't think it's all that significant, to be honest with you.

Q Would you, as a defense attorney, supposedly with no semen, want this photograph?

A I would want it, but like I said, it would be the least of my problems in this case.

Video Deposition of Vic Wisner

15:09:34 1 Q No, I'm saying without the semen.

15:09:36 2 A Without the semen? Oh, yes.

15:09:38 3 Q Okay. Fine. Thank you.

15:09:39 4 That's what -- that's the background premise.

15:09:41 5 And do you understand that --

15:09:45 6 A Without the semen, your whole job is attacking the
7 informant.

15:09:48 8 Q Correct. And -- and do you understand that before
9 Mr. Prible's trial, a letter was written on behalf of
10 Mr. Foreman on behalf of other snitches in the Herrero case who
11 were all in FCI Beaumont -- this ring is in FCI Beaumont --
12 seeking to assist them with Rule 35 reductions in the federal
13 system?

15:10:13 14 A Yes.

15:10:14 15 Q Would it be important for you to know that Mr. -- that
16 Ms. Siegler was writing on behalf of this informant, who was now
17 the cellmate of Michael Beckcom? Would you have used that to
18 impeach Michael Beckcom's testimony?

15:10:29 19 A I would have in either case, but it becomes, obviously, a
20 lot less important due to the physical evidence.

15:10:36 21 Q Thanks. Okay.

15:10:38 22 But it -- it's the -- but as you said, it becomes much more
23 important if that physical evidence was not present?

15:10:44 24 A Yeah. But like I said in that case, I doubt the case is
25 even tried.

Video Deposition of Vic Wisner

15:10:48 1 Q Right.

15:10:55 2 And one of the opinions is -- as a defense attorney, you'd
3 want to know is who sent you these photographs; is that correct?

15:11:01 4 A Sure.

15:11:02 5 Q All right. Who sent you the photograph of Mr. Prible
6 surrounded by one, two, three, four, five, six, seven other
7 people that were being used by Ms. Siegler in another case or in
8 this case to inform on Mr. Prible or on Mr. Herrero?

15:11:16 9 A Yes, sir.

15:11:17 10 Q Okay. That would be -- given there was no -- the physical
11 evidence was not significant, if you didn't have the semen, that
12 would be an extremely important piece of information for you to
13 have?

15:11:28 14 A Right.

15:11:29 15 Q Okay.

15:11:29 16 A But as we spoke about, I don't see how this case gets
17 tried --

15:11:32 18 Q That's correct?

15:11:32 19 A -- just with a federal informant.

15:11:34 20 Q And, in fact, you would want to know the identity of
21 Mr. Foreman and perhaps even call him to the stand if you
22 were -- if you knew his role in this -- knew what the
23 prosecutor, Ms. Siegler, knew about Mr. Foreman in this case?

15:11:53 24 A I guess so, but, I mean, it just seems like in order to
25 represent Prible, you've got to come up with some sort of

Video Deposition of Vic Wisner

1 plausible theory for the physical evidence.

15:12:03 2 Q Correct.

15:12:04 3 A If not, you're just impeaching really almost extraneous
4 issues or extraneous people.

15:12:09 5 Q Well, he was at the -- at the scene, and you have that from
6 other information, correct?

15:12:13 7 A Prible?

15:12:14 8 Q Yeah.

15:12:15 9 A I would assume so. I can't recall the facts.

15:12:17 10 Q I mean, he was at that house?

15:12:18 11 A Yes. He was at that house, yes.

15:12:20 12 Q And he never denied that?

15:12:22 13 A Yes. Well, he never -- he never took the stand. He never
14 gave a statement, I don't think.

15:12:28 15 Q He gave two statements to the police.

15:12:32 16 A I don't recall that, but I trust you on that. What did he
17 say about the sex?

15:12:38 18 Q He admitted that he had oral sex.

15:12:41 19 A And that he left?

15:12:43 20 Q Correct.

15:12:44 21 A Right. So the theory is that she kept the semen in his
22 [sic] mouth, and the real shooters came in, and he doesn't know
23 anything about who the real shooters were? That just is --

15:12:55 24 Q That's correct.

15:12:56 25 A It's implausible.

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15:12:57 1 Q Okay. That's -- that's your opinion of that situation?

15:13:00 2 A No. I think any person with common sense would say it's
3 implausible.

15:13:04 4 Q All right.

15:13:04 5 A It could have happened; it didn't happen.

15:13:06 6 Q That, of course, is a question about materiality, and it's
7 for the judge to decide, correct?

15:13:11 8 A No. I don't think that's an arguable point.

15:13:14 9 Q Okay. So -- but getting back to the premise, which is, you
10 know, the premise that there is -- the physical evidence is not
11 conclusive, that you need that snitch, that he's the main
12 attraction, the main show, you'd want to interview Carl Walker,
13 correct, as a defense attorney?

15:13:33 14 A The way I'd answer your question, sir, is that Beckcom is
15 inherently dislikeable --

15:13:41 16 Q Just yes or no.

15:13:42 17 A -- as is.

15:13:43 18 Q Just yes or no. Do you chase around --

15:13:44 19 A To further impeach someone who's in federal prison on a
20 serious case to make it even worse, I'd say yes.

15:13:50 21 Q Yes, right.

15:13:51 22 A But he looks bad to start with.

15:13:53 23 Q Correct. Correct. So, too, with Nathan Foreman. You'd
24 want to interview Nathan Foreman?

15:14:02 25 A I guess so.

Video Deposition of Vic Wisner

15:14:04 1 Q At trial, both you and Ms. Siegler --

15:14:10 2 A Uh-huh.

15:14:10 3 Q -- maintain that a spermatozoa deposit had to be -- would
4 have had to have been proximate to this woman's death, that the
5 oral sex had to happen proximate to this -- to death, correct?

15:14:24 6 A Yes.

15:14:24 7 Q Within minutes, correct?

15:14:26 8 A I don't know if we said minutes, but proximate is a good
9 term.

15:14:29 10 Q Within minutes was the testimony of Ms. Siegler.

15:14:32 11 A She didn't testify. She could only argue.

15:14:34 12 Q Was her argument. Her argument was within minutes, if not
13 seconds.

15:14:38 14 A I seem to remember -- maybe even I might have asked one of
15 the forensic people --

15:14:45 16 Q Uh-huh.

15:14:45 17 A -- about how long you would anticipate having sperm or semen
18 in a woman's mouth after they had performed oral sex with the
19 male ejaculating in her mouth. I seem to remember asking that
20 because it was important. I'm not positive.

15:15:03 21 Q Uh-huh. Yes. And I'll make the representation that the
22 testimony was not that it only lasts for minutes or seconds.

15:15:19 23 A Okay.

15:15:20 24 Q Okay. So who came up with this theory that it could only be
25 minutes or seconds, or it had to have been?

Video Deposition of Vic Wisner

15:15:28 1 **A** I don't know that we had a specific theory. It seemed that
2 it was common sense, and it seemed like what we argued was
3 consistent --

15:15:37 4 **Q** Uh-huh.

15:15:37 5 **A** -- with what the experts testified to.

15:15:40 6 **Q** Okay. So you thought --

15:15:41 7 **A** It seemed like it was both a combination of expert testimony
8 and common sense.

15:15:45 9 **Q** Okay. Expert.

15:15:46 10 You mentioned that one reason that you thought it would
11 have been implausible for the oral sex between Nilda and --
12 consensual sex between Nilda and Mr. Prible was his appearance.

15:15:57 13 **A** He did not give off the appearance of somebody who would be
14 seen as attractive to a female, though, that's just --

15:16:05 15 **Q** So that's a wild -- that's a wild speculation on your part,
16 isn't it?

15:16:10 17 **A** No. I think pretty much anybody would look at him or be --
18 or be around him, he came off as very cold, and he's very
19 unattractive.

15:16:17 20 **Q** Did you have any --

15:16:19 21 **A** He gives -- he kind of gives you the creeps, to be honest
22 with you.

15:16:22 23 **Q** So that was your basis. You had some sort of feeling that
24 he was creepy?

15:16:26 25 **A** If he was a handsome, tall, muscular, charismatic person, it

Video Deposition of Vic Wisner

1 may lead me to a different conclusion, or it may seem possibly
2 plausible.

15:16:35 3 **Q** So you were making judgments about whether she was sexually
4 assaulted based on your opinion of his physical appearance;
5 isn't that correct?

15:16:46 6 **A** I'd say as one of many factors, yes.

15:16:49 7 **Q** Oh, okay. As one of many factors. And you haven't heard of
8 some beautiful women falling for rather homely men? That hasn't
9 happened -- you don't know of that in your experience?

15:16:59 10 **A** Is that a question?

15:17:00 11 **Q** Yeah, that is a question?

15:17:01 12 **A** It happens very rarely, unless they have a lot of money.

15:17:03 13 **Q** And what is the basis for that opinion?

15:17:06 14 **A** Sixty years of life on earth.

15:17:08 15 **Q** Oh, 60 years.

15:17:09 16 Questions about materiality were being based on your
17 assumption on -- that Mr. Prible was unattractive to Nilda
18 Herrera?

15:17:22 19 **A** That and the circumstances of her husband being in extremely
20 close proximity, yes.

15:17:26 21 *(Conclusion of video deposition.)*

15:17:28 22 **THE COURT:** We'll take a 15-minute break.

15:17:30 23 *(Recess taken from 3:17 p.m. to 3:34 p.m.)*

15:34:17 24 **THE COURT:** Keep your seats. That's okay. We stand
25 up for the jury in this courtroom, but not for the judge.

Video Deposition of Michael Beckcom

Okay. Do we have another witness?

MS. SCARDINO: Yes, Your Honor. Petitioner calls Michael Beckcom by video.

(Video deposition of Michael Beckcom played as follows.)

EXAMINATION

Q In 1996 -- I want to talk with you about this. This was a murder case, and the procedural history was a bit complicated. You were charged in both state and federal court.

A That's correct.

Q What was the charge in state court?

A Capital murder.

Q And it was eventually dropped to a lower murder charge?

A Yeah.

Q Okay. And why -- why was that?

A I cooperated with the feds. They rolled it all into one.

I mean, I don't know how deep you want to get into that. I didn't know that's what this was about, but we'll go as deep as you want to.

Q Okay, yeah. I just need to understand a little bit about how those two cases worked together as far as your --

A Okay.

Q -- ultimate sentence was concerned.

A A business partner of mine had a feud with the gentleman, was murdered, so me and another guy were in the warehouse when the murder took place. Thirty days later, I was arrested. One

Video Deposition of Michael Beckcom

1 of the other two went and confessed, implicated me and the third
2 party. The other guy, Crawford, took off on the run. So that
3 left me, so I was catching the brunt of everything.

15:35:42 4 As time went on, things started lessening on me because of
5 no physical evidence, and the testimony of that guy was shaky on
6 the stand. So it started -- the state case started dwindling.

15:36:00 7 At some point, the deceased had spoken to someone in
8 California with the feds because he was being indicted on
9 something completely unrelated to me. So at that point, it took
10 a turn. They considered him a federal witness. So they came in
11 to kind of save the day for the state case that was falling
12 apart and kind of squeezed me in. So it was either take a plea
13 or face life in trial, so I agreed to cooperate, and I took the
14 plea.

15:36:28 15 Q Okay. And the plea that you took in federal court was what?

15:36:33 16 A The charge itself?

15:36:35 17 Q The -- sorry. The charge --

15:36:37 18 A The time?

15:36:37 19 Q -- and the time.

15:36:39 20 A Oh. It was retaliation against a federal witness by murder,
21 I think, and aiding and abetting, and it was 11 to 14.

15:36:45 22 Q Okay. Eleven to 14 years. And any probation after that?

15:36:49 23 A Five years supervised --

15:36:51 24 Q Five --

15:36:51 25 A -- release.

Video Deposition of Michael Beckcom

15:36:51 1 Q Five years supervised release?

15:36:53 2 A Correct.

15:36:53 3 Q Okay. And at the same time, you also pled guilty to
4 something in state court, right?

15:36:57 5 A Yeah. I -- I don't remember specifically what the charge
6 was. I think it -- man, that's a good question. I really don't
7 remember exactly what it was.

15:37:08 8 Q It was some sort of murder charge?

15:37:09 9 A Yeah.

15:37:09 10 Q So you don't recall filing a 6(b)6 in the California case?

15:37:13 11 A No, I don't.

15:37:14 12 Q Did Siegler help you with anything in regards to this 6(b)6
13 motion?

15:37:20 14 A I don't -- Siegler didn't really help me on anything.

15:37:25 15 Q What do you mean by that?

15:37:27 16 A Well, when this whole thing got started and I -- I set
17 myself in motion to testify in state court, she said she was
18 going to call my prosecutor in California. She said, "This
19 probably will get you out of prison."

15:37:51 20 Q She said -- she said that to you, This will get you out of
21 prison?

15:37:54 22 A Yeah. So I think she bullshitted me at that point because
23 once it was said and done, as I'm getting off the stand, they go
24 in the back, and she's got this grim look on her face, and I'm
25 like what now? "Well, they're only going to give you 12

Video Deposition of Michael Beckcom

1 months."

15:38:10 2 So at that point I felt like -- I knew she had lied to me
3 in the beginning that I was going to get walked out, you know,
4 for my testimony.

15:38:21 5 Q Did she lead you to believe that you would be getting out of
6 prison?

15:38:25 7 A Yeah.

15:38:27 8 Q Who was your case manager?

15:38:34 9 A It was a black lady. I was at the medium in Beaumont.

15:38:40 10 Q Was his name -- was it a man named Gordon Harpe?

15:38:44 11 A Mr. Harpe? He was the unit manager.

15:38:46 12 Q Okay. What do you remember about Mr. Harpe?

15:38:51 13 A Nice guy. He let me use the phone sometimes.

15:38:53 14 Q Okay. And how does that work? How could you use his phone?

15:38:58 15 A He would give you a call. Once in a while, if you wanted to
16 call family or something, he would dial it out for you and
17 let -- let you have a -- a call and talk to your family, if you
18 want to, you know.

15:39:07 19 Q Okay.

15:39:08 20 A He was a pretty good guy.

15:39:09 21 Q Okay. And he also let you call Siegler from those phones --
22 from his phone?

15:39:13 23 A I think I did call her from there.

15:39:15 24 Q And when you're testifying as an informant, credibility is
25 the most important thing, right, because you're a convicted

Video Deposition of Michael Beckcom

1 felon, right? Okay. And you need detailed information to give
2 the prosecutor so you'll seem more credible. Do you agree?

15:39:28 3 **A** Yeah.

15:39:28 4 **Q** Okay. And credibility is particularly tough for you because
5 you had a prior finding of perjury in your federal case, right?
6 Do you recall that?

15:39:38 7 **A** No.

15:39:40 8 **Q** You don't recall being called out for perjury in the federal
9 case in the Brueggen murder?

15:39:47 10 **A** No.

15:39:48 11 **Q** Okay.

15:39:48 12 Does this refresh your memory as to whether you were called
13 out for perjury in the Brueggen case?

15:39:55 14 **A** No. I mean, I don't -- it's obviously in print. I don't
15 remember it. I see where it led in from since -- from my arrest
16 June 3rd of that year.

15:40:04 17 Typical behavior.

15:40:09 18 **Q** What do you mean by that?

15:40:11 19 **A** If somebody gets arrested, they're trying to lessen anything
20 they can off of them. So...

15:40:16 21 **Q** Okay. And how did you hear about Kelly Siegler's connection
22 to Prible's case?

15:40:22 23 **A** It had to be Foreman.

15:40:30 24 **Q** Okay. And who was Nathan Foreman?

15:40:32 25 **A** He was an inmate at the Beaumont FCI Medium.

Video Deposition of Michael Beckcom

15:40:36 1 Q And he was your cellmate at one point, right?

15:40:38 2 A Correct.

15:40:38 3 Q Okay. So you were originally in USP in Beaumont, and then
4 around October 2000, you were moved to the medium? Does that
5 sound right?

15:40:50 6 A Yes.

15:40:51 7 Q Okay. And you don't have any say. You can't request a
8 cellmate, can you?

15:40:57 9 A Yeah. You can, if you want.

15:40:59 10 Q You can?

15:40:59 11 A I mean, they like to keep the peace in there. So if you and
12 a buddy, you know -- and you can get it worked out with the
13 officer on duty, they typically try to put people together who
14 want to be together, or, you know, friends.

15:41:14 15 Q But you already knew Foreman when you became cellmates with
16 him?

15:41:17 17 A Yeah. We had become friends, you know.

15:41:19 18 Q Exhibit 4 is your account telephone number list.

15:41:23 19 A Okay.

15:41:25 20 Q Okay. You notice in the fourth space there it lists Kelly
21 Siegler --

15:41:29 22 A I don't know why.

15:41:30 23 Q -- as an attorney?

15:41:31 24 A I don't know why I put her on my phone list.

15:41:35 25 Q Well, you were in contact with her, right?

Video Deposition of Michael Beckcom

15:41:37 1 **A** Yeah.

15:41:37 2 **Q** But you usually didn't need to use the inmate phones because
3 you could talk with her --

15:41:42 4 **A** Yeah.

15:41:42 5 **Q** -- from a unit manager phone?

15:41:45 6 **A** Yeah. I don't remember -- I don't remember her being on my
7 list.

15:41:47 8 **Q** Okay. So tell me about when -- you being called into the
9 lieutenant's office to speak with Ms. Siegler. What was -- when
10 did that occur?

15:41:58 11 **A** You're asking me a time?

15:41:59 12 **Q** Yeah.

15:42:00 13 **A** A month --

15:42:01 14 **Q** I'm asking you is -- was this the first time you ever met
15 with her face-to-face?

15:42:05 16 **A** Yeah.

15:42:06 17 **Q** Okay. But you had spoken with her on the phone many times
18 leading up to this?

15:42:10 19 **A** I don't know -- I don't know if it was many times, but I had
20 spoken with her.

15:42:15 21 **Q** And you say Foreman gave you her name. Was that after you
22 had already become cellmates or before?

15:42:27 23 **A** Good question.
15:42:27 24 I would say after.

15:42:35 25 **Q** So Foreman was her original informant in this case, right?

Video Deposition of Michael Beckcom

15:42:39 1 **A** I don't know what the relationship -- I thought he was doing
2 something else for her.

15:42:43 3 **Q** So you and Foreman never discussed Prible's case together?

15:42:46 4 **A** Well, we -- we talked to Prible together. I mean, this was
5 like a group of guys from Houston, which after this whole thing
6 got set in motion, it kind of became evident to me that this
7 whole group of, like, fricking ten guys were trying to get
8 information, and somehow I ended up with the information.

15:43:10 9 **Q** So they -- this wasn't a situation of him confessing to the
10 group and everyone then wanting a piece of the action?

15:43:20 11 **A** No.

15:43:20 12 **Q** They were actually trying to elicit details from him so they
13 could be part of the action?

15:43:25 14 **A** The details Jeff Prible gave me, he gave completely and
15 explicitly to me and Nathan Foreman one night. He just rolled
16 it out.

15:43:40 17 **Q** Okay. Let's look at the following page, the following
18 picture, Exhibit 8B.

15:43:46 19 **A** Okay. November '01.

15:43:51 20 **Q** November 11th, '01. So this is 13 days before this supposed
21 confession on the yard, right?

15:43:57 22 **A** Okay.

15:43:58 23 **Q** And who's in this picture? If you can do the bottom row,
24 first, left to right.

15:44:05 25 **A** I can't.

Video Deposition of Michael Beckcom

15:44:06 1

Q Okay.

15:44:06 2

A Jeff's in front of me. Nathan's to my left.

15:44:09 3

I don't remember all these guys' names.

15:44:12 4

Q Okay. Does the name Oscar Gonzalez ring a bell?

15:44:15 5

A I remember the name Oscar.

15:44:17 6

Q And his father, Felix Gonzalez, was in prison, also?

15:44:21 7

A Is that the long-haired cat?

15:44:25 8

Q Down in the bottom left?

15:44:26 9

A Yeah.

15:44:27 10

Q Yeah.

15:44:27 11

A Okay.

15:44:28 12

Q Is Oscar Gonzalez?

15:44:29 13

A Okay.

15:44:30 14

Q Do you remember him?

15:44:31 15

A I remember the face. I didn't remember his name. I

16

remember his dad was there, too.

15:44:35 17

Q Okay.

15:44:37 18

A I don't know -- I don't remember these guys.

15:44:37 19

Q Do you recognize the man standing to your left in the photo

20

with the mustache?

15:44:43 21

A No. I don't remember his name.

15:44:47 22

Q Does Cat Dominguez sound familiar?

15:44:49 23

A Cat. I remember the name Cat.

15:44:51 24

Q Rafael Dominguez?

15:44:53 25

A That's Cat.

Video Deposition of Michael Beckcom

15:44:54 1 Q Okay. And you're all surrounding Jeff in this picture. Do
2 you see that?

15:45:00 3 A Well, we're in two rows. If you want to call it
4 "surrounding," okay.

15:45:04 5 Q Okay. What was the purpose of this photograph?

15:45:07 6 A Again, these are all Houston guys wanting to take a group
7 photo.

15:45:12 8 Q They were also all Houston guys that were trying to set up
9 Mr. Prible, right?

15:45:15 10 A Well, I didn't know that at the time, but I kind of surmised
11 that later on. That was a feeling I got.

15:45:25 12 Q That's a picture of Prible and Nathan Foreman, right?

15:45:28 13 A Correct.

15:45:29 14 Q That's November 9th, 2001?

15:45:34 15 A That's correct.

15:45:35 16 Q And so during this time, Nathan was trying to get a
17 confession from Mr. Prible also, right, during this time period?

15:45:44 18 A Yeah, I guess so. I would assume he was.

15:45:47 19 Q Well, y'all were cellmates, right? Weren't you talking
20 about it together?

15:45:50 21 A Yeah. I'm sure we talked about it plenty.

15:45:52 22 Q So about how many prisoners did the medium house in total?

15:45:56 23 A Wow. A bunch.

15:45:58 24 Q More than a thousand?

15:45:59 25 A Yeah. I think so.

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15:46:00 1 Q But -- but your placement with Foreman, as far as you
2 understood, was random?

15:46:06 3 A What do you mean by "random"?

15:46:08 4 Q Like you were randomly placed in a cell with Foreman?

15:46:11 5 A No. I -- I think he asked me if he could move in.

15:46:14 6 Q Okay.

15:46:14 7 A Yeah. So -- so I said sure.

15:46:16 8 Q And so then you-all -- you would just need go to the unit
9 manager and ask them about it?

15:46:21 10 A Yeah. I don't even know if we needed to go to Harpe or not.
11 I don't remember if you had to go that far. Sometimes the
12 officer on duty would do it, or he may check with the unit
13 manager and see if there was an objection or something.

15:46:31 14 Q Okay.

15:46:32 15 A I don't remember the exact procedure, but typically.

15:46:34 16 Q Easy to do?

15:46:35 17 A Yeah. I mean, guys move all the time.

15:46:37 18 Q Okay. You testified at trial you knew Prible was coming to
19 meet him before he got there, right?

15:46:43 20 A Coming to meet who?

15:46:44 21 Q Coming to the medium. Sorry. Before he actually --

15:46:48 22 A That Prible was?

15:46:49 23 Q -- got to the medium? You had heard about his case and that
24 he was coming, right?

15:46:55 25 A Yeah. I don't remember the specifics of that.

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15:46:58 1 Q Yeah.

15:46:58 2 How would you have known that he was coming before he got
3 there?

15:47:01 4 A I don't know.

15:47:04 5 Q Is that an unusual thing for you to have known? Aren't
6 those things kept under wraps usually?

15:47:09 7 A Not necessarily, no. If they're coming from another prison
8 or -- there's a little communication that goes on in the system.
9 There's a lot of inmates, but it can be a small system.

15:47:23 10 Q So how would you be able to find that information out?

15:47:26 11 A I don't know how I would have known he was coming. I don't
12 remember that.

15:47:30 13 Q So --

15:47:31 14 A I don't remember that incident.

15:47:32 15 Q Okay. Someone would have had to tell you that he was
16 coming, right?

15:47:35 17 A Yeah. I would assume so. I don't know.

15:47:41 18 Q And before you spoke with him that first time, did you know
19 that he had been charged with these murders?

15:47:47 20 A Somebody probably told me, I'm sure.

15:47:50 21 Q And so then you went up to him and -- and met him knowing
22 what he was being charged with?

15:47:57 23 A I'm assuming. I don't remember the -- the sequence of
24 events.

15:48:03 25 Q It wasn't as if you befriended him, and then it came out

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1 later that he was charged with this? This was an intentional on
2 your part, introducing yourself to him and trying to elicit
3 information from him, right?

15:48:18 4 **A** I'm sure it probably played out that way. I don't remember
5 the sequence of events, though.

15:48:23 6 **Q** At FCI Beaumont, were you all able to watch television?

15:48:26 7 **A** Yeah.

15:48:26 8 **Q** Okay. Were you able to watch the nightly news?

15:48:29 9 **A** Yes.

15:48:29 10 **Q** Okay. So the *Houston Chronicle* was probably a pretty common
11 newspaper there?

15:48:35 12 **A** Yeah.

15:48:35 13 **Q** Did you read any articles about Prible's case while you were
14 in the prison?

15:48:41 15 **A** I could have. I may have. I don't remember that, but it's
16 possible.

15:48:48 17 **Q** Okay. And there are certain crimes that prisoners find
18 particularly reprehensible, right?

15:49:01 19 **A** Yeah.

15:49:01 20 **Q** Yeah. And those would be rape, right?

15:49:05 21 **A** And children.

15:49:06 22 **Q** Children. Both of which came into play in -- in
23 Mr. Prible's case, correct?

15:49:12 24 **A** Unfortunately.

15:49:13 25 **Q** Yes.

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15:49:13 1 And if you're charged with these things, you're not going
2 to be going around prison and telling everyone from the rooftops
3 that you did it, would you? You'd be an idiot, right?

15:49:25 4 **A** Yeah. What was he there for? He was there on a bank deal,
5 wasn't he?

15:49:30 6 **Q** Jeff there was on a bank robbery. Right.

15:49:31 7 **A** Yeah. I remember now.

15:49:32 8 **Q** Now, if you're innocent and you're charged with these
9 things, you might be telling everyone on the yard you're
10 innocent of it?

15:49:38 11 **A** Yeah.

15:49:39 12 **Q** Yeah.

15:49:40 13 **A** Or you might be telling everybody that to survive.

15:49:43 14 **Q** But you'd be an idiot to tell people that you were guilty
15 because it --

15:49:47 16 **A** To blurt it out --

15:49:48 17 **Q** -- could put you at risk?

15:49:50 18 **A** -- to everyone, yeah.

15:49:51 19 **Q** Yeah. Yeah.

15:49:51 20 Mr. Beckcom, on August 8th, 2001, Siegler and her
21 investigator, Johnny Bonds, met with Foreman in person to talk
22 about Prible's case. Did you know about this meeting? Did
23 Foreman ever tell you about it?

15:50:04 24 **A** I remember the name Johnny Bonds. He might have been there
25 when I met her.

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15:50:10 1 Q But she came with someone to meet with you?

15:50:12 2 A She came with someone, yeah. It had to have been him. I
3 remember that name. In what context, I'm at a loss for. It had
4 to be when I met them in the lieutenant's office.

15:50:27 5 Q Okay. Did Foreman tell you that he had met with Siegler
6 face-to-face?

15:50:34 7 A I don't recall having that conversation with him. I may
8 have, but I don't recall having the conversation with him.

15:50:40 9 Q Because you're cellmates. The two of you are cellmates.
10 You're both working on the same case --

15:50:44 11 A I understand.

15:50:45 12 Q -- all right? So presumably, you would have been discussing
13 the case amongst each other, right?

15:50:49 14 A And you're right. Presumably, we would.

15:50:51 15 Q Okay. Do you recall the first phone call you ever had with
16 Ms. Siegler, how it came about? You got her number from
17 Foreman, right?

15:50:58 18 A Yeah.

15:50:59 19 Q And you called her, and what did you tell her?

15:51:05 20 A The context of the conversation, I must have told her I had
21 information about Prible.

15:51:12 22 Q And you mentioned that several times, "the wheels got set in
23 motion." And what do you mean by that?

15:51:18 24 A I had information for her. She came. We talked. Then I
25 guess, from that point on, it was to see if I, you know, had

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1 anymore information, I would give it to her.

15:51:30 2 Q This is a fax dated November 26th, 2001, from Johnny Bonds
3 to Lieutenant Robert Clarke at FCI Medium. It's a visitation
4 request letter. He says, "We are supposed to be at your unit
5 around 11:00 a.m. on 12/10/01 to see Inmate Foreman. We also
6 need to see Inmate Beckcom after we talk to Foreman."

15:51:54 7 Go ahead and take a minute to read it to yourself.

15:51:56 8 Okay?

15:51:57 9 A Okay.

15:51:59 10 Q So this letter's dated November 26th, 2001. That's two days
11 after the photograph was taken with your mothers in this --
12 which was November 24th, 2001, and that was the date that you
13 said at trial that the confession came out. Do you recall that?

15:52:16 14 You with me?

15:52:19 15 A I'm here. I'm with you.

15:52:20 16 Q Okay. So she respected this -- she requested this visit on
17 November 26th. Had you contacted her after that November 24th
18 conversation with Prible and Foreman --

15:52:37 19 A I --

15:52:37 20 Q -- and told her that you needed to see her?

15:52:39 21 A I must have. I don't know.

15:52:43 22 Q Okay.

15:52:43 23 A Did I? It should be in here.

15:52:45 24 Q I'm asking you if you recall.

15:52:47 25 A Well, I don't remember.

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15:52:48 1 Q Okay.

15:52:49 2 A So this would be evidence if -- of it.

15:52:53 3 Q Well, if -- but if you had called her on the --

15:52:56 4 A If I called from --

15:52:57 5 Q -- the unit manager's phone, then it would not be.

15:52:58 6 A -- the unit manager's. So that -- that is a possibility.

15:53:02 7 Q Okay. And you and Foreman are still cellmates at this time,
8 right?

15:53:05 9 A Yeah. We're cellies till from the time I guess we both left
10 the yard.

15:53:10 11 Q Okay. So you had requested this visit with Siegler. And
12 did you know that he was meeting with her on the same day,
13 Foreman?

15:53:19 14 A I may have.

15:53:20 15 Q It seems probable, right?

15:53:22 16 A Probable, yeah.

15:53:23 17 Q You lived together?

15:53:24 18 A Yeah. Yeah.

15:53:24 19 Q You'd be talking about this.

15:53:26 20 Okay. So you knew he was going in before you, and then you
21 were going to follow him in. Do you recall, like, when you
22 walked into the lieutenant's office, was he walking out?

15:53:35 23 A No. And then again, this was Foreman. I may or may not
24 have known about this because we're on the yard, and without
25 ever saying anything to me about it, he suddenly went one day to

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1 the lieutenant's office and checked in and went to the SHU. So
2 I didn't even know what prompted that.

1 5 : 5 3 : 5 4 3 So that's what I mean by he would tell you what he wanted
4 to tell you, and he kept other things close to the vest. So he
5 had something else going on that he felt he needed to get off
6 the yard for. So, you know, everything's shaded in these
7 places.

1 5 : 5 4 : 1 2 8 **Q** So even though y'all were roommates, cellmates, you didn't
9 know that y'all were going to have these back-to-back meetings
10 that day with this prosecutor about the same case?

1 5 : 5 4 : 2 0 11 **A** I'm not saying I didn't know, but I don't remember
12 specifically that event of knowing. I mean, one day my
13 cellie -- people are asking me, "Why did Bo check in?" I'm
14 like, "What?" He didn't tell me anything about a need to get
15 off the yard.

1 5 : 5 4 : 3 6 16 **Q** But this was a case that y'all were working on together,
17 right? You were talking -- it's the same case, same prosecutor.
18 Y'all were discussing --

1 5 : 5 4 : 4 2 19 **A** Yes.

1 5 : 5 4 : 4 2 20 **Q** -- it among yourselves?

1 5 : 5 4 : 4 3 21 **A** Yeah. Obviously, I'm sure we were.

1 5 : 5 4 : 4 6 22 **Q** Do you remember this statement that you had written? This
23 is your handwriting, right?

1 5 : 5 4 : 5 0 24 **A** Yeah.

1 5 : 5 4 : 5 1 25 **Q** Okay. And when you gave this to Siegler, did you have a

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1 copy of it that you kept for yourself as well? Like did you
2 make notes or a copy of this statement that you were giving so
3 she had one and you had one?

15:55:06 4 **A** I don't think so. I think I just gave it to her.

15:55:08 5 **Q** Well, the trial took place almost a year after you wrote --
6 you gave this statement to Bonds?

15:55:14 7 **A** Maybe I had it.

15:55:15 8 **Q** Ten months.

15:55:16 9 Did you ever ask her for any sort of assurance, before you
10 went up and testified and put yourself at risk, that it would be
11 worthwhile?

15:55:25 12 **A** I'm sure I probably did, but I don't remember how that
13 conversation would have ended because I never got anything.

15:55:36 14 **Q** Well, you ended -- you got a year off.

15:55:40 15 **A** Yeah.

15:55:40 16 **Q** Is that right?

15:55:41 17 Okay.

15:55:41 18 **A** Yeah.

15:55:42 19 **Q** But you thought you would be walking out the door after?

15:55:44 20 **A** For a house full of bodies? Yeah. Children? Sure.

15:55:53 21 **Q** I'm going to show you Exhibit 22.

15:55:57 22 **A** There's Tony. So Tony must have told me something to make
23 contact with her.

15:56:03 24 I wonder how -- okay.

15:56:05 25 **Q** Okay?

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1 A Uh-huh.

2 Q Okay. This letter's not dated, but it's obviously before
3 Prible's trial, right?

4 A Yeah. I was still in the yard, and that's that --

5 Q Right.

6 A -- law library typewriter.

7 Q This is the law library typewriter --

8 A Yeah.

9 Q -- we were talking about earlier?

10 A Can't you tell it's crooked on the page?

11 Q Okay.

12 A Old-school font.

13 Q And then you say, "Also, can you give me any reassurance
14 that the feds are going to do the right thing on this case?"
15 And what are you referring to there?

16 A The Prible case.

17 Q The Prible case. So you're wanting reassurance from her
18 that the feds were actually going to give you a time cut for the
19 Prible case?

20 A Yeah.

21 Q Okay. And did she give you any reassurance on that end?

22 A I never got anything in writing. I mean --

23 Q Not in writing, but just in --

24 A I think the best -- as I shared earlier, I think the best
25 she did was -- they're going to play ball might have been her

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1 words. I've talked to them, and they're in, something to that
2 effect.

15:57:02 3 Q In this letter -- this is a letter from Ted Wilson
4 requesting permission for Siegler and Bonds to interview you and
5 Antone Davi on May 6th, 2002, correct?

15:57:16 6 A Correct.

15:57:16 7 Q Okay. So you think that this typewritten undated letter
8 from you, which mentions Davi --

15:57:23 9 A Obviously, it would be prior to this, yeah.

15:57:25 10 Q This would have been in response to that?

15:57:27 11 A Yeah.

15:57:28 12 Q Exhibit 34 would have been in response. Okay.

15:57:30 13 And you recall her coming to meet you, but you don't
14 remember what eventually happened with that case?

15:57:35 15 A With Tony, no. I don't remember what he and I even talked
16 about. My head was swimming with information back then.

15:57:43 17 Q About other people's cases?

15:57:48 18 A I guess, once I had all this from Prible, it's like suddenly
19 people came out of the woodwork for trying to get out. People I
20 didn't -- I'm like, How the fuck do you know what -- that I
21 talked to somebody?

15:58:05 22 Q I'm going to show you Exhibit 18, which has three separate
23 letters to Siegler from the father/son duo of Jesse and Felix
24 Gonzalez. One is from Mark Martinez. Do you recall that name?

15:58:26 25 A Felix? Or Mark Martinez?

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15:58:28 1 Q Mark Martinez, yeah. Do you recall him?

15:58:32 2 A I mean, Martinez is pretty common.

15:58:35 3 Q Okay. Carl Walker?

15:58:37 4 A That's a black guy.

15:58:38 5 Q Yeah. Do you remember Carl Walker?

15:58:40 6 A I remember Carl.

15:58:41 7 Q He used to come in your -- and hang out with you and Foreman
8 and yourself sometimes? Do you remember that?

15:58:51 9 A I know he visited some.

15:58:55 10 Was he in our unit? I can't remember if he lived in our
11 unit or not.

15:59:12 12 Jesse and Felix.

15:59:15 13 Q Have you seen these letters before?

15:59:16 14 A I don't remember seeing these. I don't know. It's
15 possible.

15:59:26 16 Q Now, again, these look like they were typed on that
17 typewriter at the library, right?

15:59:30 18 A Yeah. That's all we had access to.

15:59:34 19 Q And all the indentations are the same, right? The
20 formatting is the same on all three letters, right?

15:59:44 21 A Yes.

15:59:45 22 Q Okay. And it's also the same formatting as in Exhibit 22,
23 your letter that you wrote to Siegler, right?

15:59:56 24 A Correct.

15:59:56 25 Q They look like they were typed by the same person, don't

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1 they?

16:00:01 2 **A** I don't know.

16:00:01 3 **Q** You don't know?

16:00:09 4 **A** The same type of typewriter. It's all we had, five or ten
5 of them.

16:00:13 6 **Q** And the same formatting as we just discussed, and Prible is
7 misspelled in each of them, P-R-I-B-B-L-E. Do you see that?

16:00:20 8 **A** Uh-huh. Oh, that's not his spelling?

16:00:25 9 **Q** Huh?

16:00:27 10 **A** How do you spell his name, P-R-I-B-L-E?

16:00:30 11 **Q** Did you think you spelled it P-R-I-B-B-L-E?

16:00:33 12 **A** I really don't know.

16:00:35 13 **Q** Okay. Did you type up these letters for these men?

16:00:39 14 **A** I don't know.

16:00:42 15 **Q** Do you have any idea why she didn't use anyone else, any of
16 these other inmates that were --

16:00:47 17 **A** No.

16:00:47 18 **Q** -- vying to testify against Mr. Prible?

16:00:50 19 **A** No.

16:00:51 20 **Q** Okay. But you knew that they were all working this case,
21 right?

16:00:59 22 **A** I think Bo kind of said something to that effect at some
23 point.

16:01:04 24 **Q** Okay. Before the trial. Before his trial, right?

16:01:08 25 **A** Yeah.

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16:01:09 1 Q So I'm going to show you Exhibit 30. See if you remember
2 Exhibit 30. This is an October 30th, 2002, handwritten letter
3 from you to Ms. Siegler. If you could just read it to yourself.

16:01:29 4 A Okay.

16:01:30 5 Q In the first paragraph, it says, "I trusted you completely,
6 and you did exactly what you said you would." What had she said
7 she would do?

16:01:42 8 A Good question.

16:01:46 9 I don't remember the letter I'm referring to.

16:01:48 10 What was this letter for?

16:02:02 11 Q Did you later determine after -- sometime after you wrote
12 this letter, that she actually hadn't done what you thought she
13 was going to do?

16:02:09 14 A Obviously.

16:02:09 15 Q Okay.

16:02:11 16 You were contacted about a dep- -- about this deposition
17 before. It was scheduled for a date earlier than today,
18 correct?

16:02:19 19 A Yes.

16:02:19 20 Q All right. And you didn't know show at that deposition; is
21 that correct?

16:02:24 22 A Yeah. I apologize for that. I don't know what happened.
23 Personal issues.

16:02:28 24 Q All right. But you did meet with our investigator,
25 JJ Gradoni; isn't that correct?

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A Uh-huh. That's correct.

Q That's correct.

And, in fact, you gave an affidavit to JJ Gradoni, a handwritten affidavit?

A Yes.

Q Yes.

Does that refresh your memory about the nature of your conversations with Mr. Prible at the beginning?

A Yes. It refreshes somewhat.

Q Okay. So they were not particularly about the crime, but about other matters? Is that fair to say?

A Yeah. I tend to gravitate towards commonalities, I guess.

Q Uh-huh.

All right. And -- and so during your first -- the first series of conversations, you didn't have much, at all, to tell Mr. -- Ms. Siegler about the -- the crime, did you?

A That's correct.

Q Is it a fair appraisal of your testimony to say that the first telephone call was not to provide Ms. Siegler with information about the case?

A According to that, yes.

Q And is -- do you believe that your testimony back then was correct?

A Absolutely.

Q All right. The purpose of that telephone -- that telephone

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1 conversation, is it fair to say, was to arrange a deal with this
2 prosecutor for your testimony?

16:03:52 3 **A** Or to let her know I had information.

16:03:55 4 **Q** But did you have -- but you didn't impart any information
5 during this conversation --

16:04:00 6 **A** No.

16:04:00 7 **Q** -- did you?

16:04:01 8 **A** No, I didn't.

16:04:02 9 **Q** And as the other -- and later, though, you began to develop
10 information -- develop information through that prosecutor,
11 correct?

16:04:10 12 **A** As Prible told me information, I relayed it to the
13 prosecutor.

16:04:14 14 **Q** Sure. And on the -- when you had the conversation on -- in
15 October, you did discuss -- she made clear to you what she
16 needed in order for her to get you a Rule 35?

16:04:32 17 **A** I don't know --

16:04:32 18 **Q** Is that correct?

16:04:33 19 **A** I don't know that she outlined details of what she needed
20 specifically. I mean, she needed, obviously, information that
21 is credible, and I just relayed exactly what he told me.

16:04:50 22 **Q** All right. But you had no other reason to develop evidence
23 against Mr. Prible other than the fact that you may be -- might
24 be given a Rule 35?

16:05:00 25 **A** Correct.

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Q Okay. That was the motivation and the sole motivation?

A Correct.

Q For providing testimony for Kelly Siegler?

A Correct.

Q Uh-huh.

And you knew about -- you've been in the federal system for some time, and you're aware of Rule 35, correct?

A Yeah. I mean, not in detail, but sure.

Q But that, basically, is about the only mechanism by which you can get your sentence reduced in the federal system, correct?

A Pretty much.

Q Yes.

So is it fair to say that that was an issue that was at least discussed or opened up on the October conversation with Kelly Siegler?

A I don't -- I don't remember talking about Rule 35. I can't say it wasn't.

Q Would it there be any reason that you would not discuss a Rule 35?

A Specifically, I don't know.

Q Uh-huh.

Let me see if I have this.

Again, I'll show you rule -- page 37 because you said you stopped at page 36.

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16:05:59 1 **A** Okay.

16:05:59 2 **Q** And so page 37 is referring back, if I may -- if -- am I not
3 right, to that initial phone call, your initial phone call?

16:06:08 4 **A** Correct.

16:06:09 5 **Q** Correct. And page 37 of the record makes clear that the
6 purpose of that phone call was to discuss the possibility of you
7 arranging for a reduction in your sentence?

16:06:21 8 **A** Correct.

16:06:21 9 **Q** Okay. And that means by Rule 35 -- a Rule 35 reduction. Is
10 that fair to say?

16:06:28 11 **A** It's fair to say.

16:06:29 12 **Q** So this increases the likelihood, to say the least, that a
13 Rule 35 reduction, what that meant, how she could help you, was
14 discussed in that conversation?

16:06:41 15 **A** Okay.

16:06:41 16 **Q** Is that correct?

16:06:42 17 **A** I agree.

16:06:43 18 **Q** You agree?

16:06:54 19 And Ms. Siegler made clear during that conversation,
20 according to the record, that you were supposed to get specifics
21 about the case?

16:07:04 22 **A** That's what the transcript says, yes, sir.

16:07:06 23 **Q** You approached Mr. -- you approached Mr. Prible for
24 information as well, correct, both you and Foreman?

16:07:13 25 **A** Yes.

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16:07:14 1 Q Okay. I'm going to show you a copy of the statement that
2 you gave.

16:07:18 3 And did you read this before you signed it?

16:07:19 4 A Yes, I did.

16:07:20 5 Q Okay. And is it an accurate -- and you realize it's a
6 statement under oath under penalty of perjury, correct?

16:07:29 7 A Yeah.

16:07:30 8 Q Okay. And it's signed by --

16:07:32 9 A Me.

16:07:32 10 Q -- you? That is your signature on page 2?

16:07:36 11 A Uh-huh.

16:07:37 12 Q And dated 4/19/2017.

16:07:41 13 And it states that you started taking notes about what
14 Mr. Prible was telling you about his case, in effect, "To have
15 the information that Kelly Siegler asked me to get," correct?
16 That's the first sentence.

16:08:03 17 A Okay.

16:08:03 18 Q And that's -- and, again, this is an accurate statement,
19 correct?

16:08:11 20 A Yes.

16:08:12 21 Q Okay. And you also repeat that Nathan Foreman was present
22 when Prible talked about his case, correct?

16:08:27 23 A Correct.

16:08:27 24 Q Okay. And that mirrors your testimony at trial? In fact,
25 at trial you said, too, that Nathan Foreman was present on every

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1 occasion. So --

16:08:41 2 **MS. SCARDINO:** Excuse me, Mr. Beckcom. If you
3 could --

16:08:42 4 **THE WITNESS:** Yes.

16:08:42 5 **MS. SCARDINO:** -- say yes --

16:08:43 6 **THE WITNESS:** Yes.

16:08:43 7 **MS. SCARDINO:** -- or no for the record.

16:08:45 8 **THE WITNESS:** Yes. I gotcha. My apologies.

16:08:45 9 **MS. SCARDINO:** What was your answer?

16:08:46 10 **THE WITNESS:** Yes.

16:08:50 11 **BY MR. RYTTING:**

16:08:51 12 **Q** I'm going to ask you to take a look at Exhibit No. 10, if
13 will you.

16:08:55 14 And this was written down proximate to the date of the --
15 the date that's on this document, 12/10/01?

16:09:02 16 **A** Yeah. I don't know if it was right before that date, but it
17 was an accumulation of conversations.

16:09:11 18 **Q** Okay.

16:09:11 19 **A** Obviously, this was one -- this pertains to one specific
20 evening.

16:09:14 21 **Q** So this would have been close to the -- the time of -- of
22 the event? You're actually keeping sort of a diary of what was
23 going on with Mr. -- what you were hearing from Mr. Prible? Is
24 that fair to say?

16:09:27 25 **A** I don't know if I kept what you would call a diary. I just,

Video Deposition of Michael Beckcom

1 obviously, wrote things down, but then I put it all together.

16:09:37 2 Q Okay. And so this would be the most -- if anything, the
3 most accurate account, since it's proximate in time to the -- to
4 the event that you're talking about, which is the alleged
5 confession that Mr. Prible made; is that correct?

16:09:55 6 A That's correct.

16:09:55 7 Q All right. But at trial -- and it says right here that
8 you -- he -- that you -- that you walked out to the football
9 field and sat down.

16:10:12 10 A Okay.

16:10:13 11 Q And the purpose was to get away from everyone?

16:10:16 12 A Yeah. There was probably no one on the field at that point.

16:10:19 13 Q And you actually sat down on the ground?

16:10:23 14 A Okay. Yes.

16:10:24 15 Q Meaning just cross-legged in a circle just talking to each
16 other?

16:10:29 17 A Just sat in the grass.

16:10:30 18 Q Just sat in the grass. Okay.

16:10:32 19 In the middle of the field? Do you recall where you were
20 exactly?

16:10:35 21 A No, not specifically.

16:10:36 22 Q But at trial it was not what you testified to, or do you
23 remember -- or did you testify to that at trial?

16:10:43 24 A I don't remember, sir.

16:10:44 25 Q No? Okay. But this is -- would be a piece of information

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1 that seems to be, you know, where this confession took place and
2 the setting, and it should stick in someone's mind; isn't that
3 correct?

16:10:57 4 **A** Where I was specifically sitting --

16:10:58 5 **Q** Yes.

16:10:58 6 **A** -- on the rec yard?

16:11:00 7 **Q** Yes.

16:11:00 8 **A** If you say so.

16:11:01 9 **Q** I'm not saying so. I'm asking you.

16:11:04 10 **A** I don't know that that's of grave importance exactly where
11 my butt was when somebody confessed to killing a family. No, I
12 don't.

16:11:11 13 **Q** Ms. Scardino also showed you a photograph that was taken of
14 and you Mr. Prible --

16:11:17 15 **A** Yes.

16:11:17 16 **Q** -- your mother, Mr. Prible's mother and Mr. Foreman's
17 parents, and you stated that that was just a -- do you recall
18 what you testified to here about why that -- that photograph was
19 taken?

16:11:41 20 **A** No. I specifically don't remember why it was taken.

16:11:45 21 **Q** You don't remember?

16:11:46 22 **A** No.

16:11:47 23 **Q** Okay. I'd like to show you a -- another couple pages of the
24 record, starting with pages 82 and 83.

16:12:00 25 **A** Okay.

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16:12:01 1 Q And you notice that in your trial testimony, you referred to
2 this photograph as corroborating evidence?

16:12:09 3 A Yeah, I did. I see that.

16:12:11 4 Q And it was to be used to corroborate the -- the alleged
5 confession, the confession that you claim to have gotten from
6 Mr. Prible, correct?

16:12:21 7 A I don't know that I made that intention.

16:12:24 8 Q Uh-huh.

16:12:25 9 A It was awkward.

16:12:27 10 Q Yeah.

16:12:27 11 So I mean, again, I'll show you page 83, and if you read
12 down starting at line 19 --

16:12:32 13 A Yes. So if it was going to be. I don't know that it
14 wasn't -- anyone went with specific intentions. I don't know
15 that I did or not. I don't remember.

16:12:42 16 Q Do you know -- does this -- does your testimony indicate --

16:12:45 17 A My testimony indicates --

16:12:46 18 Q -- that the purpose of the -- of taking that photo was to
19 have evidence for the criminal case against -- a criminal case
20 against Mr. Prible? Is that fair to say?

16:12:55 21 A That's fair to say.

16:12:56 22 Q Okay. And you know that visiting hours at the -- what are
23 the visiting hours at BOP, if you know?

16:13:06 24 A On weekends, maybe some evenings later in the week, but I
25 don't remember specific hours.

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16:13:15 1 Q Was it usually before 5:00 o'clock; is that correct?

16:13:18 2 A We have a 4:00 p.m. count. So it's before that.

16:13:20 3 Q Before that?

16:13:21 4 A Yeah.

16:13:21 5 Q Okay.

16:13:22 6 A Some mornings till early afternoon.

16:13:24 7 Q Correct.

16:13:26 8 And so that photograph was taken before?

16:13:31 9 A Before what?

16:13:32 10 Q Before Mr. Prible talked to you and Foreman on the yard;
11 isn't that correct?

16:13:36 12 A On -- yeah. On any particular day, correct.

16:13:40 13 Q It was taken, though, the same day as you claim that he
14 confessed?

16:13:43 15 A Oh, yes.

16:13:44 16 Q Okay.

16:13:45 17 A So it would be before.

16:13:46 18 Q Beforehand?

16:13:46 19 A It would be beforehand, correct.

16:13:48 20 Q Right. Right.

16:13:48 21 So -- and it was on the 24th that you claim that everything
22 came out?

16:13:54 23 A Yes.

16:13:55 24 Q Okay. And so you took evidence -- you took the photograph
25 with the intention of corroborating a confession that you didn't

Video Deposition of Michael Beckcom

1 have yet?

16:14:04 2 **A** I didn't know he was going to say what he said.

16:14:09 3 **Q** But you were anticipating that he was going to confess?

16:14:13 4 **A** Never knew.

16:14:16 5 **Q** But you claim that this is corroborating evidence.

16:14:19 6 **A** I agreed with the question, yes.

16:14:20 7 **Q** Uh-huh. And you had nothing to corroborate yet?

16:14:24 8 **A** No.

16:14:25 9 **Q** And you didn't object to Mr. Foreman being your roommate,
10 correct?

16:14:30 11 **A** No.

16:14:30 12 **Q** Even though he was black; you were white?

16:14:33 13 **A** Yeah.

16:14:33 14 **Q** And that you at least had some association with a gang
15 called the Dirty White Boys, correct?

16:14:41 16 **A** Well, I had a band in there, and my base player was a member
17 of them.

16:14:49 18 **Q** Correct. Right. So --

16:14:52 19 **A** If that's considered an association, sure.

16:14:55 20 **Q** Uh-huh. Sure. All right. And that was an actual -- a --

21 the name reflects what? What does that name mean? What type of
22 group was this?

16:15:03 23 **A** White guys.

16:15:04 24 **Q** Yes.

16:15:04 25 White guys only?

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A Yeah.

Q And they -- so it was organized on racial lines, correct?

A Sure.

Q So -- but nonetheless, given your association with this group, even though it was through the base player, you agreed to have Nathan Foreman as your roommate?

A I'm not a member of their group.

Q Uh-huh.

And you mentioned in your testimony -- I haven't shown it to you, but I'll make the representation that you knew that Foreman was -- had been involved providing informants to Ms. Siegler in other cases?

A In what context? I don't remember speaking with him about it. I don't remember details, but I kind of got the indication, as we talked about previously, that that group were all trying to do something.

Q Uh-huh. And, in fact, there -- and, in fact, you knew that they were attempting to testify against Mr. Prible?

A Or others.

Q So it indicates that you did know that these people were involved trying to testify against Mr. Prible?

A That's what it indicates.

Q And they were all in the photograph with you on -- dated, I believe, October 11th, the group photograph.

Yeah. The group photograph dated 11/11.

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16:16:49 1 **A** Yes, sir.

16:16:50 2 **Q** Every single one of these individuals mentioned in these --
3 in this BOP document?

16:16:54 4 **A** That's correct.

16:16:55 5 **Q** Okay. They are all there surrounding Mr. Prible with you?

16:16:59 6 **A** Yes, sir.

16:16:59 7 **Q** And -- so it can't just be a coincidence, can it, that one,
8 two, three, four, five, six -- seven people, who were angling to
9 testify against Mr. Prible, all took a picture together?

16:17:22 10 **A** No.

16:17:22 11 **Q** Okay. And the purpose of this -- this picture could be used
12 just like the photograph of you and the Prible family?

16:17:34 13 **A** It could.

16:17:35 14 **Q** Did you send this photograph to Ms. Siegler?

16:17:41 15 **A** I don't recall sending her that photograph.

16:17:43 16 **Q** Do you not --

16:17:44 17 **A** I don't know if I did or not.

16:17:45 18 **Q** But you -- okay.

16:18:04 19 Is it safe to say it was either you or someone --

16:18:07 20 **A** Obviously in the group.

16:18:07 21 **Q** -- in the -- in the group?

16:18:10 22 **A** Other than Mr. Prible.

16:18:17 23 **Q** And in order for you to be able to make a statement, like
24 none of these inmates had enough credible information to
25 testify, you had to know something about what those inmates

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1 intended to tell Mrs. Siegler and the jury, correct?

16:18:33 2 **A** That would presume that, yes.

16:18:34 3 **Q** But you realize that George -- that Nathan Foreman, your
4 roommate, was listed as a witness in the Herrero case?

16:18:41 5 **A** In the Herrero case? I don't know if I learned that or, if
6 I did, I don't remember when.

16:18:48 7 **Q** Okay. He's your roommate. You and Foreman are interested
8 in getting benefits for testifying against Mr. Prible, correct?

16:18:58 9 **A** Okay.

16:18:58 10 **Q** Okay. He gives you the phone number of this prosecutor,
11 correct?

16:19:04 12 **A** Okay.

16:19:05 13 **Q** He gave you the phone number to call. He's there every step
14 of the way when you're testifying -- when you're getting
15 information from Mr. Prible, correct?

16:19:14 16 **A** I believe so.

16:19:15 17 **Q** Yes. As was your testimony at trial.

16:19:22 18 **A** Okay.

16:19:22 19 **Q** And he didn't explain to you that he was also -- that --
20 when he -- and he -- when he gave you that number for Siegler,
21 did he not explain to you that the reason you should call this
22 woman is that she is willing to go -- to use her influence to
23 seek Rule 35 reductions for inmates, that she's the one you go
24 to?

16:19:49 25 **A** I don't know that he explained in such detail as you're

Video Deposition of Michael Beckcom

1 describing right now, no. I don't recall that conversation.

16:19:54 2 Obviously, he said enough for me to pick up the phone and
3 make a phone call.

16:19:58 4 Q Okay. I'm going to show you the affidavit of -- of Nathan
5 Foreman.

16:20:04 6 Let's just go to page 2 of page 3 of this document -- of
7 these -- of this three-page document. And if you go down to
8 the -- the fourth full paragraph, it says, "Beckcom wanted to
9 get information about Prible so he could get his sentence
10 reduced. That is the only reason Beckcom had for talking to
11 Prible that I know of. Beckcom did not talk to me about going
12 into business with Prible after prison."

16:20:41 13 Any reason -- is that correct?

16:20:44 14 A No.

16:20:46 15 Q What's false about that statement?

16:20:48 16 A This whole thing's false.

16:20:51 17 Q I didn't ask you about the whole thing. I asked you about
18 that paragraph. Tell me what statement is false.

16:20:59 19 A We did talk about going into business with Prible after
20 prison.

16:21:03 21 Q Okay. So you and Nathan Foreman were going to go into this
22 asphalt business with Mr. Prible? That was your belief,
23 correct?

16:21:11 24 A That was the pretense.

16:21:12 25 Q Okay. It was a pretense for what?

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A Information.

Q Okay. A pretense to get Mr. Prible to come forth with information about his case, correct?

A Correct.

Q Okay. Mr. Foreman says he did not have any experience with asphalt or any other type of --

A Neither did I.

Q -- pavement business. And neither did you?

A No. I mean, I'm aware of an industry, but that's about it.

Q And so you weren't generally -- yeah, okay. Fine.

So you weren't generally interested in that -- going into that business. That wasn't going to be your plan for post -- post release?

A I had some interest in it.

Q Okay.

A It was a conversation starter as well.

Q All right. Let's go up to the first full paragraph. Now, it says, "Other FCI inmates heard about Prible's case and talked about his case with each other. Rafael Dominguez did. So did Michael Beckcom and a couple of the other Mexican or Hispanic inmates. People talked about Prible's case and even joked about setting Prible up would get time cuts, how Prible was going to be a ticket out of jail. Michael Beckcom was part of these conversations and plans to set Prible up."

And you dispute this paragraph or any part of it?

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A I don't remember having group conversations with these people. My conversations were mostly with Foreman.

Q Okay. But you understand that that's what -- that there were people in that system that viewed Prible that way, as a ticket out of jail?

A Yeah. I see that.

Q Uh-huh. Is that -- do you dispute what Mr. Foreman says in that paragraph?

A No. I can't dispute it. I didn't --

Q Were you aware of it?

A I didn't hear these conversations.

Q Uh-huh. But nonetheless, you have a photograph with you and the individuals that Mr. Foreman has taken of that all surrounding Prible --

A That's correct.

Q -- taken on November 11th, 13 days before he supposedly confessed to you, correct?

A That's correct.

THE COURT: Can you stop the tape for a moment?

MS. SCARDINO: Yes, Your Honor.

(Video paused.)

THE COURT: How much -- how much more is on this?

MS. SCARDINO: Just about -- I think, about 15 minutes, probably.

THE COURT: Okay. Let's go ahead and finish this.

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1 I'll ask those who are here for our 4:30 hearing just to be
2 patient. We'll get to it very quickly.

1 6 : 2 3 : 4 3 3 **MS. SCARDINO:** Okay.

1 6 : 2 3 : 4 3 4 *(Video Deposition of Michael Beckcom resumes playing.)*

1 6 : 2 3 : 4 5 5 **Q** Now, you claim that Mr. Prible told you that -- in your
6 trial testimony, and I believe in your written statement, too,
7 you -- that he searched the house for money. And both in your
8 statement and in your trial testimony, you claim that -- that
9 Prible told you that Herrera was trying to screw him out of a
10 quarter of a million dollars.

1 6 : 2 4 : 2 7 11 **A** Yeah. I read that in my testimony, yes.

1 6 : 2 4 : 2 9 12 **Q** Okay. And in your -- in your written statement, as well,
13 tracks that -- that? Is that your understanding?

1 6 : 2 4 : 3 5 14 **A** Yes. I wrote down what -- what he told me.

1 6 : 2 4 : 3 8 15 **Q** And so that is a large amount of money?

1 6 : 2 4 : 4 3 16 **A** Absolutely.

1 6 : 2 4 : 4 5 17 **Q** Right?

1 6 : 2 4 : 4 5 18 And someone in that -- if someone thought that was in a
19 house, what would they do to that house?

1 6 : 2 4 : 5 3 20 **A** Ransack it, I suppose.

1 6 : 2 4 : 5 5 21 **Q** Correct.

1 6 : 2 4 : 5 8 22 In fact, if you thought that type of money was in a house,
23 you would turn over every bloody mattress, every drawer,
24 correct?

1 6 : 2 5 : 0 8 25 **A** You would think so.

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16:25:09 1 Q Uh-huh.

16:25:19 2 And you understand that that house was undisturbed other
3 than fire damage?

16:25:24 4 A Other than set on fire?

16:25:27 5 Q Yes. So that indicates that Mr. Prible did not search that
6 house, don't you think?

16:25:37 7 A That would indicate that.

16:25:50 8 Q I just want -- there's another article. It's 28F, another
9 *Houston Chronicle* article dated July 7th.

16:26:04 10 So you were in the medium when this article came out?

16:26:07 11 A Yeah. I got moved over that day, I guess.

16:26:09 12 Q But, again, we have an article that lays out significant
13 facts in the case, correct, when -- I'm talking about
14 Exhibit 28F.

16:26:20 15 A Okay. 28F. Let me get back there again.

16:26:33 16 Yep. It mentions all the deceased.

16:26:37 17 Q The deceased, the DNA evidence, the amount of money that was
18 found in the victim's pocket?

16:26:42 19 A That's correct.

16:26:47 20 Q So -- and the -- it mentioned the victims still have a
21 course -- a close interest in this case and what happened, at
22 least according to the article, correct, at the top?

16:27:03 23 A Okay.

16:27:07 24 Q So by this time, is there anything in your testimony that
25 you can recall that wasn't in these articles in your testimony?

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A I don't know specifically. No, not that I recall. I'm reading in its entirety and comparing it and cross-referencing it with this article.

Q Uh-huh.

A All I know is my testimony is based on what came out of Jeff Prible's mouth and I wrote down.

Q Uh-huh.

A I mean, if you're asking me to recant what I said, I didn't lie.

Q Uh-huh.

Do you have your testimony in front of you?

A Yes.

Q On line 15, Ms. Siegler asks, "What month was it that you first heard about this case and learned my name?" And you respond, "I didn't learn about your name until later, probably the end of September, early October of 2001. Prior to that, I had heard of the case just briefly, something about a guy coming from the low charged with murder. I didn't really get too much information on it, end quote.

Now, do you think, looking -- now that you've seen this July 7th, 2001, article, that that might have been the reason you knew that Mr. Prible was coming from -- was going to be transferred from the low?

A No. I would take that as being yard talk.

Q Just someone on the yard knew?

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16:28:19 1 **A** Inmate rumor mill.

16:28:20 2 **Q** Okay. Someone on the yard knew that he was coming?

16:28:23 3 **A** Yeah.

16:28:23 4 **Q** And y'all were talking about it?

16:28:24 5 **A** Yeah.

16:28:24 6 **Q** But he wasn't quite there yet?

16:28:26 7 **A** No. Obviously not.

16:28:27 8 **Q** Okay.

16:28:30 9 Now, you read the Foreman affidavit, and he stated that

10 Jeff Prible did not confess in his presence.

16:28:49 11 **A** Yeah. I read that.

16:28:51 12 **Q** So -- and -- but you claimed at trial that Foreman was right

13 there.

16:28:57 14 **A** That's right.

16:28:58 15 **Q** Correct?

16:28:58 16 You -- and again --

16:29:00 17 **A** One of the guys even said he was trying to gather

18 information. So why would he be doing that if -- I mean, it

19 makes no sense. Why would he be trying to gather information

20 and then say, "I didn't get that information? No, that's not

21 true?" He either heard these things, or he didn't hear them.

22 So he can't have it both ways.

16:29:19 23 **Q** So -- that's correct. And he states he didn't hear them.

16:29:24 24 **A** Okay.

16:29:25 25 **Q** And not only did Mr. Foreman say he didn't hear Jeff

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1 confess, neither did any of the other inmates that were --
2 neither did Carl Walker.

16:29:34 3 **A** No, he didn't.

16:29:35 4 **Q** When Mr. Prible confessed to you, was Nathan Foreman
5 present?

