

Case No. 125617

**IN THE
SUPREME COURT OF ILLINOIS**

ALAN BEAMAN,

Plaintiff-Appellant,

v.

On Appeal from the
Appellate Court of Illinois,
Fourth District, No. 4-16-0527

There Heard on Appeal from the
Circuit Court of McLean County, Illinois
Case No. 14 L 51
The Honorable Richard L. Broch Judge
Presiding

TIM FREESMEYER, Former Normal
Police Detective; DAVE WARNER,
Former Normal Police Detective;
FRANK ZAYAS, Former Normal Police
Lieutenant; and TOWN OF NORMAL,
ILLINOIS,

Defendants-Appellees.

BRIEF OF DEFENDANTS-APPELLEES

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STATEMENT OF FACTS¹

The statement of facts in an appellate brief must be stated “fairly without argument or comment . . . “ Supreme Court Rule 341(h)(6). In disregard of the Rule, plaintiff’s Statement of Facts is improperly slanted, argumentative and replete with improper comment, such that it is of little use to this Court. Defendants offer here the balanced and objective description of the facts this Court deserves.

Background

On April 1, 1995, plaintiff, Alan Beaman, was found guilty by a jury of the murder of Jennifer Lockmiller, and sentenced to 50 years in the IDOC. Beaman spent 13 years in prison and was released in 2008 based on the Illinois Supreme Court’s decision in *People v. Beaman*, 229 Ill.2d 56 (2008). The Supreme Court held the State violated Beaman’s right to due process under *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose material information about a possible alternative suspect – Murray. *Id.* The withheld evidence consisted of four points: (1) Murray failed to complete a polygraph examination; (2) Murray was charged with domestic battery and possession of marijuana with intent to deliver prior to Beaman’s trial; (3) Murray had physically abused his girlfriend on prior occasions; and (4) Murray’s use of steroids caused him to act erratically. *Id.* at 73-74. During the Lockmiller murder investigation, defendants Freesmeyer, Warner and Zayas were police officers for the NPD in its Criminal Investigations Division (“CID”). Freesmeyer was an investigator, Warner an evidence officer, and Zayas the lieutenant in

¹ Record references are from plaintiff’s Appendix, designated with “A,” defendants’ Supplemental Appendix, designated with “SA,” or the common law record, designated with “C.”

charge of CID at the time. A1401-1403, A2493-2497, A2738. Tony Daniels was a CID detective also involved in the Lockmiller murder investigation. A2493-2494.

James Souk was the Felony Division Chief in the McLean County State's Attorney's Office ("SAO") at the time. SA011p.28. In January, 1997, Souk became an Associate Judge in McLean County, and was later elected Circuit Court Judge. SA011 p.28. Souk was the lead prosecutor in plaintiff's prosecution for Lockmiller's murder. SA012p.51. Charles Reynard was the elected McLean County State's Attorney at the time. SA063p.30. He also subsequently was elected a Circuit Court Judge in McLean County. SA063-064pp.32-33.

The Murder

On August 28, 1993, Jennifer Lockmiller's decomposed body was found in her apartment at 412 N. Main Street, Normal, Illinois. Lockmiller was a student at Illinois State University (ISU) at the time. Lockmiller had been strangled with an electrical cord from an alarm clock in her bedroom, and had been stabbed in the chest with a pair of scissors. A36, ¶1.

Lockmiller's body was found by her close friend, Morgan Keefe (now Hartman), who after attempting to contact Lockmiller for several days, went to her apartment, found the body and called the police. SAp.044. Keefe immediately told the police "I know who did it," and reported that Lockmiller was deathly afraid of her former boyfriend, Alan Beaman. SAp.045-046, SAp.150-151.

The crime scene was a two-story frame apartment building containing four apartments. Lockmiller's body was found in apartment No. 4, on the west end of the second

floor. A3208-3209. The police concluded there were no signs of recent forced entry. Signs of damage to the apartment door frame were present prior to the murder. A3209.

Two book bags and Lockmiller's purse were on a table; all three were closed and undisturbed. A3209. Lockmiller's purse contained her driver's license and other identification, a wallet with \$17.71 in cash, credit cards and other personal effects. A3209. Officers did not detect any burglary signs because no items of value were missing. SA073. In the living room the television was on and the air conditioning unit was running. A3209. NPD detectives learned that Lockmiller's grey Pontiac Sunbird had been parked for several days outside the front door to the building. SA074.

A hole, approximately ten inches in diameter, was found on the south wall of the bedroom. A3210. NPD detectives learned the hole in the bedroom wall was made by plaintiff prior to Lockmiller's murder. SAp.109, SAp.140. Several letters from plaintiff were found under Lockmiller's bed. SAp.068. Lockmiller's body was on the floor in between two beds in a supine position. Lockmiller's shirt and bra were pushed up, exposing her chest; and her shorts, belt, and underwear were pulled down around her left calf and ankle. A3210. The police found no physical evidence of rape. SAp.087-089.

A pair of scissors with red plastic handles was embedded in the center of Lockmiller's chest. A3210. The autopsy revealed Lockmiller was likely stabbed when she was already dead or her heart barely beating. SA072. Multiple other superficial stab wounds were noted in the skin on Lockmiller's chest, which apparently were made with the scissors. A3210. A clock radio was on the floor next to Lockmiller's head, and the cord from the radio was wrapped around Lockmiller's neck and tied in front. A3210. A box fan was resting on the scissors in Lockmiller's chest, covering her face.

The Murder Investigation

The apartment was processed for fingerprints at the Morton Crime Laboratory. Two of plaintiff's fingerprints were identified on the clock used to strangle Lockmiller; one was on the back of the clock near the cord and another on the bottom of the clock. SA065-067, SA101-102.

The cause of death was ligature strangulation. SA149. The post-mortem examination of Lockmiller found no defensive wounds on her body. SA075. The SAO and NPD detectives believed the murder was a crime of passion, involving an act of vengeance of some type, and that Lockmiller knew her killer. A1589, A2765-2766, A1900-1902.

On the day Lockmiller's body was discovered, a meeting was held in the NPD with Police Chief James Taylor, several CID detectives, Souk, and McLean County Coroner Dan Brady. A1456, SA024-025pp.180-184. Detectives were assigned to investigate various aspects of the case. A1456-1457. Souk himself visited the crime scene and very early on became the lead prosecutor. SA018pp.105-106. Plaintiff was in Rockford that night and Daniels and Rob Hospelhorn, another NPD Detective, were assigned to go to Rockford to interview plaintiff. A2630-2631.

Daniels and Hospelhorn were able to conduct a short interview of plaintiff in Rockford the night of August 28, 1993, which plaintiff terminated abruptly. A1925, A1934-1935, A1940. The detectives came away from the interview believing plaintiff's conduct was highly suspicious. They were particularly interested that while plaintiff was questioned about his relationship with Lockmiller, he never asked if something had happened to her. A1935-1939. Daniels and Hospelhorn returned to Rockford the following

day to attempt to talk to plaintiff again, but were told he was represented by counsel and would not talk to them. A1953-1954.

Throughout the first six weeks after the murder, every detective in CID worked on the investigation. A2772-2773. Dozens of friends, neighbors, boyfriends, relatives and acquaintances were interviewed. A1353. Zayas, as the head of CID, assigned different parts of the investigation, and each detective worked on various facets of the case. SA003p.69. The detectives in CID met periodically to discuss the investigation. A1420-1421. Souk at times attended as well. SA027-028.

In the beginning Freesmeyer focused on Mike Swaine, who came to Lockmiller's apartment while Freesmeyer was there. A1457. Swaine was plaintiff's roommate, and had begun dating Lockmiller. After Swaine's alibi was verified, and he passed a polygraph, Freesmeyer worked with Swaine to obtain recorded conversations with plaintiff. A1305, A1576-1577.

Interview of Morgan Keefe

Morgan Keefe was Lockmiller's best friend. A1377. Immediately after discovering Lockmiller's body, Keefe called 911 and told the dispatcher "I know who did it [Lockmiller] had this psycho ex-boyfriend that she broke up with. His name's Alan, he went to Wesleyan and I only met him once and he was psycho and he used to harass her all the time and he used to break down her door." A1377. Warner interviewed Keefe and discovered that Keefe and Lockmiller went to a movie on the Tuesday night before Lockmiller's body was found. They left the theater around midnight, which was the last time Keefe saw or spoke with Lockmiller. SA044. Keefe had been trying to contact

Lockmiller since around 3:30 p.m., on August 25. SA049. Keefe found the door to Lockmiller's apartment unlocked when she discovered Lockmiller's body. SA050.

Keefe said Lockmiller had been dating plaintiff, but when Lockmiller tried to break away from him, he would threaten suicide. SA045. One night Keefe arrived at Lockmiller's apartment and a chair and a big beam were lodged against the front door. When Keefe opened the door Lockmiller started screaming. Keefe told her, "Jen, it's me. It's ok," and Lockmiller said, "[plaintiff] broke down the door awhile ago." SA045. Keefe described Lockmiller as afraid of plaintiff. A1377. Lockmiller told Keefe that she was looking forward to plaintiff going home over the summer. SA046. Plaintiff did move home on August 4, 1993 and Swaine moved into Lockmiller's apartment with her around August 15. SA046-047.

Lockmiller's Neighbors

Neighbors told NPD detectives they overheard fights between Lockmiller and a man who drove a silver Ford Escort. A1288. Plaintiff drove a silver/grey Ford Escort. A2907. David Singley, who lived directly across the hall from Lockmiller, told NPD detectives that a month before Lockmiller's murder he overheard an argument between Lockmiller and plaintiff, during which plaintiff tried to break into Lockmiller's apartment by kicking and throwing himself against her apartment door. Singley also told police that plaintiff ran around the apartment parking lot yelling "slut." A1289, A3296-3297, SA175-176. He returned to her apartment a short time later to yell something like "I see your cherry stain on the bed;" and "you slept with him but you wouldn't sleep with me;" and "the only reason you dated me was to go to bed with my friend." A1289, A3297, SA176.

Singley also told the police that he heard sounds from Lockmiller's apartment after the suspected day of the murder. Freesmeyer and Souk believed Singley was mistaken about when he heard these sounds. SA034,p.302, SA035,pp.303-304, SA036pp.307, SA071. Singley was uncertain about timing, believing he saw Swaine's car parked in the apartment parking lot the day of the murder, when in fact Swaine did not come back to Normal until two days later. SA034pp.301-302.

Time of Death

The McLean County Coroner opined that Lockmiller's body was in her apartment for 2-4 days before she was discovered. SA076-077. The forensic pathologist estimated the time of death being between 9:00 a.m. August 25, and 9:00 a.m. August 27. SA 177-178.

Claudine Moss told NPD detectives she spoke to Lockmiller at 8:00 a.m. on August 25, about a kitten Lockmiller was advertising for sale. SA079-081, SA055-062. Moss told police she went to Lockmiller's apartment to look at the cat around 4:20 p.m. on August 25, but Lockmiller did not answer her door. SA079-081.

Lockmiller's class schedule for August 25, 1993, showed that she had four classes on that date: (a) 9:00-9:50 a.m.; (b) 10:00-10:50 a.m.; (c) 11:00-11:50; and (d) 2:00-2:50 p.m. SA078-079. Lockmiller attended her first three classes, but did not attend her fourth. She did not make a work meeting she was supposed to attend at 8:00 that night. SA079. NPD detectives were unable to find any person who saw Lockmiller alive after her 11:00-11:50 a.m. class on August 25. SA081.

Plaintiff's Alibi

On October 11, 1993, NPD detectives learned that plaintiff made a deposit at Bell Federal Bank, located at 1466 S. Alpine Road, Rockford, at approximately 10:11 a.m. on August 25. A1312. On October 12, 1993, Freesmeyer interviewed plaintiff at the NPD. A1313-1315. During the interview, plaintiff stated that on August 25, he arrived home from work shortly after 9:00 a.m. and went to sleep until his parents woke him up at 3:30-4:00 p.m., when they got home. A1313-1315. Plaintiff's supervisor where he worked, Dennis Clark (plaintiff's uncle), confirmed to NPD detectives that plaintiff got off work on August 25 at 9:00 a.m. SA085-086.

Based on the distance between Rockford and Bloomington, NPD detectives believed it was possible for plaintiff to have left Bell Federal, traveled to Bloomington to commit the murder, and returned to Rockford by 3:00 p.m. A1597-1673, SA090-096. Freesmeyer conducted a number of time trials to test this out. Souk went on at least one of them and he was aware of all the variables of these time trials, including the speed driven and routes taken, and was able to assess for himself the value of this information. SA013-017.

Plaintiff's Relationship with Lockmiller

Plaintiff and Lockmiller had broken off their stormy relationship approximately one month before her murder. During their two-year relationship, they broke up and reunited 18 times. A1291-1292. They had many loud arguments, witnessed by their friends and neighbors, one of which resulted in plaintiff drinking a bottle of nail polish remover as a suicide effort, and the police being called. SA043, SA097-098.

Freesmeyer reviewed undated letters found in Lockmiller's apartment plaintiff wrote to her. A1294-1296. The letters expressed plaintiff's passion for Lockmiller, that he loved her "more passionately than Romeo did Juliet, more hopelessly than Ophelia did Hamlet, more vengefully than Medea, Jason," and added, "Don't worry, I won't kill anybody, I don't believe in that. I do unto others as I would have them unto me (from now on)." Plaintiff wrote "I really just want you to be with me and only me," and other expressions of his passion that he felt for her. A1294-1296, SA069-070.

NPD detectives learned that in June, 1993, plaintiff broke down Lockmiller's apartment door while she was hosting her friend and sometimes lover, Larbi John Murray. A1743-1744. Todd Barth, Lockmiller's friend, told NPD detectives that around 3 a.m. on July 5 or 6, 2015, Lockmiller called him because plaintiff was trying to break in, and she was frightened and moved a dresser in front of the door. SA173-174.

Detectives learned that plaintiff suspected Lockmiller was sleeping with Swaine. A1642-1643, A2910, A2918, SA126. On a night in July, Swaine asked plaintiff to borrow his car to go to a party. Thinking Swaine was lying (he was), plaintiff followed Swaine on his bicycle to Lockmiller's apartment. Plaintiff banged on the door yelling, "I knew it! I know you are in there," and kicked in the door, looking for Swaine, who was hiding in a closet. A3208-3210, A2918-2919, SA111. Another time, plaintiff pushed his way into Lockmiller's apartment and rummaged through her trash can looking for Swaine's used condoms as evidence of their affair. A1577-1584, SA051, SA167-168, SA169-170.

Kris Perry, a close friend of Lockmiller and plaintiff, told Detective Hospelhorn that Lockmiller told him plaintiff once said he would kill her then kill himself. SA001p.109. Hospelhorn interviewed Perry a second time a few days later and Perry

changed his story to say that plaintiff only threatened to kill himself, not Lockmiller. SA001pp.110-111.

Numerous friends and family told NPD that Lockmiller was afraid of plaintiff. SA005-006pp.190-195, SA152. Heidi Steinman, a close friend of Lockmiller's, told NPD detectives that plaintiff had thrown a glass at Lockmiller, and also threw and broke her lamp. SA154. Steinman also said that Lockmiller was afraid to call the police on plaintiff because she thought he would go "crazy" if she did. SA155A.

Swaine told NPD detectives that plaintiff was infatuated with Lockmiller, and believed Lockmiller was the only woman for him. A2950. Plaintiff's friend Mike Mackey, told police Lockmiller would "fuck with his [plaintiff's] head so much that he would just go crazy . . . he would be irrational and mood swings . . . it just made him suicidal . . . she just drove him crazy." SA163-164. NPD detectives received information that in the summer of 1993, plaintiff was seeing a psychiatrist, was not eating or sleeping, and was "a mess" and "a mental wreck" because of what he was "going through with Jen." SA110-115. Another witness, Jennifer Seig, told NPD detectives she believed plaintiff threatened to kill Lockmiller and Swaine if he ever caught them together. SA0166.

Katy Corbett, plaintiff's friend, told detectives that at one time Lockmiller was ready to end it with plaintiff but did not because he "went through these times when he would be violent and he punched a huge hole in her wall at her apartment," and "he would get really upset." Corbett stated that if "Alan was in the right frame of mind, he could be violent." SA157.

Michael Bowen, Lockmiller's friend, informed detectives that Lockmiller told him plaintiff "pushed her before." SA051. Meredith Haynes, a friend of Lockmiller's, said that

Lockmiller told her that plaintiff broke down Lockmiller's apartment door several times, pushed her around and knocked things over. SA167-168, SA169-170.

Swaine's Relationship with Lockmiller

During the summer of 1993, Swaine and plaintiff were roommates and working together at the Illinois Wesleyan theater. SA097-098pp.249-250. Swaine began a sexual relationship with Lockmiller in June, 1993. SA097-098pp.249-250, SA118. Swaine told NPD that plaintiff gets "real jealous" and "would make everything real dramatic" when he thought that "something is going on" between Lockmiller and another man. SA108-109. Swaine and Lockmiller attempted to hide their relationship from plaintiff. SA117-125.

On July 25, 1993, plaintiff searched Swaine's bedroom while he was at work for evidence that Lockmiller and Swaine were having a relationship. SA098, SA127, SA165-166. Plaintiff found two letters from Lockmiller to Swaine. SA121-122. Plaintiff also found an open box of condoms in their apartment and believed some condoms were missing from the box, which meant to plaintiff Swaine was having sex with Lockmiller. SA160-161.

Plaintiff took the letters he found to the theater at school where he and Swaine worked together, and angrily confronted Swaine about his relationship with Lockmiller, accusing Swaine of "fucking my girlfriend." SA127, SA156. Plaintiff then went immediately to Lockmiller's apartment, and pounded on her locked door. SA153-154. Steinman, who was with Lockmiller in her apartment, told NPD detectives plaintiff said, "Don't do this to me Jen. I'm going to kill myself" and kept threatening suicide until Lockmiller let him in. SA153-154. Once inside, plaintiff angrily confronted Lockmiller with the letters. SA152-153. He went through Lockmiller's bathroom garbage can and

found a tampon applicator, and said “See this is prophylactic. I know it, I know it. You had sex with him.” SA153.

Plaintiff Leaves for Ohio

Plaintiff left Bloomington on July 25, after confronting Swaine and Lockmiller, and went to Ohio, where he stayed with a friend. SA127. Before leaving Bloomington, plaintiff gave his theater professor, Dr. Brown, a note stating “ the things that I’ve found out and witnessed about my aforementioned roommate and my ex-fiancé have crushed any spirit. I had to get out of the slump, and it’s really just time for me to leave. I’m just afraid I’d cause even more hell to break loose.” SA098-099. Plaintiff attached the two letters he found in Swaine’s room to the note. SA100. While he was in Ohio, plaintiff called Lockmiller eight times. A338-339.

Plaintiff Returns to Bloomington

On August 4, plaintiff returned to Bloomington to get his car. He went to the apartment he shared with Swaine and saw him driving Lockmiller’s car. SA126. That same day, plaintiff went to Lockmiller’s apartment “to talk to her because we had broken up.” A2912. Plaintiff then drove Lockmiller to class, and when he dropped her off, she kissed him goodbye, and he told her “that might be the last time we ever kissed” because he did not think he could ever trust her again. A2913. Plaintiff told NPD detectives that August 4, 1993 was the last time he saw Lockmiller and that he had “no idea” if she was dating anyone “and didn’t want to know.” Plaintiff returned to Rockford on August 4, 1993. A2902, A2908, A2912.

Swaine Moves in with Lockmiller

Around August 14, Swaine moved out of the apartment he shared with plaintiff and into Lockmiller's apartment. SA116. A week later, Swaine went home to Elmhurst, Illinois, to work. SA128-129. Swaine's belongings were in Lockmiller's apartment after he moved in: his "stuff" was on the top bunk bed; his alarm clock was on her bedroom floor; his clothes were in Lockmiller's closet and drawers; his box fan was in her bedroom; a box of his letters was in the living room; and his phone list was near the TV. SA130-146. Swaine told detectives that when he talked to Lockmiller on Sunday, August 21, Lockmiller said that she had not told plaintiff Swaine was living with her. SA147.

Plaintiff's Contact with Lockmiller from Rockford

Steinman told NPD detectives that plaintiff called Lockmiller from Rockford to tell her that he loved her and missed her. SA083-084, SA0155. Lockmiller's phone records show she made 28 calls to plaintiff's Rockford residence on August 22, 1993. SA082. The next day, August 23, plaintiff and Lockmiller spoke on the telephone for 13 minutes. SA083. Plaintiff later told Freesmeyer that Lockmiller was asking to get back together with him during the call, but he said "No, I don't want to talk to you. You fucked my fucking roommate and I don't want to talk to you," then hung up. SA162.

The Other Suspects

Other suspects early in the investigation included Swaine, Stacey "Bubba" Gates, Murray, John Revis, and Rob Curtis. A1576-1577, SA004,p.103. Freesmeyer first focused on Swaine, whose alibi checked out (he was at work in Elmhurst). Gates was eliminated as a suspect early when his alibi was verified. A1474. He was teaching at a school in Peoria when Lockmiller was murdered. A1661.

Daniels and Hospelhorn interrogated Murray twice, and tape recorded the statements. SA002 p.150. A September 2, 1993 interview revealed that Murray previously dated Lockmiller. A1737, 1781. While plaintiff and Lockmiller were dating, plaintiff “freaked out” and kicked in Lockmiller’s door when Murray was there, and grabbed Lockmiller’s arm. Lockmiller told Murray she was scared to break up with plaintiff because she “did not know what he was going to do” and that plaintiff was a “psycho.” A1797-1798, A1803. He visited Lockmiller’s apartment sometime between August 19 and 23, and he believed he left Bloomington to go home to Byron, Illinois, on August 24 at 3 p.m. A1782-1783. Murray was in Byron until September 1. A1783.

In a follow-up interview on September 8, 1993, Murray clarified he last saw Lockmiller on August 21, and that he left town on August 25, which he recalled because of his live-in girlfriend Debbie Mackoway’s work schedule. A1737-1738. Mackoway left their apartment for work at 6:30 a.m. on August 25, and returned at 1 p.m. Murray said he was at home from the time Mackoway left for work until she returned at 1 p.m., and was with her from 1 p.m. to 4 p.m. Murray left for Byron on August 25 at 4 p.m. He returned to Bloomington on September 2. A1786-1789, A2563-2564. When Murray learned of Lockmiller’s death, he and Mackoway stayed at a hotel because they believed plaintiff killed Lockmiller and were afraid of him. A1794. Murray admitted he sold Lockmiller marijuana, and Lockmiller owed him \$20. A1795. Murray offered to take a polygraph. A1804.

Daniels and Hospelhorn interviewed Mackoway on September 3 and 8, 1993. A1786. During those interviews Mackoway said she was with Murray at their apartment from 2 p.m. to 4:20 p.m. on August 25, then Murray left Bloomington for Byron. A1786.

Mackoway and Murray saw Lockmiller on August 21, and Mackoway believed that was the last time Murray saw Lockmiller as well. A1737-1738, SA052.

On September 30, 1993, Daniels took Murray to the Morton Crime Lab for a polygraph. A1978-1979. Terrance McCann, the polygraph examiner who administered the test to Murray, was unable to obtain a result because Murray could not follow McCann's directions. SA171p.47-48. McCann did not conclude Murray intentionally prevented a result to deceive the examiner. SA172p.198-199. McCann explained to Daniels that the test could not be completed. SA007p.261. While driving Murray back to Bloomington, Daniels discussed another polygraph with Murray. SA008p.270.

A week later, Warner received the Murray polygraph report. It was sent to Warner because he made the appointment for the polygraph, and when he received the report he gave it to Daniels. Warner did not know what Daniels did with the report. A2747. Warner believed the State Police Lab also sent Murray's report directly to the SAO's Office, but the SAO never got that report in its file. A2746-2747.

Daniels did not deny receiving Murray's polygraph report from Warner, only that he had no memory of it. A289-290. Daniels worked closely with Warner and knew his practices and character well, and declared that he believed Warner did not and would not intentionally suppress the report. A2244-2246. Daniels described possible explanations for the report not getting to the SAO file: Warner may have given it to Daniels and he misplaced it; an NPD intern who made copies for the file could have misplaced it; Daniels could have accidentally put the report in a different file; or the report could have otherwise fallen through the cracks somewhere in the NPD. A2033-A2034, A2485-2488.

Freesmeyer's entire knowledge regarding Murray was documented in a

comprehensive report Freesmeyer completed. A1604. Freesmeyer organized polygraph exams with Kenneth Frankenberry, a state polygraph examiner from Rockford, at the NPD on October 12, 1993 -- for plaintiff's friend, Chris Carbone; for Murray; and for plaintiff. Murray did not show up for his examination, and plaintiff refused. A1312-1314. Freesmeyer was aware that Daniels' interviewing style intimidated many of the young people he interviewed, and so the fact that Murray did not appear for his polygraph was not suspicious to Freesmeyer. A1523-1524. Freesmeyer did not interview Murray, and likely never met with him. A2673.

In February, 1994, Freesmeyer and other NPD investigators met with Chicago Police Department homicide detectives to discuss the investigation. A2128-2129. According to Daniels, alternative suspects, including Murray, were discussed at that meeting. A2135. The Chicago detectives recommended that the NPD investigators continue to focus on plaintiff as the prime suspect. A2131.

The Prosecution

On May 16, 1994, a meeting was held to decide if plaintiff should be arrested for Lockmiller's murder. NPD Chief James Taylor, Zayas, Daniels, Freesmeyer, Reynard, and Souk attended the meeting. SA029-030pp.232-236. The investigators provided input about what the nine month investigation had produced. As a result of that discussion, Reynard decided that plaintiff should be charged with Lockmiller's murder. SA021pp.139-140. NPD investigators did not lobby or urge the prosecutors to charge plaintiff. SA042pp.441-442. The decision was solely made by Reynard, and Souk agreed. SA021p.140, SA030p.234. According to Souk, no one at the meeting expressed any opposition to the decision to charge plaintiff. SA031p.237.

In April, 1994, Daniels had attended a conference in Florida for police agencies on cold cases. A2137-2138. Daniels copied the entire Lockmiller file and brought it with him to Florida. A2015-2016. Daniels returned with a list of suggested investigative avenues. A2140. According to Daniels, he brought the list from the Florida conference to the May 16 meeting, and suggested they pursue it before they proceed with Beaman's arrest. A2147-2150. According to Daniels, Souk said "I think we've got our guy" in response to Daniel's suggestion. A2283. Souk also said "we went as far as we can with this case. We are going to go ahead and issue a warrant for [plaintiff's] arrest." A2149-2150.

Freesmeyer agreed with the decision to proceed against plaintiff. A1575-1576. Freesmeyer concluded there was probable cause for the arrest and prosecution of plaintiff based on the following information developed during the murder investigation.

- Plaintiff's fingerprint was on the alarm clock used to strangle Lockmiller.
- The crime scene matched what plaintiff had done before, a garbage bag had been pulled out of the can and left on the living room couch.
- The letters plaintiff wrote Lockmiller showed an intense obsession with her.
- Telephone records showed 28 phone calls from Lockmiller to plaintiff in the days before the murder.
- There was a hole in plaintiff's alibi.
- Plaintiff had broken down Lockmiller's apartment door twice before.
- Freesmeyer asked plaintiff several times whether he had gone anywhere after he got off work the morning of the murder. Plaintiff said he did not. In reality, plaintiff had gone to a bank in Rockford that morning. A video from the bank showed plaintiff there at 10:11 a.m., when he had told the police he got off work at 9:00 and went straight to bed. Plaintiff's attorney received the videotape from the Rockford bank in September, 1993, so Freesmeyer concluded plaintiff was lying when he said he went straight to bed.
- Plaintiff told Swaine on the overheard that he knew Swaine was sleeping with

Lockmiller because “that pussy never tasted the same,” which seemed a crude reference about somebody he supposedly loved immediately after her death.

- Plaintiff told Swaine Lockmiller was never going to be happy. In Freesmeyer’s homicide investigation training, a killer will often say something like that as an effort to justify the murder in his own mind.
- Plaintiff told Swaine that “she (Lockmiller) trained me good and she would have trained you just the same.” Freesmeyer saw the statement as another justification for his actions.
- A fan covered Lockmiller’s face, which Freesmeyer saw as fitting a pattern where a person murders someone he knows then cannot face it.
- The murder indicated a crime of passion, and no one else was known to have any passionate feelings about Lockmiller.
- There was no forced entry. Valuables were lying around the apartment. Lockmiller’s purse was openly and visibly sitting on a table in the apartment. A burglar would have taken those things and there would have been a forced entry of some type.

A1577-1581, A1595.

Souk was aware of all the evidence. He considered it very significant that plaintiff’s fingerprints were only found on the clock radio -- the murder weapon -- and not anywhere else in the apartment. SA019-020pp.128-129. He believed the motive evidence against Plaintiff was the strongest he had ever seen, there was sufficient evidence to establish probable cause, and a reasonable chance of prevailing at trial. SA032p.241.

Todd Heyse, the owner of 412 Main Street where Lockmiller lived and the murder occurred, told police after plaintiff was charged that he saw two people fitting the description of plaintiff and Lockmiller around the time of the murder, possibly on the exact day. SA033p.287, SA105pp.14-15. Heyse contacted the NPD after he saw a picture of plaintiff in the paper following his arrest. Seeing the photograph of plaintiff jarred Heyse’s

memory of seeing the two people and prompted him to call the police. SA106-107pp.80-81.

Souk was the lead prosecutor in plaintiff's case and presented the case to the grand jury. SA012,p.51, SA015,pp.83-84. Freesmeyer, plaintiff, his parents, the director of his church Youth Ministries, his co-worker and his employer all testified before the grand jury. The hearing concluded on July 14, 1994. SA053-054. Around January 1, 1995, Freesmeyer moved into the SAO Office as they began to prepare for the trial. A1436.

In Souk's mind, plaintiff was the only real suspect. SA026p.193. Souk concluded after reviewing the information he had about Murray that he was not a person of interest. At the time of plaintiff's prosecution, Souk did not believe there was any evidence to suggest that Murray killed Lockmiller. SA039pp.372-373. Souk did not believe Murray had any motive to kill Lockmiller, even though Souk was aware of their prior sexual relationship. Souk knew that Murray gave narcotics and marijuana to Lockmiller, and that there were some conflicting statements about whether Lockmiller owed Murray money for drugs. SA022pp.165-167. Souk also knew that Murray made a mistake regarding his alibi in his first interview with Daniels and Hospelhorn and corrected it in his second interview, which Souk did not consider suspicious. SA038p.364. By the end of 1994, Souk was aware of three charges against Murray, two felony drug charges and a misdemeanor domestic battery case brought by Mackoway. SA023p.170.

Souk was aware at the time of plaintiff's trial that Mackoway reported that Murray started taking steroids in January, 1994, and that he then began acting erratically, which she attributed to the steroid use. SA037p.325-326, SA103p.36-37. Murray was never physically violent toward Mackoway until January, 1994. SA103p.35. Mackoway never

believed Murray killed Lockmiller. SA104p.41.

The State subpoenaed Murray for the trial and he was on Souk's witness list. SA040p.387. Souk flagged information in the SAO files regarding Murray's pending cases so the ASA handling those cases, Robert Freitag, would not offer Murray a plea in case they wanted to call Murray at plaintiff's trial. A plea in Murray's pending cases could have been used to impeach him if the State called him as a witness. SA040pp.387-389. Souk noted that Freitag should see Souk before any deals were made with Murray. SA041p.393. Souk ultimately decided not to call Murray at trial.

The jury convicted plaintiff of the murder. After the appeal and the post-conviction proceedings, the judgment was vacated, and the McLean County SAO declined to reprosecute plaintiff for the crime. Souk was not surprised by the decision not to reprosecute plaintiff. After 13 years it would take a monumental effort by the police and prosecutors to regather the witnesses and evidence again. A2964-2966. Without opposition from the State, a certificate of innocence was issued by the circuit court. DNA testing of substances continued even after the judgment was vacated. The DNA results showed only that plaintiff, and the other early suspects, were not known contributors to the samples obtained. A3363-3364.

ISSUES PRESENTED FOR REVIEW

Issue #1. Does the independent judgment of the prosecutor play any role in whether the police can be deemed to have commenced or continued the prosecution for purposes of the malicious prosecution cause of action?

Issue #2. Can an allegedly negligent investigation, as a matter of law, satisfy the proximate cause determination of whether the police commenced or continued the prosecution for purposes of the malicious prosecution cause of action?

Issue #3. Can probable cause for malicious prosecution be determined by the court as a matter of law based on the evidence against the plaintiff at the time the prosecution was initiated, or must the court declare a fact issue based on evidence and argument raised by the plaintiff after the prosecution decision was made, including evidence and argument raised at the criminal trial, post-conviction proceedings, and the civil litigation?

Issue #4. Can a fact issue on malice for purposes of malicious prosecution be established solely on the plaintiff's characterization of the police work as conducted in bad faith, even though there is no dispute all of the police work was done for the purpose of bringing the person believed to be guilty to justice?

Issue #5. Is the malicious prosecution element of "termination indicative of innocence" determined by the reasons for the termination of the prosecution, or can that element be satisfied by later judicial and executive decisions unrelated to the termination of the prosecution.

SUMMARY OF THE ARGUMENT

This case involves police work common to almost every major criminal investigation. Two trial courts and three courts of review now have laboriously examined the facts and law applicable to the case and determined there was no police misconduct. The Seventh Circuit, specifically, found that the police did not lie or mislead the grand jury, did not conspire to hide evidence, the investigation was a legitimate attempt to show plaintiff's ability to commit the crime, the police did not falsify any physical evidence or

use any knowingly false testimony, and the police activities here were the type of behavior that will be present in every criminal prosecution. *Beaman v. Freesmeyer*, 776 F.3d 500, 512-13 (7th Cir. 2015)

The unfortunate reality of reversed criminal convictions has been the subject of much litigation in Illinois and throughout the country. Some of these cases exposed egregious police misconduct which could not be defended under any circumstances. This case has none of that. There is no coerced confession or witness testimony, no fabricated evidence, no deception or lies, no recantation of testimony wrongfully induced; none of that. As the Seventh Circuit ruled, this case presents nothing but police work that will be found in every criminal investigation, efforts to gather the evidence to identify potential culprits then present it to a prosecutor to make an independent decision on whether charges should be filed.

Plaintiff can only overcome this reality in his endless effort to make a malicious prosecution case out of nothing by asking this Court to completely overhaul the law of malicious prosecution, a long disfavored cause of action subject to stringent limitations. *Beaman v. Freesmeyer*, 2019 IL 122654 ¶¶24-25. Plaintiff can only establish the commencement element of malicious prosecution by eliminating the role of the prosecutor completely. The first time this case was before the Court it announced a proximate cause standard, in which causation was determined by whether police misconduct overcame “the presumption of prosecutorial independence.” Plaintiff’s analysis eliminates any role for the prosecutor, so that the investigative activities of the police are all that is needed to establish proximate cause.

Plaintiff also asks this Court to adopt a new cause of action for a negligent investigation under the umbrella of the malicious prosecution tort. Plaintiff criticizes defendants for not thinking that the murder arose from a burglary, not seeing that a potential suspect, ruled out early, had a motive, not finding some fellow college students who flirted with the victim at a college bar some days before the murder, and so on. This new cause of action would radically expand the disfavored and stringently limited tort, violate clearly expressed public policy, and cripple police investigative work throughout the state, so that no investigation could ever escape litigation whenever a prosecution did not succeed, regardless of the cause.

Plaintiff goes on to distort how probable cause for a malicious prosecution is determined, again asking this Court to expand the tort. Plaintiff can only establish a fact question on the lack of probable cause element of malicious prosecution by expanding the calculation beyond the point when the decision to prosecute was made. The clearly established standard has been that probable cause is a question of law, unless the state of the evidence needed for probable cause is disputed, in which case it is a mixed question of fact and law. *People v. Lippert*, 89 Ill.2d 171, 177 (1982); *Ely v. National Super Markets, Inc.*, 149 Ill.App.3d 752, 758 (4th Dist. 1986). Where, as here, the facts needed to establish probable cause at the time of the prosecution decision are not in dispute, the decision is a question of law, which was decided by the appellate court the only way it could have been decided, that probable cause existed. Plaintiff undoes that principle and asks this Court to allow probable cause to be determined by what would be a relitigation of the criminal trial before a civil jury. That has never been the process in Illinois, and should not be going forward.

Plaintiff again asks the Court to broaden the tort by divorcing the malice element from the test long followed in our law, that malice requires prosecution for purposes other than to bring a guilty person to justice. *Szczensniak v. CJC Auto Parts, Inc.*, 2014 ILApp(2d) 130636, ¶19. Plaintiff turns that around and allows malice to be determined based on his post-prosecution criticisms of police work he believed could have been done better, including an alarming rule that would impose a duty on the police to veto a decision by a prosecutor to go forward with a prosecution.

Finally, plaintiff will require this Court to revise years of jurisprudence on the malicious prosecution element of a termination indicative of innocence. This Court has announced that whether termination indicates innocence is determined by the nature of the termination. *Swick v. Liataud*, 169 Ill.2d 504, 513-14 (1996). Plaintiff cannot prove the termination of plaintiff's prosecution was indicative of innocence. Nevertheless, plaintiff argues that, for the first time in Illinois history, a judicial decision unrelated to the termination of the prosecution, the non-adversarial Certificate of Innocence proceeding, designed solely for purposes of allowing an action against the State for compensation in the Court of Claims, and an executive pardon years after the prosecution was terminated, can satisfy the indicative of innocence element.

Giving plaintiff a trial in this case would expand the malicious prosecution claim in Illinois beyond what any other judicial decision has ever done. It would undo 150 years of precedent, hollow out the proximate cause standard this Court announced last time, allow the indicative of innocence element to be precluded in plaintiff's favor in proceedings in which police defendants had no say, and subject police to civil liability for practically every major investigation for a prosecution over which they had no control.

The problem of reversed convictions exists in Illinois, but not because of the type of police work done in this case. The problem of unsolved major crimes is also considerable, particularly in parts of the State, and radically rewriting the law of malicious prosecution by reversing the appellate court could only stunt legitimate police practices to solve crimes, inhibit normal and necessary cooperation between police and prosecutors, and retard reasonable efforts at bringing guilty parties to justice. The judgment of the appellate court should be affirmed.

STANDARD OF REVIEW

Summary judgment is an expeditious method of disposing of a lawsuit when the right of the moving party is clear and free from doubt. *Calvin v. Hobart Bros.*, 156 Ill.2d 166, 169 (1993); *Fortech, LLC v. R.W. Duntelman Co.*, 366 Ill.App.3d 804, 808 (1st Dist. 2006). The standard of review from the entry of summary judgment is *de novo*. *Weather-Tite, Inc. v. Univ. of St. Francis*, 233 Ill.2d 385, 389 (2009).

ARGUMENT

I. The Appellate Court Correctly Affirmed Summary Judgment On Plaintiff's Malicious Prosecution Claim Where Defendants Did Nothing to Overcome the Independent Judgment of the Prosecutors Who Made the Decision to Charge Plaintiff with Murder, And There Was Clear Probable Cause For The Prosecution As A Matter of Law

In *Beaman v. Freesmeyer*, 2019 IL 122654 (“*Beaman I*”), this Court remanded the case to the appellate court to apply a proximate cause standard to the malicious prosecution element of “commencement or continuation” of the prosecution. On remand the appellate court applied the proximate cause standard and again affirmed the trial court’s grant of summary judgment to defendants.

In *Beaman I* this Court recognized the long standing Illinois precedent that malicious prosecution claims are disfavored. *Beaman I* at ¶24. Malicious prosecution cases

“are subject to more stringent limitations than other tort actions.” *Id* at ¶25. To succeed on malicious prosecution, a plaintiff must prove five elements: 1) commencement or continuation of a criminal proceeding by the defendant (“initiation”); 2) absence of probable cause for the proceeding; 3) malice; 4) termination indicative of innocence; and 5) damages. *Id* at ¶26. The appellate court applied the *Beaman I* standard with precision, analyzing first why plaintiff cannot establish a fact issue on the initiation element. The appellate court then agreed with the trial court that in addition to the initiation prong, summary judgment is affirmed because plaintiff could not establish a fact issue that would allow a jury to find a lack of probable cause. *Beaman v. Freesmeyer*, 2019 ILApp(4th) 160527, ¶¶106, 116, 120. The appellate court’s judgment should be affirmed.

A. Plaintiff Cannot Establish The Initiation Element

The appellate court’s application of the *Beaman I* proximate cause standard announced by this Court was sound and correct. The appellate court reviewed the evidence and determined that even in a light most favorable to plaintiff no fact issue exists on the initiation element of plaintiff’s malicious prosecution claim. Only by a drastic revision of malicious prosecution jurisprudence could plaintiff’s appeal prevail here. Plaintiff’s analysis completely eliminates the role of the prosecutor in the proximate cause analysis, ignoring that this Court quite clearly announced that malicious prosecution liability requires actions by police that overcome “the presumption of prosecutorial independence.” Plaintiff’s argument eliminates the prosecutor from the proximate cause analysis, a radical expansion of the malicious prosecution tort in Illinois.

Moreover, plaintiff takes the standard police work done here, which every court of review that analyzed the evidence saw as normal to any investigation, and finds it actionable as a species of police activity capable of satisfying the proximate cause standard.

There is no police investigation under plaintiff's model that would not meet the initiation standard. Plaintiff also urges a wholesale expansion of the tort to include a cause of action for a negligent investigation. This outcome is wholly inconsistent with this Court's proclamation that malicious prosecution is a disfavored tort.

The Appellate Court Faithfully And Correctly Applied The Court's Decision in *Beaman I*

The appellate court analyzed plaintiff's malicious prosecution claim in the light of this Court's rulings in *Beaman I*, and again affirmed summary judgment for defendants. Plaintiff unfairly criticizes the appellate court as having neglected a meaningful review of the record, and ignoring this Court's *Beaman I* guidance. Both contentions are incorrect.

Plaintiff argues that the appellate court "abdicated its duty to review the record." (App.Br. 23). This contention is patently incorrect, which is manifestly demonstrated on the face of the appellate court's factually detailed opinion. Certainly the appellate court was frustrated that plaintiff's statement of facts was rife with argument and defendants failed to include pinpoint record citations for many of the facts. *Beaman*, 2019 ILApp(4th) 160527, ¶6. Defendants have been vigilant in fixing that oversight for this Court.² Regardless, the appellate court's opinion shows it fully considered the record.

This case has traveled through many courts and the facts have been repeatedly explored. The appellate court's opinion manifestly demonstrates a thorough review of the summary judgment record, a record it already examined once before. Contrary to plaintiff's claim, the appellate court did not admit it failed to review the record, it merely announced that its "summary" of the facts was taken from other decisions. The facts had

² Apparently plaintiff did not get the message in that his Statement of Facts here is as rife with argument as it was in the appellate court.

been detailed so many times already and they haven't changed. *See, Beaman*, 2019 IL 122654, ¶¶4-20; *Beaman*, 2017 IL App (4th) 160527, ¶¶5-26; *Beaman*, 776 F.3d 500, 503-05 (7th Cir. 2015); *Beaman*, 7 F.Supp.3d 805, 812-19 (C.D. Ill. 2014). Plaintiff's argument that the appellate court's failed to consider facts favorable to him is belied by the appellate court's opinion, and plaintiff points out no instance where the appellate court got the facts wrong.

Plaintiff's argument that the appellate court "defied" this Court's ruling in *Beaman I* is equally unfair and equally incorrect. The appellate court correctly applied the Court's rulings. The court recognized that prosecutors, attorneys, approve and file the type of charge made against plaintiff in this case, but that others, such as police, who play a significant role in causing the prosecution can also be deemed to have initiated it. (*Beaman I*, at ¶43). The Court announced a proximate cause standard, where "[l]iability thus depends on whether the defendant was actively instrumental in causing the prosecution, and the presumption of prosecutorial independence can be overcome by showing that the defendant improperly exerted pressure on the prosecutor, knowingly provided misinformation to him or her, concealed exculpatory evidence, or otherwise engaged in wrongful or bad-faith conduct instrumental in the initiation of the prosecution." *Beaman I*, at ¶44.

This Court remanded the case to the appellate court because it had focused too narrowly on the "pressure" and "knowing misstatement" categories, and to determine if defendants played a "significant role" in the prosecution, that is, consider all the ways the Court identified as possibly fulfilling the proximate cause standard. The appellate court carried out this directive and found plaintiff could not establish a triable fact issue to establish proximate cause.

Plaintiff argues that the appellate court ignored the fourth factor, “wrongful or bad-faith conduct instrumental in the initiation of the prosecution,” by rejecting that the way in which the investigation was conducted could satisfy it. (App.Br. p.25.) Plaintiff labels it a bad faith investigation, off-track from the beginning because it focused on plaintiff too early, causing other possible suspects to be missed. App. Br. p.26-27.

The appellate court certainly did not ignore the catch-all fourth category for proximate cause. The appellate court carefully considered and rejected plaintiff’s argument that there was bad faith in the investigation. Defendants had sound reasons to suspect early on that plaintiff was the murderer, beginning with Morgan Keefe, telling police “I know who did it,” that Lockmiller was deathly afraid of plaintiff, and the opinion that plaintiff killed Lockmiller. SA045-046, 051, 150-151 Plaintiff dismisses Keefe’s view as merely a “guess” (App.Br p.4), but it would be highly derelict for the police to ignore that report from the victim’s best friend. Nevertheless, the investigation robustly continued after that, even into other suspects.

The police investigated suspects Mike Swaine, Stacey Gates, Larbi John Murray, John Revis, Rob Curtis, and others. They were all eliminated by the investigation, some by alibi, and some, like Murray, for lack of a plausible motive. Plaintiff argues it was a bad faith investigation because the police did not consider the case a burglary. (App.Br. p.41) Yet there was no forced entry, Lockmiller’s money and belongings were untouched (A3209) and there was no other evidence to suggest a burglary.

It is a gross distortion of the record to even suggest that the investigation ended with an early focus on plaintiff. The investigation continued for nine months before the prosecution decided to charge plaintiff. Before then police heard many reports from

Lockmiller's friends and neighbors that plaintiff and Lockmiller had a volatile and sometimes violent relationship, which made plaintiff a natural suspect. That plaintiff could have done it was not just theoretical. His fingerprints were on the murder weapon, the clock radio, which cord was used to strangle the victim. SA101-102 The NPD also consulted with experienced Chicago police homicide detectives who confirmed the path the investigation was on. A2128-2129, 2131.

Most of plaintiff's claim of a bad faith investigation is wrapped up in Freesmeyer's time travels. (App.Br. p.30) The appellate court considered those claims and rightly rejected them, for the same reasons the claim was debunked by the Seventh Circuit, which concluded "Freesmeyer did not lie about the speeds at which he drove, and he was subject to cross-examination at trial about the speeds and alternative routes." The Seventh Circuit found the "time trial evidence was a legitimate attempt to show [plaintiff's] ability to commit the crime." *Beaman v. Freesmeyer*, 776 F.3d 500, 512 (7th Cir. 2015).

Plaintiff argues bad faith by Freesmeyer allegedly lying to the grand jury when asked if anyone besides plaintiff had a motive to kill Lockmiller. (App.Br. p. 29) Freesmeyer answered "No, not necessarily." A3218. Plaintiff argues Freesmeyer should have answered that Murray was a suspect, but that would not have been accurate, and the appellate court properly rejected the claim. Freesmeyer did not investigate Murray, NPD investigator Daniels handled Murray, so Freesmeyer knew very little about Murray. (A1468-1469) Murray's name shows up in Freesmeyer's 60-page report (A. 1287-1350), only twice, once brought up by Swaine, who knew Murray was with Lockmiller one of the times plaintiff broke into her apartment (A129), and then when Freesmeyer set up an

appointment for polygraphs for plaintiff, Murray, and a friend of theirs (A1312-13). Freesmeyer had no reason to think Murray had a motive to commit the murder.

Plaintiff argues bad faith because Freesmeyer told the grand jury no helpful information had been learned from Lockmiller's neighbors. (App.Br. p.29) Plaintiff contends this was false, because neighbor David Singley said he heard noises at the apartment even after the suspected day and time of the murder. The appellate court considered this contention and correctly rejected it. Freesmeyer, and the prosecutors, did not find Singley's information helpful, for good reason. Singley was never certain about timing, and Freesmeyer and Souk believed Singley was mistaken about when the noises occurred and what they might have been. SA034p.302, 035pp.303-304, 306pp.307-308, 071. Singley was indisputably wrong about Swaine's car parked in the apartment building parking lot the day of the murder. SA034pp.301-302. Singley also testified at the trial, and the jury obviously did not find his testimony helpful to plaintiff. As the Seventh Circuit proclaimed, Freesmeyer's grand jury testimony was not false or fabricated. *Beaman*, 776 F.3d at 512.

Finally, plaintiff argues that the misplacement of Murray's polygraph report was bad faith conduct proximately causing the decision to prosecute plaintiff. The appellate court fully considered and rightly rejected that claim. The test was incomplete due to a failure to follow directions, and only years later, at polygraph examiner McCann's deposition, was there any possible intent to deceive ascribed to Murray's polygraph results, and then only as a possibility. McCann never opined that Murray's polygraph results did suggest an intent to deceive. SA172 pp.198-199. This one piece of information alone was

so inconsequential to the overall investigation that the appellate correctly rejected plaintiff's contention about it.³

The threshold to plaintiff's argument, that the appellate court defied this Court's ruling in *Beaman I*, is wrong. The appellate court thoroughly considered plaintiff's bad faith contentions, and for sound reasons, agreed with other reviews of this case that the claim lacked merit. Nevertheless, even if somehow the Court gave any credence to plaintiff's criticisms of the investigation, without a drastic expansion of the disfavored tort of malicious prosecution, plaintiff's claim fails to establish proximate cause for the prosecution. As discussed next, plaintiff's claim totally fails unless the role of the prosecutor is completely removed from the proximate cause calculation.

The Appellate Court Properly Considered The Prosecutor's Independent Judgment

The crux of plaintiff's position is that the appellate court defied this Court's decision in *Beaman I* because it adhered to an analysis that included how the allegedly "bad faith" investigation could have proximately caused the prosecutor's independent judgment to be overcome. Plaintiff's argument contends that, somehow, the actions of the police stand alone, judged without any reference to whether the prosecutor could have been misled by the police. Plaintiff needs this wholesale expansion of the disfavored malicious prosecution tort to show any triable issues of fact.

The entire foundation on which plaintiff's case is built crumbles if the prosecutor is not removed from the analysis. Plaintiff argues the investigation was skewed from the beginning by an early focus on plaintiff. Prosecutor Souk, however, believed from the

³ This Court's decision in *People v. Beaman*, 229 Ill.2d 82 (2008), setting aside plaintiff's conviction, found the Murray polygraph significant only when considered along with the other Murray evidence withheld by the prosecutor.

beginning that plaintiff did it. A2283, SA021p.140, 026p.193, 030p.234. As the appellate court noted, the evidence shows that “Souk believed plaintiff was the ‘only’ or primary suspect within one day of the discovery of decedent’s body.” *Beaman*, 2019 ILApp(4th) 160527, ¶100. Souk’s view never varied. Souk met frequently with the police during the investigation, was closely familiar with the evidence against plaintiff and the other suspects, and concurred with Reynard at the all important May, 1994, meeting, to proceed with the prosecution, even against Daniels’ suggestion that the investigation continue.

Plaintiff’s characterization of Freesmeyer manipulating the time trials falls completely flat unless the prosecutors are removed from the calculation. Souk was aware of all variables in how Freesmeyer conducted the time trials, whether he went fast or slow, and the routes he took, and was easily able to assess for himself what evidentiary conclusions the complete range of the information allowed.

Plaintiff’s claim that Freesmeyer lied to the grand jury about Murray’s alleged motive and Singley’s reports also has no traction if the affect on Souk is considered. Souk knew virtually all there was to know about Murray, and Souk unequivocally thought Murray had no motive. SA022 pp.165-167. It is unfortunate that plaintiff contends he was wrongly accused, but wanted defendants to wrongly accuse Murray of having a reason to kill Lockmiller, when the prosecutor did not think so, and even more than 25 years after the murder no such evidence exists.

Souk agreed with the assessment of the investigative and evidentiary value of Singley’s information. Souk was as skeptical of the accuracy of Singley’s timing as was Freesmeyer, SA034p.302, 035pp.303-304, 036pp.307-308, 071, and for good reason in that

Singley was indisputably wrong about Swaine's car parked in the apartment parking lot the day of the murder.

Plaintiff's attaching any significance to the Murray polygraph report requires an analysis that completely excludes Souk's role from the case. Souk knew all the negatives about Murray, his changing reports to the police about his whereabouts on the day of the murder, his marijuana dealing, domestic disputes, and his steroid use. The prosecutors met with Murray personally, and had Freesmeyer's report that Murray did not show up for his rescheduled polygraph. SA040p.387 Souk even considered calling Murray as a witness to an occurrence involving plaintiff, but decided against it as a matter of trial strategy. SA040pp.387-388. Souk unequivocally never thought Murray had a motive, and never considered Murray a viable suspect.