16:29:38 6 **A** Yes, he was.

16:29:39 7 *(Conclusion of video deposition.)*

16:29:45 8 **THE COURT:** Okay. We'll recess until tomorrow. Is
9 9:00 o'clock convenient?

16:29:50 10 **MS. SCARDINO:** Yes, Your Honor.

16:29:51 11 **MS. MIRANDA:** Yes, Your Honor.

16:29:52 12 **THE COURT:** Okay. Thank you very much.

16:29:52 13 *(Evening recess taken at 4:29 p.m.)*

14 -o0o-

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above matter.

17

18 Date: June 5, 2019

19 /s/ Heather Alcaraz
20 Signature of Court Reporter

21

22

23

24

25

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EXHIBIT 58



EXHIBIT 59

STATE OF TEXAS)

)

COUNTY OF HARRIS)

AFFIDAVIT OF J.J. GRADONI

My name is J.J. Gradoni. I am over 18 years of age and am competent to make this affidavit. The following statements are true and correct:

1. I am a private investigator for Ronald Jeffrey Prible. In April 2017, I was able to locate a current address for Michael Beckcom at [REDACTED]

[REDACTED].

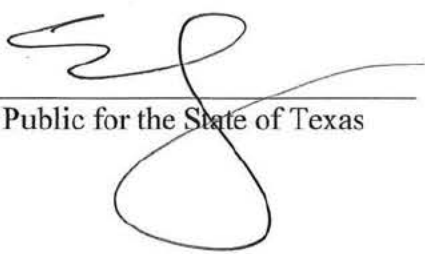
2. On April 19, 2017, I went to Beckcom's home to attempt to serve him with a subpoena for his deposition in the case of *Prible v. Davis*, Cause No. H-09-CV-1896, in the United States District Court for the Southern District of Texas, Houston Division. Upon arrival, I learned that Beckcom's home was located in a gated community. The security guard would not allow me to enter without first calling the homeowner asking for permission. The security guard dialed the home number and spoke with a woman that I believed to be Beckcom's wife. He told her that a private investigator was trying to gain admittance to speak with her husband about a case. The woman would not allow the security guard to open the gate.

3. I then called a phone number that I believed belonged to Beckcom. I left a message on the voicemail asking Beckcom to call me. I also called a phone number that I had found that I believed belonged to Beckcom's wife; I left a message on that number as well. A short time later the call was returned. I spoke with Beckcom's wife and told her that I needed to speak with Beckcom about a case he had been involved in in Texas.

4. A short time later, Beckcom called me and told me he would meet me at a Starbucks located on Lyons Avenue in Coconut Creek. Beckcom arrived at the Starbucks on his Harley Davidson motorcycle. He told me that he was done with the Prible case and wanted to have no more involvement in it. I explained to Beckcom that the lawyers wanted to take his deposition. At this point in time Beckcom became very angry, agitated, and threatening. He told me, "If I have to I'll kill the son of a bitch lawyer and go back to prison, but I'm not going to get involved in this case anymore." I served Beckcom with the subpoena for his deposition.


J.J. Gradoni, Affiant

SWORN and SUBSCRIBED before me, the undersigned authority, on 1st of August, 2017. WHEREFORE, witness my hand and seal of office:


Notary Public for the State of Texas

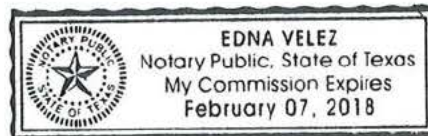


EXHIBIT 60

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD JEFFREY PRIBLE,
Petitioner,

VS.

LORIE DAVIS,
Respondent.

)
)
)
) CIVIL ACTION NO.
) 4:09-CV-1896
)
) 9:02 A.M.
)
)

EVIDENTIARY HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
APRIL 30, 2019
VOLUME 2

APPEARANCES:

FOR PETITIONER:

MS. GRETCHEN N. SCARDINO
Scardino L.L.P.
401 Congress Avenue, Suite 1540
Austin, Texas 78701
(512)659-4470

MR. JAMES GREGORY RYTTING
Hilder & Associates, P.C.
819 Lovett Boulevard
Houston, Texas 77006
(713)655-9111

FOR RESPONDENT:

MS. TINA DETTMER MIRANDA
MR. GEORGE A. D'HEMECOURT
Office of the Attorney General
Criminal Appeals Division
P.O. Box 12548
Capitol Station
Austin, Texas 78711
(512)936-1400

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 APPEARANCES CONTINUED:

2 **COURT REPORTER:**

Heather Alcaraz, CSR, FCRR, RMR

3 Official Court Reporter

515 Rusk, Suite 8004

4 Houston, Texas 77002

(713)250-5584

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EVIDENTIARY HEARING - VOL. 2

APRIL 30, 2019

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PETITIONER'S WITNESSES:**KELLY SIEGLER (VIA DEPOSITION) 5****TERRY GAISER**

Direct Examination by Ms. Scardino 154

Cross-Examination by Ms. Miranda 193

09:02:11 1 (Call to Order of the Court.)

09:02:12 2 **THE COURT:** Thank you. Please be seated.

09:02:16 3 I was pleased to hear from the director -- the
4 director's counsel concerning Ms. Siegler.

09:02:24 5 Do you -- have you received that -- that -- those
6 pleadings?

09:02:28 7 **MS. SCARDINO:** Yes, Your Honor. I've started
8 reviewing them. Ms. Miranda just provided us with a copy, and
9 she contacted me last night to tell me about her conversation.

09:02:39 10 **THE COURT:** I'm happy we made contact. I'm happy that
11 you're willing to take the lead in working out the technology.
12 Is there anything we need to discuss now, or is it -- should I
13 assume that things will be -- will proceed as -- as -- as
14 prognosis suggests?

09:03:00 15 **MS. MIRANDA:** There are a couple of items, if we can
16 take them up now, Your Honor, with respect to her testimony.
17 And one of them -- I mean, we're going to work on the
18 technology, but with respect to how we go from where we are now
19 to where we get with her, I believe they anticipate finishing up
20 their case today, potentially.

09:03:19 21 Is that correct?

09:03:20 22 **MS. SCARDINO:** Yes, Your Honor.

09:03:21 23 **MS. MIRANDA:** And then we have deposition designations
24 for the same witnesses that testified, and we weren't able,
25 unfortunately, with the timing to get them all together.

Video Deposition of Kelly Siegler

THE COURT: That's all right. That's okay.

MS. MIRANDA: So our designations overlap substantially. So there's a lot of repeats, but what we wanted to propose to the Court -- I believe they're planning to play Ms. Siegler's designations today, and then they would rest their case, and then in the interim between now and Thursday, we could edit ours down to just the portions that don't overlap so that we don't have to play those all over again for the Court.

THE COURT: That sounds like a plan.

MS. MIRANDA: Okay. And so then if we could have that time, then we would finish with their case, and then we would reconvene on Thursday, play those, and then take Ms. Siegler's --

THE COURT: Works for me.

MS. MIRANDA: -- live testimony.

MS. SCARDINO: We do have one more witness after Ms. Siegler's video this morning, and that's Mr. Gaiser, but we anticipate finishing up early afternoon.

THE COURT: Good. Okay. Good. Good. This is very promising.

You ready to call Ms. Siegler by deposition?

MS. SCARDINO: Yes, Your Honor.

(Video deposition of Kelly Siegler played as follows.)

EXAMINATION

Q So from approximately 1989 to 2008, you worked very closely

Video Deposition of Kelly Siegler

1 with Mr. Bonds on a lot of your cases?

09:04:43 2 **A** It was off and on. He would be transferred around, and I
3 would be transferred around. So it wasn't consistently the
4 whole time, no.

09:04:49 5 **Q** Okay. When you did work on a case together, you would
6 oftentimes accompany each other to witness interviews, correct?

09:04:59 7 **A** Define "often."

09:05:00 8 **Q** Well, more often than not?

09:05:02 9 **A** No.

09:05:03 10 **Q** No? How often would he accompany you to a witness
11 interview?

09:05:10 12 **A** I did most of my witness interviews by myself.

09:05:13 13 **Q** You did?

09:05:14 14 **A** Yeah.

09:05:14 15 **Q** And would you take notes when you did those witness
16 interviews?

09:05:18 17 **A** No. I didn't have time. I was talking.

09:05:21 18 **Q** You didn't take any notes after you left the interview to
19 remember what you had spoken with the witness about?

09:05:27 20 **A** Maybe sometimes.

09:05:29 21 **Q** But most of all -- most of the time, you just kept it up in
22 your head?

09:05:32 23 **A** I tried.

09:05:34 24 **Q** Well, you're very detail oriented, right?

09:05:37 25 **A** I hope most lawyers are.

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Q And details matter in circumstantial cases a lot, right?

A Yes.

Q You have to be meticulous, thorough, organized to solve these cold cases, right?

A I think any case you handle as a prosecutor requires the same things.

Q So is that a yes?

A As I said, I think all cases we work on require the same things.

Q Okay. Require you to be meticulous, thorough and organized, right?

A On any case.

Q Okay. And in the Temple case, you testified that you won circumstantial -- circumstantial cases by paying attention to detail. That's a true statement, right?

A Yes.

Q Okay. And in the Temple case, you testified that inconsistent statements of material witnesses fell under Brady, and a witness is material if he gets called to testify at trial. Do you recall that?

A No.

Q You don't recall making that statement?

A No.

Q Okay. We can come back to it, then, in a moment.

Okay. Going on to the offense reports, what was the policy

Video Deposition of Kelly Siegler

1 about disclosing offense reports to the defense back in
2 1999-2002?

09:07:01 3 **A** The office had an open file policy.

09:07:04 4 **Q** And what does that mean?

09:07:07 5 **A** For the most part, offense reports were open for the defense
6 to read.

09:07:12 7 **Q** Okay. So let's break that down. "For the most part," when
8 were they not available for the offense to read -- the defense
9 to read?

09:07:20 10 **A** What does that have to do with the issue we're here for
11 today having to do with the ring of snitches that you claim I
12 manipulated?

09:07:28 13 **MS. SCARDINO:** Objection, nonresponsive.

09:07:29 14 **BY MS. SCARDINO:**

09:07:31 15 **Q** I'd like to talk -- ask you again: What did you mean for
16 the most part these offense reports were available for the
17 defense to read?

09:07:39 18 **A** I'm not going to answer questions about every case I ever
19 handled.

09:07:43 20 **Q** Okay.

09:07:43 21 **A** That's not what this deposition is about.

09:07:45 22 **Q** So are you refusing to answer my question?

09:07:47 23 **A** Yes.

09:07:47 24 **MR. DOYLE:** What she wants to know --

09:07:48 25 **Q** Now, I'm going to ask this question about the offense

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1 reports. Going back to it, you said, quote, for the most part,
2 the defense was able to see the offense reports.

09:07:57 3 What did you mean, "For the most part"?

09:08:00 4 **A** It was an open file policy.

09:08:02 5 **Q** Okay. But you said, "For the most part." So that means not
6 all offense reports were given to them, correct?

09:08:10 7 **A** Correct.

09:08:11 8 **Q** Okay. If the witness -- if the investigator did not testify
9 in the trial, were you obligated to turn those offense reports
10 over to the defense?

09:08:24 11 **A** I don't understand what that has to do with the Jeffrey
12 Prible case and the ring of snitches that you-all have alleged
13 that I orchestrated.

09:08:32 14 I'm not going to ask -- I'm not going to answer questions
15 about every case --

09:08:36 16 **Q** I asked the question. Are you going to answer it or not?

09:08:38 17 **A** What was the question?

09:08:39 18 **Q** "For the most part" -- you said, "For the most part, the
19 defense was able to see the offense reports."

09:08:45 20 What did you mean, "For the most part"? When were they not
21 able to see the offense reports?

09:08:53 22 **A** Well, the most obvious exception to seeing the offense
23 report was if an examining trial was requested.

09:09:00 24 **Q** Okay. And was an examining trial requested in this case?

09:09:03 25 **A** In the Jeffrey Prible case?

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Q Right. Yes.

A I don't think so.

Q Okay. Were the offense reports in this matter of those investigators [sic] that did not testify at Mr. Prible's trial, were those offense reports given to Mr. Prible's defense attorneys?

A Yes.

Q When?

A Whenever they came to look at the file.

Q And when an attorney did come and look at the file, were you in the room with them when they looked at the file?

A Sometimes I was. Sometimes I wasn't.

Q Okay. And you'll agree with me that when you say "open file," ultimately, the prosecutor is the only person that knows what is in the entire file, correct?

A Correct.

Q Okay. And if you had removed certain things from the file, there would be no way for the defense to know that unless you told them that, correct?

A Correct.

Q What was your policy regarding the production of -- or the disclosure of written witness statements to the defense?

A In the Prible case?

Q Yes, in the Prible case.

A The defense got to see it.

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Q When did they see it?

A Whenever they came to look at the file.

Q So this was a different situation than in the Temple case where you didn't present the -- or offer -- or disclose the written witness statements until after the witness had testified; is that correct?

A Yes.

Q Okay. And it was different because the Temple case was an examining trial?

A Yes.

Q And so you -- you had different rules that you went by if it was an examining trial versus just a normal trial?

A According to the office policy, yes.

Q What was the DA's policy regarding the disclosure of Brady evidence that came to light after a trial was over?

A The same as it was before. If you heard about Brady information, you disclosed it.

Q Even after the trial was over, you needed to make that disclosure to defense counsel?

A Yes.

Q Were you at the DA's office during the state habeas proceeding for Mr. Temple?

A What years?

MR. DOYLE: Prible.

BY MS. SCARDINO:

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Q I'm sorry. Mr. Prible.

A What were the years of that proceeding?

Q I believe 2004, 2005.

A I was still at the office. Was I involved in it, I was not in appellate.

Q Okay. But you would have been consulted by the appellate group prior to them appearing at the state habeas hearing?

A I never appeared at any state habeas hearing.

Q I'm sorry. Let me -- that might have been confusing.

The people in the appellate group at the DA's office that were prepping for the state habeas hearing, they would have consulted you, as the trial attorney on that case, prior to that hearing, correct?

A I would hope so.

Q Right. I mean, that -- that would make sense that they would come to you since you had --

A They didn't always.

Q -- been the person that tried the case?

A They didn't always.

Q Did they in this case?

A I don't remember.

Q Exhibit 154 is excerpts from that policy manual. And I'll represent to you that this policy manual was produced by Brian Rose in response to a Public Information Act request to me as the manual that would have been in place in 2001 and 2002.

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And if you go to page 1 -- or page 25, so it's

Exhibit 154-25 --

A Not all of 2001 because the date is August 2001. So there could have been something different at some part -- point in 2001.

Q So do you disagree with Mr. Rose's representation that this is the policy manual that was in effect in 2001 and 2002?

A Well, from the bottom of the page, it says this is effective August 16 of 2001. So more than half of 2001, some of these things could have been different.

Q Okay. And you tried Mr. Prible's case in 2002?

A Yes.

Q Okay. So if you go to page -- Exhibit 154-25 -- and I know that your eyesight is -- is recovering, so I can read this to you. It says, quote, a prosecuting attorney should not impede defense counsel's access to witnesses but may accompany and assist witnesses in any interview with defense counsel.

Now, if a prosecutor does not reveal the existence of a witness, that would be an impediment, right?

A Not necessarily.

Q Well, how would the defense attorney know about a witness if the prosecutor didn't disclose the identity of that witness?

A I don't know who the witness is.

Q Okay. How about a jailhouse informant that came to you to talk with you about a case? There's no way a defense attorney

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1 could have known that unless you had disclosed that, correct?

09:14:19 2 **A** I think that answer is going to always depend on the
3 circumstances of a given case.

09:14:23 4 **Q** Okay. I just gave you the circumstances. What's your
5 answer with those circumstances?

09:14:28 6 **A** The same.

09:14:29 7 **Q** So you can't answer yes or no?

09:14:31 8 If a prosecutor does not reveal the existence of a witness,
9 that would be an impediment. That's my -- my premise that I'm
10 asking you the question, and the -- the cons- -- the
11 circumstances are if a jailhouse informant reached out to you,
12 Kelly Siegler, to talk with you about a case, the defense
13 attorney would have no way of knowing about that witness unless
14 you disclosed the identity of that witness to them; isn't that
15 correct?

09:14:59 16 **A** What's your question?

09:15:01 17 **Q** That was my question. Can you answer that question?

09:15:04 18 **A** I cannot.

09:15:05 19 **Q** You can't answer that?

09:15:06 20 **A** I don't think that's necessarily always going to be an
21 impediment.

09:15:10 22 **Q** Okay. If a jailhouse informant -- in this case, Nathan
23 Foreman is one -- came to you and said he had information about
24 Prible's case, the defense attorney would have no way of knowing
25 that that witness came to you with that information unless you

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1 disclosed that to the defense attorney, wouldn't you agree?

09:15:33 2 **A** No, I don't agree with that statement.

09:15:37 3 **Q** Okay. Moving on, also on Exhibit 154-25, it says, "A
4 prosecuting attorney shall provide information known to the
5 prosecuting attorney which is subject to a voluntary discovery
6 agreement or Court order throughout the case."

09:15:55 7 Now, this doesn't look like an open file policy to me.

09:15:59 8 **A** What doesn't?

09:16:00 9 **Q** This -- this statement saying that the prosecuting attorney
10 shall provide information, which is subject to a voluntary
11 discovery agreement or a Court order. Is that different from an
12 open file policy? Right?

09:16:12 13 **A** I didn't write the office manual. I have no idea what they
14 meant when they wrote it.

09:16:16 15 **Q** Okay. But you'll agree that this statement does not
16 describe an open file policy, right?

09:16:21 17 **A** I don't agree with that. I don't know what they meant when
18 they wrote this.

09:16:25 19 **Q** Did you ever enter into a voluntary discovery agreement with
20 defense counsel?

09:16:29 21 **A** Orally voluntarily all the time.

09:16:32 22 **Q** Okay. But nothing in writing?

09:16:34 23 **A** I might have had a few.

09:16:37 24 **Q** Okay. When a defense attorney would come and look at the
25 file, would you take notes of what was shown to that defense

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1 attorney?

09:16:46 2 **A** Sometimes.

09:16:47 3 **Q** Did you in this case?

09:16:48 4 **A** In the Prible case?

09:16:49 5 **Q** Uh-huh.

09:16:51 6 **A** No.

09:16:51 7 **Q** Okay. Going back on Exhibit 154-25, it also says, "A
8 prosecuting attorney shall participate in good faith in pretrial
9 discovery. Absent voluntary discovery, the prosecuting attorney
10 shall diligently and timely divulge matters as may be ordered by
11 the Court, end quote.

09:17:12 12 Now, again, there's no mention of an open file policy in
13 that paragraph, right?

09:17:16 14 **A** Not in this paragraph, no.

09:17:20 15 **Q** What is a timely divulging of information, in your mind?

09:17:26 16 **A** I don't know. I didn't write that paragraph.

09:17:28 17 **Q** Okay. You -- let's -- let's talk about your understanding
18 of the requirement that you timely disclose Brady -- Brady
19 information. What is your understanding of the timely
20 disclosure requirement?

09:17:45 21 **A** To make good faith reasonable efforts to disclose.

09:17:49 22 **Q** And at what point are you required to disclose Brady
23 information?

09:17:53 24 **A** That depends on the circumstances.

09:17:56 25 This is 2017. I have looked at, investigated, worked on,

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1 worked questions up for, tried, given advice on, talked about
2 and gone over maybe 500 murder cases since this one.

09:18:16 3 **Q** Okay.

09:18:17 4 **A** That's a lot.

09:18:18 5 **Q** And so you didn't review any of your materials from this
6 case in order to prepare yourself for this deposition today?

09:18:26 7 **A** No. I don't have them.

09:18:28 8 **Q** Okay. Well, was there anything preventing you from getting
9 the work product file and the other -- the rest of the file from
10 the DA's office prior to your deposition?

09:18:38 11 **A** I don't have them. I don't work there any more.

09:18:41 12 **Q** I'm asking -- I understand that. I'm asking you: Was there
13 anything preventing you from asking the district attorney's
14 office to allow you to see the file prior to your deposition
15 today?

09:18:50 16 **A** No one told me to do that.

09:18:53 17 **Q** And -- my question was: Was there anything preventing you
18 from making a phone call to the DA's office to ask if you could
19 see this file prior to your deposition today?

09:19:03 20 **A** No.

09:19:04 21 **Q** Mr. Prible, I'll represent to you, he gave his clothes to
22 the detectives that day so they could test for trace evidence,
23 and there was no blood, no Kutzit -- that's the accelerant used
24 to start the fire -- no hair, no burns, no soot, no fibers of
25 any kind connecting him to the murder scene. You don't recall

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1 that?

09:19:31 2 **A** Anything that you would represent to me, I can't agree to.

3 I've read your petition. It's full of lies. So whatever you

4 might tell me you're representing to me, I really need to see

5 for myself. And I don't remember all the details of the case.

09:19:47 6 **Q** Okay. When did you get involved in this case?

09:19:58 7 **A** 2001, maybe 2000. I don't remember.

09:20:03 8 **Q** Okay. So the Harris County Sheriff's Office had interviewed

9 all witnesses and submitted all of their reports in 1999, and

10 the investigation was completed by 1999. Do you remember that?

09:20:15 11 **A** I wasn't involved in 1999, and I disagree with that.

09:20:19 12 **Q** You disagree with that?

09:20:20 13 **A** Yes.

09:20:21 14 **Q** Okay. What was done post 1999?

09:20:23 15 **A** That's when I got the case.

09:20:25 16 **Q** Yes. And what did you do when you started investigating the

17 case?

09:20:29 18 **A** Started from the beginning all over again.

09:20:32 19 **Q** Did you interview witnesses?

09:20:35 20 **A** Yes.

09:20:36 21 **Q** Okay. But you didn't make any notes of those witnesses?

09:20:40 22 **A** If I did, they're in the file.

09:20:42 23 **Q** They would be in your work product file?

09:20:44 24 **A** No. They would be in the file.

09:20:46 25 **Q** So someone in the DA's office was working on the case from

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1 the very beginning in April 1999, but for whatever reason, they
2 did not ask to accept the charges at that time?

09:21:00 3 **A** I don't know. I don't know who was working on it before me.

09:21:03 4 **Q** Okay. And presumably, it's because the evidence didn't --
5 at that time didn't rise to the level of probable cause;
6 otherwise, they would have accepted charges on a five-person
7 murder, right?

09:21:13 8 **MS. MIRANDA:** Objection, form.

09:21:14 9 **A** I disagree with that.

09:21:15 10 **BY MS. SCARDINO:**

09:21:16 11 **Q** You do disagree with that?

09:21:17 12 **A** I do.

09:21:18 13 **Q** Okay. Was this case presented to the Grand Jury for
14 indictment in 1999?

09:21:23 15 **A** I didn't have the case in 1999.

09:21:25 16 **Q** And -- and I understand that, although you did have the
17 file. And so I'm asking you if you recall, from your review of
18 the file, whether the case was presented to the Grand Jury for
19 indictment in '99?

09:21:38 20 **A** Not that I recall, no.

09:21:39 21 **Q** Okay. So the case went cold in -- in 1999, and there's
22 nothing new in the file, I'll represent to you, until 2001,
23 although you've seen the file. Do you -- would you agree with
24 that statement?

09:21:53 25 **MR. DOYLE:** I don't -- I don't think she has seen --

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A That the case went cold, no.

MR. DOYLE: I'll object, the characterization that she had seen the file.

BY MS. SCARDINO:

Q Okay. Let -- let me restate since it's been 17 years.

All of the investigate -- all of the investigative reports and the evidence in the file is dated through 1999, but then nothing else is new in the file until 2001. Do you recall that?

A I don't recall that.

Q Okay. I'm going to show you Exhibit 46. Exhibit 46 is a March 1st, 2001, fax from William Watson to Bonds -- to Johnny Bonds. Do you see that?

A I do.

Q Okay. And Dr. Watson was the state's DNA expert in this case. Do you recall?

A He's the witness who testified, yes.

Q Okay. So it appears, from the date of this fax, that this case, the Prible case, is back on your and Mr. Bonds' radar at least by March 1st, 2001, correct?

A Yes.

MS. MIRANDA: Objection, form.

BY MS. SCARDINO:

Q Exhibit 52 is an April 4th, 2001, letter from an inmate at FCI Beaumont named Jesse Moreno to you. Now, if you need some time to read this, we can go off the record.

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So on April 4th, 2001, you received this letter,

Exhibit 52, from Jesse Moreno, and Mr. Moreno was --

A Well, that's the date he wrote the letter.

Q Okay. The date he wrote the letter. So sometime after April 4th, 2001, probably within a couple of days, you received this letter from Mr. Moreno, correct?

A Within a week, I would say, yes.

Q Okay. And Mr. Moreno was a federal prison inmate that had testified for you in the murder trial of Jason Morales a few years prior. Do you remember that?

A Yes.

Q Okay. In exchange, you dismissed a charge of aggravated robbery against him in a home invasion case in which the victims were beaten with a hammer. Do you recall that?

A I don't remember what happened with Jesse Moreno's case having to do with Jason Morales. I don't remember.

Q With Jason Morales? You don't recall dismissing a charge of aggravated -- of aggravated robbery against him?

A I do not.

Q Okay.

A I don't know what happened to his case. I can't remember.

Q Okay. So you might have done it, but you just can't recall?

A I do not remember.

Q Okay. Do you recall that you also did not charge him in a capital murder case in which he was a suspect?

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A I don't remember that at all.

Q You don't recall that at all?

A No.

Q Okay. I'm going to show you Exhibit 70. This is an excerpt of Dan Cogdell, Hermilio Herrero's attorney, questioning Mr. Moreno.

And Mr. Cogdell asks, question, "Isn't it a fact, Mr. Moreno, that in addition to the crime that you were charged with, which was later dismissed after you testified, you were a suspect in a capital murder case?"

Answer, "Yes."

Question, "So in addition to the dismissal of the aggravated robbery that was filed, you were never charged with a capital murder case?"

Answer, "No."

Now, does this refresh your memory as to whether you dismissed a charge of aggravated robbery against Mr. Moreno and also did not charge him in a capital murder case in which he was a suspect --

MS. MIRANDA: Objection, form.

BY MS. SCARDINO:

Q -- in exchange for his testimony in the Jason Morales trial?

A Contrary to what your petition states, I did not handle that capital murder case. It was never mine. It was Mark Vincent's. I had nothing to do with that.

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09:25:50 1 Q Okay. So the answer is no, you did not dismiss a charge of
2 aggravated robbery against Mr. Moreno?

09:25:54 3 A That's not my answer.

09:25:55 4 Q Okay. Then I don't understand your answer.

09:25:58 5 A I don't remember what happened in the cases arising out of
6 Jason Morales. I had nothing to do with the capital murder
7 case. That was not my case, contrary to what you've stated in
8 your petition.

09:26:10 9 Q Okay. Well, I'm -- I'm not talking about the petition right
10 now. I'm just asking you a question. So you're saying that you
11 had nothing to do with that capital murder case?

09:26:21 12 A Correct.

09:26:21 13 Q Okay. But you might have dismissed the charge of aggravated
14 robbery, but you don't recall?

09:26:26 15 A I don't remember if he pled or it was dismissed. I cannot
16 remember.

09:26:29 17 Q Okay. And so when Moreno contacted you in this letter
18 April 4th, 2001, he was being housed in the medium SHU in
19 Beaumont -- FCI Beaumont; isn't that right?

09:26:42 20 A Medium or low. I don't remember.

09:26:43 21 Q Okay. Somewhere in FCI Beaumont in the SHU?

09:26:45 22 A What is the SHU?

09:26:46 23 Q The SHU -- the special housing unit.

09:26:48 24 A I didn't know that.

09:26:49 25 Q Okay. That's just the segregation --

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09:26:51 1 **A** I didn't know that.

09:26:52 2 **Q** The segregation unit. Okay. I'll refer to it as the SHU,
3 S-H-U.

09:26:58 4 Okay. And when he contacted you, he was in the SHU with an
5 old friend of his from the neighborhood named Jesse Foreman,
6 wasn't he?

09:27:05 7 **A** I don't know who he was with.

09:27:06 8 **Q** I'm sorry. Nathan Foreman.

09:27:07 9 **A** I don't know who he was.

09:27:08 10 **Q** You don't recall that he told you he was in there with
11 Nathan Foreman?

09:27:10 12 **A** From this letter, no.

09:27:11 13 **Q** No. I'm asking you, aside from this letter, when he
14 contacted you, at that time, he was in the SHU with Nathan
15 Foreman, right?

09:27:19 16 **A** I don't know who he was with.

09:27:21 17 **Q** Okay. These are the BOP housing records for Nathan Foreman.
18 And if you look on the second page, nine lines from the bottom,
19 it says that between February 28th, 2000, and April 18th, 2001,
20 that Foreman was housed in BMM A-DES, just like we saw with
21 Mr. Moreno, correct?

09:28:01 22 **A** They're not in the same place.

09:28:04 23 **Q** Why are they not in the same -- why do you make that
24 statement?

09:28:07 25 **A** Because Jesse Moreno says in his letter he's in isolation.

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1 So wherever they're housed, it doesn't matter. Jesse is in
2 isolation.

09:28:15 3 Q In the SHU, right?

09:28:16 4 A I don't know what the SHU is. That's your word. I've never
5 heard that before.

09:28:19 6 Q Okay. Would you agree that the documents say what they say?

09:28:25 7 A I would agree that Jesse says he's in isolation, which means
8 he's not living with anybody.

09:28:30 9 Q Okay.

09:28:31 10 A That's what the letter says. You -- these documents are
11 from the prison, which you must understand better than I can,
12 but that's not what Jesse says.

09:28:40 13 Q Okay.

09:28:40 14 A He's not with Nathan Foreman, according to his letter.

09:28:44 15 Q Ms. Siegler, did you respond to Jesse Moreno's
16 4/4/01 letter?

09:28:49 17 A In writing?

09:28:51 18 Q In any -- in any way.

09:28:54 19 A Eventually, I talked to him.

09:28:56 20 Q Okay. Well, you didn't respond in writing, then?

09:28:59 21 A I don't think so, no.

09:29:00 22 Q Okay. Eventually, you spoke with him approximately how long
23 after you got that letter?

09:29:08 24 A I don't remember.

09:29:08 25 Q And did you contact him?

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A At some point, we talked, yes.

Q So you contacted him? Because he says in his letter you would have to contact -- call him, he's in the SHU, right?

A I don't remember how we got in touch the next time, but we did get in touch eventually.

Q Okay. I'm going to show you Exhibit 53, and this is a handwritten letter from Jesse Moreno's mom, and this letter is dated April 10th, 2001. Do you see that?

A Yes.

Q And in this letter, she asks you to help her son, right?

A Okay. What's your question?

Q She asked you to help her -- help her son, Jesse, right?

A Yes.

Q So April 15th, 2001, that article appears. And by this time, you're already speaking with Detective Brown about this case, right?

A It could have been after this article appeared that I first started talking to Curtis about the case. I don't remember this article coming up while I worked on the case.

Q And you recall earlier I showed you that March 1st, 2001, fax about this case, and so we discussed that you were already working on the case at that time with Mr. Bonds?

A I don't think you ever asked me that specific question.

Q Okay. I'll ask you now. Were you working on this case -- was the case on your radar again on April -- on March -- in

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1 March of '01 when that fax was sent to Mr. Bonds from Mr. --
2 from Dr. Watson?

09:30:57 3 **A** I don't know for sure. I don't remember when I got on the
4 case.

09:31:00 5 **Q** Would Johnny Bonds have gotten in on it before you got on
6 it?

09:31:04 7 **A** Yes.

09:31:04 8 **Q** Okay. So he -- he might have been --

09:31:06 9 **A** He was in Special Crimes before me.

09:31:08 10 **Q** No, but I mean, if y'all were working on a case together,
11 would the two of you approach it together or would he be working
12 on a case separately from you working on it?

09:31:14 13 **A** He could have been working separately.

09:31:16 14 **Q** Okay. So you don't -- you can't say whether or not this
15 case, this Tirado/Herrera case was on your radar in March 2001
16 at the date of that fax?

09:31:28 17 **A** The date of this fax, the William Watson fax?

09:31:30 18 **Q** Uh-huh.

09:31:31 19 **A** I don't remember for sure when I started working on the
20 Prible case.

09:31:36 21 **Q** Okay. And so you don't know for sure if you were already
22 working with Detective Brown on this case at the time of this
23 April 15th, 2001, *Houston Chronicle* article?

09:31:46 24 **A** I do not remember.

09:31:47 25 **Q** Okay. You see on page 1 right there it's dated April 26,

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1 2001, and he writes your name down?

09:31:54 2 **A** I see that.

09:31:55 3 **Q** Okay. So, presumably, you talked to him before that date.

4 You spoke with him about his April 4th letter, right; otherwise,
5 he wouldn't have put your name on the phone list?

09:32:06 6 **A** Not necessarily.

09:32:09 7 **Q** Okay. Do you recall if you spoke with him between April 4th
8 and April 26th, 2001?

09:32:14 9 **A** I do not.

09:32:15 10 **Q** Okay. You might have, but you can't recall?

09:32:18 11 **A** It's the wrong phone number to call me at if he put my
12 number down.

09:32:22 13 **Q** Okay. What is that phone number that he's listed?

09:32:24 14 **A** That's the general number.

09:32:26 15 **Q** Okay.

09:32:26 16 **A** So if he -- if he had my correct number, it wouldn't have
17 been this one.

09:32:29 18 **Q** Okay. What was your correct number?

09:32:31 19 **A** 5845, 8339, 5865, not 5800.

09:32:37 20 **Q** Okay. So you don't recall if you spoke with Mr. Moreno
21 before he put your phone number down on his phone list?

09:32:45 22 **A** I do not.

09:32:46 23 **Q** Okay. He also put his U.S. attorney that prosecuted him in
24 a Louisiana criminal case, U.S. Attorney Todd Clemons. Do you
25 see that?

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09:32:58 1 **A** I see that.

09:32:59 2 **Q** Okay. Are you familiar with Mr. Clemons?

09:33:02 3 **A** I remember his name.

09:33:02 4 **Q** Okay. What do you remember -- do you -- did you ever meet
5 with him?

09:33:06 6 **A** I don't remember.

09:33:07 7 **Q** You might have, but you don't recall?

09:33:09 8 **A** Correct.

09:33:10 9 **Q** Okay. Do you ever recall going to Louisiana and speaking
10 with him about Mr. Moreno's case?

09:33:18 11 **A** I don't remember who I talked to.

09:33:19 12 **Q** Okay. But you did do that, you just don't recall if you
13 spoke with Mr. Clemons?

09:33:24 14 **A** Correct.

09:33:26 15 **Q** Okay. So at this point, it looks like, by April 26, 2001,
16 that Mr. Moreno is already contemplating a sentence reduction,
17 wouldn't you say? He put your name down and his U.S. attorney's
18 number down -- attorney's number down?

09:33:38 19 **MS. MIRANDA:** Objection, form.

09:33:39 20 **A** No.

09:33:39 21 **BY MS. SCARDINO:**

09:33:40 22 **Q** You disagree with that?

09:33:41 23 **A** Yes.

09:33:41 24 **Q** Okay. You don't think it's on his mind -- Jesse Moreno's
25 mind at this point, he's hoping to get some kind of sentence

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1 reduction for the information that he has to give you?

09:33:49 2 **A** I think that's on every federal inmate's mind.

09:33:52 3 **Q** Okay. On July 3rd, 2001, you met with Jesse Moreno at the
4 Federal Detention Center in Beaumont. Do you recall that
5 meeting?

09:34:02 6 **A** Not by date specifically, no.

09:34:06 7 **Q** So if you're meeting with a federal prison inmate, you can't
8 just show up and ask to see them, right?

09:34:11 9 **A** Correct.

09:34:11 10 **Q** You have to give the prison advance notice, right?

09:34:14 11 **A** Yes.

09:34:15 12 **Q** You have to request to be able to see the -- the inmate?

09:34:18 13 **A** It's a process.

09:34:20 14 **Q** Right. And how long does that process usually take?

09:34:28 15 **A** Weeks, minimum.

09:34:29 16 **Q** Okay. You don't recall where you were when you met with
17 him --

09:34:34 18 **A** With Jesse?

09:34:34 19 **Q** -- at that first meeting?

09:34:35 20 Right.

09:34:37 21 **A** I remember we went to the Beaumont federal prison. I don't
22 remember which one or where exactly we met, but I remember
23 meeting with Jesse Moreno at least one time in Beaumont.

09:34:49 24 **Q** And you recorded part of that meeting, right?

09:34:52 25 **A** I don't remember that.

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09:34:53 1 Q Did you know Nathan Foreman before you had this interview
2 with Jesse Moreno?

09:35:00 3 A Did I know his name, yes.

09:35:04 4 Q Okay. And -- because Jesse had told you -- had mentioned
5 him previously?

09:35:13 6 A I don't remember how I first heard Nathan Foreman's name.

09:35:16 7 Q Okay. Let's look at pages -- Exhibit 54, page 18. On the
8 bottom part of the page, it says "KS." That's you. It says,
9 "And who was the other guy there? Nathan Foreman?"

09:35:43 10 Jesse Moreno: "Nathan Foreman. He" --

09:35:45 11 Kelly Siegler: "Is he from Houston?"

09:35:48 12 Moreno says, "Yeah, we're all from Houston."

09:35:50 13 And you say, "Beaumont medium, too?"

09:35:54 14 Okay. So it looks like from this transcript that you
15 didn't know Mr. Foreman previously, right?

09:36:04 16 A Not necessarily.

09:36:05 17 Q You might have known him before this?

09:36:07 18 A I might have known him by name. I can't remember.

09:36:10 19 Q Because Jesse might have told you his name previously?

09:36:12 20 A No. I don't know how I found Nathan Foreman, how I got his
21 name first.

09:36:22 22 Q If you look at page 12 -- I'm sorry, page 13, the very top
23 of the page, the second line, Jesse is talking to you. He says,
24 "There was me, him, ah, Dominguez, Ralph Dominguez, and, ah,
25 Nathan Foreman, the one I was asking you about." Do you see

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1 that?

09:36:48 2 **A** Uh-huh. Yes, ma'am.

09:36:48 3 **Q** Does that refresh your memory as to whether Moreno made you
4 aware of Nathan Foreman?

09:36:55 5 **A** It does not.

09:36:58 6 **Q** You still think you knew him previously for some reason
7 beyond Jesse Moreno?

09:37:03 8 **A** Yes.

09:37:03 9 **Q** But you can't tell me why?

09:37:05 10 **A** The Jason Morales trial.

09:37:07 11 **Q** You think Foreman was involved in the Jason Morales trial?

09:37:12 12 **A** I don't -- I don't know if he -- he didn't testify. I don't
13 know if he was involved. I can't remember.

09:37:16 14 **Q** Okay. Now, at this meeting, Jesse Moreno spoke with you
15 about a murder confession he had heard from Hermelio Herrero.
16 Do you remember that?

09:37:24 17 **A** Yes.

09:37:24 18 **Q** Okay. And he said that Herrero confessed to himself,
19 Moreno, to Dominguez and to Nathan Foreman in 1999 when they
20 were all incarcerated together in Beaumont. Do you remember
21 that?

09:37:34 22 **A** Yes.

09:37:38 23 **Q** And two days after this meeting with Moreno on July 3rd, you
24 asked Detectives Davis and Holtke to review the audiotape of
25 that meeting. Do you remember that?

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09:37:51 1 **A** To review the audiotape that I took?

09:37:55 2 **Q** Yes.

09:37:56 3 **A** So --

09:37:56 4 **Q** The audiotape that we just referenced, Exhibit 54.

09:37:59 5 **A** Okay.

09:38:00 6 **Q** And to refresh your memory, I have Exhibit 55, which is a
7 supplemental report from the Harris County Sheriff's Department,
8 and it mentions how you had asked Detectives Davis and Holtke to
9 review the audiotape. Do you see that?

09:38:20 10 **A** Okay.

09:38:21 11 **Q** Okay. And you accepted charges against Herrero that day,
12 right?

09:38:25 13 **A** This day?

09:38:26 14 **Q** Yes. I'm sorry. Yeah. You -- you accepted charges against
15 Hermelio Herrero on this day, on July 5th, 2001, right? That's
16 what it says here in this report?

09:38:38 17 **A** Where does it say that?

09:38:39 18 **Q** Let's see. At the very last line, "Assistant District
19 Attorney Siegler then stated she would accept charges of murder
20 on Hermelio Herrera, Jr., date of birth 10-7-1969," right?

09:38:58 21 **A** It says that I would accept the charges. It doesn't say on
22 what date.

09:39:02 23 **Q** Okay. Well, it's talking about a conversation that you had
24 with these detectives on July 5th, 2001. Do you see that on the
25 very first line?

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09:39:09 1 **A** I do.

09:39:10 2 **Q** And at the end of talking about that conversation you had
3 with them, Detective Davis states, "I informed Siegler that the
4 information the witness had provided was information that
5 matched the details of what we knew them to be. Assistant
6 District Attorney Siegler then stated she would accept charges
7 of murder on Hermelio Herrero, Jr., date of birth 10/7/1969."
8 Do you see that?

09:39:35 9 **A** I do.

09:39:35 10 **Q** Does that refresh your memory as to whether you accepted
11 charges against Mr. Herrero on July 5th, 2001?

09:39:42 12 **A** It doesn't mean that I accepted the charges on July the 5th.
13 It could have been the following day. It could have been the
14 following week.

09:39:49 15 **Q** Okay.

09:39:49 16 **A** I did accept the charges.

09:39:50 17 **Q** Okay. You also accepted charges against Mr. Prible that
18 day, right?

09:39:55 19 **A** What day?

09:39:57 20 **Q** July 5th, 2001.

09:39:58 21 **A** I don't remember.

09:39:59 22 **Q** You don't recall when charges were accepted against
23 Mr. Prible?

09:40:03 24 **A** I do not.

09:40:06 25 **Q** Now, before you charge -- accepted charges against Herrero,

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1 Hermelio Herrero, did you check to see if he was even
2 incarcerated with Moreno, Dominguez and Foreman on the date he
3 supposedly confessed to them?

09:40:19 4 **A** I would have had Johnny Bonds check on that.

09:40:21 5 **Q** Okay. And what did he find out?

09:40:25 6 **A** I'm assuming that it was consistent with the information we
7 got from Jesse Moreno.

09:40:32 8 **Q** Because if it was inconsistent, it would have been improper
9 to accept charges against Mr. Herrero based entirely on Jesse
10 Moreno's conversation with you, right?

09:40:41 11 **A** We would have needed to look into it further.

09:40:43 12 **Q** And when you accepted charges -- I will -- I will represent
13 to you that charges were accepted against Prible the same day
14 they were accepted against Hermelio Herrero.

09:40:56 15 **A** You need to show me something.

09:40:58 16 **Q** Okay. Exhibit 57, the first page, at the top, it says date
17 prepared, July 5th, 2001, felony charge capital murder against
18 Mr. Prible. Do you see that?

09:41:24 19 **A** Okay. Yes, I see that.

09:41:25 20 **Q** Okay. So you agree that charges were accepted against
21 Mr. Prible on July 5th, 2001, this -- do you agree with that?

09:41:34 22 **A** Yes.

09:41:35 23 **Q** And at that July 3rd, 2001, meeting, you and Mr. Moreno
24 discussed Nathan Foreman, you saw? Do you remember the
25 testimony -- or the recording I just showed you where you

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1 discussed Nathan Foreman?

09:41:47 2 **A** His name was mentioned.

09:41:48 3 **Q** Yes.

09:41:49 4 **A** Nathan Foreman's name was mentioned, yes.

09:41:51 5 **Q** Okay. And at that July 3rd, '01, meeting, did Moreno tell
6 you that Nathan Foreman had heard a confession by Ronald Prible?

09:41:58 7 **A** Ask me that again.

09:41:59 8 **Q** At that meeting that you had with Mr. Moreno, at some point
9 during that meeting, did Mr. Moreno inform you that Mr. Foreman,
10 Nathan Foreman had heard a confession by Mr. Prible?

09:42:12 11 **A** I don't remember what the details were, what Jesse Moreno
12 told me that day.

09:42:17 13 **Q** So he might have told you that, but you just can't recall?

09:42:19 14 **A** I cannot.

09:42:22 15 **Q** Exhibit 56 is a probable cause affidavit dated July 5th,
16 2001, for the arrest of Mr. Prible, and the affiant is Curtis
17 Brown. And you testified in the Temple case that you would
18 often type up the probable cause affidavit for the detectives to
19 sign; is that right?

09:42:47 20 **A** Correct.

09:42:48 21 **Q** Is that -- was that the case here? Did you type up this
22 probable cause affidavit?

09:42:52 23 **A** I don't know because it's signed by Marcy.

09:42:54 24 **Q** Okay. So you -- who is Marcy?

09:42:56 25 **A** A fellow prosecutor that worked in Special Crimes the same

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1 time I did.

09:43:00 2 Q Okay. So you don't know if you typed up this probable cause
3 affidavit?

09:43:04 4 A I don't know for sure.

09:43:06 5 Q Okay. Do you see anything new in that probable cause
6 affidavit that you-all didn't have against Mr. Prible in 1999?

09:43:13 7 A I didn't know what they had in 1999. It wasn't my case
8 then.

09:43:17 9 Q Okay. So you're not denying that there's nothing new in
10 that probable cause affidavit?

09:43:20 11 A I don't know what they had in '99. It wasn't my case then.

09:43:23 12 Q Okay. Did you reach out to Mr. Foreman after your July 3rd,
13 2001, visit with Mr. Moreno?

09:43:34 14 A Ask me again.

09:43:35 15 Q Did you reach out to Mr. Foreman after your July 3rd, 2001,
16 visit with Jesse Moreno?

09:43:40 17 A No.

09:43:40 18 Q You didn't?

09:43:41 19 A I didn't reach out to him, no.

09:43:43 20 Q Did he reach out to you?

09:43:45 21 A Yes.

09:43:45 22 Q Okay. In what form? How did he reach out to you? Did he
23 call you?

09:43:49 24 A He called. He might have written. I don't remember.

09:43:55 25 Q If he had written to you, that would have been kept in your

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1 file, right?

09:43:59 2 **A** Yes. We're talking about the Herrero file because you keep
3 talking about all these letters like they belong to Prible, and
4 they do not.

09:44:07 5 **Q** Well, some of them were found in the Prible file, which
6 we'll get to that in a little bit.

09:44:11 7 But -- okay. So Foreman reached out to you, contacted you,
8 you believe?

09:44:17 9 **A** Yes.

09:44:18 10 **Q** Okay. Might have written. Might have made a phone call.

09:44:24 11 Exhibit 88 is a criminal history report for Nathan Foreman
12 printed out by Johnny Bonds. And all I'm interested in is -- is
13 the date.

09:44:36 14 The date you'll see at the top is August 7th, 2001, and if
15 you go down a little bit more, and it says that Johnny Bonds had
16 printed it out. Do you see that?

09:44:45 17 **A** I do.

09:44:45 18 **Q** Okay. Now, this criminal history report, was this something
19 that you-all would typically run before you met with a potential
20 witness or -- with a potential witness?

09:44:58 21 **A** Or a potential suspect?

09:45:00 22 **Q** Or a potential suspect.

09:45:01 23 **A** Yes.

09:45:01 24 **Q** That was my next question.

09:45:02 25 **A** Yes.

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09:45:03 1 Q Okay. And so this was typed -- this was searched on
2 August 7th. And then on August 8th, the following day, you and
3 Mr. Bonds and Foreman met in the person; isn't that right?

09:45:16 4 A I don't remember the date.

09:45:17 5 Q Okay. Do you recall this meeting? Do you recall meeting
6 with Mr. Foreman at FCI Beaumont?

09:45:25 7 A In Beaumont?

09:45:26 8 Q Uh-huh, or just ever.

09:45:29 9 A I remember meeting with Nathan Foreman at the Federal
10 Detention Center in downtown Houston.

09:45:35 11 Q Okay. I'm going to show you Exhibit 108-2, beginning at
12 108-2.

09:45:42 13 In this meeting -- and you see it's dated -- these are your
14 notes, correct?

09:45:46 15 A They are.

09:45:47 16 Q Okay. And up at the top, it's dated August 8th, 2001?

09:45:50 17 A Yes.

09:45:51 18 Q So you took the notes on this day, right?

09:45:53 19 A Yes.

09:45:54 20 Q Okay. And this Jesse that Mr. Foreman is referencing in
21 this interview with you is Jesse Moreno, right?

09:46:04 22 A Yes.

09:46:04 23 Q And during this August 8th, 2001, interview with you,
24 Mr. Foreman discusses both the Prible and the Herrero cases,
25 right?

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A He does.

Q Okay. And he discusses various informants -- or various other inmates, himself, Rafael Dominguez, right? You saw that name?

A I did.

Q Okay. And Jesse Moreno, right?

A Among others.

Q Now, Mr. Bonds was at this meeting with you, right?

A Yes.

Q Okay. And what was your take on Mr. Foreman when you met with him?

A I didn't believe him.

Q Why didn't you believe him?

A I didn't believe him.

Q Okay.

A Neither one of us did. We walked out of there saying we didn't believe a word he had to say.

Q Okay. So after you left that meeting or as you were leaving, did you tell Foreman, "Look, I don't believe anything you're saying. Get out of here. Get lost"?

A I didn't tell him what I thought.

Q You didn't? Did you tell him to contact you if he had further information?

A I don't remember saying that.

Q Okay. Would you have wanted him to contact you again with

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1 more information if you knew he was a liar?

09:47:21 2 **A** No.

09:47:22 3 **Q** That would have been improper to use a witness that you knew
4 was lying, right?

09:47:25 5 **A** I never used him as a witness, contrary to what your
6 petition says.

09:47:29 7 **Q** But this was produced from your file by the DA's office in
8 August 2016. And it's a -- there's a phone message on there
9 showing Alan Percely -- Percely, who was Nathan Foreman's
10 attorney. Do you recall Mr. Percely?

09:47:44 11 **A** Now that you mentioned it, yes.

09:47:45 12 **Q** I might be saying his name wrong. Okay.

09:47:47 13 **A** He was as credible as Nathan.

09:47:49 14 **Q** He was as credible as Nathan?

09:47:51 15 **A** Uh-huh.

09:47:51 16 **Q** Okay. And what do you mean by that?

09:47:53 17 **A** Just what I said.

09:47:54 18 **Q** Just a liar?

09:47:54 19 **A** Yep.

09:47:55 20 **Q** Okay. And he called you on August 13th, 2001, about
21 testifying -- about having Nathan testify on the federal trial,
22 right?

09:48:03 23 **A** He might have. I don't remember.

09:48:04 24 **Q** Okay. If -- if, in fact, this -- this phone message shows
25 that, you wouldn't disagree with that, right?

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A No.

Q Okay. Did you call Percely back and speak with him?

A I don't remember.

Q Okay. At some point, you must have spoken with him if you knew that he was lying, right?

A Which one?

Q Percely.

A To be nice maybe.

Q Nine days after you speak with Mr. Foreman, the Prible indictments were prepared. That's Exhibit 60.

You see the first page of this Exhibit 60, it says date prepared, August 17th, 2001. So after speaking with Foreman, did you believe you had probable cause to present the case to the grand jury for indictment?

A My decision to decide what to do with the Prible case had no bearing and nothing to do with the conversation I had with Nathan Foreman.

Q Okay. Why did you suddenly decide to charge Mr. Prible and indict him for capital murder if there was no new evidence since 1999 other than this conversation that you had had with Mr. Foreman?

A One more time, I don't know with what they had in 1999. It could have been completely sufficient in 1999 to move forward, but I didn't have the case then. When I got the case, I wanted to be thorough, which included talking to Nathan Foreman, which

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1 I thought would be a waste of time, and it turned out to be a
2 waste of time.

09:49:32 3 Irrespective of that, I made a decision to move forward on
4 the case against Ronald Jeffrey Prible.

09:49:42 5 Q Okay. Did you disclose to Mr. Prible's defense attorney
6 that you had spoken with Mr. Foreman on August 8th, 2001?

09:49:47 7 A Mr. Prible's attorney, Terry Gaiser?

09:49:50 8 Q Uh-huh.

09:49:55 9 A We talked about Nathan Foreman. I don't know exactly if I
10 told him about that conversation, but we did discuss Nathan
11 Foreman.

09:50:00 12 Q I'm asking you if you told Mr. Gaiser or Mr. Wentz if you --
13 about the substance of your meeting with Mr. Foreman on
14 August 8th, 2001.

09:50:14 15 A I think I did.

09:50:16 16 Q And you would have -- did you show him your notes from that
17 meeting?

09:50:19 18 A They were in the file.

09:50:21 19 Q But he wasn't allowed to see your work product notes, was
20 he?

09:50:24 21 A Those weren't -- that's not work product. My notes were in
22 the file. Notes are notes. They're in the file.

09:50:29 23 Q So should they all be -- all your notes --

09:50:31 24 A Yes.

09:50:31 25 Q -- be viewable?

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A Yes.

Q -- to the defense counsel?

A Yes.

Q Okay. So you're saying that all of your -- any -- any of your notes that were contained in the file would have been disclosed to defense counsel?

A My notes would have been in the open file.

Q Okay. So you didn't take any notes out saying -- claiming work product protection over them before the defense came to review the file?

A Not that I remember, no.

Q Okay. Now, in this case, with all of the evidence that law enforcement had in 1999, which you came you don't recall what -- what evidence that was, but with all that evidence that they had in 1999, the DA must not have believed that there was sufficient legally admissible evidence to convict Prible of the five murders at that time, right?

A I do not agree with that statement.

Q You don't agree with that statement?

A No, ma'am.

Q Even though this was a case of an entire family being murdered, three young children, don't you think the DA's office would have prosecuted that as soon as they had -- they had the evidence needed to do so?

A Not necessarily.

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09:51:36 1 Q In fact, back in 1999, the DA's office didn't even present
2 the case to the Grand Jury, did they?

09:51:47 3 A I don't think they did, no.

09:51:49 4 Q Okay. When did the DA's office finally present this case to
5 the grand jury?

09:51:53 6 A When I did.

09:51:54 7 Q You were the one that presented it?

09:51:56 8 A Yes.

09:51:56 9 Q And do you recall the date that you did so?

09:52:00 10 A August 2001.

09:52:01 11 Q Okay. Do you recall the -- was it after you had met with
12 Mr. Foreman August 8th?

09:52:09 13 A Yes.

09:52:10 14 Q It was after you met with him. Okay.

09:52:12 15 And was there only one Grand Jury that heard this case?

09:52:17 16 A Yes.

09:52:17 17 Q Was that the only one?

09:52:18 18 A Yes.

09:52:19 19 Q Okay. Did you prepare any sort of a witness list for the
20 Grand Jury?

09:52:24 21 A No.

09:52:24 22 Q Did you present any witnesses to the Grand Jury?

09:52:26 23 A No.

09:52:28 24 Q And is that a common practice of yours, to go into a Grand
25 Jury without any witnesses?

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09:52:33 1 **A** Yes.

09:52:36 2 **Q** Did you testify at the Grand Jury about your conversations
3 with Foreman and Moreno?

09:52:42 4 **A** I know I didn't about Foreman.

09:52:44 5 **Q** But you spoke with the Grand Jury about your conversation
6 with Moreno?

09:52:48 7 **A** Having to do with the Prible case?

09:52:50 8 **Q** Yes.

09:52:51 9 **A** No.

09:52:51 10 **Q** Did you present these two cases, Herrero and Prible, on the
11 same day?

09:52:56 12 **A** Yes.

09:52:57 13 **Q** In the same -- I mean, was it like back to back? How
14 does -- how does it work when you go into the Grand Jury?

09:53:05 15 **A** You go in on your scheduled morning with all the cases that
16 you have and present them, go outside while they vote, see if
17 they have any questions, and then do the next one.

09:53:17 18 **Q** Okay. So your -- your testimony is that you spoke with the
19 Grand Jury about Moreno --

09:53:22 20 **A** No.

09:53:22 21 **Q** -- with respect to the Herrero case?

09:53:26 22 **A** I presented the Herrero case, and I presented the Prible
23 case.

09:53:29 24 **Q** Okay.

09:53:29 25 **A** And maybe others. I don't remember.

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09:53:30 1 Q Okay. And when you presented those two cases to the Grand
2 Jury, did you tell the Grand Jury that there were jailhouse
3 informants in those cases that would testify as to a confession?

09:53:43 4 A Can we divide up the cases and ask the question
5 specifically?

09:53:47 6 Q Sure. With respect to Prible.

09:53:49 7 A Okay.

09:53:49 8 Q Yes. Did you tell the Grand Jury that there was a jailhouse
9 informant that would testify that Prible confessed to the crime?

09:53:57 10 A No.

09:53:58 11 Q With respect to Mr. Herrero, did you tell the Grand Jury
12 that there was a jailhouse informant who would testify that
13 Mr. Herrero confessed to the crime?

09:54:07 14 A Yes.

09:54:09 15 Q Was there a court reporter present at that Grand Jury
16 meeting?

09:54:21 17 A No. Sorry. No.

09:54:23 18 Q You did not request that --

09:54:24 19 A I don't think so, no.

09:54:25 20 Q -- a court reporter be present?

09:54:27 21 A I don't think so, no.

09:54:28 22 Q Was that common practice in the DA's office to -- to not
23 have a court reporter present to transcribe those proceedings?

09:54:34 24 A Correct. You only had a court reporter present if you had a
25 witness you were presenting.

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09:54:37 1 Q Okay. Now, you could have a court reporter present if you
2 weren't having -- presenting a witness, but you just didn't in
3 this case?

09:54:44 4 A I don't think we ever had a court reporter present if we
5 weren't presenting a witness.

09:54:48 6 Q Okay. Let -- sorry. Let me ask you a question so it's
7 easier to follow.

09:54:54 8 Was there anything preventing you from asking a court
9 reporter to be present in a Grand Jury proceeding in which you
10 were not presenting any witnesses?

09:55:02 11 A Yes.

09:55:02 12 Q What was preventing you from doing that?

09:55:05 13 A Grand Jury proceedings are secret, so you don't want a
14 record of what's going on when they vote, when they talk about
15 things. You only have a court reporter present when there's a
16 witness.

09:55:16 17 Q Okay. But -- and I understand the Grand Jury proceedings
18 are secret. There would never be a court reporter present to
19 take down what you were telling the Grand Jury before they went
20 into their secret deliberations?

09:55:34 21 A I don't want to say never, but not that I remember.

09:55:37 22 Q Okay. Was there anything preventing you from having a court
23 reporter take down the testimony, for lack of a better word,
24 the -- the statements that you were making to the Grand Jury
25 about these cases before they went into their private

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1 deliberations?

09:55:56 2 **A** Well, you would have to find the court reporter. They
3 weren't there. They don't stay in the Grand Jury room.

09:56:02 4 **Q** You would have to arrange for a court reporter to be
5 present?

09:56:05 6 **A** Correct.

09:56:05 7 **Q** And those court reporters are -- that transcribe the -- the
8 grand jury proceedings, those worked at the DA's office, right?

09:56:13 9 **A** They worked in the Grand Jury division, yes.

09:56:15 10 **Q** Right. Like Javier Leal, I believe was one?

09:56:19 11 **A** Yes.

09:56:19 12 **Q** Okay. So what you would need to do is make arrangements for
13 one of them to be present when you presented the case if you
14 wanted the testimony -- testimony transcribed?

09:56:28 15 **A** Yes.

09:56:28 16 **Q** Okay. But you did not do that in this case?

09:56:31 17 **A** Which case?

09:56:33 18 **Q** In the Prible case.

09:56:34 19 **A** I did not.

09:56:35 20 **Q** And you did not do that in the Herrero case?

09:56:37 21 **A** I did not.

09:56:39 22 **Q** So there is no record whatsoever as to what you told the
23 Grand Jury when you presented the Prible matter to that Grand
24 Jury?

09:56:50 25 **A** There is not.

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09:56:52 1 Q And there is no record whatsoever regarding what you told
2 the Herrero Grand Jury about Herrero's case in that Grand Jury
3 proceeding?

09:57:02 4 A There is not.

09:57:03 5 Q Now, a prosecutor has a duty to disclose all material
6 defensive facts to the grand jury, correct?

09:57:08 7 A Yes.

09:57:09 8 Q Okay. Did you tell the Grand Jury in the Prible matter that
9 you had spoken to Nathan Foreman about Mr. Prible's case?

09:57:21 10 A No.

09:57:22 11 Q Did you tell the Grand Jury that a jailhouse informant tried
12 to come -- or came to you to try to set up Mr. Prible for this
13 murder before Mr. -- before he had even met Mr. Prible?

09:57:37 14 A I don't understand that question.

09:57:38 15 Q Did you tell the Grand Jury that an inmate, Nathan Foreman,
16 had come to you and tried to set up Mr. Prible, saying that
17 he -- Mr. Prible had confessed to him, but that you had
18 determined that Mr. Foreman was lying about that?

09:57:57 19 A I disagree with the assertion that Nathan -- Nathan Foreman
20 tried to set him up. I agree with the statement I made earlier
21 that I did not believe Nathan Foreman was being credible, and I
22 agree with the statement I said earlier that Nathan Foreman's
23 interview had nothing to do with the evidence that existed
24 against Jeffrey Prible.

09:58:20 25 Q Okay. My question -- I'll restate it.

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09:58:22 1 Did you -- when you were presenting the case against
2 Mr. Prible to the Grand Jury, did you tell the Grand Jury about
3 your meeting and the substance of that meeting with Nathan
4 Foreman?

09:58:33 5 **A** No.

09:58:34 6 **Q** Because first he was charged in July 5th, 2001, as we
7 established, right?

09:58:40 8 **A** Right.

09:58:40 9 **Q** And after that, he was moved from the FCI Beaumont low to
10 FCI Beaumont medium because his points went up, right?

09:58:49 11 **A** I don't know anything about that.

09:58:50 12 **Q** You don't know that he was moved from the low to the medium?

09:58:54 13 **A** I didn't keep up with that. I don't remember when he was
14 moved or why he was moved.

09:58:57 15 **Q** Okay. But you don't disagree that he was moved from the low
16 to the medium after he was charged in this case?

09:59:02 17 **A** I don't know.

09:59:04 18 **Q** Now, Curtis Brown was involved in the Hermelio Herrero case
19 as well, right?

09:59:08 20 **A** Yes.

09:59:09 21 **Q** Okay. And the same informants were involved in the Herrero
22 case as were involved in the Prible case, right?

09:59:15 23 **A** No.

09:59:16 24 **Q** Well, Nathan Foreman was involved in both cases, right?

09:59:19 25 **A** No.

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09:59:20 1 Q Well --

09:59:21 2 A You-all say Nathan Foreman was involved in the Prible case.

3 He was not.

09:59:25 4 Q He spoke with you about the Prible case, right?

09:59:28 5 A And he lied. He wasn't involved.

09:59:29 6 Q And he spoke --

09:59:30 7 A You want to make him involved. He wasn't involved.

09:59:32 8 Q And he spoke also with you about the Herrero case, right?

09:59:35 9 A Yes.

09:59:36 10 Q And he ended up not testifying again -- with you -- or for

11 you in that case, right?

09:59:41 12 A That's right.

09:59:42 13 Q Okay. But you, nevertheless, wrote him a Rule 35 letter to

14 his prosecutor, right?

09:59:47 15 A I did.

09:59:47 16 Q Okay. Jesse Moreno talked with you about Mr. Prible's case

17 and Mr. Herrero's case, correct?

09:59:55 18 A He did.

09:59:56 19 Q Rafael Dominguez spoke with you about Mr. Herrero's case,

20 and his name was also listed -- he -- he -- his name came up in

21 that conversation that you had in August 8th, 2001, with

22 Mr. Foreman, right?

10:00:14 23 A With Nathan Foreman. Rafael Dominguez was not involved in

24 the Prible case.

10:00:17 25 Q Okay. But he was mentioned in that conversation that you

Video Deposition of Kelly Siegler

1 were having with Mr. Foreman on August 8th, 2001?

10:00:22 2 **A** By Nathan Foreman --

10:00:23 3 **Q** Uh-huh.

10:00:24 4 **A** -- who was lying.

10:00:25 5 **Q** Okay. But --

10:00:26 6 **A** So that doesn't make him involved.

10:00:28 7 **Q** I understand.

10:00:28 8 My question is: Rafael Dominguez was mentioned by Nathan
9 Foreman during that conversation you had with him on August 8th,
10 2001, right?