Plaintiff argues that defendants "[h]anded a bad faith investigation" to the prosecutor, who was "in no position" to investigate the case on his own. (App.Br. p.34.) Putting aside the mischaracterization that Souk was handed a bad faith investigation, the argument ignores the reality in this case. If there were any case where a faulty investigation could not have misled the prosecutor, it is this one. Souk was not "handed" a bad investigation, he was intimately involved with the development of the case throughout. Plaintiff has not identified one fact about which Souk was misled.

When the prosecutors made the decision at the May 16, 1994 meeting, they had extensive background information to evaluate the strength and weakness of the case before making any decisions. Daniels even testified that when he tried to bring up potential weaknesses in the case, Souk cut him off, saying "I think we've got our guy," and "we went as far as we can with this case." A2283, 2149-2150 Daniels further stated that no

defendant (Warner was not even present) did anything at that meeting to cause Souk or Reynard to decide to prosecute plaintiff. A2147-2150. The prosecutors' independent decision was not undermined or unduly influenced in any way. It was the sole legal cause of the prosecution.

Plaintiff's elimination of the prosecutor from the proximate cause analysis draws no support from this Court's decision in *Beaman I*. Nothing in *Beaman I* suggests any intent by the Court to greatly expand the tort. The Court adhered closely to the many years of precedent, going back to the 1866 decision in *Gilbert v. Emmons*, 42 Ill.143 (1866), and the guidance of traditional treatments of malicious prosecution in scholarly treatises, such as C.J.S. (*Beaman I*, at ¶43), the Restatement (2d) of Torts (*Id.* at ¶45); the 1907 Cyclopedia of Law and Procedure (*Id.* at ¶23, 39), and Am.Jur. 2d (*Id.* at 25, 44). The focus was on how to formulate proximate cause of a prosecution when the defendant is not the decision maker who brings the prosecution. The Court found that liability requires conduct that "overcomes the presumption of prosecutorial independence," by four categories of conduct: 1) the defendant improperly exerted pressure on the prosecution; 2) knowingly provided misinformation to him or her; 3) concealed exculpatory evidence; or 4) otherwise engaged in wrongful or bad-faith conduct instrument in the initiation of the prosecution. (*Beaman I*, at ¶44).

The first three categories of conduct obviously relate to the prosecutor's ability to make an informed decision. Plaintiff seems to conclude, then, that the fourth "catch-all" can eliminate the role of the prosecutor, but that cannot be correct. The Court showed no intent to confine three categories of conduct to its causative effect on the prosecutor's decision to charge, but then eliminate that determination from the fourth. As with the

expression of any series, the fourth catch-all category must be interpreted in character with the other three. The court was discussing when a defendant who does not file the action can be held responsible for the filing actually effected by another. There is no support in *Beaman I* for treating the fourth category as a nonsequitur to the entire discussion.

Proximate cause requires that a defendant's conduct is both the cause-in-fact and the legal cause of the prosecution. *First Springfield Bank & Trust v. Galman*, 188 Ill.2d 252, 257-58 (1999). Defendants conduct here was neither the cause in fact nor the legal cause of the prosecution. Merely investigating a major crime, an obligation defendants' oath and assignment require them to undertake, cannot constitute cause in fact. Proof that the police conduct overcame a prosecutor's independent judgment must be needed for cause in fact, otherwise merely conducting an investigation would suffice, an absurd conclusion.

Legal cause "is essentially a question of foreseeability." *Id.* The question of legal cause is "one of policy," looking at "[h]ow far" a defendant's legal responsibility should extend "for conduct that did, in fact, cause the harm." *Turcois v. DeBruler Co.*, 2015 IL 117962, ¶24. The well-settled rule in malicious prosecution actions, which this Court reaffirmed, is that the defendant's actions are not the legal cause of the prosecution unless they interfere with the charging prosecutor's independent discretion. (*Beaman*, 2019 IL 122654, ¶44) *See also e.g., Gilbert v. Emmons*, 42 Ill. 145, 146-47 (1866) (defendant not liable by merely consenting to actions of prosecutor and allowing him "to follow the dictates of his own judgment, without interference"); *Randall v. Lemke*, 311 Ill.App.3d 848, 851 (2d Dist. 2000) (furnishing false report to prosecutor does not interfere with prosecutor's "intelligent exercise of discretion" if prosecutor bases his decision to bring

charges on independently gathered information); *Pratt v. Kilborn Motors, Inc.*, 48 Ill.App.3d 932, 935 (4th Dist. 1977) (supplying information to prosecutor or making accusation of criminal misconduct “does not constitute a procurement of the proceedings initiated by the [prosecutor] if it is left entirely to his discretion to initiate the proceedings or not.” (*Quoting* Restatement Torts, Explanatory Notes §653, comment g, at 386 (1938).

In other words, it boils down to what the Court explained in *Beaman I*, the misconduct of a non-prosecutor is the proximate cause of a malicious prosecution if it “overcomes” the prosecutor’s independent judgment. *Beaman*, 2019 IL 122654, ¶44. It is “foreseeable” that a prosecutor will exercise independent judgment in making the important decision of whether to prosecute, and to satisfy proximate cause a defendant must engage in some action that negates that foreseeable outcome. *Randall*, 311 Ill. App. 3d at 851 (*citing* Restatement (2d) of Torts § 653, comment g, at 409 (1977)). *See also*, e.g., *Szczensniak v. CJC Auto Parts, Inc.*, 2014 ILApp(2d) 130636, ¶11 (liability when defendant “knowingly provide[d] false information” to prosecutor who then relied on that information rather than “separate or independently developed information”); *Allen v. Berger*, 336 Ill. App.3d 675, 678 (1st Dist. 2002) (liability if defendant knowingly provided false information to prosecutor or “request[ed], direct[ed], or pressur[ed] the prosecuting officer into instituting the proceedings”).

Plaintiff’s effort to expand the tort to eliminate the role of the prosecutor undermines the Court’s conclusion in *Beaman I*, and the 150 years of Illinois malicious prosecution law and the venerable direction of the treatises this court consulted, which cultivated the national history of the common law tort. Without that adulteration of the law, plaintiff has no way of establishing a fact question on the initiation element. Expanding the tort that way, however, cannot be reconciled with the Court’s repeated

warning, reinforced in *Beaman I*, that malicious prosecution is a disfavored tort. The elimination of the prosecutor from the standard is radical enough, but plaintiff's other proposal for the tort's expansion, that a deficient investigation can cause a malicious prosecution, is more troublesome yet.

Plaintiff Needs The Court To Recognize A New Cause Of Action For A Negligent Investigation For the Relief He Seeks

Plaintiff offers a theory that the appellate court ignored the catch-all by rejecting that the way in which defendants conducted the investigation could satisfy it. (App. Br. p.25.) To channel the Court's language and squeeze it into the fourth category, plaintiff calls it a "bad-faith" investigation, but what he means is the investigation was botched, chiefly because it was biased by a too early focus on plaintiff as the primary suspect. (App.Br. p.26-27.) Defendants have already refuted the argument that the investigation was tainted in any way, as did the Seventh Circuit, the circuit court that granted summary judgment, and the appellate court, twice. But the argument itself is misplaced when discussing malicious prosecution.

The appellate court certainly did not ignore whether the concept of a biased investigation could fulfill the catch-all category for proximate cause. The appellate court carefully considered and rejected plaintiff's argument that this alleged form of bad faith, a negligently biased investigation, could be considered the proximate cause of a prosecution. The appellate court correctly noted that nothing in this Court's opinion in *Beaman I* supports the expansion of the malicious prosecution tort to a "biased" police investigation, and that doing so would contravene public policy. *Beaman*, 2019 ILApp(4th) 160257, at ¶98. To say that what plaintiff calls a bad-faith investigation could proximately cause a malicious prosecution is to expand the tort exponentially.

The appellate court properly deconstructed plaintiff's argument, showing that "bias" is defined as "a personal and sometimes unreasonable judgment or an "inclination . . . or outlook," and concluded that bias is "actionable only if it culminates in conduct, such as bad faith conduct, that satisfies the elements of a malicious prosecution claim." *Id.* at ¶¶99. The appellate court's observation got right to the essence of this Court's holding in *Beaman I*, a common-sense view that the police must wrongfully cause the prosecutor to prosecute the case when it otherwise would not have been prosecuted. Allegations of a faulty investigation cannot satisfy what the Court contemplated as actionable under the catch-all fourth category.

The danger in recognizing such a cause of action is apparent. Every investigation requires some police judgments on who may have done it. Was it a drifter, a serial killer, a jilted lover or family member, a business or street rival, a burglary or robbery gone wrong, and so on. Police follow the evidence, and assess it based on experience, known criminal patterns and intelligence, and to some extent subjective judgments. What does the fear of liability do to the effectiveness of police investigations for the necessary exercise of those judgments?

What plaintiff argues for sounds like some type of professional liability cause of action, in which police work would be subject to malpractice claims for deviation from a recognized standard of care. Such a dramatic departure from what is recognized as actionable under the disfavored tort of malicious prosecution would be against the public policy of the state. Section 4-102 of the Illinois Tort Immunity Act (745 ILCS 10/4-102), creates absolute immunity for the "failure to detect or solve crimes, and failure to identify criminals." Section 2-208 creates immunity for the initiation of any prosecution unless the

person “acts maliciously and without probable cause.” 745 ILCS 10/2-208. Section 2-201 exempts public employees from liability for exercising judgments and discretion. 745 ILCS 10/2-201. Any such radical expansion of the malicious prosecution tort to investigative judgments should come from the legislature, not the common law.

Nevertheless, notwithstanding public policy concerns about plaintiff’s position, the argument also fails factually. The police did investigate the other suspects. The conclusion it was not a burglary was supported by the circumstances. Plaintiff’s second-guessing these investigative judgments is what would be in store for police agencies all around the state were the Court to accept plaintiff’s notion of what it takes to proximately cause a malicious prosecution. Nothing in this Court’s opinion in *Beaman I* invites second-guessing of how the investigation should have proceeded or on which leads the police should have followed up, and doing so sets bad precedent. Difficult police investigations are routinely second-guessed in defense of criminal cases, and because such police work can lead in many directions, it often is easy to do. Defense strategies almost always attack the sufficiency of the investigation, whether all potential leads were explored and if the evidence was interpreted correctly. These questions have a place in testing guilt, but such types of scrutiny should not expand the disfavored malicious prosecution tort.

Plaintiff’s push for a cause of action that eliminates the prosecutor and recognizes a claim for a biased investigation are monumental and unwarranted expansions of the malicious prosecution tort. Without this overhaul, with its harmful societal and public policy implications, plaintiff has no claim for a trial on the commence and continue element. The appellate court’s judgment should be affirmed.

B. The Appellate Court's Judgment Should Be Affirmed Because Probable Cause Existed For Plaintiff's Arrest and Prosecution.

The appellate court also affirmed summary judgment based on probable cause, a conclusion that is hardly even debatable. Probable cause is a complete defense to a malicious prosecution lawsuit. *Joiner v. Benton Comm. Bank*, 82 Ill 2d 40, 45 (1980). Here, the appellate court correctly found that probable cause existed based on the totality of the evidence, a conclusion supported by every court that has reviewed whether the evidence was sufficient for a conviction. 2019 ILApp(4th) 160527, ¶¶81-82.

Plaintiff's argument that the appellate court fashioned a new rule requiring a prior finding of insufficient evidence to find lack of probable cause is simply wrong. (App.Br p.36-37). Rather, the appellate court merely recognized what was impossible to ignore, that every court reviewing the evidence found it sufficient to convict plaintiff, a far higher level of evidence than the low bar of probable cause. The appellate court's decision was based on the evidence, and the allusion to the many courts that validated the sufficiency of the evidence to prove plaintiff guilty beyond a reasonable doubt was to exemplify how no rational jury could find plaintiff carried his burden, were the case to be remanded for trial. The appellate court never even suggested a new rule requiring a prior ruling of insufficient evidence.

Probable cause is "a state of facts that would lead a person of ordinary caution and prudence to believe, or to entertain an honest and strong suspicion, that the person arrested committed the offense charged." *Reynolds v. Menard, Inc.*, 365 Ill.App.3d 812, 820 (1st Dist. 2006). It requires only reasonable grounds to believe the person arrested committed the crime. (725 ILCS 5/107-2(1)(c)). The existence of probable cause depends on the "totality of the circumstances" at the time of the arrest (*Gauger v. Hendle*, 2011 ILApp(2d)

100316, ¶112). The existence of probable cause is a matter of law when the facts on which probable cause is based are undisputed. *Angelo v. Faul*, 85 Ill. 106, 108 (1877). The state of the facts constitutes a question of fact, but whether the determined facts establish probable cause is a question of law. *Ely v. Nat. Super Markets, Inc.*, 149 Ill.App.3d 752 757 (4th Dist. 1986). Plaintiff may dispute whether he committed the crime and whether the facts submitted to the jury proved he committed the crime, but he cannot dispute the facts establishing probable cause.

As the appellate court recognized, there is no genuine issue as to the material facts that overwhelmingly support the low threshold finding of probable cause. 2019 ILApp(4th) 160527, ¶¶78, 81. It is undisputed Lockmiller was afraid of plaintiff, which Lockmiller's best friend verified. It is undisputed plaintiff's love letters and threat of suicide, including once drinking a bottle of nail polish remover, showed an aberrant obsession with her. It is undisputed plaintiff had been violent toward Lockmiller by bashing in her door on two occasions and punching a hole in her wall. It is undisputed plaintiff's fingerprints were found on the murder weapon. It is undisputed the crime scene showed what the police and prosecutors thought could be a signature act by plaintiff. It is undisputed plaintiff found out Lockmiller was secretly having sex with his roommate. It is undisputed the timeline, although narrow, showed it was physically possible for plaintiff to have murdered Lockmiller and returned to Rockford within the applicable window.

It is undisputed plaintiff had the means (the murder weapons were in the apartment), the indisputable motive, and opportunity, even if limited, to murder Lockmiller, which based on the overall totality of the circumstances itself could establish probable cause. *See, e.g., People v. Yost*, 468 Mich. 122, 133 (2003); *Nugent v. Hayes*, 88

F.Supp.2d 862, 869 (N.D. Ill. 2000); *Schertz v. Waupaca Cty.*, 683 F.Supp. 1551, 1565 (E.D. Wis. 1988), *aff'd* 875 F.2d 578 (7th Cir. 1989).

Add that physical evidence, his fingerprint, tied him to the murder weapon. Plaintiff posed an innocent explanation for it at his trial, as he does here, which are defenses to guilt, but probable cause and proof of guilt are a different species altogether. And although plaintiff may diminish it, it would be absurd to ignore that a jury found the evidence sufficient to prove plaintiff guilty beyond a reasonable doubt, the trial judge upheld it, the appellate court affirmed it, and this Court did not review it. When the case came here on plaintiff's post-conviction petition, the Court never expressed any reservation about plaintiff being tried again on the same evidence. *People v. Beaman*, 229 Ill.2d 56, 82 (2008). One may argue the Court recognized another avenue of defense, Murray as an alternative suspect, but nevertheless, the case could not be tried again if probable cause regarding plaintiff was lacking. No reasonable jury could disagree with these judicial rulings. The state of the evidence is undisputed, so probable cause here is a question of law.

The points plaintiff raises do not undo probable cause. He argues it was a burglary, but there was undisputed evidence to the contrary. He maintained his innocence, but if that erased probable cause it would hardly ever be established, and it cannot be ignored that when police first interviewed him about Lockmiller he never asked if something had happened to her, and suspiciously immediately started telling a neighbor that he had an alibi. A1307, SA032 pp.241-244. He also spoke of the victim with vile disdain after her murder. A1580,3331. Plaintiff argues someone else could have done it, but that is always possible, which is why a person cannot be convicted simply on probable cause and we have

a constitutional right to a jury trial in criminal cases. Plaintiff argues there was no eye witness placing him at the scene. Maybe not, but the murder took place in a student's apartment, and if plaintiff did it he was not around very long to be seen. The building owner, Todd Heyse, came forward to say he believed he saw two people fitting the description of plaintiff and Lockmiller near the building around the time of the murder. SA033, p.287. Heyse may have backed away from the identification, but not until trial.

Probable cause does not require irrefutable, bulletproof evidence, enough to prove guilt, or even a preponderance of the evidence. The inquiry is whether "a person of ordinary caution and prudence" would "entertain an honest and strong suspicion that the person arrested committed the offense charged." *Reynolds*, 365 Ill.App.3d at 820. At his deposition Souk recounted the evidence that he believed not only established probable cause, but also provided the State with a reasonable chance of proving plaintiff guilty beyond a reasonable doubt, which it did. (C00352-354, ¶¶99-110; C00977, C02845). So in deciding to go forward with plaintiff's arrest and prosecution, Souk applied a higher standard than the probable cause element for malicious prosecution.

Despite any disagreement about plaintiff's ultimate guilt, no reasonable jury could conclude there was a lack of probable cause to prosecute plaintiff. The evidence supporting probable cause was overwhelming. An office of seasoned prosecutors thought so, and so did a grand jury, which itself is *prima facie* proof of probable cause. *Freides v. Sani-Mode Mfg., Co.*, 33 Ill. 2d 291, 296 (1965); *Biancki v. McQueen*, 2016 ILApp(2d) 150646 ¶75. Even Tony Daniels, who suggested continuing the investigation, agreed there was probable cause. A2151, p.341. The facts that established reasonable grounds to believe plaintiff

committed the crime were undisputed. As a result, probable cause is a question of law in this case. The appellate court judgment should be affirmed.

II. The Appellate court Judgment Should be Affirmed Because Plaintiff Cannot Establish a Fact Question on the Necessary Prosecution Elements of Malice and a Termination Indicative of Innocence.

The final two liability elements of the malicious prosecution tort are that the defendant acted with malice, and the termination of the criminal case against the plaintiff was indicative of innocence. The appellate court never reached these two elements. Nevertheless, this Court can affirm the lower court on any basis established in the record, regardless of whether the lower court relied on those grounds. *Beacham v. Walker*, 231 Ill.2d 51, 60 (2008). The record shows that if this case proceeded to trial plaintiff could not prove malice or a termination indicative of innocence. As a result, in the alternative, defendants are entitled to summary judgment on these grounds as well.

A. Plaintiff Cannot Show the Element of Malice

Malice for malicious prosecution may be proved "by showing that the prosecutor proceeded with the prosecution for the purpose of injuring plaintiff or for some other improper motive." *Gauger v. Hendle*, 2011 ILApp(2d) 100316, ¶122; *Johnson v. Target Stores, Inc.*, 341 Ill.App.3d 56, 76-77 (1st Dist. 2003). Malice "is the commencement of a criminal proceeding for a purpose other than to bring a party to justice." *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶19. The absence of malice can be decided on summary judgment where the record is devoid of any affirmative evidence of malice, an element on which the plaintiff bears the ultimate burden of proof. *Turner v. City of Chicago*, 91 Ill.App.3d 931, 937 (1st Dist. 1980).

The circuit court properly held that the element of malice was not met here. There is no evidence that defendants acted on anything but honest beliefs that plaintiff killed

Lockmiller, and therefore, the circuit court could not find that “sufficient facts exist to show that the defendants’ involvement in this case was motivated by any other reason than to bring a party to justice.” A31.

Examples of malice have included prosecuting to collect a debt (*Szczesniak*, 2014 ILApp(2d) 130636 at ¶14); to force an employee’s termination (*Rodgers v. People’s Gas Light & Coke Co.*, 315 Ill.App.3d 340, 350 (1st Dist. 2000)); or to discover the real reason why the plaintiff entered the defendant’s property (*D.N. Vasquez v. Jacobs*, 23 Ill.App.2d 457, 464 (2dDist. 1960)). Plaintiff complains of what at worst might be construed as zealous or even negligent (in his opinion) police work, but nevertheless its only purpose was to bring Lockmiller’s killer to justice.

Plaintiff argues his criticisms of Freesmeyer’s work on the case show malice. But as the Seventh Circuit recognized, Freesmeyer’s activities plaintiff attacks were just good normal police work. Neither could malice be shown on the part of Warner and Zayas. Warner played such a short and limited role in the investigation that he would have had no occasion to even develop malice. Plaintiff says Zayas had malice because he believed the case needed more work. Plaintiff again argues for a huge expansion of the tort, such that a duty would be imposed for police to oversee the prosecutor’s independent assessment of the evidence. In sum, the appellate court’s judgment should be affirmed, based on the lack of evidence of malice to support plaintiff’s malicious prosecution claim.

B. Plaintiff Cannot Prove That The Termination Of His Prosecution Was Indicative Of His Innocence.

Plaintiff bears the burden of proving that termination of the prosecution in his favor occurred for reasons consistent with his innocence. *Swick v. Liataud*, 169 Ill.2d 504, 513

(1996). To make that determination, the circumstances under which the dismissal is obtained must be examined, not the form or title given to it. *Id.*

Plaintiff's conviction was reversed, but the case was remanded for retrial. In doing so, the Supreme Court specifically noted that it made no finding on the sufficiency of the evidence to retry plaintiff. *People v. Beaman*, 229 Ill.2d 56, 82 (2008). On remand, the State's Attorney decided not to reprosecute plaintiff. It is plaintiff's burden to prove this element, and plaintiff has garnered no evidence to show the decision not to retry plaintiff was at all related to innocence, and no conclusions can be speculated from it. *Id.* at 51-54. No inference can be drawn from it (*Swick*, 169 Ill.2d at 514), but if any could the deposition testimony of Souk (an experienced prosecutor and judge) provides it, that the decision not to reprosecute plaintiff was "a matter of impracticability of reconstructing the evidence and relocating witnesses after so many years had passed" A32.

Plaintiff relies on the certificate of innocence ("COI") and the governor's pardon to establish a termination indicative of innocence. The COI and pardon, however, have no impact in this case. To start, they had no role in the decision to terminate. The termination of the prosecution was the *nolle prosequi* of the criminal charge against plaintiff, after remand from the Supreme Court, which occurred long before either the COI or the governor's pardon were issued. Accepting plaintiff's position that they can substitute for an element is yet another major expansion of this disfavored tort plaintiff promotes.

The issuance of the COI can have no impact in this case. The COI statute specifically states: "The decision to grant or deny a certificate of innocence shall be binding only with respect to claims filed in the Court of Claims and shall not have a res judicata effect on any other proceedings." 735 ILCS 5/2-702(j). Moreover, to accept plaintiff's

argument deprives defendants of any opportunity to litigate an element of the cause of action. A COI proceeding is established under §2-702 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-702, and is essentially a non-adversarial proceeding. The statute allows the Illinois Attorney General or the State's Attorney to intervene as parties, but it provides no opportunity for police, other than possibly in the limited role of an amicus, to participate. Because defendants had no meaningful opportunity to oppose plaintiff's petition for a COI, or to litigate the pardon, it should have no effect here.

The cases plaintiff cites do not support his conclusion that the COI can satisfy the "favorable termination" element of his malicious prosecution claim. In *Kluppelerg v. Burge*, 84 F.Supp.3d 741, 745 (N.D. Ill. 2015), the district court found the COI could be relevant to whether the defendants withheld material evidence, and possibly for damages, but it never decided whether a COI could prove termination indicative of innocence. In *Walden v. City of Chicago*, 391 F.Supp.2d 660, 673 (N.D. Ill. 2005), the district court merely analyzed the effect a governor's pardon for innocence has on when a federal civil rights claim accrues and whether the statute of limitations was tolled. Plaintiff cites no Illinois authority to support his contention, and defendants could find none. Plaintiff's urging this Court to accept judicial and executive decisions unrelated to the prosecution to substitute for an element of the cause of action is one more effort to expand the disfavored tort, and undo over a century of precedent. The appellate court judgment should be affirmed.

III. Summary Judgment on Plaintiff's Intentional Infliction Of Emotional Distress Claim Should be Affirmed In That Plaintiff Forfeited the Claim, and Because There Was No Malicious Prosecution

In its first decision, the appellate court held that plaintiff forfeited his intentional infliction of emotional distress ("IIED") claim because he did not present an argument in

support of that claim. *Beaman*, 2017 IL App (4th) 160527, ¶74. In its second decision, the appellate court again found that plaintiff forfeited his IIED claim and discussed the specifics of his failure to brief the issue during the first appeal. *Beaman*, 2019 IL App (4th) 160527, ¶¶121-24 (*e.g.*, plaintiff’s argument was one sentence long, and he did not cite a legal test for IIED).

Alternatively, even if this Court was to consider it, the appellate judgment should be affirmed because plaintiff’s IIED claim is dependent on the malicious prosecution cause of action and, therefore, fails because plaintiff’s malicious prosecution claim fails. *See, e.g., Jiminez v. City of Chicago*, 830 F.Supp.2d 432, 451 (N.D. Ill. 2011) (success of IIED claim contingent on success of malicious prosecution claim); *Walden v. City of Chicago*, 755 F.Supp.2d 942, 962 (N.D. Ill. 2010) (IIED claim was “intertwined” with the malicious prosecution claim).

Moreover, absent proof sufficient to establish common law malicious prosecution, defendants are immune from liability for a prosecution, regardless of how plaintiff styles his cause of action. (745 ILCS 10/2-208) Section 2-208 of the Illinois Tort Immunity Act states as follows:

A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, unless he acts maliciously and without probable cause.

Consequently, regardless of how plaintiff characterizes the claim, either as malicious prosecution or IIED, if the immunity of §2-208 cannot be overcome by proof of initiation, lack of probable cause, and malice, defendants are immune from any such liability. The appellate court’s judgment should be affirmed.

IV. The Appellate Court Properly Affirmed Summary Judgment For Defendants on Plaintiff’s Civil Conspiracy Claim.

The appellate court properly affirmed summary judgment for defendants on plaintiff's conspiracy claim. To prove a civil conspiracy claim, plaintiff must show: "(1) a combination of two or more individuals, (2) for the purpose of accomplishing by concerted action an unlawful purpose or a lawful purpose by unlawful means, (3) in furtherance of which one of the conspirators committed an overt tortious or unlawful act." *Beaman*, 2019 ILApp(4th) 160527, ¶126 (citing *Fritz v. Johnson*, 209 Ill.2d 302, 317 (2004)). A civil conspiracy claim is dependent on an underlying tort; "[t]o succeed on a civil conspiracy claim, a plaintiff must establish an underlying tort." *Ablan v. Bank of America Corp.*, 665 F. App'x 544, 545 (7th Cir. 2016) (interpreting Illinois law). The appellate court rightly held that because there was no malicious prosecution, plaintiff cannot show the third element of a civil conspiracy claim.

Further, plaintiff's conspiracy claim is nothing more than that the defendant police officers all "collaborated closely on the case." App.Br. at 49. Defendants, plaintiff claims, "met frequently," "shared information," and "read each other's detailed reports." *Id.* In other words, defendants worked together. If this were all it takes, a conspiracy claim would exist in every police investigation involving more than one officer. *Mosley v. City of Chicago*, 614 F.3d 391, 399 (7th Cir. 2010).

Plaintiff is not claiming a conspiracy with the prosecutors, nor could he. The Seventh Circuit decision already precluded such a claim, (*Beaman v. Freesmeyer*, 776 F.3d at 512-13), and there is no evidence to support it. His conspiracy theory involves alleged conspirators employed by one organization, and is barred by the intracorporate conspiracy doctrine. *See, Wright v. Illinois Dept. of Children and Family Svcs.*, 40 F.3d 1492, 1508 (7th Cir. 1994). *Payton v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 184 F.3d 623, 632 (7th

Cir. 1999). This doctrine has been applied to dismiss conspiracy claims where the alleged conspirators were all police officers in the same police department. *See e.g., Piphus v. City of Chicago*, 2013 WL 3975209, at 8 (N.D. Ill. 2013); *Ghiles v. City of Chicago Hts.*, 2016 WL 561897, at 3 (N.D. Ill. 2016). Here, the intracorporate conspiracy doctrine bars plaintiff's conspiracy claim and the appellate court properly affirmed summary judgment for defendants on it.

V. The Appellate Court Properly Affirmed Summary Judgment On the Respondeat Superior and Indemnification Claims

Finally, as the appellate court noted, plaintiff has acknowledged that the respondeat superior and indemnification claims are derivative against the Town of Normal based on the substantive claims against the individual defendants. Because summary judgment for defendants was properly granted on all the individual claims, the appellate court properly affirmed summary judgment on these claims as well.

CONCLUSION

For all of the foregoing reasons, defendants respectfully request this Honorable Court affirm the appellate court judgment in this case.

Respectfully submitted,

TIM FREESMEYER / DAVE WARNER
FRANK ZAYAS / TOWN OF NORMAL

By:



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Case No. 125617

IN THE
SUPREME COURT OF ILLINOIS

ALAN BEAMAN,

Plaintiff-Appellant,

v.

TIM FREESMEYER, Former Normal
Police Detective; DAVE WARNER,
Former Normal Police Detective; FRANK
ZAYAS; Former Normal Police
Lieutenant; and TOWN OF NORMAL,
ILLINOIS,

Defendants-Appellees.

On Appeal from the
Appellate Court of Illinois,
Fourth District, No. 4-16-0527

There Heard on Appeal from
the Circuit Court of McLean County,
Illinois,
Eleventh Judicial Circuit,
No. 14 L 51
The Honorable Richard L. Broch
Judge Presiding

CERTIFICATE OF COMPLIANCE

I, Thomas G. DiCianni, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,585 words.

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NOTICE OF ELECTRONIC FILING

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PLEASE TAKE NOTICE that on November 18, 2020, the undersigned served and filed by electronic means via the Odyssey EFileIL electronic filing system the **BRIEF OF DEFENDANTS-APPELLEES** with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 67201, a copy of which is herewith served upon you electronically.

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CERTIFICATE OF SERVICE

I, Thomas G. DiCianni, an attorney certify that on November 18, 2020, the foregoing **BRIEF OF DEFENDANTS-APPELLEES** and **NOTICE OF FILING** were filed by electronic means with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, IL 62701. I further certify that same were served by electronic transmission on:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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**APPENDIX TO
BRIEF OF DEFENDANTS-APPELLEES**

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<p>1 MR. DICIANNI: I'm not testifying for him. 2 You're testifying for him. I'm not testifying for 3 him. 4 Q. (By Mr. Bowman) Tell me if there's anything 5 else you can point to. 6 A. In the report? 7 Q. Yes, sir. 8 A. Page 8. 9 Q. This is something that Kris Perry told you, 10 that Jennifer had told him that Alan had told her? 11 Is that what you're referring to? 12 A. Be the last sentence of the first paragraph. 13 Q. Alan said he was -- Alan had told her he was 14 going to commit suicide and homicide? 15 A. Correct. 16 Q. And this is according to what Perry said 17 that Lockmiller had said to him? 18 A. Correct. 19 Q. All right. And you were in no position to 20 verify that, right? 21 A. Correct. 22 Q. Because Lockmiller was dead, right? 23 A. That's correct. 24 Q. Okay. And you're familiar with the term</p> <p style="text-align: right;">109</p>	<p>1 (WHEREIN, the requested portion of the 2 record was read by the Court Reporter.) 3 MR. DICIANNI: I'm going to object to the 4 form of the question. 5 Q. (By Mr. Bowman) I'll rephrase it. 6 You wanted to be sure in going back to talk 7 to Perry again that what you were hearing from Perry 8 is something that Beaman had said to Perry as opposed 9 to something that Beaman had supposedly said to 10 Lockmiller that Lockmiller had supposedly said to 11 Perry, right? That was the whole point of going 12 back? 13 A. I was wanting to re-clarify some of the 14 information. I'm not sure that I exactly understand 15 your question. 16 Q. Okay. And when you re-clarified the 17 information, what you discovered was that Perry had 18 no information that Alan had ever said anything to 19 him about homicide, right? 20 MR. DICIANNI: I'll object to that 21 characterization. 22 Q. (By Mr. Bowman) Is that right? 23 THE WITNESS: Could you read back that 24 question?</p> <p style="text-align: right;">111</p>
<p>1 hearsay, right? 2 A. Yes. 3 Q. And that's what this is, right? 4 MR. DICIANNI: I'll object. That's a legal 5 conclusion. 6 Q. (By Mr. Bowman) As a police officer, you 7 understand that's what this is, right? 8 A. I understand there's a hearsay rule. I 9 couldn't tell you what exactly falls under it and 10 what doesn't fall under it. 11 Q. Well, you actually -- and you actually made 12 a point of going back and talking to Kris Perry 13 again, right? 14 A. I believe so. I would have to -- 15 Q. It's in the next paragraph of your report. 16 You went back, and you talked to him again, right? 17 A. Correct. 18 Q. All right. Because you wanted to see if 19 what you were hearing was something that Beaman had 20 said to him or something that Beaman had supposedly 21 said to Lockmiller that Lockmiller had supposedly 22 said to Perry, right? 23 MR. DICIANNI: Wait. Could you read that 24 back?</p> <p style="text-align: right;">110</p>	<p>1 MR. DICIANNI: I'll object to the form of 2 the question and the characterization. 3 THE WITNESS: Correct, about the homicide. 4 Q. (By Mr. Bowman) Any other information that 5 you developed that might in any way, shape, or form 6 suggest that Alan Beaman was a violent individual? 7 A. Again, I'm going to have to refer back to 8 the records. 9 Q. Keep looking. 10 MR. DICIANNI: So where'd we leave off? 11 MR. BOWMAN: We left off with Kris Perry on 12 page 8. 13 MR. DICIANNI: Kris Perry on page 8, okay. 14 THE WITNESS: I guess the page 10 and the 15 very top of page 11. 16 Q. (By Mr. Bowman) Right. That's when you 17 talked to this Katy Corbett, right? 18 A. Correct. 19 Q. And what Katy Corbett told you was, Alan 20 Beaman would usually take it out on something else, 21 like there is holes in the apartment walls in our 22 complex. He would bash things, you know what I mean? 23 I never saw him actually go towards someone -- 24 another person. Isn't that about what she told you?</p> <p style="text-align: right;">112</p>

28 (Pages 109 to 112)

1 Q. Okay. Do you know whether or not the
2 records that I handed to you marked for
3 identification as Hospelhorn Exhibit Number 2 --
4 whether those were included in the Lockmiller
5 homicide investigation?
6 A. I do not know.
7 Q. Okay. Now, there was also a fellow named
8 John Murray who you've mentioned a couple times in
9 your testimony. You said that you had read the
10 transcripts of your interviews with Murray?
11 A. I skimmed through them, yeah.
12 Q. And I believe you agreed with me earlier in
13 this deposition that Mr. Murray, as a former lover of
14 Lockmiller's, was somebody who needed to be
15 investigated in connection with her death, right?
16 A. Correct.
17 Q. How did Lockmiller -- I'm sorry.
18 How did Murray come to your attention?
19 A. I believe through an interview, but I'm not
20 sure.
21 Q. And can you explain your prior answer?
22 A. I'm not sure how he came to my -- to our
23 attention. I'm assuming it was through an interview
24 with a person involved in the case, but I'm not sure.

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1 Q. So in other words, you talked to somebody
2 who knew Jennifer. That individual says, oh, yes,
3 there was this guy named Murray who used to go out
4 with her. And you know you need to go look at
5 Murray?
6 A. I would assume so. I don't know for sure.
7 Q. But you're not sure?
8 A. That is correct.
9 Q. But in any event, you learned that he was
10 someone who had previously had a sexual relationship
11 with the victim?
12 A. Correct.
13 Q. And you interviewed him?
14 A. Correct.
15 Q. How many times did you interview him?
16 A. I don't remember the exact number. I think,
17 if I remember correctly, I seen at least two
18 transcripts.
19 Q. Okay. Were those interviews that you did
20 with Daniels or by yourself?
21 A. I believe with Detective Daniels. I believe
22 with Detective Daniels, but I would have to look to
23 be sure.
24 Q. Now, initially Murray provided himself with

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1 an alibi, correct?
2 A. Correct.
3 Q. He indicated that he had not been in Normal
4 on August 25, the date that the investigation
5 determined was the date that Lockmiller was killed,
6 right?
7 A. Again, I would have to look at the
8 transcripts. I don't remember the exact dates.
9 Q. What's -- you don't remember that the 25th
10 was when she was killed?
11 A. No. I don't remember what dates he said he
12 was and wasn't in town.
13 Q. Okay. Well, do you recall in general that
14 as you're investig -- did you speak with Debra
15 Mackoway?
16 A. Yes.
17 Q. Did you speak with Mackoway by yourself or
18 with Daniels?
19 A. I don't recall that either without looking.
20 Q. Okay. Do you recall that Mackoway told you
21 information regarding Murray's whereabouts on the
22 25th of August that was different from the
23 information that Murray himself provided?
24 A. Again, I know there was some information

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1 that was different. I don't remember the dates.
2 Q. Do you remember that Murray told you he left
3 town on the 24th?
4 A. Again, I don't remember the dates. I know
5 he -- he had left town, but I don't remember any
6 dates.
7 Q. Okay. Do you remember that Mackoway
8 corrected the information and said that actually
9 Murray left town on the 25th?
10 A. Again, I would have to look to see what the
11 dates were.
12 Q. Do you remember that -- well, why don't you
13 look in your report and see if there's anything to
14 help you out?
15 A. Not in this one, right (indicating)?
16 Q. Not in that one. I'm referring you to
17 Exhibit 1.
18 A. I believe we spoke with him, it looks like,
19 on the 2nd. He stated -- Murray stated that he was
20 not sure of the date he had left but thought it was
21 between the 19th of August and the 24th of August.
22 Q. Right. So he's telling you, in other words,
23 that the latest he left was on the 24th and that he
24 was gone on the 25th, right?

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38 (Pages 149 to 152)

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1	that type of information. I'd be speculating.	1	A. No, I don't, sir.
2	Q. How was that typically done in other cases?	2	Q. Okay. But fair to say that you didn't prepare
3	A. Generally we would discuss it. If -- if a copy	3	a lot of reports in this case?
4	was needed, we would provide them a copy of whatever the	4	A. No, I did not.
5	supplemental information was, actually give them a	5	Q. And basically you were -- you were supervising
6	physical, a copy of it. That's about it. Verbal and	6	what others were doing and reading their reports, right?
7	written.	7	A. Basically, yes, sir.
8	Q. Uh-huh. And so -- so typically in an	8	Q. In other words, you weren't doing the line
9	investigation, if an outside specialist report like a	9	investigating?
10	DNA report or a polygraph report were received, it would	10	A. No, sir. I was not.
11	be discussed with the officers working on that case,	11	Q. And you weren't the primary or lead
12	right?	12	investigator?
13	A. Yeah. They would be made aware of it, yes.	13	A. No, I was not.
14	Q. I wanted to turn to some questions about your	14	Q. Would you -- would you characterize your
15	role in supervising the case at issue here, the	15	management of the case as more hands-on or more
16	Lockmill homicide case. You mentioned earlier that	16	hands-off?
17	you were the detective supervising, right?	17	A. I would say more hands-off.
18	A. Yes, sir, I was.	18	Q. At the beginning of the case, Daniels was the
19	Q. Uh-huh. And that you assigned tasks to other	19	lead investigator, right?
20	officers?	20	A. Yes, sir.
21	A. Yes, sir, I did.	21	Q. Okay. And how was it decided that -- that he
22	Q. Okay. But you didn't interview witnesses,	22	would be the lead?
23	right?	23	A. I think that was by the chief. Chief Taylor
24	A. No, sir, I did not.	24	made that decision.
69		71	
1	Q. And you didn't obtain subpoenas?	1	Q. Were you consulted about that decision?
2	A. No, sir, I did not.	2	A. No, sir.
3	Q. Or perform time trials of driving?	3	Q. And do you know what the chief's reasons were
4	A. No, sir, I did not.	4	for picking Daniels to lead the investigation at the
5	Q. You weren't involved in the investigation of	5	beginning?
6	alibis?	6	A. Well, at the time, I think Tony was well
7	A. No, sir, I was not.	7	qualified and was aggressive and wanted to, you know,
8	Q. You didn't take any suspects or witnesses for a	8	pursue different avenues, so the chief thought he would
9	polygraph?	9	be a good officer to do that.
10	A. No, sir, I did not.	10	Q. Uh-huh. And Daniels does the first interview
11	Q. You didn't collect forensic evidence?	11	with Alan Bearnan early on in the case, right? Do you
12	A. No, sir, I did not.	12	remember that?
13	Q. And you did not testify at trial or any	13	A. I don't -- I don't remember that, sir.
14	hearing, right?	14	Q. Okay. Do you remember his -- his interviewing
15	A. No, sir, I did not.	15	John Murray early on in the case?
16	Q. All right. And you were present at some	16	A. No, sir, I do not.
17	investigators' meetings, but not all of them?	17	Q. Do you recall that sort of early on in the case
18	A. I'm sure there was probably meetings, but I	18	there was a flurry of activity by -- by Daniels as the
19	don't remember any of them. I really don't.	19	lead person?
20	Q. Okay.	20	A. I don't remember that. I don't.
21	A. I don't.	21	Q. Okay. And at some point Daniels' investigation
22	Q. And I believe you prepared a couple of short	22	tapers down and Freesmeyer's tapers up; is that fair?
23	reports in this case. Do you have any recollection of	23	MS. EKL: Objection; form.
24	that?	24	A. Yes, I guess that would be a correct statement.
70		72	

18 (Pages 69 to 72)

<p>1 Q. Okay. And the -- and then there's another</p> <p>2 individual with a circled "S" notation next to his name,</p> <p>3 and that's Alan, right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Is it your assumption that that refers to</p> <p>6 Alan Beaman?</p> <p>7 A. I -- I suspect that's what it -- what it was,</p> <p>8 yes.</p> <p>9 Q. Okay. Sir, just to put the -- this meeting in</p> <p>10 context in terms of background a little bit, you know,</p> <p>11 we can see that the meeting occurred on September 7th</p> <p>12 of 1993. That's the Tuesday after the Monday Labor Day</p> <p>13 holiday. We know from police reports, from -- from</p> <p>14 Daniels, that Daniels had spoken to John Murray for the</p> <p>15 first time on September 2nd, in other words, the</p> <p>16 Thursday before the Labor Day holiday, and that he had</p> <p>17 learned information about Rob Curtis on September 5th,</p> <p>18 including that Curtis had been stood up by</p> <p>19 Jennifer Lockmiller, and that according to an</p> <p>20 acquaintance of his, Curtis had made statements shortly</p> <p>21 after the murder to the effect of, "I don't have to</p> <p>22 worry about dating her anymore" and "If I had met her a</p> <p>23 few weeks ago, I could have been a suspect."</p> <p>24 Does any of that stir any recollection?</p> <p style="text-align: right;">101</p>	<p>1 was reported to you by those who were directly</p> <p>2 investigating them, right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Given that you -- you don't have a</p> <p>5 recollection of Murray, I assume that you don't have any</p> <p>6 recollection of anything that was done to eliminate</p> <p>7 Murray as a suspect later in the investigation?</p> <p>8 A. No, sir, I don't, sorry.</p> <p>9 Q. And the same answer for Rob Curtis, right?</p> <p>10 A. Right, that's correct, sir.</p> <p>11 Q. And same -- same answer for Stacey Gates?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. I got a little bit ahead of myself.</p> <p>14 This is the September 7th meeting, as we've discussed.</p> <p>15 But we had been talking earlier about your seeing the</p> <p>16 body on the crime scene on the day that the call was</p> <p>17 made.</p> <p>18 Shortly after the discovery of the body, was</p> <p>19 it -- would it be fair to say that this became a</p> <p>20 high-profile case?</p> <p>21 MR. DiCIANNI: Yeah, I'm going to object to</p> <p>22 lack of foundation.</p> <p>23 You can answer.</p> <p>24 A. In my position, probably I -- I knew that the</p> <p style="text-align: right;">103</p>
<p>1 A. No, sir.</p> <p>2 Q. Okay.</p> <p>3 A. No, sir.</p> <p>4 Q. Given that -- that Daniels was the person who</p> <p>5 had been speaking with Curtis and Murray, and that he</p> <p>6 was present at this meeting, would it be a reasonable</p> <p>7 assumption that your notes reflected a report that</p> <p>8 Daniels had provided, an oral report, regarding his</p> <p>9 interactions with those suspects?</p> <p>10 A. I wouldn't know.</p> <p>11 MR. DiCIANNI: Yeah, I'll object to the asking</p> <p>12 him to assume.</p> <p>13 Q. You testified earlier that, you know, you</p> <p>14 weren't doing the line investigations and interviews,</p> <p>15 right?</p> <p>16 A. No, sir, I was not.</p> <p>17 Q. And so you had to rely on what was reported to</p> <p>18 you by those who were doing the investigations?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And so when you wrote down notations about</p> <p>21 Curtis and Murray, it wouldn't be the result of anything</p> <p>22 that you had done directly, right?</p> <p>23 A. No, sir.</p> <p>24 Q. It would have been based on information that</p> <p style="text-align: right;">102</p>	<p>1 news media was wanting to talk to the chief, but at that</p> <p>2 point I didn't -- I didn't think that yet, no.</p> <p>3 Q. Okay. So you didn't think that yet. Is it</p> <p>4 fair to say that as the investigation went forward, it</p> <p>5 became a high-profile case?</p> <p>6 A. Yes, it did.</p> <p>7 Q. There was -- there was a lot of media attention</p> <p>8 devoted to it?</p> <p>9 A. Yes, there was.</p> <p>10 Q. Can you remember any case in your career that</p> <p>11 attracted a similar level of media attention?</p> <p>12 A. I think there was one just previously where a</p> <p>13 young girl was killed in Normal, on the east side, that</p> <p>14 media was, you know, all over it, I guess.</p> <p>15 Q. Uh-huh, uh-huh. So is it fair to say that the</p> <p>16 Lockmiller case was one of the two highest profile cases</p> <p>17 you ever worked on?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And with the possible exception of the case</p> <p>20 involving the murder of a young girl that you just</p> <p>21 described --</p> <p>22 A. Yeah.</p> <p>23 Q. -- this was the -- this case had the highest</p> <p>24 level of media interest, right?</p> <p style="text-align: right;">104</p>

26 (Pages 101 to 104)

<p>1 delivered or delivered in any manner to the State's</p> <p>2 Attorney's Office?</p> <p>3 A. I'm sorry, I have no knowledge.</p> <p>4 Q. You stated at one point that detectives kept</p> <p>5 state's attorneys -- the state's attorneys aware of</p> <p>6 progress of the case both before and after the arrest.</p> <p>7 Did you have any personal knowledge of that? Were you</p> <p>8 present while that -- when that took place at any point</p> <p>9 in time, that you can recall?</p> <p>10 A. I don't recall.</p> <p>11 Q. All right. Do you have any knowledge of either</p> <p>12 Assistant State's Attorney Souk or State's Attorney</p> <p>13 Reynard ever giving any particular assignments to any of</p> <p>14 the detectives at any point in time during the</p> <p>15 Lockmiller homicide investigation?</p> <p>16 A. I don't recall any, no.</p> <p>17 Q. You retired in November of 1994?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Okay. And if that took place after the point</p> <p>20 in time when any of those documents were generated</p> <p>21 involving John Murray and his girlfriend, would those</p> <p>22 documents have been documents that would have crossed</p> <p>23 over your desk for your approval?</p> <p>24 A. I don't remember them. I don't remember.</p> <p style="text-align: right;">189</p>	<p>1 returned."</p> <p>2 Do you see that line?</p> <p>3 A. Yes, uh-huh.</p> <p>4 Q. And do you see before that it says,</p> <p>5 "August 19th, got back from California"?</p> <p>6 A. Uh-huh.</p> <p>7 Q. I'm sorry. Is that yes?</p> <p>8 A. Yes, I'm sorry.</p> <p>9 Q. Is that a reference to Jennifer Lockmiller?</p> <p>10 MR. SHAPIRO: Objection; calls for speculation.</p> <p>11 A. I don't know.</p> <p>12 Q. These are your notes, correct?</p> <p>13 A. Yes, they are.</p> <p>14 Q. Okay. But you don't recall --</p> <p>15 A. No.</p> <p>16 Q. -- what you were referring to?</p> <p>17 A. No, I don't recall what I was referring to.</p> <p>18 Q. If you looked back at page 2, leading into</p> <p>19 page 3, would that help refresh your memory as to what</p> <p>20 you were referencing in those notes?</p> <p>21 MR. SHAPIRO: Objection; calls for speculation.</p> <p>22 A. I don't know exactly what you're referring to</p> <p>23 on page 2.</p> <p>24 Q. I'm just asking you if there's anything else in</p> <p style="text-align: right;">191</p>
<p>1 Q. In addition to reviewing documents related to</p> <p>2 the Lockmiller homicide investigation, did you</p> <p>3 also review other police reports that were generated in</p> <p>4 the department during that time that you were a</p> <p>5 lieutenant?</p> <p>6 A. Yes, I did.</p> <p>7 Q. So would you have expected that those are</p> <p>8 documents that would have crossed over your desk?</p> <p>9 A. Yes.</p> <p>10 Q. You don't have any knowledge of yourself</p> <p>11 providing those documents to the State's Attorney's</p> <p>12 Office, correct?</p> <p>13 A. Ma'am, I don't.</p> <p>14 Q. If you could take a look at Exhibit No. 1,</p> <p>15 which I think you identified as your handwriting, some</p> <p>16 notes that you took.</p> <p>17 A. Let's see. Yeah.</p> <p>18 Q. I want to direct you specifically to the third</p> <p>19 page of that document.</p> <p>20 Do you see on the second line it says, and</p> <p>21 correct me if I'm wrong, "expressed" -- is that "intent"</p> <p>22 or --</p> <p>23 A. "Interest."</p> <p>24 Q. " -- interest in order of protection when she</p> <p style="text-align: right;">190</p>	<p>1 this document --</p> <p>2 A. Oh.</p> <p>3 Q. -- to put it in context that would make you --</p> <p>4 A. No, no. Unfortunately, no.</p> <p>5 Q. The items that were written in these notes by</p> <p>6 you, the different topics that were discussed, are these</p> <p>7 things that were raised during that meeting on</p> <p>8 September 7th of 1993?</p> <p>9 A. To the best of my knowledge, yes.</p> <p>10 Q. Earlier today you were asked some questions</p> <p>11 regarding Lieutenant Daniels generally, and I believe</p> <p>12 you stated that he can be very bullheaded and difficult,</p> <p>13 and you also stated that he is very opinionated. Do you</p> <p>14 remember making those statements?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Was Lieutenant Daniels the kind of person that</p> <p>17 if he had a disagreement with something would make that</p> <p>18 disagreement known to the other detectives he was</p> <p>19 working with?</p> <p>20 A. Oh, yes. He's very vocal.</p> <p>21 Q. Did you ever know him to keep his opinions to</p> <p>22 himself if he disagreed with, say, the course of an</p> <p>23 investigation or -- or the -- well, just say the course</p> <p>24 of an investigation?</p> <p style="text-align: right;">192</p>

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1 A. No. Tony -- Tony would tell you.
 2 Q. Just a couple more questions, related to
 3 Detective Freemeyer.
 4 Detective Freemeyer took over basically your
 5 position when you left, correct? Is that my -- is
 6 that -- is my understanding correct?
 7 A. I'm not aware how the chief did that. I don't
 8 know.
 9 Q. Okay. Prior to you leaving, was it -- is it
 10 your recollection that Detective Freemeyer was working
 11 on the Lockmiller homicide investigation?
 12 A. When I left?
 13 Q. Right. Up until the time that you left.
 14 A. Yes, yes.
 15 Q. Okay. And is it fair to say that it wasn't
 16 until after you retired that Detective Freemeyer went
 17 to work over -- do some work out of the State's
 18 Attorney's Office?
 19 MR. SHAPIRO: Objection; lack of foundation.
 20 A. I -- I, to the best of my knowledge, I think
 21 that's what happened, yes.
 22 Q. You recall that while you were working with
 23 Detective Freemeyer, he was still over at the Normal
 24 Police Department?

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1 A. Right, yes, ma'am.
 2 Q. And is it your recollection that the reason, or
 3 to the best of your knowledge, the reason that
 4 Detective Freemeyer went over to the State's Attorney's
 5 Office was to help prepare for trial?
 6 MR. SHAPIRO: Objection; lack of foundation,
 7 calls for speculation.
 8 A. I really don't know. I was not in, in a
 9 meeting when that took place. But that sounds feasible,
 10 yes.
 11 MS. EKL: I think -- I think that's all I have.
 12 Thank you very much.
 13 THE WITNESS: All right.
 14 CROSS EXAMINATION
 15 BY MR. DICIANNI:
 16 Q. Frank, let me just ask you a question.
 17 On this page 3 of Exhibit 1, you wrote,
 18 "August 19, got back from California, expressed interest
 19 in order of protection when she returned."
 20 That could only be about Jennifer Lockmiller,
 21 couldn't it?
 22 A. Absolutely.
 23 MR. SHAPIRO: Objection; lack of foundation,
 24 calls for speculation.

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1 A. I would say yes.
 2 Q. Okay. So somebody at this meeting, it
 3 appears --
 4 A. Yeah.
 5 Q. -- would have shared -- would have obtained
 6 that information and shared it with the group?
 7 A. Yes.
 8 MR. SHAPIRO: Same objection.
 9 MS. EKL: I'm sorry?
 10 A. I would say yes.
 11 MR. DICIANNI: Okay. That's all I have.
 12 MR. SHAPIRO: I have nothing further. Thank
 13 you very much for your time today. I appreciate it.
 14 THE WITNESS: You're welcome.
 15 MS. EKL: Thank you.
 16 THE VIDEOGRAPHER: We're off the video record
 17 at 4:25 p.m.
 18 THE REPORTER: Do you have reading and signing
 19 MR. DICIANNI: I'll reserve.
 20 THE REPORTER: The witness reads.
 21 And you're ordering the original, right?
 22 MR. SHAPIRO: Yes.
 23 THE REPORTER: Do you want copies?
 24 MS. EKL: I'll take an E-Tran.