10:00:36 11 **A** That does not make him involved.

10:00:38 12 **Q** Okay. Are you going to refuse the answer the question?

10:00:40 13 **A** No.

10:00:40 14 **Q** Okay. One more time. Mr. Dominguez's name was mentioned by
15 Nathan Foreman when he met with you on August 8th, 2001,
16 correct?

10:00:52 17 **A** It was.

10:00:55 18 **Q** Now, why did you not end up using Mr. Foreman at Herrero's
19 trial?

10:01:04 20 **A** I didn't need him. I didn't believe him.

10:01:09 21 **Q** Exhibit 71, that's a letter dated May 5th, 2002, from you to
22 FCI medium, and you're asking the prison to keep Jesse Moreno,
23 Rafael Dominguez, Nathan Foreman and Eddie Gomez safe from
24 Herrero because he's put a hit out on them for testifying in his
25 case, right?

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10:01:31 1 **A** What's your question?

10:01:32 2 **Q** Is that -- that's what it reflects, right?

10:01:36 3 **A** Not exactly.

10:01:38 4 **Q** Okay. Well, will you agree that the letter says what it --

5 says what it says?

10:01:43 6 **A** The letter is a request to try and keep them safe.

10:01:48 7 **Q** Right. And you refer to four witnesses, one of whom is

8 Herrero, right?

10:01:52 9 **A** Yes.

10:01:52 10 **Q** I mean -- I'm sorry. One of whom is Foreman, right?

10:01:55 11 **A** Yes.

10:01:56 12 **Q** Okay. But you just said that he lied and you didn't

13 believe -- you didn't believe him?

10:02:00 14 **A** He didn't testify.

10:02:01 15 **Q** That's not my question. You just said that he lied, and you

16 didn't believe him, right?

10:02:05 17 **A** I just said that Nathan Foreman did not testify in the

18 Hermelio Herrero trial.

10:02:10 19 **Q** And you also found him to be a liar, right?

10:02:13 20 **A** I did not believe him to be credible, no.

10:02:15 21 **Q** And nevertheless, you gave him favors for his assistance in

22 the Herrero case, didn't you?

10:02:20 23 **A** I did not. I wrote him a letter.

10:02:23 24 **Q** Well, you also asked for the prison to keep him safe based

25 on his testimony in that case when he didn't testify, right?

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10:02:29 1 **A** I think I still have an obligation to keep a man from being
2 killed, don't you? Even if I think he's a liar, I can't let him
3 get killed.

10:02:38 4 **Q** Let's look at Exhibit 72. Exhibit 72 is a May 1st, 2002,
5 letter from you to U.S. Attorney Todd Clemons. We -- we
6 mentioned his name earlier. "Moreno told me initially of the
7 possibility of other witnesses to admissions made by Herrero
8 about his committing this murder in 1995. Moreno and the other
9 three witnesses have all been cooperative. It was, however,
10 Moreno who I presented to the jury as being the crux of the
11 case, and it was almost entirely because of his testimony that
12 the jury found Herrero guilty of murder," right? Right?

10:03:20 13 **A** Yes.

10:03:20 14 **Q** Okay. Now, the other three witnesses that you were
15 referring to there were Foreman, Rafael Dominguez, and Eddie
16 Gomez, right?

10:03:29 17 **A** I think so. I don't remember the last one.

10:03:31 18 **Q** Okay. And by the time that you wrote this letter, you had
19 determined that Foreman was not with Moreno at the time Moreno
20 claims he heard this testimony from Mr. -- or this confession
21 from Mr. Herrero, right?

10:03:51 22 **A** I don't remember when I figured that out.

10:03:53 23 **Q** Okay. At some point before Mr. Herrero's trial, you figured
24 that out, right?

10:03:58 25 **A** At some point before Mr. Herrero's trial, I did not believe

Video Deposition of Kelly Siegler

1 that Nathan Foreman was being completely truthful.

10:04:05 2 Q But regardless, you wrote this letter to the U.S. attorney
3 for Mr. Moreno saying that all three witnesses, including
4 Foreman, had been cooperative?

10:04:15 5 A That's correct.

10:04:18 6 Q And Exhibit 73, even though by the time Mr. Herrero's trial
7 you had found out that Moreno had been lying to you about
8 Foreman being present, and Mr. Foreman had also lied to you on
9 August 8th, 2001, you, nevertheless, wrote a letter to Foreman's
10 U.S. attorney asking for a sentence reduction for his assistance
11 in the Herrero case; is that correct?

10:04:50 12 A Okay. What was your question?

10:04:55 13 Q By May 1st, 2002, Herrero's trial was over, right?

10:04:58 14 A Yes.

10:04:59 15 Q Prior to his trial, you had determined that -- not only
16 that -- well, first, I'll break it down.

10:05:05 17 You had determined that Moreno's initial story to you about
18 hearing the confession of Herrero in the presence of Nathan
19 Foreman was false, correct?

10:05:14 20 A I don't remember that -- making that determination, no.

10:05:17 21 Q I thought you just were saying that at some point prior to
22 trial, you determined that Mr. Foreman was not present during
23 that confession?

10:05:24 24 A No. I determined that Mr. Foreman was not being completely
25 credible -- truthful.

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10:05:28 1 Q Did you not -- did you ever determine that Mr. Foreman was
2 not present for the -- for Herrero's supposed confession to
3 Moreno as Moreno had told you he was back in July of 2001?

10:05:41 4 A I don't remember. I didn't go into a break-it-down
5 determination of all the reasons why I thought Nathan Foreman
6 was lying. I just didn't believe him, so I didn't use him.

10:05:52 7 Q Okay. But you, nevertheless, wrote this letter to his U.S.
8 attorney asking for a sentence reduction, right?

10:05:57 9 A Not exactly. That's a lot different letter than the one I
10 wrote for Jesse Moreno.

10:06:01 11 Q Are you disagreeing that this Exhibit 73 is a letter to
12 Nathan Foreman's U.S. attorney asking her to consider his
13 cooperation in the Herrero case?

10:06:13 14 A I agree that I wrote this letter saying that Nathan Foreman
15 was cooperative. I don't say nearly the parts about how
16 truthful he was like I do with Jesse Moreno, and I do not
17 specifically make a request for a downward departure like I do
18 for Jesse Moreno. It's a different letter.

10:06:31 19 Q Okay. And nowhere in this letter do you say, "Ms. Batson I
20 met with -- with Mr. Foreman. I think he's a complete liar"?

10:06:38 21 A I do not say that.

10:06:39 22 Q You do not say that?

10:06:40 23 A No.

10:06:40 24 Q And nothing was requiring you to write this letter, right?
25 You didn't have to write this letter to Ms. Batson, right?

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10:06:47 1 **A** I did not.

10:06:48 2 **Q** You chose to do that on Mr. Foreman's behalf?

10:06:50 3 **A** I chose to write the letter.

10:07:06 4 **Q** Now, Hermelio Herrero was convicted of murder in April 2002,
5 and he was sentenced to life in prison, right?

10:07:12 6 **A** Yes.

10:07:13 7 **Q** And Moreno and Dominguez testified him -- against him at
8 that trial, correct?

10:07:18 9 **A** Yes.

10:07:20 10 **Q** Okay. Exhibit 125 is an undated letter from Jesse Moreno to
11 you telling you exactly what to say to U.S. Attorney Clemons to
12 get him transferred to another prison and to have his sentence
13 reduced, right?

10:07:36 14 **A** I don't know what this is.

10:07:37 15 **Q** Okay. Have you never seen it before? It was found in your
16 file.

10:07:40 17 **A** I'm trying recognize it. I don't remember seeing this.

10:07:46 18 **Q** You've never seen it?

10:07:47 19 **A** I'm not denying that it was in the file that you got from
20 Brian Rose, but I don't remember seeing this.

10:07:56 21 **Q** Were you, in fact, able to persuade the unit team to
22 transfer Moreno to the prison to keep him safe like we discussed
23 earlier?

10:08:08 24 **A** I don't know -- when are we talking about?

10:08:11 25 **Q** Well, did you -- did you contact BOP in Beaumont and inform

Video Deposition of Kelly Siegler

1 them that Moreno and these other witnesses -- these other three
2 witnesses had testified -- or had cooperated in your case
3 against Herrero and he needed to keep him safe?

10:08:27 4 **A** I don't know what this says. I didn't read the whole thing.
5 Is that what this is?

10:08:31 6 **Q** No, I'm asking you after you got -- after you received
7 this --

10:08:34 8 **A** Are we done with this? I don't know if I received this. I
9 do not recognize this.

10:08:38 10 **Q** Okay. Were you able to persuade the unit team in BOP, the
11 FCI Beaumont team to move Moreno and these other three witnesses
12 to another area of the prison where they would be kept safe?

10:08:55 13 **A** I don't remember. I hope so.

10:08:57 14 **Q** Okay. So that's something that you might have been able to
15 do is all I'm -- is all I'm asking?

10:09:04 16 **A** All I can do is make the request.

10:09:07 17 **Q** Okay.

10:09:07 18 **A** The federal prisons do what the federal prisons do.

10:09:10 19 **Q** Okay. Exhibit 123 was also produced from your file by the
20 DA's office, and it is a witness voucher for your testimony in
21 an August 22nd, 2002, sentence reduction hearing for Jesse
22 Moreno. Do you recognize this document?

10:09:29 23 **A** I do.

10:09:30 24 **Q** Okay. You filled it out, correct?

10:09:34 25 **A** I didn't fill this out.

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10:09:35 1 Q You didn't fill it out?

10:09:37 2 A No.

10:09:37 3 Q Okay. Well, you -- you must have told someone how to fill
4 it out so you could sign it and get reimbursed?

10:09:46 5 A I don't know how it got filled out. It says signed by the
6 assistant U.S. attorney.

10:09:50 7 Q Okay. But you recall seeing this document? You recall
8 making this -- submitting this fact witness voucher?

10:09:56 9 A I remember seeing this.

10:09:57 10 Q Okay. Now, this was never produced to Mr. Prible's defense
11 team, was it?

10:10:06 12 A Why would it be?

10:10:06 13 Q I'm just asking you if it was ever produced to Mr. Prible's
14 defense team?

10:10:11 15 A This piece of paper having to do with Jesse Moreno, you're
16 asking me why I didn't produce this to Jeffrey Prible's defense
17 team?

10:10:22 18 Q I'm asking if you did produce it to their defense team.

10:10:25 19 A No.

10:10:26 20 Q Okay. Now, the hearing for Mr. Moreno that this references
21 was in Lafayette, Louisiana, right?

10:10:36 22 A I was instructed that that hearing was confidential and that
23 I was never to talk about it or of it to anyone, by a federal
24 judge.

10:10:47 25 Q Ms. Siegler --

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(Video paused.)

MS. SCARDINO: Your Honor, at this point I want to pause because we went off the record and agreed to have the questions about that hearing sealed. And I would like for you to see that. It's not on video, but I would like to -- for -- to read that into the record or however you would like to --

THE COURT: It's still sealed?

MS. SCARDINO: It's -- yes. It's sealed by agreement. We agreed to have it sealed so we could question her about it -- about the...

THE COURT: Are you going to read it in the open courtroom, then?

MS. SCARDINO: Sure.

THE COURT: I'm -- that will destroy the seal, I mean.

MS. MIRANDA: And I understood that was -- that was what was subject to the protective order.

MS. SCARDINO: Well, my understanding is the protective order was the actual transcript of that August 22nd, 2002, hearing, and that -- but the questions about it were not pursuant to that protective order that was entered into with the U.S. Attorney's Office.

MS. MIRANDA: Our preference would be not to do it in open court. I mean, that's cutting it kind of close.

THE COURT: Why don't you let me read it.

MS. SCARDINO: Okay. That's fine, Your Honor.

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THE COURT: You can give it to me.

MS. SCARDINO: Okay. So should we continue?

THE COURT: Let's continue.

(Video deposition of Kelly Siegler continued as follows.)

Q Okay. So earlier we were talking about the open file policy that you said the DA's office had during this time period that Mr. Prible was prosecuted, and in that -- when a defense attorney came in to view the file, would they be able to take notes of what they were reading?

A Yes.

Q But they would not be able to make copies of the documents in the file; is that right?

A Correct.

Q And you testified that you had no work product file that you kept as such, correct?

A Not per se, not necessarily, no.

Q Okay. And that is because all of your work product would have been reviewable by the defense, right?

A I'm trying to think of what work product might have come up in Prible early on. I can't think of what it would have been.

Q Okay.

A But my notes I wouldn't have considered work product.

Q Okay. All notes -- any notes that you took working on this case would have been available to defense attorneys to see; is that right?

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A Yes.

Q Okay. And how do you define work product? What's your understanding of that definition?

The legal definition of work product.

A We tried to keep most things not work product just because it was simpler.

Q Okay. Do you understand -- do you know what the term "work product" -- how it's defined under the law?

A Tell me.

Q No, I'm asking you if you -- if you know.

A No, I don't know the criminal definition of it.

Q Okay. There were other nontestifying informants that were involved in the Prible case; isn't that right?

A I remember Michael Beckcom, but Michael Beckcom testified.

Q Okay. Do you remember discussing Mr. Prible's case with other inmates other than Mr. Foreman and Mr. Beckcom in FCI Beaumont?

A I don't remember. I could have, but I'm not sure if I did there or where or who it would have been.

Q Okay. I'm going to show you Exhibit 112. And you see on the last page of this Exhibit 112 it says the letter was received by you on May 22nd, 2002? Do you see that?

A Just a second.

Q Okay. And this letter to you is from Jesse Gonzalez and Felix Gonzalez. Do you see that at the top?

Video Deposition of Kelly Siegler

A I do.

Q Okay. Do you remember Mr. and Mrs. -- or Mr. Jesse Gonzalez and Felix Gonzalez?

A I never met them.

Q Okay. Do you recall that they were -- I'm just asking you if you -- if you remember them. Do you remember them?

A I never met them. I remember getting this letter.

Q Okay. Do you remember that they're a father/son duo that's incarcerated together in FCI Beaumont?

A Only from this letter.

Q Okay. But you did -- you remember receiving this letter in May 2002?

A Yes.

Q Okay. And in this letter, Mr. Gonzalez said that he and his father have spoken to you twice on the phone about the Prible case, right?

A That's what he says.

Q Okay. And he -- do you recall speaking to him on the phone about the Prible case?

A I do not.

Q Do you -- do you just not remember or did you not -- let me ask that question more clearly.

Did you ever speak on the telephone with the Gonzalezes about Mr. Prible's case?

A Not that I remember, no.

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10:15:18 1 Q Not that you recall, no?

10:15:20 2 Okay. And you notice in this letter that the word Prible
3 is misspelled? Do you see that?

10:15:26 4 A I do.

10:15:26 5 Q With two Bs instead of one?

10:15:28 6 A Correct.

10:15:29 7 Q Okay. And Mr. Gonzalez, in this letter, also mentions a
8 newspaper article that he had recently seen about the case while
9 he was in prison, right?

10:15:37 10 A He does.

10:15:38 11 Q Okay. Now, was it your practice with informants, if someone
12 reached out to you with information about a case and you spoke
13 with them on the phone, to ask them to write you a letter
14 detailing what they knew about the case?

10:15:56 15 A No.

10:15:57 16 Q That wasn't a practice that you had?

10:15:59 17 A No.

10:15:59 18 Q Did you ever ask any informant to put down what they knew in
19 writing and send it to you?

10:16:04 20 A I did not.

10:16:05 21 Q Did you ever tell potential informants to take a prison
22 photograph with the defendant that they were working to testify
23 against?

10:16:17 24 A I saw that in your petition where you said I did that. That
25 is a lie.

Video Deposition of Kelly Siegler

10:16:21 1 Q I'm just asking you. So you deny that you ever did that?

10:16:24 2 A I did not.

10:16:25 3 Q Okay. But you were aware of such informant photos, correct?

10:16:29 4 A I saw the picture.

10:16:31 5 Q Okay. When was the first time you saw that informant photo?

10:16:35 6 A I don't know if I first saw it at Beaumont or when -- when
7 Beckcom got back to Harris County right before the trial.

10:16:45 8 Q But you saw the photos prior to the trial of this case?

10:16:48 9 A Yes.

10:16:48 10 Q Okay. And they were shown to you by Beckcom?

10:16:52 11 A I think it was Beckcom.

10:16:53 12 Q Now, parts of this letter from Mr. Gonzalez don't make
13 sense, right?

10:16:58 14 A They do not.

10:16:59 15 Q Okay. And what was your take on this letter when you
16 received it?

10:17:04 17 A Mr. Gonzalez was trying to glom on and put himself in the
18 middle of a case to try and get himself a deal, like every other
19 inmate in federal prison.

10:17:12 20 Q Okay. And did you believe his story from this letter, that
21 he had heard Mr. Prible confess?

10:17:17 22 A I did not believe his story for lots of reasons.

10:17:23 23 Q Also, if you notice in this photo -- in this Exhibit 112,
24 Mr. Gonzalez says that he knew about Jeff and Jeff's case before
25 Jeff even got to the medium from the low. Did you see that?

Video Deposition of Kelly Siegler

A I did see that.

Q Okay. How might an inmate know that another inmate is going to be transferred to their unit of the prison?

A I have no idea. I didn't believe what this letter had to say.

Q And is that why you decided not to have Mr. Gonzalez testify against Prible in this case, because you determined that he was not credible?

A Correct.

Q Okay. Did you ever show Mr. Gaiser or Mr. Wentz this letter from Mr. Gonzalez?

A It would have been in the file.

Q Okay. So your -- your testimony is yes, you did show it to them?

A I don't know if they looked at it or not. It would have been in the file.

Q It would have been in the file that you gave them to review when they came into your office to review the file?

A Correct.

Q And do you have any written record of what was in that file that you gave them to review?

A No.

Q Okay. You never made any notes about specifics?

A The file was an open file. I've known Terry Gaiser for years. Any time he wanted to read the file, he could come. I

Video Deposition of Kelly Siegler

1 would even bring it to court for him to read during docket call.

2 "Here it is, Terry. Knock -- knock yourself out."

10:18:40 3 Q Now, Exhibit 113 -- Exhibit 113 is a letter from Carl

4 Walker, another inmate in FCI Beaumont, to you about

5 Mr. Prible's case. Do you recognize this letter?

10:18:56 6 A I do, but this is the only letter I noticed you-all talked

7 about in your petition where you don't have the envelope

8 attached with the date. I'd like to see the date, please.

10:19:05 9 Q Well, I'd like to see it also, but it wasn't produced to us

10 from your file.

10:19:09 11 A That's odd.

10:19:09 12 Q Do you think it should be in your file somewhere?

10:19:12 13 A You should ask him that.

10:19:13 14 Q Well, I'm asking you because you know what's in the file.

15 Would you have kept that --

10:19:19 16 A Yes.

10:19:19 17 Q -- in your file?

10:19:20 18 A Yes.

10:19:21 19 Q Okay. So -- and it would be -- and in your mind, we should

20 be able to review the entire file, right, that you had in this

21 case?

10:19:27 22 A No, I just want to know where the envelope is because you

23 attached the rest of the envelopes.

10:19:32 24 Q Right. I've attached everything that was given -- I'll

25 represent to you that was produced to us by the DA's office.

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So you've seen this letter before. Do you recognize it?

A Okay.

Q Okay. Now, why did you not use Carl Walker to testify against Mr. Prible?

A I didn't believe him.

Q Okay. Did you ever speak with him on the phone?

A I don't even remember the name of Carl Walker. Unlike the other inmates whose names I do recognize, I don't remember Carl Walker's name.

And I also notice in this letter that he talks as if Prible had already been indicted, unlike the others, which, again, makes me wonder where is the envelope that went with this letter.

Q And I would very much like to see that envelope also, I would represent to you. So --

Okay. So you chose -- you decided not to use Mr. Walker because you thought he was not credible?

A Based on what he's saying here --

Q What he's saying here?

A -- it doesn't make sense.

Q Okay. But you're saying that you showed this letter to Mr. Prible's defense team?

A I'm saying it was in the file.

Q So you can't say for certain that you showed this letter to Mr. Prible's defense team?

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10:20:36 1 **A** I don't know what they read. The file was open for them to
2 read whatever they wanted.

10:20:40 3 **Q** Okay. Let's look at Exhibit 114.

10:20:43 4 Exhibit 114 is a letter from Mark Martinez, another inmate
5 at FCI Beaumont, to you. And if you look on the third page,
6 there's an envelope that's dated April 30th, 2002. Do you see
7 that?

10:21:00 8 **A** Just one second.

10:21:01 9 **Q** Okay.

10:21:03 10 **A** Okay.

10:21:04 11 **Q** Okay. Now, why didn't you use Mr. Martinez in your case
12 against Mr. Prible?

10:21:09 13 **A** Because it's pretty obvious that he's just trying to jump on
14 the bandwagon of all -- what all they're all saying to each
15 other out there. He's trying to say whatever he can to act like
16 he knows something he doesn't know for a time cut, like every
17 other inmate in federal prison.

10:21:22 18 **Q** Okay.

10:21:22 19 **A** I didn't believe him, either.

10:21:24 20 **Q** And you -- and when you say talking about things --

10:21:27 21 **A** That's what he said.

10:21:29 22 **Q** Right.

10:21:29 23 **A** They were all talking about it.

10:21:31 24 **Q** Okay. So he said that all -- and you got this -- you
25 received this letter from him about four months before

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1 Mr. Prible's trial -- six months -- about six months before

2 Mr. Prible's trial?

10:21:41 3 **A** Yes.

10:21:41 4 **Q** Okay. So it looks like you had several inmates at FCI

5 Beaumont auditioning for this role of informant against

6 Mr. Prible, right?

10:21:50 7 **A** Federal inmates audition for any role they have on any case

8 they can think of with any information they might hear to try

9 and get a time cut. That's what federal inmates do all day

10 long, 24 hours a day, every day of the year.

10:22:02 11 **Q** Yeah. So you knew that they were doing this before

12 Mr. Prible's trial, right?

10:22:06 13 **A** I'm not stupid.

10:22:08 14 **Q** Okay. But your testimony is that you gave each of these

15 informant letters to Mr. Defense -- or Mr. Prible's defense

16 counsel prior to his trial, right?

10:22:19 17 **A** My testimony is these letters were in the file.

10:22:23 18 **Q** Okay. So you can't say for sure whether you gave these to

19 Mr. Gaiser and Mr. Wentz?

10:22:28 20 **A** I don't know what he read. I didn't babysit his note taking

21 and what he pulled out of the file to read.

10:22:34 22 **Q** Did it ever occur to you that these Exhibits 112 through

23 114, those informant letters, could have been typed up by the

24 same person?

10:22:49 25 **A** They might have been. I don't know. I think the similarity

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1 is the typewriter.

10:22:54 2 Q Okay. Did it raise a red flag to you when you received
3 these letters that they all looked the same?

10:22:59 4 A Yes.

10:23:00 5 Q Okay. And did -- and that red flag to you was that they
6 could have been typed up by the same person?

10:23:06 7 A I don't know if I thought that.

10:23:08 8 Q And it was obvious that these guys were talking about this
9 case on the yard together?

10:23:14 10 A Jesse Gonzalez, Felix Gonzalez, Carl Walker and Mark
11 Martinez, yes.

10:23:18 12 Q Okay. But it wasn't obvious to you that they were speaking
13 about this case with Mr. Beckcom even though he had --

10:23:23 14 A Not based on this letter. It has nothing to do with Prible.

10:23:27 15 Q I'll show you Exhibit 176. It's an affidavit you filed in
16 the state habeas hearing, Hermelio Herrero's habeas proceeding.
17 And you signed that affidavit on March 22nd, 2016; is that
18 correct?

10:23:45 19 A Okay.

10:23:47 20 Q Nowhere in that affidavit do you say that you traveled to
21 Louisiana and testified in Mr. Moreno's Rule 35 hearing, does
22 it?

10:24:01 23 A Why would it?

10:24:02 24 Q I'm just asking you if it does. Does that appear anywhere
25 in there?

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10:24:06 1 **A** It does not.

10:24:10 2 **Q** Now, moving on, there was a criminal history report for
3 Nathan Foreman that we talked about earlier. Does the
4 defense -- they don't have equal access to those reports,
5 correct?

10:24:22 6 **A** They do.

10:24:22 7 **Q** They do?

10:24:22 8 **A** Yes.

10:24:24 9 **Q** How does a defense attorney go about running a criminal --

10:24:26 10 **A** An offense --

10:24:26 11 **Q** -- or a criminal history report?

10:24:29 12 **A** He opens the DA's file and looks at the criminal history.

10:24:31 13 **Q** Okay. I understand that. Is there any way that the defense
14 attorney would be able to see that criminal history report if he
15 wasn't looking at it in a file at the DA's office?

10:24:43 16 **A** Hire a private investigator and they get the criminal
17 history for them.

10:24:48 18 **Q** Okay. What was your policy regarding giving criminal
19 history printouts that you had printed for witnesses and for
20 alternate suspect? What was your policy about giving those over
21 to the defense?

10:25:03 22 **A** We gave them over to the defense.

10:25:05 23 **Q** You gave all of the ones that you had run for all witnesses,
24 you gave them to the defense?

10:25:11 25 **A** What do you mean "all"? We're talking about which case?

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Q In -- in Mr. Prible's case.

A Can you rephrase the question?

Q Sure. Let's see. You -- let's see. I can show you each of these, if you'd like -- if you feel like you need to see them, or I can just tell you the names.

A I gave the defense the criminal histories of every witness that testified in the Prible case.

Q Okay. If a witness did not testify, you didn't give them that criminal history, right?

A Who are we calling a witness?

I don't call Nathan Foreman a witness.

Q You don't call him a witness?

A Not in the Prible case.

Q Okay. Was he a witness for you in the Herrero case?

A He tried to be.

Q Okay. Now, he had knowledge about Prible's case, right?

A He was lying.

Q Okay. But he was connected to Prible's case because he came to speak with you about it, correct?

A He's still lying.

Q Okay. So you did not -- okay. So you didn't give a criminal history report for Nathan Foreman to the defense to Prible's case?

A He wasn't a witness.

Q Okay. Did you give Exhibit 87 --

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THE COURT: Please look for a place where we can pause, okay?

BY MS. SCARDINO:

Q This is a criminal history report --

(Video paused.)

MS. SCARDINO: We can pause right there.

THE COURT: We'll take a ten-minute break.

(Recess taken from 10:26 a.m. to 10:45 a.m.)

THE COURT: Thank you. Please be seated. That's all right.

Okay. Why don't we resume the depo.

MS. SCARDINO: Thank you, Your Honor. We're about half-way finished.

THE COURT: We're half-way finished?

MS. SCARDINO: Oh, and we wondered if we might be able to break for lunch after this and have Mr. Gaiser's testimony start at 1:00.

THE COURT: That's fine.

MS. SCARDINO: Would that be okay?

Okay. Thank you.

Are you ready?

THE COURT: I'm ready.

(Video deposition of Kelly Siegler continued as follows.)

Q -- FCI Beaumont inmate named Jonathan Jefferson that was found in your file. Mr. Jefferson did not testify in

Video Deposition of Kelly Siegler

1 Mr. Prible's case. Did you give this Exhibit 87 to defense
2 counsel?

10:46:19 3 **A** I don't know who Jonathan Jefferson is, and I don't know
4 what Terry Gaiser chose to take notes from in the file.

10:46:26 5 **Q** Okay. But you just said that you only gave the criminal
6 history reports for testifying witnesses, right?

10:46:31 7 **A** I said that I know for sure I gave them criminal history
8 reports for testifying witnesses. There could have been other
9 ones in the file that Terry might have looked at. I don't know
10 what he took notes from.

10:46:41 11 **Q** You don't have -- you don't have any independent
12 recollection of giving him this criminal history report of
13 Jonathan Jefferson, do you?

10:46:50 14 **A** I do not.

10:46:53 15 **Q** Exhibit 86 is a criminal history report for a man named
16 James Martin. Again, he did not testify in Mr. Prible's case,
17 so you would not have given this exhibit to Mr. Prible's defense
18 counsel, correct?

10:47:20 19 **A** I don't know who James Martin is.

10:47:21 20 **Q** Was he an alternate suspect in this case?

10:47:23 21 **A** I have no idea who he is.

10:47:25 22 **Q** I'm going to show you Exhibit 106. It's part of that
23 criminal history report with Mr. Martin with some notes down at
24 the bottom.

10:47:37 25 Is that your handwriting?

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10:47:38 1 **A** It is.

10:47:39 2 **Q** The bottom is your handwriting. Okay. And if you could
3 read that handwriting into the record, your handwriting.

10:47:45 4 **A** "Nothing has ever happened between this witness and
5 defendant per Martin 9/10/02."

10:47:54 6 "Knew nothing regarding complainant and defendant's
7 activities and no recall day of money in the bag."

10:48:09 8 **Q** So from these notes, it looks like you reached out to this
9 James -- James Martin to follow up on a statement that someone
10 had given you in this case?

10:48:20 11 **A** I wouldn't say reached out. I would say I talked to him,
12 whether it was on the phone or in person. These are my notes
13 talking about that conversation.

10:48:28 14 **Q** Okay. I'm going to show you Exhibit 43. This is a
15 statement of Jaime Diane Lyons given on April 29th, 1999. And
16 if you go to the second page, the first paragraph, it says, "I
17 don't know of any enemies that Steve might have. The only
18 friends of his that I met were James Martin, lives in Woodgate
19 Subdivision on Lemonwood, and a white guy who I've since learned
20 to be Jeff Prible. About seven months ago, Steve, Crystal and I
21 were at James' house on Lemonwood when Jeff came over with a
22 baby shower bag full of money. The whole bag was full of cash."
23 Do you see that?

10:49:20 24 **A** I do.

10:49:21 25 **Q** Okay. Did you contact Mr. Martin in order to check out

Video Deposition of Kelly Siegler

1 whether Jaime Lyons' story was correct?

10:49:34 2 **A** I don't remember, but that would make sense.

10:49:36 3 **Q** Okay. And he -- and from looking at your notes, it looked
4 like he gave you a different story than Ms. Lyons gave in her
5 statement; is that right?

10:49:46 6 **A** It looks like he told me he didn't remember anything about
7 this baby bag full of money.

10:49:51 8 **Q** That's right. And these notes of yours were never
9 presented -- or disclosed to Mr. Prible's attorney before his
10 rile, were they?

10:50:00 11 **A** About Jaime Lyons and the baby bag full of money?

10:50:04 12 **Q** No. Your notes on Exhibit 106 about your conversation with
13 this witness, James Martin.

10:50:14 14 **A** I don't know if they were or not. This statement was in the
15 file of Jaime Lyons. The name of James Martin was in her
16 statement for Terry Gaiser to follow through with himself. I
17 don't know if Terry Gaiser took notes from this or not, No. 106.

10:50:31 18 **Q** In order to fulfill your Brady obligations as a prosecutor,
19 do you believe it was sufficient to simply give the name of a
20 witness to defense counsel without giving the context of what
21 that particular witness had spoken to you about?

10:50:48 22 **A** That's not what I said.

10:50:49 23 **Q** I'm asking you --

10:50:50 24 **A** I do not.

10:50:50 25 **Q** -- if that's your belief? You do not?

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10:50:53 1 **A** Not if I have exculpatory information, no.

10:50:55 2 **Q** Okay. You're required to give --

10:50:57 3 **A** The exculpatory information.

10:50:58 4 **Q** -- the substance of that exculpatory information? Okay.

10:51:00 5 But I believe you said that you gave the name of James
6 Martin to Terry Gaiser, and it was up to him to follow through
7 on this?

10:51:07 8 **A** I didn't say that.

10:51:08 9 **Q** That's not your -- your testimony?

10:51:10 10 **A** No. That's not what I said. I said this statement was in
11 the file. The name of James Martin was in the statement, and
12 these notes specifically were also in the file. Whether Terry
13 Gaiser read it or not, I don't know. I don't know what Terry
14 Gaiser read.

10:51:29 15 **Q** The office manual had guidelines regarding the use of
16 informants, correct?

10:51:33 17 **A** I don't remember what all it had. It was -- it was this
18 thick (indicating).

10:51:37 19 **Q** Right. It was very thorough --

10:51:39 20 **A** Yes.

10:51:39 21 **Q** -- would you say?

10:51:40 22 **A** Yes.

10:51:40 23 **Q** And the reason it would have had guidelines about the use of
24 informants is because as -- as we've just discussed, prison
25 inmates are notoriously unreliable, right?

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A They lie.

Q They lie. Everyone in jail wants a time cut?

A Yes.

Q Everyone wants out?

A Yes.

Q Okay. And so the office needed to have guidelines regarding the vetting and the usage of informants and the benefits that were exchanged with informants for the purpose of transparency, right?

A I didn't write the guideline. I don't know what their thinks was. This -- the -- the Harris County DA's office guidelines were written way before I got there.

Q Okay. But you were familiar with these guidelines as a prosecutor, right?

A Yes.

Q Okay. So if you look at page 15 of this exhibit, it contemplates two situations when informants might be used, right? And one such circumstance was where the defendant had a case pending, and he and his attorney decided -- or sought to have him become an informant to work off the case. Do you see that?

A I do.

Q And if the trial bureau prosecutor had no objections to that arrangement, it would be referred to the Special Crimes Bureau for approval. The Special Crimes prosecutor enters into a

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1 contract with the defendant and his attorney and notifies the
2 trial prosecutor when the contract is completed or not
3 completed. Do you see that?

10:53:02 4 **A** I do.

10:53:03 5 **Q** Okay. And the second situation in -- in which informants
6 might be used was where the defendant had a case pending, again,
7 and a police officer who has used the defendant as an informant
8 in the past requests special consideration in the form of a
9 lenient sentence. And in that case, the trial bureau prosecutor
10 would make the determination of whether such consideration ought
11 to be given and then must follow -- and it lists a procedure.
12 Do you see that --

10:53:33 13 **A** I do.

10:53:33 14 **Q** -- that must be followed?

10:53:34 15 **A** I do.

10:53:35 16 **Q** Okay. Now -- so the DA manual contemplates two situations
17 when informants might be used, right?

10:53:41 18 **A** No.

10:53:42 19 **Q** And --

10:53:43 20 **A** These are two specific unique situations working off a
21 contract --

10:53:47 22 **Q** Uh-huh.

10:53:48 23 **A** -- and when a cop wants to work his own informant completely
24 separate than what we've been talking about all day.

10:53:54 25 **Q** And -- and that -- that was my next question. Neither of

Video Deposition of Kelly Siegler

1 these situations applied to this case, right?

10:53:58 2 **A** Correct.

10:53:59 3 **Q** Okay. If the second situation would have applied, the
4 guidelines required several people to sign off on the use of an
5 informant, right?

10:54:07 6 **A** It's a whole different situation.

10:54:09 7 **Q** Okay.

10:54:10 8 **A** It's not anything like using an informant as a witness in
9 another case.

10:54:15 10 **Q** Let's look at the section -- Section 2. It said, if that
11 section would have applied, "The requesting officer must produce
12 his request in writing with approval of a supervisor of the
13 grade of lieutenant or above attached thereto. The chief of
14 Special Crimes or one of the members of the organized crime
15 division must be notified to determine if the informant has
16 good, bad or no past history with regards to information
17 furnished. Both the chief prosecutor in the trial court and the
18 first ADA must approve such special consideration in writing,
19 which shall become part of the file.

10:54:49 20 "Additionally, Special Crimes shall log the special
21 consideration information in a well-bound book kept for such
22 purposes. It is the trial bureau prosecutor's responsibility to
23 ensure that such information is communicated to Special Crimes."
24 Do you see that?

10:55:04 25 **A** I do.

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10:55:05 1 Q So in these two -- in these two situations in which the use
2 of informants might be contemplated, no fewer than, I believe,
3 six people had to sign off -- or five people had to sign off on
4 the use of that informant; is that right?

10:55:23 5 A No. Do you want me to explain?

10:55:27 6 Q No. I'm asking you in -- if what I just read, if the second
7 situation would have applied, the guidelines required several
8 people to sign off on the use of that informant, right?

10:55:36 9 A It's the working off of contracts that's the issue here, not
10 the use of the informant. We didn't want cops taking -- taking
11 it upon themselves to work off dope cases or to work their
12 informants in a cop's unilateral decision, a narc on the street
13 making that call without going through us. It's the working off
14 of the contract that's at issue here, not the use of the
15 informant, necessarily.

10:55:58 16 Q Okay. So if you were dealing with an -- an informant who
17 was just trying to work off a drug case, like a narc case --

10:56:07 18 A This is --

10:56:07 19 Q -- then this would have applied?

10:56:09 20 A This is to put an informant on the streets to work off a
21 case a cop has on him by trying to sell more dope, by hooking
22 him up with a bigger guy up the chain. The goal was to get the
23 bigger guy up the chain, and our reason for this rule was to
24 stop the cops from doing it out there willy-nilly without us
25 knowing what was going on and making these deals.

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10:56:27 1 Q Okay.

10:56:27 2 A Nothing to do with simply testifying as a snitch in a case.

10:56:31 3 Q Okay. And if -- and my question to you is if you did have a
4 narc case like you just described, no less than five people
5 would have had to sign off on that, right, according to this?

10:56:42 6 A There were -- there were a lot. I was the boss of Special
7 Crimes. There was a lot.

10:56:46 8 Q Okay. And that was my next question. Were you Special
9 Crimes -- you -- at this point, you were in Special Crimes. So
10 you would have had to have been one of the people that signed off on
11 the use of the informant for that working off a contract type
12 case?

10:56:57 13 A The contract.

10:56:58 14 Q Is that correct?

10:56:59 15 A We didn't want -- we didn't want a cop working off 20 kilos
16 of cocaine by having some street guy going and buying some
17 marijuana and saying, "Oh, we're all good. Special Crimes, let
18 his case go." It's the contract that was the problem. We
19 wanted to know every deal going on with drug cases with
20 contracts. We wanted to be aware of it.

10:57:15 21 Q Uh-huh. And the reason it was so important in that case to
22 have so many people sign off on the use of an informant was so
23 they could vet that informant's credibility, right?

10:57:24 24 A It was really to watch the cops, to be honest with you.

10:57:27 25 Q Okay.

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10:57:27 1 **A** We didn't want cops deciding all by themselves who they were
2 going to work off. We wanted to decide.

10:57:32 3 **Q** Okay. So the reason it was important was transparency. You
4 didn't want the cop to be able to do something that you-all were
5 unaware of, right?

10:57:38 6 **A** Well, we -- we didn't like the whole concept of working off
7 dope cases -- of working off dope cases that way anyway, but
8 this was to watch the cops.

10:57:45 9 **Q** Okay. Now, it refers -- the passage I read earlier refers
10 to a well-bound book. What is that book, and where can I find
11 it?

10:57:53 12 **A** It wasn't really a well-bound book. When I was involved
13 with this, it was like a folder passed down forever with
14 contracts in it. And the whole time I was in Special Crimes, I
15 don't know if I ever even saw a contract. That's how rare they
16 were because we didn't like them.

10:58:10 17 **Q** So when you used an informant in another context to testify
18 in a case against you, you wouldn't enter into a contract with
19 that informant?

10:58:17 20 **A** Like this?

10:58:18 21 **Q** No, just -- I'm just asking would you enter into a written
22 contract with that informant?

10:58:24 23 **A** Not under circumstances like the Herrero or Prible case, no.

10:58:28 24 **Q** What about other circumstances? Would you ever enter into a
25 contract with an informant?

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10:58:32 1 **A** On immunity agreements, which were as rare as contracts, it
2 was written down.

10:58:36 3 **Q** Okay. Nothing was stopping you from putting the agreement
4 that you had with an informant into the form of a written
5 contract, right?

10:58:46 6 **A** It was pretty transparent because I told the jury what the
7 deal was.

10:58:50 8 **Q** There was no one at the DA's office that said, "You can't
9 put your deal with an informant in writing," right?

10:58:59 10 **A** We didn't need to. We told the jury.

10:59:01 11 **Q** Okay. There was no one at the DA's office that said, "You
12 can't put a deal with an informant in writing," was there?

10:59:09 13 **A** There was no rule that said I couldn't do that. There was
14 also no defense lawyer who ever required me to do that.

10:59:15 15 **Q** So you -- at least with these smaller cases, these smaller
16 drug cases that were contemplated in this section that I just
17 read to you, you were the person that would have had to approve
18 the use of those informants in writing, right?

10:59:29 19 **A** Well, it depends on where I was in Special Crimes at the
20 time and where I was in the chain. The whole time I was in
21 Special Crimes, I wasn't the ultimate signer off. It would have
22 been my supervisor or boss, wherever I was in that time.

10:59:41 23 And you said "smaller drug cases." These were the big drug
24 cases. That's why they were rare.

10:59:46 25 **Q** I'm sorry. I'm comparing them to a capital murder case.

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1 You have a drug case versus a capital murder case, right?

10:59:52 2 **A** People get killed in those drug cases. That's why we didn't
3 like the street deals.

10:59:56 4 **Q** Okay. Okay. But in a -- in a drug case in which a
5 defendant was trying to, quote, work off a contract, you
6 required -- the DA's office required that informant deal to be
7 in writing, right?

11:00:10 8 **A** Yes.

11:00:11 9 **Q** But in the case of if you're using an already convicted
10 capital murderer in a federal prison to testify against another
11 one of your capital murder defendants in a state case, there
12 needed to be no writing memorializing that at all?

11:00:32 13 **A** It essentially was in writing.

11:00:33 14 The defense lawyer understood what was happening who
15 represented that inmate, slash, witness. It was told to the
16 jury. It was told in opening statement. It was told on direct
17 examination. It was told on cross-examination. And it was told
18 in final argument. It was all out there.

11:00:50 19 **MS. SCARDINO:** Objection?

11:00:50 20 **A** This was no secret.

11:00:52 21 **MS. SCARDINO:** Object.

11:00:53 22 **BY MS. SCARDINO:**

11:00:53 23 **Q** Did you have a written contract with Mr. Beckcom in
24 Mr. Prible's case?

11:00:57 25 **A** I did not.

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11:00:58 1 Q Did you have a written contract with Mr. Foreman in
2 Mr. Prible's case?

11:01:04 3 A One more time, Mr. Foreman was not involved in Jeffrey
4 Prible's case. I know you want him to be, but he was not.

11:01:10 5 Q Did you have a written contract with Mr. Foreman for
6 Mr. Prible's case?

11:01:16 7 A Mr. Foreman was not involved in Mr. Prible's case.

11:01:22 8 **SPEAKER:** Asked and answered.

11:01:26 9 **BY MS. SCARDINO:**

11:01:26 10 Q Did you enter into a written contract with Mr. Moreno in the
11 Herrero case?

11:01:32 12 A No.

11:01:33 13 Q Did you enter into a written contract with Mr. Foreman in
14 the Herrero case?

11:01:40 15 A No.

11:01:41 16 Q Did you enter into a written contract with Mr. Dominguez in
17 the Herrero case?

11:01:47 18 A No.

11:01:47 19 Q Did you enter into a written contract with Mr. Eddie Gomez
20 in the Herrero case?

11:01:54 21 A He did not testify, and I don't remember him for that
22 reason, but the answer is there was no written contract for any
23 of them.

11:02:04 24 Q Okay. And you say that these informant contracts were
25 pretty rare, right? They didn't --

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A No, that's not what I said.

Q Okay.

A I said these contracts that you've talked about on page 14 and tried to make appear to be the same kinds of testimony we've been discussing all day be relevant are very rare. That's what I said.

Q I'm going to show you Exhibit 162. Exhibit 162 is an informant agreement made between the Harris County DA's office and Vincent Flores on July 23rd, 1996. Do you see that?

A I do.

Q And this document was produced by the DA's office in this case from your file. And this is an example of a contract that would be entered into by the DA's office with another -- with an informant, right?

A I don't understand the relevance. Whatever this is, 162, has nothing to do with Prible or Herrero.

Q And I'm not asking you if it has anything to do with --

A Your question made it sound like -- you said it was produced as part of this file, as if it had something to do with Prible or Herrero, and that is not true.

Q Okay. Do you know that Mr. Flores was -- was a witness in Prible's case?

A I don't remember him.

Q Okay. This -- and I'm representing to you that this agreement was found in your Prible file and was produced to us

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1 by the DA's office. Do you deny that?

11:03:33 2 **A** I don't remember him.

11:03:34 3 **Q** Okay. You don't remember him?

11:03:36 4 **A** I do not.

11:03:36 5 **Q** Okay. Now, earlier when I was reading from Exhibit 154-5
6 and those two informant -- the contemplation of the use of an
7 informant that we already discussed did not apply in this case
8 but in those two situations, deviations from that policy could
9 only be made in writing by the DA for good cause shown by the
10 prosecutor urging such deviation, right?

11:04:09 11 **A** If we're talking about page 154-5 in the context of working
12 off dope deals, contracts through Special Crimes, I don't know
13 what the deviation might have been. I never dealt with the
14 deviation where that would have arisen. But if that's what the
15 manual says, that's what the manual says.

11:04:32 16 **Q** Okay. Is it your testimony that nothing in the policy
17 manual addressed the situation when informants would be used in
18 the matter that -- in the manner that you used them in the
19 Prible case?

11:04:45 20 **A** I have no idea what's in that manual. Like I said, it's
21 this thick (indicating).

11:04:51 22 **Q** And it addresses agreements with cooperating individuals.
23 Are you familiar with this paragraph of the manual?

11:05:01 24 **A** Let me read it.

11:05:02 25 **Q** Okay.

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A I haven't read the manual since about 1987.

Q Okay. So your understanding of the Harris County District Attorney's policies was that no one needed to sign off on your use of informants in the Prible case; is that correct?

A That's correct.

Q Okay. You had the ultimate discretion whether to use an informant in Mr. Prible's case, right?

A I did.

Q And no one else needed to know about your use of that informant or your conversations leading up to your use of that informant in the case?

A Well, it wasn't a secret. You made it sound like I was trying to keep it a secret.

Q Well, did you share with Mr. Wiser and Mr. Bonds your communications with these various informants?

A They knew what was going on. Vic didn't come to the Beaumont meeting with Johnny Bonds and me. Vic didn't go with me to talk to Michael Beckcom the day before he testified because Beckcom was my witness. We divided up the witnesses. He did his. I did mine.

Q It looks like you go through a lot of hoops to use an informant in a case where you're trying to work off a charge?

A It was to watch over the cops.

Q Okay. And so I think you'll agree that when you -- it sounds like when you used an informant that was already

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1 imprisoned in federal prison to testify against -- against
2 Mr. Prible in his capital murder trial, that these requirements
3 listed in the policy manual flew out the window. They didn't
4 apply to that situation, correct?

11:06:34 5 **A** Two different scenarios.

11:06:37 6 **Q** Okay. So the answer is yes, these guidelines did not apply
7 to the situation in Mr. Prible's case?

11:06:43 8 **A** Correct.

11:06:44 9 **Q** Okay. And, likewise, moving on down that page 154-16, it
10 says, "No agreement for consideration on a pending case will be
11 considered where the pending case involved any use of a deadly
12 weapon, involved any act of violence to other persons,
13 cooperating individual is a habitual criminal, cooperating
14 individual has been adjudged guilty on pending case, involves
15 one person working off a case for another, vicarious contract,
16 or the agency arresting the cooperating individual is not the
17 agency seeking the contract, unless the arresting agency is
18 aware of the contract and agrees to the terms in writing prior
19 to any agreement with the cooperating individual."

11:07:30 20 So is it your testimony that the passage I just read would
21 not have applied to any of the informants that you used in the
22 Prible or Herrero cases?

11:07:40 23 **A** The passage that you just read applies to those defendants
24 in the free world who a cop is asking to work off a dope case
25 through a contract by selling more dope on the streets, and the

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1 passage here applies because if the pending case involved
2 violence, weapons, serious victims and all that, those were the
3 cases we were going to let a cop willy-nilly decide to work off
4 a case through. To us, it was more important that the pending
5 case matter than a cop deciding unilaterally to work off my case
6 because he thought he had a good snitch that could get him more
7 dope off the streets.

11:08:20 8 Q Okay. So let's go through these 1 through 6, and I'm going
9 to take each informant from the Prible and Herrero cases and ask
10 you a question.

11:08:29 11 First, Mr. Beckcom. Mr. Beckcom had already been adjudged
12 guilty on his pending case, right? He was in prison?

11:08:39 13 A Well, it was -- it wasn't pending. It was resolved.

11:08:45 14 Q I'm sorry. His resolved -- his case was resolved. He was
15 in prison --

11:08:48 16 A Yes.

11:08:48 17 Q -- correct?

11:08:48 18 He had been convicted of capital murder, correct?

11:08:53 19 A Yes.

11:08:53 20 Q He -- his deadly weapon of choice in that case was a metal
21 toolbox that he had put his victim in and then threaded a garden
22 hose from the exhaust pipe of his car and turned the car on,
23 right?

11:09:05 24 A Yes.

11:09:05 25 Q Okay. So it definitely involved an act of violence to

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1 another person?

11:09:09 2 **A** It did.

11:09:10 3 **Q** Uh-huh. And he was an habitual criminal, correct?

11:09:14 4 **A** I don't remember.

11:09:15 5 **Q** You don't recall?

11:09:16 6 **A** I don't want to argue with that, but I don't remember.

11:09:18 7 **Q** Okay. And then Foreman -- Nathan Foreman, his crime was

8 assault causing bodily injury. Do you remember that?

11:09:26 9 **A** Nathan Foreman never testified.

11:09:28 10 **Q** That's not my question.

11:09:29 11 **A** Well, which case are we talking about?

11:09:31 12 **Q** I'm asking you if you recall that Nathan Foreman was

13 convicted of assault causing bodily injury?

11:09:38 14 **A** I don't remember what his conviction was for --

11:09:40 15 **Q** Okay.

11:09:40 16 **A** -- because I never used him.

11:09:41 17 **Q** Do you remember that he was a violent criminal?

11:09:43 18 **A** I never used him.

11:09:44 19 **Q** Well, you spoke with him --

11:09:46 20 **A** I don't know what --

11:09:46 21 **Q** -- on August 8th, 2001, right?

11:09:48 22 **A** I'm sorry. I what?

11:09:50 23 **Q** You spoke with him on August 8th, 2001, right?

11:09:52 24 **A** I did.

11:09:52 25 **Q** And did you ever speak with him again after that?

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1 **A** He probably tried to call me, but I don't know what we
2 talked about for very long because I knew he was a liar.

11:09:59 3 **Q** Okay. But you never met with him in person again?

11:10:02 4 **A** After the Beaumont -- after the --

11:10:03 5 **Q** August 8th, 2001?

11:10:04 6 **A** -- downtown Houston day, no.

11:10:06 7 **Q** Okay. Nathan Foreman was a habitual criminal. Do you
8 remember that?

11:10:10 9 **A** I don't remember.

11:10:10 10 **Q** Okay. Well, my question to you is these six requirements
11 for an informant -- or for an agreement for consideration to be
12 given to an informant in the type of case that we discussed
13 earlier, the drug case on the street, if you had a different
14 situation like the Prible case, it didn't matter if the
15 informant was involved in a crime that had -- or committed a
16 crime that involved the use of a deadly weapon, right? You
17 could still use him?

11:10:41 18 **A** Of course, it mattered.

11:10:42 19 **Q** Well, you could still use him as an informant. It wouldn't
20 preclude you from using him as an informant, right?

11:10:48 21 **A** Not that alone, no.

11:10:50 22 **Q** Okay. You could also use him if his crime involved an act
23 of violence to another person?

11:10:55 24 **A** I could.

11:10:56 25 **Q** Okay. You could also use him if he was a habitual criminal?

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A I could.

Q Okay. And you could also use him if he had been adjudged guilty on another case?

A I could.

Q Okay. So these 1 through 6 requirements, they only applied if you were working with informants who were trying to work off a drug case on the street, right?

A That's incorrect. These rules applied in writing because we were trying to watch over the cops, too, on page 154-16, on those specific types of cases.

The factors that you've listed that you think are important, I agree they are important, and in any case, whether it's a murder or a DWI case, before I'm going to use a snitch or an inmate as a witness, I care about everything that's listed here. Of course, it's important. We don't just blow it off and use every inmate that comes walking around wanting to give information. That ought to be pretty obvious to you that I didn't use them all.

Q Well, Mr. Beckcom, who testified in Mr. Prible's case --

A Yes, ma'am.

Q -- Mr. Moreno, who testified in Mr. Herrero's case, and Mr. Dominguez, who testified in Herrero's case, all of them were involved in crimes involving the use of a deadly weapon, an act of violence, they were all habitual criminals, and they had all been adjudged guilty, right?

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1 11:12:21 1 **A** Those are typically the people that end up in federal prison
2 that can be witnesses.

1 11:12:25 3 **Q** Did you ever contact FCI Beaumont to ask to speak to an
4 inmate?

1 11:12:29 5 **A** You mean like generically or by name?

1 11:12:36 6 **Q** By name.

1 11:12:37 7 **A** Yes.

1 11:12:38 8 **Q** Okay. And when you did finally hook up on the phone, the
9 inmate would be in the unit manager's office speaking with you
10 on the phone; is that right?

1 11:12:46 11 **A** Yes. Yes.

1 11:12:46 12 **Q** Okay. And that phone call would not be recorded, would it?

1 11:12:49 13 **A** I don't know. That's a federal prison rule. I don't know
14 what they're recording when they're calling from the case
15 manager's office.

1 11:12:54 16 **Q** Okay.

1 11:12:54 17 **A** I don't know the rules.

1 11:12:56 18 **Q** Okay. You do know that phone calls with inmates from the
19 usual inmate phones, those would have been recorded, right?

1 11:13:02 20 **A** I would assume so.

1 11:13:03 21 **Q** Okay. I'm going to show you Exhibit 170, Ms. Siegler. This
22 is the inmate phone list for Michael Beckcom dated
23 December 19th, 2001. And you see that he added your name to his
24 phone list on that day?

1 11:13:27 25 **A** I see that.

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1 11:13:29 1 Q Okay. That was your direct line at the DA's office?

1 11:13:31 2 A It wasn't my direct line, but it was to major offenders.

1 11:13:34 3 Q If you go to the next page, this is his printout of his
4 phone calls in 2002 from the inmate phones.

1 11:13:43 5 A Okay.

1 11:13:43 6 Q And we understand those are different from the unit
7 managers' phones.

1 11:13:47 8 A Okay.

1 11:13:47 9 Q Okay. And so every time that number 6178 appears, that
10 phone call was made to you, right?

1 11:13:55 11 A No. As I said, 6178 went to major offenders. You have
12 Special Crimes. It has four divisions, each with their own
13 number. One of those was major offenders. It wasn't my direct
14 line.

1 11:14:06 15 Q Okay. Would he have been speaking with anyone else at the
16 DA's office?

1 11:14:09 17 A There are five -- five or six other prosecutors, two or
18 three investigators.

1 11:14:16 19 Q Do you know if he was speaking to any other investigators or
20 prosecutors during the time that you were working with him on
21 the Prible case?

1 11:14:22 22 A You said this is the inmate phone.

1 11:14:24 23 Q Right. This is Mr. Beckcom's phone records from 2002 --

1 11:14:29 24 A So he had his own phone?

1 11:14:30 25 Q -- of phone calls he made from the inmate phones.

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11:14:32 1 **A** He had his own phone?

11:14:33 2 **Q** No. This is from the inmate phones at FCI Beaumont.

11:14:38 3 **A** Well, how do you know they're from Michael Beckcom?

11:14:40 4 **Q** Because if you go to the top, it says, "Inmate name Michael
5 Beckcom," and these were produced to us by the Board of Prisons.

11:14:46 6 And so my question to you is when that number -- the 6178
7 number appears on his phone list, that phone call was going to
8 the Harris County DA's office, right?

11:15:02 9 **A** That is correct.

11:15:02 10 **Q** Okay. But you're saying he might have been talking to other
11 people in the office at the same time as he was talking with
12 you, so you didn't necessarily speak with him at those -- on
13 those phone calls?

11:15:12 14 **A** I'm saying that if he called 6178, the -- the major
15 offenders number, depending on how long the call went or if he
16 was placed on hold, he might not have ever connected with me.
17 He could have called just to try and talk with me. I might not
18 have been there. I might not have taken the call. So just
19 because there's a call made to 6178 doesn't mean he necessarily
20 ever even connected with me.

11:15:33 21 **Q** Okay. It was an attempt by him to call you at least?

11:15:36 22 **A** Yes.

11:15:37 23 **Q** Okay. And you'll see on Exhibit 170 that he called that
24 6178 number that he had put on his phone list as belonging to
25 you, he called it on April 4th, 2002.

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11:15:53 1 So the one that's highlighted, he called you on April 4th,
2 2002, right?

11:15:57 3 **A** I see that.

11:15:58 4 **Q** Okay. He called you again on --

11:16:01 5 **A** Wait. Wait. Wait. It's for only how many minutes?

11:16:04 6 **Q** Six minutes.

11:16:05 7 **A** And what time is the call?

11:16:08 8 Six minutes doesn't mean he got in touch with me. He could
9 have put on hold and I never picked up the call.

11:16:13 10 **Q** Do you recall 16 years -- or 15 years ago that that
11 happened?

11:16:17 12 **A** Oh, I recall that I was so busy, they would saying, "Kelly
13 Siegler, line whatever," and I could never get all the calls.
14 Yes, it happened all the time.

11:16:26 15 **Q** Okay. So you deny speaking with him on April 4th, 2002?

11:16:29 16 **A** No. I don't remember, but just because it says he called
17 6178 and the call lasted six minutes doesn't mean that we
18 actually spoke. That's what I'll say.

11:16:38 19 **Q** Okay. He called your line for two minutes. You see that?

11:16:40 20 **A** Yes.

11:16:40 21 **Q** And on April 24th, 2002 --

11:16:42 22 **A** I'm pretty sure that wasn't a connected call to me for only
23 two minutes. The next one.

11:16:46 24 **Q** Do you have any evidence that that wasn't a connected --
25 connected call, or are you just speculating?

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11:16:52 1 **A** I don't believe that I talked to him on a phone call that
2 lasted only two minutes.

11:16:57 3 **Q** So you're denying that you spoke with him on that day?

11:17:00 4 **A** I don't remember that call, no.

11:17:01 5 **Q** You're denying that you spoke with him on that day or you
6 just don't remember?

11:17:03 7 **A** I don't remember. I don't remember.

11:17:04 8 **Q** You don't remember?

11:17:05 9 **A** It doesn't make any sense that the call would last two
10 minutes.

11:17:08 11 **Q** If you look at -- going up to April 24th, 2002, another
12 phone call to your office?

11:17:15 13 **A** Again for two minutes.

11:17:16 14 **Q** Okay. And on May 15th, 2002, another phone call to your
15 number?

11:17:24 16 **A** For three minutes.

11:17:25 17 **Q** Uh-huh. And July 12th, 2002, at the top there, it's a phone
18 call for one minute?

11:17:39 19 **A** For one minute. I see that.

11:17:41 20 **Q** And on July 16th, 2002, there's a couple of phone numbers --
21 phone calls?

11:17:50 22 **A** I see those.

11:17:50 23 **Q** Do you see that?

11:17:51 24 **A** For two minutes and for one minute.

11:17:53 25 **Q** Uh-huh. And then there's three times -- three phone calls

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1 on October -- I mean, on August 2nd, 2002. Do you see that?

11:18:01 2 **A** So three calls on the same date, which means that he
3 obviously didn't get ahold of me for the one-minute call or the
4 three-minute call because there's a nine-minute call, too.

11:18:09 5 **Q** Okay. So whenever he would call you and leave -- he would
6 leave a message, I suppose, with your office?

11:18:13 7 **A** He would call 755-6178 and get the main receptionist, who
8 would then put him through to my secretary, Esmeralda, and then
9 she would try to find me or take a message, which is probably
10 why there's so many two-minute, one-minute and three-minute
11 calls, and they never did get ahold of me.

11:18:31 12 **Q** And you would then return his phone call by calling his unit
13 manager to have a conversation on that phone?

11:18:37 14 **A** No. I got a lot of calls that I didn't return.

11:18:39 15 **Q** So you're saying that he kept calling you over and over, he
16 was your witness in -- in Prible's case, and you never returned
17 his phone call. Is that your testimony?

11:18:45 18 **A** I did return some of the phone calls. I said that I don't
19 remember returning all of these individual phone calls.

11:18:51 20 **Q** Okay. But some of those phone calls that you returned, you
21 would have called the unit manager, who would have put
22 Mr. Beckcom on the telephone, right --

11:18:57 23 **A** Yes.

11:18:57 24 **Q** -- like we discussed earlier?

11:18:59 25 **A** Yes.

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1 1:19:00 1 Q Exhibit 171 is telephone records for Nathan Foreman produced
2 by the Board of Prisons. And you see on the first page of that,
3 that Mr. Foreman added you to his phone record -- or his phone
4 list on October 3rd, 2001, right?

1 1:19:25 5 A I see that. I also notice that now he has the right number.

1 1:19:28 6 Q Right. He has the correct number. And this is almost two
7 months after you spoke with him in August 8th, 2001, and
8 determined he was lying about Mr. Prible's case, right?

1 1:19:37 9 A That's what the date says, yes.

1 1:19:39 10 Q Okay. And there are no phone calls to you, if you look at
11 Mr. Foreman's list, in 2002. Do you see that?

1 1:19:52 12 A Does this cover the whole year?

1 1:19:54 13 Q Yeah. Well, yeah. I'm just asking you -- it looks like it
14 covers from January to October 2002, and nowhere -- I'll
15 represent to you that nowhere in that list is a phone call to
16 that 6178 number.

1 1:20:09 17 A Okay.

1 1:20:09 18 Q But you were speaking with Mr. Foreman during this time,
19 correct?

1 1:20:12 20 A No.

1 1:20:12 21 Q You weren't speaking with him?

1 1:20:13 22 A Not that I remember.

1 1:20:14 23 Q Is it your testimony that you never spoke with him again
24 after August 8th, 2001?

1 1:20:18 25 A That was the day of the downtown fed facility?

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1 11:20:22 1 Q Uh-huh.

1 11:20:22 2 A I never talked to him again.

1 11:20:24 3 Q And, again -- and you were speaking -- you did speak with
4 Mr. Moreno on the phone leading up to Mr. Herrero's trial,
5 right?

1 11:20:33 6 A I know I got the letter, the letter that we talked about. I
7 know that I went to see him at some point. Whether or not there
8 was a phone call in between before I went to see him, I don't
9 remember.

1 11:20:44 10 Q Okay.

1 11:20:45 11 A I would think there was, but I don't remember for sure.

1 11:20:48 12 Q And that phone call that there might have been, would that
13 have been on the unit manager's telephone?

1 11:20:54 14 A It had to be.

1 11:20:55 15 Q Okay. And sometimes BOP employees would call you about
16 cases that you were working on with these inmates, would they
17 not?

1 11:21:03 18 A No.

1 11:21:04 19 Q But I'll -- I'll represent to you that one of these pink
20 slips in Exhibit 152 that was produced by the DA's office in
21 this case, it shows Lieutenant Robert Clark from FCI Beaumont
22 called Kelly re Herrero. So does that refresh your memory as to
23 whether any BOP employees ever called you to discuss the Herrero
24 case?

1 11:21:28 25 A No.

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1 11:21:29 1 Q Now, you said a moment ago, I believe, that you did not
2 speak with Mr. Foreman again after that August 8th, 2001,
3 meeting with him in --

11:21:37 4 A Not that I remember.

11:21:38 5 Q Okay. Exhibit 111 is a letter from Alan Percely,
6 Mr. Foreman's attorney, to you on November 12th, 2001, if you
7 want to take a moment to read it.

11:21:54 8 A Okay.

11:21:54 9 Q And he says, "As you are already aware, I am Mr. Foreman's
10 attorney on federal and state criminal matters," right?

11:22:00 11 A That's what he says.

11:22:03 12 Q So had you already been talking with Mr. Percely about
13 Mr. Foreman?

11:22:07 14 A Actually, I think what happened was he came up to me one day
15 in court and said that he represented Nathan Foreman, and I
16 thought to myself, "Of course, you do," and that was it.

11:22:17 17 Q Okay. And then he reaches out to you on this November 12th,
18 2001, letter, right?

11:22:24 19 A Yes.

11:22:25 20 Q Okay. And in his letter, he said that Nathan Foreman told
21 him that he has information that will lead you to the weapon
22 that was used in the murder case that you are preparing to go to
23 trial on in the near future. Do you see that?

11:22:38 24 A I see that.

11:22:40 25 Q Okay. How did Mr. Foreman know that the murder weapon in

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1 Mr. Prible's case had never been found?

11:22:45 2 **A** I don't even think they're talking about Prible. I think
3 it's Alan Percely talking bull with Nathan Foreman, who's
4 talking bull. I don't know what they're talking about, which
5 proves the point.

11:22:54 6 **Q** So you don't --

11:22:55 7 **A** They're both full of it.

11:22:56 8 **Q** Okay. So you don't know what case he's referring to in this
9 letter, whether it's the Prible case or the Herrero case?

11:23:01 10 **A** I tried a lot of cases in '02. It could have been one of
11 the other ones that I tried. It doesn't mean it's Prible --

11:23:07 12 **Q** Okay.

11:23:07 13 **A** -- or Herrero.

11:23:08 14 **Q** And Mr. Percely proposes a deal in exchange for whatever
15 information Mr. Foreman has, right?

11:23:15 16 **A** He tries to, yes.

11:23:16 17 **Q** Okay. And instead of telling Percely -- or ignoring this
18 letter or telling him to get lost or telling Foreman to get
19 lost, instead, you set up a face-to-face visit with Mr. Foreman
20 to discuss this new information he had, didn't you?

11:23:31 21 **A** The letter is dated November 12th of '01, and the meeting
22 with Foreman was August of '02?

11:23:39 23 **Q** August 8th, 2001, was the initially meeting with Foreman.

11:23:45 24 **A** Okay. So ask me the question again. So the letter came
25 after the meeting?

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1 11:23:49 1 Q Yes, the letter came after the meeting, and I'm asking you,
2 after you got this letter of November 12th, 2001, you could have
3 told Percely to get lost, right?

11:23:58 4 A I could have.

11:23:59 5 Q You could have told Foreman, "I never want to talk to you
6 again. You're a liar," right?

11:24:04 7 A I could have.

11:24:05 8 Q Okay. You could have ignored them, right?

11:24:06 9 A I did.

11:24:07 10 Q But instead, after you received this letter, you arrange for
11 another face-to-face meeting with Mr. Foreman at FCI Beaumont,
12 didn't you?

11:24:16 13 A Not that I remember.

11:24:19 14 Q Now, Exhibit 77 is a letter dated November 20th, 2001, from
15 Johnny Bonds to Lieutenant Clark requesting that he -- you and
16 he be allowed to visit with Nathan Foreman on December 10th,
17 2001. Do you see this?

11:24:36 18 A I see that.

11:24:40 19 Q And this letter was written eight days after Mr. Percely's
20 letter to you was written, right, on November 12th, 2001?

11:24:53 21 A Yes.

11:24:54 22 Q So when do you think you would have received this
23 November 12th, 2001, letter from Alan Percely?

11:24:59 24 A Well, I would hope the next day.

11:25:00 25 Q Within a couple of days?

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1 1:25:02 1 Okay. And so pretty soon after receiving this letter, you
2 have Johnny Bonds request another meeting with Mr. Foreman at
3 FCI Beaumont, right?

1 1:25:14 4 **A** This is Ted requesting it for Johnny and me.

1 1:25:18 5 **Q** I'm sorry.

1 1:25:19 6 **A** But yes.

1 1:25:19 7 **Q** Yes. So you, obviously, asked Mr. Wilson to request this
8 meeting, right?

1 1:25:23 9 **A** Right.

1 1:25:24 10 **Q** Okay. So even though he lied to you back in November -- or
11 in August, a few months earlier, maybe now he's got some good
12 information for you, right?

1 1:25:38 13 **A** I don't remember why we would have asked to go see him again
14 because Johnny and I both believed, when we walked away from the
15 meeting with Nathan Foreman at the downtown Houston facility,
16 that he was not being truthful.

1 1:25:50 17 **Q** I'm going to show you Exhibit 78. Exhibit 78 is a
18 November 26, 2001, letter from Ted Wilson to Lieutenant Robert
19 Clark again at FCI Beaumont medium. And he says, "I'm
20 respectfully requesting that you permit Assistant District
21 Attorney Kelly Siegler and Harris County District Attorney's
22 Investigator Johnny Bonds in your facility to interview an
23 inmate by the name of Michael Beckcom on December 10th, 2001."

1 1:26:33 24 Do you see that?

1 1:26:34 25 **A** I do.

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1 11:26:35 1 Q Okay. And that's the same date that you were going to
2 interview Mr. Foreman, right?

1 11:26:42 3 A Well, the letter is the same date. Did we ask for the same
4 date? Oh, yes. December 10th, yes.

1 11:26:48 5 Q Yeah. The letters are different dates --

1 11:26:51 6 A December 10th.

1 11:26:51 7 Q -- but the date of the meeting requested is the same?

1 11:26:54 8 A Yes.

1 11:26:54 9 Q So you requested to meet with both of those inmates back to
10 back on that date, right?

1 11:26:57 11 A Yes.

1 11:27:00 12 Q And on that date, December 10th, 2001, did you also meet
13 with Jonathan Jefferson at FCI Beaumont?

1 11:27:07 14 A I still don't remember that name.

1 11:27:09 15 Q If you turn to page 109-7 -- Exhibit 109-7, and these,
16 again, are notes in Johnny bonds handwriting, right?

1 11:27:24 17 A Yes.

1 11:27:25 18 Q And you see it looks like there he's memorializing a meeting
19 with Nathan Foreman on December 10th, 2001, which would have --
20 which corresponds to the letter that I showed you earlier
21 requesting a meeting with Mr. Foreman on that date?

1 11:27:42 22 A It does.

1 11:27:44 23 **MS. MIRANDA:** Objection, form.

1 11:27:45 24 **BY MS. SCARDINO:**

1 11:27:45 25 Q Do you see that?

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11:27:46 1 Were you present at this meeting with Mr. Bonds and
2 Mr. Foreman?

11:27:50 3 **A** If -- if Johnny would have been interviewing Nathan Foreman,
4 I would have been there.

11:27:55 5 **Q** Okay. Would you have taken notes on that meeting?

11:27:57 6 **A** Not necessarily.

11:27:58 7 **Q** If you had taken notes, where would they be?

11:28:01 8 **A** They would be in the file, but I probably didn't take any.

11:28:04 9 **Q** You wouldn't have destroyed notes about that meeting or any
10 other meeting, would you?

11:28:07 11 **A** No. I didn't take a lot of notes.

11:28:11 12 **Q** Let's look at Exhibit 78. Okay. Exhibit 78 I showed you
13 earlier, so you should have a copy of it, and it's that
14 November 26th, 2001, fax from Johnny Bonds to Lieutenant Clark.

11:28:30 15 **A** Okay.

11:28:30 16 **Q** And on the fax, if you look at the front cover sheet, it
17 says, "Another visitation request letter. We are supposed to be
18 at your unit around 11:00 a.m. on December 10th, 2001, to see
19 Inmate Foreman. We also need to see Inmate Beckcom after we
20 talk to Foreman. See attached letter. If there's a problem,
21 please call me. Thanks." Do you see that?

11:28:49 22 **A** I do.

11:28:50 23 **Q** Okay. And on that day when you met with Mr. Beckcom -- you
24 recall meeting with Mr. Beckcom that day, right?

11:28:57 25 **A** Yes.

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1 11:28:58 1 Q And did you meet with him in the lieutenant's office?

1 11:29:00 2 A I don't remember where we met.

1 11:29:02 3 Q Okay. I'll -- I'll represent to you that was his testimony
4 at trial, that you met in a lieutenant's office?

1 11:29:08 5 A That's what Beckcom said at trial?

1 11:29:09 6 Q Yes.

1 11:29:09 7 A It's in the transcript?

1 11:29:10 8 Q That -- that you met at a lieutenant's office, yes.

1 11:29:13 9 A Okay.

1 11:29:13 10 Q Okay. Do you recall the name of that lieutenant?

1 11:29:15 11 A I do not.

1 11:29:16 12 Q Okay. Do you -- and you knew at this time that Mr. Foreman
13 and Mr. Beckcom were cellmates at FCI Beaumont, right?

1 11:29:25 14 A I don't know if I knew that back then.

1 11:29:27 15 Q When did you learn that?

1 11:29:29 16 A I don't know that I've ever learned that. I've seen that in
17 your petition.

1 11:29:35 18 Q You never knew at any time during your prosecution of
19 Mr. Prible's case that Foreman and Beckcom were cellmates at FCI
20 medium?

1 11:29:43 21 A I don't remember if I knew that. I knew that they all --
22 they all hung out together on the yard working out outside. I
23 knew that. But who was whose cellmate, I don't know if I ever
24 knew that.

1 11:29:56 25 Q And you don't -- you remember meeting with Beckcom on

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1 December 10th, 2001, but not with Foreman; is that correct?

11:30:01 2 **A** I remember the Beckcom meeting. We -- it looks like, from
3 your paperwork, we met with Beckcom that same day, too. If
4 Johnny told you that we met with Foreman the same day, then we
5 did, and I just don't remember it. If Johnny remembers it, then
6 that's what happened.

11:30:16 7 **Q** And that meeting would have been in the same office,
8 presumably, if you're --

11:30:21 9 **A** You would think so.

11:30:22 10 **Q** You would think so. So one would be coming in, and one
11 would be leaving?

11:30:26 12 **A** Unless they were in separate areas and it was easier for
13 them to move us than them.

11:30:30 14 **Q** Do you have any recollection of that being the case?

11:30:32 15 **A** We moved around a lot there. We went where they told.

11:30:35 16 **Q** Okay. I'm asking you specifically on December 10th, 2001,
17 when you asked to meet with Beckcom immediately after Foreman,
18 do you have a specific recollection of them moving you to a
19 different part of the prison to meet with these two individuals?

11:30:48 20 **A** I don't -- no, I don't remember where in the prison we met
21 with either one of them.

11:30:53 22 **Q** Do you know if Beckcom and Foreman passed each other coming
23 and going that day to the meeting?

11:30:57 24 **A** I have no idea.

11:31:00 25 **Q** Presumably, they're cellmates, so they're talking about this

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1 case together, right?

11:31:04 2 **A** I didn't know they were cellmates.

11:31:06 3 **Q** Okay. 109-8, again, this is Mr. Bonds' handwriting, right?

11:31:10 4 **A** Yes.

11:31:10 5 **Q** And it looks to be a conversation -- or a memorialization of
6 the meeting that he had with Mr. Beckcom on December 10th, 2001,
7 in which you were also present, right?

11:31:22 8 **A** I see the name Michael Beckcom on the first line. I can't
9 read the rest of it, if you want to read it to me.

11:31:29 10 **Q** Okay. It says, "12/10/01, Michael Beckcom. Nathan never
11 told Mike about Kelly and Bonds." And Nathan there is referring
12 to Nathan Foreman, right?

11:31:39 13 **A** It would be Nathan Foreman.

11:31:41 14 **Q** So at this conversation -- or this meeting that you and
15 Mr. Bonds had with Beckcom, y'all were discussing Nathan Foreman
16 and his role in this case, right?

11:31:49 17 **A** Not necessarily.

11:31:51 18 **Q** Well, why else would Nathan Foreman's name appear on these
19 notes?

11:31:55 20 **A** We would ask Michael Beckcom where all he had information
21 about Prible, and Johnny could have just made a note, "It wasn't
22 from Nathan." Johnny could have just made that note.

11:32:04 23 **Q** He could have just made a note, "It wasn't from Nathan,"
24 just out of the blue. "It wasn't from Nathan"?

11:32:09 25 **A** If we had just interviewed Nathan Foreman right before

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1 Beckcom like you're saying the paperwork shows. I mean, you
2 should ask Johnny Bonds that question, not me.

11:32:17 3 Q I have asked Johnny Bonds that question, but you were always
4 at the -- that meeting, right?

11:32:22 5 A Yes, but these aren't my notes.

11:32:23 6 Q Okay. But if you had asked Mr. Beckcom where he got
7 information, would he have said to you, in response to that,
8 "Well, I didn't get it from Nathan Foreman"?

11:32:35 9 A No, but you need keep in mind that Johnny and I already
10 didn't have a very good view of Nathan Foreman's credibility.
11 So we wanted to make sure Michael Beckcom wasn't getting it from
12 Nathan Foreman --

11:32:44 13 Q So did --

11:32:45 14 A -- since we already thought he was a liar.

11:32:46 15 Q And so did you tell Michael Beckcom, "Don't talk to Nathan
16 Foreman. He's a liar"?

11:32:50 17 A I doubt it.

11:32:51 18 Q Did you bring Nathan Foreman's name up in this conversation
19 with Michael Beckcom?

11:32:56 20 A Well, his -- his name is mentioned in Johnny Bonds' notes,
21 so his name might have come up.

11:33:00 22 Q Had you asked Mr. Beckcom to take notes of his
23 communication -- his conversations with Mr. Prible?

11:33:04 24 A I did not.

11:33:05 25 Q You did not?

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A No.

Q Did you ask him to present you with a written statement --

A No.

Q -- about Mr. Prible's -- what he had learned about

Mr. Prible's case?

A No.

Q Okay. Did you use this statement that Mr. Beckcom gave to

you at that December 10th, 2001, meeting as a script for

Mr. Beckcom's testimony at trial?

A As a script, no. I'm sure I -- I referred to it, I used it,

I looked it over to make sure I had it all right in my read.

But as a script, no.

Q Did you give -- or did Mr. Beckcom keep a copy or make a

copy of this statement for himself? In other words, did he give

you his only copy, or do you recall if he made a copy of the

statement himself?

A I'm sure he would keep a copy for himself, but I'm just

assuming.

Q Did you disclose to Mr. Gaiser or Mr. Wentz that you met

with Mr. Jefferson, Mr. Foreman, and Mr. Beckcom back to back at

FCI Beaumont on December 10th, 2001, to discuss Mr. Prible's

case?

A I don't remember.

Q Now, you were talking -- you began talking with the

assistant U.S. attorney for Michael Beckcom's case in California

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1 months before Prible's trial, right?

11:34:43 2 **A** Months before Prible's trial?

11:34:44 3 **Q** Uh-huh. You were already in talks with the U.S. attorney
4 about a possible sentence reduction for Beckcom in this case?

11:34:50 5 **A** I think I might have called to introduce myself to make sure
6 I had the right prosecutor. I don't think we could talk much
7 beyond that because nothing had happened yet.

11:35:01 8 **Q** Why would you have called him to introduce yourself as the
9 prosecutor?

11:35:04 10 **A** To find out if he's the right prosecutor.

11:35:06 11 **Q** Okay. But why would you have done that before the trial --
12 before Mr. Prible's trial?

11:35:11 13 **A** Just to find out if he's the right prosecutor, to find out
14 about Michael Beckcom, to find out about the situation.

11:35:19 15 **Q** "The situation" meaning what? Mr. Beckcom's sentence?

11:35:23 16 **A** Mr. Beckcom's sentence, Mr. Beckcom's crime, what his fed --
17 fed prosecutor thought about him and the whole process.

11:35:30 18 **Q** I'm going to show you Exhibit 181. Exhibit 181 is a
19 March 4th, 2002, letter from Mark Cullers to you, and it says,
20 "Enclosed please find the federal trial testimony of Mike
21 Beckcom." And he -- he goes on to say, "I will forward a
22 printout of his docket sheet so you can see exactly his sentence
23 in federal court," right?

11:35:59 24 **A** That's what the letter says, yes.

11:36:01 25 **Q** Okay. And so when you called -- you reached out to

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1 Mr. Cullers, and you told him that Mr. Beckcom was a potential
2 informant for you in this Prible case and that you were
3 interested in seeing what his sentence was, correct?

11:36:19 4 **A** Among other things, yes.

11:36:21 5 **Q** Uh-huh. What else did you talk with him about?

11:36:24 6 **A** The crime Beckcom was in jail for and what this fed
7 prosecutor thought about Beckcom.

11:36:30 8 **Q** Okay. Did you discuss the possibility of a Rule 35
9 reduction for Mr. Beckcom if he testified in your case?

11:36:37 10 **A** If he testified truthfully and completely in my case, yes.

11:36:42 11 **Q** But you did discuss that --

11:36:43 12 **A** Yes.

11:36:43 13 **Q** -- with Mr. Cullers?

11:36:45 14 And I'm going to show you Exhibit 126. Exhibit 126 is a
15 March 5th, 2002, letter from Mr. Cullers to you enclosing the
16 initial Texas Rangers report regarding the murder of Nick
17 Brueggen, who was Mr. Beckcom's victim, right?

11:37:04 18 **A** I don't remember the name, but I remember this.

11:37:06 19 **Q** Okay. It says, "Thought you might find it helpful. Mike
20 Beckcom was sentenced to 135 months," right?

11:37:12 21 **A** That's what this says, yes.

11:37:13 22 **Q** Yes. And so this shows that you-all had discussed
23 Mr. Beckcom's sentence, correct?

11:37:18 24 **A** Yes.

11:37:19 25 **Q** And there would have been no reason for you to discuss

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1 Mr. Beckcom's sentence with Mr. Cullers if not in the context of
2 a potential Rule 35 motion down the road, right?

11:37:28 3 **A** Well, most likely that was the reason, but I would still
4 want to know what his sentence was and what he did.

11:37:38 5 **Q** And Mr. Beckcom knew that you were in talks with Cullers
6 leading up to Mr. Prible's trial, right?

11:37:43 7 **A** Yes.

11:37:46 8 **Q** Okay. And he knew about these conversations because you
9 wanted to reassure him that if he testified truthfully in
10 Mr. Prible's case, that a Rule 35 motion might be had, right?

11:37:56 11 **A** Who is "he"?

11:37:58 12 **Q** Mr. Beckcom.

11:38:01 13 **A** Say the question again.

11:38:04 14 **Q** You said that Mr. Beckcom was aware that you were speaking
15 with Mr. Cullers leading up to Mr. Prible's case, and I'm asking
16 you if the reason you told Mr. Beckcom that you were
17 communicating with Mr. Cullers was so Mr. Beckcom would be
18 reassured that a Rule 35 motion would be forthcoming in his case
19 if he testified truthfully; is that correct?

11:38:26 20 **A** Yes.

11:38:28 21 **Q** Now, this is undated, right, this letter? There's no date
22 on this?

11:38:33 23 **A** Correct.

11:38:33 24 **Q** Okay. And Mr. Beckcom is asking you for reassurance and --
25 and you mentioned that you did give him reassurance at some

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1 point by --

11:38:40 2 **A** This letter is different. It's not really reassurance.
3 He's asking for other things, different things.

11:38:46 4 **Q** And he also says, "Can you give me any reassurance that the
5 feds are going to do the right thing on this case?"

11:38:51 6 **A** Well, they all ask that.

11:38:53 7 **Q** And you gave him some reassurance, right?

11:38:57 8 **A** I'm sure I told him the same thing I told all of them.

11:39:00 9 **Q** Which is what?

11:39:00 10 **A** "Testify truthfully and completely about the facts of the
11 case, and if you do, when you do, I'll tell your fed prosecutor,
12 and they take it from there."

11:39:08 13 **Q** And you also reassured him by telling him that you were
14 already in communication with that prosecutor?

11:39:13 15 **A** Yes.

11:39:13 16 **Q** Yeah. He also says in that letter, Exhibit 127, "I may have
17 a solution to these problems if you can assist me in making
18 contact with the DEA and an FBI agent. Another inmate, Anthony
19 Davi, and I have come onto a couple of situations that would
20 interest both of these agencies."

11:39:30 21 Now, did you contact or -- or contact Mr. Beckcom to
22 discuss with him this information that he claimed he and Anthony
23 Davi had?

11:39:42 24 **A** No.

11:39:43 25 **Q** You never --

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11:39:44 1 **A** I don't remember.

11:39:45 2 **Q** -- spoke with him about that?

11:39:46 3 **A** I don't remember that. I don't know what that is.

11:39:48 4 **Q** Exhibit 81 is a letter from Ted Wilson from the DA's office
5 to Lieutenant Clark at FCI medium, and it's asking -- he's
6 respectfully requesting permission for you and Mr. Bonds to
7 interview two inmates by the name of Michael Beckcom and Antone
8 Davi on May 6, 2002. Do you see that?

11:40:22 9 **A** I see that.

11:40:23 10 **Q** Okay. So you did reach out to Mr. Beckcom and take him up
11 on this offer to discuss this other case with him?

11:40:32 12 **A** I -- I don't remember Antone Davi at all.

11:40:36 13 **Q** Ms. Siegler, Beckcom testified at Mr. Prible's trial that he
14 had gotten your name from Mr. Foreman. Do you remember that
15 testimony?

11:40:43 16 **A** I don't remember that part, no.

11:40:44 17 **Q** And does that refresh your recollection that it was Nathan
18 Foreman who gave Mr. Beckcom your name to call you about
19 Prible's case?

11:40:51 20 **A** Yes.

11:40:52 21 **Q** Okay. Exhibit 129 is a letter from you to Mark Cullers,
22 Beckcom's U.S. attorney out in California, dated October 29th,
23 2002. And this was right after Mr. Prible's trial, and you were
24 informing him of Mr. Beckcom's cooperation in that trial. Do
25 you see that?

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1 **A** Okay.

2 **Q** Okay. And in that letter, Exhibit 129, you tell Mr. Cullers
3 that, "Michael Beckcom first came to my attention when he made
4 me aware that he had information that would be helpful to my
5 case." Do you see that?

6 **A** I do.

7 **Q** Okay. And there's nothing in this letter to Mr. Cullers
8 about how Mr. Foreman had given Mr. Beckcom your name to call
9 you about this case, right?

10 **A** No.

11 **Q** Mr. Foreman's name is not mentioned in this letter at all?

12 **A** It is not.

13 **Q** Okay. And in the letter, you also state, quote, at that
14 time, Beckcom was incarcerated at Beaumont medium FCI with my
15 trial defendant, Prible, and that is where and how Prible came
16 into contact with Beckcom and confided details of his capital
17 murder offense to Beckcom." Do you see that?

18 **A** Where -- which paragraph?

19 **Q** That's the second paragraph, second line.

20 **A** Okay.

21 **Q** In here, there's still no mention of Mr. Foreman or this
22 larger informant network, is there, in this letter?

23 **A** To Beckcom's fed prosecutor, no.

24 **Q** That's right?

25 **A** There is not.

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11:42:28 1 Q So you never revealed to Mr. Cullers that, actually,
2 Beckcom's cellmate had come to you on August 8th, 2001, before
3 he had even met Mr. Prible, to try to set Mr. Prible up in this
4 case, and you determined that he was a liar, right?

11:42:44 5 A That's incorrect.

11:42:45 6 Q You revealed all of that to Mr. Culler?

11:42:48 7 A Mr. Cullers is Michael Beckcom's fed prosecutor.

11:42:53 8 Q I understand that.

11:42:54 9 Did you reveal to Mr. Cullers that you had met with Nathan
10 Foreman about Mr. Prible's case in August 8th, 2001, and
11 determined that he was lying?

11:43:05 12 A No.

11:43:05 13 Q Okay. You never mentioned Mr. Foreman at all to
14 Mr. Cullers, right?

11:43:09 15 A I did not.

11:43:12 16 Q Also in this letter to Mr. Cullers, you write, "I am not too
17 familiar with how this process works. So please forgive me if I
18 have omitted some information you need." And by "process" here,
19 you're referring to this Rule 35 sentence reduction process,
20 right?

11:43:28 21 A Yes.

11:43:29 22 Q But, in fact, you were very familiar with that process by
23 this time, right, because two months earlier, you had testified
24 in Moreno's hearing?

11:43:38 25 A Yes.

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1 1:43:40 1 Q I'm going to show you Exhibit 130. Exhibit 130 is a
2 handwritten thank you note from Michael Beckcom's to you dated
3 October 30th, 2002. Do you see that?

1 1:43:58 4 A I see it.

1 1:43:59 5 Q Okay. Do you recall receiving this note from Mr. Beckcom?

1 1:44:02 6 A Now that I've read it, I remember getting it.

1 1:44:04 7 Q And he says in that letter, "I also appreciate any further
8 contact you may have with Mark Cullers that might urge him to
9 expediently file his motion on my behalf." Do you see that?

1 1:44:15 10 A I do.

1 1:44:15 11 Q Okay. So by "further contact," he knows that you've already
12 been in discussions with Mr. Cullers, as we discussed
13 previously, right?

1 1:44:22 14 A Yes.

1 1:44:23 15 Q Okay. And it sounds here like this motion is a foregone
16 conclusion, wouldn't you agree?

1 1:44:31 17 He's -- he's not asking Mr. Cullers -- or not appreciating
18 any further contact you have -- may have with Mr. Cullers that
19 might convince him to file a motion on my behalf, right?

1 1:44:43 20 A That's not what the letter says.

1 1:44:44 21 Q That's not what the letter says, right? What it says was,
22 "I appreciate any further contact you may have with Mark Cullers
23 that might urge him to expediently file his motion on my
24 behalf," right?

1 1:44:54 25 A That's what it says.

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1 1:44:55 1 Q So I'm going to show you Exhibit 131. Exhibit 131 is a
2 November 4th, 2002, letters -- letter from AUSA Cullers to you
3 saying that the U.S. did not have jurisdiction to confer any
4 benefit on Beckcom for his cooperation with the State of Texas.
5 Do you see that?

1 1:45:23 6 A Let me read it.

1 1:45:29 7 I see it.

1 1:45:31 8 Q Okay. Now, you could have left it at that, right? You
9 could have left it at that, your dealings with Mr. Cullers
10 concerning Mr. Beckcom's sentence?

1 1:45:40 11 A Right.

1 1:45:40 12 Q Because at this point, you've done what you told the jury
13 that you would do, right, you would write a letter to
14 Mr. Cullers, which you did, right?

1 1:45:50 15 A There was, obviously, some confusion because Mr. Cullers
16 never told me this part that's -- that's addressed in the letter
17 dated November 4th of '02. He never told me that before, and I
18 don't know that Michael Beckcom knew that either.

1 1:46:04 19 Q And so you were under the assumption or under the
20 understanding going into that trial that he had jurisdiction to
21 do this Rule 35 agreement, right?

1 1:46:12 22 A "He" being?

1 1:46:14 23 Q Mr. Cullers.

1 1:46:15 24 A I was.

1 1:46:16 25 Q Okay. And you had conveyed that to Mr. Beckcom as well,

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1 right?

11:46:19 2 **A** I think Mr. Beckcom thought the same thing.

11:46:21 3 **Q** Uh-huh. And he only would have heard that from you, right?

4 He didn't have --

11:46:25 5 **A** Oh, no. Mr. Beckcom knew what the law was. He was well

6 aware of all of this.

11:46:30 7 **Q** If you could just let me finish my -- my question so we're

8 not talking over each other.

11:46:35 9 But Mr. Beckcom would not have had independent

10 communications with Mr. Cullers now, would he have?

11:46:39 11 **A** He could have.

11:46:41 12 **Q** You think that Mr. Beckcom might have been communicating

13 with his federal prosecutor while he was in prison?

11:46:46 14 **A** He can write letters.

11:46:48 15 **Q** So it's your testimony that all the information that

16 Mr. Beckcom was getting regarding the sentence -- the possible

17 sentence reduction, he didn't get it all from you?

11:46:59 18 **A** You should ask Mr. Beckcom that.

11:47:02 19 **Q** And on November 12th, 2002, you left Mr. Cullers a phone

20 message, Exhibit 133. Do you see it -- it -- you reference a

21 phone call that you made to him on November 12th?

11:47:28 22 **A** I see that.

11:47:29 23 **Q** Okay. Do you recall what you said to Mr. -- Mr. Cullers in

24 that phone message on November 12th, 2002?

11:47:34 25 **A** No.

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11:47:36 1 Q Mr. Cullers called you back and left a message for you on
2 November 12th, 2002. Do you recall that message?

11:47:44 3 Do you recall receiving that message from Mr. Cullers?

11:47:47 4 A Vaguely.

11:47:48 5 Q Okay. It sounded like there was a misunderstanding between
6 the two of you. Do you agree?

11:47:54 7 A Yes.

11:47:58 8 Q And he says in that -- in that message -- and he was
9 responding to your message on November 12th, 2002, right?

11:48:05 10 A Yes.

11:48:06 11 Q And he says in the beginning of that message, "If Mike
12 testified in your case with the expectation of some deal from
13 us, that would probably have to be disclosed to the defense in
14 your case, end quote. You heard that?

11:48:19 15 A I heard that.

11:48:19 16 Q Okay. Did you tell Mr. Cullers in that November 12th, 2002,
17 message that you left for him that Mike had testified in this
18 case with the expectation of some deal?

11:48:31 19 A No.

11:48:32 20 Q Okay. I'm going to show you Exhibit 133.

11:48:35 21 And in that letter, Exhibit 133, you beg Mr. Cullers to
22 reconsider based on the, quote, vital role that Beckcom played
23 in obtaining a conviction of Prible, right?

11:48:47 24 A I disagree with the word "beg," and the letter speaks for
25 itself.

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1 11:48:52 1 Q Okay. Do you agree that Mr. Beckcom was the star witness in
2 your case against Mr. Prible?

1 11:48:57 3 A No.

1 11:48:58 4 Q But he did play a vital role?

1 11:49:00 5 A No. He played a role.

1 11:49:02 6 Q So you disagree with the statement "a vital role" that you
7 said in this -- in this letter that you wrote to Mr. Cullers?

1 11:49:10 8 A Michael Beckcom played a role.

1 11:49:15 9 Q I'm going to show you Exhibit 135. This is a November 15th,
10 2002, e-mail from you to Mr. Cullers regarding Beckcom's
11 attorney. Do you see that?

1 11:49:41 12 A I do.

1 11:49:41 13 Q And you're giving -- you're providing Mr. Cullers with
14 Beckcom's attorney's name and contact information, right?

1 11:49:50 15 A Yes.

1 11:49:50 16 Q Okay. And eventually, Mr. Cullers did decide to -- to write
17 that Rule 35 motion for Mr. Beckcom, right?

1 11:49:57 18 A I don't remember.

1 11:49:58 19 Q You don't recall if Mr. Beckcom got any time off --

1 11:50:01 20 A I do not. What is the end of the story? I don't know.

1 11:50:04 21 Q Well, I'm ask --

1 11:50:06 22 A I don't know.

1 11:50:07 23 Q I mean, I'm asking you because you were at the story.

1 11:50:10 24 A And I don't remember.

1 11:50:11 25 Q So you -- you're saying after you -- this last

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1 correspondence that I showed you with Mr. Cullers, you didn't
2 have any follow-up with him about what the sentence reduction
3 would be?

11:50:20 4 **A** I don't remember if I did because I don't know if there was
5 a sentence reduction.

11:50:26 6 **Q** Other than this correspondence that you had with Mr. Cullers
7 regarding that Rule 35 motion for Mr. Beckcom, did you do any
8 other favors for Mr. Beckcom?

11:50:42 9 **A** Well, I wouldn't characterize that as a favor either.

11:50:45 10 **Q** I'm going to show you Exhibit 170, which we've looked at
11 before. It's Michael Beckcom's phone records, and I'll tell you
12 exactly where to go. If you go to Bates label number 63 down at
13 the bottom.

11:51:05 14 If you go to date April 17th, 2002 --

11:51:09 15 **A** Okay.

11:51:10 16 **Q** -- you'll see that Beckcom called the DA's office Special
17 Crimes phone number on that date?

11:51:15 18 **A** I see that.

11:51:16 19 **Q** Okay. So that was April 17th, 2002, he's trying to reach
20 out to you?

11:51:28 21 **A** Not necessarily.

11:51:30 22 **Q** Not necessarily? Might he have been reaching out to someone
23 else in the DA's office for some reason?

11:51:36 24 **A** You should ask him that.

11:51:38 25 **Q** Well, I'll ask you: Did you -- were you aware of any other

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1 prosecutor that he was working on cases with at this time in the
2 DA's office?

11:51:47 3 **A** I wasn't.

11:51:47 4 **Q** You weren't. Okay. Exhibit 137. Exhibit 137 is Beckcom's
5 parole application, and it's dated April 19th, 2002. Do you see
6 that?

11:52:07 7 **A** Should I have seen this before?

11:52:09 8 **Q** I'm asking you -- well, I'm asking you if you see this --
9 obviously --

11:52:12 10 **A** I've never seen this before.

11:52:14 11 **Q** You've never seen this before?

11:52:15 12 **A** I don't think so.

11:52:19 13 **Q** So you didn't fill this out for Mr. Beckcom?

11:52:21 14 **A** What?

11:52:22 15 **Q** I'm asking you: Did you fill it out for Mr. Beckcom?

11:52:24 16 **A** What is it?

11:52:25 17 **Q** It's his application for parole in the state case.

11:52:28 18 **A** You're asking me if I filled this out?

11:52:30 19 **Q** I am. I'm just asking if you filled it out for him?

11:52:33 20 **A** No.

11:52:33 21 **Q** Okay. Did you have any role in assisting him in applying
22 for parole in his state case in April of 2002?

11:52:42 23 **A** No.

11:52:49 24 **Q** If you go back to page 170 -- or Exhibit 170, same page we
25 were looking at, 63.

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1 11:53:01 1 **A** Same page?

2 11:53:02 2 **Q** Uh-huh. On April 24th, 2002, Beckcom again reaches -- or
3 calls the Special Crimes unit. Do you see that?

4 11:53:11 4 **A** Not yet. What day?

5 11:53:13 5 **Q** April 24th, 2002.

6 11:53:17 6 **A** Okay.

7 11:53:18 7 **Q** And then Exhibit 186 --

8 11:53:25 8 **A** That was a two-minute call.

9 11:53:27 9 **Q** Yes, I see that. And my question to you --

10 11:53:28 10 **A** That doesn't mean he talked to anybody.

11 11:53:30 11 **Q** My question to you was: He called the phone number at the
12 DA's Special Crimes unit on that date, right?

13 11:53:35 13 **A** He did.

14 11:53:36 14 **Q** Okay. So on April 17th, 2002, he called that number,
15 correct?

16 11:53:40 16 **A** That's the one we did a while ago?

17 11:53:45 17 **Q** Yes.

18 11:53:45 18 **A** Yes.

19 11:53:46 19 **Q** On April 19th, he signed -- or filled out a parole
20 application -- or someone filled out a parole application and
21 dated it April 19th, 2002, right?

22 11:53:53 22 **A** I have no idea who did that.

23 11:53:54 23 **Q** Well, you'll agree that that Exhibit 137 is dated 2000 --
24 April --

25 11:53:59 25 **A** I don't know where --

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1 11:53:59 1 Q -- 19th, 2002?

1 11:54:00 2 A I don't know where you got that from. I've never seen that
3 before. You can ask someone who has information about that to
4 verify it. I can't.

1 11:54:08 5 Q Okay. I'm just asking you if the date on that is
6 April 19th, 2002. Do you see that at the bottom?

1 11:54:13 7 A I don't know anything about that. I'm not going to answer
8 anything about it.

1 11:54:18 9 Q And in Exhibit 170, we see that Beckcom again called that
10 number at Special Crimes a few days later on April 24th, 2002,
11 right?

1 11:54:28 12 A And it looks like he again didn't speak to anybody. It's a
13 two-minute call.

1 11:54:31 14 Q You have no recollection, sitting here 15 years later, as to
15 whether or not he spoke with anyone on that date, do you?

1 11:54:37 16 A I have enough sense to know that not much could get done in
17 a two-minute phone call after he went through two receptionists,
18 if not three.

1 11:54:45 19 Q Right. So if he had spoken with you, it would have been
20 because you had called him on a unit manager's phone to return
21 his call, right?

1 11:54:50 22 A No. No, not at all.

1 11:54:54 23 Q Aside from writing that letter to Mr. Foreman's prosecutor
24 for the Herrero case --

1 11:55:01 25 A Mr. Foreman?

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11:55:03 1 Q Mr. Foreman's prosecutor, right. We discussed that earlier.

11:55:06 2 A Okay.

11:55:07 3 Q The letter to Ms. Batson. Did you do anything else in the
4 way of a benefit for Mr. Foreman as a result of his assistance
5 in either the Prible or the Herrero cases?

11:55:20 6 A The letter having to do with getting them all separated.

11:55:23 7 Q Okay. Did you have any charges against him dropped?

11:55:30 8 A Not that I remember.

11:55:34 9 Q That would have been -- needed to have been revealed, right?

11:55:36 10 A Yes -- no, he didn't testify for anybody ever.

11:55:42 11 Q So -- so because he didn't testify, in -- in your mind, you
12 didn't need to reveal the fact that you had written a letter for
13 him?

11:55:51 14 A Not in the Prible case, no. He nothing to do with the
15 Prible case, Nathan Foreman.

11:55:55 16 Q I'll show you Exhibit 116. Exhibit 116 was the Brady motion
17 filed by Prible's counsel pretrial. Do you see that?

11:56:11 18 A Yes.

11:56:12 19 Q Okay. Now, the defense wasn't required to file this motion,
20 right? All this information -- Brady information should have
21 been revealed by this time, right?

11:56:19 22 A Correct.

11:56:20 23 Q Okay. It's the state's burden to produce that information,
24 right?

11:56:24 25 A Correct.

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11:56:25 1 Q Okay. On Section 2, 1B, and I know it's difficult to read
2 because of your notes, but you'll see it says one of the things
3 they asked you to reveal -- to disclose was the date, place and
4 manner of the state's contacts with this witness, meaning
5 Michael Beckcom, including a statement of how contact was first
6 initiated and with whom it was made. Do you see that?

11:56:57 7 A I see that.

11:56:57 8 Q Uh-huh. And did you tell defense counsel that contact was
9 actually first made with Nathan Foreman, Beckcom's cellmate?

11:57:05 10 A I don't believe that was the case.

11:57:10 11 Q You don't believe that you spoke with Mr. Foreman before you
12 spoke with Mr. Beckcom?

11:57:14 13 A That's not what you asked me.

11:57:17 14 Q I believe it is what I asked you, but I'll -- I'll rephrase
15 it.

11:57:20 16 Did you tell the defense that contact was actually first
17 made with Nathan Foreman, Beckcom's cellmate?

11:57:28 18 A I read this to be contact that Beckcom first made with me.

11:57:35 19 Q That's right. So did you -- okay. Did you reveal to the
20 defense that you had spoken with Mr. Foreman back in August 8th,
21 2001, he was -- he was Mr. Beckcom's cellmate?

11:57:47 22 A He wasn't his cellmate. He wasn't his cellmate then.

11:57:51 23 Q When did he become his cellmate?

11:57:54 24 A I don't know.

11:57:55 25 Q Okay. I thought you said earlier you didn't know that they

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1 were ever cellmates?

11:57:58 2 **A** I didn't. I just read it a while ago when I looked at
3 Tina's transcript from Beckcom's testimony, and that reminded me
4 of what Beckcom said back then.

11:58:06 5 **Q** Okay. But eventually he became Beckcom's cellmate prior to
6 this trial, right?

11:58:10 7 **A** No, I don't know if it was prior to the trial. I don't know
8 when it happened.

11:58:14 9 **Q** Okay. Number 1C in that exhibit, it asks for a list of all
10 cases in which Beckcom has appeared as a witness, been listed as
11 a witness, or volunteered to appear as a witness. Did you
12 disclose any other cases in which Mr. Beckcom was a witness for
13 you in response to this motion?

11:58:39 14 **A** A witness for me?

11:58:40 15 **Q** Yes.

11:58:42 16 **A** There was only the one.

11:58:44 17 **Q** He wasn't a witness for you in any other case that you
18 prosecuted?

11:58:47 19 **A** No.

11:58:48 20 **Q** I'm going to show you Exhibit 145. This is a probable cause
21 affidavit in the case of Danny Bible. That was a case you
22 prosecuted, right?

11:59:12 23 **A** It was.

11:59:13 24 **Q** And if you look at the next -- actually, the third page of
25 this printout, under active parties, it says, "Michael Beckcom,

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1 connection, previous bench warrant, witness for the
2 prosecution." Do you see that?

11:59:29 3 **A** What's your question?

11:59:32 4 **Q** So he was a witness for you in Mr. Bible's case --

11:59:35 5 **A** He was not.

11:59:35 6 **Q** -- as well?

11:59:36 7 **A** He was not.

11:59:36 8 **Q** He wasn't a testifying witness, maybe, but you had spoken
9 with him about Mr. Bible's case?

11:59:42 10 **A** No, ma'am. He -- he was bench warranted and connected to
11 that case when he was brought back so Jeffrey Prible wouldn't
12 know that he was brought back for Jeffrey Prible's case.

11:59:50 13 **Q** So you put a different name on the bench warrant?

11:59:52 14 **A** That could be the explanation for it.

11:59:55 15 **Q** Section E, "Agreements made with Beckcom concerning benefits
16 he would receive in exchange for testimony, including oral
17 agreements." Do you see that?

12:00:05 18 **A** Yes.

12:00:05 19 **Q** Now, in response to that motion, did you reveal to
20 defense -- the defense counsel for Mr. Prible that you had
21 arranged a meeting with Mr. Beckcom and Mr. Davi at
22 Mr. Beckcom's request?

12:00:20 23 **A** No. That's not what happened.

12:00:22 24 **Q** That's not what happened?

12:00:24 25 **A** No. I don't remember arranging a meeting with Mr. Davi. I

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1 don't remember Mr. Davi.

12:00:30 2 Q Okay. Ms. Siegler, in the Temple trial, you testified that
3 you deleted all your emails while at the DA's office; is that
4 correct?

12:00:42 5 A I think I testified that when I was done working on a given
6 e-mail and the to-dos were done, I deleted it.

12:00:49 7 Q And you also deleted -- did you also delete all the e-mails
8 a second time from your trash folder?

12:00:55 9 A Yes.

12:00:55 10 Q Okay. And you also deleted all the e-mails that you sent
11 from your account, right?

12:01:00 12 A Well, I don't know about that. I just didn't want them in
13 my in box where I had to look at them.

12:01:04 14 Q I'm going to show you Exhibit 154. Do you have
15 Exhibit 154-1 still? That's the manual.

12:01:13 16 And it says, "The Attorney General of Texas has held that
17 electronic mail is public information under the Texas Open
18 Records Act." Do you see that?

12:01:19 19 A I do.

12:01:20 20 Q So you had a duty to preserve your e-mails on your DA
21 account, didn't you?

12:01:25 22 A I assumed the office was doing that.

12:01:28 23 Q So you assumed, even though you, personally, were deleting
24 them, that the office was saving them?

12:01:33 25 A Yeah. They had everybody's e-mails.

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Q And were -- and they would be somewhere at the DA's office?

A On the server.

Q I'll show you Exhibit 110. This is a privilege log from --

THE COURT: I'm sorry. How much is left?

Q -- the DA's office --

MS. SCARDINO: I think maybe 20 minutes, Your Honor.

THE COURT: Twenty minutes?

MS. SCARDINO: I think maybe, yes, sir.

THE COURT: We're going to have to delay your
1:00 o'clock witness or take him out of order.

MS. SCARDINO: Okay.

THE COURT: I've got a wiretap application I got to go
deal with right now. We'll --

MS. SCARDINO: Should we take lunch?

THE COURT: -- break until 1:00 o'clock.

MS. SCARDINO: Okay.

(Lunch recess taken from 12:02 p.m. to 1:06 p.m.)

THE COURT: Keep your seats, everybody. That's all
right.

Mr. Rytting, did you have something you want to say?

MR. RYTTING: No, Your Honor.

THE COURT: You want to go ahead and finish the --

MS. SCARDINO: Yes, Your Honor.

THE COURT: -- depo? Okay. Let's do that, then.

MS. SCARDINO: Is Arturo here? Can you turn up the

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1 volume?

13:06:22 2 **THE CASE MANAGER:** Should be on.

13:06:45 3 **MS. SCARDINO:** One second while we figure out what's
4 going on.

13:06:47 5 *(Video playing.)*

13:07:31 6 **MS. SCARDINO:** Can you hear it? It sounds like it's
7 not hooked up to your system for some reason.

13:07:38 8 **THE CASE MANAGER:** Try unplugging it and plugging it
9 back in.

13:07:42 10 **MS. SCARDINO:** Okay. Sorry about that.

13:07:51 11 *(Video deposition of Kelly Siegler continued as follows.)*

13:07:51 12 **Q** And that a search for e-mails related to this case, in all
13 of the results that came up, I believe there's only one from
14 your account.

13:08:07 15 So my question to you is if they do have them at the DA's
16 office, how do we find those e-mails? Because the DA's office
17 could not find them. So I'm asking you where were they stored,
18 to your knowledge?

13:08:19 19 **A** Well, first of all, I don't know that there would be any
20 more. I don't know why I would have e-mails specifically
21 dealing with Prible. I'm trying to think of why I would.
22 Because back then, we did not e-mail lawyers like they do today.
23 We didn't.

13:08:34 24 **Q** In 2001?

13:08:35 25 **A** Yeah.

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13:08:36 1 Q Well, in the Temple case, there were e-mails, but you
2 testified that you deleted your e-mails, right? There are
3 e-mails from others, right?

13:08:46 4 A Right.

13:08:46 5 Q And in this case, there are a lot of e-mails from other
6 people, but none from you, right? So other lawyers in the
7 office were using e-mail at that time?

13:08:53 8 A I meant defense lawyers, sorry, between prosecutors and
9 defense lawyers.

13:08:56 10 Q I'm talking any e-mails that you sent or received about this
11 case --

13:09:02 12 A Okay.

13:09:02 13 Q -- where would they be located if you deleted them? Where
14 could we find them?

13:09:07 15 A The DA's was would have them. If there were any more, they
16 would have them. They would be here. There must not be any
17 more. That doesn't surprise me.

13:09:15 18 Q Your theory at trial was that Mr. Beckcom and Mr. Prible
19 came into contact coincidentally at FCI Beaumont, right?

13:09:26 20 A I don't remember exactly what I said about that.

13:09:30 21 Q I'm going to show you your opening statement.

13:09:33 22 A Okay.

13:09:34 23 Q An excerpt that's Exhibit 195. Page 78, line 21, and it
24 said -- and -- and you say, "You're also going to hear testimony
25 from a man named Michael Glen Beckcom. Michael Beckcom is a

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1 federal inmate at the Beaumont medium federal penitentiary.

2 He's going to tell you about how he came to meet and know Jeff
3 Prible." Do you see that?

13:10:00 4 **A** I do.

13:10:01 5 **Q** Okay. So it was important at trial to portray the meeting
6 of Mr. Prible and Mr. Beckcom as coincidental, right?

13:10:10 7 **A** Not really.

13:10:11 8 **Q** Okay.

13:10:12 9 **A** I didn't say that anywhere.

13:10:14 10 **Q** Okay. So you'll disagree that that was your theory at
11 trial?

13:10:17 12 **A** That's not what you just read to me, that I said anything
13 about contact.

13:10:23 14 **Q** Well, in your opening statement, you tell the jury that
15 Michael Beckcom is going to tell them how he came in contact
16 with Mr. Prible, right?

13:10:33 17 **A** Yes.

13:10:33 18 **Q** And so because you put that in your opening statement, that
19 initial contact is pretty important, right?

13:10:40 20 **A** Not necessarily.

13:10:42 21 **SPEAKER:** Objection.

13:10:43 22 **BY MS. SCARDINO:**

13:10:44 23 **Q** Okay. And Mr. Beckcom testified at trial that the
24 confession that he received -- that he heard from Mr. Prible was
25 heard in the presence of Nathan Foreman as well. Do you

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1 remember that at that time?

13:10:59 2 **A** I do not remember the specifics of the trial.

13:11:01 3 **Q** Okay.

13:11:02 4 **A** It was 15 years ago.

13:11:03 5 **Q** Okay. Let me show you Exhibit 109-4. Actually, I want to
6 get you, actually, to read Exhibits 109-2, 109-3 and 109-4 into
7 the record because they're your work product notes, I believe.

13:11:19 8 **A** What is this?

13:11:20 9 **Q** This was produced by order of the Court after the Court's *in*
10 camera review of your work product in this case.

13:11:31 11 And I want to bring your attention to the middle of that
12 page, a little -- and it says, "Defendant in Beaumont pen." Do
13 you see that?

13:11:44 14 **A** I see a defendant -- yes, "Defendant in Beaumont pen."

13:11:47 15 **Q** And so this -- these notes look like they were taken before
16 Mr. Prible was charged, do you agree?

13:11:55 17 **A** Yes. These look like some initial to-dos or random thoughts
18 I had.

13:12:00 19 **Q** Okay. And if you look at the following page, if you look in
20 the middle of the paragraph, it says, "Potential federal prison
21 roommate." Do you see that?

13:12:12 22 **A** I do.

13:12:14 23 **Q** Okay. So before you were -- you had accepted charges
24 against Mr. Prible, you were already contemplating setting him
25 up with a federal prison roommate; is that correct?

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13:12:26 1 **A** No. That's not what that means.

13:12:27 2 **Q** The jury wouldn't have believed that coincidental contact
3 theory if they had known that you had thought about putting him
4 with a federal prison roommate before you even charged him,
5 right?

13:12:37 6 **A** That's not what that means. Do you want to know what it
7 means?

13:12:43 8 **Q** Another theory that you had at the trial was this theory
9 that DNA disappears immediately once it's in an oral cavity; is
10 that correct? Do you remember that?

13:12:56 11 **A** I don't remember exactly what we said, no.

13:12:58 12 **Q** Okay. Well, the reason this -- this theory was important
13 was because the most damning piece of evidence against
14 Mr. Prible was the DNA -- his DNA found in the victim's mouth.
15 Do you remember that?

13:13:10 16 **A** I do.

13:13:10 17 **Q** Okay. And so it was crucial that the prosecution refute
18 Mr. Prible's story of consensual sex, which is what he told --
19 volunteered to the detectives within hours of the murders,
20 right?

13:13:25 21 **A** I don't remember what he said initially.

13:13:26 22 **Q** Okay. But you agree that this theory about the semen
23 disappear -- or DNA disappearing immediately was something that
24 was important to the trial?

13:13:37 25 **A** I don't know that we ever used the word "disappear

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1 immediately."

13:13:41 2 Q Okay. I'm going to show you your opening statement again,
3 page [sic] 195. Do you have it in front of you?

13:13:49 4 A Yes.

13:13:51 5 Q Okay.

13:13:53 6 A It's the yellow one. Do you need it?

13:13:55 7 Q No. I think those are all -- thank you.

13:13:57 8 Look at page 82, line 18.

13:14:06 9 A Okay.

13:14:06 10 Q Okay. And I'll read it for you while you're reading along.
11 "The evidence will tell you -- the compelling evidence will tell
12 you that the reason for that is that found -- after the
13 autopsies were done, especially the autopsy on Nilda Tirado,
14 found in her mouth was the semen, the DNA of Ronald Prible. And
15 the DNA expert will tell you what the odds are, what that means
16 exactly statistically, the fact that his DNA is found in her
17 mouth. But the most compelling thing he's going to tell you is
18 that you know what, when semen is in somebody's mouth, in a
19 lady's mouth, it goes away in minutes. It goes away with a
20 small swallow. That's what the evidence is about in this case,
21 and you're going to know from the testimony all about what kind
22 of a man could ejaculate in a woman's mouth after he executed
23 her husband minutes before he executed her, minutes before he
24 could find gasoline to set her on fire and what kind of a man
25 could have walked out of the house with it smoking and burning

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1 knowing three little babies were asleep in their bed. That's
2 this kind of man, and he's guilty of capital murder."

13:15:04 3 Now, does this refresh your memory about the theory of the
4 prosecution being that DNA disappears immediately once it is in
5 a woman -- is in a victim's mouth?

13:15:15 6 **A** I did not use the words "disappear immediately."

13:15:17 7 **Q** Okay. "It goes away in minutes" is the words that you
8 stated, right?

13:15:23 9 **A** That's what I said.

13:15:28 10 **Q** And that was also the testimony that you elicited from the
11 DNA expert in this case, Mr. Watson, correct, that DNA -- the
12 fact that he found any DNA in Ms. -- in the victim's mouth -- or
13 the fact that any DNA was found in her mouth meant that the
14 victim had been executed immediately after the assailant had
15 ejaculated; is that correct?

13:15:52 16 **A** I don't think that he could testify to that exactly, but
17 you'd have to show me his testimony.

13:15:56 18 **Q** Okay. If you can look at Exhibit 109-4 -- do you have 109?

13:16:04 19 At the very top there in your handwriting, it says, "Pam
20 McInnis, semen lives up to 72 hours." Do you see that?

13:16:12 21 **A** I do.

13:16:13 22 **Q** Now, who is Pam McInnis?

13:16:16 23 **A** She is a DNA analyst and was the head of the crime lab for
24 Pasadena --

13:16:23 25 **Q** Okay.

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13:16:23 1 **A** -- and Harris County. She was connected to both.

13:16:25 2 **Q** And so you consulted her about this question as to how long
3 semen could live in the oral cavity, right?

13:16:30 4 **A** I at least started with her, yes.

13:16:34 5 **Q** Did you reveal to the defense counsel in Mr. Prible's case
6 that you spoke with Ms. McInnis and that she told you semen
7 could live up to 72 hours?

13:16:47 8 **A** I think that was part of the trial. Seventy-two hours is in
9 the trial.

13:16:52 10 **Q** My question to you is: Did you ever reveal to Mr. Prible's
11 counsel that you had spoken to Pam McInnis, and she had told you
12 that semen lives up to 72 hours?

13:17:03 13 **A** I don't remember.

13:17:05 14 **Q** You mentioned you had Michael Beckcom bench warranted in the
15 Bible -- in the Danny Bible case?

13:17:12 16 **A** No. I mentioned that Michael Beckcom was bench warranted
17 and attached to the Danny Paul Bible case.

13:17:19 18 **Q** Okay. And how do you do that? What type of documents do
19 you have to file to do that?

13:17:23 20 **A** The court -- court coordinators are in charge of bench
21 warrants.

13:17:27 22 **Q** But you instruct the court coordinator why they're being
23 bench warranted --

13:17:31 24 **A** Yes.

13:17:31 25 **Q** -- correct?

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13:17:31 1 **A** Yes.

13:17:31 2 **Q** And then they file some sort of document with the court?

13:17:35 3 **A** I don't really know what they do. That's a court
4 coordinator function.

13:17:39 5 **Q** But it comes out as a court order to move somebody from one
6 place to the courtroom or to the -- to the jail, right?

13:17:44 7 **A** It does.

13:17:45 8 **Q** Okay. And you knew at the time that he was not going to be
9 a witness in the Danny Bible case?

13:17:51 10 **A** That's correct.

13:17:52 11 **Q** Okay. So it was a false misrepresentation to the Court and
12 to the court coordinator?

13:17:56 13 **A** No.

13:17:56 14 **MR. DOYLE:** Objection.

13:17:56 15 **BY MR. RYTTING:**

13:17:58 16 **Q** What was true about that?

13:18:00 17 **A** That we needed Michael Beckcom brought to Harris County, and
18 we needed to make sure that Jeffrey Prible and Michael Beckcom
19 did not run into each other for lots of reasons, to protect the
20 integrity of the case and, also, for the safety purposes for
21 both of them.

13:18:15 22 **Q** Okay. And isn't there other means to do that without having
23 bench warrants somebody as -- and attach them as a witness to
24 the case?

13:18:22 25 **A** No. If I would have attached Michael Beckcom to the Jeffrey

Video Deposition of Kelly Siegler

1 Prible case, they would have been brought together on the chain
2 each and every time they were brought up. That would have been,
3 really, a stupid thing to have happen.

13:18:38 4 Q You can't have them bench warranted at different times?

13:18:40 5 A I did have them bench warranted at different times. That's
6 why it's connected to Danny Paul Bible.

13:18:45 7 Q No, but in the Prible case.

13:18:47 8 A No. They get -- it gets all messed up. The jail can't keep
9 it straight.

13:18:51 10 Q And is this a common practice by Harris County district
11 attorneys?

13:18:55 12 A Yes.

13:18:55 13 Q And so the result is that when, say, someone gets a post
14 conviction case and has to investigate it, they're -- they look
15 at cases and find -- and they cannot be sure if a witness is
16 attached for one reason or another to a case because of the
17 Harris County district attorney's policy?

13:19:13 18 A That would be a complication, yes.

13:19:17 19 Q And did you tell Mr. Wentz and Mr. Gaiser about your -- the
20 results of your interview with Nathan Foreman?

13:19:30 21 Just to end up, just because I'm curious, you mentioned
22 that there were a number of lies in the -- in the application --
23 or in the petition -- Prible's petition, that there are some
24 lies?

13:19:44 25 A I did.

Video Deposition of Kelly Siegler

13:19:44 1 Q Okay. And that means there's -- there must be some faults
2 in that petition that you think are false, correct?

13:19:51 3 A I do.

13:19:52 4 Q Okay. And can you name one or two of them that you think
5 are false?

13:19:57 6 A There's not much truth in it.

13:19:59 7 Q Okay. Can you name one that sounds out as being false?

13:20:03 8 A Well, the overarching lie is that I orchestrated a ring of
9 informants from the Beaumont federal prison system. That is a
10 lie --

13:20:13 11 Q Okay. All right. I'm just --

13:20:14 12 A -- that you made up --

13:20:16 13 Q No. No.

13:20:17 14 A -- and you theorized and you pieced together and you
15 represented to a federal judge and defamed my reputation, and
16 it's completely wrong and unethical and false and --

13:20:28 17 Q What is the basis for you thinking -- for your belief that
18 we've been -- we don't believe that?

13:20:33 19 A You have no evidence to support that. That is a lie. You
20 have not one shred of evidence to support it from anybody.

13:20:38 21 Q Okay.

13:20:40 22 A It didn't happen.

13:20:40 23 Q Did you not -- did you not read the transcript of the
24 interview with Carl Walker?

13:20:44 25 A I don't even know who Carl Walker is, and he's a bigger liar

Video Deposition of Kelly Siegler

1 than Nathan Foreman.

13:20:48 2 Q Okay.

13:20:49 3 A Your own investigative interview of Carl Walker was a
4 joke --

13:20:52 5 Q Okay. So --

13:20:52 6 A -- if you analyze the interview itself.

13:20:54 7 Q So --

13:20:54 8 A Read it carefully.

13:20:56 9 Q I'm just saying --

13:20:56 10 A He didn't even know my name. He wasn't even sure I was a
11 female.

13:20:59 12 Q Okay.

13:20:59 13 A And you want to pretend like Carl Walker is the crux of your
14 conspiracy of informants that I masterminded and orchestrated --

13:21:05 15 Q I'm saying did you --

13:21:06 16 A -- in federal prison?

13:21:07 17 Q Did you read -- did you read his -- the transcript of his
18 interview?

13:21:10 19 A I read -- it was about six pages long.

13:21:13 20 Q No, it was about 30 pages long.

13:21:16 21 A Maybe I read 30. I don't remember. It was the one where he
22 was interviewed by --

13:21:20 23 Q I just asked -- Ms. Siegler, I just asked you a question.

13:21:24 24 MR. DOYLE: Let her -- let her finish.

13:21:24 25 BY MR. RYTTING:

Video Deposition of Kelly Siegler

13:21:24 1 Q Did you read it?

13:21:24 2 A I think I did, yes.

13:21:25 3 Q Okay. And you've also read the affidavit of Nathan Foreman?

13:21:31 4 A I don't know if I read an affidavit. How long is that one?

13:21:37 5 Q That's about four pages in the Prible case --

13:21:39 6 A I think I read that. I think I read that.

13:21:41 7 Q -- and three pages in the Herrero case, and you commented on
8 that in your own affidavit.

13:21:45 9 A Say that again.

13:21:46 10 Q And you commented on his affidavit in the -- in the Herrero
11 case.

13:21:50 12 A Okay. That's the affidavit you're talking about --

13:21:53 13 Q Right.

13:21:54 14 A -- right?

13:21:54 15 Q So I have -- so there is evidence. You -- you disagree with
16 the credibility of that evidence, don't you?

13:22:00 17 A No, I disagree with your making a false impression to a
18 federal judge in a case this important and making up lies and
19 saying that I orchestrated a ring of informants in a federal
20 prison system and that I told them what to say and caused them
21 to lie in not just one or two or three, but four different
22 cases. That is a lie.

13:22:20 23 Q No. There was -- there was -- the claim was that you did --
24 that you were aware of a ring of informants and that --

13:22:27 25 A And I told them what to say, and told them to lie --

Video Deposition of Kelly Siegler

13:22:30 1 Q That you were aware of a ring of informants. Wasn't --

13:22:32 2 A -- and I fed them information.

13:22:32 3 Q Wasn't that -- wasn't that the petition?

13:22:34 4 A It was a whole lot more than that, and you know it.

13:22:36 5 Q And that -- that some of the key facts were learned from you
6 by -- according to our witnesses and our affidavits and our
7 taped statements?

13:22:45 8 A Your witnesses' affidavits were lies.

13:22:47 9 Q Okay. You can take that position, and it contradicts what
10 you -- in both cases, it contradicts precisely what you claim
11 the State's -- the real truth is and what the State's -- what
12 the State has argued; isn't that correct?

13:23:03 13 A You have not one shred or iota or piece of credible evidence
14 from a credible witness that supports any of those allegations.

13:23:13 15 Q And these are the type of witnesses that you used to put
16 people on death row?

13:23:16 17 A I'm calling you a liar, sir.

13:23:18 18 Q And I'm calling you one.

13:23:21 19 A I didn't go to a federal court --

13:23:22 20 Q You used -- you used Michael Beckcom to put Jeffrey Prible
21 on death row.

13:23:27 22 A That's not the only thing that put Jeffrey Prible on death
23 row, and you know it.

13:23:31 24 Q You used Moreno, who we now know lied to you.

13:23:34 25 A For Prible?

Video Deposition of Kelly Siegler

13:23:34 1 Q No. In the -- in the Herrero case, who we now know lied to
2 you.

13:23:38 3 A He did not lie.

13:23:41 4 Q So if you could start with that first page.

13:23:43 5 A At the top it says, "Prible," circled, "Montgomery County."
6 I can't read that word. "To see if Eddie" --

13:24:10 7 Q Is that "Gomez"?

13:24:12 8 A I think that's "Gomez."

13:24:16 9 I can't read the line under it. "Made -- called,"
10 underneath the line, "Charged with five bank robberies and" --
11 or "six" -- I can't tell -- "banks." I don't know what that
12 says after it. Next line. I don't know what that says.

13:24:55 13 Next line, "Here comes Prible." I can't read that.

14 "Defendant dropped. Murder - no evidence. People" -- I don't
15 know if that says "cut" or "out him." I can't read the rest.

13:25:28 16 Q Do you recall when you took these notes?

13:25:30 17 A No. I don't know where this is from. I don't know where
18 this is from.

13:25:37 19 It's not the eyesight.

13:25:39 20 **MS. SCARDINO:** -- and write --

13:25:39 21 A It's the copy. It's not the eyesight. I can't read my own
22 writing.

13:25:42 23 **BY MS. SCARDINO:**

13:25:42 24 Q Okay. So you need a more legible copy than the one that --

13:25:45 25 A No. It won't matter. It's my scratchy handwriting that's

Video Deposition of Kelly Siegler

1 the problem.

13:25:48 2 **Q** So your testimony is you can't read your own handwriting?

13:25:50 3 **A** Happens a lot because I write so fast, trying to take notes,
4 and I can't do a good job, which is why I end up not taking
5 notes, because it doesn't do me any good.

13:25:59 6 *(Conclusion of video deposition.)*

13:26:03 7 **THE COURT:** Does that conclude the depo?

13:26:05 8 **MS. SCARDINO:** Yes, Your Honor.

13:26:05 9 **THE COURT:** Okay. Do you have another witness?

13:26:07 10 **MS. SCARDINO:** Yes, Your Honor.

13:26:07 11 **THE COURT:** He's live?

13:26:08 12 **MS. SCARDINO:** Yes, Your Honor. Terry Gaiser.

13:26:11 13 **THE COURT:** Okay.

13:26:23 14 **MS. SCARDINO:** Could someone step out?

13:26:24 15 **THE COURT:** And go get him?

13:26:49 16 **MS. SCARDINO:** I'm going to sit here, Your Honor, if
17 that's okay.

13:26:52 18 **THE COURT:** That's fine.

13:26:59 19 Yes, sir, if you want to make your way up here, we're
20 going to have you in the seat nearest me.

13:27:07 21 Before you take your seat, sir, Mr. Rivera will
22 administer the oath, if you will raise your right hand.