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1 MR. DICIANNI: I'll take a copy.
 2 MR. SHAPIRO: And I'll take a PDF and mini.
 3 THEREUPON, the deposition of FRANK L. ZAYAS,
 4 taken at the instance of the Plaintiff, was concluded at
 5 4:26 p.m.
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<p>1 Q. Were you in the room at any time or were 2 you -- strike that. 3 Were you present at any time when Mr. McCann 4 was asking Mr. Murray questions? 5 A. No. 6 Q. How long were you at the Morton Crime Lab for 7 Mr. Murray's polygraph examination? 8 A. An estimate would be probably in the 9 neighborhood of an hour, 45 minutes. 10 Q. Did you wait at the crime lab -- 11 A. Yes. 12 Q. -- until it was completed? 13 Did you speak with Mr. McCann when the 14 examination was over? 15 A. First of all, there was no exam; but I did 16 speak to him after -- afterwards. 17 Q. What do you mean there was no exam? 18 A. Mr. McCann explained to me that Mr. Murray 19 was not being cooperative in his questioning. 20 Q. And, therefore, Mr. McCann couldn't actually 21 complete the test on Mr. Murray? 22 A. He couldn't start the test. 23 Q. So Mr. McCann told you he never even started 24 the test?</p>	<p>1 (Whereupon, Daniels Deposition 2 Exhibit No. 18 was marked.) 3 BY MS. BARTON: 4 Q. Do you recall giving an interview to a TV 5 reporter by the name of Mark Goldman? 6 A. Yes. 7 Q. Exhibit Number 18 is -- are documents that 8 were contained in the blue folder that you had labeled 9 Channel 31 Interview, okay? Turn to page SDT 1001. 10 A. Okay. 11 Q. Where did you obtain this document? 12 A. I just got it from you. 13 Q. Okay. Well, I got it from you from your 14 files. 15 A. Okay. 16 Q. I just informed you that it came from the 17 folder that was marked Channel 31 Interview. So it 18 was in your possession, would you agree with that? 19 A. Yes, I would say that it came from the 20 newscaster. 21 Q. From Mark Goldman? 22 A. Him or their office, yes. 23 Q. On that first page, 1001, of the interview 24 transcript, towards the bottom of the page, there's a</p>
Page 262	Page 264
<p>1 A. Correct. 2 Q. Did he tell you whether he asked 3 Mr. Murray any questions or how he got to that point? 4 A. Well, there's a preliminary question they use 5 to establish a baseline, I believe. And what 6 Mr. McCann explained to me is that Mr. Murray could 7 not sit still. He would move his legs back and forth; 8 and, therefore, the exam was not administered. 9 Q. Did Mr. McCann tell you that Mr. Murray -- or 10 in his opinion, Mr. Murray was manipulating the test 11 or attempting to manipulate the test? 12 A. I don't know if that's the words he used. He 13 just indicated to me that he would not set still. 14 Q. Did he tell you that Mr. Murray wasn't being 15 cooperative? 16 A. Well, not being cooperative was an 17 explanation of him moving his legs back and forth. He 18 wouldn't cooperate in the fact that he wouldn't set 19 still. He didn't set still. 20 Q. Did Mr. McCann tell you that he informed 21 Mr. Murray to sit still, and he instructed him to do 22 that, and Mr. Murray failed to do that? 23 A. If he -- if Mr. McCann did, then I don't 24 recall.</p>	<p>1 bigger paragraph, where it starts: "Well, the 2 girlfriend"? Do you see that paragraph on the -- 3 A. Yes. 4 Q. -- first page? 5 The last sentence in the paragraph reads: 6 "We did offer him a polygraph examination, and he did 7 take a polygraph." 8 And then Mr. Goldman asks you: "What was the 9 result to your knowledge?" 10 And you said: "Inconclusive." 11 Where did you learn that Mr. Murray's 12 polygraph was inconclusive? 13 A. Well, that may have been my term that I used 14 solely and not Mr. McCann's. 15 Q. Do you know whether Mr. McCann told you that 16 Mr. Murray's test was inconclusive? 17 A. I don't know for sure. 18 Q. And then on the next page, Mr. Goldman asks 19 you: "Any theory as to why?" 20 And you responded: "Yes. As told to me by 21 the polygraph operator, he had a problem with his 22 posture. He was manipulating the polygraph." 23 That word manipulating, is that something 24 Mr. McCann told you that Mr. Murray was manipulating</p>

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1 have been Mr. McCann's wording.
 2 Q. Okay.
 3 (Whereupon, Daniels Deposition
 4 Exhibit No. 20 was marked.)
 5 BY MS. BARTON:
 6 Q. All right. Mr. Daniels, the court reporter
 7 handed you Exhibit Number 20. This is something that
 8 I found in the materials that you provided to me in
 9 response to the subpoena that I sent to you.
 10 So I'm going to ask you whether you have ever
 11 seen this document?
 12 A. I can't recall if I've ever seen this
 13 document.
 14 Q. Is your handwriting on this document?
 15 A. That handwriting appears to be my
 16 handwriting.
 17 Q. And specifically page 3, paragraph K, did you
 18 circle the portion that says "He was manipulating the
 19 test"?
 20 A. Can't be sure, but I wrote something in the
 21 margin. Perhaps that's what that was referring to.
 22 Q. What does the note in the margin say?
 23 A. "Not following the instructions as given by
 24 the examiner."

1 responding to a different operator with the thought in
 2 mind that the male operator is a little more
 3 stringent, tougher, more strict.
 4 Q. What led you to believe that Mr. McCann
 5 stringent or strict with Mr. Murray?
 6 A. There's nothing to indicate that. That was
 7 just a ploy I used to try to solicit another polygraph
 8 from Mr. Murray.
 9 Q. Did Mr. Murray indicate that he was not at
 10 ease with Mr. McCann?
 11 A. I don't recall if he said that or not.
 12 Q. What did he say when you asked him whether he
 13 wanted to take another polygraph with the female
 14 operator?
 15 A. He was in agreement to that.
 16 Q. He agreed?
 17 A. Yes.
 18 Q. Did you set it up with him at that time on
 19 the --
 20 A. At that --
 21 Q. -- ride home?
 22 A. At that time, no, because I had to check with
 23 the lieutenant or the chief to see if it would be all
 24 right to use an outside examiner.

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1 Q. Does that mean that Mr. Murray wasn't
 2 following the instructions as given by Terry McCann?
 3 A. That's possible, yes.
 4 Q. Do you know who prepared this affidavit?
 5 A. No, I do not.
 6 Q. You can put that to the side.
 7 Did you ask Mr. Murray to take a second
 8 polygraph examination?
 9 A. Yes, I opened -- I left that option open to
 10 him.
 11 Q. When did you ask him to sit for another
 12 examination?
 13 A. While en route from Morton, Illinois back to
 14 Normal, the day that he attempted to take the first
 15 one.
 16 Q. So you had a conversation with Mr. Murray on
 17 the way back to the Bloomington-Normal area from
 18 Morton, right?
 19 A. Correct.
 20 Q. And during the conversation, you said what?
 21 A. Basically that I offered him a second
 22 polygraph if he would be willing to take one. Maybe
 23 perhaps a female operator would be a little more
 24 gentle with him, trying to let him feel at ease in

1 Q. So an examiner that wasn't employed by the
 2 State?
 3 A. Other one different from Terry McCann.
 4 Q. So what do you mean by an outside examiner?
 5 A. One that would be employed by the State.
 6 MR. DICIANNI: I'm sorry. Would or wouldn't?
 7 MS. BARTON: Would or wouldn't?
 8 THE WITNESS: Would not be --
 9 MR. DICIANNI: Would not.
 10 THE WITNESS: -- employed.
 11 BY MS. BARTON:
 12 Q. And you didn't have to seek permission from
 13 Lieutenant Zayas to take Mr. Murray to McCann because
 14 he was an employee of the State, right?
 15 A. I don't recall if I got his verbal expression
 16 or verbal permission. Normally that's where we would
 17 take our people to be examined is over there.
 18 Q. Well, normally, did you have to seek approval
 19 from your supervisor to take somebody to a polygraph
 20 examination?
 21 A. Not necessarily, Lieutenant, may I; but,
 22 Lieutenant, I'm going to schedule him for a polygraph.
 23 Something of that nature. Perhaps a suggestion and
 24 looking for a reply of either no or yeah, go ahead.

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<p>1 MR. DiCIANNI: Yeah, object to form, 2 foundation. 3 BY MR. BOWMAN: 4 Q. Just in terms of what he said? 5 A. Yes. 6 Q. And I'm not suggesting that he brought forth 7 any documentary evidence, but he -- he made statements 8 to the effect that he had a job and he had a schedule 9 and he had places where he was during the week in 10 question, right? 11 A. And he provide -- yes, that's correct. 12 Q. And as an experienced investigator, you knew 13 that all of that information needed to be followed up 14 on and investigated and pursued, right? 15 A. That's true. 16 Q. In order to assess the strength of his 17 alibi -- 18 A. Correct. 19 Q. -- right? 20 A. Correct. 21 Q. And what we know just skipping forward is 22 that in this investigation, when all of the dust 23 settled, Mr. Beaman had an extremely strong alibi, 24 right?</p>	<p>1 could provide him with an alibi at a certain point in 2 the afternoon, right? 3 A. That came about during Lieutenant John Brown 4 and my interview with the parents and Beau at the Law 5 and Justice Center after his -- 6 Q. Right. And we were talking a few minutes ago 7 about the responsibility of investigators to continue 8 with an investigation after charges, and another 9 example of that would be to follow up on the alibi 10 information from the parents, accurate? 11 A. That's correct. 12 Q. And indeed subsequent to the charging of 13 Mr. Beaman, a videotape surfaced that showed without a 14 doubt that Beaman was present at a Bell Federal 15 Savings & Loan location in Rockford, Illinois on -- 16 whenever it was, 10:11 on the morning that it was 17 believed the murder took place, right? 18 A. Correct. 19 Q. So, again, when all of the dust settled, fair 20 summary to say that there was a very narrow window of 21 time within which Beaman could have traveled to 22 Normal, committed the murder of Lockmiller and then 23 traveled back to Rockford in order to be alibied by 24 his mother in the afternoon; fair summary?</p>
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<p>1 MS. BARTON: Objection to form. 2 MR. DiCIANNI: Object, yeah, form. 3 BY MR. BOWMAN: 4 Q. In your judgment? 5 A. Yes. 6 Q. And explain that. 7 A. His time schedule, the fact that during -- 8 are we talking about after our interview with him? 9 Q. When all the dust settled. 10 A. Okay. When all the dust settled. We looked 11 at his schedules. We obtained, I believe, parts of 12 his work schedule. He worked for his uncle at various 13 stores, various locations. 14 Right after the interview, which he 15 terminated voluntarily on his own, we got his 16 permission to examine his car, and after looking at 17 his car, we thought perhaps a little bit doubtful that 18 he could drive that car in that condition back and 19 forth to those two places without being stopped by a 20 police officer, and he would have had to have been 21 going in the neighborhood of 100 miles an hour. 22 That's just not possible. 23 Q. Well, indeed as the -- the investigation 24 progressed, there was information that his mother</p>	<p>1 MS. BARTON: Objection to form. 2 THE WITNESS: That's correct. 3 BY MR. BOWMAN: 4 Q. And indeed did you form an opinion as to 5 whether the information from the video and from his 6 mother excluded or included Beaman as the offender 7 based on your experience as an investigator? 8 MR. DiCIANNI: I'll object to foundation. 9 MS. BARTON: Join. 10 THE WITNESS: I think based upon that 11 information, that gave us more reason for doubt that 12 he could have committed the crime. 13 BY MR. BOWMAN: 14 Q. Okay. And can you elaborate on that? 15 A. There were two phone calls made from his 16 residence in the neighborhood of 10:30. It was to the 17 church. Alan Beaman was involved in the church to the 18 extent that he was a member of the band, and they were 19 to have an ice cream social, and he was making final 20 arrangements and confirming that particular time for 21 the social. 22 The fact that what he was driving at the 23 time. Also, the fact that the mother's description of 24 where Alan was at the time of question being that his</p>

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1 car was in the driveway, that's the Ford Escort. He
2 was in -- even though she didn't physically open the
3 door to his bedroom, he was in his room, the door was
4 closed, and his dog was parked sleeping right outside
5 of his door. And that's the normal activities for
6 that dog and for Alan when he comes home from work
7 because he's been up most of the night.

8 Q. And all of this indicated that the likelihood
9 that Beaman had made that trip and committed the
10 murder was to be just as fair and neutral about it as
11 possible was subject to serious doubt, accurate?

12 A. Correct.

13 MR. DiCIANNI: Object.

14 BY MR. BOWMAN:

15 Q. Now, let me ask you this: At the conclusion
16 of your interview/interrogation of Beaman on August
17 the 28th, going back now to the very beginning of the
18 investigation, there was developed the information
19 from Morgan Keefe that the -- that Beaman had a rocky
20 relationship with Lockmiller and that therefore he had
21 a motive to kill her, right?

22 A. Correct.

23 Q. And then there was also the information in
24 terms of Beaman's responses that was indicative of

1 THE WITNESS: Correct.

2 BY MR. BOWMAN:

3 Q. I mean, you were there and you interacted
4 with him, correct?

5 A. Correct.

6 Q. Now, would it be fair to say that, again,
7 that's not anything definitive, but as an experienced
8 investigator, you should weigh that in and take into
9 account the possibility that the alibi is truthful and
10 accurate even based on what you knew as of August 28?

11 A. Yes, yes.

12 Q. Now, in your judgment as an experienced and
13 trained investigator -- do you need to stop for a
14 minute or can I keep going?

15 A. No, I'm just stretching my leg out, and I
16 want to be careful not to kick someone.

17 Q. Anytime you need to stop, you let me know.

18 In your opinion as an experienced and trained
19 investigator, did the investigation of Beaman
20 subsequent to your interrogation of him on August 28
21 develop any further, additional evidence indicative of
22 Beaman's guilt beyond what was known to the
23 investigators at that particular point in time?

24 MR. DiCIANNI: I'll object to lack of

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1 possible guilt, and you have talked about that
2 already, right?

3 A. Correct.

4 Q. And among the things that were -- there were
5 also other signs, we started to talk about this, in
6 the interview that were indicative of possible
7 innocence, right?

8 A. Correct.

9 Q. For example, during your interrogation of
10 him, you mixed up the days and the times as to where
11 he was and so forth and the expectation was that was a
12 ploy as well, right?

13 A. Correct.

14 Q. And the expectation was that a guy who is
15 fabricating his whereabouts, providing a false alibi
16 for himself, won't be able to keep it straight once
17 you start shifting the shells around, right?

18 A. That's correct.

19 Q. And Beaman did not do that. In fact, he
20 maintained consistently an explanation of his
21 whereabouts over the course of the questioning,
22 correct?

23 MR. DiCIANNI: Objection to foundation.

24 MS. BARTON: Join.

1 foundation.

2 BY MR. BOWMAN:

3 Q. Based on your familiarity and your knowledge
4 of this investigation.

5 A. Restate your question, please.

6 Q. Let me try it again.

7 A. Sure.

8 Q. Based on your familiarity with the case, your
9 direct participation in it, did the investigation
10 subsequent to your and Hospelhorn's interview of
11 Beaman on August 28 and the information that was
12 developed prior to that interview, subsequent to that
13 time, did the investigators get anything else on
14 Beaman that was further support for the proposition
15 that Beaman was the perpetrator?

16 MR. DiCIANNI: Same objection.

17 MS. BARTON: Join.

18 THE WITNESS: Yes, there had been.

19 BY MR. BOWMAN:

20 Q. And what is that?

21 A. Well, the information that came about as a
22 pretrial -- or a posttrial conviction I learned that
23 information was misrepresented by Tim Freesmeyer. I
24 also learned during the testimony of Judge Souk that

C00873 35 (Pages 517 to 520)

SA 010

1 Q. Where did you serve?	1 A. I did.
2 A. I served in Texas for training. I	2 Q. Graduated in 1974?
3 served in Illinois for training and then the	3 A. Correct.
4 rest of my service was at Offutt Air Force Base	4 Q. Okay. Can you give me a short resume
5 in Omaha, Nebraska.	5 of your legal career?
6 Q. Were you in the Air Force?	6 A. My first job out of law school was I
7 A. I was.	7 spent a year clerkship with Morrissey Underwood,
8 Q. Did you -- what was your -- you were	8 the chief justice of the Illinois Supreme Court.
9 honorably discharged I'm guessing?	9 Immediately thereafter, I took a job at Jenner &
10 A. I was.	10 Block in Chicago, Illinois, as an associate
11 Q. And what was your rank at discharge?	11 working primarily in major civil litigation. I
12 A. Captain.	12 remained there less than a year.
13 Q. Did you go in as an enlisted person and	13 I returned to Champaign County to work
14 do officer training or how did that work?	14 as an assistant state's attorney in the
15 A. I went in. I did basic training	15 Champaign County State's Attorney's Office where
16 immediately, did officer training and was	16 I had worked as a student intern while I was in
17 commissioned after four months. I guess you're	17 law school. I stayed there from '76 to '79.
18 considered an enlisted person until you get	18 In 1979, I went into partnership with
19 commissioned but...	19 another assistant state's attorney, James
20 Q. And you became a lieutenant and then a	20 Dobrovolny.
21 captain?	21 Q. You'll have to spell that for us.
22 A. Yes.	22 A. D-O-B-R-O-V-O-L-N-Y. And we maintained
23 Q. And what was your -- what were your job	23 a two-person partnership until -- in Urbana
24 responsibilities in the military, sir?	24 until 1991.
25	27
1 A. I was an aircraft maintenance officer.	1 In October of '91, I was hired as the
2 Q. Really? Is that where you learned all	2 chief of the felony division in the McLean
3 that stuff about odometers?	3 County State's Attorney's Office and I served in
4 MS. EKL: Objection, form.	4 that capacity until January the 2nd of 1997.
5 THE WITNESS: Actually I can't even change	5 I was appointed an associate judge in
6 the oil in my car. But the military trains	6 the 11th Judicial Circuit at that point. I
7 young officers to supervise people who actually	7 served as an associate judge until August of
8 know how to do things and it was a rather	8 2002, I guess it was, and was -- became a
9 strange fit for me. But my job was to actually	9 circuit judge at that point and remained a
10 supervise aircraft mechanics and do something	10 circuit judge until my retirement, December the
11 about such things.	11 1st of this year.
12 BY MR. BOWMAN:	12 Q. 12-1-12 -- no -- yes.
13 Q. All right. And then what was the year	13 A. Yes.
14 and month of your discharge?	14 Q. December the 1st so you just retired?
15 A. I was discharged in, I believe, May of	15 A. I have just retired.
16 1971.	16 Q. Okay. Let me ask you about your duties
17 Q. When did you return to law school?	17 in the Champaign County State's Attorney's
18 A. Either late August or early September	18 Office.
19 of 1971.	19 You were there for three years?
20 Q. And what institution?	20 A. I think a little over three years.
21 A. University of Illinois at	21 Q. And what were your assignments there?
22 Champaign-Urbana.	22 A. I was assigned to felonies. I was the
23 Q. And did you go straight through at that	23 child abuse/neglect prosecutor and I did a
24 point?	24 little bit of civil work but not much.
26	28

7 (Pages 25 to 28)

1 A. Yes.
 2 Q. Do you continue to believe that Tim
 3 Freesmeyer's efforts in connection with the
 4 Lockmiller investigation were the best efforts
 5 by a police officer that you've ever had
 6 occasion to observe or be involved with?
 7 A. Well, you know, a lot of time has past
 8 since then, but, you know, I would say, you
 9 know, certainly on a par with the best work I've
 10 ever seen by a police officer.
 11 But, you know, there was some further
 12 time that past that I was a prosecutor and of
 13 course I've seen a lot of efforts by people not
 14 -- as a judge, not as a prosecutor and defense
 15 lawyer.
 16 But certainly I never in my memory had
 17 been involved with a finer effort than what I
 18 thought Tim put in in that case.
 19 Q. So, to be clear, you've never seen
 20 finer police work than the police work of Tim
 21 Freesmeyer in the Lockmiller murder
 22 investigation, fair statement?
 23 A. That's fair.
 24 Q. Now, you say that you admire him both

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1 as a person and a police officer, yes?
 2 A. That's true.
 3 Q. Now, why do you admire him as a person?
 4 I mean that's still true, right?
 5 A. It is true, yes.
 6 Q. Why do you admire him as a person?
 7 A. Well, because I had occasion to work
 8 with him a considerable amount during that case,
 9 was a -- not only a lot of preparation leading
 10 up to the trial but Tim was allowed to be in the
 11 trial as a police representative during the
 12 trial.
 13 He did a great deal of, you know, media
 14 and audiovisual work and that sort of stuff.
 15 And so I had occasion to get to know him perhaps
 16 more so than I would a detective in a lot of
 17 other cases and had, you know, a great deal of
 18 contact with him, found him to be a person of
 19 great integrity, genuine character, just a
 20 really fine person. And I admired him as a
 21 person as well as a police officer.
 22 Q. Now, you alluded to the fact that --
 23 obviously you were involved with the
 24 investigation leading up to the charges against

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1 Alan Beaman, right?
 2 MS. EKL: Objection, form.
 3 BY MR. BOWMAN:
 4 Q. You were involved?
 5 A. I'm sorry. Leading up to what?
 6 Q. Leading up to the charges against
 7 Mr. Beaman.
 8 A. I was aware of the investigation. I
 9 don't know what you mean by involved in the
 10 investigation. I was not an investigator in the
 11 case. I was the lead prosecutor in the case.
 12 Q. Well, we'll talk about that.
 13 But you're not going to be denying over
 14 the course of the day that you attended various
 15 meetings that were held in the course of the
 16 investigation, right?
 17 MS. EKL: Objection, form, foundation.
 18 BY MR. BOWMAN:
 19 Q. Isn't that right?
 20 A. There was at least a couple of meetings
 21 that I would have attended.
 22 Q. That you did attend, sir, right?
 23 A. That I attended, yes.
 24 Q. Right. And you got to know

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1 Mr. Freesmeyer in the context of the police
 2 investigation that preceded Beaman's indictment,
 3 right?
 4 A. Yes, we would have contact during that
 5 time, sure.
 6 Q. Now, would it be fair to say that your
 7 contact with Tim Freesmeyer intensified after
 8 Alan Beaman was charged?
 9 A. Well, this was a very long time period.
 10 I would say there would be periods of more
 11 intensity than others.
 12 I would say after he was charged and
 13 leading to -- he was charged in mid May and then
 14 grand jury was, I think, on several occasions
 15 maybe ending in mid July. I would say that was
 16 a fairly intense time period because we were
 17 receiving some further materials that required
 18 investigation.
 19 And then certainly the time leading up
 20 to the trial, you know, in the last month or
 21 two, I would think it would have been more
 22 intense preparation there.
 23 And there was also a time period in, I
 24 think it was, December where the car issue and

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13 (Pages 49 to 52)

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1 trials yourself?
 2 A. June 22nd, 1994.
 3 Q. And who else was on that time trial?
 4 A. I think just Tim and I.
 5 Q. And did you -- is this the time trial
 6 that was conducted using the bypass route, Route
 7 39 around the outskirts of Rockford, or was it
 8 the trip through downtown Rockford?
 9 A. I don't remember everything that was
 10 done, but there's a memo in discovery that has
 11 all the times and places that were measured.
 12 I'd have to see that to tell you for sure
 13 exactly what was measured.
 14 Q. Well, you recalled being on a time
 15 trial?
 16 A. I recall vaguely being on a time trial
 17 although that wasn't -- you know, my purpose was
 18 to go see Rockford and get a feel for various
 19 things and so Tim was doing time things and I
 20 helped by writing down things on that particular
 21 occasion.
 22 Q. Okay. Well, so is it one time trial
 23 that you remember helping to write down?
 24 A. That's all I remember.

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1 Q. All right. Well, let's talk about the
 2 time trial that you remember.
 3 What was your job?
 4 A. There's a memo in discovery.
 5 Q. I'm not asking about the memo. I'm
 6 asking you about -- I'm asking you to tell me
 7 what was your job.
 8 MS. EKL: Locke, I'm sorry, you asked him to
 9 let you finish your questions and he has been
 10 respectful of that. Can you please let him
 11 finish his answer before you ask another
 12 question? Even if you don't believe it's
 13 responsive, please let him answer it and then
 14 ask for whatever follow-up you need to ask.
 15 BY MR. BOWMAN:
 16 Q. Let me restate the question.
 17 MS. EKL: I don't believe he was finished
 18 with his last answer.
 19 BY MR. BOWMAN:
 20 Q. Go ahead. Say --
 21 A. The only thing I remember about the
 22 time trial is reflected in the memo that's in
 23 discovery which would show the various places
 24 that we went and I think there's mileage marked

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1 down and times marked down.
 2 I don't specifically remember if I had
 3 a stop watch in my hand and I was doing the
 4 timing, if I was looking at the odometer or Tim
 5 was.
 6 But that memo was in my handwriting so
 7 I was writing down things and that would be the
 8 only thing I'd really remember other than my
 9 vague recollections that I saw were where the
 10 Beaman home was.
 11 I know I saw where Bell Federal was and
 12 we drove those various places in town and I was
 13 able to get a good feel for Rockford and what we
 14 were dealing with and, you know, along with that
 15 the times which had become increasingly critical
 16 in the case after the charges were filed were --
 17 you know, were measured.
 18 Q. Did you sit in the front seat of the
 19 car?
 20 A. I assume probably so, Mr. Bowman.
 21 Q. Did you discuss with Mr. Freesmeyer the
 22 route that would be taken and timed?
 23 A. I have no recollection of who discussed
 24 what or who decided where to go.

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1 Q. It would be fair to assume that such
 2 discussion took place?
 3 MS. EKL: Objection, foundation.
 4 THE WITNESS: It would probably be fair to
 5 say that we would have discussed what things
 6 were going to need to be measured now that we
 7 had, you know, some further information that had
 8 been provided by the Beaman family.
 9 BY MR. BOWMAN:
 10 Q. Did you discuss with Mr. Freesmeyer the
 11 fact that the route selected for timing would be
 12 critically important for your case?
 13 A. I don't think so. I don't recall any
 14 discussion -- well, I don't recall any
 15 discussion at all.
 16 I just recall we went and we timed
 17 whatever is on the memo and those were the
 18 things that we would have, you know, had some
 19 inkling at that point in time might be -- might
 20 be critical in terms of not just the timing of
 21 getting down to Bloomington and back but to
 22 cross town things related to the 10:37 and the
 23 10:39 phone calls.
 24 Q. To be clear for purposes of this

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19 (Pages 73 to 76)

<p>1 record, the significance of the time required to</p> <p>2 travel from Bell Federal to the Beaman home was</p> <p>3 critical because there were phone calls</p> <p>4 originated from the Beaman home at 10:37 and at</p> <p>5 10:39 a.m., right?</p> <p>6 A. That's true.</p> <p>7 Q. And if -- to not beat around the bush,</p> <p>8 if Beaman himself had been in Rockford at 10:39</p> <p>9 making the second of those phone calls or even</p> <p>10 if he had been at Rockford at 10:37 making the</p> <p>11 first of those calls, he could not realistically</p> <p>12 have killed Jennifer Lockmiller in Normal at</p> <p>13 noon or shortly thereafter, right?</p> <p>14 A. At noon or shortly thereafter, no, but</p> <p>15 that didn't make it impossible for him to have</p> <p>16 gone to Normal and killed her depending on how</p> <p>17 you view the evidence as to where -- you know,</p> <p>18 the other end of the time gap there.</p> <p>19 Q. Yeah. But the way you viewed the</p> <p>20 evidence was that the murder had occurred right</p> <p>21 at noon and that he was out of there by 12:15,</p> <p>22 right?</p> <p>23 A. That was the prosecution's theory, yes.</p> <p>24 Q. And that was what you asked the jury to</p>	<p>1 have committed the murders as you argued to the</p> <p>2 jury he had done, fair statement?</p> <p>3 A. Well, that's a fair statement as to</p> <p>4 that timing. That doesn't mean that the theory</p> <p>5 of the prosecution might not have changed if it</p> <p>6 could have been established that he made those</p> <p>7 calls.</p> <p>8 Q. Right. You could have -- you could</p> <p>9 have switched it up, Mr. Souk, and convinced</p> <p>10 yourself and the members of the jury that she</p> <p>11 had been killed at 1:00 o'clock and tried to</p> <p>12 work it from that angle if it had been</p> <p>13 established that he made those calls, right,</p> <p>14 agree on that?</p> <p>15 MS. EKL: Objection, form, argumentative,</p> <p>16 calls for speculation.</p> <p>17 BY MR. BOWMAN:</p> <p>18 Q. Yes?</p> <p>19 A. Well, if he had not left his home until</p> <p>20 10:40, he could have arrived in Normal by, let's</p> <p>21 say, 12:40, committed the murder shortly</p> <p>22 thereafter, driven back several hours to his</p> <p>23 home, been back in bed before his mother arrived</p> <p>24 home, assuming she arrived home, you know,</p>
<p>1 believe, right?</p> <p>2 A. That's true.</p> <p>3 Q. Did you ask the jury to believe that</p> <p>4 because that's what you thought happened?</p> <p>5 A. Yes.</p> <p>6 Q. And do you still think that's what</p> <p>7 happened?</p> <p>8 A. Yes.</p> <p>9 Q. All right. So if Beaman had made the</p> <p>10 10:37 call and the 10:39 call from his</p> <p>11 residence, he could not have committed the</p> <p>12 murder as you believed it occurred, right?</p> <p>13 A. At that point in time. But, of course,</p> <p>14 I was arguing that theory based on my conclusion</p> <p>15 that he did not make the 10:37 and 10:39 phone</p> <p>16 calls.</p> <p>17 Q. I'm not asking you that question. Let</p> <p>18 me try it again.</p> <p>19 If he had made those calls. I'm asking</p> <p>20 you to assume for purposes of the question that</p> <p>21 he did make the calls. You don't have to agree</p> <p>22 with me that he made it, just assume that he</p> <p>23 made them.</p> <p>24 If he had done so, sir, he could not</p>	<p>1 closer to 3:00 o'clock as, say, opposed to 2:15.</p> <p>2 If she actually arrived home at 2:15 as</p> <p>3 was her final position, that would have made the</p> <p>4 time frame awfully tight, requiring probably</p> <p>5 going well in excess of the speed limit but...</p> <p>6 Q. All done?</p> <p>7 A. I think so.</p> <p>8 Q. Okay. Now, the next point to be clear</p> <p>9 about, sir, is that going directly through</p> <p>10 Rockford takes longer to travel the distance</p> <p>11 from Bell Federal to the Beaman home than going</p> <p>12 on the bypass route, right?</p> <p>13 A. It appears to be the case.</p> <p>14 Q. Well, it is the case, right?</p> <p>15 A. I assume it is. That's what the</p> <p>16 evidence in the record appears to be, yes.</p> <p>17 Q. Well, it's evidence that was developed</p> <p>18 at your direction, sir, is it not?</p> <p>19 MS. EKL: Objection, form.</p> <p>20 THE WITNESS: I don't know that it was</p> <p>21 developed at my direction. I'm not actually</p> <p>22 sure of when Freesmeyer would have measured the</p> <p>23 bypass route. I don't know if that was on the</p> <p>24 trip we went on. I'm thinking that it wasn't</p>

20 (Pages 77 to 80)

1 but I'm not sure.
2 But at some point, he measured that
3 route at 25 minutes and I think he measured the
4 route through town at 31 minutes and I think in
5 post conviction and I think maybe Mr. Beaman's
6 investigator may have even lowered that from 25
7 minutes at some point.

8 BY MR. BOWMAN:

9 Q. I'm asking about the investigation that
10 was conducted in anticipation of Mr. Beaman's
11 trial.

12 That investigation concerning the
13 length of time necessary to travel from those
14 two locations in Rockford was conducted at your
15 direction and request; is that accurate?

16 A. I don't know. There were -- you know,
17 Tim continued to do measurements. One of them
18 was on June 22nd. I don't really know when the
19 other ones were.

20 You know, at that point after the
21 charges were filed, we were working in
22 cooperation with the Normal Police Department,
23 primarily Detective Freesmeyer but other people
24 too. And there were continued efforts on these

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1 timing matters.

2 I can't tell you as I sit here today
3 if, you know, I said to Tim go measure this or
4 if he decided on his own or if we had a
5 discussion about what do we still need to
6 measure. You know, those kinds of details, you
7 know -- you know, I just don't remember after
8 all these years.

9 Q. So this is -- this is -- we're getting
10 into an example where on the details as you get
11 into it, your memory gets a little foggy; is
12 that fair?

13 A. Those kinds of details, sure.

14 Q. And as to whether -- let me ask you
15 this: Did you ask Tim Freesmeyer to measure the
16 bypass route as opposed to the -- as opposed to
17 the route through downtown Rockford?

18 MS. EKL: Objection, foundation. We keep
19 jumping back and forth between different time
20 periods. So if you can make your question more
21 precise as to what time period you're referring
22 to, if it's prearrest or post arrest, I'd
23 appreciate it.

24 MR. BOWMAN: Sure. That's -- the point is

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1 noted and my question stands.

2 BY MR. BOWMAN:

3 Q. At any point did you ask Mr. Freesmeyer
4 to measure a specific route of travel from those
5 two locations, Bell Federal and the Beaman home?

6 A. I don't remember that. All I remember
7 is that he testified at grand jury that he had
8 -- at that point, which was late June, early
9 July whenever his testimony was in those grand
10 jury sessions, that he testified he had timed it
11 both ways and he had timed 25 minutes around the
12 bypass route.

13 I don't -- I don't know when he did
14 that. I don't know if that was, you know, in
15 the time I was with him.

16 But I know it was done at that point.
17 I don't know at whose direction or not.

18 Q. Well, did it surprise you when he
19 blurted that out in the grand jury, Mr. Souk?

20 MR. DiCIANNI: I'll object to the form of --
21 the characterization.

22 BY MR. BOWMAN:

23 Q. The question stands.

24 A. I don't recall being surprised by

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1 anything he said at the grand jury.

2 Q. Did you -- did you prepare Tim
3 Freesmeyer to testify at the trial?

4 A. I'm sure I did.

5 Q. You put him on the witness stand?

6 A. I believe he was my witness, yes.

7 Q. Yes. Here in Cook County, we call that
8 pretrying the witness. Is that the way you
9 describe it down there in McLean County?

10 A. Never used that term.

11 Q. But you sat down with him, you went
12 over what his testimony would be, what questions
13 you anticipated asking him and got a preview of
14 how he would answer those questions; you went
15 through that process?

16 A. I don't recall the details of it, but I
17 would have done that, sure.

18 Q. And you also probably talked with him
19 about what he might anticipate on
20 cross-examination too?

21 A. I don't again recall specifically
22 discussing that but that would be normally what
23 you would do with a witness.

24 Q. That's what a good and competent trial

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21 (Pages 81 to 84)

<p>1 lawyer does in order to effectively discharge</p> <p>2 his responsibilities during a trial, right?</p> <p>3 A. True.</p> <p>4 Q. Well, did you talk with Tim Freesmeyer</p> <p>5 about what his testimony would be concerning the</p> <p>6 time necessary to travel from Bell Federal to</p> <p>7 the Beaman home?</p> <p>8 MR. DICIANNI: Object to lack of foundation.</p> <p>9 MR. BOWMAN: What's the lack of foundation?</p> <p>10 MR. DICIANNI: What time? You started</p> <p>11 talking about his grand jury testimony and then</p> <p>12 you seemed to have moved to the trial testimony.</p> <p>13 I was -- I'm objecting to your lack of</p> <p>14 foundation as to when this conversation would</p> <p>15 have taken place or when this discussion.</p> <p>16 MR. BOWMAN: Okay. Thank you. Let me</p> <p>17 clarify it.</p> <p>18 BY MR. BOWMAN:</p> <p>19 Q. Prior to Mr. Freesmeyer's testimony at</p> <p>20 the jury trial, did you talk with him about what</p> <p>21 his answer would be in response to the question</p> <p>22 as to how long it would take in his</p> <p>23 investigation to travel from Bell Federal to the</p> <p>24 Beaman home?</p>	<p>1 maybe more than that. I'm not sure. Maybe more</p> <p>2 than one report about the distance through town.</p> <p>3 That's an issue, the 25 minutes by the bypass</p> <p>4 route, that he apparently left out of any police</p> <p>5 report but testified about at grand jury.</p> <p>6 Q. Yes. I mean, it's not that he</p> <p>7 apparently left it out of any police report. He</p> <p>8 did leave it out of any police report, right?</p> <p>9 A. As far as I know. I never saw it in</p> <p>10 any of his reports.</p> <p>11 Q. Right. And you have no reason to</p> <p>12 believe that it is in any report, right?</p> <p>13 A. I don't, no.</p> <p>14 Q. And you know full well that it's not in</p> <p>15 any report, right?</p> <p>16 A. None that's been disclosed in discovery</p> <p>17 in this case. I don't have -- I have no</p> <p>18 awareness that it was ever written in a report.</p> <p>19 Q. Yes.</p> <p>20 A. And it's grand jury testimony.</p> <p>21 Q. And indeed that has been a matter of</p> <p>22 some concern about this case for a number of</p> <p>23 years, right, that very fact that it's not in</p> <p>24 any report, yes?</p>
85	87
<p>1 A. Again I don't recall the specifics, but</p> <p>2 I'm sure we would have touched on that topic</p> <p>3 since he was asked about that at the trial.</p> <p>4 Q. At the trial. And did Mr. Freesmeyer</p> <p>5 say anything at the trial that surprised you?</p> <p>6 A. No.</p> <p>7 Q. Did he testify at trial as you expected</p> <p>8 he would testify?</p> <p>9 A. Yes.</p> <p>10 Q. And in particular on that subject, did</p> <p>11 he do so?</p> <p>12 A. Yes.</p> <p>13 Q. All right. Now, Mr. Freesmeyer also</p> <p>14 wrote a report for disclosure to the defense</p> <p>15 concerning his investigation of the length of</p> <p>16 time that it would take to travel that distance,</p> <p>17 right?</p> <p>18 A. Travel which distance?</p> <p>19 Q. The distance we've been talking about</p> <p>20 is the distance between Bell Federal and the</p> <p>21 Beaman home.</p> <p>22 A. By which route?</p> <p>23 Q. Well, by any route.</p> <p>24 A. Well, I believe he has a report or</p>	<p>1 MS. EKL: Objection to the foundation.</p> <p>2 MR. DICIANNI: Objection to the foundation.</p> <p>3 BY MR. BOWMAN:</p> <p>4 Q. In your understanding?</p> <p>5 MS. EKL: Same objection.</p> <p>6 THE WITNESS: I'm sorry. Of concern to who?</p> <p>7 BY MR. BOWMAN:</p> <p>8 Q. Has it been a matter that has been</p> <p>9 directed to your attention, sir, over the course</p> <p>10 of the years between 2004 and the present that</p> <p>11 indeed Mr. Freesmeyer's police reports do not</p> <p>12 report on the amount of time elapsed when you</p> <p>13 traveled the distance from Bell Federal to the</p> <p>14 Beaman home via the bypass route?</p> <p>15 MS. EKL: Objection, form, foundation.</p> <p>16 THE WITNESS: It's an issue that's been</p> <p>17 raised. It was not an issue of concern to me</p> <p>18 because his -- you know, that matter was</p> <p>19 disclosed to the defense and the grand jury</p> <p>20 transcript because he testified about it at</p> <p>21 grand jury.</p> <p>22 BY MR. BOWMAN:</p> <p>23 Q. Okay. So that fact has never bothered</p> <p>24 you; is that fair?</p>
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22 (Pages 85 to 88)

1 A. It's fair.
 2 Q. You never felt that anything was done
 3 wrong in that connection?
 4 MS. EKL: Objection, form.
 5 THE WITNESS: I --
 6 BY MR. BOWMAN:
 7 Q. Well, that is a bad question. Let me
 8 rephrase it.
 9 Did you feel that in preparing a report
 10 that failed to record the amount of time it
 11 would take to travel that route from the Bell
 12 Federal to the Beaman home via the bypass, that
 13 Mr. Freesmeyer was discharging his
 14 responsibilities as a police officer with
 15 exceptional ability in the single finest effort
 16 by any police officer in any case with which you
 17 had been involved?
 18 MR. DICIANNI: Objection, form of the
 19 question, foundation.
 20 THE WITNESS: After the issue came up and I
 21 explored it over some period of time, I, you
 22 know, concluded what I believe the truth is,
 23 that it was inadvertently left out. He did not
 24 try to hide the matter.

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1 He testified about it at the grand jury
 2 and it was never an issue in the case because
 3 from the time of grand jury, I proceeded on the
 4 assumption based on what Mr. Beaman told me that
 5 he went through the town route. He did not go
 6 the bypass route.
 7 BY MR. BOWMAN:
 8 Q. You're not from Rockford?
 9 A. I am not.
 10 Q. You don't know how folks drive around
 11 in Rockford?
 12 A. No, I don't.
 13 Q. No?
 14 A. I visited there a few times but no, I
 15 don't know anything about Rockford.
 16 Q. I mean, you were never a kid who went
 17 to high school in Rockford and got familiar with
 18 how you get from A to B in Rockford, right?
 19 A. That's true.
 20 Q. And you've gone out of your way to tell
 21 us it's ridiculous that Beaman took the bypass
 22 route as opposed to the route straight through
 23 town; is that -- sticking by that position?
 24 MS. EKL: Objection, form, argumentative.

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1 THE WITNESS: I'm not recalling using that
 2 term, ridiculous, about anything today. What
 3 are you referring to?
 4 BY MR. BOWMAN:
 5 Q. Have you ever said that Beaman's
 6 account of his whereabouts on August the 25th
 7 was ridiculous?
 8 MS. EKL: Objection, foundation. What --
 9 are you referring to during this deposition?
 10 MR. BOWMAN: No, not during this deposition.
 11 BY MR. BOWMAN:
 12 Q. Ever?
 13 A. You know, I don't -- about the use of
 14 the word ridiculous, whether I used that in
 15 closing argument or somewhere, but the record
 16 would indicate that.
 17 His account of what happened that day
 18 and the story that he ended up telling at the
 19 trial, I'm not quite sure if I termed it as
 20 ridiculous. But that would be a fair
 21 assessment, I think, of my feeling about how
 22 that evidence developed. But it's a rather
 23 complicated issue to discuss.
 24 Q. Sure. Well, let's keep it simple. Do

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1 you think it's ridiculous for Beaman to say that
 2 he went home via the bypass route as opposed to
 3 downtown Rockford? Do you think that's
 4 ridiculous?
 5 A. Well, in the context of this case, yes.
 6 I made a point to attempt to show that he, in
 7 fact, told the truth at the grand jury by saying
 8 he went through town, and then when it wasn't
 9 quite so convenient anymore and the time became
 10 critical once he knew about the phone calls,
 11 that he, you know, changed his story.
 12 Q. Yes, yes, and you asked -- then there's
 13 the whole discussion about the double question
 14 and all of that. You remember all that stuff,
 15 right?
 16 A. There was a discussion about a double
 17 question that was -- there was no double
 18 question that existed but there was a discussion
 19 about what he considered to be a double
 20 question.
 21 Q. Well, your years on the bench haven't
 22 taught you the meaning of a compound question,
 23 Mr. Souk?
 24 MS. EKL: Objection, argumentative, form.

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23 (Pages 89 to 92)

1 agreed with him that you do have a reputation
2 for taking on difficult circumstantial cases?
3 A. I see he puts in the article that I
4 gained a reputation for taking on difficult
5 circumstantial cases but I don't -- I assume
6 that's something he may have reached on his own.
7 I don't recall that I would have -- I can't see
8 myself telling him that I have a reputation,
9 such a reputation.
10 Q. Well, did you feel that you were the
11 kind of lawyer who takes on difficult
12 circumstantial cases?
13 A. I don't think I ever would have thought
14 of myself in those terms or thought of myself in
15 terms of taking whatever duties are assigned to
16 me and do my best at them.
17 Q. Well, how did you become assigned to
18 the Beaman case?
19 A. I don't remember.
20 Q. Well, did you go to the murder scene?
21 A. At some point but it wasn't the day the
22 body was there. I think it might have been
23 sometime shortly thereafter.
24 Q. Within a week of the discovery of

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1 Jennifer Lockmiller's body, were you at the
2 scene of her murder?
3 A. I think maybe so. I think I read
4 something somewhere that might have indicated
5 that maybe the visit I remember might have been
6 in that time period. But I just -- the only
7 thing I remember for sure is I didn't go there
8 on that Saturday while her body was still there.
9 Whenever I visited, it was at least a day later
10 and maybe more. I don't know.
11 Q. And did you go to the scene of the
12 Lockmiller murder a day after the body was
13 removed or possibly longer after the body was
14 removed in your capacity as the prosecutor
15 assigned to that matter?
16 A. Well, see, I don't have a real
17 recollection of how that happened, you know,
18 whether I just happened to be the person
19 contacted that weekend.
20 I don't recall at what point I would
21 have talked to my two bosses, Charlie Reynard or
22 Teena Griffin, and they said this is going to be
23 your case as opposed to, you know, was I the
24 person on call that weekend or something. I

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1 just don't recall.
2 Q. Let me ask you, is it fair to say that
3 it had been determined that the prosecution
4 arising from the Lockmiller murder would be your
5 case, had that been determined within a month
6 after the discovery of her body?
7 A. Early on. I just don't, you know,
8 recall the details of how that came about. But
9 early on. It wasn't ever anybody else's case.
10 Q. That's what I was going to ask. There
11 wasn't any point at which the -- this particular
12 assignment was anyone else's other than yours,
13 fair?
14 A. Correct.
15 Q. And was it determined that you were
16 going to be the prosecutor of the crime or
17 crimes arising out of her death as early as the
18 day after the discovery of her body?
19 A. Could be. I just don't recall. You
20 know, the day after her body was discovered was
21 a Sunday. You know, I mean if I had to make an
22 assumption, I would say it might have been some
23 further discussion about that come the next
24 workday, on Monday or Tuesday or something, when

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1 I would have had a chance to talk with both
2 Charlie Reynard, the state's attorney, and Teena
3 Griffin, the first assistant. But, you know, I
4 think it was early on that they said this is
5 going to be your case.
6 Q. Well, we'll talk about it more in
7 detail later. But by the beginning of the week
8 following the discovery of her body, you were
9 already sitting in on investigators' meetings
10 and a part of this investigation; is that a fair
11 statement?
12 MS. EKL: Objection, form, foundation.
13 THE WITNESS: That I was a prosecutor on the
14 case. I was -- I know I sat in on a lengthy
15 meeting that's referenced in discovery on
16 Sunday, the 29th, where everybody involved, I
17 think, was brought up to speed on what evidence
18 had been discovered so far.
19 I believe the autopsy had been done by
20 that time. There may have been possibly one or
21 two other meetings that I might have attended if
22 you want to call them formal meetings, but I
23 don't really have any independent recollection
24 of those and discovery doesn't seem to indicate

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27 (Pages 105 to 108)

<p>1 Q. Right, because to be clear, the other</p> <p>2 possibility was that the fingerprint was on the</p> <p>3 clock radio because Mr. Beaman had been a</p> <p>4 frequent guest in the apartment and it had been</p> <p>5 clear that he had touched the clock radio as a</p> <p>6 routine matter when he spent the night at the</p> <p>7 Lockmiller apartment, yes?</p> <p>8 A. Based on that evidence and the expert</p> <p>9 testimony about the fingerprints, we, you know,</p> <p>10 could not prove when the fingerprint would have</p> <p>11 definitely been placed there.</p> <p>12 Q. Right. And to be very clear, you had</p> <p>13 -- you had no scientific evidence on which you</p> <p>14 could base your argument as to the date of</p> <p>15 origin of that print, right?</p> <p>16 A. Fingerprint experts won't give you such</p> <p>17 an opinion or at least they didn't back then. I</p> <p>18 don't know what they do now.</p> <p>19 Q. Well, they certainly didn't in the</p> <p>20 record of Mr. Beaman's trial, right?</p> <p>21 A. Correct.</p> <p>22 Q. And so what you did in your closing</p> <p>23 argument, sir, was to engage in an exercise in</p> <p>24 speculation that perhaps the fingerprint was of</p>	<p>1 Sorry. Were you done?</p> <p>2 MR. BOWMAN: Go ahead. You can object.</p> <p>3 BY MR. BOWMAN:</p> <p>4 Q. I said that the clock radio obviously</p> <p>5 gets set every night. Your counsel objected to</p> <p>6 foundation.</p> <p>7 And that's because nobody really knows</p> <p>8 what happened with the clock radio, right?</p> <p>9 Nobody knows what happened with the clock radio</p> <p>10 in the Lockmiller apartment, right?</p> <p>11 A. I don't understand the question.</p> <p>12 Q. Nobody knows who touched it and when,</p> <p>13 right?</p> <p>14 A. Well, again as I said, I think there</p> <p>15 may have been some testimony from Mr. Swaine</p> <p>16 about his use of that clock radio in the brief</p> <p>17 time that he stayed there and I think there may</p> <p>18 have been -- I believe there was some testimony</p> <p>19 from Mr. Beaman about whether he would have ever</p> <p>20 touched the clock radio.</p> <p>21 Q. And the sum and substance of that</p> <p>22 testimony, Mr. Souk, was that the two of them</p> <p>23 touched the clock radio and that's about it</p> <p>24 because they set the clock so they could wake</p>
<p>1 recent origin because if it wasn't of recent</p> <p>2 origin, it would have been smudged off, right?</p> <p>3 MS. EKL: Objection, form, foundation.</p> <p>4 THE WITNESS: What I did in closing argument</p> <p>5 was argue the reasonable inferences of the</p> <p>6 evidence as is appropriate and proper for any</p> <p>7 attorney in closing argument.</p> <p>8 BY MR. BOWMAN:</p> <p>9 Q. Yes, but you had introduced no evidence</p> <p>10 at the trial, sir, had you, about anyone's habil</p> <p>11 in terms of wiping the clock radio or touching</p> <p>12 certain portions of the clock radio, right?</p> <p>13 A. You know, I'd have to look at the</p> <p>14 record. I seem to recall that maybe Swaine</p> <p>15 might have given some testimony about that. I'm</p> <p>16 not sure if Mr. Beaman did in his testimony</p> <p>17 about how often or when they might have touched</p> <p>18 the clock radio.</p> <p>19 But I think -- I think probably they</p> <p>20 might have been asked, but I would have to look</p> <p>21 at the record to be sure.</p> <p>22 Q. Well, the clock radio obviously gets</p> <p>23 set every night, right?</p> <p>24 MS. EKL: Objection, form, foundation.</p>	<p>1 up; isn't that about it?</p> <p>2 MS. EKL: Objection, form, argumentative.</p> <p>3 The testimony is --</p> <p>4 THE WITNESS: I mean, I don't recall the</p> <p>5 details of it, but I assume that that would be</p> <p>6 the reason they would be touching the clock</p> <p>7 radio and they would have testified that they</p> <p>8 used it as an alarm clock.</p> <p>9 BY MR. BOWMAN:</p> <p>10 Q. Right. And that's all you had to go</p> <p>11 on, right?</p> <p>12 MS. EKL: Objection, form, foundation.</p> <p>13 THE WITNESS: Well, you can read the</p> <p>14 argument. There's more to it than that and I</p> <p>15 argued the reasonable inferences of what was</p> <p>16 found and, you know, when -- the information I</p> <p>17 had from Mr. Beaman about the last time he was</p> <p>18 there and how much that radio might have been</p> <p>19 touched by other people and the thing smudged,</p> <p>20 where his fingerprints were elsewhere in the</p> <p>21 apartment in the apartment he had lived in for</p> <p>22 -- practically lived in for a number of months.</p> <p>23 And his prints were not found anywhere</p> <p>24 else in the apartment and there may have been</p>

32 (Pages 125 to 128)

1 other parts to the argument too. I have to look
2 at it to recall the entire thing.

3 But it was, you know, a fairly
4 significant, you know, part of the argument
5 about the importance of that evidence.

6 But again, telling the jury that it was
7 not a good enough piece of evidence to convict
8 someone on standing alone.

9 BY MR. BOWMAN:

10 Q. Well, you tried to make that
11 fingerprint look as sinister as possible, right?

12 MS. EKL: Objection, form, argumentative.

13 THE WITNESS: Well, I tried to explain to
14 the jury why I thought that print was important
15 in the case and more significant than the
16 defense thought it was.

17 BY MR. BOWMAN:

18 Q. And this is because -- because of your
19 -- I mean, what evidence did you have that
20 anybody ever smudged prints off of that clock
21 radio? What evidence can you point to other
22 than the fact that the alarm clock was set by
23 Mr. Swaine and that it was set by Mr. Beaman?
24 What other evidence did you have about the

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1 touching of the clock?

2 A. Well, I think we had the evidence that
3 it was -- the actual -- I think there were two
4 clock radios in the room and this one was the
5 one that had belonged to Ms. Lockmiller. I
6 believe her mother identified it as the one she
7 had had for some years.