13:27:12 23 *(Witness sworn.)*

13:27:12 24 **THE COURT:** Try to adjust the mic so you can speak
25 right into it, if you can, sir.

Ms. Scardino Direct of Terry Gaiser

THE WITNESS: I've got kind of a low voice, Judge.

THE COURT: I think we can handle it. I think we can.

THE WITNESS: All right. Does that work?

THE COURT: That'll work.

TERRY GAISER, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MS. SCARDINO:

Q Good afternoon, Mr. Gaiser.

A Good afternoon.

Q You were Mr. Prible's trial attorney in the capital murder case; isn't that correct?

A I certainly was.

Q Okay. Can you tell us your background? How long have you been practicing law?

A Oh, I've been practicing law since 1972.

Q Okay. And has that been entirely as a defense attorney, a criminal defense --

A Yes, it has.

THE COURT: You must be in state court. I don't recall seeing you over here.

THE WITNESS: Well, I was in your court once, Judge.

THE COURT: Once. Welcome back. Welcome back.

THE WITNESS: On a pornography case.

THE COURT: On a pornography case, okay.

BY MS. SCARDINO:

Ms. Scardino Direct of Terry Gaiser

13:28:09 1 Q So you've been a criminal defense attorney for about
2 47 years. And has that always been in the Houston area?

13:28:16 3 A Well, Houston and environs.

13:28:20 4 Q So you've had hundreds of cases against the Harris County
5 District Attorney's Office, I would imagine?

13:28:24 6 A I have hundreds, if not thousands. I've never counted.

13:28:28 7 Q Okay. And you have about 47 years of experience trying to
8 get discovery from the Harris County District Attorney's Office?

13:28:36 9 A I have.

13:28:38 10 Q I want to take you back to the years 2001 and 2002. This
11 was long before the Michael Morton Act, right?

13:28:45 12 A Correct.

13:28:46 13 Q Okay. And --

13:28:47 14 A Discovery was a lot different back then.

13:28:50 15 Q And do you recall approximately when you were appointed to
16 represent Mr. Prible in his capital murder case?

13:28:56 17 A I believe it was September of 2001.

13:28:59 18 Q Okay. Does September 28th, 2001 --

13:29:03 19 A That sounds right.

13:29:04 20 Q -- sound correct?

13:29:05 21 A Yes.

13:29:06 22 Q Okay. And was this your first capital murder case?

13:29:08 23 A No, no. I had had probably 10, 12 capital cases before
24 that.

13:29:13 25 Q Okay. Who was the prosecutor in Jeff's case?

Ms. Scardino Direct of Terry Gaiser

13:29:16 1 **A** Kelly Siegler and Vic Wisner.

13:29:20 2 **Q** Okay. Was this your first case against Kelly Siegler?

13:29:23 3 **A** Well, I had dealt with Kelly Siegler in court, but I had
4 never tried a case against her. I mostly just -- mostly just
5 third degree felonies, I'm sure.

13:29:37 6 **Q** Okay. When you received an appointment like this in a
7 capital murder case, what would have been the first thing you
8 would have done?

13:29:47 9 **A** I can't remember in this case, but, normally, I would go
10 meet with the client.

13:29:52 11 **Q** Okay. Would you also request to see the DA's file?

13:29:57 12 **A** Of course. I would.

13:29:59 13 **Q** And how would you go about reviewing the DA's file? How
14 that would process work?

13:30:04 15 **A** Back then -- it's totally different now, but back then, you
16 would make an appointment to go to the prosecutor's office, and
17 they would bring out the file and put you in a separate room,
18 you know, whether it was a box of files or boxes of files, and
19 you would go through the files yourself or with cocounsel.

13:30:32 20 **Q** And would you be able to look at everything that the DA's
21 office had in a given case? Would everything be included in
22 that file?

13:30:41 23 **A** Well, what was in that file was what they put in the file.
24 You know, I was never aware that there may be other things that
25 weren't in that file.

Ms. Scardino Direct of Terry Gaiser

13:30:50 1 Q Okay. As far as you knew, was it an open file policy at the
2 DA's office at that time?

13:30:56 3 A Pretty much. There were some cases where they closed the
4 file. Where an attorney had done something that angered them
5 for some reason, they would close the file.

13:31:06 6 Q Okay. Do you remember that being true in Mr. Prible's case?

13:31:10 7 A I saw the file in Mr. Prible's case. It was not a closed
8 file in that sense.

13:31:16 9 Q Okay.

13:31:17 10 THE COURT: Would you say your relationship with the
11 DA's office was cordial?

13:31:21 12 THE WITNESS: Yes, sir.

13:31:23 13 THE COURT: Remains so?

13:31:24 14 THE WITNESS: I hope so, yes, Your Honor.

13:31:26 15 BY MS. SCARDINO:

13:31:27 16 Q Was it customary, when you would look in the DA's file, for
17 the attorney's work product to be included in that file?

13:31:35 18 A No. No. They would not put work product in there.

13:31:39 19 Q Okay.

13:31:40 20 A To -- that was not part of their open file policy.

13:31:43 21 Q Okay. So your understanding, when you went to look at the
22 file, was that it would be everything except the work product;
23 is that accurate?

13:31:50 24 A Supposedly, yes. That was my understanding.

13:31:52 25 Q And was that your understanding in Mr. Prible's case as

Ms. Scardino Direct of Terry Gaiser

1 well?

13:31:56 2 **A** Yes.

13:31:58 3 **Q** Do you recall seeing notes of Ms. Siegler and her
4 investigators in Mr. Prible's case file?

13:32:04 5 **A** No, I did not.

13:32:09 6 **Q** Back then, in 2001 and 2002, would a prosecutor provide
7 defense attorneys, such as yourself, with a witness list before
8 trial?

13:32:18 9 **A** At times, but that was not the general practice. You would
10 usually -- you would have to look for what's -- what subpoenas
11 had been filed in the district clerk's office to find -- to
12 discover the witnesses, usually.

13:32:35 13 **Q** When you went in to review a copy of the file at the DA's
14 office, were you allowed to make your own copy of anything in
15 the file?

13:32:42 16 **A** No. No. No -- no, I don't -- in most cases, no. If there
17 was something in the file that was public record that I -- I
18 could go get from the clerk's office, I'd ask, you know, "Can I
19 just get a copy of this now so I don't have to go to the
20 district clerk's office?"

13:32:58 21 **Q** Okay.

13:32:58 22 **A** But as a general rule, you would not be allowed to copy
23 anything in the file.

13:33:03 24 **Q** You just had to sit in the room and make notes?

13:33:05 25 **A** That's correct.

Ms. Scardino Direct of Terry Gaiser

13:33:06 1 Q And do you recall that -- if that was the case in
2 Mr. Prible's situation when you were -- when you went to review
3 his file?

13:33:13 4 A Certainly, yes. That was the case.

13:33:20 5 Q After you were appointed to represent Mr. Prible and you had
6 had an opportunity to review the file at the DA's office, what
7 was your take on the state's evidence against Mr. Prible?

13:33:31 8 A Well, the state's case -- in my opinion, the state's case
9 was -- there were two major points in the state's case that had
10 to do with DNA found in -- a sperm specimen found in the female
11 victim's mouth, and -- and that later connected to Jeff, and the
12 testimony of a witness from the federal correctional facility in
13 Beaumont, Michael Beckcom. Those were the two -- two main --
14 that was the thrust of their case.

13:34:15 15 Q Those two issues?

13:34:16 16 A I mean, there were some other things from -- the firearms
17 evidence, for instance, was -- was also -- the fact that
18 firearms had been found in Jeff's parents' house, that the state
19 wanted to make the case that one of those firearms could have
20 been used in the -- in the murders. But, you know, apparently,
21 there were -- in my expert's view, there were literally 20 or 30
22 different weapons that could have fired the bullets that were
23 fatal in this case.

13:34:55 24 Q Okay. So you recall that other than that ballistics
25 evidence, the heart of the state's case was the informant and

Ms. Scardino Direct of Terry Gaiser

1 the DNA evidence?

13:35:04 2 **A** Oh, definitely. Yes.

13:35:06 3 **Q** Okay. And do you recall what the prosecution's theory was
4 regarding the DNA?

13:35:14 5 **A** Well, based upon what they argued in the -- in the trial was
6 that -- that Jeff had ejaculated in the female decedent's mouth
7 and shot her right away after doing that was their theory of the
8 case.

13:35:36 9 **Q** Yeah.

13:35:37 10 **A** The testimony at trial -- well, you're familiar with the
11 testimony at trial.

13:35:42 12 **Q** Okay. And do you remember the story about the jailhouse
13 informant and how he came in contact with Mr. Beckcom -- I mean,
14 with Mr. Prible?

13:35:54 15 **A** Well, my first knowledge of him came from -- from Kelly
16 Siegler. There was a -- I don't remember exactly when I learned
17 of him, but she had given me, at one point, a -- a handwritten
18 statement that he had given.

13:36:18 19 **Q** Okay. And by "he" --

13:36:19 20 **THE COURT:** Was use -- in major crimes, was the use of
21 prison informants unusual or fairly common or somewhere in
22 between?

13:36:28 23 **THE WITNESS:** In the Harris County District Attorney's
24 Office, it was pretty common.

13:36:31 25 **THE COURT:** Pretty common?

Ms. Scardino Direct of Terry Gaiser

THE WITNESS: Yes, sir.

BY MS. SCARDINO:

Q Do you remember how -- approximately how close to trial you received this -- this handwritten letter from Mr. Beckcom?

A Oh, I'm sure it was sometime before trial, but I don't know exactly when.

Q Okay. Do you think it would have been weeks before trial or months before trial? Can you speculate -- or can you not speculate, but --

A Well, I don't want to speculate, but I -- I was aware of the handwritten statement that he had given prior to trial.

Q Prior to trial.

And the case went to trial in October of 2002. Do you remember filing any pretrial motions?

A I -- we filed a load of motions that -- as I remember. We filed several motions on the constitutionality of the death penalty scheme in Texas and discovery motions of -- a variety of discovery motions.

Q Okay. And I want to talk about some of those discovery motions. Exhibit 109 -- can you see on your monitor there -- is a Brady motion that you filed.

A Yes.

Q Does that look familiar?

A Yes.

Q Okay. That's the -- you titled it, "The Motion and Request

Ms. Scardino Direct of Terry Gaiser

1 for Production of Evidence Favorable to the Accused"?

13:37:59 2 **A** Yes. Yes, ma'am.

13:38:01 3 **Q** In Section 21B of that motion, you ask for the date, place
4 and manner of the state's contacts with Beckcom, including how
5 contact was first initiated and with whom it was made. Do you
6 see that?

13:38:15 7 **A** Yes.

13:38:16 8 **Q** Okay. Why did you want this information?

13:38:20 9 **A** I wanted -- well, as the fact that -- that he was an
10 informant in the case made it important to know, from the
11 standpoint of his credibility, whether he had come forward
12 seeking some sort of remuneration or something in exchange for
13 his testimony as to -- as to -- or whether the -- and how many
14 times the contact had occurred were -- would be important in
15 determining that also.

13:38:56 16 But that would go to his credibility.

13:39:00 17 **Q** And it was also important for you to know who made contact
18 with Beckcom in -- in the DA's office, which side reached out to
19 the other?

13:39:09 20 **A** Of course, yes.

13:39:11 21 **Q** Okay.

13:39:12 22 **A** The -- I mean, that bore on the same issue of his
23 credibility in terms of what he wanted for his testimony or
24 whether they had gone to him seeking him out to -- to groom him
25 as a witness.

Ms. Scardino Direct of Terry Gaiser

13:39:27 1 Q Okay. And the Court -- do you remember pretrial hearings --
2 a pretrial hearing on September 10th, 2002, when they took up
3 this Brady motion?

13:39:38 4 A I -- you'll have to help me because I, you know -- I -- it's
5 been 18 years.

13:39:45 6 Q Okay.

13:39:46 7 A But I would have some memory of that, yes.

13:39:48 8 Q Okay. Well, I'm going to post Exhibit 70 at pages 4 through
9 5. This is a transcript from that hearing on the Brady motion.
10 Can you read that?

13:40:05 11 And it says, Number B, which is the provision that I just
12 made -- or read in the Brady motion. Number B has to do with a
13 date, time, place and manner of the state's contacts with this
14 witness, Beckcom, including a statement of how the contact was
15 first issued and with whom it was made.

13:40:26 16 A Well, I remember I was interested, for the same reason, as
17 to who had initiated the contact or whether they had initiated
18 it. How it came about was important to --

13:40:38 19 Q Right.

13:40:38 20 A -- bearing on -- on his credibility.

13:40:41 21 Q And you'll see Ms. Siegler responded, "Judge, and I don't
22 think I'm required to provide that to him. If they want to ask
23 him on cross-examination how many times I've met with him, how
24 we first came in contact with each other, I think they get to do
25 that. But I don't think I have to sit down and write a

Ms. Scardino Direct of Terry Gaiser

1 statement to the defense as to how I came in contact with
2 Mr. Beckcom." Do you see that?

13:41:03 3 **A** Yes, I do.

13:41:04 4 **Q** Now, why were you -- why did you ask, in open court, for the
5 prosecutor to provide you with this information rather than just
6 Beckcom -- asking Beckcom for it on cross-examination?

13:41:16 7 **A** At that point, Ms. Siegler is asking me to -- to believe in
8 her witness, that her witness is credible on that point, that --
9 that I couldn't possibly cross-examine him if I didn't have the
10 information of when and where they met and who initiated the
11 contact.

13:41:33 12 **Q** And did you have -- was his credibility already shot, in
13 your mind, based on the fact that he was a prison informant?

13:41:41 14 **A** Well, yes, you know. And later I did research on
15 Mr. Beckcom and -- and dealt with his credibility.

13:41:52 16 **Q** Uh-huh.

13:41:54 17 I also want to post Exhibit 70 at pages 5 through 6. On
18 this same issue, Ms. Siegler stated, "Judge, I'll agree to tell
19 Mr. Gaiser how we came into contact and the times that we've
20 met. I don't remember the dates. I didn't take any notes. And
21 the best that I can remember, I'll let him know what they are,
22 but I'm not going to write it all down. He can come to my
23 office, and I'll sit down and tell him what I can remember."

13:42:23 24 Do you see that?

13:42:24 25 **A** Yes, I do.

Ms. Scardino Direct of Terry Gaiser

13:42:25 1 Q What did Siegler tell you about how she came into contact
2 with Beckcom?

13:42:33 3 A Well, I believe, if my memory's correct, it was the
4 handwritten note from Mr. Beckcom that somehow came into her
5 hands. It was -- I was never led to believe that she had made
6 contact with him, but it was always, he had made contact with
7 her.

13:42:54 8 Q Did Ms. Siegler tell you that she had been communicating
9 with Beckcom's cellmate, Nathan Foreman, since way back in
10 August 2001 before Prible was indicted?

13:43:04 11 A No. No, she did not.

13:43:06 12 Q Did she tell you --

13:43:08 13 MS. MIRANDA: Objection, Your Honor, that actually
14 misrepresents the facts in this case.

13:43:11 15 THE COURT: I'll let you bring that out in cross.

13:43:13 16 MS. MIRANDA: Okay.

13:43:13 17 BY MS. SCARDINO:

13:43:15 18 Q Did she ever tell you that she had determined that
19 Mr. Foreman was lying about hearing Mr. Prible confess?

13:43:21 20 A No.

13:43:23 21 Q She didn't tell you about him at all?

13:43:24 22 A Well, I knew of his existence because he was mentioned in
23 the -- in Beckcom's handwritten statement.

13:43:32 24 Q And beyond that, did Ms. Siegler tell you anything about
25 Mr. Foreman?

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13:43:39 1 **A** Oh, not to -- not that I can remember.

13:43:43 2 **Q** Did she ever tell you or mention the name Jesse Moreno to
3 you?

13:43:47 4 **A** No.

13:43:48 5 **Q** You hadn't heard that name?

13:43:50 6 **A** No, not -- not till I met with the lawyers recently.

13:43:54 7 **Q** Okay. I'm going to show you -- back to Exhibit 109.

13:43:59 8 **MS. SCARDINO:** Actually, you can pull up 70 at 6
9 through 7.

13:44:05 10 **BY MS. SCARDINO:**

13:44:06 11 **Q** But another request you made in that Brady motion was a copy
12 of all statements made by Beckcom and communicated to the state,
13 including notes of any conversations had with Beckcom by any
14 agent of the state.

13:44:20 15 And you stated in court, "We've been supplied with a
16 written statement that he made and been told by Ms. Siegler that
17 that's the only written statement they have." And that's the
18 written -- that's the handwritten statement that you're
19 referring to?

13:44:33 20 **A** Yes. Yes.

13:44:35 21 **Q** And Ms. Siegler says, "That's correct, Judge. And again,
22 like we've talked about once before, I've given up Mr. Gaiser
23 the statement Beckcom wrote up for me as to his communications
24 with Prible and how they came into contact. I've already
25 provided that to him, and it's still our position that any notes

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1 that either myself or Johnny Bonds made when we went to visit
2 Michael Beckcom is work product."

13:44:55 3 Do you see that?

13:44:56 4 **A** Yes.

13:44:57 5 **Q** And that comports with your recollection of reviewing the
6 file, that the work product was not available to you, correct?

13:45:04 7 **A** That's correct.

13:45:05 8 **Q** Okay. And the Court says, "I agree. So I will grant it as
9 to the witness statement that's been described in the record,
10 not as to notes made by Ms. Siegler or Mr. Bonds."

13:45:18 11 Now, my question to you is: Did Ms. Siegler ever provide
12 you with Beckcom's statement regarding an inmate named Anton
13 Davi? That's Exhibit 95.

13:45:32 14 **A** I --

13:45:32 15 **MS. MIRANDA:** Objection, Your Honor. Again, she's
16 mischaracterizing the evidence in this case.

13:45:36 17 **THE COURT:** Okay. I'll let you bring that out in
18 cross.

13:45:42 19 All she did was ask, "Did Ms. Siegler ever provide you
20 with Beckcom's statement regarding an inmate named Anton Davi?"

13:45:49 21 **MS. MIRANDA:** All right. But there's absolutely no
22 statement in the record. And I understand I can bring out
23 certain things at cross, but there is no statement in the
24 record --

13:45:56 25 **THE COURT:** Well, then the witness can say he's aware

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of no such statement. That's fine.

MS. SCARDINO: Okay. I can rephrase it, Your Honor.

THE COURT: Okay.

BY MS. SCARDINO:

Q Did Ms. Siegler ever provide you with this document,
Exhibit 95?

(Witness reviews document.)

THE COURT: If you remember.

THE WITNESS: No. No, I don't remember.

THE COURT: Don't remember?

THE WITNESS: No. I have never seen that till --

THE COURT: You've never seen it?

THE WITNESS: No, not until that was presented to me
when they were preparing me for testimony.

THE COURT: Okay. All right.

BY MS. SCARDINO:

Q And you see that at the bottom -- do you see who that letter
is signed by?

A Michael Beckcom.

Q Okay. Do you consider that a statement of Mr. Beckcom?

A I certainly do.

Q Okay. Another thing you asked for in your Brady motion
are -- were agreements made with Beckcom concerning benefits he
would receive in exchange for testimony, including oral
agreements. Do you remember making this request?

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13:46:56 1 **A** Yes.

13:46:57 2 **Q** Okay. And you also filed a motion to require the state to
3 reveal agreements, which is basically the same thing. You
4 basically asked for this twice, right?

13:47:07 5 **A** Yes.

13:47:08 6 **Q** It was pretty important?

13:47:09 7 **A** Yes, of course.

13:47:10 8 **Q** Okay. In that motion is Exhibit 74.

13:47:15 9 Now, why did you -- we'll bring it up.

13:47:19 10 Why did you file this motion?

13:47:22 11 **A** Well, I -- you know, I'm constitutionally entitled to know
12 for -- for purposes of -- of testing his credibility on -- on --
13 in confronting and cross-examining him what sort of deal he's
14 made with the government in exchange for his testimony.

13:47:42 15 **Q** And did you specifically limit your requests in this motion
16 to agreements that the state had made with Beckcom?

13:47:50 17 **A** I think it was for all -- any and all witnesses.

13:47:53 18 **THE COURT:** I'm going to ask you to pull the
19 microphone a little bit closer to you or --

13:47:56 20 **THE WITNESS:** I believe it was for all the witnesses
21 in the case.

13:47:58 22 **BY MS. SCARDINO:**

13:47:59 23 **Q** Did you have any reason to believe, at the time you filed
24 this motion, that there were any other informants in this case
25 other than Beckcom?

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13:48:07 1 **A** No.

13:48:11 2 **Q** And you took this up at a pretrial hearing as well. That's
3 Exhibit 70 at 28 through 29.

13:48:19 4 **A** Correct.

13:48:24 5 **Q** And the Court brought it up. They said motion to require
6 the state to reveal agreements. Ms. Siegler says, "We've agreed
7 on that, Judge.

13:48:31 8 The Court: "That's granted."

13:48:33 9 And you state, "Can we have the state, state for the record
10 what the agreement is?"

13:48:38 11 And Ms. Siegler says, "The agreement right now, Judge, that
12 I have with witness Michael Beckcom is that in exchange for his
13 cooperation and truthful testimony, when this trial is
14 completely over with and resolved, I will notify his assistant
15 U.S. attorney, whose name is Mark Cullers, in Fresno,
16 California, that he cooperated in this case, what the level of
17 his cooperation was, the extent of his cooperation and whether
18 or not I believe that it was truthful.

13:49:03 19 "At that time, it will be Mark Cullers' decision as to
20 whether or not to file a Rule 35 reduction. Even if he files
21 that Rule 35 reduction, it will be his superior's decision
22 whether or not to proceed with it, and even if they decide to
23 proceed with it, it will be his federal judge in California's
24 decision whether or not to give him any kind of reduction in his
25 sentence. That's the agreement that we have."

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Do you remember that?

A Yes.

Q Okay. Did Ms. Siegler ever mention at this hearing that she had written a Rule 35 letter for Nathan Foreman? That's Exhibit 44.

THE COURT: In the course of your preparation for the trial, had you ever heard of Nathan Foreman?

THE WITNESS: Well, I had heard of Nathan Foreman from the -- the written statement that -- that Beckcom wrote to Siegler.

THE COURT: Okay.

BY MS. SCARDINO:

Q Did you ever see this Exhibit 44? Was this produced to you by the state?

A No.

Q Okay.

MS. SCARDINO: Can you pull up Exhibit 43, please?

THE COURT: You got to say --

MS. SCARDINO: I'm sorry?

THE COURT: Got to show the next page. It's not obvious who wrote that.

Is that from Ms. Siegler? Okay. Thank you.

MS. SCARDINO: Yes.

BY MR. RYTTING:

Q Exhibit 43. Exhibit 43 is a Rule 35 letter written by

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1 Ms. Siegler for Jesse Moreno. Did the state ever show this to
2 you?

13:50:39 3 **A** No. I was not aware of the existence of a Jesse Moreno.

13:50:44 4 **Q** So I take it, then, that Ms. Siegler did not mention to you
5 that she had testified in a Rule 35 hearing for Moreno two
6 months before Mr. Prible's trial?

13:50:55 7 **A** I believe the record shows that she stated to the Court that
8 she had testified on a Rule 35 hearing somewhere, but there was
9 not reference to anyone where it was or why it was or who the
10 witness was.

13:51:11 11 **Q** Okay. And that -- that actually occurred on Exhibit 70 at
12 page 30, 31. And the Court says, "Is it the State's intention
13 to be a part of that process in recommending a Rule 35
14 reduction?"

13:51:29 15 And Ms. Siegler says, "Yeah. They tell me that the mere
16 fact that I write the letter means that I'm recommending it.
17 I've done one before, and I went to Louisiana and testified."

13:51:38 18 Is this the hearing that you were just referring to?

13:51:42 19 **A** It is.

13:51:43 20 **Q** Okay. Did she tell you or say in court who this Rule 35
21 hearing in Louisiana was for?

13:51:49 22 **A** No.

13:51:49 23 **Q** Did she mention that it was connected, at all, to
24 Mr. Prible's case?

13:51:54 25 **A** No. No.

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13:51:55 1 Q Okay.

13:51:56 2 A I had no reason to believe it was in any way connected to
3 the case we were trying.

13:52:01 4 Q Okay.

13:52:02 5 MS. SCARDINO: If you could post Exhibit 70 at 30
6 through 31. I guess, actually, that's already up. Sorry.

13:52:11 7 BY MS. SCARDINO:

13:52:12 8 Q And the Court gave Ms. Siegler a second opportunity to tell
9 you of any agreements when they said: (Reading) If on any
10 future date the agreement changes or is modified, you'll notify
11 the Defense as soon as possible. And that also, obviously,
12 extends to any other witnesses involved in the case as far
13 as" --

13:52:34 14 THE COURT: Slow down. Slow down.

13:52:35 15 BY MS. SCARDINO:

13:52:35 16 Q (Reading) -- "at this point in time, are there any other
17 agreements with any other witnesses involved in the case?"

13:52:41 18 And Ms. Siegler responded: (Reading) One of the defendant's
19 ex-wives' names is Melanie Garrison. She's bench warranted by
20 Karen, and she'll be here this week. She just got mentioned --
21 moved to Gatesville by Waco, and I -- I haven't even talked to
22 her, but I've told her family that I will try to get her sent
23 back to Gatesville when this is over because she likes it there.
24 She's getting a degree there or something. If you call that a
25 promise, I've talked to her family about that. That's all I can

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1 think of."

13:53:11 2 And the Court asks, "And anybody else or any other
3 agreements that you're aware of?"

13:53:15 4 Ms. Siegler said, "No, sir, that's it."

13:53:19 5 You see that?

13:53:20 6 **A** Yes, I do.

13:53:21 7 **Q** Okay. Still Ms. Siegler -- no mention of Mr. Foreman?

13:53:24 8 **A** No.

13:53:24 9 **Q** Correct?

13:53:25 10 Still no mention of Mr. Moreno, correct?

13:53:28 11 **A** No mention of Mr. Moreno; no mention of Mr. Foreman, no.

13:53:32 12 **Q** And then the court gave her a third opportunity to inform
13 her of deals that she had made with informants. Do you recall
14 that?

13:53:39 15 **A** I -- you'd have to show me.

13:53:41 16 **Q** Okay. The Court says, "Anybody else or any other agreements
17 that you're aware of?" Ms. Siegler says, "No, sir, that's it."

13:53:50 18 The Court, "Same thing, if anything comes about notify the
19 Defense as soon as possible."

13:53:55 20 **A** Okay.

13:53:55 21 **Q** So what was your understanding, Mr. Gaiser, after this
22 pretrial hearing, of agreements that the state had made with any
23 informants in this case?

13:54:04 24 **A** That it was my understanding -- it was obvious from the
25 hearing that the -- the only agreement they had was with Michael

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1 Beckcom. That was the only -- that was the only witness that
2 they were giving consideration for in terms of his testimony.
3 He was the only one that I was ever aware of.

13:54:27 4 **Q** And were you aware at this time that Ms. Siegler had already
5 been in communication with Mr. Cullers or -- Mr. Beckcom's
6 federal prosecutor for months before Mr. Prible's trial?

13:54:39 7 **A** No.

13:54:41 8 **Q** Your understanding that -- was that she was going to make
9 the phone call to him after trial?

13:54:45 10 **A** After the testimony, correct.

13:54:47 11 **Q** If Mr. Beckcom testified truthfully?

13:54:50 12 **A** Right.

13:54:51 13 **Q** Okay.

13:54:51 14 **A** In her opinion.

13:54:54 15 **Q** Going back to your Brady motion, you also requested all
16 evidence indicating the deceased, Steve Herrera, was involved in
17 the purchase, sale, delivery or distribution of drugs, firearms,
18 or money laundering, and all evidence intending to incriminate
19 any person other than the defendant in the commission of the
20 defense -- of the offense.

13:55:19 21 Do you recall making that request?

13:55:21 22 **A** Yes.

13:55:21 23 **Q** Okay.

13:55:22 24 **MS. SCARDINO:** And if you could post Exhibit 70 at 9.

13:55:30 25 **BY MS. SCARDINO:**

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Q And at the pretrial hearing, you stated, "Ms." -- to the court, "Ms. Siegler has represented that we've seen everything they have in their possession and would be in compliance with that request."

Do you see that?

A Yes.

Q Okay.

MS. SCARDINO: Can you pull up Exhibit 130?

A Can you go back to that exhibit?

BY MS. SCARDINO:

Q Sure. Which -- the hearing testimony?

A The one that was just up.

Q Sure. That's Exhibit 70.

A Okay. Thank you.

MS. SCARDINO: Now, if you could go back to Exhibit 130.

BY MS. SCARDINO:

Q Was this letter produced to you by the state before Mr. Prible's trial?

A You've shown me that, and I've never seen that.

Q Okay.

A Before trial or after trial.

Q Okay. Now I'm going to show -- or go to your request in your --

A I mean, obviously, that was extremely relevant to whether

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1 there was another motive for killing -- for killing Steve as to
2 whether or not he was dealing drugs and had money in the house.

13:56:52 3 **THE COURT:** Do you -- you said you had other cases
4 with Ms. Siegler?

13:56:55 5 **THE WITNESS:** What I said was I had dealt with
6 Ms. Siegler, but never in a trial.

13:57:01 7 **THE COURT:** Never got to trial, but --

13:57:02 8 **THE WITNESS:** I've had dealings with her since.

13:57:05 9 **THE COURT:** And you've had -- well, given the course
10 of your dealings with her before and since, would you say she
11 was forthcoming about evidence she had?

13:57:16 12 **THE WITNESS:** Well, obviously, from what I'm seeing
13 now.

13:57:19 14 **THE COURT:** But I'm asking --

13:57:21 15 **THE WITNESS:** Back then, I had no reason --

13:57:22 16 **THE COURT:** You had no reason to think that was a
17 pattern?

13:57:24 18 **THE WITNESS:** -- to be skeptical of -- to be skeptical
19 of the things she was telling me.

13:57:28 20 **THE COURT:** How about since then?

13:57:29 21 **THE WITNESS:** Well, since then I've had other dealings
22 with her and her *Cold Justice* show. A client of mine spent four
23 years in jail on a charge that was ultimately dismissed by
24 Kim Ogg because it was worked up by *Cold Justice*.

13:57:45 25 **THE COURT:** Okay.

Ms. Scardino Direct of Terry Gaiser**BY MS. SCARDINO:**

Q Could you have made use of this letter that I just showed you, Exhibit 130, if you had had that prior to Jeff's trial?

A Well, of course. I would use it to -- to further investigate all these homes and whether there were drug dealings and -- dealings and all these other addresses and who was involved. It certainly would have given somebody else a motive to -- to break in and -- and steal drugs or money and execute the people living in the house.

Q You also asked, in your Brady motion, for all witness statements, whether written or oral.

MS. SCARDINO: And if you could go to Exhibit 70 at 16 through 17.

BY MS. SCARDINO:

Q Why would you have asked for all witness statements?

A Well, I wanted it for discovery, of course, to see, you know, what -- whether I could use it on cross.

Q Okay. And you'll see the court says, "I'm going to say all witness statements, whether oral or written by any witness." Ms. Siegler states, "Judge, how about just written? Because oral statements is a lot of people that end up not saying anything worth our time, and I didn't take notes on and I don't plan on using."

The Court says, "Okay. I guess with the exception of any oral argu- -- any oral statement by any witness turns out to be

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1 Brady --"

13:59:14 2 Ms. Siegler, "Okay."

13:59:17 3 The Court, "-- or exculpatory or impacts on punishment,
4 then that needs to be turned over. So I'm going to say any
5 written statements, and then I'm going to change the language to
6 any oral statements which are Brady or mitigate punishment."

13:59:34 7 **MS. SCARDINO:** Now, if you could show Exhibit 37,
8 please.

13:59:46 9 **BY MS. SCARDINO:**

13:59:47 10 **Q** Exhibit 37 is a letter from Ms. -- to Ms. Siegler from a
11 prison inmate named Jesse Gonzalez. Was this statement turned
12 over to you?

13:59:59 13 **A** No. I haven't seen this until you showed it to me in
14 preparing for my testimony.

14:00:04 15 **Q** Could you have made use of it if you had had it before
16 Mr. Prible's trial?

14:00:09 17 **A** Well, I mean, all of this together, you know, brings into
18 question the credibility of these people in the Beaumont
19 facility in terms of people wanting to give information to get
20 consideration for doing this. So I'd want to know, you know,
21 how, generally, this was going on at this facility.

14:00:39 22 I had not seen these names or these letters prior to -- to
23 seeing them recently.

14:00:47 24 **Q** Okay. And I'm going to show you Exhibit 36. This is a
25 letter to Ms. Siegler from another inmate named Carl Walker.

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1 Did the state produce this to you?

14:01:03 2 **A** No.

14:01:05 3 **Q** And, again, you could have made use of this in the same way
4 that you previously stated?

14:01:09 5 **A** Yes.

14:01:11 6 **MS. SCARDINO:** And if you could go to Exhibit 35.

14:01:20 7 **BY MS. SCARDINO:**

14:01:20 8 **Q** This is a letter to Ms. Siegler from Mark Martinez, another
9 inmate at FCI Beaumont. Was this produced to you by the state?

14:01:28 10 **A** No. Same -- same answer. I hadn't seen this till you
11 showed it to me recently.

14:01:33 12 **Q** Okay. And you went through that entire file, case file,
13 correct --

14:01:36 14 **A** The file --

14:01:37 15 **Q** -- that they allowed you to go through at the DA's office?

14:01:40 16 **A** Yes.

14:01:46 17 **Q** Is one of the reasons you would have wanted to see these
18 letters is to determine how Ms. Siegler chose which informant to
19 use?

14:01:54 20 **A** Oh, absolutely. The -- this bears on all of their
21 credibility, but, you know, why Beckcom of -- I would have -- I
22 would have wanted that at the time, but not knowing this, I
23 couldn't wonder anything back then.

14:02:13 24 **Q** Would it have indicated to you whether or not these inmates
25 were discussing Jeff's case among themselves with Beckcom?

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MS. MIRANDA: Objection, Your Honor. I'm going to

object to leading. If he's here to testify about the materiality and what he would have made use to, I absolutely object to counsel suggesting what that would be, and I would ask that the witness be the one that would identify the way in which he would use this information, if it had come to his attention.

THE COURT: Well, she's asking, "Would it have indicated to you whether or not these inmates were discussing Jeff's case among themselves."

MS. MIRANDA: Yes, and in that she is suggesting a manner in which he would have used that. And if he is going to come to the Court and testify about materiality, I believe that it ought to be his testimony and not counsel's testimony with respect to the ways and the manner and means in which he would have used this information.

THE COURT: Okay. Fair enough.

Can you tell us what you would have done with this information?

THE WITNESS: That's hard to answer, Judge, since I didn't see it at the time. Answering it now is -- is...

THE COURT: Okay. If these are leading questions, they're not leading you anywhere, are they?

THE WITNESS: During Beckcom's testimony, he -- well, pardon me. It was my contention during trial that Beckcom got all the information he had about these killings from public

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1 information, from the complaint that was on file, from -- from
2 the -- the news releases that had to do with -- Beckcom got all
3 of that information. That's one of the main thrusts of my
4 cross-examination of him was --

1 4 : 0 3 : 5 2 5 **THE COURT:** Yeah. Yeah.

1 4 : 0 3 : 5 3 6 **THE WITNESS:** But this would definitely have shown
7 that there were others that were interested in what Jeff was
8 saying over at the -- the -- the facility. In fact, a witness
9 came and testified at trial that the complaint and other
10 information was readily available to anybody in the FCI.

1 4 : 0 4 : 2 1 11 **BY MS. SCARDINO:**

1 4 : 0 4 : 2 1 12 **Q** I'm going to show you Exhibit 96. That's a -- this is a
13 typed --

1 4 : 0 4 : 3 2 14 **MS. SCARDINO:** Is that 96?

1 4 : 0 4 : 4 1 15 **BY MS. SCARDINO:**

1 4 : 0 4 : 4 1 16 **Q** Yes. That's a typed letter asking -- requesting -- from the
17 DA's office requesting a meeting with Mr. Beckcom and Mr. Davi.
18 Did you ever see that in the DA's file?

1 4 : 0 4 : 5 1 19 **A** No.

1 4 : 0 4 : 5 2 20 **Q** Okay.

1 4 : 0 4 : 5 2 21 **A** No.

1 4 : 0 4 : 5 3 22 **Q** And Exhibit 23, this is a November 12th, 2001, letter from
23 Alan Percely to Ms. Siegler regarding Nathan Foreman. Was that
24 ever produced to you by the state?

1 4 : 0 5 : 1 2 25 **A** No. No.

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14:05:17 1 Q Okay. I'm going to go to Exhibit 71, which I'll give you a
2 page number. This -- you had -- yeah. This is the hearing on
3 your motion for equal access to all information obtained by the
4 prosecution by means of NCIC or JIMS investigations. Do you
5 remember filing that?

14:05:38 6 A Yes.

14:05:38 7 Q Was that a standard discovery motion that you would usually
8 file?

14:05:42 9 A Yes.

14:05:42 10 Q And what is an NCIC?

14:05:45 11 A Well, it's the National Crime Information Center. They keep
12 records from all the states and -- and -- in terms of arrests
13 and convictions.

14:05:56 14 Q Okay. So in layman's terms, it's like a criminal history
15 report --

14:05:59 16 A Right.

14:05:59 17 Q -- would you say?

14:06:00 18 Okay. Did you, as a defense attorney, have the ability to
19 generate it?

14:06:04 20 A No. No way.

14:06:06 21 Q Why did you specifically ask for the state to produce NCICs?

14:06:12 22 A Just discovery of their -- for the witnesses they were going
23 to use, to specifically ask for their arrest records.

14:06:23 24 Q If you had seen an NCIC in a file for a witness that you had
25 never heard of, what -- would that have signaled anything to

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1 you?

14:06:34 2 **A** I might want -- I'd want to know why it was there, you know.

3 At this late, you know -- looking back, I can't answer what I

4 would have done at the time. But -- but it certainly would have

5 raised my interest to wonder -- wondering what these records are

6 doing in -- in their file.

14:06:52 7 **Q** Might you have investigated an individual whose --

14:06:55 8 **A** Yeah. I'd want --

14:06:56 9 **MS. MIRANDA:** Again, Your Honor, objection.

14:06:57 10 **THE COURT:** Okay. Yeah. That's fair enough.

11 Rephrase your question.

14:07:00 12 **MS. SCARDINO:** Okay.

14:07:02 13 **BY MS. SCARDINO:**

14:07:02 14 **Q** Did you understand the court to be ordering Ms. Siegler to

15 produce NCICs of only testifying witnesses at this hearing?

14:07:10 16 **A** I believe that's what the judge ruled, if I'm not mistaken.

14:07:13 17 **Q** And not non-testifying --

14:07:15 18 **A** Right.

14:07:15 19 **Q** -- witnesses?

14:07:17 20 Did you ever see Exhibit 93 -- or, I'm sorry, 169?

14:07:28 21 Did the state produce to you this NCIC of Nathan Foreman?

14:07:33 22 **A** No.

14:07:39 23 **MS. SCARDINO:** Can you pull up Exhibit 94?

14:07:48 24 **BY MS. SCARDINO:**

14:07:48 25 **Q** Did the state produce from you -- from Mr. Prible's file

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1 this NCIC for Rafael Dominguez?

14:07:56 2 **A** I don't remember seeing that, no.

14:07:57 3 **Q** Do you know who Rafael Dominguez is?

14:07:59 4 **A** No.

14:08:02 5 **MS. SCARDINO:** If you could pull up Exhibit 72 at 10
6 through 14.

14:08:11 7 **BY MS. SCARDINO:**

14:08:11 8 **Q** So do you recall another pretrial hearing on October 11th,
9 2002, to take up discovery matters again?

14:08:18 10 **A** What's the day?

14:08:19 11 **Q** October 11th, 2002.

14:08:21 12 **A** So that would be right before trial.

14:08:23 13 **Q** Yes.

14:08:25 14 **A** Yes. I remember there was a hearing.

14:08:30 15 **THE WITNESS:** Excuse me, Judge.

14:08:31 16 **BY MS. SCARDINO:**

14:08:33 17 **Q** And, again, the issue of how contact was first initiated
18 with Mr. Beckcom came up. Do you recall that?

14:08:52 19 **A** I remember seeing this with -- but in terms of -- of having
20 seen it from when you showed it to me. I'd -- I --

14:09:01 21 **Q** Does this transcript refresh your recollection of that
22 hearing?

14:09:05 23 **A** Well, certainly.

14:09:06 24 **Q** Okay. And at that hearing, you stated, "Finally, Judge,
25 just so the record is clear on this, when we initially had a

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1 hearing concerning discovery with reference to Michael Beckcom,
2 one of the orders the Court issued was that the state furnish us
3 with -- and I believe the Court said that that report could be
4 oral -- an indication of when and how contact was first
5 initiated by -- with regard to Mr. Beckcom and the dates of any
6 contacts with him, and I'm somewhat confused -- and that may be
7 my own fault, in my old age, in having a lot of senior
8 moments -- as to those dates and how contact was initiated. And
9 I re-urge that we've been told on, I believe, two different
10 dates, but I may be wrong on that -- if Ms. Siegler could
11 reinform me on that, in that regard, I would appreciate it."

14:09:51 12 And Ms. Siegler responded, "Judge, on the record -- I don't
13 have my notes in front of me, so I'm trying to remember this as
14 best I can. I know that I told Mr. Gaiser inconsistent at one
15 point because I went back and looked up the notes."

14:10:05 16 You see that?

14:10:06 17 **A** Yes.

14:10:07 18 **Q** Was this -- and she states, "The first time he contacted me,
19 it was by telephone. He called me. He got my name from Nathan
20 Foreman," and the Court asks, "Who's Nathan Foreman?"

14:10:21 21 Ms. Siegler responds, "Nathan Foreman is another inmate at
22 FCI medium. What else did you ask me?"

14:10:26 23 You see that?

14:10:28 24 **A** Yes.

14:10:28 25 **Q** Now, what did you understand -- or did you have any reason

Ms. Scardino Direct of Terry Gaiser

1 to suspect from this exchange between Ms. Siegler and the Court
2 that Foreman had come to Ms. Siegler at any previous time and
3 spoken to her about this case?

1 4 : 1 0 : 4 4 4 **A** No, I did not.

1 4 : 1 0 : 4 5 5 **Q** Okay. Did she ever mention to you, before trial, that
6 Prible had supposedly confessed to Beckcom and Foreman?

1 4 : 1 0 : 5 5 7 **A** No.

1 4 : 1 0 : 5 5 8 **Q** Okay. You just remember reading that in that -- that
9 handwritten letter right before trial?

1 4 : 1 1 : 0 0 10 **A** Correct. Correct.

1 4 : 1 1 : 0 1 11 **Q** Okay. Did she mention anything about Jesse Moreno?

1 4 : 1 1 : 0 5 12 **A** No.

1 4 : 1 1 : 0 6 13 **Q** Okay.

1 4 : 1 1 : 0 6 14 **A** That's a new name to me.

1 4 : 1 1 : 0 8 15 **Q** Okay.

1 4 : 1 1 : 0 8 16 **MS. SCARDINO:** If you could post Exhibit 72 at 13 to
17 14.

1 4 : 1 1 : 1 6 18 **BY MS. SCARDINO:**

1 4 : 1 1 : 1 6 19 **Q** And also at this pretrial hearing, you asked Ms. Siegler how
20 many phone calls she had had with Mr. Beckcom. Do you remember
21 this? Does this refresh your recollection?

1 4 : 1 1 : 2 7 22 **A** Yes.

1 4 : 1 1 : 2 8 23 **Q** Okay. And Ms. Siegler responded, "In altogether, there has
24 been about four or five phone calls where he's called me from
25 Beaumont." And you state, "He initiated all those phone calls?"

Ms. Scardino Direct of Terry Gaiser

1 Ms. Siegler says, "He has to because I can't call an inmate,
2 obviously."

1 4 : 1 1 : 4 4 3 Okay. Did you have any reason to believe that she could
4 call an inmate?

1 4 : 1 1 : 4 9 5 **A** No. I took her at her word.

1 4 : 1 1 : 5 1 6 **Q** Okay. Why was it important for you to know whether
7 Ms. Siegler or whether Mr. Beckcom initiated those phone calls?

1 4 : 1 1 : 5 9 8 **A** Same thing we've talked about. Who -- who was cultivating
9 who? Was the -- who had -- who precipitated the -- the
10 information? Who -- who was the instigator of the -- the
11 informant's testimony?

1 4 : 1 2 : 1 8 12 **MS. SCARDINO:** If you could post Exhibit 72 at 5
13 through 6.

1 4 : 1 2 : 2 6 14 **BY MS. SCARDINO:**

1 4 : 1 2 : 2 6 15 **Q** At this hearing, the issue of the alibi witness also came
16 up. Do you remember the alibi witness in this case?

1 4 : 1 2 : 3 2 17 **A** Yes, I do.

1 4 : 1 2 : 3 3 18 **Q** Okay.

1 4 : 1 2 : 3 6 19 **A** The -- she was a young girl that lived near the Pribles
20 that, apparently, had seen or claimed to have seen Jeff being
21 dropped off at his parents' house on the night these murders
22 occurred and seeing -- believing that it was Steve Herrera's car
23 that they arrived in. So I -- yeah, I remember her.

1 4 : 1 3 : 0 0 24 **Q** And did you learn about the alibi witness from the state?

1 4 : 1 3 : 0 3 25 **A** No, no. We developed that. I have -- we developed that,

Ms. Scardino Direct of Terry Gaiser

1 and I believe it was Mr. Prible, Jeff's dad, that may have
2 contacted her originally.

1 4 : 1 3 : 1 7 3 Q Did you attempt to find out about the alibi witness from the
4 state?

1 4 : 1 3 : 2 2 5 A I'm sure we talked about it at some point, but --

1 4 : 1 3 : 2 5 6 Q Okay.

1 4 : 1 3 : 2 6 7 A -- I mean, I would have to have subpoenaed her, and I'm sure
8 the state was aware of that subpoena. Now, what else they knew,
9 I do not know.

1 4 : 1 3 : 3 4 10 Q Okay. I'd like for you to look at Exhibit 72 at page 5 up
11 on the screen when you specifically asked, "Your Honor, at this
12 point, we would continue to make our request concerning the
13 information Curtis Brown may have, the alibi witness that we
14 discussed at the last session of court." Do you see that?

1 4 : 1 3 : 5 5 15 A Yes.

1 4 : 1 3 : 5 6 16 Q Does this refresh your recollection as to whether you asked
17 the state about that alibi witness at that pretrial hearing?

1 4 : 1 4 : 0 3 18 A Well, obviously, I did.

1 4 : 1 4 : 0 5 19 Q Okay. And Ms. Siegler said, in response to that, "Judge, I
20 re-interviewed or interviewed in great detail Detective Brown on
21 Wednesday afternoon and reasked him the question about
22 Mr. Gaiser's concern about this witness. He told me pretty much
23 the same thing that I stated on the record before, that he
24 vaguely recollects that. At the time, he didn't note the time
25 that the witness was talking about Prible, saying Prible was

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1 dropped off. He looked again for notes. He can't find any
2 notes."

1 4 : 1 4 : 3 3 3 Going down, he says -- she says, "And they think that the
4 witness was a female, and that's the best that I have as far as
5 what they can remember. And, again, there are no notes or
6 supplements reflecting any of that."

1 4 : 1 4 : 4 5 7 You see that?

1 4 : 1 4 : 4 7 8 **A** Yes.

1 4 : 1 4 : 4 8 9 **Q** Okay. And so I want to show you Exhibit 20, page 7.

1 4 : 1 4 : 5 8 10 Did you ever see this note in -- or was this note produced
11 to you from Mr. Prible's file?

1 4 : 1 5 : 0 5 12 **A** No.

1 4 : 1 5 : 0 6 13 **Q** Okay. Do you see there where it says, "12-year-old witness
14 saw them together," and it's dated December 10th, '01?

1 4 : 1 5 : 1 3 15 **A** I -- I had not seen that until it was shown to me by you.

1 4 : 1 5 : 1 9 16 **Q** Okay. To your knowledge, was the state aware of -- of the
17 alibi -- or did the state have any notes from this alibi witness
18 or about this alibi witness?

1 4 : 1 5 : 3 0 19 **A** They never presented any to me.

1 4 : 1 5 : 3 6 20 **Q** Did Siegler tell you about a meeting that she had had with
21 Foreman on August 8th, 2001?

1 4 : 1 5 : 4 4 22 **A** No.

1 4 : 1 5 : 4 8 23 **Q** Did Ms. Siegler or Mr. Wisner tell you about a meeting
24 between Siegler, Foreman and Beckcom at FCI Beaumont on
25 December 10th, 2001?

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A No. No.

Q Did Ms. Siegler ever tell you about Hermelio Herrero?

A Who?

Q Hermelio Herrero.

A No.

Q Did she mention to you that some of the same informants in Mr. Prible's case were also helping her on another murder case?

A No.

MS. MIRANDA: Objection to mischaracterization of the record.

THE COURT: Okay. You can take -- you can bring that up in cross.

MS. SCARDINO: Can you pull up Exhibit 32, please?

BY MS. SCARDINO:

Q I'm going to show you a photograph taken at FCI Beaumont on November 11th, 2001. Was this -- this was almost a year before trial; is that correct?

A Yes.

Q Okay. Can you identify any of the inmates in this photo?

A I see Jeff and Michael Beckcom.

Q Okay.

A That's -- I don't know the others.

Q Okay. Now, if you had known the identities of any other of these gentlemen and had seen those informant letters that I showed you earlier, could you have made use of this photo at

Ms. Scardino Direct of Terry Gaiser

1 trial?

14:17:16 2 **A** Well, I certainly could have talked to Jeff about it if
3 I -- if -- if I had seen it. But prior to trial, no, I had not
4 seen it.

14:17:28 5 And I don't remember -- it wasn't -- obviously, it was not
6 offered in evidence at trial.

14:17:35 7 **MS. SCARDINO:** Can you pull up Exhibit 170 at 3
8 through 7?

14:17:51 9 **BY MS. SCARDINO:**

14:17:52 10 **Q** And this is an excerpt from Ms. Siegler's closing argument
11 regarding the DNA evidence. And as you stated earlier, you
12 recall the theory -- the state's theory about the DNA evidence?

14:18:03 13 **A** Yes.

14:18:04 14 **Q** Okay. And what was that again?

14:18:05 15 **A** That the -- that their theory was that Jeff had ejaculated
16 and immediately shot Nilda in the back of the head.

14:18:14 17 **Q** Okay.

14:18:14 18 **MS. SCARDINO:** Can you post Exhibit 20 at page 4?

14:18:25 19 **BY MS. SCARDINO:**

14:18:26 20 **Q** Did you ever see this note in Jeff's file in the DA -- in
21 the file produced by the DA's office?

14:18:34 22 **A** No.

14:18:35 23 **Q** Okay.

14:18:35 24 **A** I mean, I know who Pam McInnis is.

14:18:38 25 **Q** Who's Pam McInnis?

Ms. Miranda Cross of Terry Gaiser

A She a serologist that worked in the -- for Fort Bend County, as I remember.

Q Okay. And you see that note says that semen lives up to 72 hours, teeth clenched shut?

A Yeah. I -- I've never seen that piece of paper till it was shown to me recently.

Q Okay.

MS. SCARDINO: I pass the witness, Your Honor.

THE COURT: Okay. Why don't we take our afternoon break. Ten minutes, please.

(Recess taken from 2:19 p.m. to 2:35 p.m.)

THE COURT: Please be seated.

Okay. Let's proceed with cross.

CROSS-EXAMINATION

BY MS. MIRANDA:

Q Mr. Gaiser, we just met, like, five seconds ago; is that correct?

A Yes.

Q So we have not discussed this case previously, ever?

A No, we have not.

Q All right. I want to go over a little bit of your testimony, and I'm going to put up there on the screen what has been marked as the -- Petitioner's Exhibit 95. I believe you were shown that a bit ago. And while he's putting that up there on the screen, I'd like to ask you a question.

Ms. Miranda Cross of Terry Gaiser

When you were filing that pretrial motion with respect to witness statements, can you tell -- tell the Court what you meant by witness statements? What were you looking for?

A Any statement given by a witness relative to the -- to the facts of the case.

Q And when you say "the facts of the case," we're talking about Mr. Prible's case; is that correct?

A Of course.

Q Okay. And so then, earlier, you were shown Exhibit 95. It's petitioner's exhibit, which was represented to you as a statement from Mr. Beckcom with respect to Anthony Davi. Do you see that at the bottom paragraph on there?

A No, I don't.

Q Okay.

MS. MIRANDA: Can you move it up a little bit?

BY MS. MIRANDA:

Q Okay.

A That's Mr. Beckcom's signature, I take it?

Q That's what it purports to represent, yes.

A Yes.

Q Okay. So my question is: Looking at this -- this statement with respect to what Mr. Beckcom said about Anthony Davi, what -- what part of this statement right here is relevant to Mr. Prible's case?

A Well, whatever Mr. Beckcom is doing to gain consideration

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1 for his testimony, whether it -- it has to do with my case or
2 other cases that he's been involved in trying to get
3 consideration for his involvement in, all are relevant to -- to
4 this trial.

1 4 : 3 7 : 0 3 5 Q Okay. So then this is relevant to the extent that it's --
6 represents what, a potential deal? Because this is -- there are
7 no facts relevant to Mr. Prible's case on this letter, correct?

1 4 : 3 7 : 1 3 8 A No. Mr. Beckcom is, once again, probing to see if he can
9 either get help for himself or someone else --

1 4 : 3 7 : 2 2 10 Q Okay.

1 4 : 3 7 : 2 2 11 A -- based upon information that he's discovered.

1 4 : 3 7 : 2 5 12 Q And that's -- and that's what I wanted to know. So this is
13 relevant to Mr. Beckcom and -- and impeachment of Mr. Beckcom;
14 is that correct?

1 4 : 3 7 : 3 1 15 A That's the way I see it, yes.

1 4 : 3 7 : 3 3 16 Q Okay. And to potential what, a deal that he has with the
17 state? Is that your testimony?

1 4 : 3 7 : 3 7 18 A No, to the lengths he's willing to go to -- to get
19 consideration for -- for -- from the state for whatever he's
20 doing.

1 4 : 3 7 : 4 7 21 Q Okay. And then how -- how would you have used this -- this
22 exhibit at trial?

1 4 : 3 7 : 5 3 23 A This may not have been used at trial, but it certainly would
24 have prompted more investigation into what was going on with
25 Mr. Beckcom and these other inmates.

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1 14:38:04 Q And to what end? What were you attempting to show the jury
2 about Mr. Beckcom?

1 14:38:08 A That he was a liar.

1 14:38:10 Q Okay.

1 14:38:11 A That he's willing to say anything to get --

1 14:38:14 Q Okay.

1 14:38:14 A -- a deal.

1 14:38:15 Q All right. Now, your testimony earlier that you requested
9 and the court ordered the prosecutor in this case to turn over
10 information regarding any deals that they might have with the
11 informants in this case -- is that correct?

1 14:38:30 A Yes.

1 14:38:30 Q And you testified with respect to a Petitioner's
14 Exhibit 43 -- and we'll put that up there -- that Ms. Siegler
15 had not disclosed this -- the Rule 35 letter that she wrote for
16 Mr. Moreno. Do you recall testifying to that?

1 14:38:53 A That's correct.

1 14:38:54 Q Okay. And then from this letter -- did Mr. Moreno testify
19 in Mr. Prible's case?

1 14:39:00 A No.

1 14:39:00 Q Okay. Whose case did he testify in?

1 14:39:03 A I believe it was the Herrero case.

1 14:39:04 Q Okay. And so this Rule 35 agreement that she wrote, it was
24 a deal that she made with Mr. Moreno in Mr. Herrero's case; is
25 that correct?

Ms. Miranda Cross of Terry Gaiser

1 4:39:13 1 **A** As far as I can tell.

1 4:39:14 2 **Q** Okay. This is not a deal that she made in Mr. Prible's
3 case; is that correct?

1 4:39:18 4 **A** That -- that's correct.

1 4:39:19 5 **Q** So if you asked the court for Ms. Siegler to turn over deals
6 that she made with informants in Mr. Prible's case, this letter
7 would not be one of them, would it?

1 4:39:27 8 **A** In the -- in the technical sense, no. In the broader sense
9 of what was -- what was being done with Mr. Beckcom and the
10 people at the FCI, yes, it would.

1 4:39:41 11 **Q** Okay. I want you to look at this letter, and I want you to
12 tell me, from this letter, what has anything to do with
13 Mr. Beckcom.

1 4:39:46 14 **A** That letter has nothing to do with Mr. Beckcom.

1 4:39:49 15 **Q** Okay. What does Mr. Moreno have to do with Mr. Beckcom?

1 4:39:52 16 **A** Apparently, from what I'm told after the fact --

1 4:39:55 17 **Q** Okay.

1 4:39:55 18 **A** -- they were inmates together at the FCI.

1 4:39:58 19 **Q** Mr. Moreno and Mr. Beckcom were inmates together at FCI
20 Beaumont. That's your testimony?

1 4:40:03 21 **A** That's -- I -- I -- that's what I understand.

1 4:40:06 22 **Q** You said you were told that. Who told you that?

1 4:40:09 23 **A** I believe it was the -- the lawyers for Mr. Prible.

1 4:40:13 24 **Q** And they told you that Mr. Beckcom and Mr. Moreno were
25 inmates together at FCI Beaumont?

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1 4 : 4 0 : 1 7 1 **A** I believe so.

1 4 : 4 0 : 1 8 2 **Q** Okay. And that's why you believe this document has
3 relevant -- is relevant to your case?

1 4 : 4 0 : 2 4 4 **A** Yes.

1 4 : 4 0 : 2 5 5 **Q** Okay. And then -- and how precisely would you have used a
6 deal made by a prosecutor in an unrelated murder case in your
7 case?

1 4 : 4 0 : 3 7 8 **A** At this point in time, you know, I -- looking back, I can't
9 answer what I would have done at that time. But it certainly
10 would have alerted me to what she was doing with other witnesses
11 in terms of what she was -- how far she would go to seek a
12 Rule 35.

1 4 : 4 0 : 5 7 13 **Q** "How far she would go" explain that for me.

1 4 : 4 1 : 0 0 14 **A** Well, what she would do. How far she would go.

1 4 : 4 1 : 0 3 15 **Q** So if she made a deal with an inmate in an unrelated murder
16 case, and she wrote a Rule 35 agreement for that inmate, what --
17 I'm not sure that I understand --

1 4 : 4 1 : 1 2 18 **A** Well, I certainly could cross Mr. Beckcom as to what his
19 understanding was of what Kelly Siegler would do for him.

1 4 : 4 1 : 1 9 20 **Q** "For him," for Mr. Beckcom?

1 4 : 4 1 : 2 1 21 **A** Yes.

1 4 : 4 1 : 2 2 22 **Q** But not for Mr. Moreno?

1 4 : 4 1 : 2 3 23 **A** Based on what he [sic] had done for other inmates.

1 4 : 4 1 : 2 8 24 **Q** You would cross --

1 4 : 4 1 : 2 9 25 **A** What she had done for other inmates.

Ms. Miranda Cross of Terry Gaiser

1 4 : 4 1 : 3 0 1 Q You would cross-examine Mr. Beckcom about what --

1 4 : 4 1 : 3 5 2 A I consider -- I would ask him if he knew Jesse Moreno, if
3 she [sic] knew Kelly Siegler's relationship with Mr. Moreno,
4 what she had done for Mr. Moreno.

1 4 : 4 1 : 4 5 5 Q Okay.

1 4 : 4 1 : 4 5 6 A I mean, I wouldn't -- when I cross-examined Mr. Beckcom, I
7 went into some of the things he had done in the past --

1 4 : 4 1 : 5 2 8 Q Sure.

1 4 : 4 1 : 5 2 9 A -- to seek --

1 4 : 4 1 : 5 3 10 Q Sure.

1 4 : 4 1 : 5 4 11 A -- to seek benefits from the government.

1 4 : 4 1 : 5 7 12 Q And this is all based on the presumption that Mr. Beckcom
13 and Mr. Moreno know each other, correct?

1 4 : 4 2 : 0 2 14 A No. It's based on what Kelly Siegler would do to -- how far
15 she would go --

1 4 : 4 2 : 1 0 16 Q So it's your testimony --

1 4 : 4 2 : 1 1 17 MS. SCARDINO: Judge --

1 4 : 4 2 : 1 1 18 THE COURT: Let him finish. Let him finish.

1 4 : 4 2 : 1 4 19 BY MS. MIRANDA:

1 4 : 4 2 : 1 4 20 Q It's your testimony --

1 4 : 4 2 : 1 5 21 THE COURT: No. Let him finish.

1 4 : 4 2 : 1 6 22 MS. MIRANDA: Oh, I apologize.

1 4 : 4 2 : 1 7 23 A How far she would go to seek dispensation for these -- these
24 snitches in the FCI.

1 4 : 4 2 : 2 8 25 BY MS. MIRANDA:

Ms. Miranda Cross of Terry Gaiser

1 4 : 4 2 : 2 9 1 Q And I understand what you're saying about the broader sense,
2 but what I'm trying to understand -- as a trial attorney who has
3 been practicing as long as you have, what I am trying to
4 understand is how you would use information that is irrelevant
5 to this case in the sense that Mr. Beckcom -- this has nothing
6 to do with Mr. Beckcom.

1 4 : 4 2 : 4 9 7 And I apologize. I'm going to stop and start over.

1 4 : 4 2 : 5 2 8 MS. SCARDINO: I'm going to -- okay. Thank you.

1 4 : 4 2 : 5 4 9 BY MS. MIRANDA:

1 4 : 4 2 : 5 4 10 Q I'm going to stop and start over.

1 4 : 4 2 : 5 6 11 Is it your testimony that you would be able to
12 cross-examine Mr. Beckcom with respect to deals that Ms. Siegler
13 made in unrelated cases --

1 4 : 4 3 : 0 5 14 A I --

1 4 : 4 3 : 0 5 15 Q -- with any inmate at FCI Beaumont? Is that what your
16 testimony is?

1 4 : 4 3 : 0 8 17 MS. SCARDINO: Objection, confusing, Your Honor.

1 4 : 4 3 : 1 0 18 THE COURT: I -- I think the witness understands it.
19 It's --

1 4 : 4 3 : 1 2 20 THE WITNESS: Yeah.

1 4 : 4 3 : 1 4 21 THE COURT: He's already said he doesn't know what he
22 would have done, looking back now, 18 years ago, 17 years ago.

1 4 : 4 3 : 2 1 23 But go ahead and answer it as best you can.

1 4 : 4 3 : 2 4 24 A Well, it certainly demonstrates how far she would go in aid
25 of someone that was an informant from the FCI.

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14:43:32 1 **BY MS. MIRANDA:**

14:43:32 2 **Q** She would write them a Rule 35 letter?

14:43:34 3 **A** And I can certainly investigate that to see if there are
4 others that she had done that with --

14:43:38 5 **Q** Okay.

14:43:38 6 **A** -- but I couldn't investigate this because --

14:43:39 7 **Q** Okay.

14:43:39 8 **A** -- I never saw it.

14:43:41 9 **Q** Okay. And then you --

14:43:42 10 **MS. SCARDINO:** Objection, Your Honor.

14:43:43 11 **THE COURT:** Just a second.

14:43:44 12 **MS. SCARDINO:** Excuse me. Just -- I would just ask
13 that Ms. Miranda allow him to finish his statement.

14:43:48 14 **THE COURT:** Yeah. Fair enough.

14:43:49 15 **MS. MIRANDA:** I apologize, Your Honor.

14:43:51 16 **THE COURT:** Fair enough.

14:43:51 17 **MS. MIRANDA:** I apologize.

14:43:52 18 **BY MS. MIRANDA:**

14:43:52 19 **Q** So you would investigate to see what other inmates that she
20 made deals with in other cases?

14:43:58 21 **A** Yeah, from the FCI.

14:44:00 22 **Q** Okay. Not related to Mr. Prible?

14:44:03 23 **MS. SCARDINO:** Objection, Your Honor, mischaracterizes
24 evidence.

14:44:06 25 **A** Well --

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THE COURT: Well, the whole issue of the connection

with Mr. Prible's case may depend on whether Mr. Beckcom and

Mr. -- and Mr. Moreno knew each in other prison. I can see

that. But if they knew each other, and Moreno told Beckcom that

this is a prosecutor who will not only write a letter, but

actually go to an out-of-state court and testify on behalf of a

defendant, I can see that it would be relevant.