8 So it would have been, you know, a
9 radio that she used. Mr. Swaine would have
10 testified about using it, I think, while he was
11 -- in the brief period that he was living there.

12 And I think a reasonable inference from
13 the evidence is that after Mr. Beaman stopped
14 coming over there and spending the night which
15 would have been a couple of months before the
16 murder, that it was Ms. Lockmiller's clock radio
17 and she presumably would have used it but
18 obviously she wasn't around to say whether she
19 did or not.

20 Q. Right. My question is not about the
21 inferences. My question is other than the
22 testimony by Swaine that he set the alarm clock,
23 the testimony by Beaman that he set the alarm
24 clock, did you have any other evidence in your

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1 record about the touching of the alarm clock
2 upon which to base the argument that you made
3 regarding the significance of the print? That
4 also, I think, seeks a yes or no answer, if you
5 can do it. If it's too complicated a question
6 to answer yes or no, then, you know, do your
7 best.

8 MS. EKL: Objection to the commentary after
9 the question. It's argumentative.

10 THE WITNESS: Do you now have a copy of that
11 portion of the argument that I can refer to?

12 BY MR. BOWMAN:

13 Q. There's a question pending, sir.

14 A. Well --

15 Q. Do you want it read back?

16 A. No, thank you. A good part of the
17 argument was that the clock radio would have
18 been touched by other people, that two months
19 had past and Mr. Beaman had not been there by
20 his own admission for two months to spend the
21 night in that apartment or be in that room and
22 have occasion to use the clock, that by his own
23 admission and other evidence in the case, he had
24 been in that apartment on many, many, many

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1 occasions and practically lived there, would
2 have had occasion to touch almost everything,
3 anything in that apartment, and that with all
4 the fingerprinting that was done by the crime
5 scene technician, that Mr. Beaman's prints
6 weren't found anywhere else and, you know, I
7 made the argument based on that evidence.

8 I'm not recalling any other specific
9 evidence, you know, about anybody else who would
10 have touched the radio.

11 Q. Well, let's take a hypothetical,
12 Mr. Souk, and maybe we can get on the same page
13 with each other.

14 You might have a case in which a person
15 testified that I put the glass in the dishwasher
16 the night before the murder and it went through
17 the dishwasher and then the defendant has a
18 fingerprint on the glass the next day and that
19 would be evidence that the print was put on the
20 glass at a certain point in time, right?

21 A. All right.

22 Q. In that hypothetical, are you following
23 me?

24 A. Okay.

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33 (Pages 129 to 132)

<p>1 That's why I asked the question that way.</p> <p>2 Did you think it was a difficult</p> <p>3 circumstantial case?</p> <p>4 A. Of course it was a difficult</p> <p>5 circumstantial case.</p> <p>6 Q. Okay. Now, here comes the next</p> <p>7 question. Did you think it was a difficult</p> <p>8 circumstantial case because there wasn't enough</p> <p>9 physical evidence to base a conviction on, there</p> <p>10 was no confession from the defendant and there</p> <p>11 was no eyewitness testimony? Is that why you</p> <p>12 thought it was a difficult circumstantial case?</p> <p>13 MS. EKL: Objection, asked and answered.</p> <p>14 THE WITNESS: That certainly went into it.</p> <p>15 BY MR. BOWMAN:</p> <p>16 Q. Okay. Is there anything else that went</p> <p>17 into its being a difficult circumstantial case?</p> <p>18 MS. EKL: Other than what he already</p> <p>19 testified to.</p> <p>20 BY MR. BOWMAN:</p> <p>21 Q. No. I'm asking him to explain right</p> <p>22 now. Is there anything else that went into it</p> <p>23 being a difficult circumstantial case?</p> <p>24 A. I -- you know, I -- just off the top of</p> <p style="text-align: right;">137</p>	<p>1 information was that Mr. Beaman had gotten off</p> <p>2 work at 9:00 o'clock and so would have been in a</p> <p>3 position to head for Normal at 9:00 o'clock.</p> <p>4 When the video surfaced, that took an</p> <p>5 hour and eleven minutes off the time frame</p> <p>6 making it clear he was still in Rockford at Bell</p> <p>7 Federal at 11 minutes after 10:00.</p> <p>8 BY MR. BOWMAN:</p> <p>9 Q. Did the video surface before or after</p> <p>10 you and the investigators agreed to initiate</p> <p>11 this prosecution?</p> <p>12 MS. EKL: Objection, form, foundation.</p> <p>13 THE WITNESS: After I and the investigators</p> <p>14 agreed to do what?</p> <p>15 BY MR. BOWMAN:</p> <p>16 Q. May 16, you have a meeting with the</p> <p>17 investigators. It's at the McLean County</p> <p>18 State's Attorney's Office. You recall that,</p> <p>19 right, May 16 of 1994?</p> <p>20 A. As I indicated before, I can't recall</p> <p>21 where it was but yes, there was a meeting.</p> <p>22 Q. And that was the meeting at which</p> <p>23 everybody went around and talked about whether</p> <p>24 charges should be filed against Beaman or not?</p> <p style="text-align: right;">139</p>
<p>1 my head, I'm not thinking of delineating the</p> <p>2 factors that made it difficult. It just was</p> <p>3 clearly a difficult case.</p> <p>4 Those are part of the factors, and</p> <p>5 obviously if you have a confession, a case is</p> <p>6 not so difficult. If you have eyewitnesses, it</p> <p>7 probably isn't so difficult. And when you have</p> <p>8 a case that's in essence totally circumstantial,</p> <p>9 and, you know, I think this was the most</p> <p>10 difficult case in my career, not because of</p> <p>11 comparing it to other totally circumstantial</p> <p>12 murder cases but because I, you know, didn't</p> <p>13 have as far as I know a totally circumstantial</p> <p>14 murder case that I ever tried.</p> <p>15 But, you know, the fact of the things</p> <p>16 that weren't there, yes, certainly no direct</p> <p>17 evidence and all circumstantial evidence makes</p> <p>18 for great difficulty in putting a case together.</p> <p>19 Q. And actually there was a degree of</p> <p>20 difficulty added to this case when the Bell</p> <p>21 Federal videotape surfaced, wasn't there?</p> <p>22 MS. EKL: Objection, form.</p> <p>23 THE WITNESS: Well, when that surfaced, that</p> <p>24 -- prior to the time that surfaced, our</p> <p style="text-align: right;">138</p>	<p>1 A. It was a discussion. I don't recall</p> <p>2 the details of it.</p> <p>3 Q. Did you chair that meeting?</p> <p>4 A. I don't recall.</p> <p>5 Q. In any event, you do recall that that</p> <p>6 was the date that the charges were approved and</p> <p>7 the prosecution of Mr. Beaman was initiated,</p> <p>8 correct?</p> <p>9 A. You phrased it in terms, Mr. Bowman, of</p> <p>10 the investigators and me making a decision to</p> <p>11 charge him. The prosecutors made the decision</p> <p>12 as to whether to charge him.</p> <p>13 And the final decision would have been</p> <p>14 made by the state's attorney, Mr. Reynard, not</p> <p>15 by the investigators. The investigators' input</p> <p>16 would have been listened to.</p> <p>17 Q. Well, we'll talk about the</p> <p>18 investigators' input in a minute and I don't</p> <p>19 want to engage in a debate right now about whose</p> <p>20 decision it was.</p> <p>21 But in any event, we can all agree that</p> <p>22 on May 16, a decision was made to file a</p> <p>23 criminal complaint against Alan Beaman for the</p> <p>24 murder of Jennifer Lockmiller; can we not?</p> <p style="text-align: right;">140</p>

35 (Pages 137 to 140)

<p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. BOWMAN:</p> <p>3 Q. Now, the focus of the Supreme Court's</p> <p>4 opinion was on the evidence relating to</p> <p>5 Mr. Murray that was not disclosed, right?</p> <p>6 A. Correct.</p> <p>7 Q. And the -- would you agree with the</p> <p>8 proposition that there was evidence as to Murray</p> <p>9 from which someone could contend that Murray</p> <p>10 might have killed Jennifer Lockmiller?</p> <p>11 MS. EKL: Objection, form, foundation.</p> <p>12 BY MR. BOWMAN:</p> <p>13 Q. Well, that's not a very good question.</p> <p>14 Let me see if I can rephrase it.</p> <p>15 Do you believe that the argument could</p> <p>16 be made that there was circumstantial evidence</p> <p>17 that Murray killed Lockmiller?</p> <p>18 MS. EKL: Objection, foundation, form.</p> <p>19 THE WITNESS: I'm aware of no such evidence.</p> <p>20 BY MR. BOWMAN:</p> <p>21 Q. Okay. Do you believe that there was</p> <p>22 evidence of a possible motive that Murray had to</p> <p>23 kill Lockmiller?</p> <p>24 A. I'm aware of no such motive evidence.</p>	<p>1 A. Well, I'm aware of what he said in his</p> <p>2 statements which was not totally clear. I think</p> <p>3 in one statement, maybe the first one, he had</p> <p>4 indicated that the last time he had seen her</p> <p>5 with some other people, she had paid him money</p> <p>6 that she owed him.</p> <p>7 And then I think in the second</p> <p>8 statement, he said she owed him a small amount</p> <p>9 of money, I think it was \$20, for marijuana.</p> <p>10 It wasn't entirely clear if he was</p> <p>11 referring to me anyway to a new \$20 that she</p> <p>12 paid him whatever the week or so before the</p> <p>13 murder.</p> <p>14 But there was reference to that small</p> <p>15 amount of money. I think it was 20 bucks but...</p> <p>16 Q. Are you aware of evidence -- strike</p> <p>17 that.</p> <p>18 Were you aware of evidence at the time</p> <p>19 of your prosecution of this case that Murray had</p> <p>20 a history of physical violence against women?</p> <p>21 MS. EKL: Objection on foundation, assumes</p> <p>22 facts not in evidence.</p> <p>23 THE WITNESS: I was aware of the time of the</p> <p>24 trial that he had had a domestic incident with</p>
<p>1 Q. Are you aware that Murray had had a</p> <p>2 sexual relationship with Lockmiller in the year</p> <p>3 prior to her death?</p> <p>4 A. I'm aware now and I was aware at the</p> <p>5 time of the trial.</p> <p>6 MR. DICIANNI: I'm sorry. I didn't hear the</p> <p>7 answer.</p> <p>8 THE WITNESS: I'm aware now and I was aware</p> <p>9 at the time of the trial.</p> <p>10 MR. DICIANNI: Thank you.</p> <p>11 BY MR. BOWMAN:</p> <p>12 Q. All right. Are you aware of evidence</p> <p>13 that Murray supplied narcotics to Ms. Lockmiller</p> <p>14 in the weeks prior to her death?</p> <p>15 A. There was some evidence in the record</p> <p>16 primarily through his statements that he had on</p> <p>17 occasion provided her marijuana and it was --</p> <p>18 I'm not recalling what the timing of that was,</p> <p>19 whether it was in the weeks prior to her death</p> <p>20 or, you know, in the preceding months or year or</p> <p>21 whatever. But there was evidence of that in the</p> <p>22 record, yes.</p> <p>23 Q. Are you aware of evidence that</p> <p>24 Lockmiller owed Murray money for drugs?</p>	<p>1 his girlfriend, Debbie Mackaway, in October of</p> <p>2 '94, about a year and a couple of months after</p> <p>3 the murder, a fairly minor domestic in which</p> <p>4 they were both arrested for domestic battery.</p> <p>5 And I think that's the only awareness I</p> <p>6 had of any violent incidents he might have had</p> <p>7 toward a woman.</p> <p>8 BY MR. BOWMAN:</p> <p>9 Q. Well, let me ask you this: In your --</p> <p>10 in your capacity, you were chief of felony</p> <p>11 trials in 1994 and 1995 at McLean County State's</p> <p>12 Attorney's Office; is that correct? Yes?</p> <p>13 A. Yes.</p> <p>14 Q. In that capacity, did you review -- in</p> <p>15 that capacity, did you review those -- the cases</p> <p>16 that were filed by the office as -- was it part</p> <p>17 of your responsibility to keep abreast of what</p> <p>18 was being prosecuted in the office?</p> <p>19 A. Any new felony cases that came in which</p> <p>20 might have been screened by various people</p> <p>21 including me, but once they went through</p> <p>22 arraignment would be sent to me and I would</p> <p>23 assign the attorney to the case and I would</p> <p>24 review the case at that point in, you know,</p>

42 (Pages 165 to 168)

1 varying degrees of details depending on what the
2 case was or whether I knew about it beforehand.
3 And I also would review cases that
4 would come back across my desk after disposition
5 and I would review them to see what the
6 disposition was and, you know, to keep track of
7 how attorneys were handling cases and if I
8 thought anything, you know, needed to be done in
9 terms of when an attorney might be disposing of
10 cases.

11 Q. So in terms of Mr. Murray's legal
12 problems, you were aware, were you not, in the
13 ordinary course of your work, that felony
14 charges were filed against Mr. Murray in 1994,
15 arising out of domestic violence and arising out
16 of possession of narcotics with intent to
17 distribute, yes?

18 A. Well, I would have first become aware
19 of his first felony drug case, I believe, on
20 September the 30th of '94 when it would have
21 come across my desk after arraignment.

22 And then the second case which is the
23 one that involved drugs as well as the domestic
24 issue, I believe, occurred a week or so later

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1 and that would have come across my desk -- I'm
2 not sure of the date. Maybe late October.

3 Q. Of '94?

4 A. Of '94, yes.

5 Q. Okay. So there's no doubt in your mind
6 that as of the end of 1994, you were aware of
7 the totality of your office's involvement with
8 Mr. Murray for multiple charges of possession
9 with intent and for this one instance of
10 domestic violence?

11 A. Right.

12 MS. EKL: I'm just going to object to the
13 form and specifically in regard to your phrase
14 totality of your office's knowledge.

15 BY MR. BOWMAN:

16 Q. Well, I'll rephrase it then. Were you
17 aware of the three charges by the end of 1994
18 against Mr. Murray, two for possession with
19 intent and one for domestic violence?

20 A. Right. There were two separate
21 numbered felony cases. The first one involved
22 drugs only. The second one involved drug count
23 and domestic -- I think it was just a
24 misdemeanor domestic battery count, I believe.

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1 Q. Now, I wanted to ask you another
2 question.

3 Have you been keeping up to date,
4 Mr. Souk, with the recent forensic developments
5 in connection with the ongoing investigation by
6 the McLean County State's Attorney's Office of
7 Jennifer Lockmiller's homicide?

8 A. Somewhat I've been, you know, told in
9 brief summary about --

10 MR. DICIANNI: I'm sorry. I can't hear you.

11 THE WITNESS: I've been told in brief
12 summary, but I don't have detailed knowledge
13 about it.

14 BY MR. BOWMAN:

15 Q. Have you learned, sir, that in the
16 course of the ongoing investigation into the
17 Lockmiller homicide, that DNA evidence has been
18 developed from the swab taken from
19 Ms. Lockmiller's vaginal cavity following her
20 death?

21 MS. EKL: At this point I'm going to object
22 to the extent that your questions, although you
23 may not know this at this point, to the extent
24 your questions are now starting to invade within

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1 the attorney-client privilege area.

2 I would ask that you rephrase your
3 question and ask it in a manner that does not
4 include any conversations he may have had with
5 his attorneys.

6 BY MR. BOWMAN:

7 Q. Okay. All right. Are you aware
8 independent of conversations you may have had
9 with any of your lawyers about the DNA evidence
10 that was recently developed from Lockmiller's
11 vaginal swab?

12 A. I don't recall precisely but I'm pretty
13 sure it was in the paper, in the Pantagraph.
14 And, you know, when I'm home, I usually read the
15 Pantagraph so I probably saw whatever it was
16 reported there but I don't really recall what
17 was reported there.

18 Q. I want you to assume with me, though
19 you may not know it, that Y-STR profiles have
20 been developed from the vaginal swab material
21 and that Y-STR profile, obviously these are male
22 profiles that we're talking about, are of two
23 individuals whose identity is not known.

24 These profiles have been compared with

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43 (Pages 169 to 172)

1 Maybe conversation has taken place since I was
2 last made aware of it.
3 But I just want to put that on the
4 record, that if this is going to be used in the
5 COI proceedings, that Mr. Eves needs to be aware
6 of that because that was not the understanding
7 that we were proceeding under previously.
8 MR. BOWMAN: Well, it's certainly my
9 understanding and the reason for my consultation
10 with Mr. Urdangen is because he's counsel in
11 this case.
12 And I'm not involved in the COI
13 proceedings.
14 MS. EKL: I don't mean to make accusations
15 without basis. I just want to put that out
16 there, that if that is the case, especially in
17 the future depositions, that if there's anything
18 that is going to be used from these proceedings
19 in that proceeding, that Mr. Eves be put on
20 notice.
21 BY MR. BOWMAN:
22 Q. Okay. Let me ask you one last question
23 to see if we can get an answer from you,
24 Mr. Souk.

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1 Take yourself back to May 16 of 1995 --
2 I'm sorry, May 16 of 1994, when you made the
3 decision -- I'm sorry, when the decision was
4 made, whoever made the decision, to initiate
5 charges against Beaman.
6 If you held everything constant that
7 you and the investigators were aware of as of
8 that date and in addition you knew that there
9 was seminal material in Ms. Lockmiller's vaginal
10 cavity from two unidentified males who you did
11 not know who they were, they weren't any of the
12 sex partners that had come under scrutiny in the
13 course of the investigation, would that have
14 changed your decision, sir, to charge Beaman at
15 that time?
16 MS. EKL: Objection, form, calls for
17 speculation, also assumes facts not in evidence
18 that it was his decision to charge Mr. Beaman.
19 BY MR. BOWMAN:
20 Q. I don't mean to -- you had a -- you had
21 a role in the decision, right?
22 A. I did.
23 Q. And you -- if you had disagreement with
24 the decision, you would have been expected to

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1 state your disagreement, right?
2 A. Right. I was in agreement with the
3 decision.
4 Q. So that's my question. Would you have
5 -- would you have disagreement with the decision
6 under the scenario that I just gave you in the
7 prior question?
8 MS. EKL: And my objection is just to form
9 and to the extent that it calls for speculation.
10 THE WITNESS: Well, it does call for a huge
11 amount of speculation, but had we been aware of
12 this at the time and had not been able to
13 identify the sources of that semen, there, of
14 course, would have been the possibility that the
15 semen was not related to the murder, that it may
16 have been related to her promiscuity. But, you
17 know, what would have been done, I can't
18 speculate about.
19 But I would agree with you that it
20 would have been an additional factor that would
21 have made the prosecution of Mr. Beaman more
22 difficult.
23 BY MR. BOWMAN:
24 Q. Let's talk about your role in the

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1 investigation.
2 You told us that you recalled a meeting
3 of some length that took place the day after the
4 body was found, on Sunday, August 29.
5 What do you recall of that meeting?
6 A. Virtually nothing other than I vaguely
7 recall a meeting and think in a fairly large
8 conference room with the Normal Police
9 Department and I read the brief account of it
10 and I guess Freesmeyer's report and just have a
11 general recollection.
12 MR. DiCIANNI: I'm sorry. I can't hear.
13 THE WITNESS: Just have a general
14 recollection that those involved in the
15 investigation were relating what had been
16 discovered thus far since the body was
17 discovered the preceding afternoon.
18 There actually had already been a lot
19 that occurred, including the initial interview
20 with Mr. Beaman on Saturday night and the
21 autopsy had been done, a number of other
22 interviews.
23 Mr. Swaine had showed up at the scene,
24 been interviewed by Detective Freesmeyer, some

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45 (Pages 177 to 180)

<p>1 other people, Morgan Keeses, the lady who found 2 the body and, you know, I don't remember who 3 all, but there was quite a lot to inform the 4 relevant parties about.</p> <p>5 And I think that's what happened at 6 that meeting. In terms of actually recalling 7 what was said, who said what, I don't have any 8 recollection of that.</p> <p>9 BY MR. BOWMAN:</p> <p>10 Q. Can you tell me who was present?</p> <p>11 A. I think the coroner was. I think the 12 chief of police was. And I'm sure a number of 13 detectives were. You know, I don't have an 14 independent recollection of that.</p> <p>15 You know, I think Freesmeyer's report 16 indicates that, you know, he and Lieutenant 17 Zayas and I'm sure Tony Daniels was there and 18 probably some of the other detectives. I 19 imagine Hospelhorn who had been with Daniels at 20 the Beaman interview and probably some other 21 people.</p> <p>22 I sort of seem to recall a meeting 23 with, you know, maybe a group about this size, 24 you know, but, you know, it's been a long time</p> <p style="text-align: right;">181</p>	<p>1 So if you could try and keep your voice 2 up.</p> <p>3 A. I'll do better. I promise. I'll do 4 better.</p> <p>5 MR. DiCIANNI: Thank you.</p> <p>6 BY MR. BOWMAN:</p> <p>7 Q. Now, you said that one purpose of the 8 meeting was to exchange information about 9 developments in the investigation thus far; is 10 that fair?</p> <p>11 A. I think to bring everybody up to date 12 with what had been discovered to that point.</p> <p>13 Q. Did the meeting progress by various 14 investigators, experts, crime scene technicians, 15 coroners, what have you, presenting their 16 information as to what they had learned about 17 the case thus far?</p> <p>18 A. Well, as far as I know, I don't think 19 there were written reports done up at that point 20 so I can only assume the meeting proceeded by 21 people verbally indicating what they had done in 22 the investigation and what they -- what they 23 knew.</p> <p>24 I don't have an independent</p> <p style="text-align: right;">183</p>
<p>1 ago but...</p> <p>2 Q. Well, there are about eight or nine 3 people in the room today.</p> <p>4 Does that about jive with your memory 5 of the size --</p> <p>6 A. You know, that's what I'm thinking was 7 it was more than two or three of us. It was, 8 you know, not a huge group but quite a few 9 people who had initially been involved were and 10 probably maybe -- I'm not sure for the whole 11 meeting but maybe the crime scene tech might 12 have been there at some point. I'm not really 13 sure.</p> <p>14 MR. DiCIANNI: I'm sorry. I can't hear you.</p> <p>15 THE WITNESS: I'm not really sure if the 16 crime scene tech was there. He might have been 17 for at least part of the meeting.</p> <p>18 BY MR. BOWMAN:</p> <p>19 Q. Mr. Souk, you are fading out. I can 20 hear you okay. And I tend to speak softly as 21 well.</p> <p>22 But I do want to make sure that your 23 answers are heard and in particular that they're 24 heard by Mr. DiCianni.</p> <p style="text-align: right;">182</p>	<p>1 recollection of it. The only thing I can think 2 of that might have been done that was 3 memorialized already was the interview with your 4 client had been taped or all but a few minutes 5 of it. It's possible that tape could have been 6 played at the meeting, but I don't recall that.</p> <p>7 That's -- but other than that, I don't 8 think there were reports done. The autopsy had 9 been done but obviously Dr. Snickers' written 10 report was not available so I'm sure the coroner 11 would have reported about that result and that 12 other detectives would have reported what they 13 had found out so far.</p> <p>14 Q. Now, the meeting lasted how long?</p> <p>15 A. Well, somewhere -- maybe it's 16 Freesmeyer's report indicates it was a lengthy 17 meeting, four, four and a half hours. I don't 18 -- I don't remember independently.</p> <p>19 Q. Other than your assumption that the 20 meeting would have involved reports from various 21 sources about the status of the investigation 22 thus far, was there other discussion at the 23 meeting regarding the future of the 24 investigation, for example?</p> <p style="text-align: right;">184</p>

46 (Pages 181 to 184)

1 THE WITNESS: In my way of thinking -- I
2 know there's been discussion about this at other
3 times, but according to the way I define things,
4 I would consider him at that point to have been
5 the only suspect and some other people to be
6 potential suspects depending on what other
7 information was uncovered.

8 But in looking back on it, I believe
9 that some of the things we knew about him
10 already at that point made him what I would
11 consider a suspect.

12 BY MR. BOWMAN:

13 Q. Okay. So to be clear, as of August 29,
14 1993, Alan Beaman was really the only suspect in
15 your mind?

16 A. In the way that I define suspect, there
17 were some other people who might be potential
18 suspects. But in terms of what I would consider
19 a suspect, you know, that there's some evidence
20 pointing to them, you know, possibly whatever it
21 might be, some motive evidence, some opportunity
22 evidence, whatever, and I thought we had that
23 early on about Mr. Beaman and so I considered
24 him a suspect.

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1 Q. Well, the suspect, the only one?

2 A. In my -- you know, I'm not speaking for
3 other people. In my mind at that time, he would
4 have been the only suspect.

5 Q. Okay. That's clear. Thank you.

6 Now, was there discussion on August 29
7 about how the murder took place, about what had
8 happened based on the findings at the scene?

9 A. I can only assume that there probably
10 was, but I don't have any independent
11 recollection of that.

12 Q. At the trial, you argued to the jury
13 that there had not been a sexual assault, that
14 the scene had been staged to look like a sexual
15 assault? You remember making that argument,
16 right?

17 A. Well, I think more accurately, the
18 argument was that -- and again I'd have to look
19 at my argument. I think I argued that I
20 probably thought it was staged but that the
21 evidence, you know, wasn't entirely clear. It
22 was not a huge issue at trial. There wasn't a
23 charge of sexual assault.

24 Q. Well, we'll get to your argument in a

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1 moment.

2 What I meant to be getting at is when
3 did you first conclude based on the evidence
4 that the investigators were developing that
5 there had not been a sexual assault and that the
6 scene had been staged to make it appear that
7 there was?

8 A. I can't answer that. I don't know when
9 I might have concluded that.

10 Q. Did the investigators tell you anything
11 on August 29, 1993, to that effect?

12 A. Well, you know, I mean, I'm almost sure
13 at that point in time -- it was a rather lengthy
14 meeting so, you know, I can only assume that
15 there was a pretty complete report from
16 everybody as to what they knew at that point.

17 And the one thing that they would have
18 known for sure at that point would have been the
19 state of the body, where it was found, the
20 location, and what they -- what they knew at
21 that point.

22 Now, at that point, we wouldn't have
23 been able to reach a conclusion, I think,
24 because obviously we didn't have any lab results

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1 and nobody knew if there was any semen inside
2 her body or in other places and so we would have
3 been, you know, premature if there was evidence
4 at that point.

5 Q. Well, you never found -- and you
6 correct me if I'm wrong because I may not
7 understand this.

8 But you and the folks who were involved
9 in this matter through the prosecution of Alan
10 Beaman's trial, you never had any evidence that
11 there was seminal material in Jennifer
12 Lockmiller; is that accurate?

13 A. Right.

14 Q. So you were proceeding on the
15 assumption that there was no -- that that kind
16 of evidence of a sexual assault was not present
17 in the case, right?

18 A. Right. We didn't have that.

19 Q. Sorry. I didn't mean to interrupt. Go
20 ahead.

21 A. Right. There was no evidence of semen
22 that we had at that time.

23 Q. Okay. And at some point, you got a
24 laboratory report back that so indicated, that

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49 (Pages 193 to 196)

1 During the investigation, was there any
2 discussion to which you were a party regarding
3 the possible significance of the garbage bag at
4 the crime scene?

5 A. Well, in terms of was there any
6 discussion, I don't remember specific
7 discussions. Was I aware early on that the
8 garbage bag had some significance, yes.

9 Q. And how did you come to be aware of
10 that?

11 A. Well, it came out fairly quickly in the
12 early evidence and I -- you know, I don't recall
13 all the sources. But -- and I don't recall the
14 dates of the interviews, except I recall most of
15 them occurred pretty much in September, but
16 there was -- there was a lady, a friend of
17 Jennifer's, who had been present at -- Heidi
18 Steinman, is that right? I think, and her
19 interview revealed a situation where Alan had
20 come in and was looking for proof of birth
21 control and gone into the garbage and the
22 bathroom, I believe.

23 Q. Right. And you argued the inference
24 that the garbage bag at the scene was part of

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1 submitted to you for your review during the
2 course of the investigation before the charges
3 were filed?

4 A. I don't remember the details of that as
5 to, you know, when paper came over. I can only
6 assume it probably came over, you know, in
7 segments as it might have been prepared and
8 various officers might have gotten their reports
9 done and various interviews were transcribed.

10 Q. Well, Mr. Freesmeyer, for example,
11 prepared a report that's dated January 1994.

12 Did you receive that report shortly
13 after it was prepared?

14 A. I can only assume I did. Probably the
15 only way to tell for sure is if our office put a
16 received stamp on stuff which they sometimes did
17 so that might -- I didn't notice that as I was
18 going through the reports so...

19 Q. But your best recollection is that as
20 transcripts were prepared, as the police
21 investigators generated reports, you had an
22 opportunity to review them in order to keep
23 yourself up to date on the progress of the
24 investigation before the charges were filed?

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1 Beaman's MO? He pulls out the garbage bag and
2 that's proof that he's the guy who did it?

3 A. I argued that that was a very unusual
4 piece of evidence considering that we knew his
5 history of being concerned about that and having
6 searched her garbage before.

7 Q. Right. Now, when did you learn about
8 the development of this evidence from the
9 friend, before you filed the charges?

10 A. Oh, I'm sure, yeah. I think she was
11 interviewed early on but I don't recall the date
12 without looking at the interview.

13 Q. And you were informed of the results of
14 that interview?

15 A. I'm sure I was kept informed as we went
16 along. I'm not sure, you know, when the
17 informing, you know, took the form of me seeing
18 the transcripts. It was a huge number of
19 transcripts when they were done and actually on
20 paper for me to look at as opposed to being told
21 about it. You know, I wouldn't have any memory
22 at this point.

23 Q. Is it accurate that as transcripts of
24 interviews were prepared, that they were

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1 A. Saying that's the logical way it would
2 have happened and I'm assuming that that, you
3 know, would have been done that way, rather than
4 waiting until, you know, like May and dumping
5 the whole huge stack of stuff on us right at
6 once.

7 Q. I have some reason to believe that the
8 day after the four-and-a-half-hour meeting on
9 August 30, there was another investigators'
10 meeting.

11 Did you attend that meeting? It was at
12 6:00 p.m. on August 30th.

13 A. I don't think so. I think I saw
14 mention of that in the Freesmeyer's report. I
15 don't think my name was mentioned on that one
16 and I don't have any recollection of being
17 there.

18 Q. Is it -- are you going to take the
19 position that unless your name is mentioned as
20 being present, you're saying you weren't there?

21 A. I -- independently I recall two times
22 that I was at the Normal Police Department
23 during the investigation phase leading up to the
24 charges in May.

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56 (Pages 221 to 224)

1 Q. Well, that's actually -- that's --
 2 let's see. I mean, we've touched on this
 3 before. I mean, it's one thing to say that you
 4 don't recall one way or another whether you were
 5 present for a meeting on August 30th. You may
 6 have been. You may not have been. There's no
 7 documentation that you were there and you don't
 8 recall it.
 9 Is that your testimony?
 10 MS. EKL: Objection, form.
 11 THE WITNESS: My testimony is I have
 12 independent recollection of -- in regard to the
 13 Beaman case being at a Normal Police Department
 14 on two occasions.
 15 BY MR. BOWMAN:
 16 Q. Right. I'm not asking you --
 17 A. That's my testimony.
 18 MS. EKL: Your question is unclear, Locke,
 19 so perhaps you can --
 20 MR. BOWMAN: Okay. We'll keep hacking away
 21 at it then.
 22 BY MR. BOWMAN:
 23 Q. On August 30th, there is no -- you're
 24 right, there's nothing saying Souk was at the

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1 meeting.
 2 My question is do you recall one way or
 3 another whether you were at the meeting -- let
 4 me start over.
 5 There are two possibilities with
 6 respect to the August 30th meeting. One
 7 possibility is you can be quite certain as you
 8 sit here today that you were not there.
 9 Another possibility is that you can't
 10 say one way or another, because of the passage
 11 of time, you no longer recall.
 12 Which is it?
 13 A. I have no recollection of being at a
 14 second meeting on August 29th.
 15 Q. Are you denying that you were there?
 16 A. I'm not denying anything. I'm saying I
 17 have no recollection of being at a second
 18 meeting.
 19 Q. That's clear. Now, the Freesmeyer
 20 report indicates that the following day again,
 21 August 31st, there was another meeting, attended
 22 by persons who were not named in the report.
 23 Do you recall one way or another
 24 whether you were present for the August 31st

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1 meeting?
 2 A. I don't have any recollection of it and
 3 I don't believe I was. It's not -- my name is
 4 not mentioned.
 5 Q. Apart from the fact that your name is
 6 not mentioned on the report, is there any other
 7 reason for your testimony that you don't believe
 8 you were there?
 9 A. Based on my general recollection that
 10 the only two meetings I recall being at the
 11 Normal Police Department did not involve going
 12 to if you want to call them any sort of daily
 13 meetings of the police detectives at the early
 14 stage of the investigation.
 15 I'm almost certain I did not go back
 16 over there on any sort of daily basis even that
 17 first week and sit in as they were discussing
 18 the case and where their investigation was going
 19 and what Lieutenant Zayas was going to have
 20 people do or what he was going to have them
 21 investigate.
 22 I know that I did not do that.
 23 Q. At some point in time, did the
 24 investigators begin to conduct regular meetings

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1 at the state's attorney's office?
 2 MS. EKL: Objection, foundation.
 3 BY MR. BOWMAN:
 4 Q. Let me rephrase. At some point during
 5 the course of the investigation, did
 6 investigators begin to conduct regular meetings
 7 at the state's attorney's office?
 8 A. I have --
 9 MS. EKL: Objection.
 10 THE WITNESS: -- absolutely no recollection
 11 of that and I can't imagine that it happened.
 12 If you're talking -- by investigators, if you're
 13 talking about the Normal Police Department
 14 detectives working on the case, I have no
 15 recollection of it and I can't imagine why
 16 they'd be meeting at our office as opposed to
 17 meeting at their own office.
 18 BY MR. BOWMAN:
 19 Q. So you're denying that that happened?
 20 A. I have no recollection of it.
 21 Q. All right. What can you tell me about
 22 the decision that was made at some point in the
 23 investigation to remove Tony Daniels as the lead
 24 investigator in the Lockmiller murder

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57 (Pages 225 to 228)

1 investigation to replace Mr. Daniels with
 2 Mr. Freesmeyer?
 3 A. I can't tell you much.
 4 Q. Did you participate in any way in that
 5 decision?
 6 A. Not that I can recall.
 7 Q. Did you welcome that decision?
 8 A. You know, I don't -- I just don't
 9 recall much about it at the time other than the
 10 fact that there was a decision made because the
 11 Beamans had cut off contact and because
 12 apparently they were miffed at Tony having
 13 somebody else who, you know, might be able to
 14 contact Beaman and relate. And then once he
 15 came back, the school would be the way to go.
 16 But in terms of anything other than
 17 that, you know, I don't think I had anything to
 18 do with it and that's all I remember about it
 19 and I'm not even sure when it was -- exactly
 20 when it was made.
 21 MR. DICIANNI: I'm sorry to interrupt but a
 22 lot of this I'm losing.
 23 THE WITNESS: I'm not sure exactly when the
 24 decision was made and I didn't have any part in

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1 making of it -- making it that I recall.
 2 BY MR. BOWMAN:
 3 Q. Did you provide input into the
 4 decision?
 5 A. I don't think so.
 6 Q. Did you tell anyone that you thought
 7 that Daniels should be replaced with an
 8 investigator who would be better able to relate
 9 to Beaman?
 10 A. I don't have any recollection of doing
 11 that, you know, not as I sit here now. I don't
 12 have any idea whose idea it was to do that
 13 except, you know, I can only assume because it
 14 was a Normal Police Department investigation and
 15 Lieutenant Zayas was the chief of detectives,
 16 that it was his decision to make. Who -- you
 17 know, who came up with that thought, I don't
 18 know.
 19 Q. Did Daniels express -- at any point
 20 prior to the charges against Beaman, did Daniels
 21 ever express to you any disagreement with the
 22 course of the investigation?
 23 A. Not to my recollection.
 24 Q. Did Daniels express to you at any point

230

1 prior to the filing of charges the belief that
 2 the investigation was -- do you know the term
 3 tunnel vision?
 4 A. I'm sorry?
 5 Q. Tunnel vision, do you know what that
 6 is?
 7 A. Uh-huh.
 8 Q. Yes?
 9 A. Yes.
 10 Q. You understand what that means?
 11 A. I think so.
 12 Q. Did Daniels ever express in those words
 13 or in substance the concern that this
 14 investigation was being beset by tunnel vision
 15 in the sense that it had focused prematurely and
 16 exclusively on Alan Beaman to the exclusion of
 17 other possibilities?
 18 A. Not to my recollection in my presence
 19 or that was brought to my attention.
 20 Q. Why don't we just go now to May 16,
 21 1994?
 22 You do recall being present at a
 23 meeting at which the question of whether charges
 24 should be filed against Beaman was discussed?

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1 A. There was such a meeting.
 2 Q. Pardon me?
 3 A. Yes, there was such a meeting.
 4 Q. And you were present?
 5 A. I was.
 6 Q. Who else was present?
 7 A. As far as I recall, my boss, Charlie
 8 Reynard, and I think the chief of police was
 9 there and Daniels, Freesmeyer, and probably
 10 Zayas and I'm not sure if anybody else was or
 11 not.
 12 I don't really recall the details of
 13 the meeting other than I remember we had a
 14 meeting and a decision was made and charges were
 15 filed the next day.
 16 Q. All right. Now, at that meeting had
 17 your office -- at the point when the meeting was
 18 convened, before any discussion happened, had
 19 the decision already been made to charge Beaman?
 20 A. I'm not sure.
 21 Q. Whose decision was it?
 22 A. Well, final decision would have had to
 23 have been Charlie Reynard's.
 24 Q. And is it fair to say that you were the

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58 (Pages 229 to 232)

1 person in your office advising Reynard as to
2 what decision he should make in that regard?
3 A. That's true.
4 Q. Is there anybody else providing input
5 on the decision in your office?
6 A. To my recollection and the record
7 doesn't seem to indicate that the first
8 assistant, Teena Griffin, was present but I'm
9 almost sure that there would have been
10 discussions with her as this investigation by
11 the Normal Police Department had unfolded and so
12 I'm sure she had some input.
13 I don't have a recollection as to why
14 she wasn't at the meeting but she would have
15 been involved in anything like that at the time.
16 Q. Now, Ms. Griffin was the first
17 assistant?
18 A. Right.
19 Q. And you reported to her?
20 A. Correct.
21 Q. And then she was -- she was the conduit
22 to Charlie Reynard?
23 A. Well, it wasn't that big an office but
24 that was the -- that was the chain of command.

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1 But, you know, we talk about many matters, would
2 often have discussions with the three of us
3 about office matters or cases and we could have
4 well -- I don't really remember specifically.
5 We could have had some three-way discussions
6 leading up to May 16th but --
7 Q. That's what I was going to ask. Do you
8 recall providing Mr. Reynard with any input on
9 whether charges should be filed against Alan
10 Beaman prior to the convening of the May 16
11 meeting?
12 A. You know, I'm not -- I'm not sure when
13 I would have made a final recommendation except
14 I'm sure that I would have recommended at the
15 May 16th meeting that we go ahead and file
16 charges.
17 Q. But you determined in your own mind as
18 you sat down for the May 16 meeting that charges
19 should be filed against Beaman?
20 A. On May 16th?
21 Q. Yes.
22 A. Yes.
23 Q. Before the meeting started, had you
24 decided?

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1 A. I would say probably substantially
2 decided. But, you know, I think we were having
3 a last meeting to get input from people as to
4 whether there was any new updates or any new
5 information and hear what other people, you
6 know, had to say about it in terms of the course
7 of the investigation.
8 Q. At any point, did you write a
9 memorandum for Ms. Griffin and Mr. Reynard
10 regarding the investigation in providing an
11 opinion as to whether Beaman should be charged?
12 A. I would highly doubt that. That would
13 not have been our normal practice. I'm almost
14 sure we would have had verbal discussions with
15 him.
16 Q. So to the extent -- your discussions
17 with Reynard were not on paper; they were all
18 verbal?
19 A. I'm almost certain of that.
20 Q. Now, you were looking for input from
21 others, as I understand it, you and Mr. Reynard
22 and Ms. Griffin, before a final decision was
23 made about charging on May 16th. That's what
24 I'm hearing you say.

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1 Have I got that right?
2 A. I think that was the purpose of the
3 meeting, to see if there was anything from the
4 Normal Police Department to -- that would have
5 any impact on the decision, either, you know,
6 pro or con as to whether he should be charged.
7 Q. So the representatives from the Normal
8 police, just to be clear, were the chief of
9 police, Mr. Taylor, the supervisor of the
10 investigation, Mr. Zayas, and Daniels and
11 Freesmeyer who at different points had been the
12 lead investigator in the case?
13 A. I think at least those people were
14 there. I can't recall if there were others
15 also.
16 Q. All right. And where did this meeting
17 take place?
18 A. I don't remember.
19 Q. As to whether it was in the state's
20 attorney's office or the Normal Police
21 Department, you don't recall?
22 A. I don't remember.
23 Q. How long did it last?
24 A. I don't remember.

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59 (Pages 233 to 236)

1 Q. Who was in charge of the meeting?
 2 A. I don't remember, can only assume that
 3 it was, you know, probably Charlie Ryan since he
 4 was the state's attorney. But I'm not sure. It
 5 was the type of meeting that somebody was in
 6 charge of but...

7 Q. All right. Are you denying the
 8 proposition that you led the meeting? Are you
 9 saying I didn't lead the meeting?

10 A. I don't know if there was a leader of
 11 the meeting. I don't --

12 Q. Tell me how the meeting went down.
 13 Tell me what happened.

14 A. I don't recall the details of the
 15 meeting except that a decision was made that we
 16 would pursue charges and I proceeded with that
 17 the next day.

18 The only other thing I remember about
 19 the meeting is I have no recollection of any
 20 opposition from anyone to proceeding with the
 21 prosecution of Mr. Beaman.

22 Q. Now, let me ask you with respect to
 23 this meeting, do you have an independent
 24 recollection of the meeting or are you telling

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1 me things that you assume about the meeting
 2 based upon the Freemeyer report and any other
 3 documents that may exist that pertain to it?

4 MS. EKL: Objection, form.

5 THE WITNESS: I have an independent
 6 recollection that nobody ever raised objections
 7 to prosecuting Mr. Beaman.

8 BY MR. BOWMAN:

9 Q. Was there a process at the meeting for
 10 eliciting the opinions of those present on the
 11 question of whether Beaman should be charged?

12 A. I don't remember the specifics of how
 13 the meeting was conducted except I'm sure
 14 everybody would have had a chance to speak if
 15 they wanted to.

16 Q. Tell me what Tony Daniels said at the
 17 meeting.

18 A. I don't recall the details of what
 19 anybody said.

20 Q. Well, you don't recall details of what
 21 Tony Daniels said. Tell me in general what Tony
 22 Daniels said.

23 A. I don't recall the details of what
 24 anybody said.

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1 Q. Is it your testimony that you have zero
 2 recollection as you sit here today what Tony
 3 Daniels said at the meeting?

4 A. I have no recollection of what Tony
 5 Daniels said at the meeting.

6 Q. Okay. What did Mr. Zayas say at the
 7 meeting?

8 A. I have no recollection of what any
 9 specific person said at the meeting.

10 Q. What did Mr. Taylor say at the meeting?

11 A. I have no specific recollection of
 12 that.

13 Q. What did Mr. Freemeyer say at the
 14 meeting?

15 A. I have no specific recollection of
 16 that.

17 Q. What did you say at the meeting?

18 A. I have no specific recollection of
 19 that.

20 Q. What did Mr. Reynard say at the
 21 meeting?

22 A. I have no specific recollection of
 23 that.

24 Q. Do you have any specific recollection

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1 of anything anybody said at the meeting?

2 MS. EKL: Objection, asked and answered.

3 THE WITNESS: I have a specific recollection
 4 that I was in favor of proceeding with the
 5 prosecution and that was my recommendation to my
 6 boss. And I have a recollection that no one
 7 raised any objection to proceeding in that
 8 fashion.

9 BY MR. BOWMAN:

10 Q. If there are others who were present at
 11 that meeting and their recollection is different
 12 from yours, is it your testimony that they're
 13 wrong or is it possible that they're remembering
 14 something that you've now forgotten?

15 MR. DICIANNI: Object to the form of the
 16 question.

17 MS. EKL: Same objection.

18 THE WITNESS: You're asking me what I might
 19 think about what somebody might say about what
 20 happened at the meeting but I don't know what it
 21 is that they might say?

22 BY MR. BOWMAN:

23 Q. That's my question.

24 A. I have no idea if somebody else's

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60 (Pages 237 to 240)

<p>1 recollection would be any better than mine.</p> <p>2 Q. All right. Can you remember anything</p> <p>3 anybody said as to the reasons why it was</p> <p>4 appropriate to file the charges against Beaman</p> <p>5 when this discussion took place on May 16?</p> <p>6 A. I don't remember the specifics.</p> <p>7 Q. Was there any discussion of what</p> <p>8 probable cause existed or didn't exist to charge</p> <p>9 Mr. Beaman at that time?</p> <p>10 MS. EKL: Objection, form of the question.</p> <p>11 THE WITNESS: I don't remember specifically</p> <p>12 except there obviously had to be a discussion</p> <p>13 about what the state of the evidence was and</p> <p>14 whether it was an appropriate exercise of our</p> <p>15 prosecutorial discretion to file charges, in</p> <p>16 other words, did we have enough for probable</p> <p>17 cause and did we have some reasonable chance of</p> <p>18 prevailing at a trial.</p> <p>19 BY MR. BOWMAN:</p> <p>20 Q. You obviously concluded that you did</p> <p>21 have enough for probable cause.</p> <p>22 What did you base your determination on</p> <p>23 that there was probable cause against</p> <p>24 Mr. Beaman?</p> <p style="text-align: right;">241</p>	<p>1 interviews with people and contacted the</p> <p>2 neighbors.</p> <p>3 And that's when he had the interview</p> <p>4 with Mr. Vanberinger (phonetic) who gave us the</p> <p>5 information that Mr. Beaman immediately after</p> <p>6 his interview with Hospelhorn and Daniels had</p> <p>7 come over to his house and was well aware of the</p> <p>8 -- well aware of the odometer evidence at that</p> <p>9 point in time and told him how many miles he had</p> <p>10 driven approximately and that sort of thing.</p> <p>11 And, of course, we didn't know until</p> <p>12 the charges were filed, that it wasn't until</p> <p>13 then that Mrs. Beaman appeared with the picture</p> <p>14 of the odometer and so forth. But we did know</p> <p>15 that Mr. Beaman had been -- had been questioned</p> <p>16 and had an opportunity to provide that when</p> <p>17 asked specifically about his car and could he</p> <p>18 provide anything.</p> <p>19 And he at that point did not reveal to</p> <p>20 Detective Freesmeyer this evidence he had that</p> <p>21 supposedly cleared him, which was a very strange</p> <p>22 development.</p> <p>23 We knew that he had lied about going to</p> <p>24 the bank because he had told Detective Daniels</p> <p style="text-align: right;">243</p>
<p>1 A. Well, the -- again at the risk of</p> <p>2 possibly leaving something out, I'll try to</p> <p>3 recall as best I can what evidence we knew at</p> <p>4 that point.</p> <p>5 But there was the entire -- almost the</p> <p>6 entire scope of the motive evidence that we</p> <p>7 presented at trial was known at that time and</p> <p>8 basically his intense, passionate love affair</p> <p>9 over many months with Jennifer and the stormy</p> <p>10 nature of their relationship, the explosive</p> <p>11 nature of his temper and his acting out on a</p> <p>12 number of occasions and the contrast of that</p> <p>13 with his reaction immediately after her body was</p> <p>14 discovered when he was questioned by Daniels and</p> <p>15 Hospelhorn.</p> <p>16 The investigation conducted by the</p> <p>17 Normal police uncovered evidence that he had</p> <p>18 lied and withheld evidence in the investigation.</p> <p>19 The --</p> <p>20 Q. What in particular, sir?</p> <p>21 A. Well, immediately after -- not</p> <p>22 immediately but within, I think, the week, maybe</p> <p>23 September the 3rd, Detective Freesmeyer had gone</p> <p>24 to Rockford and tried to conduct various</p> <p style="text-align: right;">242</p>	<p>1 and then, I believe, Detective Freesmeyer on a</p> <p>2 subsequent occasion that he had gone directly --</p> <p>3 directly home.</p> <p>4 I'm trying to -- I'm trying to think in</p> <p>5 terms of the development of the other evidence.</p> <p>6 We had the Swaine overhears which basically was</p> <p>7 a continuation of what we knew from the Daniels</p> <p>8 interview, that his reaction to her death was</p> <p>9 very strange for a person who had this</p> <p>10 passionate love and that he had a lot of</p> <p>11 bitterness and just all the things that were</p> <p>12 said in that which were used at trial.</p> <p>13 And, you know, we had pretty fully</p> <p>14 developed, you know, the whole scenario without</p> <p>15 going into all the details of it, of the love</p> <p>16 triangle involving Swaine and the breakup and,</p> <p>17 you know, his blowing up and leaving town and</p> <p>18 coming back to town.</p> <p>19 We, of course, had the information at</p> <p>20 that point about her numerous attempts on the</p> <p>21 Sunday before she was killed to reach Mr. Beaman</p> <p>22 and that she had, in fact, talked to him on</p> <p>23 Monday night for some period of time.</p> <p>24 I'm sure there was other stuff we knew</p> <p style="text-align: right;">244</p>

61 (Pages 241 to 244)

1 Q. Why did you and the investigators conclude that
2 Lockmiller was killed at noon?

3 A. Well, from the entire circumstances that were
4 presented it was clear to me and was the theory I argued
5 that we knew that Ms. Lockmiller was in class at 11:00,
6 got out of class at 11:50. That her habit was to return
7 home and watch a program that she always watched, All My
8 Children, which came on at noon. We had the Todd Heyse
9 evidence in which he saw a person fitting the
10 description of both of them walking in the apartment
11 about the right time of day, possibly on the right day.
12 We had the evidence that there was no forced entry into
13 the apartment. We had the evidence that her purse and
14 her books appeared to have been laid down on the, I
15 think it was a kitchen table or counter, and apparently
16 not moved after that. No robbery, no disarray there.
17 That the remote and her car keys were laid down. That
18 the TV was still on when her body was discovered.

19 There was evidence of her being dragged into
20 the bedroom. Her two, both of her earrings were at
21 different places outside the bedroom, and one of her
22 shoes was off. And she had a 2:00 o'clock class which
23 she did not attend. She had people coming over to see
24 about cats at, I don't know, 3:00 or 3:30, something
25 like that. They never got ahold of her, and went over

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1 there at some point and got no answer.

2 So putting all of that evidence together and,
3 you know, the other evidence about what I concluded was
4 the likely scenario of what happened. That Mr. Beaman
5 came there and got upset when he saw Swaine's things,
6 that something happened right away, that it wouldn't
7 take very much time to kill someone in the manner she
8 was killed, and that that's what happened, and he was
9 back on the road and had plenty of time to get home
10 before his mother would have come home.

11 Q. You've, you've provided an account of why it is
12 reasonable to assume that she was in the apartment at
13 noon. That being the fact that she got out of class at
14 11:50, that it was her habit to return home immediately
15 after class and to watch a television program. But what
16 is your theory -- I'm sorry. What evidence supports the
17 proposition that she was killed at noon as opposed to at
18 1:00 p.m. or 2:00 p.m. or shortly before 3:00 p.m.?

19 MS. EKL: Objection. Asked and answered.

20 THE WITNESS: Well, again, with the layout of
21 the way things were in the apartment, the fact that her
22 books and her purse appeared to be set down, that the
23 remote and her keys there, the reasonable inference from
24 all the evidence was she came in, she put her stuff
25 down, she did what she usually does, which is turn the

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1 TV on to watch this program --

2 BY MR. BOWMAN:

3 Q. Let me stop you there.

4 A. -- and nothing was ever, that's all there was.
5 That her purse wasn't taken anywhere else, she didn't do
6 anything else with the books, or anything else.

7 Q. Okay. Got that. So let me make sure I
8 understand this point. Your theory was that because her
9 purse and her books were on the table, that that meant
10 that she had been killed shortly after entering the
11 apartment; is that your theory?

12 MS. EKL: Objection. Form, mischaracterizes
13 his testimony.

14 THE WITNESS: Well, that's part of the, part of
15 the factors that would go into it. The overall scenario
16 and the reason this whole thing happened and what would
17 have been visible in the apartment once Mr. Beaman comes
18 in the door with her, there were things of Swaine's
19 visible in the living room area that he would have seen,
20 and with the other items that were on the floor, that
21 clearly something happened. There was a blowup, and she
22 was dragged into her bedroom, and the reasonable
23 inference that we argued is that it happened right away.

24 BY MR. BOWMAN:

25 Q. Right away. Now, other than the fact that her

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1 keys and her purse were on the table, and she was, and
2 that there was evidence that she was forcibly dragged
3 into the bedroom, the fact that Swaine's belongings were
4 visible in the living area of the apartment, is there
5 any other reason to believe that she was killed at noon?

6 MS. EKL: Objection. Form, mischaracterizes
7 the evidence, and also asked and answered. You keep
8 trying to recharacterize his testimony and you leave out
9 things that he's stated already, such as she did not
10 make her 2:00 o'clock class. He referred to the people
11 who were coming to buy cats.