But I don't have any idea whether Moreno and -- and

Beckcom knew each other.

THE WITNESS: That -- I couldn't have known that at

the time. I had no reason to believe there was a relationship.

I didn't know who Mr. Moreno was.

THE COURT: It might be worth asking a question,

though, mightn't it?

THE WITNESS: Of course, if I had seen the letter.

THE COURT: That's all I'm saying.

THE WITNESS: Yeah. Yes.

BY MS. MIRANDA:

Q And just -- because I think this is a critical point. I

need to be clear on the record.

So in order for you to know whether Mr. Moreno knows

Mr. Beckcom, Ms. Siegler would have to disclose to you every

agreement or Rule 35 that she made with federal inmates in the

federal pen so that you could ask them whether they knew

Mr. Beckcom. Is that your testimony?

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A No, that's not my testimony. My --

Q Okay. So if there's no evidence in this record that Mr. Beckcom knew Mr. Moreno, then how would this letter -- how would Ms. Siegler know to disclose this letter to you?

MS. SCARDINO: Objection, Your Honor, calls for speculation and confusing.

THE COURT: Well --

MS. MIRANDA: Your Honor, he's the one that indicated that he would have liked to have --

THE COURT: I'm going to allow it. I'm going to allow it.

A What's the question?

THE COURT: The question is how this letter would have helped you and whether it -- you're making a claim as broad as Ms. Siegler should have disclosed to you every deal she had ever done with a federal inmate.

THE WITNESS: Well, seeing this now, you know, knowing what I know now, this letter would have been very important because it shows that she was making deals with other inmates in the same facility.

THE COURT: Well, but in fairness, a lot of prosecutors do that, don't they? State prosecutors make deals with federal inmates?

THE WITNESS: This is -- I haven't seen that many, Judge. I may be --

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1 4 : 4 6 : 2 7 1 **THE COURT:** But Ms. Miranda is asking whether you are
2 claiming as much as Ms. Siegler -- it was incumbent on
3 Ms. Siegler to turn over all deals she had ever made with a
4 federal inmate. I don't think that's what you're saying.

1 4 : 4 6 : 4 4 5 **THE WITNESS:** No. No, that's not what I'm saying.

1 4 : 4 6 : 4 6 6 **THE COURT:** Well, why don't you explain what you are
7 saying.

1 4 : 4 6 : 4 9 8 **THE WITNESS:** I'm trying -- she's willing -- how far
9 is she willing to go with inmates in the FCI that would -- you
10 can't -- I can't know until I investigate this letter, and I
11 can't know unless I know all the -- the people that she's making
12 deals with at the FCI. Obviously, there were others she was
13 making deals with.

1 4 : 4 7 : 1 5 14 **BY MS. MIRANDA:**

1 4 : 4 7 : 1 5 15 **Q** And I understand that. From a defense attorney perspective,
16 is there -- you would want to know everything, would you not?

1 4 : 4 7 : 2 2 17 **A** Of course.

1 4 : 4 7 : 2 2 18 **Q** Everything in the prosecutor's file; is that correct?

1 4 : 4 7 : 2 5 19 **A** Yes.

1 4 : 4 7 : 2 5 20 **Q** All right. But my question -- you were asked earlier
21 specifically about this exhibit in response to what was ordered
22 by the court in this particular case; is that correct?

1 4 : 4 7 : 3 9 23 **A** Say that again, please.

1 4 : 4 7 : 4 2 24 **Q** When you were asked by Mr. Prible's attorney about this
25 exhibit, you were discussing the order that was entered by the

Ms. Miranda Cross of Terry Gaiser

1 trial court in this case, in Mr. Prible's case; is that correct?

1 4 : 4 7 : 5 4 2 **A** Certainly.

1 4 : 4 7 : 5 4 3 **Q** And you asked the trial court for Ms. Siegler to disclose
4 deals that she made with individuals who were testifying in this
5 case; is that correct?

1 4 : 4 8 : 0 4 6 **A** Well, individuals who are witnesses or prospective witnesses
7 in the case.

1 4 : 4 8 : 0 8 8 **Q** Okay. Witnesses -- fair enough. Witnesses or prospective
9 witnesses in this case. Is that -- that's correct? That was
10 your understanding?

1 4 : 4 8 : 1 6 11 **A** Yes.

1 4 : 4 8 : 1 6 12 **Q** Okay. And then, to your knowledge, was Mr. Moreno a witness
13 or a prospective witness in this case?

1 4 : 4 8 : 2 1 14 **A** Not to my knowledge, no.

1 4 : 4 8 : 2 3 15 **Q** Thank you.

1 4 : 4 8 : 2 4 16 **A** Not at this...

1 4 : 4 8 : 3 0 17 **Q** All right. And now I'm going to put up there what has been
18 marked as Petitioner's Exhibit 44, which is the Rule 35
19 agreement that Ms. Siegler wrote for Mr. Foreman. Do you recall
20 being asked about this?

1 4 : 4 8 : 5 2 21 **A** Yes.

1 4 : 4 8 : 5 2 22 **Q** All right. And if you will look at that, what case was this
23 written in?

1 4 : 4 8 : 5 9 24 **A** The Herrero case.

1 4 : 4 9 : 0 1 25 **Q** Okay. Thank you.

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MS. MIRANDA: If I may have a moment, Your Honor.

THE COURT: Sorry?

MS. MIRANDA: May I have a moment?

THE COURT: Yes. Yes, you may.

BY MS. MIRANDA:

Q Now, also, just to be clear, earlier during your testimony, you were asked by Ms. Scardino whether, with respect to the documents that you were shown, you could make use of those documents. Do you recall that?

A Yes.

Q Okay. Now, it's not your testimony, is it, that whether or not you could make use of a document, that's not the standard for turning over Brady material, is it?

A Of course not.

Q Okay.

Now I'm going to show you what has been marked as Petitioner's Exhibit 30, and specifically I'm going to look at what is marked up at the top at page 5, and that bottom paragraph.

Can you read that bottom paragraph?

A "At first, when talking about the murder, Prible says -- Prible was taking a position of innocence. He said that Steve Herrera was his best friend. He said that he had been screwing Nilda, that she and Steve had an open relationship. He said that he had admitted to being at Steve's house that day, but

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1 Steve had driven him home and that he had a witness who saw him
2 being dropped off."

1 4 : 5 1 : 0 3 3 Q And then you can read the next line?

1 4 : 5 1 : 0 9 4 A "I later found out that this witness was then 12 or 13
5 years -- was a then or 12- or 13-year-old neighbor who had
6 gotten up to use the restroom. But then --"

1 4 : 5 1 : 2 3 7 Q All right.

1 4 : 5 1 : 2 4 8 A Is that enough?

1 4 : 5 1 : 2 5 9 Q No, go ahead. Finish that paragraph.

1 4 : 5 1 : 2 6 10 A "But then a question came to my mind. If Steve took Prible
11 home from his house that night, when did he have time to have
12 sex with Nilda? That's when I began to realize that he was
13 guilty and, from then on, began to press him about the murder."

1 4 : 5 1 : 4 0 14 Q All right. Now state -- or, I'm sorry, Petitioner's
15 Exhibit 30, you recognize that, don't you, as the handwritten
16 notes that you were provided by Ms. Siegler?

1 4 : 5 1 : 4 9 17 A Correct.

1 4 : 5 1 : 4 9 18 Q Okay. And so when -- when you testified earlier with
19 respect to Petitioner's Exhibit 109, where you were shown a note
20 about a 13-year-old girl and an alibi witness, and you testified
21 that you did not get those notes -- do you recall that?

1 4 : 5 2 : 0 5 22 A That's correct.

1 4 : 5 2 : 0 6 23 Q Okay. But you're not testifying that you didn't get that
24 information. You just didn't get that information in that form;
25 is that correct?

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A That's correct.

Q Because it would appear that she gave that information to you in -- in Mr. Beckcom's written statement?

A Well, if you call -- if you believe that that identifies the witness. I don't know when Mr. Prible talked -- talked to this young lady, if he, indeed, did.

Q Okay.

A "Talked" referring to Jeff's father.

Q Sure. And I understand that part. I'm just simply referring to -- to the note that you saw earlier when you said you didn't see that note. But the information in that note you received in the way of this handwritten statement from Mr. Beckcom?

A Well, obviously, in that handwritten note, Curtis Brown knew who that witness was and what the name of that witness was.

Q All right.

A It's an alibi witness. That's certainly material to this case.

MS. MIRANDA: Objection, Your Honor. Nonresponsive.

THE COURT: Ask another question. You think it was nonresponsive, ask a follow-up.

MS. MIRANDA: That's fine. I think the record speaks for itself on that, Your Honor.

BY MS. MIRANDA:

Q Is it fair to say that you're not a fan of jailhouse

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1 informant testimony?

1 4 : 5 3 : 1 9 2 **A** Of course I'm not.

1 4 : 5 3 : 2 0 3 **Q** Okay. Why is that?

1 4 : 5 3 : 2 3 4 **A** I believe that it's fundamentally unreliable. After Jeff's
5 case, the legislature even took action to the effect of -- of
6 passing a rule of evidence about corroboration of jailhouse
7 informants.

1 4 : 5 3 : 3 7 8 **Q** All right. And so when -- when you saw that there was going
9 to be a jailhouse informant in this case, what was your
10 reaction?

1 4 : 5 3 : 4 9 11 **A** Oh, another one of these.

1 4 : 5 3 : 5 1 12 **Q** Okay.

1 4 : 5 3 : 5 2 13 **A** Another snitch.

1 4 : 5 3 : 5 3 14 **Q** And did you think that it was important to attempt to
15 impeach this jailhouse informant?

1 4 : 5 3 : 5 8 16 **A** Of course.

1 4 : 5 3 : 5 9 17 **Q** Okay. And the best way, would you agree with me, to impeach
18 a jailhouse informant is to point out and highlight the sort of
19 inherent unreliability of their testimony; is that correct?

1 4 : 5 4 : 1 2 20 **A** That's one way.

1 4 : 5 4 : 1 3 21 **Q** Okay. To show that they have a motive to lie?

1 4 : 5 4 : 1 7 22 **A** That's one way.

1 4 : 5 4 : 1 8 23 **Q** All right. That they want to get their sentence reduced,
24 perhaps?

1 4 : 5 4 : 2 1 25 **A** That's one way.

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Q Okay. To -- to show that they have a criminal history?
They're, in fact, in jail?

A That's one way.

Q All right. And perhaps even on a felony?

A That's a way.

Q All right. What about demonstrating to the jury that the
information that the jailhouse informant has actually came from
a different source?

A Of course. That was part of my cross-examination.

Q Okay. And to show that the defendant could have come by
that information some other way, correct?

A That the informant could have come by that information some
other way.

Q Yes.

A Not the defendant.

Q Not the defendant. The informant who's coming to testify in
court, could have gotten that information from somewhere other
than the defendant --

A Right.

Q -- is that correct?

A Correct.

Q Or even just, generally, the informant's character for
truthfulness?

A Right. When a federal judge in California says that he's a
liar, that helps also.

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1 4:55:18 1 Q Okay. Exactly. And so then in this case, did you do all
2 those things with respect to Mr. Beckcom?

1 4:55:24 3 A I certainly tried.

1 4:55:25 4 Q Okay. Did you show the jury that he had a motive for
5 testifying?

1 4:55:29 6 A Of course.

1 4:55:29 7 Q All right. And that, actually, not only was he testifying
8 in this case, but he had actually done it before, hadn't he?

1 4:55:35 9 A Yes.

1 4:55:35 10 Q I believe that in closing arguments, it was referred to as a
11 craft that he was practiced at. Do you recall that?

1 4:55:43 12 A Yes.

1 4:55:44 13 Q All right. And you also were able to point out to the jury
14 that he was a quadruple felony; is that correct?

1 4:55:50 15 A Best I remember.

1 4:55:52 16 Q A capital murderer?

1 4:55:52 17 What about his character for truthfulness? Did you do
18 anything to attack Mr. Beckcom's character for truthfulness?

1 4:56:01 19 A Well, if a federal judge in California had made statements
20 from the bench concerning his credibility and the fact that he
21 was not a credible person, that he was a liar.

1 4:56:12 22 Q So you were able to show the jury in this case that he had
23 actually, in fact, lied in another case --

1 4:56:18 24 A Correct.

1 4:56:18 25 Q -- as found by a federal Judge?

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A As I remember, I did that.

Q Did you call any witnesses with respect to Mr. Beckcom?

A I think I called Bret Liedtke and --

Q Okay. And then Mr. Liedtke, what -- why did you call him?

A Because Mr. Liedtke was aware that all this information about Jeff's case was readily available to anyone at the FCI, that everybody that -- that anybody who could read could say that Jeff had confessed to it.

Q Okay. When you say "anybody who could read," why do you say "anybody who could read"?

A Well, it was public record. It was --

Q Okay. And, in fact, you introduced evidence that Mr. Prible was showing his probable cause affidavit around prison; is that correct?

A Yes.

Q All right. And Mr. Liedtke testified that Prible talked to -- his case to a lot of people?

A Right. Talked all the time.

Q Talked all the time, to the point that Mr. Liedtke told him to stop talking; is that correct?

A Right.

Q All right. And so this probable cause affidavit, do you recall what was in -- what kind of information was in the probable cause affidavit?

A I don't remember.

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14:57:27 1 Q All right.

14:57:28 2 A I'm sure it's available.

14:57:29 3 Q All right.

14:57:35 4 **MS. MIRANDA:** Can you give me a second, Your Honor?

14:57:42 5 **THE COURT:** Yes.

14:57:42 6 **BY MS. MIRANDA:**

14:57:42 7 Q And I don't know. It might be easier if we hand you a copy
8 of this, but can you take a second and review this? Do you
9 recall seeing this at trial?

14:57:56 10 A Yes. I believe it was entered in evidence as an exhibit.

14:58:00 11 Q All right. And I'll give you just a second. And there's,
12 actually, a second page, so if we need to hand you a physical
13 copy, we can do that.

14:58:33 14 *(Witness reviews document.)*

14:58:34 15 **BY MS. MIRANDA:**

14:58:37 16 Q And I'll wait to proceed when you're ready, Mr. Gaiser.

14:58:40 17 A I can't see the whole thing.

14:58:42 18 **MR. d'HEMECOURT:** Are you ready to move?

14:58:43 19 **THE WITNESS:** Pardon?

14:58:44 20 **MR. d'HEMECOURT:** Are you ready for me to move it up?

14:58:46 21 **THE WITNESS:** Yeah. Please.

14:58:47 22 Can you just hand it to me?

14:58:58 23 **MR. d'HEMECOURT:** I can just hand it to him.

14:59:10 24 **THE WITNESS:** Do you know what page it's on?

14:59:13 25 **MS. MIRANDA:** Oh, may I approach, Your Honor?

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THE COURT: Yes, you may.

Can we put another copy up there?

MS. MIRANDA: I believe we probably can.

THE COURT: Yeah. Thank you.

THE WITNESS: Thank you.

THE COURT: Can we move it down a little bit?

(Witness reviews document.)

A What is your question?

BY MS. MIRANDA:

Q My question is that within this affidavit, does it contain the names of the victims?

A Yes.

Q All right. The location of their bodies in the house?

A Yes.

Q The manner of their death?

A I think it does, yes.

Q All right. Information about even the DNA, is that contained in the probable cause affidavit?

A Well, the --

Q And so your point at trial, was it not, was that anyone who had this type of information that was around Jeffrey Prible could have gotten this information from the probable cause affidavit; is that correct?

A And news reports, yes.

Q Okay. I'm going to show you -- I'm going to -- actually,

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1 I'm going to attempt to ask this question without putting them
2 up there. If you need the letters, then please let me know, and
3 I will put them up there.

15:01:22 4 But earlier during your testimony, you were asked about
5 letters that were written from Mr. Gonzalez, Mr. Walker, and
6 Mr. Mark Martinez. Do you recall that? Do you recall those
7 letters?

15:01:34 8 **A** Yeah. I had never seen those letters prior to being shown
9 that.

15:01:37 10 **Q** Okay. And so if you had seen those letters, what would you
11 have assumed with respect to the information that they had about
12 Mr. Prible?

15:01:49 13 **MS. SCARDINO:** Objection, Your Honor, calls for
14 speculation.

15:01:51 15 **A** I --

15:01:52 16 **THE COURT:** He can answer it.

15:01:53 17 If you can.

15:01:54 18 **THE WITNESS:** I can't answer that. I can't assume
19 what they might have known.

15:01:58 20 **BY MS. MIRANDA:**

15:01:59 21 **Q** Okay. So you would have received those letters, and you
22 wouldn't have done anything with them?

15:02:02 23 **A** Oh, I didn't say that. I said I wouldn't assume anything
24 from the letters other than there seemed to be a large -- a
25 majority of activity going on at the FCI involving these

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1 informants and Kelly Siegler.

15:02:17 2 Q Okay. And why do you say Kelly Siegler?

15:02:24 3 A If she had given them to me, I would assume that it would
4 involve her.

15:02:28 5 Q Okay. So now you can assume?

15:02:31 6 A Yeah.

15:02:31 7 Q So now you're going to assume it has to do with Kelly
8 Siegler. Is that your testimony?

15:02:35 9 MS. SCARDINO: Objection, Your Honor, harassing the
10 witness.

15:02:37 11 THE COURT: I think you're saying the fact they're
12 writing to Kelly Siegler would have alerted you to inquire
13 further. Is that what you're saying?

15:02:44 14 THE WITNESS: Yes.

15:02:45 15 MS. MIRANDA: Okay. And if I may, Your Honor, I would
16 like to probe a little bit.

15:02:50 17 BY MS. MIRANDA:

15:02:50 18 Q When you say assume Kelly Siegler, are you assuming that she
19 is somehow complicit in these letters? Is that your testimony
20 before the Court?

15:02:58 21 A No.

15:02:59 22 Q Okay. Then what is your testimony?

15:03:01 23 A That the letters would have alerted to -- me to something
24 going on at the FCI involving all these informants, and I would
25 have to investigate further to -- to determine what exactly was

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1 going on.

15:03:16 2 **Q** Okay. And would you agree with me that there's a big
3 difference between assuming that something is going on at FCI
4 Beaumont and assuming Kelly Siegler is involved?

15:03:25 5 **A** At this point in time, it's different than what I might have
6 done back then. So I -- you know, I assume -- I assume now
7 because the more I know about the case. Back then, I don't know
8 what I would have assumed.

15:03:37 9 **Q** Okay. And in what you know about the case, was that
10 information provided to you by the defense?

15:03:43 11 **A** By the defense, by his prior lawyers, by...

15:03:47 12 **Q** Okay. Fair enough. So then -- then let's look at these
13 letters individually.

15:03:54 14 I'm going to put up what has been marked as Petitioner's
15 Exhibit 36.

15:04:14 16 Is there anything in that letter that suggests that Mr. --
17 Ms. Siegler reached out to federal informants in the pen?

15:04:25 18 **A** No. I mean, it's -- Carl Walker is writing her a letter.

15:04:30 19 **Q** So it appears that Mr. Walker reached out to Ms. Siegler; is
20 that correct?

15:04:34 21 **MS. SCARDINO:** Objection, Your Honor, calls for
22 speculation.

15:04:36 23 **THE COURT:** Well, I don't think that's too much to
24 deduce. This letter sounds like he's ready to testify, doesn't
25 it?

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THE WITNESS: The -- yeah. It -- it doesn't establish

that he is the one that initiated the contact with Ms. Siegler.

All it indicates is that -- that he wants help with his sentence

based upon what Jeff may or may not have said to him.

BY MS. MIRANDA:

Q And what would you have done --

A I would wonder --

Q I'm sorry.

A If I had that, I would wonder how he got Kelly Siegler's

name --

Q All right.

A -- in this case.

Q Okay.

A I would begin to investigate that.

Q All right.

A I would start asking questions in those pretrial hearings

about these other inmates and how they initiated contact with

her.

Q Okay. Fair enough.

Would you have attempted to introduce these letters at

trial?

A I don't know. That would depend on how the facts developed.

Q Would you have attempted to call any of these witnesses at

trial?

A Same answer. It would depend on how the facts played out

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1 prior to trial in terms of who initiated contact, what the
2 contact was about, how often the contact was.

15:05:54 3 Q If you had known that there were other inmates in FCI
4 Beaumont that were on the government's witness list, would you
5 have investigated that?

15:06:05 6 A Certainly.

15:06:08 7 Q Do you recall whether you were aware of that?

15:06:10 8 A The government's -- the state's witness list?

15:06:13 9 Q Whether you were aware that there were other informants at
10 FCI Beaumont on this state's witness list?

15:06:20 11 A No. The only name I had heard with respect to Michael
12 Beckcom was Nathan Foreman.

15:06:26 13 Q All right. You don't recall the name Mark Martinez?

15:06:30 14 A No.

15:06:32 15 Q Or Jesse Gonzalez?

15:06:33 16 A No.

15:06:34 17 Q Felix Gonzalez?

15:06:36 18 A No.

15:06:37 19 Q Did you ever -- do you recall, in this case, providing
20 Mr. Liedtke with a copy of the government's subpoena list?

15:06:46 21 A I don't think there would be any reason for me to have given
22 that to Mr. Liedtke.

15:06:50 23 Q All right.

15:06:52 24 A I don't know. I certainly don't remember that --

15:06:55 25 Q Okay.

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A -- let me put it that way.

MS. MIRANDA: May I approach, Your Honor?

THE COURT: You may.

BY MS. MIRANDA:

Q I'm going to show you what's been marked as Petitioner's Exhibit 85, and at this point I just want you to read it and see if that refreshes your recollection.

MS. SCARDINO: Can we get a copy of that?

MS. MIRANDA: Yes.

MR. d'HEMECOURT: It's your 85.

MS. SCARDINO: My 85?

MS. MIRANDA: Yes.

(Witness reviews document.)

A I have not seen this before.

BY MS. MIRANDA:

Q All right. My question is --

A Oh, there's a back. There's this other --

THE COURT: Sorry?

THE WITNESS: There's a second page. I didn't realize.

THE COURT: Okay.

BY MS. MIRANDA:

Q And I believe it's the last part of the second page, if you'll look at that. The back page.

(Witness reviews document.)

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A I've never seen this.

BY MS. MIRANDA:

Q Okay. My question is: Does that refresh your recollection --

THE COURT: What are we looking at? I'm sorry.

MS. MIRANDA: I apologize. We can put it -- put it up there.

THE COURT: Who has written this? This is from the captain at Beaumont to a technician at Beaumont to the associate warden; is that correct?

MS. MIRANDA: Yes.

BY MS. MIRANDA:

Q And does it state in here that you -- Mr. Liedtke reported that you showed him a copy of the subpoena list?

MS. SCARDINO: Objection, Your Honor. The document says what it says, but he can't testify to it. He just said he -- it doesn't refresh his recollection, and he didn't write the document.

THE COURT: What's the purpose of this document?

MS. MIRANDA: Well, to under- -- the purpose of this document is to see if it refreshes his recollection as to whether he provided the subpoena list -- the government's subpoena list to Mr. Liedtke. Mr. Liedtke, in this --

THE COURT: Liedtke. It says -- but how -- how would this refresh him if he never saw it before?

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15:09:58 1 **MS. MIRANDA:** Just -- just to remind him of whether or
2 not he did that, whether or not he showed -- because --

15:10:03 3 **THE COURT:** He would have no basis for knowing whether
4 this document's authentic or accurate or anything else, would
5 he?

15:10:08 6 **MS. MIRANDA:** No. And, Your Honor, this is not -- I'm
7 not introducing this as an exhibit. This was simply to refresh
8 his recollection.

15:10:14 9 **THE COURT:** Does this help refresh your recollection?

15:10:16 10 **THE WITNESS:** No, Judge. Part of it is erroneous,
11 according to my recollection.

15:10:21 12 **MS. MIRANDA:** And for the record, Your Honor, this is
13 the petitioner's exhibit. This is not our exhibit. This is
14 their exhibit.

15:10:25 15 **THE COURT:** Well, but exhibits can be appropriate for
16 one witness and not the other. I mean, I don't know how this
17 could refresh him if he's not seen it before and he doubts its
18 accuracy. But --

15:10:34 19 **MS. MIRANDA:** Your Honor, I don't believe he said he
20 doubted its accuracy.

15:10:37 21 **THE COURT:** I thought --

15:10:37 22 **THE WITNESS:** I just did.

15:10:38 23 **THE COURT:** I thought you said it was erroneous.

15:10:40 24 **THE WITNESS:** Yes.

15:10:41 25 **MS. MIRANDA:** Okay.

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15:10:41 1 **BY MS. MIRANDA:**

15:10:41 2 **Q** So then you do recall that you did not show Mr. Liedtke the
3 government's subpoena list?

15:10:47 4 **A** The first -- the first erroneous statement is that I was
5 given the subpoena list and told that I could -- the -- but a
6 copy could not be provided to the involved inmates. That was
7 never part of any agreement I had with the state, and as far as
8 I know, I never saw their subpoena list.

15:11:10 9 **Q** Okay. So your testimony is you did not see their subpoena
10 list?

15:11:13 11 **A** No.

15:11:14 12 **Q** All right.

15:11:34 13 **MS. MIRANDA:** One more moment, Your Honor. I think
14 I'm almost done.

15:11:37 15 **BY MS. MIRANDA:**

15:11:37 16 **Q** Were you curious about Mr. Foreman at trial?

15:12:01 17 **A** I was just hopeful that no more people were coming at that
18 point because I didn't think there were others.

15:12:08 19 **Q** All right. So you just testified that if you knew that
20 there were other informants that had information, that you would
21 want to investigate them. Was that your testimony?

15:12:16 22 **A** I would want to investigate further whether it was them or
23 what their stories were or how they were involved --

15:12:24 24 **Q** All right.

15:12:24 25 **A** -- or what their backgrounds were. What they were in for,

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1 what --

15:12:30 2 Q And did you do that with respect to Mr. Foreman?

15:12:33 3 A I don't believe so, but I really don't remember at this
4 point.

15:12:36 5 Q So -- so you knew there was at least one other person that
6 was mentioned by Mr. Beckcom; is that correct?

15:12:41 7 A I knew Mr. Beckcom said that Mr. Foreman was present.

15:12:45 8 Q Okay. But you did not investigate him at the time of trial?

15:12:48 9 A Not that I remember.

15:12:49 10 Q But you would have investigated Carl Walker?

15:12:52 11 A If -- if I had known he was going to give a statement
12 against my client, of course.

15:12:58 13 Q Okay. And you would have investigated Mr. Martinez?

15:13:02 14 A If he was going to give a statement against my client, yes.

15:13:05 15 Q Okay. So is it your testimony, then, that you weren't
16 concerned about Mr. Foreman's credibility?

15:13:11 17 A No. He was not going to be a witness, as far as I knew.

15:13:15 18 Q Okay.

15:13:16 19 A Anything -- anything about Mr. Foreman would be hearsay.

15:13:21 20 Q And so you wouldn't have used anything about Mr. Foreman at
21 trial. Is that your testimony?

15:13:26 22 MS. SCARDINO: Objection, Your Honor, vague.

15:13:28 23 A Well, all I had was his name.

15:13:34 24 THE COURT: Well, there's evidence in the case that
25 Mr. Foreman met with Ms. Siegler and with an investigator.

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THE WITNESS: I knew nothing about that.

THE COURT: Okay. The question is: If you had known that, and if you had known they had considered him too unreliable to use as a witness, would that have been of interest to you?

THE WITNESS: Of course it would, Judge.

THE COURT: Okay. That's all she's asking, I think.

MS. MIRANDA: Actually, that was not my question, Your Honor.

THE COURT: Well, then, rephrase it. It sounded like that to me.

You said, "And so you wouldn't have used anything about Mr. Foreman at trial. Is that your testimony?" Without knowing what the evidence is as to Mr. Foreman, how can he answer that?

MS. MIRANDA: His -- his testimony was that if he knew there were other inmates at FCI Beaumont that had information on Mr. Prible, he would have wanted to investigate.

THE COURT: Right. Mr. Foreman claimed to have information.

MS. MIRANDA: Mr. Beckcom -- I'm talking about what he knew at the time of trial. At the time of trial, he knew that Mr. Beckcom indicated that Mr. Foreman was present during the confession.

A All I had was Beckcom's hearsay statement that somebody else

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1 overheard a conversation. I knew nothing about that and -- and
2 had no desire to go find someone that might corroborate
3 Beckcom --

15:14:58 4 **BY MS. MIRANDA:**

15:14:58 5 **Q** Okay

15:15:00 6 **A** -- at that point in time.

15:15:01 7 **Q** Fair enough.

15:15:01 8 **MS. MIRANDA:** I'll pass the witness.

15:15:03 9 **THE COURT:** Anything further?

15:15:04 10 **MS. SCARDINO:** No, Your Honor. We pass the witness.

15:15:06 11 **THE COURT:** You may step down. Thank you very much.

12 You may step down. Thank you very much.

15:15:10 13 **THE WITNESS:** Thank you, Judge.

15:15:13 14 **THE COURT:** Does that bring us to a close for today?

15:15:16 15 **MS. SCARDINO:** Yes, Your Honor. I just had a couple
16 of housekeeping measures I wanted to take up with the Court.

15:15:20 17 **THE COURT:** Okay.

15:15:22 18 **MS. SCARDINO:** I understand, from your local rules,
19 that all the exhibits on the pretrial order are admitted for
20 purposes --

15:15:27 21 **THE COURT:** Unless somebody objects to them.

15:15:28 22 **MS. SCARDINO:** Yes, Your Honor. And we had that
23 telephonic hearing last week where we addressed some of the
24 objections that the respondent had, and I -- I believe I
25 understood your ruling to be that they're admitted, or do we

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1 still need to take --

15:15:47 2 **MS. MIRANDA:** I believe it was that we were going to
3 take them up when they came up.

15:15:49 4 **THE COURT:** Yeah. I thought that was what we said.

15:15:51 5 **MS. SCARDINO:** Okay. Okay. I just wanted to make
6 sure that before this is over, we -- I've properly --

15:15:57 7 **THE COURT:** Have these exhibits come up? I didn't
8 hear any objection to the exhibits while we've been receiving
9 testimony.

15:16:02 10 **MS. MIRANDA:** I don't believe they've been offered,
11 Your Honor, but we haven't had any objections.

15:16:05 12 **MS. SCARDINO:** The ones that you've objected to, you
13 don't think they've come up yet?

15:16:08 14 **MS. MIRANDA:** No, the ones -- I don't believe so.

15:16:10 15 **THE COURT:** I've always found it much easier to take
16 up an objection to a document or exhibit when we're in -- in the
17 context of a trial. That way we can better judge things like
18 relevance or prejudice or --

15:16:22 19 **MS. SCARDINO:** Okay. So in my -- just so I'm clear,
20 if -- if it's listed on the pretrial order, and it's not
21 objected to during this hearing, it's going to be admitted?

15:16:32 22 **THE COURT:** Well, no, she's registered her objection.

15:16:34 23 **MS. SCARDINO:** Okay.

15:16:35 24 **THE COURT:** So we have an objection we have to deal
25 it.

15:16:37 1 **MS. SCARDINO:** Okay.

15:16:37 2 **THE COURT:** If it doesn't come up at all during the
3 course of the trial, you can either decide you don't need the
4 exhibit, or we're going to have a discussion in the abstract
5 about whether the exhibit ought to be admitted.

15:16:45 6 **MS. SCARDINO:** Okay. I understand, Your Honor. Thank
7 you.

15:16:47 8 **THE COURT:** Anything else?

15:16:48 9 **MS. SCARDINO:** One more additional exhibit [sic],
10 Your Honor.

15:16:50 11 **THE COURT:** Okay.

15:16:51 12 **MS. SCARDINO:** I wanted to ask if you might allow
13 Mr. Prible to have a hug with his family? Is that -- would that
14 be something the Court could allow?

15:16:59 15 **THE COURT:** It's really not my call. Does security --

15:17:02 16 **THE MARSHAL:** Your Honor, I think TDC has a -- a
17 policy, because of where he's being housed, that there's not
18 even -- they don't get contact visits.

15:17:14 19 **THE COURT:** I'm afraid that's the rule of the federal
20 court. I'm sorry.

15:17:17 21 **MS. SCARDINO:** That's okay, Your Honor. Thank you.
22 It was a request.

15:17:20 23 **THE COURT:** I'm not saying this would happen here, but
24 I used to get involved with how security concerns were dealt
25 with, and we had a horrible incident where a family member

1 slipped a razor blade to an inmate with disastrous consequences.
2 I'm not saying that would happen here, but I do understand the
3 need for the rules.

1 5 : 1 7 : 4 1 4 **MS. SCARDINO:** Yes. Yes, Your Honor. Thank you for
5 considering it.

1 5 : 1 7 : 4 4 6 *(Evening recess taken at 3:17 p.m.)*

7 -o0o-

8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above matter.

10
11 Date: June 5, 2019

12 /s/ Heather Alcaraz
13 Signature of Court Reporter
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EXHIBIT 61

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD JEFFREY PRIBLE,
Petitioner,

VS.

LORIE DAVIS,
Respondent.

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)
) CIVIL ACTION NO.
) 4:09-CV-1896
)
) 1:01 P.M.
)
)

EVIDENTIARY HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
MAY 2, 2019
VOLUME 3

APPEARANCES:

FOR PETITIONER:

MS. GRETCHEN N. SCARDINO
Scardino L.L.P.
401 Congress Avenue, Suite 1540
Austin, Texas 78701
(512)659-4470

MR. JAMES GREGORY RYTTING
Hilder & Associates, P.C.
819 Lovett Boulevard
Houston, Texas 77006
(713)655-9111

FOR RESPONDENT:

MS. TINA DETTMER MIRANDA
MR. GEORGE A. D'HEMECOURT
Office of the Attorney General
Criminal Appeals Division
P.O. Box 12548
Capitol Station
Austin, Texas 78711
(512)936-1400

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 APPEARANCES CONTINUED:

2 **COURT REPORTER:**

Heather Alcaraz, CSR, FCRR, RMR

3 Official Court Reporter

515 Rusk, Suite 8004

4 Houston, Texas 77002

(713)250-5584

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Video Deposition of Michael Beckcom

THE COURT: Please be seated.

Okay. Good afternoon, and welcome back. We'll proceed with the balance of the -- of the video, I guess.

You ready to proceed?

MS. MIRANDA: Yes, Your Honor. We call Michael Beckcom.

THE COURT: Michael Beckcom, okay.

(Video deposition of Michael Beckcom played as follows.)

EXAMINATION

Q So let's -- let's talk a little bit about the timeline. Before you testified at Mr. Prible's trial, she guaranteed that you'd get out of prison?

A No. She didn't really say those words, "I guarantee." She -- I don't think she hung her ass out like that.

Q Did she lead you to believe that you would be getting out of prison?

A Yeah.

Q Did she tell you that you needed to tell the jury only that she was going to write you a letter?

A No, she didn't -- she didn't -- she never steered me like that because really, once -- once I put myself to the task, it was me. I just -- I felt like -- at that point, I felt like she knew I wasn't going to get out, that I was probably -- she may not have known I was even going to get any time off. I don't know what the conversation with the U.S. attorney in California

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1 and her was, but -- I don't know.

13:02:52 2 At that point I felt like, Wow, you know, I really put
3 myself on a fricking bind, and this is the thanks I get, you
4 know. So I felt like at that point she knew I wasn't really
5 going to get out, but she never put herself in a position to
6 make that known, that I would know, you know. It's just -- it's
7 just seemed evident to me that this was information she had.

13:03:17 8 **Q** Okay. So you felt like she wasn't straight with you when
9 she had said if you testify, you're going to get out?

13:03:23 10 **A** Yeah. I mean, this is not like a deal we made pre anything.
11 As things progressed and Prible confided information to me, I
12 wrote things down and sent it to her, you know. I said, you
13 know, what are they going to do for me for this?

13:03:45 14 **Q** And when you say you wrote things down and sent it to her,
15 did you take notes and mail them to her?

13:03:49 16 **A** I don't remember how I got them to her. I -- Prible told me
17 a bunch of shit, and I just wrote it all down. I wrote it all
18 down and got it to her. I don't remember the method of
19 transportation to her, to be honest with you.

13:04:04 20 **Q** Okay. You don't know if you mailed it to her? You don't
21 know -- but you took notes as you and Prible would talk?

13:04:09 22 **A** Not as we talked.

13:04:10 23 He pretty much confided everything to me, if I recall
24 correctly, on the yard. And I wrote down from knowledge, best I
25 could, everything he told me, and I got -- I don't remember how

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1 I conveyed it to her. I don't remember how I got the -- I must
2 have mailed it, best I know. I might have gone through my case
3 manager. I don't recall.

13:04:33 4 Q Okay. Did she ever call you on Harpe's phone and have him
5 go out and find you?

13:04:40 6 A No. I don't recall ever being called, no.

13:04:44 7 Q Do you recall her -- or do you recall ever being called in
8 to a unit manager or counselor's office because you had a phone
9 call from Ms. Siegler?

13:04:55 10 A No. I don't remember that. I don't know if that happened.

13:04:58 11 Q Do you ever recall being -- did you ever speak with
12 Ms. Siegler on a unit manager or a counselor's phone while other
13 inmates were in the room with you?

13:05:09 14 A No.

13:05:10 15 Q You never spoke with her on the phone while Nathan Foreman
16 was in the room with you?

13:05:15 17 A No. There wouldn't be anybody else in the room.

13:05:19 18 Q It would just be you --

13:05:20 19 A Me and the unit manager.

13:05:21 20 Q -- and the unit manager?

13:05:23 21 A Correct.

13:05:23 22 Q And it's also important, when serving as an informant, to
23 make it look like the defendant trusted you enough to confess to
24 you; isn't that correct?

13:05:33 25 A Repeat that.

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13:05:35 1 Q So when you're testifying -- or when you're working as an
2 informant, it's important to make it appear to the jury and to
3 the prosecutor that the defendant trusted you enough to confide
4 in you?

13:05:48 5 A Well, based on the information you give them, they -- they
6 have to make that judgment.

13:05:53 7 Q And there's certain rules that prosecutors have to follow
8 when working with informants that you're probably familiar with,
9 are you not?

13:05:59 10 A Certain rules that prosecutors have to work with?

13:06:02 11 Q Uh-huh. Have to follow.

13:06:04 12 A I don't know what those are.

13:06:05 13 Q For instance, it would be improper for a prosecutor to feed
14 you information about a crime?

13:06:08 15 A Oh, I could see that, yeah.

13:06:10 16 Q Yeah. Okay.

13:06:10 17 In your experience working as an informant, did you ever
18 encounter any prosecutor that didn't follow the rules?

13:06:16 19 A No.

13:06:17 20 Q They all followed the rules?

13:06:19 21 A Yeah.

13:06:20 22 Q Okay. None of them supplied you with details about a crime?

13:06:23 23 A No.

13:06:24 24 Q Okay. They didn't reach out to you about a particular
25 inmate? You reached out to them?

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13:06:30 1 **A** Kelly Siegler is the only one I reached out to.

13:06:33 2 **Q** Okay. So you made contact with her first? She did not make
3 contact with you first?

13:06:37 4 **A** Correct.

13:06:38 5 **Q** Did most of your phone calls with her take place on a -- on
6 a BOP employee's phone rather than this public inmate phone?

13:06:48 7 **A** No. I mean, if I had her on my list, then I used my -- my
8 account to call her.

13:06:54 9 **Q** But you also --

13:06:56 10 **A** I remember making a couple of calls from Mr. Harpe's
11 office --

13:06:59 12 **Q** Uh-huh.

13:06:59 13 **A** -- but it wasn't a routine thing.

13:07:03 14 **Q** Okay. But you had spoken with her on the phone many times
15 leading up to this?

13:07:07 16 **A** I don't know -- I don't know if it was many times, but I had
17 spoken with her.

13:07:13 18 **Q** More than once?

13:07:16 19 **A** I could only assume at that point. I don't know. I don't
20 know how many times I actually spoke to her. There was no need
21 to speak over and over.

13:07:26 22 I mean, once Prible confided in me and I had information, I
23 gave it to her. So that was a matter of the wheels were in
24 motion.

13:07:34 25 **Q** Okay. What was the purpose of this photograph?

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13:07:37 1 **A** Again, these are all Houston guys wanting to take a group
2 photo.

13:07:42 3 **Q** They were also all Houston guys that were trying to set up
4 Mr. Prible, right?

13:07:46 5 **A** Well, I didn't know that at the time, but I kind of surmised
6 that later on. That was a feeling I got.

13:07:55 7 **Q** And why'd you get that feeling?

13:07:57 8 **A** I don't know. It seems like everybody was kind of hanging
9 around all the time.

13:08:03 10 I guess you get a little hyper alert sometimes in prison.

13:08:09 11 **Q** Does the same Jesse Moreno ring a bell?

13:08:13 12 **A** Jesse Moreno. Moreno.

13:08:19 13 **Q** Moreno was a friend of Foreman's from the neighborhood.
14 Does that sound familiar to you?

13:08:25 15 **A** Man, I don't remember that.

13:08:28 16 **Q** He had worked with Ms. Siegler on other cases?

13:08:30 17 **A** Moreno did?

13:08:30 18 **Q** Moreno had.

13:08:32 19 Did you hear that or did you know that Moreno had given
20 Foreman's name to Ms. Siegler? Does that sound familiar to you?

13:08:38 21 **A** No.

13:08:40 22 **Q** So is it your testimony that you didn't know Prible until he
23 actually got to the yard?

13:08:44 24 **A** Yes. I -- I mean, I met him there.

13:08:49 25 **Q** When was the first time you met him? Do you recall meeting

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1 him?

13:08:55 2 **A** It had to have been on the rec yard. That's the only place
3 you're going to interact with somebody, rec yard, chow hall. If
4 you don't live in the same unit with them, the only other place
5 you're going -- you're going to see them is on the rec yard.
6 That's the only free movement.

13:09:08 7 **Q** Was there talk on the yard, before Prible got there, about
8 checking him in once he got there?

13:09:18 9 **A** I don't recall having those conversations.

13:09:20 10 **Q** You don't recall discussing --

13:09:21 11 **A** No.

13:09:21 12 **Q** -- his impending arrival with anyone before he got there?

13:09:24 13 **A** I don't -- ma'am, I'm not trying to be an ass, but I really
14 don't remember.

13:09:28 15 **Q** Okay. So you're not denying that it happened?

13:09:31 16 **A** I can't. I don't remember it.

13:09:32 17 **Q** Okay. You can't deny it?

13:09:34 18 **A** No.

13:09:34 19 **Q** Okay. And people on the yard really believed that he killed
20 these -- these girls, right, that he killed these people?

13:09:44 21 **A** I don't know if they believed it.

13:09:47 22 **Q** Do you recall the first phone call you ever had with
23 Ms. Siegler, how it came about? You got her number from
24 Foreman, right?

13:09:55 25 **A** Yeah.

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13:09:55 1 Q And you called her. And what did you tell her?

13:09:59 2 A The context of the conversation, I must have told her I had
3 information about Prible.

13:10:09 4 Q And did you tell her that you were Foreman's roommate?

13:10:12 5 A I don't know if that came up or not. I don't -- I don't
6 recall.

13:10:16 7 Q Okay. You don't know if she was aware that you were
8 Foreman's cellmate at any time?

13:10:20 9 A No. I -- I mean, she may have been, but I don't know.

13:10:24 10 Q Okay. So you called her, and you said you had information
11 about a case?

13:10:27 12 A Yeah.

13:10:28 13 Q Okay. And you mentioned that several times, "the wheels got
14 set in motion," and what do you mean by that?

13:10:35 15 A I had information for her. She came. We talked. Then, I
16 guess from that point on, it was see if I, you know, had anymore
17 information, I would give it to her.

13:10:47 18 Q Okay. And did she tell you anything about Prible's case?
19 Did she tell you anything about the evidence they had against
20 Prible?

13:10:57 21 A No. She was more interested in what I had --

13:11:00 22 Q Okay.

13:11:01 23 A -- you know, What -- what can you tell me? You tell me. I
24 remember that fucking line, "Well, you tell me."

13:11:10 25 Q And what exactly was she interested in, details about what

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1 y'all had discussed?

13:11:15 2 **A** I guess to see if the valid- -- the validity -- you know,
3 the validity of my information matched whatever she had, you
4 know. She would know whether or not I was really talking to the
5 guy and if he was really telling me anything pertinent.

13:11:32 6 **Q** Was Ms. Siegler well known on the compound at FCI Beaumont?

13:11:38 7 **A** That was the first I'd ever heard of her, you know.

13:11:41 8 **Q** In your discussions with Ms. Siegler about this case, did
9 she ever tell you anything about the DNA evidence in this case?

13:11:52 10 **A** No.

13:11:52 11 **Q** Did she ever tell you that Mr. Prible's semen was found in
12 the victim's mouth?

13:11:58 13 **A** No.

13:11:59 14 **Q** Okay. Did you know that -- that that was the case?

13:12:05 15 **A** I think -- I think Jeff led me to believe -- whatever he
16 told me, I wrote down and gave to her. I can't remember word
17 for word conversations we had --

13:12:20 18 **Q** Okay.

13:12:21 19 **A** -- but he spit quite a bit of information out to me.

13:12:26 20 **Q** Okay. Did Ms. Siegler talk with you about any problems that
21 they had with the case against Mr. Prible, for -- for example,
22 the alibi witness? Did she talk with you about the alibi
23 witness?

13:12:38 24 **A** No. I don't think so.

13:12:40 25 **Q** Did she talk with you about the fact that there was no

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1 physical evidence linking Mr. Prible to the murder?

13:12:49 2 **A** No. I don't recall that.

13:12:50 3 **Q** Did she talk to you about the fact that there wasn't a
4 motive?

13:12:56 5 **A** No.

13:12:57 6 **Q** Did she talk to you about the fact that the money had never
7 been found?

13:13:03 8 **A** Not to the best of my knowledge. No, ma'am.

13:13:05 9 **Q** Okay. Did she tell you that the murder weapon had never
10 been found?

13:13:10 11 **A** No.

13:13:10 12 **Q** So you never discussed these issues with Ms. Siegler?

13:13:15 13 **A** I don't recall. No.

13:13:16 14 **Q** Okay.

13:13:16 15 **A** I mean, he was just giving me information. I was giving it
16 to her.

13:13:20 17 **Q** In all, how many times do you think you spoke with
18 Ms. Siegler on the phone leading up to the trial?

13:13:31 19 Was it a pretty regular communication?

13:13:33 20 **A** No. There was no point in really a regular communication.

21 Once I made contact and I was on board and I had information, I
22 pretty much wrote it down, I believe, and got it to her, or I
23 may have called maybe three or four times. I don't remember.

13:13:51 24 **Q** And, in fact, you and Mr. Nathan Foreman took steps to
25 befriend Mr. Prible; isn't that -- isn't that right?

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13:13:59 1 **A** In the beginning, we all met on the rec yard. I don't
2 remember who approached who initially. I think he kind of
3 wandered up in an area we were, and that was pretty much the
4 initial introduction.

13:14:17 5 **Q** Uh-huh.

13:14:23 6 **A** Yeah. That's basically how it started --

13:14:25 7 **Q** Okay.

13:14:25 8 **A** -- out in the rec yard.

13:14:28 9 In what context? I don't remember speaking with him about
10 it. I don't remember details.

13:14:32 11 **Q** Uh-huh.

13:14:33 12 **A** But I kind of got the indication, as we talked about
13 previously, that that group were all trying to do something.

13:14:42 14 **Q** Uh-huh. And, in fact, there -- in fact, you knew that they
15 were attempting to testify against Mr. Prible?

13:14:50 16 **A** Or others.

13:14:51 17 **Q** And you knew about the stories that they had -- or the
18 stories they were trying to --

13:14:55 19 **A** I never -- okay.

13:14:56 20 **Q** And you knew about what they -- the information they had on
21 Mr. Prible?

13:14:59 22 **A** I never had individual conversations with them as to what
23 they knew specifically, that I recall.

13:15:04 24 **Q** Uh-huh. But you're able to comment about -- you understood
25 whether or not they had credible information or not; isn't that

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1 correct?

13:15:10 2 **A** Well, I don't know what would be considered credible. I
3 don't know what they specifically knew. I don't remember.

13:15:16 4 **Q** On line 15, Ms. Siegler asks, "What month was it that you
5 first heard about this case and learned my name?" And you
6 respond, "I didn't learn about your name until later, probably
7 the end of September, early October of 2001. Prior to that, I
8 had heard of the case just briefly, something about a guy coming
9 from the low charged with murder. I didn't really get too much
10 information on it, end quote.

13:15:40 11 Now, do you think, looking -- now that you've seen this
12 July 7th, 2001, article, that that might have been the reason
13 you knew that Mr. Prible was coming from -- was going to be
14 transferred from the low?

13:15:51 15 **A** No. I would take that as being yard talk.

13:15:55 16 **Q** Just someone on the yard knew?

13:15:56 17 **A** Inmate rumor mill.

13:15:58 18 **Q** Okay. Someone on the yard knew that he was coming --

13:15:59 19 **A** Yeah.

13:16:00 20 **Q** -- and y'all were talking about it?

13:16:01 21 **A** Yeah.

13:16:01 22 **Q** But he wasn't quite there yet?

13:16:04 23 **A** No. Obviously, not.

13:16:05 24 **Q** Okay. In that inmate yard talking, did it also -- was it
25 also said, during those conversations about this guy's about to

Video Deposition of Michael Beckcom

1 come over to low -- or to the medium, was it in the context of,

2 And Siegler is his prosecutor? Like, did you put Siegler --

13:16:23 3 **A** No.

13:16:23 4 **Q** -- and him together at that time?

13:16:25 5 **A** No, ma'am.

13:16:25 6 **Q** And not only did Mr. Foreman say he didn't hear Jeff
7 confess, neither did any of the other inmates that were --
8 neither did Carl Walker?

13:16:34 9 **A** No, he didn't.

13:16:35 10 **Q** He claimed that Prible -- I'll make the representation to
11 you that he never -- that he considered Herrero his friend, that
12 they were -- they didn't have any -- and that was the only
13 representation he ever heard Mr. Prible claim about it, but you
14 claim --

13:16:54 15 **A** Okay.

13:16:54 16 **Q** -- but you claim in your testimony -- testimony that they
17 had a sudden falling out.

13:16:59 18 **A** I'm basing it on what I was told by a man. Well, I mean,
19 what do you want me to say? You want me to unhear what I heard?

13:17:07 20 **Q** I want to talk really briefly also about your -- the
21 conversations that you and Mr. Foreman had regarding Mr. Prible.

13:17:18 22 Did Nathan Foreman tell you that he met with Kelly Siegler
23 and Bonds in August? Did he tell you about that meeting?

13:17:29 24 **A** I don't recall having that conversation with him.

13:17:32 25 **Q** Okay. Did Foreman ever ask you to go get information from

Video Deposition of Michael Beckcom

1 Mr. Prible?

13:17:43 2 **A** I -- I don't remember any terms like that being used. I --
3 I don't remember the conversation.

13:17:49 4 **Q** Okay. Did Foreman ever tell you any information about
5 Mr. Prible's case, specifics about his case?

13:17:58 6 **A** No. Not that I recall.

13:18:02 7 **Q** When Mr. Prible confessed to you, was Nathan Foreman
8 present?

13:18:06 9 **A** Yes, he was.

13:18:07 10 **Q** And, again, just to clarify from earlier, were you ever
11 present during other conversations with Mr. Gonzalez or Rafael
12 Dominguez or Mr. Walker about attempts to set Mr. Prible up to
13 confess?

13:18:29 14 **A** I don't recall having those specific conversations. I more
15 remember them being a little more hushed around me.

13:18:37 16 **Q** Okay. Did you participate in any conversations with them --

13:18:41 17 **A** Not that I --

13:18:42 18 **Q** -- about --

13:18:43 19 **A** -- remember.

13:18:43 20 **Q** -- Mr. Prible's case?

13:18:44 21 **A** Not that I remember. It was kind of me and Bo.

13:18:51 22 **Q** I believe you testified earlier that your first conversation
23 with Ms. Siegler was in October; is that correct?

13:18:56 24 **A** I believe that's what the records showed me.

13:18:58 25 **Q** Okay. Do you have any independent recollection today of

Video Deposition of Michael Beckcom

that conversation?

A Of the specifics of the -- no, ma'am.

Q Okay. Would your testimony on the record be the best reflection of that conversation?

A Yes, it would.

Q Did Ms. Siegler ever contact you by telephone?

A Not that I have any recollection of.

(Conclusion of video deposition.)

MS. MIRANDA: Your Honor, that concludes our deposition testimony.

THE COURT: Nothing from Ms. Siegler's deposition?

MS. MIRANDA: No, we don't. All of our edits were actually -- when we compared them, all of our edits were included in theirs.

THE COURT: Okay. So we just need to wait for Ms. Siegler's appearance?

MS. MIRANDA: Yes, Your Honor.

THE COURT: And we anticipate that will be around 2:00 our time?

MS. MIRANDA: Yes.

THE COURT: Okay. Thank you very much.

(Recess taken from 1:19 p.m. to 1:47 p.m.)

THE COURT: All right. Why don't we proceed.

Thank you for your availability, Ms. Siegler. Can you hear us okay?

Ms. Scardino Direct of Kelly Siegler

THE WITNESS: Yes, sir.

THE COURT: Okay. Ms. Scardino wants to inquire first.

THE WITNESS: Okay. Can y'all hear me okay?

THE COURT: Yes, we can. Thank you.

MS. SCARDINO: Yes. Can you hear me?

THE WITNESS: Okay. Yes.

KELLY SIEGLER, TESTIFIED:**DIRECT EXAMINATION**

BY MS. SCARDINO:

Q Ms. Siegler, when did you find out about this evidentiary hearing and that you were going to be called as a witness?

THE COURT: Oh, yeah. We need to administer the oath. I'm sorry.

MS. SCARDINO: Sorry about that.

THE COURT: Just as a formality, let's swear you in, yes.

(Witness sworn.)

BY MS. SCARDINO:

Q Ms. Siegler, when did you find out about this evidentiary hearing and that you were going to be called as a witness?

A The first time I heard about it -- I don't remember the date, but it would have been the same day that I sent that e-mail to Tina Miranda.

Q That's February 27th?

Ms. Scardino Direct of Kelly Siegler

A Whatever that date was. I don't have it in front of me.

Q Okay. That's Exhibit 171 at page 10. It's dated February 27th.

And the process server went to your home and your office eight times and tried to deliver paperwork; is that correct?

A That's what I've seen paperwork stating. I wasn't aware of that at the time.

Q So the person at your office, the receptionist, didn't tell you that paperwork was left there?

A No. I don't -- I don't remember paperwork ever being left at my office.

Q And your office, as listed with the State Bar of Texas, is 1200 Binz Street, Suite 1300; is that correct?

A Yes. I use that address, but I don't ever really go there to do any work.

Q Okay. But that is your address registered with the state bar?

A Correct.

Q And no one at your home ever gave you paperwork that was left there by the process server?

A Somebody left some little stickies on my gate.

Q So are you --

A The little stickies said nothing -- the little stickies said nothing about a process server or a court hearing.

Q So are you telling us that you didn't realize that we were

Ms. Scardino Direct of Kelly Siegler

1 trying to serve you to appear as a witness at this evidentiary
2 hearing?

13:50:03 3 **A** No. What I'm telling you is that what I first became aware
4 of anything else is going on with the case, I sent that e-mail
5 to Tina asking Tina what was going on, and after I talked to
6 Tina, I still didn't know for sure what was going on or when
7 anything was going to be happening.

13:50:19 8 And those dates that you're talking about when you were
9 allegedly trying to serve me, my husband was in the hospital,
10 and I was at the hospital a lot during those dates.

13:50:29 11 **Q** And what were those dates that he was in the hospital?

13:50:33 12 **A** He went in on a Friday -- I took him to the emergency
13 room -- and he came home either Tuesday or Wednesday. I don't
14 know which day that was. I'd have to look at a calendar.

13:50:42 15 **Q** Did you have any time between February 27th, when you first
16 heard about this hearing and that you were going to be called as
17 a witness -- between that date and Monday to reach out to the
18 attorney general and ask when you were needed in this courtroom
19 to testify?

13:51:03 20 **A** The e-mail to Tina, and Tina called me one day when I was
21 pulling into the parking lot at Memorial Hermann Hospital, and I
22 told her what was going on with my husband, and she said she
23 needed to talk to you, and she would get back with me. And
24 that's about the only conversation I had with Tina except for
25 trying to set up what we're doing right now.

Ms. Scardino Direct of Kelly Siegler

1 Q And you didn't have any time between the last week of March
2 and this past Monday to respond to any of that paperwork left by
3 the process servers?

4 A Again, I never got any paperwork. There were stickies left
5 on my gate.

6 Q So your testimony is not that you were occupied by something
7 and weren't able to respond, but that you didn't know that we
8 were trying to serve you in this case. Is that your testimony?

9 A No, that's not what I said. What I said is I didn't know
10 what was going on. I was waiting for Tina to call me to tell me
11 exactly what and when I needed to do anything.

12 And I'm here. If you have any questions, I'm ready to
13 answer them, if I can, and when you deposed me a year and a half
14 ago, I tried my hardest to answer all the questions you had that
15 day too.

16 Q Ms. Siegler, you had time to attend a *Cold Justice* panel the
17 week of April 11th when we were trying serve you, didn't you?

18 A I didn't know you were trying to serve me then. I didn't
19 know what was going on with the case. I was waiting to hear
20 back what was going on with the case.

21 Q And you also had time to appear as the guest speaker at the
22 Atticus Finch Day event in Bryan, Texas, on April 18th when we
23 were trying to serve you, right?

24 A Again, I didn't know you were trying serve me that day.

25 Q But you didn't have time to respond to our process server?

Ms. Scardino Direct of Kelly Siegler

13:53:04 1 **A** I didn't know your process server was looking for me. I
2 wasn't at the office. I was in and out of the hospital. He
3 left stickies on my gate.

13:53:11 4 You should see the stickies. They say nothing about him
5 being a process server.

13:53:16 6 **THE COURT:** Okay. Well, I think -- I think --

13:53:17 7 **A** They're stick- --

13:53:18 8 **THE COURT:** I think we're -- reached a standoff on
9 this issue. Let's move on.

13:53:22 10 **MS. SCARDINO:** Okay.

13:53:22 11 **BY MS. SCARDINO:**

13:53:22 12 **Q** I took your deposition in October 2017. You remember?

13:53:27 13 **A** Yes, ma'am.

13:53:27 14 **Q** And you had not reviewed the file at that time. Do you
15 recall that?

13:53:31 16 **A** I do.

13:53:32 17 **Q** Have you reviewed the file in Mr. Prible's case now?

13:53:37 18 **A** No, ma'am. I don't -- I don't have access to the file.

13:53:40 19 **Q** And there was nothing present- -- preventing you from asking
20 the district attorney's office if you could review the file to
21 testify about how you had prosecuted Mr. Prible back in 2001,
22 2002, was there?

13:53:53 23 **A** I have not asked the district attorney's office to look at
24 the old file, no, ma'am.

13:53:57 25 **Q** Okay. You testified at your deposition that you knew

Ms. Scardino Direct of Kelly Siegler

1 Nathan -- you knew about Nathan Foreman from the Jason Morales
2 case. Do you remember that?

13:54:07 3 **A** Yes.

13:54:07 4 **Q** Now, you didn't -- you knew that Nathan Foreman wasn't
5 involved in the Jason Morales case, didn't you?

13:54:17 6 **A** I don't want to get confused, Ms. Scardino. I remember the
7 name. Whatever I said at my deposition, I don't want to get
8 confused today and say something incorrectly.

13:54:30 9 Nathan --

13:54:30 10 **Q** You didn't --

13:54:30 11 **A** -- Foreman is in the middle of all this. I don't remember
12 which case right now it was -- it started being in the middle of
13 first.

13:54:38 14 **Q** You didn't want to admit at your deposition that you learned
15 about Nathan Foreman from Jesse Moreno, did you?

13:54:45 16 **A** I think that is an inaccurate statement.

13:54:48 17 **Q** You talked about Mr. Prible's case with Moreno, didn't you?

13:54:54 18 **A** Say that again.

13:54:55 19 **Q** You talked about Mr. Prible's case with Jesse Moreno, didn't
20 you?

13:55:05 21 **A** I don't remember. Whatever I said in the deposition, if I
22 answered that question then, it would be the same answer today.
23 I don't remember.

13:55:12 24 **Q** Okay. I'll play the clip of that deposition.

13:55:14 25 (Video played as follows.)

Ms. Scardino Direct of Kelly Siegler

Question: "Jesse Moreno talked with you about

Mr. Prible's case and Mr. Herrero's case, correct?"

Answer: "He did."

BY MS. SCARDINO:

Q And you knew that Mr. Moreno was in the SHU with Nathan Foreman and Rafael Dominguez in FCI Beaumont, didn't you?

A Yes.

Q And you knew that's where they hatched their plan to inform on Hermelio Herrero and then Mr. Prible; isn't that correct?

A It is not. I disagree with the phrase "hatched their plan."

Q You knew that it was in the SHU when they discussed their plan to inform on Mr. Herrero and Mr. Prible; isn't that correct?

A It is not.

Q At your deposition, you claimed you didn't know what the word "SHU" was. Do you remember that?

A Yeah. I almost asked you again today.

Q But, in fact, you have heard that word before at your deposition, hadn't you?

A Well, I guess I heard it from you. "SHU," I don't -- are you spelling that S-H-U or S-H-O-E? I really don't know exactly what that means.

Q I'm spelling it S-H-U.

And, in fact, you had used that word, yourself, previously, hadn't you?

Ms. Scardino Direct of Kelly Siegler

13:56:38 1 **A** If I did, I don't remember.

13:56:45 2 **Q** At Mr. Prible's trial, when you were questioning Beckcom,
3 you said, on page -- volume 26, page 96, "What is the name --
4 the name of the person who caused difficulty for you that you
5 had placed in the SHU in Beaumont before you got to Houston?"

13:57:02 6 Does that refresh your recollection as to whether you were
7 familiar with the SHU?

13:57:08 8 **A** If you're reading -- if you're reading that from the
9 transcript, then obviously I did say it, but I still don't
10 remember exactly what it means. I'm sorry. I know it has to do
11 with the prison.

13:57:20 12 **Q** You also insisted at your deposition that Mr. Moreno was in
13 isolation and, therefore, couldn't have been in the same place
14 as Nathan Foreman. Do you remember that?

13:57:29 15 **A** At one point he was in isolation, but I don't remember when
16 in the deposition we were talking about.

13:57:35 17 **Q** Okay. I'll play the clip to refresh your recollection.

13:57:37 18 *(Video deposition played as follows.)*

13:57:37 19 **Question:** "These are the BOP housing records for
13:57:48 20 Nathan Foreman, and if you look on the second page,
13:58:00 21 nine lines from the bottom, it says that between
13:58:16 22 February 28th, 2000, and April 18th, 2001, that
13:58:22 23 Foreman was housed in BMM A-DES, just like we saw
13:58:29 24 with Mr. Moreno, correct?"

13:58:38 25 **Answer:** "They're not in the same place."

Ms. Scardino Direct of Kelly Siegler

Question: "Why are they not in the same -- why do you make that statement?"

Answer: "Because Jesse Moreno says in his letter he's in isolation. So wherever they're housed, it doesn't matter. Jesse's in isolation."

Question: "In the SHU, right?"

Answer: "I don't know what the SHU is. That's your word. I've never heard that before."

Question: "Okay. Would you agree that the documents say what they say?"

Answer: "I would agree that Jesse says he's in isolation, which means he's not living with anybody."

Question: "Okay."

Answer: "That's what the letter says. You -- these documents are from the prison, which you must understand better than I can, but that's not what Jesse says."

Question: "Okay."

Answer: "He's not with Nathan Foreman, according to his letter."

BY MS. SCARDINO:

Q In fact, Ms. Siegler, you knew that that was not true, didn't you?

A No. I think what I said to you that day is absolutely what I thought and still think today.

Ms. Scardino Direct of Kelly Siegler

13:59:31 1 Q Well, you were familiar with how segregation and how the
2 segregated housing unit works over there in FCI Beaumont,
3 weren't you, that -- and the isolation that they're talking
4 about is not the same as solitary confinement?