12 MR. BOWMAN: Beth, Beth --

13 MS. EKL: And I know that you're trying to
14 narrow his --

15 MR. BOWMAN: -- Beth, Beth, don't. Don't. I
16 know it's been a long week, but you can't do that. You
17 know that.

18 MS. EKL: And you can't do that either, Locke.
19 You keep repeating his answers, and leaving things out
20 of them, and trying to get him to commit that that's all
21 there is. And it's --

22 MR. BOWMAN: I don't want to have an argument
23 with him.

24 MS. EKL: -- completely unfair.

25 MR. BOWMAN: And I don't want to have an

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7 (Pages 287 to 290)

1 that a fair statement?
 2 A. That's correct.
 3 Q. Okay. Now, apart from the reconstruction of
 4 how Beaman behaved, do you have any other evidence that
 5 she was, that she was dead at 2:00?

6 MS. EKL: Objection. Asked and answered. Now
 7 we're talking about probably 10 times you've asked the
 8 same question.

9 THE WITNESS: My conclusion that she was dead
 10 shortly after noon is based on the factors that I have
 11 mentioned and that I argued at trial. Those are the
 12 factors that, of evidence that I had, and I argued the
 13 reasonable inference of those.

14 BY MR. BOWMAN:

15 Q. All right. Well, let's put it this way, and
 16 then we can put a wrap on it. Other than the arguments
 17 that you made in your, in your closing argument at trial
 18 regarding the shoe, the earrings, Beaman's seeing
 19 Swaine's belongings and snapping, all of that, is there
 20 any other evidence that you have that she was dead at
 21 2:00?

22 MS. EKL: Objection. Form, asked and answered,
 23 and incompletely repeats what he's already testified to.

24 THE WITNESS: Other than the factors I've
 25 already stated, Mr. Bowman, I don't have anything else

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1 Q. Do you recall that he then went to the pool?

2 A. Swimming pool you mean?

3 Q. Swimming pool, yeah.

4 A. I don't recall that.

5 Q. Do you recall that he returned from the
 6 swimming pool and made some other observations?

7 A. Well, I'm recalling there was a witness, or
 8 maybe a couple of witnesses who made some observations,
 9 some related a car that may or may not have been there,
 10 and some related hearing possible noises and door
 11 closings at other times and maybe a air conditioner or
 12 something, if, if that was Singley. I don't recall all
 13 the details. I'm not sure if he was involved in the car
 14 or just having heard a door maybe at a later time, like
 15 on Friday or something. You know, I just would have to
 16 read his testimony over again. I did not do that.

17 Q. Well as you, you've actually, you've actually
 18 described some of the information that the neighbors
 19 provided during the course of the investigation. The
 20 fact that there was a white car parked in the parking
 21 lot on August the 25th, right, that appeared to have
 22 been Swaine's car; do you remember that now?

23 A. Some people thought they had seen the car that
 24 they presumed was maybe Swaine's.

25 Q. Right.

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1 to add to that.

2 BY MR. BOWMAN:

3 Q. All right. Now, what did you think of Singley
 4 as a witness?

5 A. I don't think I can answer that. I don't have
 6 a whole lot of recollection of Mr. Singley.

7 Q. Did you have any reason to doubt Singley's
 8 credibility?

9 A. I haven't, I don't think I reviewed his
 10 testimony in recent times.

11 Q. Well, as you sit here today do you have any
 12 reason to doubt that Singley was a credible person?

13 A. Well if he's the -- let me think. You know, I
 14 would have to be reminded what, exactly what he
 15 testified to. I might have him confused with another,
 16 with another witness. So I really couldn't answer that
 17 without reviewing I think his testimony.

18 Q. Well, let me see if I can refresh your
 19 recollection. Do you recall that Mr. Singley was the
 20 young man who lived with her girlfriend in the apartment
 21 directly across the hall from Jennifer's?

22 A. Yes. I do recall that.

23 Q. Do you recall that he reported returning home
 24 around 2:00 p.m. on August the 25th?

25 A. I don't, I don't recall that detail, no.

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1 A. At a time when we --

2 Q. You were confident that the car was elsewhere.

3 A. -- it was determined that it was somewhere
 4 else, but. And the police went to some efforts, I think
 5 they even made a car lineup to show them to see if they
 6 could pick out the car. I don't remember which
 7 witnesses looked at that though.

8 Q. Right. I'm going to put the car aside. The
 9 young man, Singley, reported hearing Jennifer's door
 10 shut abruptly just as he was coming up the stairs at
 11 around, a little before 2:00 p.m. Do you recall that?

12 A. Only vaguely.

13 Q. Do you recall that Singley also heard the door
 14 open and shut in the next 10 minutes, the door, and by
 15 that I mean the door to Jennifer's apartment?

16 A. You know, I don't remember the details. I do
 17 remember that I argued that we believed he to be
 18 mistaken in some of the things he testified about, not
 19 that he was lying or not credible, but that he was
 20 mistaken.

21 Q. All right. So let's, let's talk about his
 22 credibility now that you're focused on it again. Do you
 23 have at any point prior to your presentation of this
 24 case to the grand jury any reason to doubt Singley's
 25 credibility?

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10 (Pages 299 to 302)

1 MS. EKL: Objection. Asked and answered.
 2 THE WITNESS: Well, if you're asking about
 3 credibility in terms of credibility meaning was he, was
 4 he intentionally not telling the truth. No, I don't, we
 5 had --
 6 BY MR. BOWMAN:
 7 Q. Did you have any reason to believe that he was
 8 a bias witness?
 9 A. No. We had reason to believe he was a mistaken
 10 witness.
 11 Q. Did you have any reason to believe that he was
 12 a, that he lacked appropriate ability to observe and to
 13 note events, that he was impaired in some way?
 14 A. No, I don't think so. I think we just thought
 15 he was mistaken in some of his observations.
 16 Q. All right. So let's get to that. Why did you
 17 think he was mistaken?
 18 A. You know, I'm not recalling the exact details,
 19 except I think he was recalling things about sound and
 20 when doors might have opened or closed, or air
 21 conditioners going off and on. And some of it might
 22 have related to Friday, when it was, you know, certainly
 23 clear beyond any doubt that she was dead at that point
 24 by anybody's theory of the case, but.
 25 Q. Did you think he was mistaken because he was

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1 talking about, he was conflating Friday and Wednesday;
 2 is that why you thought he was mistaken?
 3 A. Well, I don't, I don't recall the details.
 4 Again, I'd have to look at the transcript of his
 5 testimony to see precisely what he, what he said. I
 6 just remember that, you know, that I argued that, you
 7 know, he wasn't lying or anything like that. He just
 8 you know --
 9 Q. Other than -- go ahead. Finish.
 10 A. That he had made a mistake and, you know, that
 11 sound is funny, and you hear doors down the hallway or
 12 whatever and you think you're hearing something and, you
 13 know, just argued that he was mistaken. Just as we
 14 argued that people were mistaken about the car that they
 15 thought they saw.
 16 Q. Well, you'd been in the Lockmiller apartment at
 17 some point prior to your presentation of the case to the
 18 grand jury, right?
 19 A. I had I think, one time I think. Yeah.
 20 Q. Yes. And you were familiar with the vestibule
 21 area in that building, right?
 22 A. Vaguely.
 23 MS. EKL: With the what? I'm sorry.
 24 BY MR. BOWMAN:
 25 Q. With the vestibule area in the building.

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1 A. Vaguely.
 2 Q. I mean, you walked up through the front door of
 3 412 Main, up those four or five stairs to the second
 4 floor, right?
 5 A. I would have had to. I don't recall the, I
 6 recall more about the layout of the apartment as opposed
 7 to the, you know, how the other apartments were laid out
 8 or any hallways or stairs or vestibules.
 9 Q. Well, do you remember that it was possible to
 10 touch both Singley's door and Lockmiller's door while
 11 you were standing between the two doors in the
 12 vestibule?
 13 MS. EKL: Objection. Form, foundation.
 14 THE WITNESS: No. I don't recall where the
 15 other doors of the apartment building were.
 16 BY MR. BOWMAN:
 17 Q. Do you think it would bear on whether Singley
 18 was mistaken that his door was approximately four or
 19 five feet from Jennifer's door?
 20 A. Well, I suppose the closer you are to a sound
 21 that, obviously, the more likely you are to be able to
 22 identify the source of the sound.
 23 Q. Right. And do you think it would bear on
 24 Singley's credibility that the only other door on the
 25 second floor of that building was Jennifer's door, other

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1 than his?
 2 A. Well, all I can tell you is I argued at the
 3 time what I believe his credibility was. That he in
 4 good faith made a mistake about whatever he was
 5 testifying about sound-wise, and --
 6 Q. No. We know that. I'm asking you a
 7 different --
 8 MS. EKL: Please let him finish his answers,
 9 Locke. You keep cutting him off.
 10 MR. BOWMAN: Well, he keeps --
 11 MS. EKL: He's entitled to finish his answers
 12 whether you think they're too long or not.
 13 MR. BOWMAN: It's not just that they're too
 14 long. It's that they're deliberately evasive. We've
 15 been through this before.
 16 MS. EKL: Right. And there's no --
 17 BY MR. BOWMAN:
 18 Q. It's a simple question. It's a simple question
 19 about, about whether or not he was mistaken. And I
 20 understand what you argued before. Do you think it
 21 bears on the question of whether he was mistaken in what
 22 he reported that Jennifer's door is the only other door
 23 on the second floor of that building other than his?
 24 A. Sure. I think everything about where he was
 25 and the proximity and so forth would bear on that, and

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11 (Pages 303 to 306)

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<p>1 that was all before the jury for them to determine 2 whether he was mistaken or not. 3 Q. Okay. Now, Singley also reported that when he 4 returned home from class at about 2:00, he heard the 5 stereo on in Lockmiller's apartment; do you recall that? 6 A. No. 7 Q. Do you think that that's significant, 8 potentially? 9 MS. EKL: Objection. Form, assumes facts not 10 in evidence. 11 THE WITNESS: Well, I don't recall anything 12 about a stereo. I recall the television being on in 13 this case. 14 BY MR. BOWMAN: 15 Q. So you don't remember. Well if, if, just say 16 hypothetically that Singley had told the investigators 17 that when he returned home from class at around 2:00 18 p.m. and when he left for the pool shortly thereafter, 19 he heard the stereo on in Lockmiller's apartment, just 20 assume that. If Singley had provided that information, 21 do you think that that was potentially significant 22 information in this investigation? 23 MS. EKL: Objection. Form, calls for 24 speculation. 25 THE WITNESS: Well, I think it's a piece of</p> <p style="text-align: right;">307</p>	<p>1 potentially that was important evidence in this 2 investigation? 3 A. I suppose it could have been if he's, you know, 4 if he was accurate in his perceptions. 5 Q. Right. Now do you recall that Singley told the 6 investigators that when he left for the pool, and when 7 he returned home from the pool that the air conditioning 8 was not on in Jennifer's apartment? 9 A. I recall something about air conditioning, but 10 I don't recall the details. 11 Q. And do you recall Singley providing the 12 information that later that evening the air conditioner 13 went on in Lockmiller's apartment and he specifically 14 recalled that? 15 MS. EKL: Objection. Form. Foundation as to, 16 just to be clear, whether you're saying does he recall 17 reading that in a report, learning that at trial. At 18 what time period are you referring to? 19 BY MR. BOWMAN: 20 Q. Well I'm, to be very clear, all of my questions 21 relate to the period of time prior to your presentation 22 of this case to the grand jury. Okay. Do you recall 23 learning that information before you presented this case 24 to the grand jury? 25 A. I recall something about a air conditioner.</p> <p style="text-align: right;">309</p>
<p>1 evidence that would have been considered. And would be, 2 well, from my recollection it's consistent with what we 3 knew, that the television had been on and was still on 4 when her body was discovered. 5 BY MR. BOWMAN: 6 Q. I said stereo, not television. 7 A. Well, I'm not, I guess I'm not sure how a 8 person would distinguish the stereo from the TV 9 necessarily, but. 10 Q. Okay. 11 A. If there was a, I suppose if there was a stereo 12 on as opposed to the TV being on, and then when we 13 discovered the body the TV was on but there was no 14 stereo, then I, you know, I suppose that would be 15 something to consider and look at. 16 Q. Right. And that was, in fact, the case. When 17 the body was discovered, the TV was on, right? 18 A. Yes. 19 Q. And, indeed, do you recall that Singley 20 reported that when he returned home from the pool later 21 in the day that the stereo was not on anymore, and it 22 had been replaced by the television? 23 A. I don't have any recollection of that at all. 24 Q. Okay. Assuming that that was Singley's 25 statement, will you agree with the point that</p> <p style="text-align: right;">308</p>	<p>1 The exact details, you know, I don't remember as, you 2 know, being on, being off, or whatever. In terms of 3 prior to the presentation to the grand jury, I know at 4 some point we had obtained and presented evidence that 5 the air conditioner in that apartment shifted, I don't 6 know, from high compressor to low compressor, but I'm 7 not sure if that had been looked into prior to the grand 8 jury. But we would have had, you know, his interview 9 and his statement prior to charges being filed and prior 10 to the grand jury. And so whatever he said in there 11 about the air conditioner I would have, I would have 12 known about. 13 Q. Right. In fact, everything that he said to the 14 investigators would have been well-known to you at the 15 time you presented this case to the grand jury, fair 16 statement? 17 MS. EKL: Objection. Form. 18 THE WITNESS: Yes. I'm almost certain there 19 was a written, you know, transcribed interview, taped 20 interview that was transcribed for Mr. Singley. 21 BY MR. BOWMAN: 22 Q. Well, actually, there were two, right? There 23 was one on August the 31st and a second one on September 24 the 2nd. 25 A. I don't remember that. But if there was, there</p> <p style="text-align: right;">310</p>

12 (Pages 307 to 310)

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1 at the time and still shows to me as to whether
2 Mr. Murray had any conceivable motive. And I don't
3 think there was any evidence that anything had developed
4 between him and Jennifer that would cause him to have a
5 motive to hurt her or kill her.

6 BY MR. BOWMAN:

7 Q. All right. You don't think that Murray could
8 have, could have seen Swaine's relationship with
9 Lockmiller and snapped in the way, been frustrated and
10 disappointed and killed her; you don't think that's even
11 conceivable?

12 A. Well, there was nothing in the history of their
13 relationship that would suggest anything like that. And
14 there was nothing in any evidence that we uncovered
15 about any current involvement that they had. The
16 evidence that you mentioned about some interest in
17 getting back together was very minuscule. Something,
18 basically, that Murray mentioned in his statement like,
19 well, she wanted to go out with me again whenever. And
20 that, maybe the Heidi Steinman statement you mentioned.
21 But there was no evidence uncovered that they were, you
22 know, about to get back together, or that somehow he was
23 frustrated. He was, you know, practically living with
24 another woman, his girlfriend Debbie Mackoway. There
25 was no evidence of problems between them. Just, just

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1 we didn't, we didn't have any evidence of anything like
2 that at the time against Murray.

3 BY MR. BOWMAN:

4 Q. And you didn't have any evidence that Beaman
5 had ever been physically violent against Lockmiller
6 either. You told me that earlier.

7 A. Not against her person.

8 Q. Right. And --

9 A. It is, it is violent to kick somebody's door in
10 and take actions like that. We had that evidence of his
11 temper and those kind of actions.

12 Q. Right. And you had, with respect to Murray
13 eventually there came out evidence that he had erratic
14 behavior as a result of steroid drug use that he was
15 engaging in in 1993, right?

16 MS. EKL: Objection. Foundation.

17 BY MR. BOWMAN:

18 Q. Eventually that evidence came out, came to your
19 attention?

20 A. Well, what eventually came to my attention were
21 the two cases our office filed against him. There's a
22 third matter that was an order of protection matter that
23 was filed by Ms. Mackoway. This is in October of '94,
24 and which I was not aware of. And within the confines
25 of the information she provided to the police, I believe

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1 was nothing there.

2 Q. Well, there was, there was eventually evidence
3 of problems between Debbie and John, right?

4 A. More than a year later.

5 Q. Yeah. So how about you throw that into the
6 mix, does that give Murray a conceivable motive?

7 MS. EKL: Objection. Form.

8 THE WITNESS: Throw what into the mix?

9 BY MR. BOWMAN:

10 Q. The fact that he was physically violent against
11 Mackoway on a, according to her on a continual basis for
12 an extended period of time.

13 MS. EKL: Objection. Form.

14 THE WITNESS: Well, the only evidence we knew
15 about Mackoway and him having problems occurred well
16 after the murder. So I wouldn't, I wouldn't have ever
17 had any evidence at the time of the murder that he was
18 violent toward any other women. And, you know,
19 depending on what the facts were and, you know, that
20 might have been a factor that would cause you to look
21 more closely at someone had they been violent toward
22 some other woman, other than the one who was, who was
23 murdered to be much more relevant if they had been
24 violent toward the murder victim, as it was, you know,
25 problems that Mr. Beaman had with Ms. Lockmiller. But

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1 she made an indication, I'm not sure which file it's
2 contained in, she made an indication that he had started
3 taking steroids, I believe in January of '94, and that
4 she had not had problems with him prior to that time.
5 But that she had some problems with him prior to the
6 incident for which, the domestic incident for which they
7 were both arrested in early October of '94. But she did
8 relate that he had been acting, I think erratically,
9 which she attributed to him taking steroids. But I
10 believe --

11 Q. You had evidence that he was taking steroids in
12 January of '93, right?

13 A. January of '93?

14 Q. Yeah.

15 A. Well, my recollection is whatever she related,
16 that she said it was, it was January of '94, after the
17 murder that he started, that she started having
18 difficulties with him and that he started acting
19 erratically. You know, I'd have to see the, the
20 reports.

21 Q. Records. Okay.

22 A. But.

23 MR. BOWMAN: Well, let's do that then. And
24 this is a big one, Tom. I don't have a copy for you. I
25 mean it's just, you're welcome to, it's all this --

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16 (Pages 323 to 326)

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1 context. It was brought up I think by Mr. Beaman.
2 Other than that, was any mention made of Mr. Murray in
3 the grand jury?

4 MS. EKL: Objection. Form.

5 THE WITNESS: I'm not recalling anything else.
6 I'm not sure whether there was or not.

7 BY MR. BOWMAN:

8 Q. Is there any reason, sir, why you made no
9 mention of John Murray during the grand jury
10 presentation?

11 MS. EKL: Objection. Form, assumes facts not
12 in evidence.

13 THE WITNESS: Other than bringing up the door
14 incident, there would have been no reason to mention Mr.
15 Murray, since he had nothing to do with the crime.

16 BY MR. BOWMAN:

17 Q. Okay. And how did you determine that Murray
18 had nothing to do with the crime?

19 A. Well, because we had uncovered no evidence that
20 he had anything to do with the crime, I should say the
21 police hadn't before, and I hadn't uncovered, in
22 preparation for grand jury uncovered anything additional
23 that I considered to be evidence that he committed the
24 crime. And so, I wouldn't have had any reason to
25 present that.

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1 committed, right?

2 A. He did.

3 Q. Okay.

4 A. And he corrected it.

5 Q. And he corrected it. And actually when he
6 corrected it, it was, it was because his girlfriend
7 pointed it out, right?

8 MS. EKL: Objection. Foundation.

9 THE WITNESS: Well, I don't know what happened
10 between them. But I think they had presumably consulted
11 and maybe, I remember some mention that she might have
12 had a written calendar or something. Because I don't
13 think she was right in the initial interview either, if
14 I'm recalling. So they consulted, and they both came
15 back and agreed he, basically, he was home alone at the
16 time of the murder.

17 BY MR. BOWMAN:

18 Q. Isn't it true that Debra Mackoway brought to
19 the attention of the police the fact that Murray did not
20 leave town on the 24th, he left town on the 25th?

21 A. Well, which one of them said it first to the
22 police I don't, I don't remember.

23 Q. You don't recall. Okay. He, ultimately, it
24 was determined based on his own admission that he had no
25 alibi, right?

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1 Q. All right. So to summarize, Mr. Murray's
2 involvement with the victim as a drug dealer, as her
3 former boyfriend, as a former boyfriend who was
4 interested in rekindling a past romantic relationship
5 with her, his evasive behavior during interviews, his
6 lack of an alibi, his giving of a false alibi, all of
7 those factors in combination did not furnish probable
8 cause to charge John Murray with Lockmiller's murder,
9 right?

10 MS. EKL: Objection. Assumes facts not in
11 evidence.

12 THE WITNESS: Well, there was no evidence upon
13 which to base charging Mr. Murray.

14 BY MR. BOWMAN:

15 Q. Right. And what I'm asking is you'll agree
16 with me that he furnished a false alibi, right?

17 A. Well, you continue to term that as a false
18 alibi. He made a mistake in his first interview, and
19 came back and corrected it himself in the second
20 interview.

21 Q. Right. Sometimes --

22 A. Which I did not consider to be suspicious.

23 Q. Sometimes people make mistakes. And in this
24 particular occasion Mr. Murray made a mistake about
25 whether he was out of town or not when the murder was

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1 A. Correct.

2 Q. He had a prior romantic relationship with the
3 victim, right?

4 A. Correct.

5 Q. And he, according to some sources had an
6 interest in rekindling that past romantic relationship,
7 right?

8 A. There was very, very minimal evidence about
9 that, but at least some mention of that possibility.

10 Q. Well, how far did you go in exploring that?
11 What, what efforts did you or any of the investigators
12 take to explore that, the level of that interest?

13 A. Well, I think the investigators in this case
14 talked to every conceivable person they could come up
15 with who knew anything about Jennifer, her friends and,
16 you know, which included a number of people who talked
17 about her knowing Murray and who might have provided pot
18 and that sort of thing. There was, you know, dozens of
19 witnesses were talked to to explore all the possible
20 options. And none of those uncovered any evidence of
21 any problems between Mr. Murray and Ms. Lockmiller that
22 would cause anyone to have a suspicion that he'd have
23 some reason to kill her.

24 Q. Did anybody wear a wire against Mr. Murray?

25 A. Not that I know of, no.

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26 (Pages 363 to 366)

<p>1 is a relevant person in this case?</p> <p>2 MS. EKL: Objection. Form.</p> <p>3 THE WITNESS: That he is what?</p> <p>4 MR. BOWMAN: A relevant person in this case.</p> <p>5 MS. EKL: Same objection.</p> <p>6 BY MR. BOWMAN:</p> <p>7 Q. You said he has nothing to do with the case,</p> <p>8 right, that's your view?</p> <p>9 A. No. There was nothing about that case that</p> <p>10 related to Jennifer Lockmiller or anything, any</p> <p>11 similarity to her case. So, no, I don't consider it to</p> <p>12 be any indication at all that it somehow was relevant to</p> <p>13 the Lockmiller investigation.</p> <p>14 Q. All right. So from your standpoint as you sit</p> <p>15 here today knowing everything that you now know about</p> <p>16 Murray, it would be your position that Murray is</p> <p>17 completely irrelevant to the Lockmiller murder?</p> <p>18 A. I know of zero evidence that Mr. Murray</p> <p>19 committed the offense of murdering Jennifer Lockmiller.</p> <p>20 Q. Do you know of any evidence that would make him</p> <p>21 a person of interest with respect to the murder as you</p> <p>22 sit here today?</p> <p>23 A. Other than what was available at the, at the</p> <p>24 time.</p> <p>25 Q. No, no. I'm not asking you if you know some</p> <p style="text-align: right;">371</p>	<p>1 of some interest. After I reviewed what was sent to me,</p> <p>2 which of course didn't include the polygraph test, I</p> <p>3 concluded as far I was concerned that he was not a</p> <p>4 person of interest to me, because I detected no evidence</p> <p>5 of any issues that he had with Jennifer Lockmiller, any</p> <p>6 motive, any conflict they had, any evidence that he had</p> <p>7 anything to do with the, with the murder.</p> <p>8 BY MR. BOWMAN:</p> <p>9 Q. So in other words, to summarize, you viewed</p> <p>10 Murray as having been cleared of the murder by virtue of</p> <p>11 the fact that you did not detect a motive for him to</p> <p>12 commit the crime; is that a fair summary?</p> <p>13 A. I concluded that there was no evidence against</p> <p>14 Mr. Murray.</p> <p>15 Q. Well, right. I mean, you know, I could say,</p> <p>16 Mr. Souk, that there's no evidence against Mr. Beaman.</p> <p>17 But the fact of the matter is there was no evidence, as</p> <p>18 to the murder scene there was no physical evidence other</p> <p>19 than these fingerprints of Swaine and Beaman's right?</p> <p>20 MS. EKL: Objection. Form.</p> <p>21 BY MR. BOWMAN:</p> <p>22 Q. Right? I mean we've been around this before.</p> <p>23 A. We have. Maybe I could put another take on it</p> <p>24 and say my analysis, my personal analysis, my</p> <p>25 professional analysis at the time was the information</p> <p style="text-align: right;">373</p>
<p>1 additional evidence that we haven't already talked</p> <p>2 about. I'm putting out what we've discussed. The</p> <p>3 information about Murray's evasiveness on the polygraph</p> <p>4 and in his interviews with Daniels. The information</p> <p>5 about the incorrect alibi, followed up with the absence</p> <p>6 of an alibi. The information about his proximity to</p> <p>7 Lockmiller. The information about his violence against</p> <p>8 his girlfriend. The information about the fact that he</p> <p>9 left town on August 25. The information about his</p> <p>10 interest in rekindling his past romantic relationship</p> <p>11 with Lockmiller, and his involvement with drugs and</p> <p>12 Lockmiller. All of these things, does that indicate to</p> <p>13 you that he is a person of interest with respect to</p> <p>14 Lockmiller's homicide in light of the fact that that is</p> <p>15 now an open investigation?</p> <p>16 MS. EKL: Objection. Form.</p> <p>17 THE WITNESS: Well, I think safe to say, you</p> <p>18 know, in defining terms, suspect, person of interest, I</p> <p>19 don't know exactly how we define those. But I believe</p> <p>20 he was a person of interest initially. He and his</p> <p>21 girlfriend were interviewed those several times. The</p> <p>22 police apparently decided they wanted to follow up some</p> <p>23 more, because they did take him over for this polygraph</p> <p>24 test. And beyond that what they may have done, I don't</p> <p>25 recall anything else. But, certainly, he was a person</p> <p style="text-align: right;">372</p>	<p>1 that the investigation had presented to me about</p> <p>2 Mr. Murray, I did not consider it to be any evidence</p> <p>3 that he had any motive to kill Jennifer Lockmiller, or</p> <p>4 that there was any evidence that he had gone to her</p> <p>5 house, or that he'd done anything. There was simply no</p> <p>6 evidence against him.</p> <p>7 Q. Did you take the Tom Haze evidence seriously?</p> <p>8 MS. EKL: Objection. Form.</p> <p>9 THE WITNESS: Who?</p> <p>10 BY MR. BOWMAN:</p> <p>11 Q. Did you take, this fellow who saw the taller</p> <p>12 man with dark hair and the blond-haired woman go into</p> <p>13 the building, the fellow who owned the property.</p> <p>14 A. You mean Todd Heyse?</p> <p>15 Q. Yes.</p> <p>16 A. Did I take it seriously?</p> <p>17 Q. Yeah.</p> <p>18 A. Well, sure. He was a witness for the state at</p> <p>19 trial.</p> <p>20 Q. And you understood that he could not make a</p> <p>21 positive identification, right?</p> <p>22 A. That's true.</p> <p>23 Q. And you understood that he was coming forward</p> <p>24 with his information fully nine months after the, after</p> <p>25 the murder had taken place, right?</p> <p style="text-align: right;">374</p>

28 (Pages 371 to 374)

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1 had already been admitted by the defendant.
 2 Q. When did you decide not to call Murray?
 3 A. I can't really put a time frame on that.
 4 Q. At one point he was on your witness list,
 5 right?
 6 A. He was.
 7 Q. And at one point you were intending to call
 8 him, right?
 9 A. I can't say that. I don't know that we were
 10 intending to call him. I think we probably prior to
 11 trial, you know, made some determination as to whether
 12 we needed him for anything other than the door incident,
 13 but I don't really have a specific recollection of how
 14 that came about. But we had a whole lot of people on
 15 the witness list who were never called, and his being
 16 one of them.
 17 Q. You say we. That's you and Teri Dimmick?
 18 A. She was my co-counsel on the case, yes.
 19 Q. And you and Ms. Dimmick sat down and went over
 20 who would and wouldn't be called?
 21 A. I don't have a specific recollection of, you
 22 know, our conversations, but I'm sure we would have.
 23 Q. Did you talk with Ms. Dimmick about whether or
 24 not it would be a good idea to call Murray?
 25 A. I don't recall any specific conversation in

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1 that regard. And I don't remember when we made a final
 2 decision that he would not be called.
 3 Q. Did you or Ms. Dimmick ask Mr. Murray to come
 4 in for an interview prior to the trial to assess him as
 5 a possible witness?
 6 A. I think my vague recollection is that
 7 Ms. Dimmick may have interviewed Mr. Murray.
 8 Q. And then after Ms. Dimmick interviewed
 9 Mr. Murray, did she report to you on her impressions of
 10 him?
 11 A. I'm sure she did, but I don't have an
 12 independent recollection of that. Other than a
 13 conclusion was reached that we didn't need him, and we
 14 didn't call him, which I eventually announced to the
 15 court at the March, I think it was the March 15th
 16 pretrial hearing.
 17 Q. At the point when you decided that Murray would
 18 not be called as a witness, did that change your
 19 discovery obligations with respect to Murray?
 20 A. Well, information that I was aware of regarding
 21 his pending cases with our office in my mind at the time
 22 would have been, would need to be provided to the
 23 defense only if he was in fact a witness, because I
 24 didn't consider it Brady material. I considered it only
 25 material that could be used to impeach him, because he

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1 had pending cases and might be seeking more favorable
 2 resolution of his cases.
 3 Q. Was Giglio material.
 4 A. I'm sorry?
 5 Q. Giglio.
 6 A. I'm not understanding what you're saying.
 7 Q. It was Giglio material. It was impeachment
 8 material.
 9 A. Impeachment material that the defense could ask
 10 him about, and once he's not a witness then there would
 11 be no obligation to provide that.
 12 Q. Right. And when you made the decision not to
 13 call Murray you took into account, sir, that as a result
 14 of making that decision you would not need to disclose
 15 his pending cases and his relationship with your office,
 16 right?
 17 MS. EKL: Objection. Form, specifically to the
 18 phrase relationship to the state attorney's office.
 19 THE WITNESS: I don't have any recollection of
 20 really thinking about it or any thought process about
 21 that at the time. You know, I just don't recall
 22 anything. It didn't come up until a number of years
 23 later and, you know, I didn't even realize until a
 24 number of years later that those cases were not
 25 disclosed.

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1 BY MR. BOWMAN:
 2 Q. What was your, you didn't realize that they
 3 weren't disclosed? Did you think they were disclosed?
 4 A. I don't have any recollection of what I knew or
 5 thought at the time.
 6 Q. I see. What was your procedure in terms of
 7 handling the discovery in cases where you were the
 8 prosecutor; did you have a particular approach that you
 9 used?
 10 A. Well, we prepared, you know, a formal document
 11 or discovery response that answered paragraph by
 12 paragraph the standard discovery order we had in place
 13 at the time. And we listed, of course, all the
 14 witnesses. And at that time it was the practice to hand
 15 number all the actual pages of discovery that were sent
 16 along, and then those would be referenced in certain
 17 responses, you know, see Pages 1 through whatever, and
 18 those would be attached. And then as more reports or
 19 discovery would become available, we would send
 20 supplemental discovery sheets and attach, you know,
 21 continue the numbering wherever we'd left off before.
 22 And I think that was done in this case. There was
 23 three, four, or five I think supplemental discovery
 24 responses that were filed with some additional
 25 information as it came in.

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32 (Pages 387 to 390)

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<p>1 Q. And was it the procedure in your county to</p> <p>2 include all of the state's discovery in the common law</p> <p>3 record of the case?</p> <p>4 A. At that time it was.</p> <p>5 Q. And was that done here?</p> <p>6 A. Yes.</p> <p>7 Q. Did you have an open file policy, Mr. Souk?</p> <p>8 A. Not sure what that means.</p> <p>9 Q. Well, was it your practice in dealing with</p> <p>10 discovery in your matters -- I'll hold on for just a</p> <p>11 minute. Was it your practice in dealing with discovery</p> <p>12 in your matters to provide the defense with all of the</p> <p>13 documents in your file without regard to whether they</p> <p>14 were specifically requested or not? Obviously, you</p> <p>15 wouldn't turn over privileged matters, but apart from</p> <p>16 that to just simply disclose everything?</p> <p>17 A. Yes. Whatever we got from the police, from the</p> <p>18 lab, or from any other source, yes, turn it over.</p> <p>19 Q. And, I mean, Ms. Dimmick has testified that you</p> <p>20 were known for that. That your practice as a prosecutor</p> <p>21 was, what I term open file. That you would, you would</p> <p>22 always turn over everything, you never withheld</p> <p>23 documents.</p> <p>24 A. That's a point about my practice where I</p> <p>25 remember attempting to be very meticulous and open and</p> <p style="text-align: right;">391</p>	<p>1 according to this file folder is in August of '94.</p> <p>2 Tell us what these things are.</p> <p>3 A. These are a mostly complete, but not entirely</p> <p>4 complete photocopy of the outside of the state's</p> <p>5 attorney's file folder on the two cases that were</p> <p>6 charged and pending against Mr. Murray back in '94.</p> <p>7 Q. These are the ones we talked about before, the</p> <p>8 one from October of '94, and the other one from January</p> <p>9 of '93?</p> <p>10 A. Right. The January of '93 is the second sheet</p> <p>11 here that has, you know, 8/26/94 date up there at the</p> <p>12 top. And then the 10/21/94 date on the top left there,</p> <p>13 that's the second case that occurred in October of '94.</p> <p>14 Q. All right. And do you see your writing on the</p> <p>15 second sheet anywhere?</p> <p>16 A. Yes.</p> <p>17 Q. Tell us where your handwriting appears on the</p> <p>18 sheet relating to the '93 case.</p> <p>19 A. Well, it's partially cut off. But there's a</p> <p>20 note that says BF, which refers to Bob Freitag, the drug</p> <p>21 prosecutor. This guy is a witness in Beaman. See me</p> <p>22 before you make any deals. Has my initials, JES.</p> <p>23 Q. Okay.</p> <p>24 A. Also, well, I think that's the only, that's the</p> <p>25 only place you can see. I, I think from my recollection</p> <p style="text-align: right;">393</p>
<p>1 make sure all discovery was turned over.</p> <p>2 Q. Right. Did you have a conversation with</p> <p>3 Ms. Dimmick regarding whether or not the Murray criminal</p> <p>4 records, the records relating to Murray's 1993 and 1994</p> <p>5 cases should be turned over to the defense?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Would you doubt Ms. Dimmick's recollection of</p> <p>8 such a conversation if she recalls it?</p> <p>9 MS. EKL: Objection. Form.</p> <p>10 THE WITNESS: I wouldn't, I wouldn't, you know,</p> <p>11 I don't know what her recollection is. I haven't talked</p> <p>12 to her about it. And I wouldn't have any reason to</p> <p>13 doubt what she might recall as opposed to me, but I</p> <p>14 don't recall those kind of specifics.</p> <p>15 MR. BOWMAN: All right. I think we're at 10,</p> <p>16 right.</p> <p>17 (Exhibit No. 10 marked for identification.)</p> <p>18 BY MR. BOWMAN:</p> <p>19 Q. Tell us what the two pages that I've placed in</p> <p>20 front of you and marked for identification as Exhibit</p> <p>21 10, what those are. They're McLean 003060 and 003061.</p> <p>22 They appear to be copies of file folders relating to the</p> <p>23 prosecution of Mr. Murray on the domestic battery</p> <p>24 matter, the possession of Cannabis matter from October</p> <p>25 of 1994, and another matter relating to Cannabis,</p> <p style="text-align: right;">392</p>	<p>1 having looked at the original file once upon a time and</p> <p>2 based on my practice at the time, that probably my</p> <p>3 handwriting would have been up there somewhere in the</p> <p>4 upper left with, my practice was to put the initials of</p> <p>5 the attorney and circle it, the attorney who was going</p> <p>6 to be assigned to the case. So there probably would</p> <p>7 have been a BF up there somewhere, but I don't see it on</p> <p>8 here.</p> <p>9 Q. Okay. And the reason you'd be doing that is</p> <p>10 because at the time you were the chief of felony trial?</p> <p>11 A. I was. And every felony once it went through</p> <p>12 arraignment came across my desk, and I would assign it.</p> <p>13 Drug cases always went to Bob Freitag.</p> <p>14 Q. Okay.</p> <p>15 MS. EKL: Could we take one second? Just since</p> <p>16 I don't have a copy, I want to look, take a better look</p> <p>17 at this before you ask any further questions.</p> <p>18 MR. BOWMAN: Sure.</p> <p>19 MS. EKL: Thank you. And based on my review on</p> <p>20 this I just want to make a clarification. You</p> <p>21 referenced earlier, Mr. Bowman, the '93 case. And just</p> <p>22 to be clear, both of these cases appear to have '94 case</p> <p>23 numbers. So that the record is clear, I don't know what</p> <p>24 you're referring to when you say the '93 case. One of</p> <p>25 them is 94 CF 658 and one is 94 CF 912. So I just want</p> <p style="text-align: right;">394</p>

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SA 041

<p>1 they're inadmissible, we still would, you know, we turn</p> <p>2 them over.</p> <p>3 Q. Okay.</p> <p>4 A. And we did in this case, the ones we got.</p> <p>5 Q. Okay. But you, you would not have disclosed in</p> <p>6 this case the polygraph report regarding John Murray as</p> <p>7 Brady material, would you?</p> <p>8 A. I doubt that I would have termed it Brady</p> <p>9 material. But, again, at that point I don't think we</p> <p>10 were required to specify, you know, hey, I'm giving you</p> <p>11 Exhibits 900 and 901 and this is Brady material. I</p> <p>12 would have turned it over, and there would have been</p> <p>13 some general --</p> <p>14 Q. Right.</p> <p>15 A. -- notation.</p> <p>16 Q. Right. So you're saying that as part of the</p> <p>17 entire group of documents that you would have turned</p> <p>18 over just in terms of because they related to the</p> <p>19 investigation, you may have turned it over. But in</p> <p>20 terms of designating it or considering it to be Brady</p> <p>21 material, you would not have turned it over for that</p> <p>22 purpose?</p> <p>23 A. No.</p> <p>24 MR. BOWMAN: Objection to the form of the</p> <p>25 question.</p> <p style="text-align: right;">439</p>	<p>1 says?</p> <p>2 A. That's what it says.</p> <p>3 Q. Okay. Now we know from the testimony given at</p> <p>4 the post-conviction proceeding that there may have been</p> <p>5 some purposeful effort to defeat the test. But that's</p> <p>6 certainly not indicated on the face of the report, is</p> <p>7 it?</p> <p>8 A. No.</p> <p>9 Q. Way back at the beginning of your first</p> <p>10 deposition you were asked about the meeting in May of</p> <p>11 1994, where the discussion took place about whether to</p> <p>12 arrest Beaman for the Lockmillier murder. Do you recall</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. And you testified at that time that the</p> <p>16 decision was made by the state's attorneys, by the</p> <p>17 state's attorney with input from the investigators.</p> <p>18 A. Yes.</p> <p>19 Q. Correct. And you were clear to say that the</p> <p>20 investigators didn't make the decision, but they</p> <p>21 provided input; is that fair to say?</p> <p>22 A. Correct.</p> <p>23 Q. Can you remember what type of input you would</p> <p>24 have gotten at that meeting?</p> <p>25 A. I don't have any independent recollection</p> <p style="text-align: right;">441</p>
<p>1 THE WITNESS: Correct, I would not have.</p> <p>2 BY MR. DICIANNI:</p> <p>3 Q. The polygraph report that we've been talking</p> <p>4 about, let's see it's, yeah, Souk 7, just on its face it</p> <p>5 doesn't indicate any wrongdoing or effort to deceit by</p> <p>6 Larbi Murray, does it?</p> <p>7 A. Not, not on the face of it. It says he didn't</p> <p>8 follow directions.</p> <p>9 Q. Yeah. We saw with Bubba, or Stacey Gates where</p> <p>10 they actually said his, his responses were erratic and</p> <p>11 inconsistent and. But in this case all they say is he</p> <p>12 didn't follow specific directions given to him, correct?</p> <p>13 MR. BOWMAN: Objection to the form. It says</p> <p>14 what it says.</p> <p>15 THE WITNESS: That's what it said. He didn't</p> <p>16 follow the directions, and he was dismissed from the --</p> <p>17 BY MR. DICIANNI:</p> <p>18 Q. Okay.</p> <p>19 A. -- lab without completing the test, and the</p> <p>20 examiner didn't offer any opinions.</p> <p>21 Q. Right. And it says after being advised several</p> <p>22 times to follow the directions, the subject informed</p> <p>23 this examiner that he was not able to comply. Not that</p> <p>24 he refused to comply, but that he was not able to</p> <p>25 comply; is that fair to say? I mean is that what it</p> <p style="text-align: right;">440</p>	<p>1 of that meeting really.</p> <p>2 Q. Okay. Do you recall any particular</p> <p>3 investigator lobbying or, or advocating either strongly</p> <p>4 in favor of the arrest, or strongly or in any way not in</p> <p>5 favor of the arrest?</p> <p>6 A. I don't recall anyone lobbying not in favor of</p> <p>7 the arrest.</p> <p>8 Q. Okay. The discussion it sounded like from your</p> <p>9 testimony was a basic discussion about what evidence was</p> <p>10 there and should you go forward; is that fair to say?</p> <p>11 A. I think so. And determining if there was</p> <p>12 anything else that we might need to do --</p> <p>13 Q. Yeah.</p> <p>14 A. -- before we would make a final decision.</p> <p>15 Q. All right. And your decision at that point</p> <p>16 would be both whether there's probable cause for the</p> <p>17 arrest and whether it's feasible to proceed with a</p> <p>18 prosecution, correct?</p> <p>19 A. Yes. At least the way we did business it was a</p> <p>20 two-pronged thing.</p> <p>21 Q. Yeah.</p> <p>22 A. That you wouldn't just charge somebody because</p> <p>23 maybe you could get by with probable cause. That we</p> <p>24 would have to believe that we had a reasonable chance of</p> <p>25 succeeding in the prosecution.</p> <p style="text-align: right;">442</p>

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SA 042

1 Q. Yeah.

2 A. And wouldn't just charge somebody to, in
3 essence, persecute them in a case that we thought was
4 not winnable.

5 Q. I understand. So, actually, the determination
6 if there's some standard that you're applying at that
7 meeting isn't just the minimal probable cause, it's
8 actually a greater standard than that, something higher
9 than that?

10 A. Yes.

11 Q. And would you describe it as a reasonable
12 chance of proving his guilt beyond a reasonable doubt?

13 A. Yes. I think that's the ethical thing for a
14 prosecutor to do, and that's the way we proceeded.

15 Q. Okay. When you consider the question of
16 probable cause, which would be the threshold question in
17 that two-pronged analysis you just discussed, would you
18 consider inadmissible evidence as well?

19 A. I would. Although, it would be, you know,
20 given some, some lesser weight. But, you know, if we
21 had something that was inadmissible that was highly
22 relevant, that possibly would be in there. But, you
23 know, that would obviously go to --

24 Q. Yeah.

25 A. -- the factor of, you know, how much of a

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1 chance do we have to win at trial if we're using a great
2 deal of what might be inadmissible evidence. That would
3 certainly affect --

4 Q. Right.

5 A. -- where we were going with things.

6 Q. I understand that. But as we know, you know,
7 from basic criminal law, police officers can get
8 warrants and get arrest warrants and search warrants and
9 make arrests based on probable cause derived from
10 inadmissible evidence.

11 A. Right.

12 Q. We know that for a fact. Okay. And so it was
13 not, it was not improper in any way to consider
14 inadmissible evidence for purposes of determining is
15 there probable cause?

16 A. Right.

17 Q. Okay. Lots of discussion about whether there
18 was any evidence of violent conduct; violence against a
19 person, violent, was Beaman a violent person. There
20 was, there was a significant amount of testimony that
21 Beaman was a violent person, was there not -- not
22 testimony, evidence?

23 A. That he was violent in terms of his temper and
24 damaged property and that sort of thing. There was not
25 evidence that he had assaulted Jennifer --

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1 Q. Right.

2 A. -- or assaulted other people. Although, other
3 than one physical altercation with his father the day
4 after the murder.

5 Q. Well, okay. I mean that's not something you
6 were required to discount or dismiss, the physical
7 confrontation with his father, correct?

8 A. No. I don't remember it being argued strongly.
9 But, you know, it was, I think kind of brought up as a
10 factor that the only evidence we ever had that he, you
11 know, lost his cool enough to get in a fight with his
12 father was the day after the murder.

13 Q. The timing of it was significant, was it not?

14 A. Yeah, I thought so.

15 Q. And then the violence against a person's home
16 isn't something you're just going to dismiss because
17 once he forces himself inside he doesn't commit violence
18 against the occupant; is that fair to say?

19 A. Right. We considered those door breaking
20 incidents and other incidents to be significant. It
21 took, it took his relationship with Jennifer far above
22 what a normal, you know, relationship of college kids
23 with problems would be. It took it into a whole other
24 realm.

25 Q. It's showing, is it fair to say there was an

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1 escalation? First you have his own violence against
2 himself with the swallowing of the nail polish remover,
3 and then the violence against her home, and then the
4 potential, at least your consideration of violence
5 against her; is that fair to say?

6 A. Yes. The fingernail polish was the first,
7 first in time. I believe the prior fall or winter
8 maybe.

9 Q. Okay. You testified at the first deposition
10 about how you had various conversations with Timothy
11 Freesmeyer about the case. It would seem to me that one
12 of the things you wouldn't discuss with him, well, you
13 wouldn't be guided by anything from a police officer is
14 what's required to be disclosed under a Supreme Court
15 decision; is that fair to say?

16 A. That's fair.

17 Q. I mean I think we as trial lawyers, we don't
18 ask our clients if something is discoverable. Those are
19 determinations we make as lawyers, correct?

20 A. Correct.

21 Q. So would it be, would it be fair to say that
22 your conversations with Freesmeyer would not have
23 included discussions about, Tim, should I disclose this
24 as Brady material?

25 A. I can't imagine that would have ever occurred.

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SA 043

This is Detective Warner with the Normal Police Department. It's the 28th day of August, 1993, at approximately 1500 hours. Present is Detective Daniels, also with the Normal Police Department. This is an interview with Morgan Keefe, in reference to a female found at 410 North Main.

Dave: Can you tell us how you found out, what, why did you go there?

Morgan: She and I went to the movie on Tuesday night and had made plans. We had made plans to go out Wednesday night and I tried to call her all day Wednesday and I just got her answering machine. And um, so I thought maybe she had just left and I went out with some other friends and then I tried to call all day on Thursday, and still, kept getting the answering machine. And then I tried yesterday a couple of times. And I, um, I kind of thought it was weird and I even said to my Dad this morning that I hadn't talked to her since Tuesday and that she and I were going to go out and that she had kind of skipped town or something, I didn't know what had happened. And um I babysat last night and drove past her ~~place and saw her~~ car was there so I assumed she must have been home. So I called her from where I babysat last night and she still, it was still the answering machine so today, I decided that this was really kind of strange so I went to her place and her car was there and so I went up and I knocked on the door and I heard the TV on in there, I think, or some noise was coming from in there. And, um, I opened, I, I opened the door cause it was unlocked and I was yelling her name the whole time then I kind of, I looked into the bedroom and I saw, I saw this thing, and at first I thought it was like a blow up doll or something, it was so gross and I went into her doorway and I saw that it was her and that, um, she had scissors coming out of her chest and the fan was on her head and her body was like twisted back, she didn't have any clothes on and um, her cats were running all over so I shoed them back in the apartment and I ran out and I went to my friend Kelly's place at the ISE house and that is when we called 911. So I was only there for like, 30 seconds.

Dave: OK, let's go back to Tuesday. What were you two doing on Tuesday?

Morgan: We went and saw Sleepless in Seattle.

Dave: Ok. And you were out together with anybody?

Morgan: It was just she and I.

Dave: Just you and, Ok, and you saw that here in town?

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SA 044

Morgan: yeh.

Dave: And then she just got into her car and left.

Morgan: Uh-huh (yes).

Dave: And you, did she say she was going home or did she say she was going...?

Morgan: I don't think she said. I, I think it's just assumed that that was where she was going, I ..

Dave: Does she date anybody?

Morgan: Um, this gets really messy. Um, she went out with this guy named Alan.

Dave: Alan?

Morgan: Alan, Beaman, B E A M A N, and um, I never knew him because this last semester I was at Washington D.C. on a semester program. I was a student at Wesleyan and she was ~~a student here at ISU. And um, he was a student at~~ Wesleyan and I heard people talk about him all the time but I had never met him in my life. People just said he was kind of gross. And um, I finally met him on the 4th of July, and um, Jen didn't like him very much. She went out with him but he was kind of pushy. Kind of to the point where he talked her into going out with her. And if she swayed away from him, then he would threaten suicide. And so, she would, out of guilt, go back out with him. And a couple times, I remember, he would, um, break down the door at her apartment. You, you should call where she rents from because I know they have fixed the lock on her door several times. And um, when I got back from Washington I came and stayed with her over the summer probably four or five times just to hang out and I had some friends ..

Dave: Over here on Main Street?

Morgan: Uh-huh (yes), I had some friends who lived here. And one night I came home and, um, there was a chair up against the door and there was a big beam, and when I opened the door she started screaming and I was like, "Jen, it's just me, it's Ok", and she said "oh, well, Alan broke down the door awhile ago" and that's why she had it all blockaded up and I had only met him once. I didn't know very much about him and um...

Dave: How often would they go out?

Morgan: I have no idea, I really. She went out with me and my other friend, Heidi, who I called earlier, who would come and stay. And um, usually when we came and stayed, he wouldn't go out with us. It would just be the three of us girls would go out and so, like I said, I only met him once and I only heard about him through her.

Dave: How often had they been going out? You say you only heard about them two going out. Had they been going out for awhile, or off and on for awhile, or how would you characterize that?

Morgan: Well, she, she is the type of person that if she was going out with somebody, she wouldn't cheat on him. And he would talk her into going out with him so she didn't really cheat on him, ever.

Dave: So how long...

Morgan: So they were exclusive I guess.

Dave: had they been going out? Week? Month?

Morgan: No, they started going out while I was in Washington. No, they started going out right before I left for Washington.

Dave: What month would that have been? Do you know an approximate date?

Morgan: I left in January, I would say probably, probably in November was when I first started hearing about him. And then I heard rumors that they were engaged and whatever, and I hadn't talked to her for awhile because we've both been so wrapped up in school that I didn't, I really don't know the story, so, this is hearsay. This isn't true, maybe not. Um anyway, um she, he lived with a guy named Mike Swaine, who Jen really liked and over the summer she has been talking about how much she was looking forward to Alan going home so that she could finally spend time with Mike. And Mike is, Mike and Alan were like, opposites, from what Jen says. Alan got high all the time, probably did other stuff, was drunk, was, I didn't like him when I met him, he was really kind of gross, he was greasy. And Mike was really, um, kind of anal retentive. Like, she would talk about how he would like to play Uno all the time and he wouldn't smoke pot or do anything like that because he had a guilty conscious or whatever, and. Anyway when Alan moved home, Mike moved in with her because he didn't have a place to live. So they have been living together for the past, maybe three weeks or so.

Dave: Mike and Alan have been living together?

Morgan: Mike and Jen had, Mike had moved in with Jen.

Dave: Ok.

Morgan: And um, this week he has been gone because Jen said he went home to work, I think. And so she has been living in her apartment by herself. And she likes Mike, she liked Mike, but she kind of found out that he was not her type either because, she is not like a greasy wild women or anything like that, but she smokes pot sometimes and she would get drunk and stuff and then would come home and Mike would make her feel guilty about it, so. And I haven't heard her talk about Alan for probably a couple of weeks. And I haven't asked, just cause I was glad that he was out of the picture.

Dave: When was the last time, when was the last time you saw Mike?

Morgan: I met him once at the beginning of the summer at a play ~~at Wesleyan. It was probably in July.~~

Dave: You said he's, he was gone for three weeks working, er, I'm sorry, gone for a week working.

Morgan: Just this week, yeh.

Dave: How did you hear about that?

Morgan: Jen told me that he was leaving for the week.

Dave: To go where, do you know?

Morgan: I think he is from Elmhurst. I'm really not sure. Up near Chicago somewhere, he was going to come back today.

Tony: What school does uh, Mike go to?

Morgan: Wesleyan, they all go to Wesleyan except, um, I'm here now and Jen transferred here, two years ago or a year ago maybe. I think this is her second year.

Dave: How did Jen get along with Mike, other than she recently figured out?

Morgan: Well Tuesday night when we out I said to her, I said, "Well maybe you don't like him as much as you thought, maybe he is really not your type". And, um, she said "Well no, I do like him", and I said "well, what are you going to do? Are you going stay with him, or you know,

does he still like you?" and I said "it's hard to imagine that if you guys are so different then he would feel like you, you know, if he is making you feel guilty about doing whatever you like to do", and she said she didn't, she didn't really have an answer. But from what I assumed, she still liked him and she wasn't..

Dave: Was she going to ask him to move out or anything, or..?

Morgan: I don't think, I think he was going to live with her until Wesleyan started.

Dave: Now when you say living together, do you mean sharing the apartment or living together with a sexual relationship?

Morgan: Probably both, in fact both. Because she said ...

Dave: Did they stay in one bed or two beds?

Morgan: I don't know, I really don't know. In fact I hadn't been to her apartment since, well I moved down her last Saturday, and I haven't been to her apartment for ~~probably three weeks. So, I really don't know what the~~ living situation was like. I know she said that they had sex recently when I talked to her on Tuesday so I know that they were sleeping together.

Dave: Ok. Before Tuesday, how often did you usually see Jennifer?

Morgan: Ummm. Well, over the summer I saw her, like I said, maybe four or five times. And then, since I got here, I got here on Saturday, we went out Saturday night, and then we went to the movie Tuesday night, so that was it.

Dave: So Saturday and Tuesday?

Morgan: Uh-huhm (yes).

Dave: Do you know someone that would uh, she would talk to more often than you that maybe we could talk to, maybe a closer friend? Is there anybody?

Morgan: She talked to my friend, Heidi, on Tuesday night.

Dave: Heidi who?

Morgan: Heidi Steinman. I just called her a little while ago, she lives in Highland Indiana.

Dave: Ok, is there anybody in town that she would be hanging out with that would know what is going on with boyfriends

Dave: I'm sorry, what did you say?

Morgan: Mike is.

Dave: In what?

Morgan: Acacia.

Dave: Ok., a fraternity?

Morgan: I don't know if Alan is or not, I don't think so.

Dave: Um, you were attempting to contact Jennifer for how long now? Since Tuesday or Wednesday?

Morgan: Yeh, Wednesday. Well she and I had made plans to go out, I had to, um, I work for Marc Center and I was gonna do some respite care for a girl, a handicapped girl last night, and so she and I had made plans to go out Wednesday, and Thursday, and Saturday.

Dave: To do what? What time Wednesday was she supposed to get together with you?

Morgan: I don't know, I think, I tried to, I tried to call her, um, probably three or four times and then, um, my friend Mat came over and Mat and I were waiting on her and she never called and so we just decided to go ahead and go out.

Dave: When did you first try calling her on Wednesday? Do you remember? Right when you got up, or later in the day?

Morgan: Maybe at 3:30 because I had class...

Dave: In the afternoon?

Morgan: from 12:00 until 3:00, 12 until 2:00.

Dave: So the first time was Wednesday at 3:30, about?

Morgan: Yeh.

Dave: And then did, how often did you try after that? Did you try again?

Morgan: Yeh, I tried again around 5:00 and I probably tried again around 6:00 and then my friend Mat came over at about 8:00 and I tried three or four times. Every time I got the machine then, I just hung up.

Dave: Eight, how many times after 8:00 did you try?

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Morgan: Maybe three times? And then I tried to call her when I was babysitting at like, 11:00 last night, and I, then I called her this morning at about, noon..

Dave: This morning, about noon?

Morgan: Uh-huh (Yes), and I left a message that said, "I am worried about you, give me a call".

Dave: And then uh, you decided to go over there about what time?

Morgan: Well, I had a bunch of errands to run, it was about 2:00, maybe 1:30 when I left my apartment, and um, I just decided I would drive past her place first and so I drove by and I saw her car still there so I parked my car and um, I went up and I opened the door and one of her cats just came flying out, so I chased down and got the cat and threw him in.

Dave: When you walked in uh, looking around, did you touch anything?

Morgan: Uh-uh (no), I touched the doorknob and I might have touched the wall. I think that is it.

Dave: You didn't have to move anything around to, to get throughout the apartment?

Morgan: Uh-uh (No), the door opened really easily.

Dave: And then you uh, saw Jen and the you immediately turned around and left, you didn't..?

Morgan: Well, I saw Jen and I didn't believe it was her and so I, I was like "Jen, Jen" and I kind of went like this and I, I looked and I noticed her arms were really purple and her back was all icky and I noticed she didn't have any clothes on and I didn't look around to see for clothes or anything. I, I thought I was going to throw up and so I ran out and then I drove straight to my friend Kelly's.

Dave: Um, she was laying on her back then?

Morgan: Yeh, and her knees were kind of, were, her, her calves were up underneath her and her legs were kind of spread. I, I am not a cop or anything but it looked like she had been raped too just because her clothes were off and she was kind of in the ...

Dave: You said her arms were blue?

AL POLICE SUPPLEMENTAL CASE R.

Page of Case #
B C93-4033

Offense Supervisory Correction of #2 or #3
Murder

Victim Name (or Business Name) Responsible Party
Jennifer Lockmiller

Perry stated that Alan arrived at his house and wanted Perry to take him back to Jennifer's apartment and get his keys from Michael because that was who Jennifer was with. Perry stated that he drove Alan back to the apartment but made Alan stay in the car while he went to Jennifer's apartment and got his keys. Perry stated that he saw Jennifer and Michael Swaine in the apartment and both were very upset. Perry did get the keys and Alan left in his car. Perry stated that Michael started walking home and Alan picked him up. Perry stated that he followed them back to IWU to make sure there was no trouble. Perry also stated that Jennifer had told him during July that she was afraid of Alan and that Alan had told her he was going to commit suicide and homicide. See transcript of taped conversation with Kris.

On 09-02-93 RO interviewed Kris Perry again to clarify some information. Perry stated that Jennifer told him about Alan saying homicide and suicide but he had heard Alan saying he could not live without Jennifer. See transcript of taped interview.

On 09-02-93 RO also interviewed Richard House. House stated that the call to Jennifer's house was from a friend he had down that Michael was going to take back to Bolingbrook on his way to Elmhurst. See transcript of taped interview.

On 09-02-93 RO also spoke with Michael Bowen (618-536-8345). Bowen stated that the last time he saw Jennifer was around August 10th 1993 in Decatur. Bowen stated he doesn't recall Jennifer saying anything about Alan when he saw her last in Decatur. Bowen also stated that Jennifer had told him Alan had pushed her before.

RO also spoke with Samantha Glaudel on 09-02-93. Glaudel (618-536-8336) stated that the last time she spoke with Jennifer Lockmiller was around July 3, 1993 but does not remember the conversation. Glaudel also stated the last time she had contact with Alan was the last week of school around May 18, 1993.

On 09-02-93 RO also spoke with Ross Minion who stated he had a very hectic schedule and had to go to work. RO left word for Minion to contact myself on 09-03-93. On 09-02-93 RO and Detective Daniels interviewed John Murray at Normal Police Dept in the center interview room. Murray was asked if he minded the interview was taped to which he agreed. Detective Daniels started the conversation with Murray. Murray stated his address was 1408 Main #1 Bloomington IL 61761 (#828-0718). During the initial conversation Murray stated that he last talked to Jennifer one or two weeks ago. Murray stated that he was a former boyfriend of Jennifer's but stated he knew she had been dating a guy that he knew for about a year by the name of Alan Beamon. Murray

Officer's Name & ID#: Date & Time Report Typed Supervisor's Name & ID#:
R. Hospelhorn 491 2-September-93 1845

Solvability Referred to: Property Recovered: Value:

Assigned Investigator: Status: Booking #: 313
D. CHURCHILL 602 Active Suspended Fail to File Complaint
Cleared Unfounded Exceptionally Cleared

C01218

AB00442B

SA 051

Rob: You said earlier that you had spoke to John last night, what did you speak about last night?

Deb: Well, I was over there all yesterday evening, we talked about we talked about Jen dying and um I asked him you know about coming here and he told me about that that he was asked alot of questions and stuff like that.

Rob: Ok, um, as far as John, he had mentioned yesterday that he had recently gone back home.

Deb: Um huh.

Rob: Do you know when he left to go back home?

Deb: I couldn't even tell you the dates he was gone. I mean maybe if I had my calendar I could try to figure it out but I can't even remember it was I can't even remember the date he came back which was a few days ago.

Rob: Ok, today would be Friday the 3rd which is right here, going by that would you be able to tell?

Deb: I couldn't even give you the dates.

Rob: Do you know approximately how long he was gone?

Deb: He was gone between five to seven days, I think.

Rob: Did he call you or come back during that time that he was gone.

Deb: Yeh, well he didn't come back, I talked to him. I talk to him all the time.

Rob: Ok, on the phone?

Deb: Yeh, so maybe from a phone bill if you really need to know.

Rob: And did, had he left before that and come back at all. Did he

Deb: He goes home alot.

Rob: Ok.

Deb: Yea.

Rob: But you are not sure of the date?

Deb: When he was gone? No I can't remember the date.

Rob: Did John ever tell you when the last time he had seen Alan or Jennifer was?

Deb: Well, we were talking about it last night and I think that last time when I saw her and she was driving and I don't think he was there and he didn't remember that time so he must have been and the time before that was um yeh, I was moving out of the apartment and that day she stopped by in the parking lot and we saw her. She just stopped by and talked for a little bit, that was the last time.

Rob: You say we saw her, who's describe we?

Deb: John and me and my Dad was there.

Witnesses:

MITCHELL OLSON

Examination by Mr. Souk..... 3
Examination by Grand Jury..... 18

CAROL JEAN BEAMAN

Examination by Mr. Souk..... 23
Examination by Grand Jury..... 91

BARRY BEAMAN

Examination by Mr. Souk.....100
Examination by Grand Jury.....121

COUNTY DEFS. INI. R26 002785

C01326

C 700

SA 053

Witnesses:

July 7, 1994

TIMOTHY JOHN FREEMEYER

Examination by Mr. Souk..... 126
Examination by Grand Jury..... 259

July 14, 1994

TIMOTHY JOHN FREESMEYER

Examination by Mr. Souk..... 280
Examination by Grand Jury..... 287
Recalled, Examination by Mr. Souk..... 420
Examination by Grand Jury..... 423

DENNIS CLARK

Examination by Mr. Souk..... 298
Examination by Grand Jury..... 309

CLIFFORD GRAY

Examination by Mr. Souk..... 312
Examination by Grand Jury..... 327

ALAN W. BEAMAN

Examination by Mr. Souk..... 330
Examination by Grand Jury..... 413

COUNTY DEFS. INI. R26 002786

-i-

C01327

680

C

701

SA 054

IF CALL BE LS
BC AMA FILE NORMALILLINDIS IS BEING PROCESSED.
REMINDER WARNING: FILTER FUNCTION IS ENABLED.

8/2/93
Orig. Calls

To:

BLOCK NO: 6942
EX ID:AA STRUCTURE CODE:00020C CALL CODE:001C SENSOR TYPE:036C
ENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
ATE:30802C TIMING IND:10000C STUDY IND:0000000C ANSWER:0C
ERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C ORIG NPA:309C
RIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
ERM NUMBER:8280718C CONNECT TIME:2059209C ELAPSED TIME:000000321C
ATS INDICATOR:0C WATS BAND OR MBI:001C

828-0718 at 20:59 hrs
Larbi Nwanya
1408 N. Main - Apt 1, Ben
32.1 sec

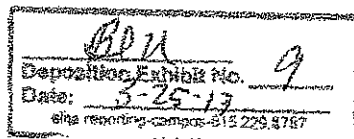
BLOCK NO: 6895
EX ID:AA STRUCTURE CODE:00625C CALL CODE:110C SENSOR TYPE:036C
ENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
ATE:30802C TIMING IND:00000C STUDY IND:0000000C ANSWER:0C
ERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C ORIG NPA:309C
RIG NUMBER:4529913C OVERSEAS IND:0C TERM NPA:00217C
ERM NUMBER:4232610C ANSWER TIME:2100343C ELAPSED TIME:000007212C
C/INC PREFIX:02891C CC DATE:30802C CC TIME:2100233C
LAPSED CC:000007382C IC/INC EVENT STATUS:010C TRUNK GROUP NUMBER:00087C
DUTING INDICATOR:0C DIALING INDICATOR:1C ANI INDICATOR:1C

217-423-2610 at 21:00 hrs
Arma L. Smith
241 N. Front, Ramsey, IL
7 min, 27.2 sec

BLOCK NO: 7355
EX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
ENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
ATE:30802C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
RIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
ERM NUMBER:8281503C CONNECT TIME:2230072C ELAPSED TIME:000001096C
ATS BAND OR MBI:001C

828-1503 at 22:50 hrs
Juvia A. Markay
1 min, 09.6 sec

END OF FILE: NORMALILLINDIS



Terminating Calls
m 8-2-93

C02188

MCC001876

C 1871

8/4
 >>>BLOCK 2698
 *HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
 DATE:30804C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8280718C CONNECT TIME:1258132C ELAPSED TIME:000000047C
 WATS BAND OR MBI:001C

Originating from 152-9912
 on 8/4/93

To 828-0718 at 12:58p.
 4.7 sec
 Larbi Murray

>>>BLOCK NO: 6603
 *HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
 DATE:30804C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8294300C CONNECT TIME:2150599C ELAPSED TIME:000000094C
 WATS BAND OR MBI:001C

To: 829-4300 at 9:50p
 Michael Swain (2150 hrs)
 9.4 sec

>>>BLOCK NO: 6613
 *HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309432C
 DATE:30804C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8294300C CONNECT TIME:2153180C ELAPSED TIME:000000040C
 WATS BAND OR MBI:001C

To: 829-4300 at 2153
 Michael Swain
 4.0 seconds

602189
 >>>BLOCK NO: 6634
 *HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
 DATE:30804C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8284737C CONNECT TIME:2154584C ELAPSED TIME:000003015C
 WATS BAND OR MBI:001C

To: 828-4737 at 2154
 Donald Jones
 1506 N. Roosevelt - NW
 3min, 01.5 sec

>>>BC AMA FIL

MCC001879

C 1874

1:10-cv-01019-1 BGC # 111-43 Page 3 of 9

125617

6

JUMP CALL IN-TRAILS
 >>>BC AMA ...E NORMAL ILLINOIS IS BEING PROCESSED.

>>>REMINDER WARNING: FILTER FUNCTION IS ENABLED.

8/7/93

>>>BLOCK NO: 2915

*HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
 DATE:30807C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8280718C CONNECT TIME:1929457C ELAPSED TIME:000000062C
 WATS BAND OR MBI:001C

To: 828-0718 at 19:29
 6.2 sec.
 Larbi Murray

>>>BLOCK NO: 2920

*HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
 DATE:30807C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8294300C CONNECT TIME:1931149C ELAPSED TIME:000000026C
 WATS BAND OR MBI:001C

To: 829-4300 at 1931
 2.6 sec
 Michael Swain

>>>BLOCK NO: 2924

*HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
 DATE:30807C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8297806C CONNECT TIME:1932208C ELAPSED TIME:000000163C
 WATS BAND OR MBI:001C

To: 829-7806 at 1932
 16.3 sec
 Jennifer Sieg
 RR1 - Box 103
 Shirley
 Serv. Add.
 1406 N. East-ast
 Bern

>>>BLOCK NO: 2927

*HEX ID:AA STRUCTURE CODE:00625C CALL CODE:110C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
 DATE:00000C TIMING IND:00000C STUDY IND:0000000C ANSWER:1C
 SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:0C TERM NPA:00608C
 TERM NUMBER:7368775C ANSWER TIME:0000000C ELAPSED TIME:000000000C
 IC/INC PREFIX:02881C CC DATE:30807C CC TIME:1933192C
 ELAPSED CC:000000271C IC/INC EVENT STATUS:007C TRUNK GROUP NUMBER:00037C
 ROUTING INDICATOR:0C DIALING INDICATOR:1C ANI INDICATOR:1C

To 608-756-8775 at
 19:33:19.2
 No Answer
 AT&T Trunk
 (Greenview, WI)
 WI Bill Selg

602190

MCC001883

SA 057

1335

2185

1878

1:10-cv-01019-JH BGC # 111-43

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125617

>>BLOCK NO: 3154
 HEX ID:AA STRUCTURE CODE:00653C CALL CODE:119C SENSOR TYPE:0
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452
 DATE:30807C TIMING IND:00000C STUDY IND:0000000C ANSWER:0C
 SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C OVER
 TERM NPA:00309C TERM NUMBER:4529913C ANSWER TIME:2029497C
 ELAPSED TIME:000020138C IC/INC PREFIX:02882C CC DATE:30807C
 CC TIME:2029380C ELAPSED CC:000020255C IC/INC EVENT STATUS:01
 TRUNK GROUP NUMBER:00087C ROUTING INDICATOR:0C

>>BLOCK NO: 3462
 HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:0
 SENSOR ID:0309432C REC OFFICE TYPE:036C REC OFFICE ID:0309452
 DATE:30807C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8224300C CONNECT TIME:2301140C ELAPSED TIME:00000
 WATS BAND OR MBI:001C

>>BLOCK NO: 3467
 HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:0
 SENSOR ID:0309432C REC OFFICE TYPE:036C REC OFFICE ID:0309452
 DATE:30807C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8280718C CONNECT TIME:2304167C ELAPSED TIME:00000
 WATS BAND OR MBI:001C

>>BLOCK NO: 3507
 HEX ID:AA STRUCTURE CODE:00653C CALL CODE:119C SENSOR TYPE:0
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309432
 DATE:30807C TIMING IND:00000C STUDY IND:0000000C ANSWER:0C
 SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C OVER
 TERM NPA:00309C TERM NUMBER:4529913C ANSWER TIME:2333207C
 ELAPSED TIME:000002412C IC/INC PREFIX:02882C CC DATE:30807C
 CC TIME:2333080C ELAPSED CC:000002540C IC/INC EVENT STATUS:01
 TRUNK GROUP NUMBER:00087C ROUTING INDICATOR:0C

>>END OF FILE: NORMALILLINOIS

9.12
 15:51
 5661.81.6
 9.11
 1235.5331
 11
 FROM

C02191

MCC001885

C 1880

01885

1939

>>>BLK NO: 3154

*HEX ID:AA STRUCTURE CODE:00653C CALL CODE:119C SENSOR TYPE:036C
SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
DATE:30807C TIMING IND:00000C STUDY IND:0000000C ANSWER:0C
SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C OVERSEAS IND:1C
TERM NPA:00309C TERM NUMBER:4529913C ANSWER TIME:2029497C
ELAPSED TIME:000020138C IC/INC PREFIX:02882C CC DATE:30807C
CC TIME:2029380C ELAPSED CC:000020255C IC/INC EVENT STATUS:010C
TRUNK GROUP NUMBER:00087C ROUTING INDICATOR:0C

8-1

To 452-9913 at 2

From AT&T

20 min, 13.8 sec

>>>BLOCK NO: 3462

*HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
DATE:30807C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
TERM NUMBER:8274300C CONNECT TIME:2301140C ELAPSED TIME:000000113C
WATS BAND OR MBI:001C

To: 829-4300 at

11.3 sec

Michael Swain

>>>BLOCK NO: 3467

*HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C

SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
DATE:30807C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
TERM NUMBER:8280718C CONNECT TIME:2304167C ELAPSED TIME:000000073C
WATS BAND OR MBI:001C

To: 828-0718 at 23

7.3 sec

Garbi Murray

>>BLOCK NO: 3507

HEX ID:AA STRUCTURE CODE:00653C CALL CODE:119C SENSOR TYPE:036C
SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
DATE:30807C TIMING IND:00000C STUDY IND:0000000C ANSWER:0C
SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C OVERSEAS IND:1C
TERM NPA:00309C TERM NUMBER:4529913C ANSWER TIME:2333207C
ELAPSED TIME:000002412C IC/INC PREFIX:02882C CC DATE:30807C
CC TIME:2333080C ELAPSED CC:000002540C IC/INC EVENT STATUS:010C
TRUNK GROUP NUMBER:00087C ROUTING INDICATOR:0C

To: 452-9913 at

2333

From: AT&T

2 min, 41.2 sec

1:10-cv-01019-JL
JGC # 11-43 Page 6 of 9

125617

C02192

1881

MCC001886

SA 059

SEND OF FILE: NORMALILLINOIS

1340

8/8

>>>BLOCK NO: 1233
 *HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
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 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8294300C CONNECT TIME:1502145C ELAPSED TIME:000014347C
 WATS BAND OR MBI:001C

To: 829-4300 at 1500
 Michael Swain
 14 min, 34.7 sec

>>>BLOCK NO: 1532
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 DATE:00000C TIMING IND:00000C STUDY IND:0000000C ANSWER:1C
 SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C OVERSEAS IND:1C
 TERM NPA:00309C TERM NUMBER:4529913C ANSWER TIME:0000000C
 ELAPSED TIME:000000000C IC/INC PREFIX:02882C CC DATE:30808C
 CC TIME:1643487C ELAPSED CC:000000166C IC/INC EVENT STATUS:001C
 TRUNK GROUP NUMBER:00087C ROUTING INDICATOR:0C

To: 452-9913 at 16:43
 No answer
 from AT+T Trunk

>>>BLOCK NO: 2060
 *HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309432C
 DATE:30808C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8280718C CONNECT TIME:1915499C ELAPSED TIME:000000042C
 WATS BAND OR MBI:001C

To: 828-0718 at 19:15
 Larbi Murray
 4.2 sec

>>>BLOCK NO: 2966
 *HEX ID:AA STRUCTURE CODE:00653C CALL CODE:119C SENSOR TYPE:036C
 SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
 DATE:30809C TIMING IND:00000C STUDY IND:0000000C ANSWER:0C
 SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C OVERSEAS IND:1C
 TERM NPA:00309C TERM NUMBER:4529913C ANSWER TIME:0016480C
 ELAPSED TIME:000063090C IC/INC PREFIX:02882C CC DATE:30809C
 CC TIME:0016372C ELAPSED CC:000063197C IC/INC EVENT STATUS:010C
 TRUNK GROUP NUMBER:00087C ROUTING INDICATOR:0C

To: 452-9913 at 1648
 AT+T Trunk
 63 min, 09.0 sec.

C02193

MCC001887

END OF FILE: NORMALILLINOIS

1.7

C 1885

C 1885

8/9/93 -1

BLOCK NO: 4088
EX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
ATE:30809C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
RIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
ERM NUMBER:8280712C CONNECT TIME:1519339C ELAPSED TIME:000000037C
ITS BAND OR MBI:001C

To: 828-0718 at 1519 hr
3.7 sec
Larbi Murray

BLOCK NO: 5364
EX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
ATE:30809C ANSWER:0C SERVICE FEATURE:000C ORIG NPA:309C
RIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
ERM NUMBER:8294300C CONNECT TIME:1752415C ELAPSED TIME:000000252C
ITS BAND OR MBI:001C

To: 829-4300 at 1752 hr
25.2 sec
Michael Swaine

BLOCK NO: 5694
EX ID:AA STRUCTURE CODE:00653C CALL CODE:119C SENSOR TYPE:036C
SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
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SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C OVERSEAS IND:1C
ERM NPA:00309C TERM NUMBER:4529913C ANSWER TIME:0000000C
ELAPSED TIME:000000000C IC/INC PREFIX:02882C CC DATE:30809C
TIME:1847465C ELAPSED CC:000000193C IC/INC EVENT STATUS:001C
LINK GROUP NUMBER:00087C ROUTING INDICATOR:0C

To: 452-9913 at 1847 hr
No Answer

AT+T

BLOCK NO: 6564
EX ID:AA STRUCTURE CODE:00653C CALL CODE:119C SENSOR TYPE:036C
SENSOR ID:0309452C REC OFFICE TYPE:036C REC OFFICE ID:0309452C
ATE:00000C TIMING IND:00000C STUDY IND:0000000C ANSWER:1C
SERVICE OBSERVED:0C OPER ACTION:0C SERVICE FEATURE:000C OVERSEAS IND:1C
ERM NPA:00309C TERM NUMBER:4529913C ANSWER TIME:0000000C
ELAPSED TIME:000000000C IC/INC PREFIX:02882C CC DATE:30809C
TIME:2127435C ELAPSED CC:000000221C IC/INC EVENT STATUS:001C
LINK GROUP NUMBER:00087C ROUTING INDICATOR:0C

To: 452-9913 at 2127 hr
No Answer

C02194

MCC001890

8/5/23 -1

>>BLOCK NO: 129

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 TERM NUMBER:8294300C CONNECT TIME:0723018C ELAPSED TIME:000000363C
 WATS BAND OR MBI:001C

To: 829-4300 at 0723

Michael Suzanne

36.3 Sec.

>>BLOCK NO: 601

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 WATS BAND OR MBI:001C

To: 829-4300 at 0900

34.2 sec

Michael Suzanne

>>BLOCK NO: 2104

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 LAPSED TIME:000011348C IC/INC PREFIX:02882C CC DATE:30810C
 C TIME:1137511C ELAPSED CC:000011438C IC/INC EVENT STATUS:010C
 RUNK GROUP NUMBER:00087C ROUTING INDICATOR:0C

To: Lockmiller at 1138
 452-9913

11 min 34.8 sec

from AT&T trunk

>>BLOCK NO: 2216

HEX ID:AA STRUCTURE CODE:00502C CALL CODE:001C SENSOR TYPE:036C
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 ORIG NUMBER:4529913C OVERSEAS IND:1C TERM NPA:00309C
 TERM NUMBER:8280718C CONNECT TIME:1204034C ELAPSED TIME:000000036C
 WATS BAND OR MBI:001C

To: 828-0718 at 12:04

3.6 sec

Larbi Murray

CO2195

CO21892

346

01867

1887

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1 amount went up?
2 A. Well, the juvenile -- the juvenile
3 assignment went to my partner. I negotiated
4 that switch of contracts to my partner so that
5 we would have a little bit more cost coverage
6 for our firm, our small firm.

7 So she caught the juvenile assignment
8 and I caught a felony position from the public
9 defender at that time.

10 Q. I see.

11 A. And so the amount of the contract was
12 roughly the same. There might have been some
13 annual increases. I can't recall. But I was
14 handling only adult felony cases after that
15 switch.

16 Q. Switch. And that switch came about
17 three years into it to the best of your
18 recollection?

19 A. Let's see. If I started in '77, it
20 would have probably been in the neighborhood of
21 mid 2000 -- mid 1990 -- 1980. History is so
22 mind boggling.

23 Q. What were the -- what was the rest of
24 your practice?

29

1 A. Private criminal, domestic relations,
2 personal injury, and then a variety of other
3 general practice and client needs that came in
4 the door.

5 Q. And did your firm have an office here
6 in Bloomington?

7 A. Yes.

8 Q. What was the name of the firm?

9 A. When it became -- it started out as my
10 name only and my partner came along as an
11 associate in late '80, early '81, somewhere in
12 there.

13 And then it -- after one year of it
14 remaining my firm, it became Reynard & Robb,
15 R-O-B-B.

16 Q. And then in 1987, you became the
17 state's attorney at McLean County?

18 A. Correct.

19 Q. Tell me how that came about.

20 A. I applied for a vacancy in the position
21 created by my predecessor's ascendancy to the
22 bench and I was selected by the county board
23 chairman.

24 Q. And then so is it accurate that you

30

1 assumed the position initially by appointment
2 and then you had to run for election when the --

3 A. Correct.

4 Q. -- term that you completed expired?

5 A. Correct.

6 Q. Who is the fellow who became a judge?

7 A. Ronald Dozier, D-O-Z-I-E-R.

8 Q. When you ran, what year did you run in?

9 A. The first year that I ran for state's
10 attorney was prior to this particular time. You
11 didn't --

12 Q. We missed that. Okay.

13 A. That got glossed over. That was the
14 ignominious loss of 1980. I ran against
15 Mr. Dozier in 1980. He was reelected for his
16 first reelection.

17 Q. Was it a partisan election?

18 A. That was a primary election. It is a
19 partisan position, but it was a primary contest.

20 Q. Do I have it about right that to be
21 anything in McLean County, you have got to be a
22 republican?

23 A. You got it about right.

24 Q. So whoever wins the primary as a

31

1 practical matter is in all likelihood going to
2 get the office?

3 A. It was in 1980, yes, and it is in most
4 elections. There are some general election
5 contests but they're relatively rare.

6 Q. Is there some kind of a slating
7 committee or anything like that?

8 A. No.

9 Q. In the local republican party?

10 A. No.

11 Q. Pretty free access?

12 A. It can -- yes, it was and is.

13 Q. So you ran again in 1988 and with the
14 benefits of incumbency were elected?

15 A. That was it, along with nobody opposing
16 me. That helped too.

17 Q. In 2002, did you make a decision not to
18 run for state's attorney again and instead to
19 run for judge?

20 A. I made the decision to run for judge,
21 but 2002 was mid term state's attorney and so I
22 had not decided not to run for state's attorney
23 but it would be dependent upon whether or not I
24 lost the judgeship.

32

8 (Pages 29 to 32)

1 Q. So it was an eight-year term?
 2 A. No. The election cycle for state's
 3 attorney was '88, '92, '96, 2000, 2004.
 4 Q. Got it.
 5 A. 2002 was a newly created judgeship and
 6 so it went with a different election cycle.
 7 Q. Got you.
 8 A. Just because of the date of creation.
 9 Q. Got you. Thank you.
 10 All right. It looks like you had a
 11 little -- where is St. Joseph's College?
 12 A. Rensselaer, Indiana.
 13 Q. And it looks like you had a little gap
 14 between college and law school?
 15 A. Not really. I did have a gap between
 16 law school and law school.
 17 Q. Okay.
 18 A. I was out for about a year and a half.
 19 I was in the evening division, a four-year
 20 program. Upon completion of two and a half, I
 21 was out for a year and a half and then completed
 22 the last year and a half.
 23 Q. So that would make you 29 at the time
 24 of your law school graduation?

33

1 A. Well, let's see. 2004, mid -- mid --
 2 would have to be February so 28, going on 28,
 3 yeah. I think that's right. Maybe I was 27.
 4 My math is suffering here.
 5 Q. Now, how did you learn -- well,
 6 actually before we get there, can you tell me
 7 what your -- under your administration, and I'm
 8 really interested in knowing in this relevant
 9 period of time between August of 1993 and the
 10 completion of the Beaman trial in the first
 11 half of '95, in that two-year period, what was
 12 the -- can you give me the organizational chart
 13 in the state's attorney's office here in McLean
 14 County?
 15 A. There was a first assistant state's
 16 attorney, a felony chief assistant state's
 17 attorney, several, and I'm thinking it would
 18 have been three, assistant state's attorneys
 19 designated as general felony assistant state's
 20 attorneys, one drug prosecutor, two misdemeanor
 21 prosecutors.
 22 Q. And who did the misdemeanor prosecutors
 23 report to, directly to their first assistant or
 24 was there a chief over municipal -- I'm sorry,

34

1 over misdemeanor?
 2 A. The first assistant was the immediate
 3 supervisor, did the evaluations of the nonfelony
 4 assistants. And the felony chief, of course,
 5 did the supervisory evaluation responsibilities
 6 for the felony assistants.
 7 Q. Did the felony -- did the chief report
 8 to the first assistant or did both report
 9 directly to you?
 10 A. Both.
 11 Q. Okay.
 12 A. Report both to the first assistant and
 13 myself.
 14 Q. Okay. But in the organizational chart,
 15 the first assistant would stand between you and
 16 the felony chief if the felony chief reported to
 17 the first assistant?
 18 A. If reality was diagrammatic, your
 19 description is right. Reality isn't
 20 diagrammatic because he reported to both of us.
 21 Q. So you've got a first assistant.
 22 Who -- did that -- did the person in
 23 that position change? And again --
 24 A. During that relevant period?

35

1 Q. During that relevant period. And just
 2 to be clear for the record, we are going to
 3 define the relevant period for purposes of the
 4 next few questions as the period from August of
 5 1993 until June of 1995.
 6 A. Fair enough. No change.
 7 Q. And who was the individual?
 8 A. Teena, T-E-E-N-A, Griffin.
 9 Q. Okay. And the felony chief was
 10 Mr. Souk?
 11 A. Correct.
 12 Q. And then who were the three general
 13 felony assistants in the relevant time period?
 14 A. There is --
 15 Q. Some change?
 16 A. There is a little bit of foggy memory
 17 at work. But Stephanie Wong, W-O-N-G, Jeffrey,
 18 Horve, H-O-R-V-E. He most likely during that
 19 time period would have been entirely assigned to
 20 the drug prosecutor, but he was considered --
 21 that position was considered a felony division
 22 position.
 23 Q. The drug prosecutor was Mr. Frietag?
 24 A. During that period of time, Frietag

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9 (Pages 33 to 36)

1 it on there and it immediately appears, or does it take some
2 time to develop?

3 A It really depends on the surface and the quality of
4 the prints. Sometimes it develops quickly, other times it
5 takes longer to develop a print, and then sometimes there are
6 no prints at all that are developed.

7 Q And obviously you have some training in when a print
8 or a portion of a print appears, to know when that is a
9 sufficient amount to be what you refer to as a latent print of
10 value?

11 A That's correct. What I do is look for ridge detail.
12 That is the patterns that you can see on your fingers. That's
13 what the latent print examiner needs to make a comparison. If
14 I develop a print and I see ridge detail in it, I will collect
15 it to allow him to evaluate it. If I see smudges, or
16 sometimes what we call finger marks, where there's really no
17 ridge detail but maybe just the shape of a finger, that's
18 really of no use to a latent print examiner, so I won't
19 collect that.

20 Q Obviously, at a crime scene like this, fingerprints
21 is something you're interested in, right?

22 A Yes.

23 Q Could you tell us where in the apartment that day
24 you dusted or processed for fingerprints?

1 A Yes. Basically beginning at the front door of the
2 apartment.

3 Q Would it be helpful if you used the diagram for
4 that?

5 A That might be easier to point it out.

6 MR. SOUK: May he step down?

7 THE COURT: You may. I think he could stand on this side
8 and the court reporter would likely still be able to hear him.

9 A Starting here at the entrance to the apartment, the
10 door frame, the door, door knob, see if anybody may have
11 touched it on the way in. Coming into the hallway, the door
12 frames around the entrance to the bedroom, also into the
13 bathroom, inside the bathroom, the sink, the toilet seat,
14 toilet lid, flush handles, those areas. Coming into the
15 kitchen, the trash can, the cabinet door that was standing
16 open. Also coming into the bedroom, itself, all the items,
17 the desk, the chest of drawers, the frame along the bed, this
18 chest of drawers, the frame along this bed, anything that was
19 within reach inside that room I tried to fingerprint to see if
20 there was any possibility someone might have touched it. The
21 fan, being a metal surface, I attempted fingerprinting on
22 that, and also this -- this desk that's located on the wall.
23 The edge of this closet door, if you notice from the
24 photographs, it was open, and that was another area that I

1 attempted to get prints from.

2 Q Fine. If you resume your seat please. Is this a
3 fairly lengthy process, or about how long does it take you to
4 do the fingerprinting at a scene like this?

5 A The actual fingerprinting, itself, took probably
6 close to an hour to complete.

7 Q That day with all the fingerprint processing that
8 you did at the scene, could you tell us how many latent prints
9 of value that you discovered and preserved for the fingerprint
10 examiner at the lab?

11 A Yes, on that particular day there were no
12 identifiable prints developed. I did have some smudges and
13 things like that, but no ridge detail that was good enough to
14 submit to the fingerprint examiner. Another two other places
15 that I didn't mention, both telephones. There was some
16 smudges on those, but there was no clear ridge detail.

17 Q So out of the entire apartment, everything that you
18 did, an hour of processing, you had no latent prints of value?

19 A That's correct.

20 Q Did you -- well, if you look, you already indicated
21 that you were at the autopsy the following day, and I asked
22 you if you recovered some items of evidence at the autopsy.

23 A Yes, I did.

24 Q Is it basically part of your duties as the crime

1 in time?

2 A Yes, sir, I was. The crime scene technician was
3 just finishing up his work at the apartment. He asked if
4 there was anything that I would like to take as evidence
5 which he was not going to take.

6 Q And did you gather some items at that point?

7 A Yes, I did.

8 Q What items did you gather?

9 A I gathered the word processor off that table, some
10 disks I found in the bedroom desk and drawers, and a box of
11 letters which I believe were found under one of the two
12 beds.

13 Q Did you, at the station, review the letters that
14 you had found?

15 A Yes, sir, I did.

16 Q Did you find some letters which appeared as if
17 might have been letters to Jennifer from Mr. Beaman?

18 A Yes, I did.

19 MR. SOUK: If we could have the lights please?

20 A Mr. Souk, I'll need to advance the slide projector
21 to the right place.

22 Q (By Mr. Souk) You have the controller here with
23 you?

24 A Yes, I do.

1 Q Okay, and would you read the portions that go to
2 his feelings?

3 A Yes, I would. Underneath the blacked out marks
4 there's a little spot, and then it starts out, "Okay, you
5 got it, all out honesty. Here's the things you don't want
6 to hear. Number one, I really just want you to be with me
7 and only me," only underlined, "Selfish, but honest. Number
8 two, when I say I love you on the phone, I wish you would
9 say it back and not give a shit who is sitting there in your
10 living room. Number three, I won't be able to handle this
11 much longer without some growth in our "relationship."
12 Number four, I'm not sweet, I'm a selfish asshole with a
13 thorn in my pride and I want to be yours, but only if you're
14 mine." It continues on the back of People's Exhibit 4-B-5,
15 "Number five, even I sometimes put on a pair of shiny shoes.
16 Number six, are you wanting inspiration? You spill your
17 secrets on me, then you tell me with a whisper of things
18 that will never be, Black Crowes." It appears to be a
19 quote. "Number seven, lover cover me with your sleep, let
20 your love light shine. Lover cover me with a good dream,
21 let your love light shine, Black Crowes. Number eight,
22 yeah, I fucked up. I'm only human. If you wanted a demi
23 God or a martyr, you should have become a nun and chased
24 priests." Then there's a star on the bottom, "I guess

1 want to be at peace with you and for you to be at peace with
2 me."

3 Q Next slide please.

4 A The next slide relates to Exhibit 4-B-13.

5 Q And the blown-up portion there that you -- that
6 goes to his feelings?

7 A States, "I know there's things about me that
8 bother you, but I want to make a change in my lifestyle. I
9 want to be monogamous, and I want it to be with you."

10 Q The next slide refers to which exhibit?

11 A The next slide refers to Exhibit -- People's
12 Exhibit 4-B-15. The large portion shows, "I love you! More
13 passionately than Romeo did Juliet. More hopelessly than
14 Ophelia did Hamlet. More vengefully than did Medea, Jason."
15 And then in parentheses, "Don't worry, I won't kill anybody.
16 I don't believe in that.", end parentheses -- or end quotes.
17 "I do unto others as I would have them do unto me from now
18 on. That's why I love you, ..., that's why I need you, ...,
19 I could really grow up for you," with really underlined.

20 Q Next slide please. Next slide refers to which
21 exhibit?

22 A Refers to People's Exhibit 4-B-16.

23 Q And the blown-up portion reads?

24 A This is on the bottom of the note, "When I show up

1 Ronsick.

2 Q You're aware, I take it, or you were aware very
3 early in the investigation when Mr. Singley gave his
4 statement of his observations about having heard doors open
5 and close, and people walking up and down stairs at certain
6 times on -- and also air conditioning going on and off at
7 certain times on Wednesday?

8 A Yes, I'm aware of that, sir.

9 Q Fairly early in the investigation did you discount
10 Mr. Singley's observations as being inaccurate?

11 A Yes, sir, I did.

12 Q And would you tell us why?

13 A Well, first of all, nobody could pick out Mr.
14 Swaine's vehicle from the photos we showed them. Second of
15 all, Mr. Singley stated he heard the door, that same door
16 open and close on Friday as he did on Wednesday, and
17 everybody on the team was in agreement that Miss Lockmiller
18 was deceased long before Friday. And also he stated he saw
19 Swaine's vehicle there on Wednesday, and I'd already spoken
20 with Miss Betteridge from Elmhurst. She stated that Mr.
21 Swaine was at her side until 3:15 that day. There was
22 absolutely no way that that car could have been in Normal on
23 Wednesday.

24 Q The investigation, was it fairly early on that

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his clock. This is Exhibit Number 12. This is a closer view of the body. Again, the fan's been removed. It shows the scissors. It also shows the cord coming on this side. You can see a little bit of blood coming out of the mouth and nose area. This was pretty much the extent of the blood in the apartment once they removed the body. There was not a large amount of blood.

BY GRAND JUROR: Is that unusual, I mean in a death when the scissors are all the way in?

A As we'll go in a little bit farther on, the main cause of death was strangulation. Once she was strangled, it's been told to us that it stopped the heart. Therefore, when the scissors went in, the heart was not pumping the blood back out again. It was gurgling out slowly. And therefore, there was not a lot of blood at the scene.

This is another picture taken back from the closet area, or possibly standing directly in front of the desk where the curling iron was. The reason we've submitted this, this is Exhibit Number 7, is to show you the smaller bunk bed. Mr. Souk mentioned that we might be pursuing possible charges of sexual assault. On the bed, there's a black comforter. If you look at the position of the victim's body, it shows that it's

room, is it, in your view, is there any possibility that could be accounted for by cats playing with it?

A I've had cats all my life and I don't believe it's possible for a cat to open the cupboard, pull that entire plastic container out. Then pull the garbage bag out of the plastic pail and carry it onto the couch and set it onto the couch. I don't think that would be possible.

Q Did you detect any signs that there'd been any robbery or any theft from the premises?

A No. The victim's purse was sitting on the table. It didn't appear that the purse was entered or disturbed in any manner. There were numerous items, valuable items which Miss Lockmiller's mother had pointed out to us later after she was notified of her daughter's death that we did find in the apartment. We were unable to locate any--or unable to not locate any valuable items that should have been in that apartment.

Q She had in her wallet some money and credit cards?

A I believe so, yes.

Q When you went into the apartment, was discovered by Morgan Keefe and the authorities arrived, was the air conditioner running and the TV on quite

loudly?

A Yes they were.

Q Had the neighbors reported that they'd heard that TV on loudly for several days at least?

A Yes they did.

Q Did Miss Lockmiller own a car or have a car that her parents provided her?

A Yes she did. She owned a, I believe it was a Pontiac Sunbird, something of that nature.

Q Was that found at the premises there?

A Yes it was. It was parked right outside the front door.

Q Did the witnesses indicate her car had been in the same place there for at least several days?

A Yes. Morgan Keefe stated she'd driven by several times and observed her car where it was sitting.

Q In the search of the car, was anything found out of the ordinary or missing?

A Not necessarily. There was a bag with some wet clothes found behind the driver's seat. Her mother stated that she can account for that because she had done some laundry and it didn't get dry. It was put in the back.

A That's correct. While we were at the scene, there was a small amount of blood still bubbling out of the wound right next to the scissors. The crime scene technician advised me that that's gases escaping from the body. That accounted for the blood we saw.

Q Did Dr. Schnitker discover any, what we call defensive wounds, on the body?

A Not to my knowledge, no.

Q Or broken nails or blood or finger scrapings or anything under the nails, of skin under the nails, anything like that?

A No. The only thing we found was some skin under the nails which correlated to the neck area where she might have been grasping for the cord.

Q Were there some marks on her neck that might have indicated that?

A Yes, there were scratches that compared with that exactly.

Q When I'm talking, when I refer to defensive wounds, talking about wounds perhaps on the hands or arms where someone may have put their hands up to try to defend themselves or protect themselves?

A No, there were no wounds of that nature.

Q Was the Doctor able to determine if there

was any injury to the genitalia or the anus?

A She was not able to make that determination due to the decomposition of the body. The body had been there for approximately three days, so was unable to tell.

Q Was the state of decomposition basically consistent with what we'll get into in a minute, placing the time of death Wednesday early afternoon?

A Yes. It was consistent with our frame time.

Q Did the Doctor take samples to be sent to the crime lab, hair and blood and fingerprint samples and swabs of the vagina and anus?

A Yes she did.

Q All typical things that are done in an autopsy on a case of this type, correct?

A That's correct. To cover all bases as much as possible.

Q These are sent, they're not analyzed by the Doctor but sent to the Illinois State Police Crime Lab, is that correct?

A That's correct.

Q Without going into individual details, were the other residents of the apartment building shortly after the discovery of the body, in the next few days,

questioned extensively?

A Yes. Actually while the crime scene technician was in processing the scene, I waited outside for people to come home. I was able to make contact with the majority of the people who lived in that apartment. And they were subsequently asked to come to the station and statements were taken within several days.

Q Would it be a fair summary of those interviews that all of them produced no eyewitnesses to the crime and no information that turned out be particularly helpful in the investigation?

A That's correct.

Q Now in establishing what is believed to be the time of her death, I want to ask you a few questions about that. First as to Morgan Keefe, the young lady who found her, I take it that was a college friend of hers?

A Yes. She is an ISU student also.

Q Could you tell us what Miss Keefe said first about the last time that she had seen Jennifer alive?

A She stated that she went out with Jennifer Tuesday night, the night prior to her death. They went out to see a movie I believe, and then Jennifer dropped

or some other place so she never stopped. Finally on Saturday when she couldn't get a hold of her she stopped. Which coincided with numerous calls from Morgan Keefe on Jennifer's answering machine.

Q Were you able to recover the answering machine and it had a number of messages on it, correct?

A Yes, that's correct.

Q Is that depicted on the--

A You see the phone on the diagram. I believe the answering machine was located just to the-- it was to one side or the other. I believe it was to the right of the phone, which would be directly below where the phone is marked.

Q Did your investigation indicate whether Jennifer was at that point in time already enrolled in classes for the fall semester?

A Yes. She was currently taking classes at ISU during summer session.

Q What did you find out about her class schedule on Wednesday, the 25th, and her attendance at those classes?

A Jennifer had a class from 11:00 until 11:50 on Wednesday. She had another class that started at 2:00 and went to 2:50 I believe. From talking to her

instructor, she was at her 11:00 o'clock class on Wednesday morning. She did not show up for her 2:00 o'clock class. She did not show up to meet Morgan Keefe that night and she also missed a meeting with the Pantagraph that she was supposed to be at that evening.

Q You said Pantagraph. You mean Vidette?

A I'm sorry, Vidette, yes.

Q Jennifer was a journalism major who worked on the student newspaper, The Vidette at ISU, is that correct?

A That's correct.

Q Were you able to obtain the phone records for Jennifer's phone in her apartment showing both incoming and outgoing calls for that week?

A Yes I did.

Q When is the last record that you had of any of Jennifer or someone at her residence making any outgoing calls?

A The last outgoing call we have is Tuesday evening around 8:00 p.m.

Q And do you have any indication on Wednesday morning, the 25th, that Jennifer may have been there and taken or received a phone call?

A Yes. There were two phone calls shortly

after 8:00 o'clock. One of which was a Katherine Moss. We spoke with Katherine and Katherine remembered talking to a female with a soft pleasant voice at that phone number that morning. Jennifer on Tuesday had put an ad with the Pantagraph for some kittens. She was trying to get rid of the two kittens that she had. Katherine was calling on behalf of the kittens. They'd made an appointment to meet later on that afternoon for Katherine to come and see the kittens.

Q What time did they make the appointment for?

A The appointment was supposed to be around 3:00 or 3:30 I believe.

Q What did Miss Moss say happened that afternoon?

A Well she stated that afternoon she was running a little late. About 4:00 o'clock, she tried calling the residence. Got the answering machine and left a message on the machine that she was running late. They would be by as soon as they could. They left there. Drove straight to Jennifer's apartment. Got there approximately 4:20. Knocked on the door numerous times and could not get an answer on the door.

Q And before they went over, did they call and tell or leave a message on the answering machine

that they were running late?

A Yes they did. About 4:00 o'clock, they called.

Q Weren't able to get a hold of Jennifer, only left a message?

A That's correct.

Q Was that call also on the answering machine?

A Yes it was. It was also on the phone log as an incoming call.

Q In the course of your total investigation, did you ever find any one who saw Jennifer Lockmiller alive after she left her 11:00 o'clock class that Wednesday morning?

A No. We were unable to find anybody that saw her alive after her 11:00, after 11:50 when she left class. Even phone messages coming in stopped shortly before 11:00 o'clock. Every call after 11:00 o'clock was on the answering machine.

Q At some point, you located a young man who thought he had talked with her on Wednesday evening, correct?

A Yes, that's correct.

Q Were you able to establish from phone records that in fact his phone call showed up Tuesday

evening, not Wednesday evening?

A That's correct, he was one day off.

Q Now in the course of your investigation, you've gathered quite a huge amount of evidence, correct?

A Yes, that's correct.

Q You've already indicated that part of those involved the phone records from Jennifer's telephone there at the apartment, correct?

A Yes.

Q Did you in the course of your investigation learn Alan Beaman's home phone number at his home where he lives with his parents in Rockford?

A Yes I did.

Q Now referring to Sunday, August 22nd, did Jennifer's phone records reveal any calls to the Rockford Beaman residence?

A On Sunday morning, they revealed 28 phone calls from Jennifer's residence to Alan Beaman's residence, none of which were answered.

Q When you say none of which are answered, how are you able to tell that?

A From the phone record, we're showing either no connection or a short span of connection which might

go to his residence in Elmhurst.

Q Did he know anything about the numerous attempts of Jennifer to reach Alan Beaman?

A No. He was unfamiliar with any attempts.

Q Did the phone records also verify that there was a 13 minute phone call initiated by Jennifer to the Beaman residence on Monday evening, the 23rd?

A Yes. The records do indicate that.

Q Other than what Mr. and Mrs. Beaman or Alan Beaman may have indicated about that Monday night phone call, were you able to locate anybody other than a young lady named Heidi Stineman who had had any conversation or contact with Jennifer indicating that Jennifer had told anyone she had talked with Mr. Beaman or was trying to reach him for any reason?

A No. We were unable to find anybody that could shed more light on that phone call.

Q As far as Miss Stineman, would it be correct that she was interviewed by telephone on August 30th of 1993 by Detective Hospelhorn of your department, and that she indicated that she'd talked to Jennifer sometime on the afternoon of Tuesday, the 24th, and that Jennifer told her that she had talked to Alan and he had told her he had talked to someone who had seen her

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with someone else. That person being another male?

A Yes. That is a correct statement out of Officer Hospelhorn's report.

Q Other than that brief mention by Heidi Stineman, were you able to uncover anyone else who had talked with Jennifer before her disappearance about her contacts with Alan Beaman?

A No. We were not able to find anyone else.

Q In the course of your investigation, you've also received some records relating to the outgoing phone calls from the Beaman residence in Rockford, correct?

A Yes, that's correct.

Q And at this point in time, you're hoping to have by next week I believe records that would show the incoming calls to that residence last August 25th, correct?

A The records would show outgoing calls from Mitch Olson's residence, from the church. Well from two different church lines and Mitch Olson's residence. It will show if there was a call placed from Mitch Olson's residence or his work numbers to the Beaman residence, but it will not show all incoming to Beaman's residence. Those have already been erased from my

understanding.

Q By getting those records, we are hoping to be able to determine when Mr. Olson may have made a phone call that he indicated he made to the Beaman residence sometime on the 25th, correct?

A Yes, that's correct.

Q As far as the outgoing calls from the Beaman residence, is it correct that those records show two outgoing calls at 10:37 and 10:39 a.m.?

A On August 25th, yes.

Q What do those calls indicate as far as duration and where they went?

A The 10:37 call is to Christ United Methodist Church. That's where they worship. I believe that's a little over a minute. The second call is to Mitch Olson's home residence and that's under a minute.

Q During the investigation, have you been able to obtain from Mr. Beaman's uncle what records are available about his work at the IGA during August of 1993?

A Yes, we have received some records from him.

Q What time records they have, while those don't include like punching into a time clock, correct?

A Correct. Those are records that are written down by Alan Beaman's supervisor, Dennis Clark. And Dennis writes down his hours that he works. Turns them in to Alan's uncle and the uncle just assumes that Alan works the same hours.

Q Those records show that Mr. Beaman got off of work on Wednesday morning, the 25th of August, 1993 at 9:00 o'clock in the morning, correct?

A Yes, that's correct.

Q As far as the pay records, do those indicate that the checks that were issued for his work during August and early September at his Uncle's stores, those checks were not issued until after September 1st and after he had completed working there?

A That is correct.

Q And would it be an accurate summary that the uncle has indicated, confirmed that he was out of town for a period of time and had left Mr. Beaman the task of doing some reworking on his driveway at his home which is located in the Rockford area?

A Correct. He was going to have Alan blacktop I believe his driveway.

Q Did he indicate that he would have paid Alan cash for that job but that basically he wasn't sure if

Q What time was the last time on the tape that would have had him completing the transaction and ready to leave the bank?

A The tape is a time lapse. You get a picture about every three seconds. The last frame that you can see Alan Beaman in the bank was at 11 minutes after 10:00 on August 25th, 1993.

Q In the course of the investigation, in addition to the autopsy samples that were taken, were numerous other items of evidence that were obtained at the scene and from other people sent to the Illinois State Police Crime Laboratory?

A I'm sorry.

Q Were numerous items of evidence from various sources sent to the crime lab?

A Yes there were.

Q Without going into too much detail, let me go over the summary of some of those with you. Would it be correct that the swabs taken from the anal and vaginal areas of Jennifer Lockmiller did not reveal the presence of semen or sperm?

A That's correct.

Q The possible explanation for that, could you tell us what the possibilities are from your

experiences as an investigator?

A The possibility is the semen will only remain for approximately 72 hours intact before it decomposes. With the heat in the apartment, being the 25th of August that we assume she was killed, and the decomposition of the body, if there was semen in the vaginal area, it would not have lasted up to the point where they took the swabs.