13:59:44 5 A I am not. I'm not a federal prosecutor. I am not
6 intimately familiar with how all that works. I know vaguely
7 what it means, and that's about it.

13:59:53 8 Q So you did not realize that when they say they're in the
9 hole or in the SHU, they're in segregation from general
10 population, but they're in there with other people?

14:00:03 11 A No. And it sounds to me like, from what you just read back
12 to me, I didn't know what the SHU was on deposition day, either.

14:00:12 13 Q Now, you know from your July 3rd, '01, interview with Moreno
14 that they could talk to other people while they're in the hole.
15 Didn't you learn that, then?

14:00:21 16 A What day was the interview?

14:00:23 17 Q July 3rd, 2001.

14:00:26 18 A I really don't remember what was said that day. That was a
19 long time ago. I'm sorry.

14:00:31 20 Q Okay. I'll refresh your recollection with a short clip from
21 that meeting.

14:00:34 22 (Audio played as follows.)

14:00:34 23 "Who was there when he said that to you that day,
14:00:41 24 the first time you heard it?

14:00:44 25 "Ah, Dominguez and -- and Nathan Foreman.

Ms. Scardino Direct of Kelly Siegler

"Okay. What is Dominguez's whole name?

"Rafael Dominguez.

"And he's here -- he was in Beaumont medium, too, at
The time?

"Yeah.

"Where is he now?

"He's still in Beaumont. See, when I was in the hole,
he went in -- he got in the hole first and charged
something, right, so [UI] so he goes in the hole and
tells me --

"Dominguez?

"Yeah, Dominguez. See I know Dominguez. We went to
school together, too. We're all from the
neighborhood.

"Okay."

BY MS. SCARDINO:

Q Now, does that refresh your recollection that Moreno told
you, at that July 3rd, 2001, meeting that Dominguez was already
in the hole when he got there and that the two of them were able
to talk about Herrero's case while they were in the SHU?

A I think we should let that tape speak for itself. It
doesn't refresh my memory about that conversation, no, ma'am.

Whatever the tape says is what happened that day, but
that's not helping me remember in any better detail all these
years later. I'm sorry.

Ms. Scardino Direct of Kelly Siegler

1 14:01:43 Q Okay. You recall I asked you at your deposition about that
2 August 8th, 2001, meeting with Nathan Foreman?

1 14:01:51 A I don't recall that, but you could have. If the deposition
4 transcript says you did, then you did.

1 14:01:56 Q And Mr. Dominguez was one of your testifying informants in
6 that -- in the Herrero case, right?

1 14:02:03 A Yes.

1 14:02:03 Q And you wrote him a Rule 35 for his assistance in that case,
9 didn't you?

1 14:02:10 A I think so, yes.

1 14:02:11 Q And at one point you and Johnny Bonds also considered using
12 Dominguez as a witness against Mr. Prible, also, didn't you?

1 14:02:19 A I don't remember that. We could have. I really don't
14 remember.

1 14:02:24 Q Okay. So you can't say yes or no? You just don't recall?

1 14:02:28 A Correct. Correct.

1 14:02:37 Q Exhibit 94, which I'm not sure that the witness can see from
18 where you are, but it's a NCIC -- a criminal history report for
19 Rafael Dominguez that was found in Mr. Prible's case file, and
20 in Johnny Bonds' handwriting, it has the word "witness" at the
21 top.

1 14:02:58 Does this sound familiar to you?

1 14:03:03 A Well, I -- I don't know.

1 14:03:06 Q Okay. Would this indicate to you, if -- what I just
25 described, would that indicate to you that you were considering

Ms. Scardino Direct of Kelly Siegler

1 using Mr. Dominguez as a witness against Mr. Prible?

1 4 : 0 3 : 1 5 2 **A** No, ma'am, not necessarily.

1 4 : 0 3 : 2 1 3 **Q** At your deposition, I spoke with you about Exhibit 48. It's
4 a witness voucher for a Rule 35 hearing for Jesse Moreno on
5 August 22nd, 2002, that you went to testify at. Do you recall?

1 4 : 0 3 : 4 0 6 **A** Okay. What was the question about that again?

1 4 : 0 3 : 4 2 7 **Q** Do you recall me showing you that witness voucher?

1 4 : 0 3 : 4 8 8 **A** On deposition day?

1 4 : 0 3 : 4 9 9 **Q** Yes.

1 4 : 0 3 : 5 0 10 **A** I don't remember right now, but if you say you did, then you
11 did.

1 4 : 0 3 : 5 6 12 **Q** Okay. You did, in fact, drive to Lafayette, Louisiana, to
13 testify at a Rule 35 hearing in Jesse Moreno's federal criminal
14 case on August 22nd, 2002; isn't that correct?

1 4 : 0 4 : 0 9 15 **A** I -- I did. You asked me if I remembered seeing a paper. I
16 did drive to Louisiana.

1 4 : 0 4 : 1 5 17 **Q** Okay. And at your deposition, you testified that a federal
18 judge told you that that hearing was confidential and that you
19 were never to talk about it or of it to anyone. Do you recall
20 that?

1 4 : 0 4 : 2 5 21 **A** That's -- I do.

1 4 : 0 4 : 2 6 22 **Q** And, in fact, you said at your deposition that the federal
23 judge told you not to even tell anyone that you testified. Do
24 you remember that?

1 4 : 0 4 : 3 3 25 (No response.)

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THE CASE MANAGER: We lost connection.

MS. SCARDINO: Okay. Can she hear me still?

THE COURT: Ms. Siegler, can you hear us?

THE CASE MANAGER: No. She dropped from the feed.

THE COURT: She do it intentionally? Can we tell?

THE CASE MANAGER: No.

MS. MIRANDA: She said she's trying to call back in.
She said she's getting help with the video connection.

THE WITNESS: Can y'all hear me?

MS. SCARDINO: Yes. Can you hear me?

THE WITNESS: Yes, ma'am. Sorry about that. The
internet is not great here.

MS. SCARDINO: Can we continue, Your Honor?

THE COURT: Yes, please.

BY MS. SCARDINO:

Q We were talking about the Rule 35 hearing at which you
testified for Jesse Moreno in Lafayette, Louisiana, on
August 22nd, 2002.

Who was the federal judge in that case?

A Oh, I don't remember.

Q Does Richard Haik sound correct?

A I really don't remember.

Q What exactly did the federal judge tell you that day about
not telling anyone about your testimony?

A That it was confidential and that I should not talk about it

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1 to anyone.

1 4 : 1 0 : 4 9 2 Q And he gave you this instruction at the hearing?

1 4 : 1 0 : 5 3 3 A He did.

1 4 : 1 0 : 5 4 4 Q And so it would be in the transcript?

1 4 : 1 0 : 5 7 5 A I would assume so.

1 4 : 1 0 : 5 8 6 Q And so for that reason, you never told anyone, before your
7 deposition in this case, that you had testified in Moreno's
8 Rule 35 hearing?

1 4 : 1 1 : 0 9 9 A Not that I remember.

1 4 : 1 1 : 1 0 10 Q You never disclosed it to Mr. Herrero's attorneys, right?

1 4 : 1 1 : 2 0 11 A It happened after the trial.

1 4 : 1 1 : 2 2 12 Q But don't you have a continuing obligation to disclose Brady
13 obli- -- Brady evidence even after a trial has been completed?

1 4 : 1 1 : 3 1 14 A It was told to the jury and the judge and the defense
15 lawyers during the trial. They knew all that was going to
16 happen.

1 4 : 1 1 : 3 7 17 Q They didn't know that you were going to personally testify
18 at his hearing, did they?

1 4 : 1 1 : 4 2 19 A Yes, they did.

1 4 : 1 1 : 4 3 20 Q You think that's in the transcript somewhere -- in the
21 Herrero transcript?

1 4 : 1 1 : 4 6 22 A Yes, ma'am.

1 4 : 1 1 : 4 8 23 Q And you never disclosed that you went to testify at this
24 hearing to Mr. Prible's attorneys, did you?

1 4 : 1 1 : 5 7 25 A I don't believe so, no.

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1 4:11:58 1 Q Even though you had discussed Mr. Prible's case with Jesse
2 Moreno and Moreno had put you in touch with your original
3 informant in the case, who was Nathan Foreman, correct?

1 4:12:08 4 A I -- I do not agree with that as being the way it happened,
5 no, ma'am.

1 4:12:13 6 Q Okay. What do you disagree with in that statement?

1 4:12:15 7 A You're trying to make it sound like Jesse hooked me up with
8 Beckcom.

1 4:12:19 9 Q I'm trying to make it sound -- I'm -- I'm actually telling
10 you that Jesse Moreno hooked you up with Foreman; isn't that
11 correct?

1 4:12:26 12 A I disagree with that too.

1 4:12:29 13 Q And even though the Rule 35 hearing in Lafayette was only
14 two months before Mr. Prible's trial, you did not tell
15 Mr. Prible's defense attorneys about it, did you?

1 4:12:41 16 A Jesse Moreno did not testify in Prible's trial.

1 4:12:46 17 Q And so is it your testimony that you only needed to reveal
18 favors given to informants that actually testified against the
19 defendant?

1 4:12:55 20 A That's not what I said.

1 4:12:56 21 Q Well, is that your understanding?

1 4:13:00 22 A No. That's not what I said.

1 4:13:03 23 Q You signed an affidavit in Herrero's state writ case on
24 March 22nd, 2016. That's Exhibit 125. Do you remember that
25 affidavit?

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A Not off the top of my head. I'm sorry.

Q Okay. And that was for Mr. Moreno's state writ case.

A Okay. I don't remember.

Q And you never mentioned in that affidavit your traveling to Lafayette for that Rule 35 hearing, did you?

A I don't remember what that affidavit was for, Ms. Scardino.

Q I re- -- showed it to you at your deposition. You don't remember?

A No, ma'am.

Q You testified at your deposition that you --

MS. MIRANDA: One -- one second. I'm sorry. Just to be clear: Did you say that it was Moreno's state case?

MS. SCARDINO: I'm sorry. Herrero's state case.

MS. MIRANDA: Okay. Because I think, if we're going to question her without seeing it, we need to be really careful about the names we're using because we're crossing back and forth between cases.

MS. SCARDINO: I agree, and I thought I said Herrero's state case.

MS. MIRANDA: You said Moreno.

MS. SCARDINO: Okay.

BY MS. SCARDINO:

Q So it's an affidavit that you signed for Herrero's state writ case. Do you remember that affidavit?

A No, ma'am. And I'm really getting very confused with these

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1 dates and different affidavits and the deposition and today, and
2 I have nothing in front of me. So I'm pretty confused.

1 4 : 1 4 : 2 3 3 Q Well, it would be definitely much better if you were here
4 live so we could show you the exhibits.

1 4 : 1 4 : 2 7 5 A And you did all that to me when you deposed me for an entire
6 day a year and a half ago. We've done all this.

1 4 : 1 4 : 3 6 7 Q You testified at your deposition that all your notes would
8 have been in the file and would have been viewable by -- by
9 defense counsel. Do you remember that?

1 4 : 1 4 : 4 4 10 A Yes.

1 4 : 1 4 : 5 9 11 Q Now, in a pretrial hearing on September 10th, 2002, on the
12 defense's Brady motion, I'm going to read to you from that.

1 4 : 1 5 : 1 1 13 Mr. Gaiser said, "We've been supplied with a written
14 statement that" -- "that he made" -- meaning Beckcom -- "and
15 been told by Ms. Siegler that that's the only written statement
16 they have."

1 4 : 1 5 : 2 2 17 And you responded, "That's correct, Judge... I've already
18 provided that to him, and it's still our position that any notes
19 that either myself or Johnny Bonds made when we went to visit
20 Michael Beckcom is work product."

1 4 : 1 5 : 3 9 21 So, Ms. Siegler, you lied at your deposition when you said
22 you didn't consider your notes to be work product, didn't you?

1 4 : 1 5 : 4 8 23 A No.

1 4 : 1 5 : 4 9 24 Q And you lied at your deposition when you said that all of
25 your notes had been disclosed to Mr. Prible's counsel, didn't

Ms. Scardino Direct of Kelly Siegler

1 you?

1 4 : 1 5 : 5 6 2 **A** No, ma'am.

1 4 : 1 6 : 0 7 3 **Q** Also at that pretrial hearing, the court asked you, "Is it
4 the State's intention to be a part of that process in and
5 recommending a Rule 35 reduction?"

1 4 : 1 6 : 2 2 6 You responded, "Yeah -- they tell me that the mere fact
7 that I write the letter means that I'm recommending it. I've
8 done one before, and I went to Louisiana and testified."

1 4 : 1 6 : 3 3 9 Now, you didn't tell the court at that time that the
10 Louisiana hearing was for Jesse Moreno, who you had spoken with
11 about Prible's case and had recruited you your original
12 informant in that case, did you?

1 4 : 1 6 : 4 7 13 **A** There was no need to at that point. And, again, Jesse
14 Moreno was not a witness in the Prible case.

1 4 : 1 6 : 5 3 15 **Q** Even though he spoke with you about the Prible case and got
16 you in touch with Nathan Foreman?

1 4 : 1 6 : 5 9 17 **A** I disagree with the way you phrased that question. That's
18 not how I remember it happening. Jesse Moreno was not a witness
19 in the Prible case.

1 4 : 1 7 : 0 9 20 **Q** At another pretrial hearing on October 11th, 2002,
21 Mr. Gaiser asked, "Finally, Judge, just so the record is clear
22 on this. When we initially had a hearing concerning discovery
23 with reference to Michael Beckcom, one of the orders the Court
24 issued was that the state furnish us" -- "furnish us with -- and
25 I believe the Court said that that report could be oral, an

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1 indication of when and how contact was first initiated by --
2 with regard to Mr. Beckcom and the dates of any contact with
3 him. If Ms. Siegler could reinform me on that regard, I would
4 appreciate it."

1 4 : 1 7 : 4 9 5 And you said: (Reading) The first time Beckcom contacted
6 me, it was by telephone. He called me. He got my name from
7 Nathan Foreman.

1 4 : 1 7 : 5 9 8 The Court asks, "Who's" --

1 4 : 1 8 : 0 1 9 **THE COURT:** Slowly. Slowly, now. Slowly.

1 4 : 1 8 : 0 4 10 **MS. SCARDINO:** Sorry.

1 4 : 1 8 : 0 5 11 **BY MS. SCARDINO:**

1 4 : 1 8 : 0 5 12 **Q** The Court asked, "Who's Nathan Foreman?"

1 4 : 1 8 : 0 6 13 And you responded, "Nathan Foreman is another inmate at FCI
14 Medium. What else did you ask me?"

1 4 : 1 8 : 1 3 15 Do you remember that exchange with the court?

1 4 : 1 8 : 1 6 16 **A** I do not, but if it's in the transcript, then -- then it
17 would be accurate.

1 4 : 1 8 : 2 0 18 **Q** Now, Nathan Foreman wasn't just another inmate at FCI
19 medium, was he? He was your original snitch in this case.

1 4 : 1 8 : 2 8 20 **A** I disagree with that completely.

1 4 : 1 8 : 3 1 21 **Q** You think he wasn't involved in this case as a snitch?

1 4 : 1 8 : 3 6 22 **A** As I stated over and over and over again at the deposition,
23 I did not use Nathan Foreman as a witness because I never
24 believed that he was credible. We went over this a lot of times
25 the day of the deposition, and you keep wanting to infer that I

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1 used Nathan Foreman in the Prible case. I did not.

1 4 : 1 8 : 5 5 2 Q Now, you remember Beckcom's testimony at trial, that Nathan
3 Foreman was a corroborating witness to every single piece of the
4 confession that he supposedly got from Mr. Prible?

1 4 : 1 9 : 0 8 5 A That's not exactly the way I would describe it, but the
6 transcript would speak for itself.

1 4 : 1 9 : 1 3 7 Q Yes, it will.

1 4 : 1 9 : 1 8 8 Now, you testified at length in the Temple case about your
9 understanding of the Brady rule. Did you testify truthfully in
10 that case?

1 4 : 1 9 : 2 5 11 A Yes, ma'am.

1 4 : 1 9 : 2 6 12 Q And Ms. Temple was murdered in '99, and you tried David
13 Temple for her murder in 2004. Do you remember that?

1 4 : 1 9 : 3 5 14 A That is not when I tried David Temple. I tried David Temple
15 in 2007.

1 4 : 1 9 : 3 9 16 Q Okay. The Herrera/Tirado murders happened in '99, and you
17 tried Mr. Prible for those murders in 2002, correct?

1 4 : 1 9 : 4 7 18 A I remember that the murders happened in '99. I do not
19 remember when Mr. Prible's trial was.

1 4 : 1 9 : 5 2 20 Q And so this was the -- this -- these two cases were during
21 the same general time period, right?

1 4 : 1 9 : 5 9 22 A Not really.

1 4 : 2 0 : 0 0 23 Q Well, did your understanding of the Brady rule change during
24 that time period or was it consistent?

1 4 : 2 0 : 0 8 25 A I don't understand your question. You're acting like the

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1 trials had something to do with each other, Temple's and this
2 one.

1 4 : 2 0 : 1 6 3 **Q** I'm asking you if your understanding of the Brady rule was
4 consistent during that time period that you tried these two
5 cases?

1 4 : 2 0 : 2 2 6 **A** Yes, ma'am.

1 4 : 2 0 : 2 3 7 **Q** Okay. And at Mr. Temple's state habeas hearing in 2014, you
8 testified, to your belief, that apparently favorable evidence
9 did not need to be disclosed if the state did not believe it was
10 true. Do you remember that?

1 4 : 2 0 : 3 6 11 **A** That has been so mischaracterized I don't even know how to
12 describe it. That was a long conversation. Your point is taken
13 out of context, and there was a whole lot more to that
14 discussion than what you're trying to tell this judge today. I
15 would say that transcript speaks for itself, but it's a long
16 conversation. It's not just that one line you're trying to pull
17 out of context.

1 4 : 2 0 : 5 9 18 **Q** And the Texas Court of Criminal Appeals Opinion would speak
19 for itself also?

1 4 : 2 1 : 0 3 20 **MS. MIRANDA:** Objection, Your Honor. At this point,
21 if she's trying to impeach the witness with, apparently, what
22 she considers prior bad acts, that's inadmissible under
23 Rule 404B.

1 4 : 2 1 : 1 2 24 **MS. SCARDINO:** It's not prior bad acts --

1 4 : 2 1 : 1 5 25 **MS. MIRANDA:** And if she's trying -- or if she's

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1 trying to establish inconsistent testimony, we haven't done that
2 yet. If she's trying to impeach her with prior testimony, we
3 haven't set the foundation to do that yet.

1 4 : 2 1 : 2 3 4 **MS. SCARDINO:** It's Rule 405, pattern and practice,
5 Your Honor.

1 4 : 2 1 : 2 6 6 **MS. MIRANDA:** How -- how is it a pattern or practice?
7 I don't believe that's been established, at all, in this case.

1 4 : 2 1 : 3 3 8 **MS. SCARDINO:** We have Brady -- very similar Brady
9 violations that we've alleged in this case.

1 4 : 2 1 : 3 8 10 **MS. MIRANDA:** I don't believe -- alleging a Brady
11 violation does not make them similar, Your Honor, and I don't
12 believe that having been found to have committed Brady
13 allegation -- or violations in another case makes that a pattern
14 or practice.

1 4 : 2 1 : 5 1 15 **THE COURT:** Why don't you ask about the specific
16 incidence, and I think I can draw my own conclusion about
17 whether there's been inconsistency. Just ask about the specific
18 incident you're worried about.

1 4 : 2 2 : 0 1 19 **MS. SCARDINO:** Okay.

1 4 : 2 2 : 0 2 20 **BY MS. SCARDINO:**

1 4 : 2 2 : 1 9 21 **Q** Okay. Well, presumably, in every case you prosecuted, you
22 believe the defendant was guilty, right?

1 4 : 2 2 : 2 6 23 **A** Yes, ma'am.

1 4 : 2 2 : 2 6 24 **Q** So it would stand to reason that anyone tending to
25 contradict that belief would, in your view, not be credible,

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wouldn't you agree?

A I don't understand that question.

Q Okay. Well, your practice of not revealing your communications with an incredible witness, or even the existence or identity of that witness would result only in your disclosing to defense counsel evidence that bolstered your case, wouldn't it?

MS. MIRANDA: I'm going to object to this line of questioning, Your Honor.

THE COURT: Yeah. I think you're -- you're -- you're being unnecessarily inquisitorial. Just -- if there's an issue of her not disclosing favorable testimony, ask about that.

MS. SCARDINO: Okay.

BY MS. SCARDINO:

Q And, specifically, Nathan Foreman. Nathan Foreman was the nontestifying but corroborating evidence to Beckcom's confession story, wasn't he?

A I disagree with that. Nathan Foreman was not a witness in Jeffrey Prible's trial.

Q Now --

THE COURT: I think -- I think the question is whether Mr. Foreman, whether you found him credible or not, might have had some information that would have been to Mr. Prible's advantage for his lawyers to have.

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Do you -- do you recall anything like that concerning Mr. Foreman? Was there anything about his narrative, however incredible you found it, that was favorable for Mr. Prible?

THE WITNESS: No, sir, there was not. And I believe that Mr. Foreman was not credible, and I think that Ms. Scardino and I talked about that at length the day of the deposition. I don't believe he was credible, which is, among other reasons, why he was not a witness in the Prible case.

THE COURT: But is it not possible someone could be, in your view, not believable, but be narrating information that was favorable to the accused?

THE WITNESS: Yes, sir. I get that. Yes, sir, I understand that. That did not happen with Nathan Foreman.

THE COURT: Okay.

BY MS. SCARDINO:

Q Even though his name appeared throughout Mr. Beckcom's testimony as being present to everything that he heard about the confession?

A I don't remember what Michael Beckcom testified about at the trial in regards to the presence of Nathan Foreman. The transcript would speak for itself. That doesn't necessarily mean that I believed that he was -- because he's standing there, it doesn't mean he's credible. Because he's standing there, it doesn't mean he has information. And even if he was standing there, I never used him as a witness in the Prible trial.

Ms. Miranda Cross of Kelly Siegler

Q Okay.

MS. SCARDINO: Your Honor, I pass the witness.

THE COURT: Okay.

Ms. Miranda?

CROSS-EXAMINATION

BY MS. MIRANDA:

Q Ms. Siegler, can you hear me?

A Yes, ma'am.

Q When you originally got involved in this case and took your initial look at the evidence, did you believe there was enough evidence to proceed with this case?

A Yes, ma'am.

Q Were you looking for an informant?

A No, ma'am.

Q All right. And then you talked a little bit about your interview with Jesse Moreno. Do you recall interviewing him on July 3rd?

A I don't. If -- is that the tape that y'all have? That speaks for itself. That's all I can remember from that day.

Q All right. And would you have -- would there be parts of that interview that are not recorded on that tape?

A No. The tape is the tape. There's nothing else.

Q So there were no substantive conversations that you had with Mr. Moreno that day that are not recorded on that transcript?

A No.

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1 4 : 2 6 : 0 8 1 Q Now, when you were filing charges against Mr. Prible, did
2 you know at that time that Mr. Foreman wanted to inform against
3 Mr. Prible?

1 4 : 2 6 : 2 0 4 A I don't remember. I don't think so, but, again, Mr. Foreman
5 was never a credible witness.

1 4 : 2 6 : 2 5 6 Q Okay.

1 4 : 2 6 : 2 6 7 A It wouldn't have mattered. I was never going to use Nathan
8 Foreman.

1 4 : 2 6 : 2 9 9 Q All right. Thank you.

1 4 : 2 6 : 3 2 10 Were you -- when you made charges against Mr. Prible, were
11 you relying, in any way, on any kind of informant testimony?

1 4 : 2 6 : 4 1 12 A The probable cause affidavit that should be in the file is
13 the evidence that I believe we had at that time, and I also
14 believe, at that time, was sufficient to go forward with.

1 4 : 2 6 : 5 5 15 Q Do you recall filling out the detainer paperwork in this
16 case to move Mr. Prible from federal custody back to Harris
17 County?

1 4 : 2 7 : 0 2 18 A Oh, I don't know if I filled that out or if Kim Bryant, the
19 lady at the DA's office who was in charge of all that kind of
20 paperwork, filled it out.

1 4 : 2 7 : 1 0 21 Q And when you say, "filled it out," did you eventually sign
22 that paperwork?

1 4 : 2 7 : 1 3 23 A I think we signed it, and Kim Bryant did all of the
24 fill-in-the-blank paperwork part.

1 4 : 2 7 : 1 9 25 Q All right.

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MS. MIRANDA: Can I have a moment, Your Honor?

THE COURT: Yes. Sure.

BY MS. MIRANDA:

Q One moment, Ms. Siegler.

Now, I understand that you can't see this, but I'm going to put it up so that the Court can see it.

Now, this detainer paperwork was sent by Bert Graham. Who was Bert Graham?

A He was the first assistant at that time, and he was Kim Bryant's boss.

Q All right. And --

A So, in effect, my boss too.

Q Okay. And this paperwork to transfer Mr. Prible was addressed to the FCI unit low. Do you recall that?

A That sounds right. I mean, there were -- there was low, medium and high in Beaumont. I remember that.

Q Okay. So if this paperwork was addressed to Mr. Prible at FCI Beaumont low, is that because that was where your understanding was of where he was at the time?

A Yes.

Q Did you give Nathan Foreman or any other inmate at FCI Beaumont information about Mr. Prible's case?

A No.

Q Did you instruct or encourage Nathan Foreman, Michael Beckcom or any other FCI Beaumont to obtain information against

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Mr. Prible?

A I did not.

MS. MIRANDA: I'll pass the witness.

THE COURT: Ms. Siegler, this is Keith Ellison. I had a few questions.

THE WITNESS: Yes.

THE COURT: To the best of your recollection, in how many capital cases did you use as witnesses prison inmates who were in the same facility as the accused?

THE WITNESS: Judge, right now I'm just thinking of this one.

I think it's just this one. I'd have to go through the list. Is there -- is there a certain named defendant that you're thinking of?

THE COURT: No. No. No. It's not a trick question. I just wondered if there was a certain protocol to using prison inmates as witnesses. It seems, to me, that their incentive for wanting to provide information is very high, and there were liabilities, at least -- at least in question.

THE WITNESS: Yes, sir. I would agree with all that.

THE COURT: And I'm just wondering why -- if this is the only case you used it, why you thought the dimensions of this case made it particularly appropriate to use Mr. Beckcom.

THE WITNESS: This is what I'll say, Judge: I -- I thought long and hard about that, and I remember thinking to

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1 myself, There are five victims here. I believe that the case
2 against Jeffrey Prible was strong enough for a jury to convict,
3 but I did not want to live the rest of my life not using Michael
4 Beckcom and maybe one juror or two jurors having a little bit of
5 doubt and telling me that, and then regretting for the rest of
6 my life and career that I didn't use an inmate.

1 4 : 3 1 : 0 2 7 I thought I had enough, but I -- I wanted to be sure.
8 I wanted to make sure that I did all that I needed to in this
9 case.

1 4 : 3 1 : 1 1 10 **THE COURT:** Ms. Siegler, I'm absolutely sympathetic
11 with the role you were given in prosecuting capital cases. My
12 empathy is broader than that. I feel sorry -- or at least
13 empathetic with anyone who's involved in any capital case, and I
14 feel very empathetic now with Ms. Miranda and Ms. Scardino and
15 even with myself.

1 4 : 3 1 : 3 3 16 The stakes could not possibly be higher. The proof is
17 seldom clearcut, and we all face the eventuality of living the
18 rest of our lives with an incorrect decision. I fully
19 understand that.

1 4 : 3 1 : 4 9 20 But I'm -- know less about the case than you did --
21 you do, and I came to the case very late. But we've heard from
22 Ms. Foreman -- Mr. Foreman this week, and he -- he stated
23 forthrightly and without qualification that Mr. Beckcom was
24 making up this story about Prible's involvement with the
25 murders. He thought Beckcom was -- was just a fabulist, came up

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1 with a story.

1 4 : 3 2 : 2 3 2 And I guess I didn't take the same -- I didn't have
3 the same ration you did to Mr. Foreman. It was not obvious to
4 me that he was unbelievable or perjurious. So we're left with
5 that. We have Mr. Beckcom's word, and it's entirely
6 controverted by Mr. Foreman, both of whom have serious criminal
7 records.

1 4 : 3 2 : 4 9 8 And it just leaves --

1 4 : 3 2 : 5 1 9 **THE WITNESS:** I'm just --

1 4 : 3 2 : 5 1 10 **THE COURT:** Excuse me. Go ahead.

1 4 : 3 2 : 5 2 11 **THE WITNESS:** I can say this, Judge: There are --
12 wow. If Tina Miranda had the time, there are so many defense
13 lawyers and prosecutors who could speak to Nathan Foreman's
14 credibility. I remember one day leaving the -- the federal
15 facility over there in downtown when we talked to Nathan
16 Foreman, walking out -- I think it was with Johnny Bonds --
17 thinking to myself, Man, he's -- he's -- he's a good liar.

1 4 : 3 3 : 2 3 18 And if you just heard him the one time, I could
19 understand why you would think what you do, but when you know
20 the whole history of Nathan Foreman -- and I'm not trying to say
21 that Michael Beckcom is a stellar witness by any means, but
22 Nathan Foreman is in a category all by himself. I really do
23 believe that.

1 4 : 3 3 : 4 0 24 **THE COURT:** Well, I will say, in support of what
25 you've just said, we did hear by deposition from Mr. Bonds, and

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he -- he was thoroughly unimpressed with --

THE WITNESS: Yeah.

THE COURT: -- Foreman, agreed with your profile of him wholeheartedly about --

THE WITNESS: It's almost -- it's almost funny that -- that Nathan Foreman is -- is the person in the middle of your hearing now causing all this because of all the inmates that I've ever dealt with, he's at the top of the list for being not believable.

THE COURT: Well, he may be an extreme example, but in a lot of criminal cases, we're dealing with witnesses who -- who are not figures of moral probity. That's one of the reasons criminal jurisprudence is so very difficult.

We had a lot of testimony this week about a photograph -- a group photograph taken that included Mr. Beckcom and Mr. Prible and others who had some part, however minor, in this story. Did you have anything -- did have you any advanced knowledge of a photo being taken or did you ask for a photo to be taken to show anything --

THE WITNESS: That -- that's the picture, something around -- about Thanksgiving with somebody's mother there. I remember Ms. Scardino asking about that at the deposition, and I remember seeing it before, but I don't remember who brought it up or showed it to me and all that.

I know what you're talking about, but I don't remember

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the beginning of the story.

THE COURT: And you didn't know anything in advance about that photograph being arranged or anybody who --

THE WITNESS: No. No, sir.

THE COURT: Did -- in terms of whether this case was worthy of prosecution without Mr. Beckcom, did you ever find the murder weapon? I mean, I would have thought, if Mr. Prible was, in fact, the right defendant, somewhere in the home, which you got -- which the authorities got to very quickly, there would be -- there would be the murder weapon.

THE WITNESS: Judge, I don't remember. I would hope that that would be in my opening statement or final argument addressing that fact. I want to say that -- that there was paperwork saying he had the right caliber of murder weapon, but finding the gun itself, I don't think we found it, but I'm not sure, sir. I'm sorry.

It should be in the -- it should be in the transcript. I feel like that would have come up.

THE COURT: Okay. But it was a cold case when you got this information from Mr. Beckcom and decided to seek an indictment?

THE WITNESS: Yes, sir.

THE COURT: And you never relayed any information to any of the inmates about what you knew about Mr. Prible's case?

THE WITNESS: No, Judge. You know, that -- that is --

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1 that allegation from the defense is insulting, and I can't even
2 tell you how that makes me feel, that people would think that or
3 say that or believe that. I was a prosecutor my whole career.
4 I love that job, and to think that I would do something like
5 that and that they can just throw that out there and tell the
6 *Chronicle* every chance they get so it'll be out there even more,
7 I don't know what to do.

1 4 : 3 7 : 1 9 8 I don't know what to say. I don't know how to stop
9 it, but I'm telling you, sir, that is a lie, and that never
10 happened.

1 4 : 3 7 : 2 8 11 **THE COURT:** Given that this case was cold, there had
12 been no indictment, and given that you never used a prison
13 inmate to make a capital case before, it just -- this puts an
14 awful lot of gravity on the testimony of Mr. Beckcom. He was
15 the difference between bringing an indictment and not bringing
16 an indictment.

1 4 : 3 7 : 5 0 17 **THE WITNESS:** But, Judge, he wasn't. He wasn't the
18 difference. He wasn't the difference.

1 4 : 3 7 : 5 4 19 **THE COURT:** Well, tell me why not. I thought we
20 agreed it was a cold case.

1 4 : 3 7 : 5 9 21 **THE WITNESS:** It was a cold case, but I believe there
22 was enough there for an indictment and a conviction even without
23 Michael Beckcom. I believed that, but I can't -- I can't make
24 that automatically that 12 jurors are going to agree with me.

1 4 : 3 8 : 1 4 25 I believed there was enough without Michael Beckcom,

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1 but I didn't want to run the risk that 1 of 12 jurors might wish
2 that there was a little bit more, and I decided, because in my
3 opinion I didn't need it, I didn't put him on.

1 4 : 3 8 : 3 0 4 And there could have been other death penalty cases
5 where I used another inmate, I just can't think of them right
6 now.

1 4 : 3 8 : 4 3 7 **THE COURT:** And Mr. Beckcom has testified that in the
8 end, he didn't get anything out of having talked to you and
9 talked with Mr. Bond. That he didn't get a time cut; he didn't
10 get anything.

1 4 : 3 8 : 5 6 11 Is that true?

1 4 : 3 8 : 5 9 12 **THE WITNESS:** I believe it is, sir.

1 4 : 3 9 : 0 1 13 **THE COURT:** Did you try to get him a time cut or
14 anything like that?

1 4 : 3 9 : 0 4 15 **THE WITNESS:** I wrote a letter, and I think that y'all
16 have a copy of that letter, the same -- the same letter.

1 4 : 3 9 : 1 3 17 **THE COURT:** Okay. I don't have any further questions.
18 Does anybody else have any follow-up questions?

1 4 : 3 9 : 1 9 19 *(No response.)*

1 4 : 3 9 : 2 0 20 **THE COURT:** Thank you very much for your availability,
21 Ms. Siegler. I guess we're done. Thank you.

1 4 : 3 9 : 2 5 22 **THE WITNESS:** Yes, sir. Thank you.

1 4 : 3 9 : 3 0 23 **THE COURT:** Any further witnesses?

1 4 : 3 9 : 3 2 24 **MS. MIRANDA:** No, Your Honor.

1 4 : 3 9 : 3 3 25 **THE COURT:** Any --

1 4 : 3 9 : 3 4 1 **MS. SCARDINO:** No, Your Honor.

1 4 : 3 9 : 3 4 2 **THE COURT:** Any rebuttal? No.

1 4 : 3 9 : 3 6 3 **MS. SCARDINO:** No.

1 4 : 3 9 : 3 6 4 **THE COURT:** How would you like to proceed from here?
5 Do you want to make closing arguments? Do you want to submit --
6 I assume you'll be submitting post-hearing briefs.

1 4 : 3 9 : 4 3 7 **MS. SCARDINO:** Yes, Your Honor. Which would you
8 prefer, closing argument or --

1 4 : 3 9 : 4 7 9 **THE COURT:** Well, it's not one or the other. I mean,
10 if you want to make closing arguments, we can do that.

1 4 : 3 9 : 5 1 11 **MS. SCARDINO:** Okay.

1 4 : 3 9 : 5 1 12 **THE COURT:** But I would like -- I would like
13 post-trial -- post-hearing briefs, in any event.

1 4 : 3 9 : 5 5 14 **MS. SCARDINO:** Okay.

1 4 : 3 9 : 5 7 15 **THE COURT:** I mean, I'm taking this very seriously,
16 and it's -- obviously, the stakes could not be higher.

1 4 : 4 0 : 0 2 17 **MS. SCARDINO:** Right. Okay, Your Honor.

1 4 : 4 0 : 0 4 18 **THE COURT:** You both see the case so differently,
19 it's -- and I respect you both. So it's -- I'll take all the
20 help I can get.

1 4 : 4 0 : 1 0 21 **MS. SCARDINO:** Okay. I would like to make a closing
22 argument, Your Honor.

1 4 : 4 0 : 1 3 23 **THE COURT:** Let's take a ten-minute break.

1 4 : 4 0 : 1 5 24 **MS. SCARDINO:** Okay.

1 4 : 4 0 : 1 5 25 *(Recess taken from 2:40 p.m. to 2:52 p.m.)*

1 4 : 5 2 : 0 0 1 **THE COURT:** Keep your seats. That's all right.

1 4 : 5 2 : 3 1 2 You ready?

1 4 : 5 2 : 3 2 3 **MS. SCARDINO:** Yes, Your Honor.

1 4 : 5 2 : 3 3 4 **THE COURT:** Please proceed.

1 4 : 5 2 : 3 4 5 **MS. SCARDINO:** Okay. Your Honor, what we have seen
6 this week in this courtroom is an officer of the Court who has a
7 brazen contempt for the rule of law. I don't have to tell you.
8 You saw it for yourself firsthand when Ms. Siegler refused to
9 show up in this courtroom and testify in that seat (indicating).

1 4 : 5 2 : 5 1 10 And when she did finally agree to make herself
11 available for questioning, she did so on her terms from her --
12 where her telephone -- television show is filming, in the
13 comfort of her room. The rest of us heeded your orders, Judge.
14 We were ready. We came prepared on Monday and Tuesday for the
15 hearing. We came back today.

1 4 : 5 3 : 1 0 16 My client has been sitting in a cell on death row in
17 solitary confinement for 23 hours a day for 17 years, and
18 Ms. Siegler was too busy on her television show to come sit in
19 that chair and answer questions about how she prosecuted this
20 case. Over and over again in this courtroom we saw how
21 Ms. Siegler had lied. Just as she did in the Temple case, many
22 of these lies were by omission and by concealing key evidence.

1 4 : 5 3 : 4 0 23 For example, she presented the grand -- the Herrero
24 and Prible cases to the grand jury on the same day, to the same
25 grand jury. She did not tell that jury that there were

1 overlapping informants in those two cases. She wrote a Rule 35
2 letter on Foreman's behalf for his assistance to her, to his --
3 his Assistant U.S. Attorney Batson, and never in that letter did
4 she mention to Ms. Batson that Nathan Foreman lied to her.

1 4 : 5 4 : 1 4 5 She wrote a letter to Jesse Moreno's U.S. attorney.
6 She said in it Moreno has always been truthful. She didn't tell
7 him that Moreno had lied to her about Herrero confessing in
8 December 1999 in the presence of Moreno, Foreman and Dominguez.
9 She lied to Moreno's federal judge when she left out the part
10 about how Moreno had lied to her about that December 1999
11 confession.

1 4 : 5 4 : 4 7 12 When she signed that March 22nd, 2016, affidavit in
13 Herrero's state writ case, she didn't mention, she conveniently
14 left out that she had driven to Lafayette, to federal court, to
15 testify in person on Moreno's behalf and get him let out of
16 prison -- a 78-month sentence reduced to 77 -- or to one month.

1 4 : 5 5 : 1 4 17 She lied to the trial court in Mr. Prible's pretrial
18 hearings regarding discovery. She lied to Mr. Gaiser at those
19 hearings. She concealed key facts from Mr. Prible's jury in
20 opening argument.

1 4 : 5 5 : 2 8 21 Her timeline was that she told the jury: (Reading)
22 You will also learn from the evidence that before this state,
23 me, ever knew of the existence of Michael Glen Beckcom, these
24 capital murder charges were already filed on Jeff Prible.

1 4 : 5 5 : 4 8 25 But what she didn't tell the jury was that she had

1 gotten the name of her original informant in the case, Nathan
2 Foreman, before charges were filed against Mr. Prible and that
3 Beckcom was Foreman's cellmate. She also concealed -- sorry.
4 This is also to that -- to that end.

1 4 : 5 6 : 0 8 5 At her testimony -- or Michael Beckcom's testimony at
6 trial, she asked him: (Reading) Where were -- where was he --
7 Mr. Prible -- when he first found out about the fact that he was
8 charged with capital murder out of this case in Harris County?

1 4 : 5 6 : 2 2 9 "I believe he was at the low in Beaumont."

1 4 : 5 6 : 2 5 10 Question: "And then they transferred him to the
11 medium?

1 4 : 5 6 : 2 7 12 "Correct.

1 4 : 5 6 : 2 8 13 "Which is when you get to know him?

1 4 : 5 6 : 3 0 14 "Yes."

1 4 : 5 6 : 3 2 15 He [sic] never, again -- she never told the jury about
16 her previous conversations with his cellmate, Nathan Foreman.

1 4 : 5 6 : 4 8 17 She -- she sat silently by while her cocounsel,
18 Wisner, tells the jury: (Reading) The first thing that's done
19 to get these two people together are charges are filed. When
20 charges are filed, an affidavit accompanies those charges. So
21 that's the first thing that does. That's the first thing that
22 gets Beckcom and Prible into motion to meet each other.

1 4 : 5 7 : 0 8 23 That's not the first thing that got Beckcom and Prible
24 into motion to meeting each other. Beckcom learned about
25 Prible's case from Mr. Foreman, who had already been speaking to

1 Ms. Siegler about it.

1 4 : 5 7 : 2 3 2 And Mr. Wisner continued: (Reading) Then and only
3 then is this defendant taken from one of those two lower prison
4 units at Beaumont to medium when he meets Beckcom. Now, think
5 this through with me. Let's assume Beckcom is the most evil,
6 devious, cunning person in the world, and as soon as he sees
7 Jeff Prible walk through the door at Beaumont medium, he starts
8 rubbing his hands together and going, Man, this is great. I
9 just got me a get-out-of-jail-free ticket.

1 4 : 5 7 : 4 8 10 And Mr. Wisner says this sarcastically, but the
11 jury -- what the jury didn't know is this is exactly what
12 happened.

1 4 : 5 7 : 5 8 13 Ms. Siegler also concealed from Mr. Prible's jury what
14 she had learned from Pam McInnis about semen lasting for
15 72 hours in the mouth. And she said in her opening statement
16 that: (Reading) Semen goes away in minutes. It goes away with
17 a small swallow. That's what the evidence is about in this
18 case. And you're going to know from the testimony all about
19 what kind of a man could ejaculate in a woman's mouth after he
20 executed her husband minutes before he executed her.

1 4 : 5 8 : 3 8 21 And she sat by while Wisner supported Mr. Watson, the
22 DNA expert's testimony. He says: (Reading) There is no way in
23 the world that that semen wasn't deposited either moments before
24 or seconds after Nilda died. There is no way that semen is not
25 the semen of somebody who sexually assaulted her just moments

1 before or moments after she died.

1 4 : 5 9 : 0 4 2 Ms. Siegler sat by and let him argue that to the jury,
3 and all the while, there's a note in her file, the 72 hours
4 note.

1 4 : 5 9 : 1 6 5 And again, Mr. Wisner, in his closing argument,
6 states: (Reading) I would suggest to you that what the evidence
7 indicate is that the defendant, after killing Steve, forced
8 Nilda to orally copulate him at gunpoint and executed her as
9 soon as he finished. As horrific as that sounds, that is the
10 only logical conclusion that you can draw from that evidence.

1 4 : 5 9 : 3 6 11 But, Your Honor, that's not the only logical
12 conclusion you could draw from that evidence, and they knew
13 it -- or Ms. Siegler knew it because that 72 hours note was in
14 her file the whole time.

1 4 : 5 9 : 5 1 15 Ms. Siegler also vouched for the credibility of her
16 star witness, Michael Beckcom, even though, according to his
17 story, Nathan Foreman, the witness she says she did not believe,
18 was there every step of the way for the confession. She said in
19 her closing: (Reading) Is there any evidence in this trial that
20 Michael Beckcom got any facts about what happened anywhere
21 except out of the mouth of this defendant? All of Mr. Gaiser
22 and Mr. Wentz's questions and hypotheticals and hopes and
23 desires in the whole wide world do not amount to a hill of beans
24 because there ain't no evidence that Michael Beckcom ever had
25 anybody, anywhere, any paper, any newspaper, any cop, any TV

1 show tell him anything about the case -- this -- the facts of
2 this case except for Jeff Prible.

15:00:40 3 And all the while she had, hidden in her work product
4 file, letters from three -- at least three other inmates
5 offering to testify about Mr. Prible's case and explaining that
6 they were talking about his case together on the yard. And she
7 also knew that she had been talking to Beckcom's cellmate,
8 Michael -- or Nathan Foreman for months before Prible's trial.

15:01:05 9 And this is what Mr. [sic] Siegler told you today.
10 She argued that: (Reading) Those families, the victims'
11 families, had a right to have a jury know all of the evidence
12 that there is, even if there was a witness like Michael Beckcom.
13 She said, and if there is a witness who knows the very details
14 of exactly how a crime happened, and the state is too lazy or
15 too stupid or too insensitive to talk to that witness and do
16 their utmost to bring all of the evidence to a jury, for a jury
17 to decide one day, whether or not they believe it, then that
18 would be a tragedy. You try telling those people, Oh, I just
19 blew off Mike Beckcom. That's crazy.

15:01:47 20 Your Honor, it's not crazy. Ms. -- Ms. Siegler,
21 today, stated that she didn't feel that she could win a
22 conviction without Mr. Beckcom's testimony.

15:02:07 23 And, Your Honor, one of the most disturbing pieces of
24 this case and pieces of the trial is how Ms. Siegler didn't just
25 use Beckcom to testify that he heard a confession. She used

1 Beckcom -- she took him through a highly scripted and
2 choreographed direct examination and had him explain away all of
3 the problematic aspects of the state's case against Mr. Prible.

15:02:35 4 For example, concerning the DNA evidence in
5 Mr. Prible's story of consensual sex, she asked Beckcom:

6 (Reading) What did you say to him when the defendant told you
7 they had DNA on the girl?

15:02:51 8 (Reading) I said, Well, that's pretty serious, you
9 know. You're pretty -- you're through right there.

15:02:57 10 (Reading) What did she -- what did he say back to you?

15:03:02 11 (Reading) Answer: He said, Well, everybody knew I was
12 having an affair with her. So he made it -- he painted a
13 picture to me like it was common knowledge that he was having an
14 affair with this girl.

15:03:13 15 And later during trial, she asked Mr. Beckcom:

16 (Reading) I want to direct your attention now to the DNA. Did
17 you ever make any -- did you ever make any comment to Mr. Prible
18 about your opinion of the DNA evidence?

15:03:28 19 (Reading) Answer: Yeah.

15:03:30 20 (Reading) Question: What did you say?

15:03:33 21 (Reading) Answer: I pretty much told him you're
22 through if they've got DNA on the body.

15:03:39 23 (Reading) Question: And what was his comment back to
24 you in regard to that?

15:03:43 25 (Reading) Answer: Everybody knew they were messing

1 around. So that was his justification. That was going to solve
2 it.

15:03:54 3 Concerning the missing murder weapon, Your Honor, the
4 murder weapon was never found in this case.

15:03:59 5 **THE COURT:** That's what --

15:04:00 6 **MS. SCARDINO:** That was a big problem the state had.
7 And she asked Beckcom: (Reading) Question: I want to direct
8 your attention right now to a conversation you had with this
9 defendant when he talked about, in regards to the weapon, the
10 asphalt business.

15:04:14 11 Mr. Beckcom responds: (Reading) Well, it actually
12 came out later just in passing. It was something that you
13 almost didn't catch because at one point, when I actually became
14 interested in this and decided what I was going to do, I began
15 prodding him into conversations at times. So I would ask him,
16 Well, tell me about the evidence. What did you do here? What
17 did they have here? And so the only thing I told him, Well,
18 they don't have the murder weapon. That's good. You sure it
19 can't be found? And in passing he said something about, Well,
20 that's -- asphalt's good sometimes for hiding things.

15:04:50 21 Your Honor, concerning Mr. Prible's alibi witness,
22 you'll recall the neighbor that saw the victim --

15:04:56 23 **THE COURT:** Yeah.

15:04:56 24 **MS. SCARDINO:** -- dropping Mr. Prible off at his home.
25 And he said -- or she asked Mr. Beckcom at trial: (Reading) Did

1 the defendant ever tell you something about a witness that he
2 said he had about that night?

15:05:11 3 Mr. Beckcom said: (Reading) Yes, he did. Initially,
4 one of the first conversations when I was asking him what you
5 guys had on him --

15:05:17 6 **THE COURT:** Not too fast, now.

15:05:19 7 **MS. SCARDINO:** Sorry.

15:05:20 8 **THE COURT:** "Initially, one of the first
9 conversations" --

15:05:23 10 **MS. SCARDINO:** (Reading) -- when I was asking him what
11 you guys on had him, he said DNA. And when we got through the
12 discussion on that, he said, But I've got a witness that saw
13 Steve take me home that night. So he said he admitted to
14 authorities that he was there that day, but that Steve had taken
15 him home. The information he gave me later -- it may have been
16 that conversation or a subsequent conversation -- that it was a
17 child of maybe 12 or 13 years. From what he said, the person --
18 the child had gotten up in the middle of the night to use the
19 restroom and saw him through the window, with Steve out in front
20 of his parents' home.

15:05:57 21 Now, concerning how Mr. Prible would have been able to
22 return to the house after Steve had dropped him off at home,
23 kill the family, and then escape unnoticed, Mr. Prible said --
24 or I'm sorry, Ms. Siegler asked Mr. Beckcom: (Reading) What
25 else did you say to him in that conversation to get him to tell

1 you more about what happened?

1 5 : 0 6 : 2 3 2 And he -- and Mr. Beckcom responded: (Reading) I
3 asked him point blank: How did you get in and out without being
4 seen? And he said -- his response was, It's a typical high
5 intensity/low drag maneuver.

1 5 : 0 6 : 4 1 6 Now, concerning the fact that many people knew that
7 Steve Herrera was in possession of a large amount of money from
8 bank robberies and would have had a motive to rob the
9 Herrera/Tirado house and kill the family, Ms. Siegler asked
10 Mr. Beckcom: (Reading) Now, back to what you were getting into,
11 this conversation where you were talking about perception of the
12 crime, tell the jury, first of all, what you said as the
13 introduction to this conversation we're just going to talk
14 about.

1 5 : 0 7 : 1 8 15 Mr. Beckcom responded: (Reading) Well, he was still
16 in the early stage. He was still asking me, you know, what to
17 expect. I said, Well, it depends on what they found at the
18 crime scene. So he asked me, What do you mean? I said, Well,
19 it depends on where the bodies were. If the police officers
20 walk into a home, and there's several bodies who have been
21 killed in the same room, then it looks like maybe it was a
22 robbery or some kind of organized hit. But if the people are in
23 different rooms, then it gives the impression that they knew who
24 the attacker was because they were comfortable with them to let
25 them in the home. They weren't guarding themselves.

15:07:49 1 (Reading) Question: Did you say anything -- did you
2 say anything to Prible about forced entry?

15:07:55 3 (Reading) Answer: Yes, I did.

15:07:57 4 (Reading) Question: What did you say?

15:07:59 5 (Reading) Answer: I said, Well, if they're all in
6 separate rooms and there is no forced entry, then it's obvious
7 that they knew who the person was.

15:08:12 8 Concerning Prible's lack of motive to kill the family,
9 Ms. Siegler asked Mr. Beckcom: (Reading) Did he ever give you
10 any more detail about why he shot Steve, what his motivation was
11 for doing this?

15:08:23 12 Mr. Beckcom responded: (Reading) Yeah. It was over
13 money.

15:08:31 14 And concerning the fact that the money, the supposed
15 motive for the murders, was never found, Beckcom testified:
16 (Reading) I even asked him, Well, did you at least get my [sic]
17 money back? And he said, No. I said, Well, did you look in the
18 house? And he said, Yeah, but it wasn't there.

15:08:50 19 So Ms. Siegler used Beckcom for a lot more than just
20 to come in and say that Mr. Prible confessed. He was her case,
21 Your Honor, and for all of the reasons that we've laid out this
22 week and in our extensive briefing in our fourth amended
23 petition, we hope that Your Honor will see to it that Mr. Prible
24 is entitled to habeas relief.

15:09:15 25 **THE COURT:** What -- what kind of relief are you asking

1 for, another trial?

15:09:19 2 **MS. SCARDINO:** Yes, Your Honor.

15:09:24 3 **THE COURT:** Okay. Thank you very much.

15:09:26 4 Ms. Miranda?

15:09:36 5 **MS. MIRANDA:** May it please the Court.

15:09:38 6 **THE COURT:** Yes. Please proceed.

15:09:39 7 **MS. MIRANDA:** Your Honor, as a career appellate
8 prosecutor, I'm going to reserve most of my argument for
9 paper --

15:09:44 10 **THE COURT:** Okay.

15:09:45 11 **MS. MIRANDA:** -- because that's what I tend to do
12 best, but I do want to remind the Court of what I mentioned
13 during oral arguments at the beginning of the week, and that is
14 when -- when you listen to Mr. Prible's allegations, they sound
15 pretty damning, and they sound very, very troubling.

15:10:03 16 However, in not just a federal habeas, which happens
17 to be where we are, but in any court proceeding, you can make
18 all the allegations that you want, and you can make all the
19 claims that you want against the prosecutors or whoever else,
20 but at the end of the day, in order to obtain relief on those,
21 you have to provide this Court with proof of those, and that has
22 not been done in the proceedings.

15:10:26 23 And I do just want to take a second -- I'm not going
24 to go over them, but just some of the basic fundamental tenets
25 that they mentioned at the beginning.

15:10:35 1 In their petition, they said: (Reading) If the jury
2 had known that Moreno had given Siegler Foreman's name while
3 Prible was still on low, and that she charged Prible in the
4 belief that she would --

15:10:47 5 **THE COURT:** Slowly. Slowly, now.

15:10:49 6 **MS. MIRANDA:** I apologize.

15:10:49 7 **THE COURT:** "Charged" --

15:10:52 8 **MS. MIRANDA:** (Reading) -- she had charged Prible in
9 the belief that she would have an informant, namely, Foreman, to
10 testify against him, the testimony of Michael Beckcom would have
11 been a lot less believable to the jury.

15:11:02 12 And this part right here at the beginning is really
13 the crux of so much, this attempt to connect Jesse Moreno and
14 Foreman to Michael Beckcom. And the bottom line: There's just
15 absolutely no evidence of that, and this will be set out very
16 clearly in our supplemental briefing. But we have a transcript
17 of that initial interview with Moreno, and there's no mention of
18 Prible.

15:11:25 19 There's no mention of Prible in the indictment.
20 Ms. Siegler just testified to that. She didn't even talk to
21 Foreman until after he had already been charged. And when they
22 talked to Foreman, they believed he was a liar, and they
23 indicted this case without an informant. They didn't have one.
24 And then they didn't meet Michael Beckcom until after he was
25 already indicted.

15:11:48 1 So this -- this attempt that they make to seem like
2 the only reason this case was charged was because the
3 prosecution knew that Foreman would testify is absolutely not
4 true. It's not substantiated. If you go through all of the --
5 the individuals that they claim are connected in this case --
6 and I do think one of the things that's going to be very
7 important for this Court is to make sure that we distinguish
8 between Herrero's case and Prible's case.

15:12:16 9 They are different. They are different people that
10 are involved in each case. But even if you take both of them
11 and you combine them and you look at whether it's a letter they
12 wrote to the prosecutor, whether it's a statement they made to
13 the defense in an interview, whether it's an affidavit that they
14 submitted, no one -- no one has said that Siegler provided them
15 with information except for Mr. Foreman, who even if he is
16 credible before this Court, testified that he didn't share
17 that -- that -- whatever information.

15:12:50 18 He was very vague. He didn't give specifics. The
19 only specifics he gave was in an affidavit, all right? But even
20 then, he also testified he didn't share that information with
21 Michael Beckcom, and Michael Beckcom confirmed that he didn't
22 get information from Prible.

15:13:05 23 So we, personally, don't find Foreman credible, but
24 even if you do, that information never got passed along to the
25 inmate who testified. So there's --

15:13:13 1 **THE COURT:** Well, why -- what's to explain the timing
2 of her going before the grand jury? It's simply she didn't get
3 the case until shortly before that?

15:13:21 4 **MS. MIRANDA:** Yes. That was her testimony at the
5 deposition, was that the detective, Curtis Brown, came to her,
6 asked her to look at it. That was first time she picked it up,
7 and that when she picked it up -- and she testified today -- she
8 thought there was enough. And then she took it to -- she
9 charged him, and then she indicted them, and she did both of
10 those steps without an informant.

15:13:42 11 Now, Mr. Prible is arguing that Foreman was an
12 informant, and if you want to accept the fact that Foreman came
13 to Siegler and lied to her about a confession that he did not
14 have, if that's how you define "informant," then I guess if
15 we're going do it loosely, but --

15:14:01 16 **THE COURT:** That happened before the indictment,
17 right?

15:14:04 18 **MS. MIRANDA:** She -- Foreman came to her on the 8th,
19 yes, and said, "I have information," and she did not believe
20 him, and she never used him.

15:14:11 21 And they also maintain in their closing that they were
22 in constant contact, that they were constantly talking. There's
23 absolutely no evidence of that in the record. And, Your Honor,
24 I could go on and on through all of their individual allegations
25 and show that, yes, they sound damning, but there's no proof

1 underneath them to substantiate, and that's what we'll show in
2 our post-hearing briefing.

15:14:32 3 And if you don't have any other specific questions,
4 Your Honor, I'm going to reserve my arguments for that.

15:14:37 5 **THE COURT:** Okay. Thank you.

15:14:39 6 Did you want another turn?

15:14:41 7 **MS. SCARDINO:** No, Your Honor. Thank you.

15:14:42 8 **THE COURT:** Okay. Okay. How long do y'all need for
9 post-hearing briefs?

15:14:50 10 **MS. SCARDINO:** Your Honor, we would like to get them
11 to you as soon as possible. So --

15:14:53 12 **MS. MIRANDA:** I think if we could get the transcripts,
13 and then set the date out from there, that makes it a little
14 bit.

15:14:58 15 **THE COURT:** Okay. Ten days after you get the
16 transcripts, how about that?

15:15:01 17 **MS. SCARDINO:** That's fine, Your Honor.

15:15:03 18 **MS. MIRANDA:** Thank you.

15:15:03 19 **MS. SCARDINO:** Thank you.

15:15:04 20 **THE COURT:** Okay. Thank you very much.

15:15:07 21 *(Proceedings concluded at 3:15 p.m.)*

22 -o0o-

23 I certify that the foregoing is a correct transcript
24 from the record of proceedings in the above matter.

25 Date: June 5, 2019

/s/ Heather Alcaraz
Signature of Court Reporter

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W well... [28] 15/2 16/18 23/6 25/20 28/1 30/23 34/21 36/3 39/23 41/21 42/3 49/24 50/10 52/19 54/9 61/8 61/11 62/11 62/16 62/17 62/19 64/15 64/17 64/18 65/5 65/16 65/17 69/1 went [9] 20/4 21/12 29/8 29/12 31/5 33/23 36/19 37/8 38/24 Wentz's [1] 59/22 were [65] 6/13 8/23 9/3 9/3 11/4 11/7 14/3 14/13 14/15 14/18 15/20 16/7 16/12 17/10 18/12 18/13 19/12 19/21 20/25 21/8 21/11 21/16 21/18 22/4 22/6 22/8 22/17 22/18 22/23 22/24 26/2 26/6 26/16 28/1 29/19 29/20 30/25 31/19 32/16 33/17 36/3 39/20 44/13 44/23 45/1 45/10 45/10 46/15 47/9 47/18 48/11 55/14 55/22 55/25 56/24 57/2 57/6 60/6 61/25 64/10 64/11 64/19 64/24 69/21 69/22 weren't [3] 22/7 28/3 64/25 what's [1] 69/1 whatever [7] 12/3 12/15 20/1 24/7 24/21 29/23 68/17 wheels [2] 8/23 11/13 wherever [1] 27/4 whether [11] 12/4 14/25 26/6 41/17 42/21 42/22 51/5 60/17 68/11 68/12 68/13 which [12] 21/14 24/12 27/12 27/15 30/17 32/16 43/7 51/8 51/9 54/7 57/13 66/16 while [9] 6/12 6/15 28/14 29/20 57/17 58/21 59/3 60/3 67/2	who [25] 14/2 14/2 26/4 28/23 32/19 34/3 37/10 45/19 46/7 47/8 49/13 50/11 50/11 50/16 50/23 51/3 55/6 57/25 58/25 60/13 64/20 64/23 65/7 68/15 68/25 who's [3] 38/8 38/12 48/13 whoever [1] 66/19 whole [6] 29/1 40/13 49/20 52/3 59/14 59/23 wholeheartedly [1] 50/4 whom [1] 49/6 why [11] 18/23 27/1 27/1 41/15 43/8 47/21 47/22 49/19 52/19 65/10 69/1 why'd [1] 9/7 wide [1] 59/23 will [6] 18/18 39/7 49/24 56/22 65/23 67/15 win [1] 60/21 window [1] 63/19 wish [1] 53/1 Wisner [5] 57/18 58/2 58/10 58/21 59/5 without [9] 35/15 48/23 51/6 52/22 52/25 60/22 64/3 67/23 69/10 witness [35] 12/22 12/23 19/12 19/18 19/21 21/1 21/17 30/12 30/17 30/20 31/1 31/4 31/7 37/14 37/18 38/23 39/3 40/21 42/4 42/5 42/18 43/8 43/25 44/2 45/5 47/3 49/21 59/16 59/17 60/12 60/13 60/15 62/21 63/1 63/12 witnesses [5] 3/6 47/8 47/17 50/11 53/23 woman's [1] 58/19 wondered [1] 47/16 wondering [1] 47/21 word [8] 12/16 12/17 25/16 25/18 25/24 27/8 30/20 49/5 words [1] 4/13	work [5] 7/10 20/15 36/20 36/22 60/3 worked [1] 9/16 working [3] 7/1 7/8 7/17 works [2] 28/2 28/6 world [3] 58/6 58/23 59/23 worried [1] 41/18 worthy [1] 51/6 would [61] 4/15 5/6 5/21 6/18 7/13 11/17 12/4 15/2 15/15 18/3 18/5 19/23 21/23 24/22 27/9 27/11 30/24 30/25 33/4 33/5 36/3 36/7 36/8 38/3 38/17 39/5 39/6 40/15 40/18 41/24 41/25 42/5 42/23 43/21 44/20 44/20 47/20 49/19 51/7 51/9 51/10 51/11 51/12 51/18 52/2 52/4 54/4 54/7 54/12 54/12 54/21 59/6 60/18 62/15 63/21 64/8 67/4 67/9 67/10 68/3 70/10 wouldn't [4] 6/17 42/1 42/6 45/7 wow [2] 5/2 49/12 writ [4] 34/23 35/2 35/24 56/13 write [2] 4/19 37/7 written [2] 36/13 36/15 wrote [12] 5/12 5/14 5/17 5/17 5/24 12/16 13/22 30/8 53/15 56/1 56/5 68/12 Y y'all [7] 12/1 15/20 19/4 32/9 44/18 53/15 70/8 yard [14] 5/24 9/23 10/2 10/3 10/5 10/7 10/19 14/1 14/8 15/15 15/16 15/18 15/24 60/6 yeah [21] 4/17 5/10 7/15 7/16 7/21 10/25 11/12 14/6 15/19 15/21 19/13 25/17 29/5 29/12 37/6 42/10 50/2 61/19 62/23 65/12 65/18

Y

year [2] 22/13 36/6
years [3] 29/25 55/17 63/17
yes [47] 4/5 9/24 17/9 18/5
18/17 18/20 19/1 19/6 19/7
19/17 20/14 23/13 24/3 25/7
30/7 30/10 30/15 31/9 32/10
32/11 32/14 33/22 36/10
39/7 39/11 40/6 41/23 43/12
43/12 44/8 44/12 46/2 46/20
47/6 47/20 51/22 53/22 54/7
55/3 57/14 63/3 65/3 66/2
66/6 69/4 69/19 69/25
Yes, [2] 19/5 33/19
Yes, they [1] 33/19
Yes, we [1] 19/5
yet [3] 15/22 41/2 41/3
you [461]
you'd [1] 4/12
you'll [2] 54/6 62/22
you're [26] 5/9 7/1 7/1 7/8
10/3 10/5 10/5 10/15 14/24
21/8 26/8 26/8 34/7 39/25
40/14 40/16 41/18 42/10
42/10 42/10 47/14 50/25
58/18 61/9 61/9 61/21
you've [2] 15/11 49/25
your [107]
Your Honor [31] 4/5 18/9
18/17 32/13 40/20 41/5
41/11 42/9 44/2 46/1 53/24
54/1 54/7 54/17 54/22 55/3
55/5 59/11 60/20 60/23 62/3
62/21 65/21 65/23 66/2 66/7
69/23 70/4 70/7 70/10 70/17
yourself [2] 25/24 55/8

EXHIBIT 62

DECLARATION OF DR. WILLIAM WATSON

I, William Watson, state and declare as follows:

1. My name is William Watson. My address is [REDACTED]
[REDACTED]. My date of birth is [REDACTED].

2. I am the Quality Assurance Director for the New Mexico Department of Public Safety Forensic Laboratory. My past positions include State CODIS Administrator for the New Mexico DNA Identification System, Laboratory Director and DNA Technical Leader for Orchid Cellmark, Forensic Scientist with the Fort Worth Police Department, and independent forensic consultant. I have over thirty years' experience as a forensic science professional specializing in DNA analysis. I have testified as an expert in forensic serology and forensic DNA analysis in over 100 cases for both prosecution and defense. My testimony has been presented in United States Federal Court, courts in thirteen states, and in Canada.

3. I obtained a Bachelor of Science degree in Molecular Biology from Southwest Texas State University (now, Texas State University) in 1990. In 1998, I obtained a Master of Science Degree in Biology, with a specialty in Microbiology, from the University of North Texas. And in 2010, I received a Doctorate degree in Molecular Biology from the University of North Texas.

4. On October 17, 2002, I testified as a DNA and forensic serology expert on behalf of the State in *State of Texas v. Ronald Jeffery Prible, Jr.* At the time, I was the lab director at the Orchid Cellmark Nashville laboratory. I had a Master's degree and was working on my Doctorate degree. In 1999, I performed DNA analysis on the forensic evidence that was submitted to the laboratory for this case. At the time of analysis, I had roughly 2½ years of experience with this type of DNA analysis. At the time of testimony, I had roughly 5 years of experience.

5. I was contacted by current counsel for Mr. Prible in 2024 to discuss my trial testimony. Before making this statement, I reviewed the following:

- a. Transcripts of my testimony, the prosecution's opening statements, and the prosecution's closing arguments from Prible's trial in October 2002;
- b. The complete Orchid Cellmark laboratory case file from this case (now in the possession of Bode Technology), including all documentation of the DNA analysis I personally performed;
- c. The Harris County Medical Examiner's Laboratory Report dated April 28, 1999; and
- d. Various articles and studies regarding the recovery of spermatozoa in the oral cavity, including but not limited to: Willott, G.M. and Allard, J.E., Spermatozoa – Their Persistence after Sexual Intercourse. *Forensic Science International* 19 (1982) 135-154; Willott, G.M. and Crosse, M.A., The Detection of Spermatozoa in the Mouth, *Journal of Forensic Science Society* 26 (1986) 125-128; Collins, K.A. and Bennet, A.T., Persistence of Spermatozoa and Prostatic Acid Phosphatase in Specimens from Deceased



Individuals During Varied Postmortem Intervals 22 (2001) 228-232; Fonnelop et. al., A Retrospective Study on the Transfer, Persistence and Recovery of Sperm and Epithelial Cells in Samples Collected in Sexual Assault Casework, Forensic Science International: Genetics 43 (2019) 102153; and Casey et. al., The Persistence of Sperm and the Development of Time Since Intercourse (TSI) Guidelines in Sexual Assault Cases, Journal of Forensic Sciences 62(3) (2016) 585-592.

6. Since my testimony, the field of forensic biology, including forensic serology and forensic DNA analysis has changed significantly. Our scientific understanding how long spermatozoa can persist in the oral, vaginal, and anal cavities has also changed. Additionally, my personal scientific knowledge, expertise, experience, and understanding of these issues has changed. Finally, the scientific methods on which the evidence from this trial was based has progressed.

7. Based on these changes in the field and my own increased experience and scientific knowledge, if I were asked to testify today, my answers to many of the questions asked by the State at trial would be different. My original responses were based on the questions as they were asked, and my understanding of the science at the time, but they were incomplete and lacked context and clarifying information. Today, I would provide more thorough and nuanced explanations.

8. Aside from opinions based on my knowledge and experience, the only scientifically definitive conclusions I can draw regarding the evidence in this case are that spermatozoa containing sufficient DNA to generate a male profile were present on (1) one oral swab, (2) one vaginal swab, and (3) one anal swab.

9. I cannot definitively state when the spermatozoa detected in the oral cavity were deposited in relation to Nilda Tirado's time of death, or whether they were deposited before or after the spermatozoa deposited in the vaginal or anal cavities. The DNA analysis performed in this case does not, and cannot, answer any questions about when the spermatozoa was deposited in relation to each other.

10. Additionally, there are several unknown factors regarding the distribution of the spermatozoa in the anatomical area sampled, the collection process, the distribution of the spermatozoa on the swabs selected for testing, and variations in the laboratory processing that could impact the quantities of spermatozoa on the swabs and subsequent DNA yields. None of these issues were raised by the prosecution or defense in the trial.

11. Additionally, there are unknown factors regarding the male donors in this case such as low spermatozoa count, or recent previous ejaculation prior to penetration which could have impacted the number of spermatozoa recovered from each swab.

12. On pages 93 and 94 of my testimony transcript, the prosecution asked why the DNA from the vaginal swab yielded a mixture instead of a "pure male fraction." Specifically, the prosecution asked whether the spermatozoa "wasn't a strong enough sample to obtain a pure male fraction." I responded, "That's certainly a possibility, yes." Given the changes in the scientific field and my personal scientific knowledge that have occurred in the intervening years, I would not provide that



same answer. Today, I would explain that while a weak sample is one possibility, there are many others. The presence of an abundance of female cells, a low spermatozoa count, pre-ejaculation, degraded Proteinase K, inefficient cell lysis, or variability in my extraction technique could all explain the result. In short, I would clarify that there were numerous possibilities to explain that observation. I would also clarify that using the phrase "pure male fraction" or "pure male sample" was inaccurate, and that the scientifically correct term would simply be a single source male profile. And, that I was able to obtain a male profile from the spermatozoa on the vaginal swab.

13. On pages 94 and 95 of my testimony transcript, the prosecution asked why I was able to obtain a "pure male sample" on the oral swab, in contrast to the vaginal swab. Specifically, the prosecution asked if that was "consistent with a strong sample." I answered, "It's consistent with there being a great deal of spermatozoa present, yes." I further explained that "based on the quantity of DNA that was extracted, yes, I can say there was more in the mouth than in the vaginal or anal swabs." Today, based on changes in the scientific field and my own scientific understanding, I would clarify that answer. I would not say there was "more [spermatozoa] in the mouth than in the vaginal or anal swabs." I would clarify that while I extracted more DNA from the oral swab, this does not necessarily indicate a greater quantity of spermatozoa on the swab or in the mouth than was present on the vaginal or rectal swabs or cavities.

14. I would also say there are many other possibilities to explain why a complete male profile was generated from the oral swab. As outlined in the preceding paragraph, differences in sample collecting, selection processing or donor characteristics could have contributed to the result. I cannot conclude, scientifically, that the sample in the oral swab was any "stronger," more "pure," or more recently deposited than the vaginal or anal swab samples. I would still state that the amount of DNA recovered on the oral swab was higher than was recovered from the vaginal swab. However, for the reasons stated above I could not conclude there was more spermatozoa in the oral cavity than in the vaginal or anal cavities.

15. In this case, I estimated the quantity of male DNA on the vaginal swab to be around 1 nanogram. I estimated the quantity of male DNA on the oral swab to be around 2.5 nanograms. While this led me to say the oral swab had "a great deal of spermatozoa," both quantities are relatively high by today's standards and not vastly different in quantity. And at the time the testing in this case was performed, DNA quantification relied on visual estimates from slot blot densitometry. Current methods of DNA quantification provide much better estimates of the quantity of DNA, as well as information related to gender and sample degradation.

16. On page 100 of my testimony transcript, I was asked about my personal experience generating male profiles from oral cavity swabs, and I answered that I did not recall ever having generated one. Today, I would say that I have seen both partial and full profiles from oral swabs in sexual assault cases. In my experience, while it is still not common, it is not unusual. I am also now aware of multiple studies that have found spermatozoa present in oral swabs of sexual assault victims ranging from 6 to 13 hours after assault.

17. On pages 101 and 102 of my testimony transcript, I was asked whether, because we have a "full and complete male profile" in the oral swab, it would be "inconsistent with the semen in this case being deposited into Nilda's mouth as long as an hour before she was killed." I answered, "I would say that it is. I would say that it's inconsistent." Today, based on changes in the scientific



field and my own scientific understanding, I would say that it is consistent with the spermatozoa being there less than one hour, but it's also consistent with it being there for over one hour. I would say that studies have found that spermatozoa can be found in an oral cavity in sufficient quantity for DNA analysis for longer than an hour, in some instances considerably longer.

18. On page 103 of my testimony transcript, I was asked if the DNA profile from the oral swab was "consistent with the male depositing the semen into Nilda's mouth moments, if not seconds, before she was killed?" I answered, "It would certainly be consistent with that." Today, based on changes in the scientific field and my own scientific understanding, I would clarify that while that is one possible explanation, it is not the only one. Additionally, I would say that I cannot definitively determine the exact timing of deposition based on the profile.

19. In sum, based on changes in the scientific field and my own scientific understanding, I would make it clear in my testimony that I cannot conclude with scientific certainty (1) whether more spermatozoa was present in the oral cavity than the other cavities, (2) whether the spermatozoa in the oral cavity was deposited before or after the spermatozoa in the vaginal or anal cavities, or (3) when the spermatozoa was deposited in the oral cavity in relation to the time of death. The only statement I can make with scientific certainty is that there was sufficient DNA present on the oral, vaginal, and anal swabs to yield a full profile from each swab.

20. The prosecution misrepresented my testimony during opening statements. On page 82 of the opening statement testimony transcript, Kelly Siegler stated that I would tell the jury that "when semen is in somebody's mouth, in a lady's mouth, it goes away in minutes. It goes away with a small swallow." I did not testify to that, and it is not a scientifically valid statement.

21. The prosecution also misrepresented my testimony during closing arguments. On page 10 of the closing argument testimony transcript, Vic Wisner stated that I told the jury I had never gotten a partial profile of even one locus before, and that since I developed a full male profile from the oral swab, it had to come right before or after the time of death. I did not, and would not have testified to that. Additionally, I did not testify that it "had to come" right before or after she was killed. I testified that it was "consistent" with a short time frame. That is an important difference.

22. On page 11 of the closing argument testimony transcript, Vic Wisner stated that I had told the jury, "There is no way in the world that that semen wasn't deposited either moments before or seconds after Nilda died. There is no way that semen is not the semen of somebody who sexually assaulted her just moments before or moments after she died." I never testified to this and never claimed the case involved sexual assault.

23. On page 12 of the closing argument testimony transcript, Vic Wisner asked the jury to assume Nilda's mouth "is kind of like fly paper for semen – and it may have happened two or three or four or five hours before. This would be a first case in this kind for Bill Watson." I did not testify to that, and would not have stated that to a jury. I never testified to this, nor would I. It is not a scientifically sound analogy.

24. On pages 55 and 56 of the closing argument testimony transcript, Kelly Siegler told the jury that they would have to think Prible had "some kind of magic semen, magic spermatozoa that somehow lives longer than any of y'all's or any other man's in this whole universe," and that to



believe his story, the jury has “got to believe that his semen is so tasty that she walked around savoring the flavor of it in her mouth for a couple hours. That’s the only way it’s going to end up still in her mouth after she’s dead.” I never testified to this, nor would I. These inflammatory remarks are not only scientifically baseless, but also highly inappropriate.

25. On page 58 of the closing argument testimony transcript, Kelly Siegler told the jury that the decedent “left this world with his penis in her mouth, knowing her husband was dead, hoping to God that her babies would survive the nightmare that is Jeff Prible. That’s how she left this world.” I never made such a statement and would never testify in such a way.

26. On page 58 of the closing argument testimony transcript, Kelly Siegler told the jury that the decedent had semen in her mouth “because she did not have a chance to spit it out or swallow it or take a drink of water or let any time pass whatsoever because as soon as he ejaculated, he executed her.” I did not testify to that, and would not have stated that to a jury.

I declare under penalty of perjury as provided in the laws of the United States and the State of Texas that the foregoing 5-page declaration is true and correct and based on my personal knowledge.

Executed on July 31, 2025, in Santa Fe, Santa Fe County, New Mexico.

A handwritten signature in black ink, appearing to read "Kelly Siegler", written over a horizontal line.A handwritten signature in black ink, possibly reading "Lynn", written over a horizontal line.

EXHIBIT 63



Esteban & Maria Herrera
2339 Lemonwood
Houston, Texas 77038-1740

77038+1740



HCDA-08:12.2016-00674

**Esteban & Maria Herrera
2339 Lemonwood Ln.
Houston, Texas 77038-1740**

OK Fuckheads this is not a cordial greeting,

We are tired of **thieves and drug dealers** living in 12718 Bauman. You do something about it or we will. You do something **NOW !!!**. We are about to start checking the other properties you own, maybe the drugs being sold are yours ??? Maybe !!! The DEA loves to seize property from drug dealers. Especially when HUD is supporting the houses. There might be several felonies here. Anyway you do something or we will. **NOW !!!**

5142 Bataan Rd.
942 Fruitvale Dr.
208 Hamilton
8924 Ivy Spring
8343 Pommel
8710 Rutherford
1438 Saddle Rock
13380 T.C. Jester
8235 Whitecastle
3358 Frick Rd.

We know who you are and what you have, we will go after it. When all of your houses burn at the same time do you think your insurance will pay 12 claims when we notify them you are drug dealers. At best can you afford the hassle of them being burned all at once. Go ahead call the police, let them investigate the bullshit going on around your properties.

This is your only warning !!!!

EXHIBIT 64

August 25, 2025

Nat Lombardo, Assistant Federal Public Defender
Federal Public Defender,
Western District of Texas
919 Congress Avenue, Suite 950
Austin, TX 78701

SERI Case No. 13682.25
Agency Case No. 0921126
Victims: Esteban Herrera
Nilda Tirado
Suspect: Ronald Jeffery Prible Jr.

Evidence Examination Report 1

Results Summary

1. Envelope Flap (Item 1-2): A DNA mixture was obtained from this item.

Evidence Submission

Two items were submitted on June 26, 2025 by Rehana Vohra of the Harris County District Attorney's Office via Federal Express (8822 4484 0734).

Requested Analysis

DNA analysis
CODIS upload evaluation

Examination

Item 1: Typed Envelope with Stamp: A white, business-style envelope with an attached adhesive stamp.

- The back of the stamp was sampled (Item 1-1).
- The center area of the top and bottom envelope flap was sampled (Item 1-2A).
- The two flanking adhesive sides of the top and bottom envelope flap were sampled (Item 1-2B).
- The DNA extracts from Items 1-2A and 1-2B were combined (Item 1-2).

Item not examined: Typed Letter (Item 2)

Results and Conclusions

1. Back of Stamp (Item 1-1):
 - a. No DNA was detected on this item. No further testing was performed.

2. Envelope Flap (Item 1-2):

- a. A DNA mixture was obtained.
- b. The mixture was interpreted as originating from three contributors, with at least one male and one female, but without a discernible major contributor.

Recommendation

The results from the following item are suitable for comparison should a reference sample from a person of interest become available:

Envelope Flap (Item 1-2)

Globalfiler™ Results

Item No.	1-2
Description	Envelope Flap
D3S1358	14[15,18]
vWA	17[16]
D16S539	8[10,13]
CSF1PO	[9,10]
TPOX	8[11]
Y-indel	[2]
AMEL	X(Y)
D8S1179	10,11(13)[12,15]
D21S11	29,30
D18S51	13,14
DYS391	NR
D2S441	10,14(11)
D19S433	14,14.2,15[13]
TH01	6>7
FGA	21,22[26]
D22S1045	15,16(17)
D5S818	11>12,13
D13S317	8,11[9,12,13]
D7S820	9,11
SE33	[24.2,26.2]
D10S1248	12,14[16]
D1S1656	17.3[13]
D12S391	16>23[18]
D2S1338	17,19>24[20]

KEY:

- X,Y Male DNA.
NR No Results.
<&> Below 60% Primary.
() Below 40% Primary.
[] Below Stochastic.

All control samples typed as expected.

CODIS Submission

The results obtained will not be sent to the San Mateo County Sheriff's Office Crime Laboratory for CODIS upload evaluation.

Laboratory Activity Dates

Start Date: 7/21/2025
End Date: 8/22/2025

Evidence Disposition

The evidence will be returned. SERI will retain any remaining DNA extracts.

DocuSigned by:
MAHP
A5F198BE833346E... 8/25/2025

Technical Reviewer

DocuSigned by:
Erin Laurie
0CBB8599B0EF4AA...

Erin A. Laurie
Forensic DNA Analyst III

TECHNICAL NOTES

1. Other analysts/technicians may have conducted testing on this case.
2. Short Tandem Repeat (STR) DNA can be amplified using the Polymerase Chain Reaction (PCR) method. The Applied Biosystems™ Globalfiler™ PCR amplification kit detects twenty-one STR genetic markers, two gender markers (Amelogenin and Y-indel), and one Y-chromosome STR genetic marker (DYS391). Amelogenin, Y-indel and DYS391 are not included in any statistical calculations.

EXHIBIT 65

May 29, 2026

Nat Lombardo, Assistant Federal Public Defender
Federal Public Defender,
Western District of Texas
919 Congress Avenue, Suite 950
Austin, TX 78701

SERI Case No. 13682.25
Agency Case No. 0921126
Victims: Esteban Herrera
Nilda Tirado
Suspect: Ronald Jeffery Prible Jr.

Evidence Examination Report 2

Results Summary

1. Envelope Flap (Item 1-2): Ronald Jeffery Prible Jr. is excluded as a contributor to the DNA results obtained from this item.

Evidence Submission

Six items were submitted on April 8, 2026 by Rehana Vohra of the Harris County District Attorney's Office via Federal Express (8703 9799 4475).

Requested Analysis

DNA analysis

Examination

Item 3: Mouth Swabs: Four swabs with light yellow staining.

- Half of one swab was sampled (Item 3-1).
- The remaining half of Item 3-1 was sampled (Item 3-1A).

Items not examined: (2) Blood Samples (Item 4), Head Hair (Cut) (Item 5), Head Hair (Pulled) (Item 6), Pubic Hair (Cut) (Item 7), and Pubic Hair (Pulled) (Item 8).

Results and Conclusions

1. Envelope Flap (Item 1-2):
 - a. A DNA mixture was obtained.
 - b. The mixture was interpreted as originating from three contributors, with at least one male and one female, but without a discernible major contributor.
 - c. Ronald Jeffery Prible Jr. (Item 3-1A) is excluded as a contributor to this mixture.

2. Mouth Swabs (Item 3-1):

- a. A weak and incomplete single source, male DNA profile was obtained.
- b. This profile was not used as the reference for Ronald Jeffery Prible Jr.

Recommendation

The results from the following item are suitable for comparison should a reference sample from an additional person of interest become available:

Envelope Flap (Item 1-2)

Globalfiler™ Results

Item No.	1-2*	3-1A
Description	Envelope Flap	Ronald Jeffery Prible Jr.
D3S1358	14[15,18]	16,18
vWA	17[16]	16,18
D16S539	8[10,13]	[9,13]
CSF1PO	[9,10]	NR
TPOX	8[11]	NR
Y-indel	[2]	2
AMEL	X(Y)	X,Y
D8S1179	10,11(13)[12,15]	10,11
D21S11	29,30	29,31
D18S51	13,14	13[15]
DYS391	NR	NR
D2S441	10,14(11)	10,11
D19S433	14,14.2,15[13]	14
TH01	6>7	7
FGA	21,22[26]	24
D22S1045	15,16(17)	15,16
D5S818	11>12,13	10,12
D13S317	8,11[9,12,13]	8
D7S820	9,11	[12]
SE33	[24.2,26.2]	27.2
D10S1248	12,14[16]	14,15
D1S1656	17.3[13]	13,17
D12S391	16>23[18]	22
D2S1338	17,19>24[20]	[17]

KEY:

- * Results from Evidence Examination Report 1, dated August 25, 2025.
X,Y Male DNA.
NR No Results.
<&> Below 60% Primary.
() Below 40% Primary.
[] Below Stochastic.
All control samples typed as expected.

Nat Lombardo
SERI Case No. 13682.25
May 29, 2026

Laboratory Activity Dates

Start Date: 4/16/2026
End Date: 5/29/2026

Evidence Disposition

Items 1 and 2 were returned to Rehana Vohra of the Harris County District Attorney's Office on August 25, 2025 via United Parcel Service (1Z 893 040 03 9507 1990). Items 3 through 8 will be returned. SERI will retain any remaining DNA extracts.

DocuSigned by:

CB6A4239DE2D4CC... 5/29/2026

Technical Reviewer

DocuSigned by:

0CBB8599B0EF4AA...

Erin A. Laurie
Forensic DNA Analyst III

TECHNICAL NOTES

1. Other analysts/technicians may have conducted testing on this case.
2. Short Tandem Repeat (STR) DNA can be amplified using the Polymerase Chain Reaction (PCR) method. The Applied Biosystems™ Globalfiler™ PCR amplification kit detects twenty-one STR genetic markers, two gender markers (Amelogenin and Y-indel), and one Y-chromosome STR genetic marker (DYS391). Amelogenin, Y-indel and DYS391 are not included in any statistical calculations.
3. Likelihood ratios assess the support of two mutually exclusive events (e.g., Person X is included in this mixture versus Person X is not included in this mixture). The results are expressed as a number that indicates which scenario is more likely. The significance of the likelihood ratio can also be assessed using the following table:

Likelihood Ratio Value	Verbal scale for evidence interpretation
$LR \geq 1,000,000$	Very strong support for the inclusion hypothesis
$10,000 \leq LR < 1,000,000$	Strong support for the inclusion hypothesis
$100 \leq LR < 10,000$	Moderate support for the inclusion hypothesis
$2 \leq LR < 100$	Limited support for the inclusion hypothesis
$0.01 \leq LR < 2$	Results are uninformative for either inclusion or exclusion
$LR < 0.01$	Person of Interest is excluded as a contributor to the mixture

Likelihood ratios for single source and major contributor profiles are the reciprocal of the random match probability for the profile. This lab uses the published population database from the NIST 1036 Revised US Population Dataset (July 2017).

4. The results in this report address whether body fluids and/or DNA are present on items, and, where possible, from whom they may originate. Any statistical results do not address how or when DNA or body fluids may have been deposited.

EXHIBIT 66

JUL - 5 2011

CLIENT: Hilder & Associates
CASE DESCRIPTION: State of Texas vs. Ronald Prible
OUR FILE #: 08-11-0621
REPORT DATE: June 23, 2011
REPORT TOPIC: Mark Martinez
RELATIONSHIP TO CASE: Potential Defense Witness
ATTACHMENT: Letter to Olmstead
Copy of Martinez's Letter

INVESTIGATIVE ACTIVITY

I. Preliminary Information

Mark Martinez was an inmate at Beaumont FCI, who wrote a letter to Kelly Seigler regarding Jeff Prible.

Mark Martinez possesses Inmate Number 94369-079.

II. Locative Efforts

Inmate Locator System

Investigators determined through the Federal Inmate Locator System that Mark Anthony Martinez, who possesses Inmate #94369-079 is a 35 year old male, who is currently incarcerated at Florence High USP, located at 5580 Highway 67 South, Florence Colorado 81226.

Martinez's expected release date is September 21, 2018.

Investigator contacted the prison and was able to identify Ms. Olmstead as Martinez's Counselor. Investigator also learned that Olmstead could be contacted via facsimile #(719) 784-5974.

On May 12, 2011, Investigator sent a fax and letter to Olmstead requesting a telephone interview with Martinez.

On Wednesday, May 18, 2011, Olmstead called the offices of Gradoni & Associates. Olmstead stated that the prison had been in lockdown for a number of days. Olmstead also stated that since Martinez is a gang member, she needed to have someone present with her when she speaks to him. Olmstead stated that she did ask Martinez about having a phone conversation with Investigator and he replied he did not want to get involved. Olmstead agreed to take a copy of the letter back to Martinez and see if he would verify if he signed it, who wrote the letter, if it was factual and if Beckom was involved.

Olmstead agreed to try to present a case to Martinez about the letter that would hopefully give him a reason to interview with Investigator.

On May 24, 2011, Investigator sent a letter along with a copy of Martinez's alleged letter to Siegler to Olmstead, expecting a response in the near future (copy attached).

Investigator left messages for Counselor Olmstead on June 4th and 9th, 2011. On June 15th, Olmstead returned Investigator's call leaving a message.

Investigator finally spoke to Olmstead on Thursday, June 23, 2011. Olmstead stated that she had showed the letter to Martinez who stated that he did not write the letter nor did the letter bear his signature. Martinez did make the comment that there were other people at the prison being pressured to do letters. Martinez would not go into any detail nor would he identify who was involved.

Olmstead reiterated that Martinez did make the comment twice that "some dudes were pressured to write letters." Olmstead stated that it was obvious that Martinez was not going to provide any other information because he told her he did not want to get involved.

Olmstead stated that after her conversation with Martinez, she looked up his signature in her files and was able to determine that the signature on the letter was certainly not Martinez's.

Olmstead also verified that Martinez did not have the intelligence level to compose a letter with that specific vocabulary.

Investigator asked Olmstead what the procedures were when an inmate used the phones in her office to call a Prosecutor. Olmstead stated that she would always place the call from her phone. Once the connection was made with the Prosecutor, Olmstead would ask if the inmate wanted her present during the conversation. Olmstead stated that the majority of the time the inmate says no.

If that is the case, Olmstead stated that she would stay outside the room where she could monitor the inmate by looking through the window on her door but she could not hear the conversation. When the conversation was over, she would enter the room and have the inmate escorted back to the prison.

End of Report.



President/Manager, Texas License A05741
G:\Cases\2008 Case Files\11\0621\Reports\doc

Date 6/23/2011

CONFIDENTIAL
ATTORNEY-CLIENT WORK PRODUCT

May 24, 2011

Counselor Olmstead
USP Florence – High
U.S. Penitentiary
5880 Highway 67 South
Florence, Colorado 81226

via facsimile (719) 784-5974

Re: Inmate Mark Anthony Martinez, Inmate #94369-079

Dear Ms. Olmstead:

I certainly appreciate your recent response to my letter.

As we discussed on the phone, I am trying to determine if Mark Martinez authored the letter to Prosecutor, Kelly Siegler, a copy of which I have attached to this fax.

What I am trying to determine are the following points:

Did Martinez actually sign the letter?

Did Michael Beckom type the letter? In not, who did?

Was the information in the letter embellished and not truthful?

I understand Martinez's position about not wanting to get involved but I have a client sitting on Death Row, who may be the victim of false testimony by an inmate who claims Prible had confessed the murders. The letter does not cause Martinez any downside since it was never used by the Prosecutor in any type of legal proceeding, nor did Martinez ever testify. Hopefully, Mr. Martinez will reconsider talking to me or at least answer these questions in order that you may respond the answers.

Your assistance in this matter is greatly appreciated.

Sincerely,



J.J. Gradoni

JJG/lea
Enclosure(s)

Mark A. Martinez 94369-079
P.O. Box 26040
Beaumont, Tx 7772-06040

Kelly Siegler
Harris Co. Dist. Attorney's Office
1201 Franklin, Ste. 600
Houston, Tx 77002

Re: R.J. Pribble

Ms. Siegler,

As you know from our previous conversation, I am incarcerated at FCI Beaumont-Medium, and have information in regards to the murder of Steve Herrera and his family.

While here I met Jeff Pribble, who recognized me as being a friend of Steves'. My ex-girlfriend and I went to Steve's house on the night of April 23, 1999. We stopped by for a short time and saw Steve outside with another man who turned out to be Jeff Pribble. When I got out of the car I noticed that Steve and Pribble were having some sort of argument. When I asked Steve if everything was alright, he said, "Nah. this white boys' just trippin' over some money". So my girlfriend and I left. The next day we received a phone call from Herreras' family informing us that Steve, his wife, and three children had died in a house fire. Later that day we found out that they were murdered.

It wasn't until my arrival here at FCI-Beaumont in May of 2001 that I saw Pribble again. We had several of the same friends, and Pribble told me he didn't want any trouble over what happened to Steve and his family. He told me that it wasn't supposed to go down like that. Later on as we became somewhat of friends, Pribble confided in me of Steve owing him some money from the banks they were robbing together, and how he had gone back that night to get what belonged to him. Pribble told me that Steve should have respected their business. He admitted to me of Killing Steve and his wife. Pribble even admitted to raping her, but claimed that she really liked it. As we became more familiar with one another he would sometimes joke around and say things like, "You know what happens to people who don't pay!".

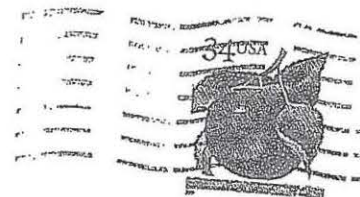
I am more than willing to testify to these things in court. I am currently serving a twenty year sentence for Possession w/Intent to Distribute. I am willing to help you and would appreciate if you could help me. I recently helped Agent

Lanier with a statement that helped him put together the murder of Rory JoonPatrick Erhart. I do not have an attorney at this time, but you can contact me through my Counsler J. Wilson at 409-721-0101.

Sincerely,


Mark A. Martinez #94369-079
Federal Correctional Institution
P.O. Box 26040
Beaumont, Tx 77720-6040

Mark A. Marcínez 94369-079
Federal Correctional Institution
P.O. Box 26040
Beaumont, Tx 77720-6040



This letter was processed through the
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asks a question or problem over which this facility
is justification, you may wish to return the material
or further information or clarification. If the writer
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addressee, please return the enclosure to:
FEDERAL CORRECTIONAL COMPLEX
BEAUMONT, TEXAS 77720

Kelly Siegler
Harris Co. District Attorney's Office
1201 Franklin, Ste. 600
Houston, Tx. 77002

77002+1930 07

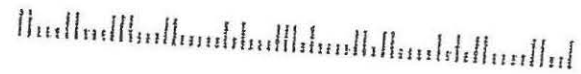


EXHIBIT 67

THE STATE OF TEXAS
VS.
DANNY PAUL BIBLE
LA DEPT CORR/ANGOLA
, LA

SPN: [REDACTED]
DOB: [REDACTED]
DATE PREPARED: 3/29/01

(P-1)
D.A. LOG NUMBER: 674016
CJIS TRACKING NO.:
BY: DJB DA NO: 060533450
AGENCY: HCSO
O/R NO: 79039629
ARREST DATE: TO BE

NCIC CODE: 0907 10

RELATED CASES:

FELONY CHARGE: CAPITAL MURDER
CAUSE NO: 872986
HARRIS COUNTY DISTRICT COURT NO: 351
FIRST SETTING DATE:

BAIL: \$NO BOND
PRIOR CAUSE NO:

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned Assistant District Attorney of Harris County, Texas, this day appeared the undersigned affiant, who under oath says that he has good reason to believe and does believe that in Harris County, Texas, DANNY PAUL BIBLE hereafter styled the Defendant, heretofore on or about MAY 27, 1979, did then and there unlawfully while in the course of committing and attempting to commit the AGGRAVATED SEXUAL ASSAULT of INEZ DEATON, intentionally cause the death of INEZ DEATON by stabbing INEZ DEATON with an ice pick.

PROBABLE CAUSE:

I, Harry Fikaris, employed as a peace officer with the Harris County Sheriff's Department, assigned to the Homicide Division Cold Case Squad, do solemnly swear that I have reason to believe and do believe that Danny Paul Bible, date of birth [REDACTED], did, in Harris County, Texas, on or about May 27, 1979, intentionally and knowingly committed the offense of Capital Murder.

MY BELIEF IS BASED UPON THE FOLLOWING FACTS:

Your affiant, in the course of his employment, investigated the offense of Capital Murder which occurred on May 27, 1979 at 10922 Keith Road, Harris County, Texas. Your affiant is assigned to the Cold Case Squad Division of the Harris County Sheriff's Department and reviews old, unsolved murders that occurred in the county limits. Your affiant in his review of this case, reviewed offense report #79-039629 in which Detective Ronnie Phillips, Sr. with the Harris County Sheriff's Department made the original scene where the body of the complainant was discovered, 13900 Homestead. Phillips states that the complainant was identified as Inez Deaton and he observed that she had died as a result of stabbing wounds and it appeared as if she had been sexually assaulted.

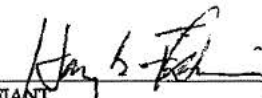
Your affiant also reviewed the autopsy report prepared by Assistant Medical Examiner Dr. Eduardo Bellas in which he stated that the complainant died as a result of 11 ice-pick wounds to the chest and to the back and also suffered injuries consistent with being sexually assaulted.

Your affiant states that the defendant was initially developed in 1979 as a suspect. Your affiant states that he went to West Baton Rouge Parish Sheriff's Department in the state of Louisiana in December 1998 and interviewed the defendant. Your affiant states that the defendant gave a voluntary taped statement and admitted the following. The defendant stated that he made up his mind to rape the complainant as soon as he saw her. The defendant stated that he overpowered her and struggled with her and took her to the floor. The defendant stated that her pubic hair color was dark brown and she was nude when he sexually assaulted her in the living room. The defendant stated that he killed her and took her body to a car and took her and dumped her in a field.

WHEREFORE PREMISES CONSIDERED, affiant respectfully requests that a warrant issue for the arrest of Danny Paul Bible, for the felony offense of Capital Murder.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Sworn to and subscribed before me on March 29, 2001


AFFIANT


ASSISTANT DISTRICT ATTORNEY
OF HARRIS COUNTY, TEXAS.

BAR NO.


COMPLAINT

HCDistrictclerk.com

The State of Texas vs. BIBLE, DANNY PAUL (SPN:
00593419)

5/11/2017

Cause: 087298601010 CDI: 3 Court: 351

SUMMARY**CASE DETAILS**

File Date	3/29/2001
Case (Cause) Status	Dismissed
Offense	CAPITAL MURDER
Last Instrument Filed	Felony Indictment
Case Disposition	DISM-062403
Case Completion Date	6/24/2003
Defendant Status	DISPOSED
Bond Amount	\$0.00
Next/Last Setting Date	6/24/2003

DEFENDANT DETAILS

Race/Sex	W / M	Height/Weight	5'08 / 170 LBS
Eyes	BLU	Hair	GRY
Skin	MED	Build	MED
DOB	██████████	In Custody	N
US Citizen	YES	Place Of Birth	TX
Address	LA DEPT CORR/AN UNK LA		
Markings			

CURRENT PRESIDING JUDGE

Court	351 st
Address	1201 Franklin (Floor: 14) Houston, TX 77002 Phone: 7137555620
JudgeName	Powell, George
Court Type	Criminal

HCDistrictclerk.comThe State of Texas vs. BIBLE, DANNY PAUL (SPN:
00593419)

5/11/2017

Cause: 087298601010 CDI: 3 Court: 351

ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
LIEDTKE, J. BRENT	PREVIOUS BENCH WARRANT FOR DEFENSE (MAY RETURN BW		62336500
WILLIAMS, BOBBY II	PREVIOUS BENCH WARRANT FOR DEFENSE (MAY RETURN BW		01962479
BECKMON, MICHAEL	PREVIOUS BENCH WARRANT WITNESS FOR THE PROSECUTION		00787071
CORNELIUS, R. P.	APPOINTED DEFENSE ATTORNEY		54831500
ISBELL, ALLEN C.	APPOINTED DEFENSE ATTORNEY		60431500
CORNELIUS, R. P.	APPOINTED DEFENSE ATTORNEY		54831500
ELLIS, MARK K	JUDGE - CRIMINAL		56572210
BIBLE, DANNY PAUL	DEFENDANT - CRIMINAL		00593419

INACTIVE PARTIES

No inactive parties found.

EXHIBIT 68

HN FORENSIC CONSULTING LLC

September 12, 2025

Nat Lombardo
Assistant Federal Public Defender
Capital Habeas Unit
Western District of Texas

RE: Ronald Jeffery Prible, Jr.
Cause No.: 4:09-CV-1896
GeneScreen Case No.: FOR2296
Harris County Office of Medical Examiner Case No.: CL99-0115

Dear Mr. Lombardo,

Per your request, I have performed a document review of the DNA testing performed by the Harris County Medical Examiner's Office ("HCME") and GeneScreen in the above referenced case. The documents reviewed include:

- the April 28, 1999 HCME Laboratory Report for Case No. CL99-0115, signed by Sara Katsanis ("HCME Lab Report");
 - the HCME laboratory case file, including the serology worksheet and slide examination worksheets ("HCME Case File");
 - the April 25, 1999 HCME investigative report for Nilda Tirado, Case No. 99-1121 ("HCME Tirado Report")
 - the June 4, 1999 GeneScreen report for Case No. FOR2296, signed by William Dr. Watson ("GeneScreen Report");
 - GeneScreen's associated case file, including lab worksheets and lab notes ("GeneScreen Case File");
 - the May 6, 1999 Harris County Sheriff's Office Supplemental Report #4 ("HCSO Report");
 - William Watson's 2002 trial testimony transcript ("Watson Testimony"); and
1. I have made the following observations regarding the DNA testing performed on the oral swabs from Nilda Tirado:
 - A. The following information is provided in the HCME Lab Report:
 - i. Semen was detected on the oral swab.
 - B. The following information is provided in the HCME Case File:
 - i. The Serology Worksheet indicates that spermatozoa were identified on the oral swab.

- ii. The Visualization of Sperm worksheet indicates “~15” (approximately 15) sperm were seen on the portion of the oral swab sample that was examined microscopically for the presence of sperm.
 - iii. The Visualization of Sperm worksheet further states in the comments section “cellular debris no tails seen” which indicates only sperm heads were observed upon examination and the sperm tails had already dislodged.
 - C. The following information is obtained from the GeneScreen Report and GeneScreen Case File:
 - i. A differential extraction was performed on the oral swabs, Item FOR2296-007, that resulted in two samples: the male (sperm) and female (nonsperm/epithelial) fractions. Generally, when such a differential extraction is performed, the male fraction would contain DNA from any sperm cells in the sample, and the female fraction would contain the epithelial cells from the female victim.
 - ii. The profile obtained from the male fraction of the oral swabs (FR2296-007OM) is consistent with the profile generated from Ronald Jeffery Prible, Jr. Statistical frequency estimate was provided for this profile.
 - iii. No conclusions are provided in the GeneScreen Report regarding the DNA results from the epithelial (female) fraction of the oral swab (Sample FR2296-007OF). However, upon comparison of the DNA profiles obtained, I conclude that the DNA profile from the epithelial (female) fraction of the oral swabs is consistent with the DNA profile obtained from Nilda Tirado.
2. I have made the following observations and conclusions regarding the Dr. Watson Testimony:
- A. Dr. Watson testified that at the time of the trial, he had never before developed a DNA profile from an oral swab. Dr. Watson further testified that his ability to successfully develop a full profile from the oral swab was “consistent with there being a great deal of sperm present,” and that this would be “consistent with [ejaculation] moments, if not seconds, before [Tirado] was killed.”
 - B. Dr. Watson’s conclusions, however, are not scientifically supported. A full DNA profile could be obtained even from extremely low levels of DNA – as low as approximately 200 picogram (pg) of DNA (1picogram is equal to 1 trillionth of 1gram) using the PCR kit used at the time. Since STR analysis utilizes PCR to target, replicate and amplify small amounts of DNA over many cycles, it is highly sensitive and capable of amplifying minute quantities of DNA. PCR based STR kits can produce interpretable profiles even from ~100pg of DNA. The ability to obtain a full profile is influenced by factors such as DNA quantity, DNA quality from proper preservation, storage conditions, and environmental degradation—not by the timing of deposition alone. Therefore, a particular analyst’s ability to obtain a

complete DNA profile does **not** imply that ejaculation occurred recently or immediately prior to death. In forensic science, there is no validated method to determine the time of deposition of semen based on profile completeness or quantity alone. As such, drawing conclusions about the proximity of ejaculation to death based on a particular analyst's ability to develop a full DNA profile from an oral swab is misleading and not substantiated by forensic literature.

- C. Dr. Watson acknowledged during his testimony that he personally had never previously developed a DNA profile from an oral swab and had never seen such results in published literature. However, by the early 2000s, the collection and testing of oral swabs in sexual assault investigations was a standard forensic practice in cases involving alleged oral-genital contact. The U.S. Department of Justice's National Protocol for Sexual Assault Medical Forensic Examinations (2004) recommended collecting oral swabs "when oral penetration is reported." These recommendations reflected practices already in place and confirm that oral swab collection and analysis was already being performed in forensic labs and profiles were being obtained from these samples.
- D. The ability to detect and identify sperm cells known as the persistence of spermatozoa in the oral cavity of deceased individuals is a subject with limited specific research. However, it is known from literature that sperm can remain detectable in the vaginal cavity for up to 72 hours post-ejaculation¹. In deceased individuals, degradation in the oral cavity is slower due to the cessation of normal body functions such as swallowing, salivation and enzymatic activity. Once these functions stop, there is no natural clearance of semen from the oral cavity, which can result in extended persistence of sperm cells where it was deposited. Furthermore, another study examined the persistence of spermatozoa and prostatic acid phosphatase (PAP) in various body specimens during different postmortem intervals. The study analyzed cases over a 10-year period, collecting swabs from oral, vaginal, and anorectal areas. While the study does not provide specific timeframes for the oral cavity, it suggests that spermatozoa and PAP can persist in postmortem specimens, with detection influenced by factors such as postmortem interval, environmental conditions, and the body's location². Another study found sperm cells after 16 days in the vagina of a dead body³.
- E. Another observation of note is the lack of tails on the sperm cells found in the oral cavity upon microscopic examination as reported in the HCME visualization of sperm worksheet. Sperm tails are tiny, whip-like structures that help the sperm move or "swim." They don't contain DNA; the DNA is in the head of the sperm. Sperm tails are very delicate and begin to break down quickly after ejaculation, especially if the sperm is no longer in a warm, moist

environment like inside the body. Tails typically fall off within 2 to 6 hours after ejaculation, depending on environmental and postmortem factors. The absence of tails in the sample may suggest that sperm had been present for a period of time in the oral cavity prior to collection.

- F. Given the above research, the presence of sperm in Ms. Tirado's oral cavity is not conclusive of when sexual activity occurred and cannot be used to estimate proximity to death. Research shows that sperm cells can survive even longer in deceased individuals^{3,4} since physiological processes like swallowing and salivary clearance cease, often preserving biological material longer. Dr. Watson's testimony regarding the timing of the deposition of semen does not take into account forensic literature suggesting longer postmortem sperm persistence. In my opinion, Dr. Watson's testimony regarding the timing of ejaculation relative to the time of death was overstated and misleading. DNA testing alone cannot conclusively determine the circumstances or the timeframe when DNA was deposited on an item.

If I can be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Huma Nasir." The signature is written in black ink and is positioned above the printed name and title.

Huma Nasir, MS
Forensic DNA Consultant
HN Forensic Consulting LLC

References:

1. Madea, B. (2015). Estimation of the Time Since Death. CRC Press.
2. Collins KA, Bennett AT. Persistence of spermatozoa and prostatic acid phosphatase in specimens from deceased individuals during varied postmortem intervals. *Am J Forensic Med Pathol.* 2001 Sep;22(3):228-32. doi: 10.1097/00000433-200109000-00004. PMID: 11563728.
3. Wilson, E.F. Sperm's morphologic survival after 16 days in the vaginal of a dead body. *Journal of Forensic Sciences.* 1974 July 1.
4. U.S. Department of Justice (2004). A National Protocol for Sexual Assault Medical Forensic Examinations – Adult/Adolescent. Washington, DC: Office on Violence Against Women.

EXHIBIT 69

Curriculum Vitae

HUMA NASIR, MS, ABC-MB

Education

M.S. Pharmaceutical Sciences with concentration in Forensic Serology and DNA	University of Florida	2006
B.S. Biological Sciences	University of New Orleans	2000

Professional Experience

June 2017 – Present

Forensic DNA Consultant

HN Forensic Consulting LLC, TX

Forensic DNA Expert providing consulting services to law enforcement agencies in the United States. As an expert, I provide independent review of the DNA testing and testify to my findings as needed. My services include case consultation, trial preparation, testing observation and trial testimony.

March 2019 – October 2023

DevLab *bio*, LLC, Coppell, TX

Vice President of Operations

- Responsible for the overall operations of laboratory, ensuring operations meet or exceed all key performance indicators
- Develop and implement operational standards for the lab
- Oversee laboratory testing and daily operations to complete all projects in the lab
- Ensures that regulatory requirements are met, monitoring test systems to ensure that they are in control
- Supervise employees, including all activities relative to staffing, work assignments, hiring/termination, performance reviews, orientation, and professional development
- Maintain client contact on all current and potential projects in the lab
- Oversee purchasing and testing of lab equipment to support efficiency/cost improvements.
- Create a culture of operational excellence, accountability and collaboration where teamwork and active problem-solving result in continuous improvement
- Lead strategic planning for lab; supporting continual growth, including equipment acquisition, personnel and process evolution.
- Oversee all lab budgeting activities and annual budget planning
- Maintain quality and efficiency, ensuring all laboratory day-to-day execution is consistent and in adherence with regulatory requirements

June 2017 – December 2018

RealTime Labs, Carrollton, TX

Lab Manager

Manage daily operations of the CAP accredited laboratory including supervision of ELISA and molecular testing.

June 2016 – June 2017

Bode Cellmark Forensics, VA

Senior Forensic DNA Analyst:

Duties include casework analysis and report writing, case reviews of work performed by other laboratories, preparing affidavits and providing expert testimony as needed. Also responsible for technical review of all validations provided to external government agencies to ensure compliance with accreditation standards and assist with laboratory work, data analysis and summary reports as needed.

January 2008 – December 2015

Orchid Cellmark/Cellmark Forensics, Dallas, TX

Technical Leader/Associate Laboratory Director

Forensic DNA Analyst III/IV/Team Leader (1/1/2008-11/31/11)

Supervisor Forensics (12/1/11-7/9/12)

Technical Leader, mtDNA and Y-STRs (7/9/12 – 3/4/13)

Technical Leader, autosomal STRs, Y-STRs and mt DNA (3/5/13-12/2015)

- Responsible for technical management of the laboratory, including technical problem solving of analytical methods. Responsible for method evaluation and proposing new or modified analytical procedures to be used by the laboratory.
- As Associate Director, assisted in the direction, overall operation and administration of the Forensic laboratory.
- Responsible for assisting with the oversight of training of new employees, quality control and quality assurance, and proficiency testing of all qualified forensic analysts in the laboratory.
- Conducted Internal Audits of the forensic laboratory and ensured compliance with various accrediting agencies. Ensured compliance with FBI's Quality Assurance Standards, SWGDAM guidelines, ASCLD standards and ISO17025 standards.
- Responsible for ensuring that casework is processed in an accurate and timely manner. Duties include case reviews, expert witness testimony as a court qualified expert, and client contact.
- Possesses in-depth expertise with all forensic DNA testing methodologies including autosomal STRs, Mini-STRs, Y-STRs and mitochondrial DNA testing.
- Continued casework analysis, reporting and technical review.

March 2001 – December 2007

ReliaGene Technologies, Inc. New Orleans, LA

Associate Scientist I (2001-2003):

- Extraction, PCR amplification and analysis of samples for CODIS upload.
- Assisted in development and production of Y-PLEX™ 5 and Y-PLEX™ 12 amplification kits, which consists of a primer mix, allelic ladder and controls, used for Y-STR analysis.
- **HIV Genotyping, DNA sequencing to determine patient's drug resistance profile.**
- **Performed Medical Diagnostics Testing for infectious diseases**

Forensic DNA Analyst I/II/III and Team Leader (2003-2007):

- Conduct scientific analysis on multiple forms of biological evidence on forensic casework utilizing PCR based DNA analysis following standard operating procedures for forensic DNA testing. Systems used on a routine basis include STR kits, Y-STR kits, MiniSTR, and Mitochondrial DNA analysis using the ABI 310, 3100 and 3130 Genetic Analyzers and the ABI 377 DNA Sequencer platforms.
- Responsible for processing casework in an accurate and timely manner. Prepare, write, and sign case reports, and available as an expert Forensic DNA analysis for court testimony.

- Routinely communicate directly with clients regarding various aspects of their case, from evidence collection to trial preparation.
- Available to less senior laboratory personnel as a resource for training, technical advice, problem solving, and questions.
- Assist Senior Forensic Scientists with the maintenance of training, QA/QC, safety measures, and proficiency testing in the laboratory.

Laboratory Experience

- DNA Extractions (PCR-STR)
- PCR Amplification
- PCR Analysis and Interpretation
- Paternity Testing
- Forensic Biology Screening (Presumptive and Confirmatory Immunoassays)
- Forensic Analysis, Case Reporting and Technical Review
- Y-STR Experience
- Mini STR Experience
- Mitochondrial DNA Experience
- Technical Reviews
- Case Reviews

Certifications

American Board of Criminalistics (ABC) – Molecular Biology

Memberships

Member – American Academy of Forensic Sciences (AAFS)

Testimony Experience

Qualified and testified as a Forensic DNA analyst/expert over 120 times in several different jurisdictions.

Publications

1. Shewale, J.G., **Nasir, H.**, Schneida, E., Gross, A.M., Budowle, B. and Sinha, S.K. 2004. Y-Chromosome STR system, Y-PLEX™ 12, for forensic casework: Development and validation. J. Forensic Sci. 49: 1278 - 1290.
2. Sinha, S.K., Budowle, B., Chakraborty, R., Paunovic, A., Guidry, R.D., Larsen C., Lal, A., Shaffer, M., Pineda, G., Sinha S.K., Schneida, E., **Nasir, H.** and Shewale, J.G. 2004. Utility of the Y-STR typing system Y-PLEX™ 6 and Y-PLEX™ 5 in forensic casework and 11 Y-STR haplotype database for three major population groups in the United States. J. Forensic Sci. 49:

691-700.

3. Sinha, S.K., **Nasir, H.**, Gross, A.M., Budowle, B. and Shewale, J.G. 2003. Development and validation of the Y-PLEXTM5, a Y-chromosome STR genotyping system, for forensic casework. J. Forensic Sci. 48: 985-1000.
4. Shewale, J.G., **Nasir, H.** and Sinha S.K. 2003. Variation in migration of the DNA fragments labeled with fluorescent dyes on the 310 Genetic Analyzer and its implication in the genotyping. The Journal of the Association of Genetic Technologists. 29: 60-64.

Abstracts

1. Orchid Cellmark's Osteo-PureTM Bone Extraction Procedure Captures Degraded DNA to Improve STR Results.C.B. Smitherman, **H. Nasir**, W.L. Hoffman, R.W. Staub, and S.K. Sinha. Promega Meeting, 2010.
2. Shewale, J.G., **Nasir, H.**, Schneida, E., and Sinha, S.K, 2003. Development and Validation of a Y-Chromosome STR Genotyping System, Y-PLEXTM 12, for Forensic Casework. 29th Annual Meeting NEAFS 2003, Pittsfield, MA. European Academy of Forensic Science Triennial Meeting 2003, Istanbul, Turkey. 14th International Symposium on Human Identification 2003, Phoenix, AZ. American Academy of Forensic Sciences 56th Annual Scientific Meeting 2004, Dallas, TX.
3. Sudhir K. Sinha, PhD, Amrita Lal, MSFS, Chris Larson, BS, Alison Flemming, BA, **Huma Nasir, BS**, Elaine Schneida, BS, and Jaiprakash Shewale, PhD. Validation and Forensic Casework Applications of the Y-STR Genotyping Systems Y-PLEXTM 6 and Y-PLEXTM 5. Annual meeting of the American Academy of Forensic Sciences 2003, Chicago, IL.
4. Sinha, S.K., **Nasir, H.**, Schneida, E. and Shewale, J.G. Y-Chromosome Specific STR Analysis Using Y-PLEXTM6 and Y-PLEXTM5 Amplification Kits. FASEB Meeting 2002, New Orleans, LA.
5. Sinha, S., **Nasir, H.**, Schneida, E. and Shewale J. Y-Chromosome specific STR analysis using a combination of Y-PLEXTM6 and Y-PLEXTM5 amplification kits. Proc. 16th 9Meeting of the International Association of Forensic Sciences 2002, Edited by E. Baccino, pp. 21-24, Monduzzi Editore.

EXHIBIT 70

U.S. ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF TEXAS
910 TRAVIS, SUITE 1500
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HOUSTON, TEXAS 77208
(713) 567-9000
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Mark McIntyre
ASSISTANT UNITED STATES ATTORNEY

SIGNATURE

DATE

TO:

Kelly Siegler
NAME

OFFICE/COMPANY

CITY/STATE

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713-755-5915# OF PAGES 6 (EXCLUDING FAX TRANSMISSION CONTROL RECORD)

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Precedence: Routine Priority ImmediateSender's Voice Coordination Telephone Number

Remarks:

Attached is copy of Rule 35 and
amendment effective December 1, 2002.
Also, attached is Rule 35 Motion that
I filed more than 1 year after sentencing.

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FEDERAL RULES OF JUDGMENT

Rule 35

Rule 34. Arrest of Judgment

The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or *nolo contendere*, or within such further time as the court may fix during the 7-day period.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Proposed Amendment of Rule

Effective December 1, 2002, absent contrary Congressional action, this rule is amended to read as follows:

Rule 34. Arresting Judgment

(a) *In General.* Upon the defendant's motion or on its own, the court must arrest judgment if

(1) the indictment or information does not charge an offense, or

(2) the court does not have jurisdiction of the charged offense.

(b) *Time to file.* The defendant must move to arrest judgment within 7 days after the court accepts a verdict or finding of guilty, or after a plea of guilty or *nolo contendere*, or within such further time as the court sets during the 7-day period.

ADVISORY COMMITTEE NOTES**1944 Adoption**

This rule continues existing law except that it enlarges the time for making motions in arrest of judgment from 3 days to 5 days. See rule 1(2) of Criminal Appeals Rules of 1933, 292 U.S. 561 (18 U.S.C. formerly following § 688).

1966 Amendments

The words "on motion of a defendant" are added to make clear, here as in Rule 33, that the court may act only pursuant to a timely motion by the defendant.

The amendment to the second sentence is designed to clarify an ambiguity in the rule as originally drafted. In *Loft v. United States*, 367 U.S. 421 (1961), the Supreme Court held that when a defendant pleaded *nolo contendere*, the time in which a motion could be made under this rule did not begin to run until entry of the judgment. The Court held that such a plea was not a "determination of guilt." No reason of policy appears to justify having the time for making this motion commence with the verdict or finding of guilty but not with the acceptance of the plea of *nolo contendere* or the plea of guilty. The amendment changes the result in the *Loft* case and makes the periods uniform. The amendment also changes the time in which the motion may be made to 7 days.

See the Advisory Committee's Note to Rule 29 as to the effect of

2002 Amendments

Effective December 1, 2002, absent contrary Congressional action,

The language of Rule 34 has been amended as part of the general reworking of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 35. Correction or Reduction of Sentence

(a) **Correction of a Sentence on Remand.** The court shall correct a sentence that is determined on appeal under 18 U.S.C. § 3742 to have been imposed in violation of law, to have been imposed as a result of an incorrect application of the sentencing guidelines, or to be unreasonable, upon remand of the case to the court.

(1) for imposition of a sentence in accord with the findings of the court of appeals, or

(2) for further sentencing proceedings if, after such proceedings, the court determines that the original sentence was incorrect.

(b) **Reduction of Sentence for Substantial Assistance.** If the Government so moves within one year after the sentence is imposed, the court may reduce a sentence to reflect a defendant's subsequent substantial assistance in investigating or prosecuting another person in accordance with the guidelines and policy statements issued by the Sentencing Commission under 28 U.S.C. § 994. The court may consider a government motion to reduce a sentence made one year or more after the sentence is imposed if the defendant's substantial assistance involves information or evidence not known by the defendant until one year or more after sentence is imposed. In evaluating whether substantial assistance has been rendered, the court may consider the defendant's pre-sentence assistance. In applying this subdivision, the court may reduce the sentence to a level below that established by statute as a minimum sentence.

(c) **Correction of Sentence by Sentencing Court.** The court, acting within 7 days after the imposition of sentence, may correct a sentence that was imposed as a result of arithmetical, technical, or other clear error. (As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 23, 1983, eff. Aug. 1, 1983; Oct. 12, 1984, Pub.L. 98-473, Title II, § 215(b), 98 Stat. 2015; Apr. 29, 1985, eff. Aug. 1, 1985; Oct. 27, 1986, Pub.L. 99-570, Title X, § 1009, 100 Stat. 3207-3; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 24, 1998, eff. Dec. 1, 1998.)

Proposed Amendment of Rule

Effective December 1, 2002, absent contrary Congressional action, this rule is amended to read as follows:

Rule 35. Correcting or Reducing a Sentence

Rule 35

RULES OF CRIMINAL PROCEDURE

(a) **Correcting Clear Error.** Within 7 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

(b) **Reducing a Sentence for Substantial Assistance.**

(1) **In General.** Upon the government's motion made within one year of sentencing, the court may reduce a sentence if:

(A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and

(B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements.

(2) **Later Motion.** Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

(A) information not known to the defendant until one year or more after sentencing;

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or

(C) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

(3) **Evaluating Substantial Assistance.** In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentence assistance.

(4) **Below Statutory Minimum.** When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.

**Rule Applicable to Offenses Committed
Prior to Nov. 1, 1987**

This rule as in effect prior to amendment by Pub.L. 98-473 read as follows:

"Rule 35. Correction or Reduction of Sentence

"(a) **Correction of Sentence.** The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

"(b) **Reduction of Sentence.** A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judg-

ment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision."

For applicability of sentencing provisions to offenses, see Effective Date and Savings Provisions, etc., note, section 235 of Pub.L. 98-473, as amended, set out under section 3551 of Title 18, Crimes and Criminal Procedure. See, also, Codification note below.

ADVISORY COMMITTEE NOTES

1944 Adoption

The first sentence of the rule continues existing law. The second sentence introduces a flexible time limitation on the power of the court to reduce a sentence, in lieu of the present limitation of the term of court. Rule 46(c) abolishes the expiration of a term of court as a time limitation, thereby necessitating the introduction of a specific time limitation as to all proceedings now governed by the term of court as a limitation. The Federal Rules of Civil Procedure (Rule 6(c)), 28 U.S.C. Appendix, abolishes the term of court as a time limitation in respect to civil actions. The two rules together thus do away with the significance of the expiration of a term of court which has largely become an anachronism.

1966 Amendments

The amendment to the first sentence gives the court power to correct a sentence imposed in an illegal manner within the same time limits as those provided for reducing a sentence. In *Hill v. United States*, 368 U.S. 424 (1962) the court held that a motion to correct an illegal sentence was not an appropriate way for a defendant to raise the question whether when he appeared for sentencing the court had afforded him an opportunity to make a statement in his own behalf as required by Rule 32(a). The amendment recognizes the distinction between an illegal sentence, which may be corrected at any time, and a sentence imposed in an illegal manner, and provides a limited time for correcting the latter.

The second sentence has been amended to increase the time within which the court may act from 60 days to 120 days. The 60-day period is frequently too short to enable the defendant to obtain and file the evidence, information and argument to support a reduction in sentence. Especially where a defendant has been committed to an institution at a distance from the sentencing court, the delays involved in institutional mail inspection procedures and the time required to contact relatives, friends and counsel may result in the 60-day period passing before the court is able to consider the case.

The other amendments to the second sentence clarify ambiguities in the timing provisions. In those cases in which the mandate of the court of appeals is issued prior to action by the Supreme Court on the defendant's petition for certiorari, the rule created problems in three situations: (1) If the writ were denied, the last phrase of the rule left obscure the point at which the period began to run because orders of the Supreme Court denying applications for writs are not sent to the district courts. See *Johnson v. United States*, 235 F.2d

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v. .

SHANNIN KOVARNA

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§
§
§

CRIMINAL NO. H-00-454

GOVERNMENT'S RULE 35 MOTION FOR
REDUCTION OF SENTENCE

The United States of America, by and through Michael T. Shelby, United States Attorney, and Mark McIntyre, Assistant United States Attorney, for the Southern District of Texas, moves the Court to depart downward at the re-sentencing of the defendant for the following reasons:

I.

On January 12, 2001, defendant Shannin Kovarna was sentenced to 57 months after having previously entered pleas of guilty to Counts Three and Four of the Criminal Indictment charging him with aiding and abetting the possession with intent to distribute and importation of 3, 4 methylenedioxymethamphetamine.

II.

The defendant subsequently traveled to the Central District of California so that he could cooperate with the Government and testify against an individual involved in a conspiracy to import 3, 4 methylenedioxymethamphetamine into the United States in a case styled *United States v. Aaron Cain McKnight, Cr. 00-344*, in the United States District Court for the Central District of California. The defendant was unable to testify at trial based on a ruling by the Court. However, Julie J.

Shemitz and Michael S. Lowe, Assistant United States Attorneys for the Central District of California in Los Angeles have advised that the defendant's cooperation substantially assisted the government. A copy of a letter detailing the defendant's cooperation from Ms. Shemitz and Mr. Lowe is attached as Exhibit A.

III.

Rule 35(b) of the Federal Code of Criminal Procedure allows the Court to consider the cooperation and value to the Government at the re-sentencing of a cooperating defendant. Under Rule 35(b), the Government advises the Court that the defendant has provided substantial assistance to the Government during the prosecution of the above-mentioned case.

IV.

The defendant was originally sentenced to 57 months imprisonment:

V.

The government recommends to the Court, in view of the defendant's cooperation in the prosecution of the above-mentioned case, that the defendant be re-sentenced to 41 months imprisonment.

VI.

This recommendation does not overlook the fact that the defendant was directly involved in importing large quantities of 3, 4 methylenedioxymethamphetamine into the United States. Rather, the recommendation is made in recognition of the cooperation voluntarily provided by the defendant and the value of his assistance to the Government.

Respectfully submitted,

MICHAEL T. SHELBY
United States Attorney

By:

Mark McIntyre
Assistant United States Attorney
910 Travis, Suite 1500
P.O. Box 61129
Houston, Texas 77208
Telephone: (713) 567-9572
Telecopier: (713) 718-3305

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by fax to counsel of record for the defendant as listed below on the 25th day of July, 2002.

David Adler
Fax (713) 665-7070

Mark McIntyre
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

SHANNIN KOVARNA

§
§
§
§
§
§

CRIMINAL NO. H-00-454

ORDER

The Government's motion for downward departure for defendant SHANNIN KOVARNA
is hereby **GRANTED / DENIED**.

The defendant is re-sentenced to _____ months imprisonment.

SIGNED in Houston, Texas, on this the _____ day of _____, 2002.

HONORABLE MELINDA HARMON
UNITED STATES DISTRICT JUDGE

EXHIBIT 71

Logan Dietz

address & phone

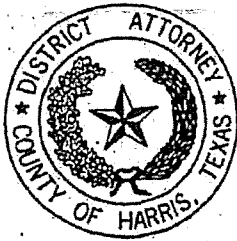
to negotiate w/ atty over ↓ at

C Logan Dietz
212 770006
713-626-8171
713-526-5156

John
539 7432
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559 498
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11/15/02
Mach play
to pay & make
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Cullen
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Beckham

EXHIBIT 72



CHARLES A. ROSENTHAL, JR.

DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

1201 Franklin, Suite 600, Houston, TX 77002

FAX COVER SHEET

DATE: 11/15/02

COMPANY NAME: U.S. Attorney's Office, Eastern District of California

ATTENTION: Mark Callers

TELEPHONE: _____

FAX NUMBER: 559-498-7432

FROM: HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE

1201 FRANKLIN, STE. 600

HOUSTON, TX 77002

SPECIAL CRIMES BUREAU: GANGS AND NARCOTICS DIVISION

Tel: (713) 755-5845

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Siegler, Kelly

To: mark cullers

Michael Beckcom's last attorney was C. Logan Dietz, 212 Stratford, Houston, TX 77006. W 713-626-8171 Fax: 713-526-5156

*** TX REPORT ***

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RESULT	OK