Q The timing there at the point the body was discovered, about 2:00 o'clock on Saturday afternoon, that would have been about 72 hours after it's believed she was killed, correct?

A It would have been more than 72 hours. It would have been approximately four days, so we're looking at almost 92 hours. I'm sorry, it would have been three days, about 72 hours.

Q But by the time the samples were taken from her body was 9:00 o'clock on Sunday morning so well after 72 hours by the time the samples were taken?

A Correct.

Q The other possibilities were no semen inside the body or--

A Well it's possible that if she was sexually assaulted, the perpetrator could have been using a

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condom. It's also possible that he might have removed himself before ejaculation.

Q It's also possible that there was no sexual assault?

A It's also possible there was no sexual assault, yes, that's correct.

Q Now you previously, I believe in Grand Jury Exhibit Number 6 showed the single bed which was by her knees.

A Correct.

Q And some semen was found on that dark sheet that's visible in that picture, correct?

A That's correct.

Q And was testing, DNA testing done on that semen?

A Yes it was.

Q What were the results of that?

A The results were that that semen matched up with Michael Swaine, the individual that was living with Jennifer prior to her death.

Q I think also showed her DNA characteristics intermixed?

A I'm not sure.

Q But did not show Mr. Beaman, correct?

time.

First, can you tell us how far it is from Jennifer's apartment to Bell Federal in terms of miles?

A Okay, from Bell Federal to Jennifer's apartment would be 127.9 miles. And when we drove it coming back the last time, I believe it took us right around about 2 hours from Bell Federal to Jennifer's apartment driving an average of 65 to 70 miles an hour.

Q That was actually taking 7 minutes out for a stop?

A Correct.

Q Now Bell Federal is kind of in the middle of Rockford, correct?

A Yes, that's correct.

Q The Beaman residence is actually around the city up on the northwest side of the city, correct?

A That is correct.

Q And would it be accurate that it's around 137 miles to their residence one way?

A It's 139.7 miles from Jennifer's apartment to their residence.

Q But you don't have to go through the heart of the city to get there, correct?

A That's correct. You take Interstate 39 to

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the 20 bypass to Meridian Trail which is a rural road all the way north to Alvina which is a rural subdivision.

Q Could you tell us what is the fastest that you've been able to drive that route?

A Fastest I've driven the route is in an hour and 45 minutes.

Q How fast were you going on the interstate?

A Approximately 85 miles an hour.

Q The routes within the city, have you had occasion to go through the initial interview that Alan Beaman had with Detective Daniels and Hospelhorn, and all of his interviews with you including the exhibit that the grand jury has been shown today, the itinerary he wrote out, and pull out of that a determination of every place that Mr. Beaman said that he drove after that week, after he would have had occasion to have his tires changed?

A Yes. I drove them out as fairly as I possibly could.

Q Did you drive those using the longest possible way to get there in the Rockford area?

A Yes I did.

Q And sometimes, to be fair, the longest way is actually the shortest way because you can get there quicker sometimes by going around the outer--

A Correct, the Route 20 bypass sometimes is quicker.

Q And giving him every benefit of the doubt and driving every place that he said that he went including driving himself all the way to work and back every night, what total mileage did you come up with that all of his efforts could account for?

A Giving him every benefit of the doubt, I came up with 199.7 miles, give or take 2 miles.

Q The total mileage that we're dealing with depending on whether he put an extra 10 miles on or not would be the 322 miles or 332 miles, correct?

A That's correct.

Q So even with everything that he told us, most of which was based simply on his word, correct?

A Uh-huh.

Q Even giving him the benefit of that, you were still more than 100 miles short of filling up the total mileage that was on his car, correct?

A He falls between 120 and 130 miles short of accounting for the miles on his speedometer.

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Q Now in looking at Mrs. Beaman's activities on August 25th, did you determine that there was a Walmart store fairly close by to where her mother lives?

A Yes, within a mile of her mother's residence.

Q And you're aware at this point that Mrs. Beaman's checkout from that Walmart store according to the receipt was 11:10 a.m. that morning?

A Yes, that's correct.

Q Did you do some driving and some timing to determine whether it was physically possible that Mrs. Beaman could have returned to her house and still had time to get to Walmart shop and check out by 11:10?

A I left her mother's residence at 10:00 o'clock. I drove the speed limit. Stopped at every red light and every stop sign along the way, and arrived at her residence at 17 minutes after 10:00, approximately over 10 miles drive. Turning around from her residence and going back to Walmart I did not drive, but it would be approximately, probably a 15 to 16 minute drive. We're looking at a total there of about 33 to 34 minutes. From 10:00 o'clock until 11 minutes after 10:00, that leaves us a fair amount of time.

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However, considering the phone calls, if she would have left her mother's residence at 10:00 o'clock, she would have been home by 10:17. She could have made the calls at 10:37 and 10:39. Left the house and arrived back at Walmart at approximately 10:57 or 11:00 o'clock. Give her 10 minutes to go into three different departments at Walmart and check out. It would be rushed, but it would be possible.

Q And again, this was one of those rare occasions when you were driving the speed limit?

A That is correct.

Q Now did you also on two occasions do the same kind of timing from Bell Federal to the Beaman residence?

A Yes I did.

Q On one of those occasions, did you basically drive it through town?

A I drove the most direct route and I also drove what I thought to be the fastest route, the two most logical ways to get to the Beaman residence from Bell Federal.

Q On both those occasions, did you drive the speed limit?

A Yes. The trip through town, I drove the

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speed limit and I drove it on a Wednesday afternoon at approximately 10:00 o'clock, so it would be very comparable to the time that Mr. Beaman would have driven that route.

Q How long did that trip take going through town?

A That trip took me 30 minutes. If he had left the bank at 11 minutes after 10:00, he'da gotten home at 10:41. The calls were made at 10:37 and 10:39.

Q When you drove it the other way, did you-- from Bell Federal, if you go a couple miles south, do you get to this Route 20 going around the south side of town?

A Yes. Bell Federal is on the corner of Newburg and Alpine. If you take Alpine straight south to 20 and around, that would be probably the quickest route to Mr. Beaman's residence, and that took me 25 minutes. So once again 25 added on to the 10:11 would put me there at 10:36. The calls were at 10:37 and 10:39.

Q Did you drive from Bell Federal to Jennifer's apartment on one occasion exceeding the speed limit?

A Yes I did.

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Q How fast did you make it then?

A I made it in an hour and a half from Bell Federal to Jennifer's driveway.

Q Do you recall how fast you were going then?

A Approximately 85 mile an hour.

BY GRAND JUROR: Could I ask a question?

BY MR. SOUK: Sure. Why don't you break in if you've got something.

BY GRAND JUROR: I have written down here you said you went the fastest and it took you an hour and 45. Now you say you went the fastest and took an hour and a half.

A I took the fastest route which would be going straight down Alpine to 39 to Jennifer's apartment. When I drove it at 65 mile an hour, it took me just about 2 hours. When I drove it at 85 mile an hour, it took me an hour and a half. The hour and 45 minutes was the fastest from Jennifer's apartment to the Beaman residence. That was the hour and 45 minutes.

BY GRAND JUROR: We haven't gotten to this point yet. Have you checked with the cash register computer systems of the IGA stores as far as date and times concerned?

A We've received a subpoena to do that. I

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Q Was he shown photographs to determine whether he could identify either Mr. Beaman or Miss Lockmiller?

A Yes. He was shown photographs. He stated that he only has about three to four seconds as he's driving by to take a glance and the main thing that stuck out in his mind was the way the guy was dressed, the dark hair, her light blonde hair and that he was about a head taller than she.

Q Finally, I want to ask you some questions related to, that we've touched on before, that related to Mr. Beaman's conceivable motive. In your interviews with Mr. Swaine and others, would you just briefly summarize for us Beaman's relationship, how long had it been going on, and when Swaine came into the picture and what happened from that point?

A Alan Beaman started dating Jennifer Lockmiller around July of last year. They dated throughout the year.

Q I'm sorry, July of which year?

A I'm sorry, July of '92. They dated. It was on and off continuously. Jennifer, we understand went through two abortions during sometime in that time. Excuse me, one abortion during that time. There

was another one before that.

During that time, it was on again off again. During the summer, Michael Swaine was living with Alan Beaman. Towards the end of June, first of July--

Q Of '93?

A Of '93, Michael and Jennifer started becoming friendly. Jennifer would come over to their apartment. She would say she was going into the bathroom and instead, she would sneak in and kiss Mike goodnight while he was laying in the bedroom. This sort of thing continued. It led up to one time in July when Jennifer and Michael had sex in the Sig Chi basement while Alan was in the process of driving to Rockford to get marijuana for Jennifer. This continued on, continued on. Towards the end of July when Alan found out, or found enough proof to satisfy himself, he went to Dr. Brown who is a Professor at Illinois Wesleyan and was in charge of the summer theater. He left a note for Mr. Brown saying that he could no longer stand to see this going on. That he had to get away. If that made him a horrible person, that's the way it had to be, but he had to leave and get out of the situation. Alan traveled then to Iowa, or Ohio, with a friend. He came back.

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Q I want you to stop there and if you would read into the record, you've got a copy of that note from Dr. Brown, or the original actually?

A Yes we do.

Q Would you read that note that Mr. Beaman left for Dr. Brown?

A Okay. On the outside of the note, it says "Dr. Brown." On the back side, "Alan Beaman."

"I apologize and if this is too far, then I guess it's the way it had to go. My TD, (stands for technical director) has had very close relations with my very recently ex-fiance, if you know what I mean. When I get back, I'll talk with you about how much of my paycheck I need to give back. I'll work my butt off at home until I can afford it. I know this is unprofessional and childish, but they've been chewing at me since early July. I'm too damn tired of this to be professional. If that makes me a nobody or means I'm through at IWU, okay. But the things that I've found and witnessed about my aforementioned roommate and my ex-fiance have crushed any spirit I had to get out of the slump. And it's really just time for me to leave. I'm just afraid I'd cause even more hell to break loose. I'm only asking that as a person you

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going...something you in my heart."

Q That's the last notation by Mr. Beaman on there, correct?

A So that was the note that was given to Jerry Brown. At that point, he left and traveled to Ohio with another individual.

Q During the investigation in Jennifer's apartment when it was searched after her body was found, did you find a number of letters that she had saved that had been written to her from Mr. Beaman?

A Yes we did.

Q You refer to page 7 of your report.

A Yes.

Q And I want to ask you to quickly, well not too quickly, read into the record some of the parts that are highlighted and you've excerpted some things from some fairly lengthy letters, correct?

A Correct. There was a letter written from Jennifer to Chris Perry in which she was stating that she had never been happier in her life than during the summer of '93 with a new guy that she had met. Now these are excerpts from the letters.

Q The letters from Alan to Jennifer?

A From Alan to Jennifer. "Thinking of you

BY MR. SOUK: So you're presuming that the murderer unplugged the clock?

A Correct.

Q Why would anybody set two clocks?

BY ANOTHER GRAND JUROR: They're college students. I'm in college too.

Q About the fingerprints on the clock, Swaine's, can you tell me where they found Swaine's and where they found Alan's? Are they all on top by the button or some on the side?

BY MR. SOUK: We have a mock-up. We better use it.

Q This Katherine Moss who came by to look at the kittens--

A Yes.

Q If she came by around 4:00 to 4:30, something like that.

A 4:20 I believe is when she got to the apartment.

Q And earlier, you had said that the TV had been on loud for days. I assume from the time of the killing at least, Saturday, until somebody find the body, it's been on all that time. She showed up, did she indicate--you said she knocked on the door and

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nobody answered. She must have evidently heard a TV going on in there and thought somebody was there. She just didn't pursue it when nobody came to the door and figured somebody left it on?

A That's my understanding.

BY MR. SOUK: In response to the prior question, we do have a mock-up put together. We can show that to you and show you which prints were where.

A Now this is not a true scale, okay. You can see where I've cut out certain size, so it's a little bit thicker than what it was. Yellow fingerprints indicate Swaine's prints. Blue fingerprints indicate Alan's prints. Now the numbers start, if you'll hold your hands out. It goes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. We have Alan's left ring finger right back here by the cord. We have his pinky finger right here at the bottom underneath.

For Swaine, we have his left middle--excuse me. Correct, Beaman's middle finger on his left hand here. Small finger over here. For Mike, we have his middle finger here, his right thumb here. His ring finger here and his middle finger here. These two cannot be the same grip because one's here and the other one's here. It has to be two different ones. The unknown

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DEBRA BLUESTEIN - August 11, 2015

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EXAMINATION**BY MR. DICIANNI:****Q. It's Bluestein?****A. Yes.****Q. Bluestein.**

Ms. Bluestein, when you filed your petition for order of protection, it appears that one of the first lines in the "Incident" section states: "Larbi has been a friend of four years which has been peaceful until January of 1994."

I assume that was a true statement.**A. Yes.**

Q. Okay. And was he -- when you had a reference to him being a friend, did you mean boyfriend or some plutonic type of friendship before becoming a boyfriend?

A. He was a friend prior to becoming a boyfriend.

Q. Okay. So the four years would have included both when it was a friendship and the period of time when it developed into a closer relationship?

A. Yes.

Q. Okay. As of the time that you filed the order of protection, how long had you actually been boyfriend-girlfriend?

A. I believe, one or two years.**Q. Okay. All right. And you filed this -- well,**

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1 ahead.**MR. DICIANNI: Cross.**

Q. (BY MR. DICIANNI) And you go on to -- in your statement, to say that when he -- I'll finish the statement as I started before just for context.

"Larbi has been a friend of four years, which has been peaceful until January of 1994 when he experimented with a series of street steroid injections. His behavior since has been unexplainable."

You found out or you were aware that in January of 1994 he started using steroids?

A. I found out after he had been using them.

Q. Okay. And do you recall when you would have found that out?

A. I believe it was about two to three months after, would be my best...

Q. Did you begin to experience this more confrontational or even violent behavior from John before you found out that he was using steroids?

A. Yes.

Q. Okay. And then, subsequently, you must have wondered what's gotten into him, and all of a sudden you found out that it was steroid -- that he was taking steroids, correct?

A. Yes.

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1 let's, maybe, put some context in it.

2 It appears that you filed this October 11, 1994, correct?

A. Yes.

Q. Filed the order of protection -- or petition, I should say.

You were interviewed by the police after they discovered that Jennifer Lockmiller had been murdered; that would have been in September 1993, correct?

A. Yes.

Q. And I recall a statement in a comment in one of the statements you gave, that you had been together during that time for about nine months, correct?

A. Yes.

Q. So it would be, roughly, fair to say that you would have started going out sometime beginning of 1993?

A. Yes.**Q. Roughly, okay. All right.**

So, it sounds like from your order of protection, from that first year until January of 1994, there was no physical -- no violence or conflict between the two of you, correct?

A. Yes.**MR. SHAPIRO: Objection; leading. Go**

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Q. In your mind, you saw a connection between his steroid use and his violent behavior; is that fair to say?

A. Yes.

Q. Okay. It looks like, from the police reports that were marked Exhibit 10 and Exhibit 11 -- let me make sure I've got that right.

Yeah, Exhibit 10 and Exhibit 11; that after the order of protection petition and the order was actually entered, you and John resolved your differences and got back together; is that -- is that fair to say or is that consistent with your memory?

A. I don't remember that.

Q. Let me ask you if this would refresh your memory.

Exhibit Number 10, which is the police report from August 1, 1995, says, "The victim Mackoway stated she has been trying to break up with her boyfriend, Murray, for about a month."

So that would suggest that -- that as of a month before this report, which would be July of 1995, you were still boyfriend and girlfriend; is that accurate?

A. It doesn't sound right.**Q. Okay. Well, let me ask you this: do you have**

10 (Pages 34 to 37)

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1 any memory of the two of you reconciling and getting
2 back together after the order of protection was entered?

3 A. No.

4 Q. No?

5 Were you living together, though, as of
6 August and September of 1995?

7 A. I had a condominium and he stayed over. I'm
8 not sure I would call it living together.

9 Q. Okay. The report from Exhibit Number 7 -- this
10 is when the arrest first took place which ultimately
11 lead, I guess, to the petition for order of
12 protection -- shows you both have -- both living at 903
13 North Linden, Apartment Number 4. Was that accurate at
14 that time, that the two of you were sharing 903 North
15 Linden, Apartment Number 4?

16 A. No.

17 Q. Okay. Whose apartment was -- who was living at
18 903 North Linden, Apartment Number 4, as of October
19 1994?

20 A. That was my condominium.

21 Q. Did you own it?

22 A. Yes.

23 Q. Okay. So this would have been incorrect, that
24 it has John's address as being the same as of that date?

25 A. Yes.

1 report, correct?

2 A. Can you clarify?

3 Q. Well, somebody called the police first on
4 August 1, 1995, because of a conflict between yourself
5 and John, and then again on August 3rd, 1995, and you
6 would agree with that?

7 A. Yes.

8 Q. Okay. And the information that the police
9 would have received and recorded would have come either
10 from yourself or John, correct?

11 A. I don't know.

12 Q. You would have talked to the police on both of
13 these occasions, I would expect, correct?

14 A. I would expect.

15 Q. Okay. And I'm not -- please understand I'm not
16 finding fault with you at all. People often breakup,
17 reconcile, breakup, reconcile as relationships go on for
18 a long time before they're finally over, so I'm not
19 finding fault. I'm just trying to clarify the sequence
20 of events. Okay?

21 A. Uh-huh.

22 Q. Nevertheless, these reports do suggest that
23 there was some interaction between the two of you, that
24 you were trying to finish for -- with finality, as of
25 August 1995; is that fair to say?

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1 Q. Okay. Where -- do you know where John was
2 living at at that point in time?

3 A. I don't recall.

4 Q. All right. When we look at Exhibit Number
5 11 -- and this is from August 3rd, 1995 -- the narrative
6 says, "The officers met with Ms. Mackoway. Ms. Mackoway
7 stated that she and her boyfriend had had problems last
8 night and her boyfriend was arrested for criminal
9 trespassing and an ATF warrant. After he got out of
10 jail, they had made arrangements to meet -- to meet at
11 her apartment so he could remove his belongings. As he
12 was removing his belongings, they could" -- I believe,
13 that means "got" -- "into an argument over whose
14 properties was whose."

15 It sounds like, from this report, that at
16 least as of August 3rd, 1995, there was some
17 relationship between you and John; is that not correct?

18 A. That may be correct. I'm sorry, I don't
19 remember.

20 Q. Okay. Do you remember the event in which he
21 was at your place to remove belongings and you got into
22 another argument and called the police?

23 A. No.

24 Q. Okay. You would have no reason to doubt,
25 though, the accuracy of the information that's in the

1 A. I don't remember.

2 Q. Okay. All right. When you were interviewed by
3 the police after Jennifer's murder, you spoke to them
4 twice in person and then once by telephone, correct?

5 A. Yes.

6 Q. All right. You never told the police that John
7 was abusing you physically in any way, did you?

8 A. I don't remember.

9 Q. It sounds like from your October 1994
10 statement, that as of September 1993 -- when they
11 interviewed you about Jennifer's murder -- John hadn't
12 been abusing you up to that point.

13 MR. SHAPIRO: Object to the form.

14 A. I believe that's correct.

15 Q. (BY MR. DICIANNI) So if he hadn't been abusing
16 you up to that point, then you, obviously, wouldn't have
17 told the police that he was abusing you, correct?

18 A. Correct.

19 Q. Okay. Did you believe, at that point in time,
20 that John killed Jennifer Lockmiller?

21 MR. SHAPIRO: Objection; relevance.

22 A. No.

23 Q. (BY MR. DICIANNI) At any point in time, have
24 you ever come to the opinion or come to the belief that
25 John killed Jennifer Lockmiller?

11 (Pages 38 to 41)

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1 A I have a real estate broker's license, but I
2 haven't really done much with it.
3 Q Have you been engaged professionally since your
4 move in 2012?
5 A Not much. Just -- yeah.
6 Q Obviously the principal reason I've subpoenaed you
7 to a deposition today is to ask you questions
8 about your role in the Lockmiller homicide
9 investigation. Do you recall speaking to police
10 and being involved in that investigation?
11 A Yes.
12 Q Can you tell me in general terms what you recall
13 about your role in the investigation and your
14 interactions with the police.
15 A What had happened was I was going up -- I was
16 driving. I was in the process of buying a
17 building, and we were just -- we had actually had
18 an option on it, and they allowed us to work on
19 the building. This was on South Main Street. I
20 was going back and forth. I had actually owned
21 the building on Main Street. We were going back
22 and forth and visiting it. I saw a couple walking
23 into the building like off -- from going up Main
24 Street off kind of like at an angle towards the
25 entrance of the building. After the murder was in

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1 the papers, I kind of thought about it for a while
2 and I thought that might be something important
3 and went to the police.
4 Q And you saw this while you were in the process of
5 buying a building?
6 A Well, yeah. We were kind of in the -- basically
7 traveling. But I was at the point I was buying
8 the building and trying to close on it.
9 Q So the point at which you saw this was prior to
10 when you had closed on the building?
11 A Yeah. It's about that time. It was about -- we
12 already -- the owners of the building already gave
13 me the ability to work on the building. I ran a
14 parking business at the building site. This was
15 south of the 412 Main Street. So we were --
16 Willow Street -- I was going out to -- basically
17 you kind of go around a triangle is what I did. I
18 would always go up Main Street or Willow or back
19 and forth. I was doing a lot of driving back then
20 because we were meeting a lot of students and
21 trying to close on the building at the same time.
22 So we were -- I was traveling a lot during the
23 days.
24 Q Uh-huh. So they gave you access to start working
25 on the building prior to the closing?

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1 A Yeah. They actually gave me an option. It was
2 approximately a year before. They allowed me to
3 do a parking business for the Illinois State
4 University students. And so I was -- I was
5 basically working at that capacity at that time.
6 Actually, we were just trying to get to the
7 closing where I was actually going to buy the
8 building. So we were doing all of the closing
9 work.
10 Q And, prior to the closing, there was a period when
11 you were driving by the building that you owned
12 frequently at 412 North Main?
13 A I lived at 212 College Park Drive. I would go up
14 and you had to go west along the golf course to
15 go. That's where I officed. So I was going by
16 the building a lot, up and down Main Street a lot.
17 Q And it was during the period prior to the closing
18 when you were going back and forth that you saw
19 it?
20 A Yeah. It was approximately during that time
21 period. Yeah.
22 Q Do you recall if it was before or after the
23 closing actually occurred?
24 A Actually, I don't.
25 Q Okay. How long after the closing occurred were

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1 you continuing to go by the building frequently to
2 do work at the new property?
3 A It was on Main Street, so -- the building at
4 709 South Main Street -- if I went north and then
5 took a left, you know, to go to basically where I
6 lived and also officed, I would go past it all of
7 the time.
8 Q When you were driving between your house and your
9 office and the 709 Main Street address, you would
10 frequently go by the 412 North Main Street
11 address?
12 A Yes.
13 Q If I understand you, around the time of the
14 closing you were doing this fairly frequently.
15 A Oh, yeah.
16 Q How long after the closing did it continue that
17 you would pass by that property on a frequent
18 basis?
19 A I probably went past it every day.
20 Q For about how long after the closing?
21 A For a long time. It's pretty much right in where
22 I drove all of the time, so --
23 Q But, as you sit here today, you're not sure if it
24 was before or after the closing that you saw the
25 people that you described going into the 412 North

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<p>1 details of how it like exactly -- I just remember</p> <p>2 -- I don't remember all of the details of it to be</p> <p>3 honest.</p> <p>4 MR. SHAPIRO: I have no further</p> <p>5 questions. I may have some more after Lucy</p> <p>6 asks questions.</p> <p>7 MS. BEDNAREK: I just have a few.</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 By Ms. Bednarek:</p> <p>11 Q The statement that you're looking at --</p> <p>12 A Two is right here. I'm sorry.</p> <p>13 Q -- which is marked as Exhibit 2 -- that's dated</p> <p>14 June 24, 1994, correct?</p> <p>15 A Yes.</p> <p>16 Q If you met with the police more than once about</p> <p>17 the couple that you saw, would the other meeting</p> <p>18 have been or would it have taken place very near</p> <p>19 to the date of June 24, 1994?</p> <p>20 A It was in that timeframe.</p> <p>21 Q Did you speak with the police about the couple you</p> <p>22 saw at any time before June 1994?</p> <p>23 A I mean -- I went into the -- I don't remember the</p> <p>24 exact dates of the meetings. I mean -- this is</p> <p>25 the first time I've seen this, but this is the</p>	<p>1 at any time before June 1994 about the couple you</p> <p>2 saw?</p> <p>3 A Just -- I think just to set up an appointment to</p> <p>4 come in.</p> <p>5 Q Okay. So on or around June 24, 1994 --</p> <p>6 A Yeah.</p> <p>7 Q -- was the first time you would have talked with</p> <p>8 the police, right?</p> <p>9 A Yes.</p> <p>10 Q Did anything the police showed you with regard to</p> <p>11 the inside of 412 North Main Street affect or</p> <p>12 change your memory of the couple that you saw?</p> <p>13 A No.</p> <p>14 Q When the police showed you the bank stills, did</p> <p>15 the police tell you that the name of the man in</p> <p>16 the stills was Alan Beaman?</p> <p>17 A I don't believe they did to be honest. I don't</p> <p>18 know if they did or not. I don't think they did</p> <p>19 because I didn't -- I don't -- I don't know. I'm</p> <p>20 conjecturing. I don't remember to be honest. I</p> <p>21 just remember looking at them, and my thoughts</p> <p>22 were -- I mean -- like I said before, was this --</p> <p>23 I mean -- it was just like it hit me kind of like</p> <p>24 it was a -- that this was close to what I saw. I</p> <p>25 don't know how to say it to be honest. I mean it</p>
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<p>1 time that I -- the approximate time that I --</p> <p>2 Q Okay. So what I'm trying to get at is -- I know</p> <p>3 you don't remember whether the meeting actually</p> <p>4 took place on June 24, 1994, even though that's</p> <p>5 the date of your statement. Right?</p> <p>6 A Yes.</p> <p>7 Q And you don't remember --</p> <p>8 A I'm assuming this is the day that I made the</p> <p>9 statement because this is the only thing I have.</p> <p>10 Q Right. Okay.</p> <p>11 A I don't know if that answers the question.</p> <p>12 Q Yes. You also testified earlier that you thought</p> <p>13 you met with the police on two occasions, right?</p> <p>14 A Yes.</p> <p>15 Q But you were not sure, right?</p> <p>16 A Yeah. I'm not sure.</p> <p>17 Q So if you would have met with the police on a</p> <p>18 second occasion, that meeting would have taken</p> <p>19 place very near to the time of the statement date,</p> <p>20 right?</p> <p>21 A I believe so. Yes.</p> <p>22 Q Okay. And the statement date is June of 1994,</p> <p>23 right?</p> <p>24 A Yes.</p> <p>25 Q Okay. So do you recall speaking with the police</p>	<p>1 was like -- go ahead.</p> <p>2 Q No. I understand.</p> <p>3 A Yeah.</p> <p>4 Q You testified earlier that before the bank stills</p> <p>5 you had never seen a photo of Alan Beaman,</p> <p>6 correct?</p> <p>7 A No.</p> <p>8 Q However, at your trial you testified that seeing a</p> <p>9 photo of Alan Beaman in the paper after his arrest</p> <p>10 in May 1994 prompted you to call the police.</p> <p>11 A Yeah. I don't --</p> <p>12 Q Right?</p> <p>13 A Yes. This is what I said. I don't -- as far as</p> <p>14 the details, I don't remember -- how do I say it?</p> <p>15 I don't know. I'm trying to recount the details</p> <p>16 on how this happened. I'm trying to remember it.</p> <p>17 I don't believe -- the paper -- when we were</p> <p>18 looking at the paper, I know that the -- as far as</p> <p>19 when they announced the murder -- yeah. I don't</p> <p>20 really --</p> <p>21 Q Let's take a look again at --</p> <p>22 A I know it's what's written here.</p> <p>23 Q Okay. So you don't remember, sitting here today,</p> <p>24 whether or not seeing a picture of Alan Beaman in</p> <p>25 the paper after his arrest in May of 1994 prompted</p>

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1 you to call the police?
 2 A I don't remember that.
 3 Q But you will agree with me that that's what you
 4 testified to --
 5 A Yes.
 6 Q -- at the -- that's what you testified to at the
 7 criminal trial, correct?
 8 A Yeah. I believe that's correct.
 9 MS. BEDNAREK: I have nothing
 10 further.
 11 MR. SHAPIRO: I have nothing
 12 further.
 13 Thank you.
 14 MS. BEDNAREK: Do you want to
 15 explain to him reserve or waive?
 16 MR. SHAPIRO: Oh, yes.
 17 You have two options, Mr. Heyse, with
 18 regard to the transcript that the court
 19 reporter will prepare. Either she can send
 20 you a copy of the transcript and you can make
 21 corrections to it, really corrections for
 22 instances where you think you said one thing
 23 and she took it down inaccurately and not
 24 corrections to the substance of your
 25 testimony.

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1 THE WITNESS: Yeah.
 2 MR. SHAPIRO: You get a period
 3 after the deposition, you know, after the
 4 transcript goes to you, to review it and sign
 5 it. Or you can waive that right and just not
 6 have the transcript sent to you and not
 7 review it. It's your decision.
 8 THE WITNESS: Are we still on --
 9 MR. SHAPIRO: We're still on. Yes.
 10 THE WITNESS: The one thing is --
 11 there's -- I don't --
 12 MR. SHAPIRO: I just want to be
 13 clear. I'm not -- it's just a question of
 14 did the court reporter accurately take down
 15 what you said.
 16 THE WITNESS: Sure. That's fine.
 17 MR. SHAPIRO: Do you want to read
 18 it or not?
 19 THE WITNESS: I don't know if I
 20 should take it or not. I mean --
 21 MR. SHAPIRO: It's up to you.
 22 THE WITNESS: If you want to send
 23 it to me, that's fine.
 24 MR. SHAPIRO: Okay. The court
 25 reporter -- it sounds like you want it, so

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1 the court reporter can send it to you.
 2 THE WITNESS: Yeah.
 3 Can I --
 4 MS. BEDNAREK: Your testimony is
 5 done. Did you have something else to add?
 6 THE WITNESS: Yeah. I wanted to
 7 add something. Is that okay or not?
 8 MR. SHAPIRO: I think we have
 9 concluded the deposition at this point.
 10 THE WITNESS: That's no problem.
 11 MR. SHAPIRO: We can go off the
 12 record.
 13 THE VIDEOGRAPHER: Going off the
 14 record at 3:11. DVD one of one. End of
 15 deposition.
 16 (Adjourning at 3:12 p.m.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 STATE OF WISCONSIN }
 2 COUNTY OF DANE } ss.
 3 I, SUSAN C. MILLEVILLE, a Court Reporter and
 4 Notary Public in and for the State of Wisconsin, do
 5 hereby certify that the foregoing videotape deposition
 6 was taken before me at Cullen Weston Pines & Bach LLP,
 7 Attorneys at Law, 122 West Washington Avenue, City of
 8 Madison, County of Dane, and State of Wisconsin, on the
 9 30th day of July 2015, that it was taken at the request
 10 of the Plaintiff, upon verbal interrogatories; that it
 11 was taken in shorthand by me, a competent court reporter
 12 and disinterested person, approved by all parties in
 13 interest and thereafter converted to typewriting using
 14 computer-aided transcription; that said videotape
 15 deposition is a true record of the deponent's testimony;
 16 that the appearances were as shown on Page 3 of the
 17 videotape deposition; that the videotape deposition was
 18 taken pursuant to subpoena; that said TODD HEYSE before
 19 examination was sworn by me to testify the truth, the
 20 whole truth, and nothing but the truth relative to said
 21 cause.
 22 Dated August 5, 2015
 23 Susan C. Milleville
 24 Notary Public, State of Wisconsin
 25

Digitally signed by Susan C. Milleville
 DN: cn=Susan C. Milleville, o=For the Record, Inc., ou,
 email=smilleville@fortherecordmadison.com, c=US
 Date: 2015.08.05 15:42:41 -0500

then there is another one of her boyfriends that keeps calling that she doesn't like to, she thinks still likes her, who lives in Peoria now, I guess, who is teaching over there. He is like 27, his name is Bubba, I don't know his real name.

Tim: Bubba?

Mike: Yeh, he didn't like his real name, so he, they called him Bubba, and

Tim: OK.

Mike: He was supposed to come down and visit her this weekend, but not, I don't know if it's this weekend or last weekend, but he was supposed to come down and see her or she was going to go up and see him or something. Um, and that's all I know really.

Tim: OK.

Mike: Alan had told me that she had had two, I didn't want to mix, get mixed up with her, too, because I thought she was an alcoholic. And, and I told my parents this when I went home and they said just be careful. And that, and, so and I had told her, I didn't tell her she was an alcoholic, I told her that I thought she should cool down and that.

Tim: Uh-huh. (yes).

Mike: And, she didn't seem to be, whenever I saw her she seemed to have some sort of alcohol with her and I thought I'd a good influence on her because I don't drink very much at all.

Tim: Uh-huh. (yes_)

Mike: Because I don't like it. Um, I was going to say something but forget what it was. Um, I don't know what else I was going to say. That's, I guess that's all I can say.

Tim: Ok. Ok. Um, with, with Alan, with this Alan guy, what about Alan, can you tell me about him?

Mike: Um, yeh he is a friend of mine. He's, he was my boss for half of the summer and I was his boss for the second half of the summer. Um, it's hard to say stuff about him without making, without making him seem really evil. Um, because he's, I guess he, he's really, gets really jealous when he thinks that something is going on. I had been to Jen's apartment a couple times before I moved out of the place with him.

Tim: Uh-huh. (yes).

Mike: Which is really shitty of me to do, but he found out once and I was trying, I would go over there and make sure she was ok from, because they broke up.

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and

Tim: Uh-huh. (yes).

Mike: I just thought, he would make everything really dramatic.

Tim: Uh-huh. (yes).

Mike: He broke in her door twice. Um, once while I there, and I hid in the closet and he didn't find me, and another time, then he knew, but he knew I was there and I ended up going home with him and talking to him and

Tim: Ok.

Mike: And that's when he told me that, that she had, that she played games with boyfriends, and that she was sort of was a nympho with him and that's another reason I didn't want to get involved with her. That's what I was going to say. Um, because he told me on the way home, that she had had two other ex-boyfriends who committed suicide because they were so hung up on her, but I didn't, but I didn't, it wasn't my business to go and ask her.

Tim: Uh-huh. (yes).

Mike: to a, you might put that on there, on the way over, trying to, ah, find out who it is. Um, what was I saying?

Tim: You were talking that, she manipulated

Mike: Oh right, I had no, I didn't want to confront her with this because it wasn't any of my business and I felt bad enough that I was living with her and I wasn't doing anything except I plastered up the hole that she had in her apartment and I was going to plaster up that big one in her bedroom.

Tim: Uh-huh. (yes).

Mike: I don't know if you went in there, I am sure you went in there.

Tim: Ok.

Mike: But, I didn't get to it. And, Alan made, Alan had made those holes, too.

Tim: Uh-huh. (yes).

Mike: Um, but he wouldn't have done this. I don't think. I hope not. Ah.

Tim: You say that he, he broke into the apartment a couple times. Can you explain those times for me?

Mike: Alan have a what?

Tim: Does Alan have a temper?

Mike: Yes.

Tim: What..

Mike: But he's not physical, I mean he won't, I don't, he's never been physical with me, he's always just freaked out and gotten crazy and hit the wall and cried.

Tim: Ok, freaked, I mean, explain what's, what's it mean?

Mike: It's like, it's like screamed and, or talked on the phone to her, and broken down to the floor in tears.

Tim: Ok.

Mike: And just been a mental wreck, and he's not, his health isn't that good either because he just

Tim: We need to know everything.

Mike: Right, I, all I know, I'm, I'm, I'm not, okay, um, he just, I was just thinking what I was talking to Jen about. Um, she thought he was just infatuated with her but he said he loved her, and, and he was just, he thought that she was the only woman for him.

Tim: Uh-huh. (yes).

Mike: And, he was finding out, I guess they broke up like 18 times.

Tim: Uh-huh. (yes).

Mike: Um, but she would always take him back. Um, and they, and there was another time at a party that, um, they both, I was with them too but I was staying away. I was with some friends of mine. And they started freaking out and she was crying and saying she loved someone else and I guess that was me. But, she, was freakin, she was drunk and he was drunk and I guess he started running around after her and she started running around beating on peoples doors, "Help me, save me."

Tim: Uh-huh. (yes).

Mike: And he, he, and then he got in the car and drove off, um, and then he came back and tried to take her with him.

Tim: Did, did he try to forcibly take her?

Mike: I don't know, because I was gone at that point I think, um. I don't know.

Tim: The times, the times when you seen him get mad, Mike, you know some people when they get mad they don't say anything they get quiet, other people...

Mike: That's me.

Tim: get mad and they, they just kind of go electric, you know.

Mike: Uh-huh. (yes).

Tim: What type, what kind of personality does he have?

Mike: Well, when he got mad, when I saw him at, break in,

Tim: Yeh.

Mike: He broke in and he wasn't, he said he didn't want it to do anything except see me there, and as soon as he saw me there, he'd be fine and know it was true that I was seeing her or whatever.

Tim: Uh-huh. (yes).

Mike: And, then he'd leave he said. Um, but he couldn't find me there, and, and I had told him that I was going to go visit a friend that was in town.

Tim: Uh-huh. (yes).

Mike: It was 2:00 in the morning, which was lame. Um, and I was hid, hiding in the closet because I was terrified because I didn't, I didn't know if he would hurt me, I didn't know, I just didn't know how to deal with the situation, cause I never had anything bad happen. Um, so I just hid, and she said she would do whatever I wanted. She could seek me out and he thought I had snuck out a window.

Tim: Uh-huh. (yes).

Mike: And she, she ended up calling a friend of hers who was a friend of mine and Alan's, too.

Tim: Uh-huh. (yes).

Mike: And he came over and talked to me and said that Alan, he told me that Alan was just mad that I had lied to him and stuff, and that, he'd dro**, I said, he asked me if I needed a ride home and I said no, I walked home, but Alan, he was with Alan, so Alan drove me home. Ah, then we talked and he cried and said how much she hurt him and what, how it was messing up his life.

Tim: Uh-huh. (yes).

Mike: And I said, I, and I lied to him and said that I, you know, there is nothing there and I don't want anything or something, and so that's all, I think that's all he knew, I don't think anybody knew that I was, well, my friends sort of, very few knew that I was living with Jen because I didn't want Alan to know. I didn't want many of my friends know because they knew that Jen was like, drank alot and I didn't want, I was just embarrassed I guess.

Tim: Uh-huh. (yes). Did, did he know that you were staying with Jen? That you were living there?

Mike: He suggested it first, before all this happened.

Tim: Ok.

Mike: But, he knew that I had the chance to, and he knew that she was going away to California for a week to visit her brother. So, ah, but as far as I know I don't think he, if I was him I would assume that he, that I wouldn't have stayed there because that would have been the moral thing to do.

Tim: Ok, so there's a chance that he didn't know you were staying there?

Mike: Right.

Tim: Ok. You say that, that Alan left for vacation with somebody or went to another state?

Mike: He went to Cincinnati, to go, to get away, because a friend of his was in town that weekend that this all happen, that he found the notes and came and quit.

Tim: Ok.

Mike: That was the last weekend of August. Um, and he went to Cincinnati to get away from everything because

Tim: The last weekend in August, this is August.

Mike: It's September now, isn't it?

Tim: No this is August 28th.

Mike: Oh, the last weekend of the last, the past, July.

Tim: Ok.

Mike: Thank you. I thought it was September. So that, it, so I didn't, I left on August 22nd not September 22nd.

Tim: Ok. Ok.

Mike: Um.

Tim: So he left the end of July?

Mike: He went to Cincinnati with a friend of his named Jamie Thurman.

Tim: Ok.

Mike: Or Thurogate, I think it is Thurman.

Tim: How long was he supposed to be in Ohio?

Mike: There was no, he didn't have a set time because he wasn't supposed to go. He quit. He broke his contract with this Theatre, and, and said that he just needed to go to Ohio and I said that was the best thing.

Tim: Uh-huh. (yes).

Mike: I, and, I, oh, I didn't think that was the best thing, but I felt bad that I had done this. And I thought he needed to just get away, and cool off, and that would, he needed to just get away from Jen.

Tim: Uh-huh. (yes).

Mike: And, and he did, and he was gone for a week, and like three days.

Tim: Ok.

Mike: And he came back, and I saw him and talked to him and he seemed fine.

Tim: Uh-huh. (yes).

Mike: And I, and I was still living in my apartment, alone.

Tim: Uh-huh. (yes).

Mike: Um, and he, he took all the stuff and packed it up, and went to see Jen, and I had seen, I saw Jen that night and she said she had talked to him, and he, she said he was, ah, he just needed to get away from her, and, um. He was going to wait for her and so he was going to go home to Rockford.

Tim: Ok.

Mike: Um, to visit his friends there, I guess.

Tim: Ok.

Mike: Um. Ah.

Tim: Did he go home to Rockford?

Mike: Yes, I think so, I don't know for sure. Um, but I heard from his friends that they, he wasn't hanging out with them, he was just hanging out with his parents.

Tim: Ok.

Mike: Which is good because I guess they were just straightening him, straightening him out. Um.

Tim: When was the next time that you saw him?

Mike: I didn't, I haven't seen him at all since then.

Tim: Since he went to Rockford.

Mike: Right. But she said he called once...

Tim: When is

Mike: ...and told her that, pardon?

Tim: I'm, I'm sorry. Go ahead.

Mike: I think, I don't know if it was after I started living with her or before. I don't remember.

Tim: Ok, go ahead.

Mike: Um.

Tim: He called.

Mike: He called and said that he was over her, he didn't love her anymore, he was dealing with other things, and he had seen a psychiatrist when he was down here.

Tim: Uh-huh. (yes).

Mike: Um, but he didn't really keep up with it, and I think she was seeing a psychiatrist in the past and I was trying to get her to, cause I think she had problems.

Tim: Uh-huh. (yes).

Mike: Um, so, I guess she got a call from him, she said that he was over her. And, she didn't tell him that I was going to live with her. Um, and I think it's the last I've heard of her, she heard from him.

Tim: Ok. You say that she was seeing a psychiatrist. Why was that, do you know?

Mike: I don't know. I assume it was because, I never really wanted to pry because I felt really bad that, I felt that she was giving me more than I was giving her. Um, I, cause, I just, she let me live with her for a, a, like, she offered for the whole month because I just didn't have a place to stay, and I, I found, I stayed in my apartment for an extra 16 days because the landlord said it was ok.

Tim: Ok.

Mike: Um, and ah, um, I guess she was seeing if, I, I'd assume because she if she had ex-boyfriends in the past, like that. Um, um, that would be the only reason, if, I mean

Tim: Ok. You say that, that Alan was seeing a psychiatrist. Why was that?

Mike: Just because, well, first of all because, well I don't know for sure, but just because of all the stuff that Jen was,...

Tim: Uh-huh. (yes).

Mike: ...that he was going through with Jen. Um, and that was just ripping apart his life, he wasn't sleeping, he wasn't eating right, he was just a mess.

Tim: Yea.

Mike: Um.

Tim: Do you know who he was seeing?

Mike: Who?

Tim: Do you know who he was seeing? Which psychiatrist?

Mike: A psychiatrist at Illinois Wesleyan.

Tim: You don't know the name?

Mike: I don't know, if you said some names I could tell you who he was.

Tim: Is it a staff psychologist?

Mike: I think he, he works for Wesleyan.

happy to try to make some phone calls.

End of first side of tape

Tim: Yeh, your two friends that dropped you off, are out in the lobby waiting for you.

Mike: Ok.

Tim: And they asked if you're still here, and how long we were going to be and all.

Mike: Ok.

Tim: Um, I'm not going to hold you any longer tonight, I just, I want to get some information for I kick you loose as far as where you are going to be living and phone numbers....

Mike: That's fine. Oh, sure.

Tim: ...and stuff like that, cause we are going to have to get in touch with you again.

Mike: Ok.

Tim: And Mike, one thing we're going to have to do, is I'm going to have to ask you to come in, sometime next week, so we can sit down and get a written statement from you.

Mike: Ok.

Tim: It's nothing that you have to do, but it sure would help us if you would.

Mike: Ok. Ok, I write it down?

Tim: What we are going to do is, we'll to do it on the computer and I'll type in a question and I'll read it to you and I'll type in your exact answer. And this thing, it could take awhile.

Mike: Ok.

Tim: We've got alot to talk about it's just like we did tonight.

Mike: That's fine.

Tim: And it may be numerous pages, but we need to get something from you down in writing, so that when we get done with the whole case report we have something to put in there.

MS: Right, and I believe on that Monday, or, Sunday night was the first time I slept over there.

TF: Ok. So, 15th first night slept. Ok. Mike, when did you first meet Jennifer, I mean first time?

MS: It probably would have been close to the beginning of the school year and it was through Alan. It would, it would be seeing her like in the dugout, where, that, which is where we could snack but at Wesleyan.

TF: Ok.

MS: Just seeing her and knowing that she went out with Alan, saying hi to her.

TF: Uh-huh. (yes)

MS: Um, and then I saw her, I remember one time I saw her at the end of the year, before finals, and, um, I talked with her and Alan for awhile, they were in the car and then they drove away.

TF: So you first met, you say the beginning of the school year. Can you you give me a month and a year on that?

MS: Um, it was 1992 but I'd say like October, but that's very rough.

TF: Ok.

MS: I saw her, I. I believe all throughout the year, just at various times, in the Dugout and that's where she met Alan also.

TF: Uh-huh. (yes) **inaudible**

MS: Cause she used to go to Wesleyan, she is now going to ISU, or was.

TF: Ok. Ok. How often would you see her throughout the time?

MS: Not very much, once or twice a month, if that.

TF: Ok.

MS: I didn't see her very much.

TF: At some point in time obviously it changed more from just an occasional meeting ...

MS: Yes.

TF: ... to more of a, a very close friendship, almost a dating relationship if you will.

MS: Um huh. (yes)

TF: When did that all start to come, come about?

MS: You could say that all started in, um, early June, but that's, she was still dating Alan then, and she'd come over to see him and I'd see her like that. Um, and we, one night Alan was out of town and we ended up making out and sleeping together that night. Um, and that was when she was still dating Alan, I'd say in the beginning of June. I'm not sure of the days. I could probably get you the exact date because it was the opening night of the play that I was in.

TF: Ok.

MS: Um, ah, it was like the 7th or 8th I guess because that's when it opened. Um.

TF: Uh-huh. (yes) Tell me about the night that, that you first slept with her.

MS: Um, it was hard because all of my friends knew that she was going out with Alan, and that's when she, whenever she came over, there was only like contacts but

TF: Now, did she come to your apartment?

MS: Yes. There's my apartment and Alan's and Bill, whose car I'm using now.

TF: Ok.

MS: Bill Ingrahm, and, um, another boy who live's in Oak Brook named Brandon Komola. Four people live in the apartment and she'd come over and see him, um, and that night she came over and we were just having a bunch of people over, um, for an opening night party.

TF: Uh-huh. (yes).

MS: Um, and we ended, everybody else ended up leaving the apartment and me and Jen were still, remaining in the apartment sitting on a, a couch and we ended up, we had talked a week before at a party too, and I found out that she liked me and she found out that I liked her.

TF: Uh-huh. (yes)

MS: And the next week, we ended up, I ended up kissing her on the

couch and then we ended up actually going to another building where I knew that nobody would know that we where and we slept together in that building.

TF: What kind of building was that that you went in?

MS: It was a building under construction, the new Sigma Chi house at Illinois Wesleyan.

TF: Ok. What part of the building?

MS: Um, second floor.

TF: Was, was?

MS: It was just in one of the rooms.

TF: Ok.

MS: It was, it's very rough.**inaudible**

TF: What state was the room, were there windows in tact in it, were there open walls?

MS: Yea, there were windows in tact in it. There was plaster board with, with wood, there was some wood exposed on the third floor.

TF: Uh-huh. (yes)

MS: Um, it was under construction pretty much. I think they were working on plumbing in the basement at the time.

TF: Did you guys just sleep on the floor or?

MS: Yea, we didn't sleep there we had sex and then we went back to the apartment.

TF: Ok. Ok.

MS: And the thing is when we were, when I was kissing on the couch, a bunch some of my friends walked in on us.

TF: Uh-huh. (yes)

MS: Um, and we had been drinking that night. Um, Jenny walked in on us and that's why I ended up going away because,...

TF: Uh-huh (yes).

MS: ... um, I knew that they were eventually going to come back and I knew that they knew, but I didn't think about it and I

just did it, so that happened, and I ended up having to tell Alan that Monday that I kissed her.

TF: Uh-huh. (yes)

MS: I didn't tell him that I slept with her. I told him that I kissed her. And my friends pretty much made me do it, so, I mean nobody knows that I slept with her except, um, a few people. Some of my friends do, um, but my friends never saw us, or I sure, I know some people assume that we did, but...

TF: Uh-huh. (yes).

MS: ...they never, they had no proof so I, and, so I just told Alan a lie that we had just kissed and he said that's ok, you know, he talked, he talked to her about it.

TF: How did he take it, I mean did he get mad?

MS: He got mad at her and not me. But he didn't, I mean he called her, he worked at for me at that time,...

TF: Uh-huh. (yes)

MS: Um, and that day that I told him he didn't come in that afternoon, cause he was on the phone with her, um, and I guess there's a whole, oh man, it's, it's hard for me to tell you some of these things, because some of these things I don't think she, she only told me, but in like October she told me that she had a miscarriage of his baby.

TF: Of Alan's baby?

MS: Right and, um, he didn't give her any support because he had met someone else. And he went off with her for awhile and left Jen alone. And when they got back together Jen gave him all kinds of, and I don't even think her parents know that.

TF: Uh-huh. (yes)

MS: Um, ah, when they got back together she gave him shit about that for a long time, I'm sorry, I swear. Um,...

TF: That's alright.

MS: Her, he said seven months she gave him trouble about that, so he said, he finally had some ammunition to get back at her and made her feel guilty about what she did to him and that was what she did with me.

TF: Ok. How, how would he go about that? He had ammunition to get back at her?

MS: He just like, make her feel guilty by talking to her, and manipulating her in ways that I don't know how to do, but I think that she had, she had the power to do that with him, ...

TF: Uh-huh. (yes)

MS: ... and he had the power to do that with her, and I think in a letter, she wrote me a letter, cause I told her, close, when I was close then and some when I was living with her, that I didn't think that we should see each other as much when school started and Alan came back.

TF: Uh-huh. (yes).

MS: And she wrote me a letter before she went to California that said, um, I wish you wouldn't have been, wouldn't be so willing to give up our friendship for the sake of what people think about you, um, and, and pretty much, I mean, that was true, but I think I established when I talked to her that I didn't want to cover up my life I just wanted to settle down and cool it and not just, I mean, not be with her so much. Um.

TF: Can you describe that letter for me?

MS: Um, it was in a card, it was in my, some, a pile of my belongings that were, was at her house, her apartment.

TF: Uh-huh. (yes)

MS: Um, and I think she, yeh, she kissed it. She, she had always put her lips on a letter she wrote, um, but it said that, it said that...

TF: Written in ink, in pencil?

MS: Um, it was typed.

TF: Typed, ok.

MS: And, it was inside of a card that she sent me ...

TF: I see.

MS: ...that was a very nice card that said pretty much that she thought I was very special and she was glad that I was becoming a friend of hers.

TF: Uh-huh. (yes). Ok. After...

MS: But in that, in that typewritten letter I felt that she was being sort of manipulative and, not manipulative, but just, I don't know if her intention was to make me feel bad or not but

it seemed that she knew, she even said in the letter that I would probably feel bad about this because I feel bad, I always apologized about to her about it I'd say, "I'm sorry, I hope its not inconvenient."

BTF: Uh-huh. (yes)

MS: And stuff like that, um, so, but I think that she did it to just try to make me, hurt me a little bit or make me feel so, feel bad so that I, would feel more towards her, and show her the love that I think she wanted me to show her.

TF: Uh-huh. (yes). You guys got close in June you say and the night you guys first slept together ...

MS: Ok, that wasn't, um , ***inaudible*** on that, we didn't really get close, we talked every once, every once and while I would go over to her house and talk to her, um...

TF: Uh-huh. (yes).

MS: ... couple of times Alan found out about it and came over. Um, but it was pretty much, she would date Alan and I wouldn't, I'd pretty much stand back because I didn't want anybody to know anything was going on,...

TF: Uh-huh. (yes).

MS: ... till the time she would come in, I'd go to bed early because I was in charge and I'd have to be there an hour earlier than everybody else. So I'd go to bed and she'd, sneak away from Alan and them and come in and kiss me goodnight.

TF: Uh-huh. (yes).

MS: Um, and over and over again I'd tell myself that that was wrong morally and I shouldn't be doing this, but I did and I didn't, it didn't, make me want to stop it.

TF: Uh-huh. (yes).

MS: I should just tell her to stop, so she'd come in and kiss me goodnight pretty much then she'd leave.

TF: This is when you were living with Alan and she was still seeing Alan?

MS: Right. Um, huh. Ah, me seeing her everyday didn't really start until until, until he moved out really. Well, I saw her every day, I guess, because she'd always be with Alan, but, um, after they broke up, they tried, they tried to hang out

together, and, um, I'd try and, I'd end up talking to her and I would feel bad about it but I'd still talk to her cause I had really good conversations with her, um.

TF: Ok, so you would, from the time that you guys first slept together in June then you just saw her when she came to visit Alan?

MS: Uh-huh. (yes) Well, except for a couple of times when I would go over there.

TF: Ok, except that, and then go over there, ok. You say that continued until Alan moved out?

MS: Un-huh. (yes)

TF: Where did Alan move to?

MS: Um, he went to Ohio for a week and a half with a friend of his to just get away from all of this.

TF: Ok. Ok. Alright. And from the time when he left to go to Ohio then what happened in your relationship with Jen?

MS: Um, she'd come over, I'd see her pretty much every day. I'd call her, she'd call me, um, it was pretty much a dating relationship I guess.

TF: ok.

MS: Um, we'd go out but I wouldn't, in my head I wouldn't consider them dates or I'd put that in the back and say, you know, this isn't anything, and I'd end up kissing her, and it, I'd say this isn't anything, you know, I can deal with it not being anything, I can not...

TF: Uh-huh. (yes)

MS: want anything more from it, and it ended up that I probably, I, I did and now, I mean, I know that my feelings for her were more than what I thought they were, but, um, after that time I pretty much, um, would see her every day but I didn't move in, I lived alone in my apartment from the 1st to the 16th.

TF: Ok.

MS: But I'd see her every night, and, and she'd end up coming over, and then going home. Or else, um, I borrowed her car for the first week of, of August because I worked at the McLean County Fair.

TF: Ok.

MS: And I'd drive her car to work and back cause she said she'd sleep until noon or whatever and, um, then she'd walk to school,...

TF: Uh-huh. (yes)

MS: ...and, um, she'd walk back and I'd get home about 3:30, so I'd just drop the car off at her's, she'd give me a ride back, and we'd end up hanging out or, and I'd cook dinner for her that whole week.

TF: She was going to school, where was she going to school at?

MS: At Illinois State University.

TF: Ok.

MS: She was taking a class in death and dying.

TF: Was it a summer class or?

MS: Yea, she was taking two classes, one on the Anthropology of Death,...

TF: Ok.

MS: ...um, and second one was, um, Cosmology, it was a weather glass. I'd always, whenever I'd ask what it was I'd say cosmetology and she'd say, "No that's make-up."

TF: Uh-huh. (yes) Ok. When was her class over with?

MS: Um, I can't say for sure. I think like 4:00. I think it went from like..

TF: What, what day was it on?.

MS: Oh! I think it was maybe the 5th of August, I'm not positive, wait no, I couldn't say for sure really, I don't, um, she went to California, on, I wish we had a calendar so I could point them out, on the, she left for Decatur on...

TF: You got a blank calendar here Dave?

DW: Yeh.

MS: That would be great. Um, she left for Decatur a week after she had ended school, so like the Friday she ended, Saturday, Sunday, Monday, Tuesday she left.

TF: Uh-huh. (yes)

MS: But she had thought that she'd get out of classes a week earlier and she probably thought she was going, actually . . . I think one of her classes finished a week before and one of them finished the, the week..

TF: Ok. We'll wait for a minute until he gets a calendar so you can sit down with him and the calendar.

MS: Ok. Fine.

TF: Did you talk with a, Path last night? How did it go?

MS: Uh-huh. (yes). I talked with them and it was fine.

TF: Yeh. Ok.

MS: Um, they gave me a name of a counselor at Wesleyan that I'm going to talk to tomorrow.

TF: Ok.

MS: And I talked to my parents again at the hospital and I told them that I talked to somebody and they wanted me to, I talked to my mom today.

TF: Uh-huh. (yes)

MS: and she's going to call again tonight,...

TF: Ok.

MS: cause we've been watching, I've been watching the news all day and I haven't slept much,

TF: Uh-huh. (yes)

MS: and I haven't eaten since yesterday morning but she is going to call back to see if there is anything else that happened.

TF: Yeh.

MS: Today is the 29th?

TF: Ok.

MS: Um, this is the week that I was home last, I was home from Saturday, this Sunday, the 22nd, til Saturday the 28th and then I got back at her, I arrived at her apartment at around 5:30 and that's when I tried to go in, and the police officer told me to come over, and that I, I said I was a friend of

TF: So when was her classes over?

MS: On the 6th, I believe.

TF: Ok. And, now what time of the day did they meet, did you say?

MS: I think one of the met from 1 to 4 and another one met from 8-12 or 8-11.

TF: Ok. Alright.

MS: I don't know what day they met or anything.

TF: Ok. So when did Alan take off for Ohio?

MS: He left on July 25th.

TF: Ok. When did he come back?

MS: I believe on Tuesday the 3rd, I'm not sure. It was after, I, this, this first week of August I worked for McLean County Fair and that's when I borrowed her car and when he came back I drove into the parking lot and he saw me in her car, and I knew that it was just, I mean, if I was in his shoes I would have assumed the same things that he did.

TF: Uh-huh. (yes).

MS: and they were pretty much true, um, but we had told...

TF: And what, what's that?

MS: That, that I was having a relationship with her.

TF: Ok.

MS: Um, which I guess I had every right to cause they were broken up, but still, I don't, I don't think that's correct, cause I've had something like that happen to me. Um, so he arrived back then, I worked for McLean County Fair that week, from Monday to Saturday.

TF: The 2nd to the 7th of August?

MS: Yes, and then from the 9th to 13th I worked at, at Bloomington Seeding Company and used Bill's car to go there. I used her car on the 9th, and then she took off on the 10th of August to go home with her car,

TF: Ok.

MS: so I worked at the Seeding Company from Monday through Friday

TF: Is that what he said?

MS: No. No, I'm sure that, I'm speculating, um,

TF: Ok. Ok.

MS: ...but he didn't sleep that night he said that she had made it, I got up the next morning when he was awake and said that Jen had made a slip last night and she said that she didn't masturbate and I said, I was like, "Oh, she masturbates" you know,

TF: Uh-huh. (yes)

MS: **inaudible** she does and he told me that she did have a couple vibrators and of course she does, she has two vibrators or whatever.

TF: Uh-huh. (yes).

MS: I never saw one and I never wanted to confront Jen with that cause I didn't see it as my place to do that really.

TF: Ok.

MS: Um,

TF: What about

MS: And when he found she stayed, he stayed up all night and then I left to work, well I walked with my coworker **inaudible** and he looked in my room and found the letters that she had written me, and he came to work and said "I quit, your are fucking my girlfriend."

TF: Uh-huh. (yes)

MS: And then the last thing he said to me was, "Are you fucking her" and I said "No, fuck you" and he left and I remember that.

TF: Ok. And was that on the 24th?

MS: 25th or so I, that was a Sunday when he left, and he, um, he went home, I guess packed all his stuff, and I continued to work, um, and I got home and his car was packed full of stuff, and I put a note in his steering wheel that had talked to me before you go, um, and it ended up that he had left with Jaime in Jaime's car, so I ended up taking the note out and locking his car, so that nobody would take his stuff.

TF: Ok. Um, while we are on the topic what about sexual habits of

TF: Ok. What about positions? Did he talk to you about what different positions they tried?

MS: No.

TF: OK. How many times, and I know this is a best guess, how many times would you say Alan and Jen had sex?

MS: Well, they went out for a year, started going out on July 4th of last year I believe, or July 12th or something.

TF: Ok.

MS: Um, and they broke up this year around the same time, um, (clears throat) at the beginning they had sex alot, he would stay over there with her from his dorm room, um, in the end, she withheld sex from him. Um.

TF: Ok.

MS: He, he would be all upset about it and he, had a, after the Rockford, when he went to Rockford and the Sigma Chi house happened, they had sex about three times after that I think. Um, one was on their anniversary and the other two times, I don't know when, I don't even know if it was three exactly.

TF: Ok.

MS: But I know that she stopped having sex, having sex with him or that's what he said to me. He's come in to work and say she's still withholding from me, or, I, I don't think he really said that, but I, sort of, cause I was interested if she, if they were still having sex.

TF: Uh-huh. (yes)

MS: Um, cause I was interested in her, I'd sort of pry, and, just enough so that I could get a hint that they weren't, I'd try to lead the conversation, so that he would tell me what they were.

TF: Ok.

MS: Which obviously they weren't if he told me that.

TF: You left on, I'm, I'm going to kind of change gears for a little bit here.

MS: Ok.

TF: You left on what day to go to?

MS: Chicago?

TF: Elmhurst.

MS: Elmhurst, Illinois. I left on the 22nd. That morning I took her out to Zorba's...

TF: Ok.

MS: ... for breakfast at about 11, I stopped by some of my friend's houses at ISU that I hadn't seen in a long time and I actually stopped by their house with her because...

TF: Uh-huh. (yes)

MS: ...I was happy that she was hanging out with me because she was very attractive, and I wanted to sort of show her off to them.

TF: Ok. I'd like for you to do me a favor Mike.

MS: Sure.

TF: To the best of your memory, if you would describe how the apartment looked, when you left on the 22nd. What I would like you to do is, is to start as you walk in the door, I want you to, in your mind, to turn to the left and describe what the kitchen looked like to me, then describe what the living room looked like to me

MS: Ok.

TF: then describe the bedroom, then the bathroom. That should pretty much cover the whole apartment.

MS: That's, yea, that's fine.

TF: Ok. Could you start out and do that for me?

MS: Yes. Walk in the door, blue carpeting, turn left to go through a beaded curtain into the kitchen, on the left hand side was the refrigerator, um, on the bottom piece of it, was kind of like, falling down, um, there were probably diet coke cans around. Um, I tried to get her to re-cycle them and she'd throw them away. Um, in the cupboards were a lot of my food and a lot of her food, actually not a lot of her food because she didn't, she didn't eat that much.

TF: Uh-huh. (yes)

MS: I'd try to get her to eat more and she'd say no I have to watch my figure **inaudible**, um, on the kitchen table, on

the counter there was a toaster and a microwave, um, sink,

TF: Were there normally dishes in the sink?

MS: Not many.

TF: Ok.

MS: There shouldn't have been many in there I don't think, um, espically if she was alone, I wasn't there any more, um, the stove was in the corner, the far right corner...

TF: Did she usually leave food on the stove?

MS: She didn't really cook with the stove I don't think. She never did when I was there, and I don't think she never really bragged about being a good cook, and she had a lot of lean cuisine things in her freezer, but she would, actually, I don't think, her mom gave them to her and I don't think she really ate them.

TF: Uh-huh. (yes)

MS: On the kitchen table there was, a computer, typewriter, word processor thing and a egg car or milk thing, crate, with books and magazines in it. On top of that I guess there was paper and pen holder, um.

Officer's beeper goes off.

TF: Go ahead.

MS: Um, there was an opening to the right side of the couch, or right side of the ah, kitchen table

TF: Ok.

MS: ...um, and in that opening was the couch, ah, to the left of the couch there was a lamp, um, with a shade that had green velour,

TF: Uh-huh. (yes).

MS: ... weird looking stuff on it, that was commonly falling off cause it was broken.

TF: Ok, the shade, tell ..Ok.

MS: Yes, the a, I tried to fix with duct tape, there was probably duct tape on the thing, but it always got, it got really hot that week and I didn't want to use her air conditioning when I, when she was gone, cause I didn't want to run up her bills,

I was getting to use her apartment for free.

TF: Sure.

MS: Her shades were, the kitchen window was usually open a little bit, I think and the cat would always go in there, Lucy, the one with the pink collar.

TF: Uh-huh. (yes)

MS: Um, in the living room the shades were always drawn, pretty much. When I was living there, I opened them most of the time and opened all the windows cause it was hot, um, but they were commonly, while she was there, they were closed, the air conditioning could have been, and the shades were drawn, um, bean bag chair, pink, no black, or no blue on the floor. I think it was blue and the blue rug um,

TF: Ok. Where on the floor?

MS: We moved it all around. Usually it was closest to the shade, the drapes. Um, she usually had a pillow with the arms, I don't know how to describe it, but it's just something that you sit up in bed with and read at night.

TF: Called a study buddy, sounds

MS: Right, prob, that's what, she had it below the chair that was as you were walking in the door, you would walk straight and it would be on your right hand side, past a table with a phone on it and things with two vases with flowers I believe. I brought her flowers a couple weeks before they died I threw them away and put the fake flowers back in. Um, um, the, there's a television table, well I had my tapes on, right next to the drapes, those two big canisters with tapes in it, the wooden crates were my tapes, um, she had a white storage container that had her tapes in it and she had a bunch of records next to the chair that she played. Um, there was a little Grease sticker, up on the wall, that's ***inaudible** because she liked Grease a lot and a friend of hers put it up there for her once. Um, um, facing the back wall with the doors, tapestry on it, the doors tapestry in the middle, um, then there was a Who tapestry and a Rolling Stones tapestry on either side of that, um, she had hanging a moon and a star from the ceiling ...

TF: Uh-huh. (yes).

MS: ... drapes and, I can't believe how much of this I remember. Um, a peace symbol with a cardboard cut out on the other wall or hanging from the ceiling closest to the other wall and on that wall there was a Grateful dead tapestry, um, then a

little dent in that wall too. That was there. Um, she thought, she didn't know how it got there either, because she thought that was one of the ones that I had plastered up.

TF: Uh-huh. (yes)

MS: There was a dent in the wall. It wasn't broken through it was just like a, impression in the wall, but it was about like, I guess, three fingers and a fist in size.

TF: Ok.

MS: Walking in straight, to go past the chair there was a television table, with a television on top of a VCR, to the left of that there was a big coffee tin, I think, with like scissors and stuff in it and a stereo to the left of that with a record player on top, um, the cats would always, the wires were all in back of there, the cats would always play with them, and I had next to that a box of letters that my mother, my aunt gave me that my mother wrote to her when I was a child, about my childhood or when I was a baby.

TF: Uh-huh. (yes)

MS: Um, to the left of that was another lamp on the floor or on the crate, I'm not sure which one, it might have been on the crate. Um, that's the living room.

TF: On the table, Mike, were there, were there other canisters?

MS: There was a wicker basket, too and that's where the pipes were and I knew, I knew she had that in the car but, um.

TF: Ok. What, what else was on the table besides the wicker basket? **inaudible**

MS: There was a, there was a, the whipped cream thing?

TF: Ok.

MS: There was a whipped cream container, with, with 3 seeds of marijuana that I had found when I cleaned out my own apartment. I planted them myself.

TF: Ok.

MS: Because I was interested to see if they would grow.

TF: Ok, you mentioned something else that was on the table there. I can't,

MS: There was a coffee can. It was, like, she had squirt guns in

it cause she squirted the cats when they would, like, they would always run out. She wasn't supposed to have cats in the apartment.

TF: Yeh.

MS: And they would always run out so she'd, we'd bring them back in and we would squirt them to show them, discipline, is that what you mean?

TF: Yea, you mentioned a coffee can, is there anything else in there?

MS: I don't know. I don't think, there probably was, but I don't, um, hmmm, all I can remember being in there is the scissors, not scissors, scissors were in the drawer and I cut my finger on the scissors in her apartment, um, two squirt guns, one was long, one was thick, I know there was other stuff in there, but I can't remember what was in there, I'm sorry and I'm not saying

TF: Ok. Ok. Ok. What, what was there a drawer in the table where stuff was kept.

MS: Not under the TV table, I don't think, but under the, there was a big tablecloth over the one with the phone and there was games under that. Um.

TF: You mentioned that there was another drawer.

MS: Um, she kept little scissors in the drawer in the kitchen

TF: Oh, kitchen drawer, ok. I thought there was a drawer in the table.

MS: I don't think so. I don't remember there being a drawer and I never opened a drawer in there um.

TF: Ok.

MS: One, the first night I was staying with her, ah, I was alone in the apartment, I was sorta scared, because it was my first night alone there, and, there was, there was a big thunderstorm on the night of the 15th, or the, 15th, I think, and I just freaked out and I was, I told myself I wasn't gonna snoop around when she was gone, to see, cuz I knew that she, Alan said that she had vibrators somewhere and I didn't wanna look around for 'em but I did, go in one, her top drawer of her, where she had, in her bedroom, um, her dresser drawer, and there were, like, there was a bunch of medicine in there.

TF: What's that

MS: She told me later that that was for like, like ****inaudible**** and stuff like that.

TF: Let's, let's back up, you were in the living room.

MS: Okay, the living room.

TF: Yeah, continue from where you were talking about. There was a TV table, and you were going around the, progressing around the room. Can you continue with that?

MS: Ok. TV table, had all that stuff on it. The wood container was mine. Ah, oh I don't even know if it was on there because she might have put it in the window.

TF: Ok.

MS: Um, it had three marijuana seeds in it. That, or, I assumed they were. I found a bag in my apartment that was Alan's and it didn't have anything in it except seeds and stems.

TF: Uh-huh. (yes).

MS: And, I didn't, I don't know much about it, but I have, I've done it, like I told you.

TF: Um- hm. (yes)

MS: But, I didn't know if you could get high from the stems or the seeds or what. But I thought it would be neat to see if I could get the seeds to grow and then use ****inaudible****. I didn't know how far I was gonna take it. Um, but I planted them. That's why I cut my finger, cutting the plastic container for that. Maybe that was a warning not to do it.

TF: What did you, were they small, were they small scissors?

MS: No, they were a pair of large scissors with plastic on 'em. It was pretty sharp. I was, I went through the plastic and I had my finger on the inside of the plastic and I just sliced my finger.

TF: Through the plastic?

MS: I was holding, this is the bottom of the plastic container and it was like that.

TF: Ok.

MS: I was holding it like that and feeling the scissors poke through.

TF: Yeah.

MS: They just poked through and cut my finger, like.

TF: Did they have a square, or straight end on them or were they, like...

MS: It was like, pointy. The end was pointy and one of them, one was pointy and one was rounded.

TF: Oh, okay. Alright.

MS: Probably big scissors for paper cutting I guess.

TF: Like, what type...

MS: Um...

TF: It was a hand, was it an insufficient handle and you slipped, or...

MS: No, I just, I was feeling it come through and it went through too fast, it was sharper than I had expected so it, it cut me.

TF: Oh, I see. I see.

MS: And I called my mom that night from her apartment and said, um, I, I gave myself first aid and everything because I've been a medic.

TF: Yeh. Uh-huh. (yes).

MS: And told her that, you know, it was really hurting. I didn't know if it was a pretty deep cut I saw it. And I didn't know if I'd have to go into BroMenn.

TF: I see.

MS: I ended having to, I just covered it up and patched it so it sealed itself and I...

TF: Uh-huh. (yes).

MS: Um, wrapped a paper towel up for the next day with scotch tape wrapped around it.

TF: What night was that?

MS: Um, the 16th, Monday the 16th. And that night I stayed at her apartment all night and watched the last ***inaudible**of Christ.

TF: Ok. Ok, go ahead. We were working our way around the living room.

MS: Ok, um, that's all in the living room I think.

TF: Okay. You mentioned the table with the phone.

MS: The table with the phone had the phone, the phone on it, the phone might have been on the floor, ah, it had, when I left it had my, and you can see in the picture that it had my phone list on it. I had made a phone, that, it, it's not totally mine. It was mine, Alan's and Brandon's and Bill's from when we lived at the other apartment. I brought it over because it had Rich and, Rich and Mark's phone number on it and stuff like that.

TF: Uh-huh. (yes).

MS: Um, and she had, I don't even know if she had a phone list, but under the table, or on the table was the phone or on the floor.

TF: Okay, you left your phone list on it.

MS: Yes.

TF: What did your phone list look like?

MS: Um, I think it was graph paper.

TF: Okay.

MS: And it was just pretty ratty paper. And there might have been also IWU Summer Theater Company phone list.

TF: Okay.

MS: From back to back.

TF: Was it taped on the TV, on the phone I mean or just set on top of the phone or?

MS: It wasn't like on top, it was just, it was just in the area. And it could've, she had the air conditioning on and the fan, there were fans in there too, I think. Um, and window, there might have been, or maybe, we might have taken it out of the window and put on the ground, a fan. That was Alan's fan actually that he left in my apartment when he left and I was giving it back to him when he came back to school.

TF: The one that's usually kept in the livingroom?

MS: Um, the metal fan that goes in the window, that you can shut a window on. It has double heads.

TF: Oh, okay.

MS: Um,

TF: I know which one you're talking about. Ok, go ahead.

MS: Um, on the table, the phone was on the ground, and the phone was, could've been anywhere. In the picture its on the table, so I assumed that that's probably where it, it is, or it was.

TF: Ok.

MS: Um, on the table there were also two vases. Um, and a picture that she had, that she got sold by a student, a foreign exchange student, that she got ripped off on. It said love on it and,

TF: Oh, yea. It's out of the bible, love is patient, love is kind.

MS: It was nice, it was very nice.

TF: Yeah. Had a good author.

MS: Yeah, it did. Actually there's a bible in the room too, and I was reading that while she was gone.

TF: Yeah.

MS: Um, it was probably, can I progress to, in the bedroom now?

TF: Yeah, yeah, go ahead.

MS: Ok. If you go

TF: If you've covered everything in the living room go on ahead.

MS: I have. Under the table, on the table there were two vases with flowers in them, I believe

TF: Ok.

MS: And an answering machine, that's if you look down. And under the table there were a bunch of games and phone books, um, and the cat I think liked to go under there. Um, strewn around in the bedroom there might have been cat toys, like a ball with a bell in it, that was the cage for the ball and, um, a pink stick, ah, and there, there used to be a little mouse attached to the end of it.

TF: Uh-huh. (yes)

MS: But it had broken right before I left, so I don't know if she would have been able to fix it or not.

TF: Ok.

MS: So cat toys were around. And in the kitchen there were cat, there was cat food, cat dishes on the floor. Um, towards the couch um, go, going in the apartment, I turn to the right and I go, I go past the closet and I go into the bathroom.

TF: Ok.

MS: The bathroom, I'm looking straight at the bathtub, um, right to my right is the sink and that's the cabinet above it. To the left of that on that wall is 4 shelves or 3 shelves with her beauty stuff on it and toothpaste and brushes. Um, along that was the toilet, um, and a plunger and there was a kitty litter box and clothes.

TF: Ok.

MS: When I was living there, they had, she had two cats, she had, one of the cats I got from where I lived from some people who asked her if she wanted it and she took it. It was an older cat named Lucky, it was a black cat, um, it had a litter box, and we, I put it in the bathroom too, so there were two open litter boxes in there when I was living there alone. And it stunk, so when she, and I sorta when I'd take a shower I'd just hold my nose and, cuz I didn't know what to do, I didn't know how to change it and such. So I waited until she came home and she ended up getting that ****inaudible**** cuz it was so horrible, smell.

TF: Yeah.

MS: Ah, and they ended up, I guess liking that one and using that one. Um.

TF: This is, when did this happen? The first week that you moved in?

MS: When did I...

TF: When you couldn't stand the smell of the cat liter?

MS: That was, um, it would have been, well I took care of her cat, we got kicked out of our apartment, the lease ended on the 16th, so we had to be out of, out of there.

TF: Ok.

MS: I took care of her cat from the, her cat, Lucy the small one with the pink collar, from the 10th to then, and on the 12th I brought her over to my place.

TF: Ok.

MS: Just cuz I was sick and I came home and I didn't want her to be alone for that long.

TF: Sure.

MS: And that was hard because I couldn't let her get out and our door, our front door was always open, so, I ended up just bringing her back and taking care of her in her apartment. On the 16th I brought Lucky over, or 15th, I think, I brought Lucky over with her, his liter box and then into the bathroom which reaked.

TF: Yeah, so you waited until she got home?

MS: No, she was home on the 8th, well she was home, she got home on the 18th.

TF: Ok.

MS: And she was home for, when I got home from work at the Card Factory, I got out of work at 3:42 and went right home. And I saw her and I think one of the first things we said was, she was like sorry about the cat odor, and I was like, don't worry about it, you know, you let me live here I should've changed it, I should've.

TF: Okay, I was just wanting a general time.

MS: Okay, I'm sorry.

TF: Ok, that's okay, go ahead, go ahead with where you were at in the bathroom.

MS: Um, that's the bathroom, I think. She might have had a towel, I think there was a rack on the left hand side.

TF: Okay.

MS: I don't know for sure. Um, the shower, and the shower curtain I don't remember what it looks like.

TF: Okay.

MS: Um, you go into the bedroom, the door is on, it opens up with your left hand, you push it open, and there was a shoe rack on the front of that.

TF: Okay.

MS: Um, that's one of the things I fixed when I went there. The shoe things had things that you put into the two racks and I took, I got pliers, I don't know if the pliers, if I left the pliers there or not.

TF: Ok.

MS: I could've brought em back to the theater, but I squeezed it and pushed it in farther so it was in group so that it locked in, so I fixed that. I don't know why I'm telling you this, but I guess.

TF: No that's, that's fine.

MS: Um, let's see, proceed past that and on the left hand side behind the door, um, where the door handle was there was a hole that was patched up, that I patched up.

TF: Ok.

MS: I had sanded it down and I don't know if, she might have opened the door past again and broken it through. I thought it might happen cuz that's right where the door knob was and it was a small hole, door knob hole.

TF: Okay.

MS: But I had patched that up and there's a large hole that she said Alan had made and Alan was going to fix it up for her.

TF: Did she say how Alan made it?

MS: No.

TF: Ok.

MS: I don't know, um, and, it could've been them just joking around, you know going, kinda karate guy fan. Um, I was gonna patch that up with the, there's a piece of wood with a hole in the center and plaster in the container,...

TF: Uh-huh. (yes)

MS: ...on the crate with her purses in it, in a crate I believe, on the floor I think there was a sander.

TF: Okay.

MS: That is the theater's and I told, I called, um, him today and said that I had borrowed that and I'd bring it back as soon as

I can.

TF: Okay.

MS: Um, proceeding to the bedroom on the left hand side, um, there was desk with a chair there and a phone on it. On the other side of the phone there were two milk crates, one with purses in it and the other had papers in it or something. I don't remember exactly what was in that one. But on top of that crate I think I stacked some of my stuff. Some of my papers. With like, that's where the letter would've, would've been, that card that she wrote me and the letter. Um, that says, ****inaudible**** throw away our friendship.

TF: Uh-huh. (yes)

MS: Um, this is where, most of my stuff is in that, in there. Um, in the closet, going around in the closet where I hid it in the big closet with all of her clothes, um, her clothes were on one side, in the bottom there was shoes, not as much as when the closet incident happened because she got that shoe rack about half way through the summer, not halfway through the summer but somewhere after that. And, my clothes were shoved on the other side.

TF: Okay.

MS: Um, that was all my hangup clothes, um, suits and whatever, what have you. Um, turning to your left from the closet was another desk with a vanity mirror on it.

TF: Okay.

MS: Um, that's the desk with the, um, with the prescriptions in the drawer. Um, I didn't open any of the other drawers because I, I sortof, um, was mad at myself for even going that far and looking in that drawer. Um, that's where she had her makeup and her brushes and her beauty supplies. I don't think there's anything else in that but I sort of, there's a window upon that too.

TF: Uh-huh. (yes)

MS: Um, I sort of remember something being to the right, on the right side of the desk but I'm not sure, I don't know. So I really can't say, um, if you're standing in the doorway, I'll go, I'm sorry I'm going back all the time.

TF: That's okay.

MS: Um, looking into the bedroom, there's a single bed on one side and that's the bed that I slept in, and the bed that I slept

with her or had sex with her and oral sex with her in a couple times. Um, the other bed, she would sleep in the bottom bunk. Um, she said before I got there she would switch beds, but we never slept the night together.

TF: Did you never spend an entire night together?

MS: No, we never did.

TF: Okay.

MS: Never did it. Um, and she'd always go to bed later than me, cuz I'd go to bed, I'd try and go to bed at 11 but I'd end up, she'd tuck me into bed, and we'd fool around and it would turn into me making out with her,

TF: Uh-huh. (yes)

MS: ...and either fooling around with her or having sex. Um, um, she'd tuck me in and I'd go to bed at 11, but it'd turn out to be more like 12 by the time everything was over, um, and she'd go to bed late at night and she'd get up usually before me. And I got up at 6:00 o'clock, um, not usually before me, but once, the first time I think she was there Wednesday night she got up at 5 and I woke up and saw her putting on makeup and I remember thinking that, um, she's a member, she was member of Kappa Kappa Gamma sorority and I kept thinking she's a Kappa.

TF: Ok.

MS: Cuz they're notorious for having big hair, um, so she was up before me that time but we never slept together all night. Um, so the, on the right side of the room there's the bunk beds. On the top on the bunk beds was a pile of my stuff again, on the bottom was my sleeping bag and you built up towels, and actually some of my letters might have been there too, I might have magazines on that. Um, I think I had a box of letter, a box of envelopes on that with stamps inside of it. Um, and I think that's all I had there. Um, I put something else up there too, um, I don't know, it wasn't, it was just one of my belongings. It was, maybe my, no my alarm clock was on the floor. She had two alarm clocks, one of them was mine. Most of the...

TF: What did the alarm clocks look like?

MS: Um, hers was, I think, white, um, or off-white, um, and mine was, both of them were digital, mine was, had a brown top, um, a red front, I guess I mean the numbers were red, I don't know if it just had a red front, but, ah, is that all you need, is that okay, is that enough description?

TF: Yeah, sure.

MS: On the top bed there were a couple stuffed animals. That's what I put up there, I think, my small stuffed animal that was mine. Um...

TF: What kind of animal was it?

MS: It was a small lion.

TF: A small lion, okay.

MS: And she had a small dog and a couple other animals on her bed, I don't even know what it was, but the dog was...

TF: You said there might have been a box of letters on the bed.

MS: A box of envelopes.

TF: Of envelopes, oh, okay.

MS: Yeah, the box of letters were,

inaudible (another officer)

TF: Oh, okay, go ahead.

MS: Um, I had letters though, that probably would be with my papers. They were just from different girls that I wrote to over the summer, girls in my family and my aunt and my mom.

TF: ok. Alright.

MS: Um, (clears throat) excuse me. Um, in the, in between the two, the two sets of beds, um, was a dresser that she let me put all my clothes in. All my clothes were in there, I don't think any of her clothes were. Um, on top of that was, um, a lamp.

TF: And did she keep the alarm clock up there?

MS: I don't know. I think, I believe she kept, kept them on the floor, I know she kept them on the floor, I don't know if, there was, she had a lamp up there, a jewelry, a big wooden jewelry box and, no I took my jewelry box home, my earrings, um, I don't know, and in the living room there also were candles all over cause she liked candles and I liked candles.

TF: Okay, where did she keep her other fan?

MS: Um, on the floor next to the bed by, so it could
inaudible, plastic, plastic, plastic fan, there was

probably a box fan...

TF: Ok. By which, by which bed? The

MS: By the bunk beds.

TF: By the bunk beds?

MS: Yes. Both of them were plugged into an outlet around there.

TF: Both, both of the fans?

MS: Both of the alarm clocks.

TF: Okay, both of the alarm clocks.

MS: So they were either on the floor by the bed when I left or on the bed.

TF: Okay, on the top, bottom?

MS: Bottom bunk.

TF: Bottom, okay. They were both on the same side of the room?

MS: Yes.

TF: Okay.

MS: Because they were both plugged into the outlet close, I think she had a power switch by the vanity, by the desk by the vanity, I don't, and they were both plugged into that.

TF: Ok.

MS: But I know that the switch controlled the light and when I turned the switch off, one of the alarm clocks would go off. My alarm clock would go off.

TF: Okay.

MS: So, I ended up having to just turn off the lamp from there. I'm sorry it's not important.

TF: That's okay, go ahead.

MS: Um, and that's the bedroom I think, um...

TF: You mentioned the fan?

MS: Yes, there are two fans, one was a plastic circular one with a support structure on the bottom,

TF: Ok.

MS: ...and the other one was a box fan that had a drum support, just like little legs.

TF: Ok. There was..

MS: The box fan was mine, the other one was hers, but the circular fan, plastic, was right by where the alarm clocks would have been.

TF: Okay.

MS: On the floor by the bunk beds, by the vanity. Um, the box fan could've been over there also, but it might've been in between the two beds like, by the dresser.

TF: Okay. And that one's yours?

MS: Yes, that one's mine. Most of the fans were mine because I brought 'em over there. They were, well they're not mine. One of 'ems mine, one of 'em I don't who's is, someone left it in my apartment, either Alan or a friend Alan's, and the other fan was the one with the dual heads was Alan's.

TF: Okay.

MS: Um, also on the walls in the bedroom, um, there were two pictures of Jerry Garcia, one of, one I cut out for her and put up and the other one she had before. Um, a picture of Van Halen, pictures above the, the single bed, of, Steve Tyler and I think maybe that the other members of Aerosmith cuz she liked them a lot. Um, and she like Steve Tyler a lot, and there was a picture of Steve Tyler above her top bunk bed, I think. And I think that's all that was on the wall.

TF: Okay.

MS: Is that, like, what you found? Or I don't even know if you can say.

TF: I'm, I'm just trying to think if there's anything else I need to ask you.

MS: Okay, I'm sorry.

TF: No, you're doing a fine job of describing, a real fine job.

DW: Was there a painting above, ah, the bed you slept in?

MS: Yes, there was, um, she said a friend of hers did that. I never knew if it was an ex-boyfriend or a friend, and it was

sort of, um, it wasn't anything incredibly impressive, it was just a painting, acrylic, I think, hanging above the bed. Your right.

TF: Ok, so you slept in the bed on the left as you're looking in the room? The single bed?

MS: Correct.

TF: And she slept in the bunkbeds?

MS: (nonverbal answer)

TF: Did you guys ever sleep in the top bunk? Anybody ever sleep up there?

MS: I don't know, I never saw her sleep up there except, stuffed animals were always up there.

TF: What about calendars?

MS: Yes, she did have a calendar on the wall also. Um, it was for the month of September, I think that was the only month that was left, um, and then she had bought a new one and her, her school books she had just bought, we just started school on Monday.

TF: Uh-huh. (yes)

MS: And, um, she had just bought a new one, so I don't if she replaced that or if it was still on the floor, um, when I left. I think it was on the floor. It was probably below the hole that I repaired, there was probably plaster, cuz I sanded it off with the sander, then I put excess on it and I sanded it off.

TF: Yeh.

MS: The way I did it was I put a string, I don't know if this is important, but I put a string through the hole and I pulled it, put the wood in there and pulled then put plaster there so that the wood would be a backing for it. Then I'd let it dry and go over it again.

TF: I see. Ok. Um, you mentioned, the, the cart with the seeds and, and I know I got kinda detailed there, I was, I was really kinda curious, you know, cuz, you, you mentioned the drug aspect and there's a carton with seeds and the scissors, can you describe the scissors for me?

MS: Cart with seeds and scissors?

MS: She said she made her money through the Vidette, and

TF: And she was a paid reporter?

MS: Yes, and she had, um, she had a writing job with a magazine called, um, something Edge, it's Big Edge, it's a new magazine.

TF: Ok. The Edge I think it's called.

MS: The Edge, right. She had it, one copy of that in her apartment.

TF: Ok.

MS: Um, she was a writer for that supposedly. I don't know if she had written any stories for that or not but she got money. She won \$150 when she went to like Lake Tahoe in California when she was visiting her brother two weeks ago.

TF: You mentioned before, you know, when you were up at your parent's house that you were driving their car, what kind of cars do your parents have?

MS: A Chevrolet Skylark, and that's, and I drove their, our mini van once, it's a Plymouth Voyager, I believe.

TF: What year is the Skylark?

MS: Skylark, I believe it's a '79 and it's white, um, with a red interior. And the mini van is midnight blue, I think, with blue interior.

TF: Ok.

MS: And that's a pretty new car.

TF: Um, we talked last time and you said that you didn't think Alan knew that you and Jen were living together. Do you know if he ever found out about that? Does he

MS: No, I, I know, well, up to the point when I left Jen last time I talked to her on Sunday, she told me that she didn't say anything to him about us living together and I was happy about it because I didn't want him to know, because I was

TF: What do you think the result would be if he found out?

MS: Um, I really don't know. I mean he would be hurt, but I don't know what he'd do. I'm sorry. I mean I, from past experience I could say lots of things, I mean he could come and break the

door down again but I don't know if he would do that again. I don't know if he was over Jen like he said he was, he wouldn't do anything. He'd say um, "That's sort of a shitty thing for you to do," but that's about

TF: Besides, besides pushing the door in, has he ever gotten physical in any other ways, punched holes in the walls that you've seen?

MS: He kicked a hole in the wall in my apartment and I plastered that up, and he...

TF: Ok.

MS: ... made those holes in Jen's wall, but that's all I know. I think, no, he took her lamp once, the one with the green stuff on it, he gave that lamp to her, and he threw it out once and

TF: Threw it out, threw it out where?

MS: In the dumpster outside.

TF: Ok.

MS: I guess they had an argument and their relationship, they always had arguments, like I said that last night they broke up, he said 17 times, and they would get back together and that's in a year, um.

TF: More than once a month.

MS: So, right. But, I mean, so they'd either break up for like a day or two, and he'd call and say, "Look, I can't live without you," and she'd give in, or I don't know, I guess that's how it went. The last, she broke up with him once, before they broke up for the final time, when I was, when I knew her, pretty well, and he called her the next day, and, or he, he came to my room that night I remember and said he, he was crying and said, "its over." I'm going, he was going to go over to give her an anniversary present and say good-bye to her and get some of his stuff in their apartment.

TF: Have you ever seen him get physical with her? What about

MS: You mean like intimacy?

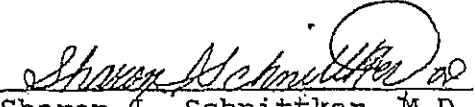
TF: No, like physically violent...

MS: No, I have not.

PATHOLOGIC DIAGNOSES:

- I. Ligature strangulation.
 - A. Ligature compression mark of the neck.
 - B. Petechial hemorrhages of the conjunctivae.
 - C. Ecchymoses and abrasions of the neck.
- II. Multiple stab wounds (scissor wounds) of the anterior chest.
 - A. Stab wound penetrating the left lobe of the liver.
 - B. Moderate postmortem decomposition.
- III. Moderately severe postmortem decomposition.

OPINION: This 22 year old white female, Jennifer Lockmiller, died of ligature strangulation with an electrical cord from a clock radio. Also present were multiple stab wounds inflicted with scissors to the anterior chest. The ethanol level detected in blood is consistent with being caused by the decomposition process. The elevated level of Zoloft and its metabolite detected in the blood may also possibly be related to decompositional process in the body, changes in pH, and postmortem redistribution of the drug. The decedent was known to be receiving Zoloft prescribed by her doctor at a dosage of 150 mg daily in the morning.


Sharon C. Schnittker, M.D.
Forensic Pathologist
Date signed: 9/24/93

COUNTY DEFS. INI. R26 000110

C03002

Ring.....

Tim: 911 Emergency.

First Caller: Um, yes, um, you talk.

Second Caller: Hello, who is this?

Tim: This is 911 Emergency, do you need help?

Second Caller: Yes, well, not right now. I just, I went over to go see my friend and she's been murdered. I, I ..

Tim: Ok, mam, what is the address?

Second Caller: 412 North Main.

Tim: 412 North Main, is that where she is at?

Second Caller: Wait, I think it might be South Main. Yeh, that is where she is at, Apt. #4.

Tim: 412 South Main, #4?

Second Caller: Is that, is that in Normal?

Tim: Well, are you in Normal? There is a 412 South Main in Normal.

Second Caller: Yes, and it's an apartment building.

Tim: Ok.

Second Caller: And she's in apartment #4. The last time I talked to her was Tuesday night, we went to the movie and then I've been calling her all week and leaving messages and she hasn't returned them so I went to go see if she was Ok and, the door was unlocked and I went in and I found her body, and

Tim: She is in Apartment #4 and she is inside?

Second Caller: Yeh.

Tim: Ok, I am going to put you on hold and I am going to send an officer, please don't hang up, ok?

Second Caller: Ok.

Tim: Thank you.

Second Caller: I am on hold, I'm, I'm, I am so freaked out, her

body is so gross and it's all, it was all swollen and purple and, oh my God, I can't believe I made it here. I was like talking to myself the whole way here. I was like "just calm down Morgan, you'll, you'll be fine" and, I know who did it too. She had this psycho ex-boyfriend that she broke up with. His name's Alan, he went to Wesleyan and I only met him once and he was psycho and he used to harrass her all the time and he used to break down her door.

First Caller: I, shit, I was so shocked, I just. I'll be right back, I'll be right back.

First Caller: Come on, come here, Your getting a blush on you cause I know your going to get cold.

Second Caller: I am so freaked out, I knew that it was weird that she hadn't, that she hadn't returned my phone calls. Her body was so gross, her arms were like dark purple and her, her legs were bent behind her body and she was like up like this in an arch and she had no clothes on and she just had these scissors sticking up out of her chest. I knew something was wrong, I knew it, I knew it.

First Caller: Do you want me to talk to them?

Second Caller: I am on hold, I don't, he's like "don't hang up", oh my God, I can't believe I just found one of my friends murdered.

Tim: Ok, mam, are you still there?

Second Caller: Yeh.

Tim: Ok, I have officers on the way and I have also rescue and Lifeline on the way.

Second Caller: OK.

Tim: Ok, do you want to tell me what exactly happened? Like what the circumstances?

Second Caller: Well, I can, I can help you out some but not much. I went to the movie with her on Tuesday and she and I were supposed to get together another time this week. And I called and, um left about five or six messages and she never got back to me and I thought maybe she had just gone to see her family or an emergency had come up or something and I didn't think anything of it. And then I called today and

It is September 2, 1993 at 1:22 pm. This is an interview with Heidi Steinman

Dave: Would you state your full name please?

Heidi: Heidi Lorraine Steinman.

Dave: Your date of birth?

Heidi: 5-26-72.

Dave: And your address?

Heidi: 9400 Parkway Drive, Highland Indiana.

Dave: And your phone?

Heidi: 219-924-3861.

Dave: Ok, and why are you here today?

Heidi: To tell you anything I know about Jennifer Lockmiller.

Dave: When was the last time you had contact with Jen?

Heidi: Oh,...I talked to her on the phone on last Tuesday, ah last Tuesday at, I don't know the date.

Dave: Ok.

Heidi: Um, it was in the afternoon.

Dave: Approximately what time?

Heidi: I honestly don't know, it's like...

Dave: You know, between what times, would it be before 3:00?

Heidi: Probably about 2:00 or 3:00.

Dave: Ok, and what did you talk about?

Heidi: Um, I was supposed to visit her this weekend, um, the week of September 3rd and we were just solidifying our plans.

Dave: Ok.

Heidi: And, she was glad that I was coming down because she was alone and she was kind of nervous because her ex-boyfriend was going to be back, he goes to Wesleyan.

Dave: And what is his name?

Heidi: Alan Beaman.

Dave: And why would she be nervous he would be coming to town?

Heidi: Because twice this summer he broke down her door, and he's just, he was very manipulative and very, he would cry if she just made him stay outside and then once he got in the house he would just be really mean to her.

Dave: What do you mean by mean?

Heidi: Um, he went through her garbage looking for used prophalactics to see if she like, to see if she was fooling around with anybody else, or um when I was there and he came in once I had to hide the cat in my purse, her little baby cat so he wouldn't hurt it and I finally had to throw him out, cause he was just...

Dave: These are all things that Jen told you, or did you witness any? .

Heidi: I was witnessing this.

Dave: Ok, when did you witness this?

Heidi: Um, it was the weekend of August 6th.

Dave: Ok.

Heidi: Friday the 6th or Saturday the 7th

Dave: And what happened, can you tell me what time, ah, did Alan stop by?

Heidi: It was 10:00 in the morning cause we were sleeping, and he just knocked on the door and I went to the door and I had the chain on it and he's like, "can you go get Jen," and I told him that she wasn't there just so I wouldn't have to deal with him, and he's like, "I know she is there," and he just started crying and he was leaning on the door so I couldn't push it back, um, and finally he just started crying he's like, "Don't do this to me Jen. I'm going to kill myself. Jen, you can't do this to me ." And then, um, she finally said, "Just let him in." And once I got the chain off the door, he just came in, he stopped crying, he was fine. He was just out to find out what had happened, and...

Dave: What had happened?

Heidi: Ah, she...

Dave: What was he upset about?

Heidi: She liked his roommate, and in her eyes she and Alan were broken up, but he just kept coming back and coming back, so she was starting, trying to start something with Mike Swain, and she had written him a letter, a letter and he had found it, and, it didn't say I love you or anything it was just a letter to him.

Dave: Alan found the letter to Mike?

Heidi: Right. And, um, he started going through her garbage, and...

Dave: What garbage would that be?

Heidi: The garbage in the bathroom, and he found a tampon applicator and he's like, "See this is prophylactic. I know it, I know it. You had sex with him." And all the garbage was on the floor and she's crying in her bedroom, and I am in the living room with the cat, and I didn't know what to do, cause he wasn't being physical he was just being verbally abusive and finally I'm like, "Get your ass in the bathroom, clean up your garbage and get the hell out of here." And he was like, "You stay out of it." And I'm like, "No, I am part of this now, she is my best friend and you are torturing her." And, um, finally he's like, well fine, you know, and I had found a broken glass that weekend cause we had straightened up her apartment and she had said that he had thrown it at her and that was just part of the glass that he had thrown at her and it was like along the wall behind the stereo and he's like, "Oh well, I better leave before she throws another glass at me." And she's like, "Whatever, you are the one throwing things at me." And also that weekend he had brought her lamp back because he had thrown it and broken it, and, um, he had fixed it for her. But...that's, he left and I was afraid that he was going to come back but he did not come back that day.

Dave: Do you know if she had made any contact with him after, ah, the weekend of the 7th?

Heidi: Um, I think, ok, the 7th or the 8th he went to Ohio with his friend Jamie that goes to Wesleyan.

Dave: Ok, wait, this incident happened on the weekend of the 1st?

Heidi: No, the 7th or the 8th, it was the weekend of the 6th.

Dave: Of the 7th

Heidi: And on Sunday the 8th...

Dave: Ok. Ok.

Heidi: ... he went back with his friend Jamie to Ohio and I think he stayed about a week, and then I think the week of the 16th, a Monday, he went back to Rockford and he called her from there and he had just started saying, um, that he loved her and he missed her and that he had heard from friends at Wesleyan that she had gone out with a guy and what was she doing with him and they spent exactly four hours together and why were they together like that, and...

Dave: Do you know what friend he was talking about?

Heidi: Um, I don't, it could have been John Murray or Mike.

Dave: Ok.

Heidi: But, see, she only...

Dave: Well, who do you think would have told Alan that this was going on?

Heidi: Um, see I don't know alot of his friends from Wesleyan, he was a Theatre major and he hung out, and I don't know.

Dave: Ok, so you are pretty sure she got a call from him on the 16th.

Heidi: Yeh.

Dave: How do you know about that, she told you about that or what?

Heidi: She, when I called her on the 24th, um, she said that he had called her, and he was, that is why she was afraid when he came back cause he had started calling her again and she thought it was finally over but he had started calling her again.

Dave: Are you sure about the 16th, because she might have been in California then I can't remember exactly.

Heidi: Oh, that's right. It might, I don't know, it was like ...

Dave: The week of the 16th , he called her?

Heidi: Yeh, somewhere around there. Because I talked to her on Monday the 23rd and Tuesday the 24th.

Dave: What time did he call her on Monday the 23rd?

Dave: Was there any other incident you are aware of when Alan came to the door?

Heidi: Um, not while I was there.

Dave: Ok, did you hear of any others?

Heidi: He had broken down her door twice.

Dave: Do you know the approximate dates on that, a month and a week, or you know?

Heidi: It was this summer, twice, so it would be June or July. I was down there all the time but it was on weekends when I wasn't there, or I left early or something.

Dave: Did she call, did Jen call and talk to you about these?

Heidi: Yeh, and so did Morgan, cause Morgan was visiting one weekend when he broke down the door. I don't remember when, and she didn't want to call the police because she said that it would just make everything worse. He would just be crazy. And he had started seeing a counselor and she was really glad cause she was like, well, um, when was that, oh, the last week, two weeks of July.

Dave: The last two weeks in July?

Heidi: Yeh, she, I don't know, I think her last class was on the 30th of July, the 23rd or 30th and she was going to break up with him like the 28th cause that is when he had to move out of his apartment, or did he,... God, this is crazy, it was either the last week of July or the first week of August his lease ran up, and he would have to go back home, and she was going to break up with him right before he went home, so that for the last time she was going to break up with him, and then he started seeing a counselor and she was like really glad cause she's like well this counselor can help him through this.

Dave: Alan started seeing a counselor?

Heidi: Ah-huh, (yes), I don't know how long he went and he said he was going.

Dave: Did she have any plans, ah, she told you that she was going to get rid of Alan for good, did she have plans to go on after that with somebody else, or?

Heidi: Yeh, she, um, Alan and Mike Swain lived together, and their lease went out, so she wanted to get rid of Alan, he'd go home, and then, she wanted, Mike needed a place to stay, it wasn't really ... their relationship wasn't sexual, it was just like, oh, I like him but it wasn't anything really started, that I know of, and he just needed a place to stay until Wesleyan started in September, so since she was going to be in California anyway, we got her a baby cat, then he was going to take care of the cat and her apartment and

Tony: Do you know where Jamie lives here on IWU campus?

Katy: No I don't. I didn't know James previous to this summer, I just met him with Alan and ah he is from Ohio and that is why Alan went to Ohio.

Tony: And why did ah Alan go to Ohio with Jamie?

Katy: One morning there was another fight after the initial like the incident I was talking about before. Um things kind of settled down and then Alan and Jen kind of got back together things were all what we thought were kind of cool. Alan and Mike didn't really resume their friendship, but things were ok in the apartment. They just kind of avoided each other, um and then at the end of July the second or last week in July, like I say I can't remember the date for sure, but ah, we um there was another fight Alan woke up one morning really really upset and he thought that um, Mike and had been with Jenny again so we all worked here at the Theatre at Wesleyan for our summer jobs and so that morning we all had to work and Alan showed up at the Theatre really irate and started screaming at Swain. Um, looked at the rest of us and screamed a few more things. And said he quit and went home and packed up his stuff and left.

Tony: You said he left his car here?

Katy: Yeh

Tony: Do you know where he left it parked?

Katy: He left it parked in the parking lot at the apartment complex.

Tony: When he returned back here to Bloomington, do you recall the date?

katy: It was after all my roommates had left so it had to be, oh shoot, the first or second week of August.

Tony: The first or second week of August.

Katy: I I wish I could remember the date, um, I am trying to think what happened around there cause I was working and I came home from my noon break and he was there. And he had he just came up and told me that things were Ok and he was going back to Rockford.

Tony: Did he in fact go back to Rockford?

Katy: That is what he told me, I haven't talked to him since he came up to my apartment that day.

Tony: Had he make mention of whether or not he was going to see Jenny before going to Rockford?

Katy: He didn't say. We talked about Mike, cause I wanted to make sure that he was ok with that or that Alan was ok cause Alan and Mike are both pretty good friends of mine and ah when Alan left he was pretty ah pretty off the wall. And uh and so when I questioned him about how things were with himself or how he was dealing with things how uh his relationship was with Mike if he had talked to Mike, that kind of thing and he said that he thought soon he would be able to forget about it and move on.

Tony: Was it your understanding that he wanted to forget about the relationship between Jenny and Mike?

Katy: Well he, I mean he was having a hard time cause he said he still loved Jen and you know that that was the hardest part.

Tony: Have you heard from Alan either by a visit or a phone call since he left here to go back to Rockford?

Katy: No

Tony: Katy, did you ever witness any disputes between Alan and Jennifer?

Katy: I never saw them actually in a fight but I'd see Alan and her after fights, you know what I mean? Um like one of them storming out of the apartment ah or coming up to my place or whatever, after something had happened.

Tony: Would you describe Alan or Mike as a violent individual?

Katy: Mike definitely not, um, if Alan were in the right frame of mine, he could be violent.

Tony: Have you known him to take any type of drugs?

katy: Yes

Tony: What type of drugs in particular?

Katy: Marijuana, the main one.

Tony: Does he do any type of other drugs?

Katy: Just what, I mean I only know what he has told me, I have never seen him engage in any kind of situation.

Tony: What was his frame of mind or ah his general state of being?

Katy: Different, it could be different from time to time.

Tony: Compassionate or combative?

Katy: It could be both, he could, I mean there would be times when he was the happiest guy in the world and he would sing and I mean and then there were other times when it had the adverse effect on him.

Tony: Did you ever know or recall any conversations you would have had with Jenniefer in regards to Jennifer and Alan's relationship?

Katy: Jen and I had a long talk one night. The two of us, about their relationship and um, they had been going out for like a year and ah she was ready to call it quits. She was she didn't cause he went through these times when he would be violent and you know he punched a huge hole in her wall at her apartment and just you know times that he would get really upset. And she had her own problems too and and she felt like he wasn't helping her with her problems and uh she said she was going to wait til the end of the summer that that was it, cause she didn't want to make him upset while he was still working here at the Theatre.

Tony: Did you ever notice any ah types of markings, bruises or anything on Jennifer?

Katy: No

Tony: Anything on Jennifer as a result of a fight between her and Alan?

Katy: No

Tony: How about between ah Jennifer and Mike, did Mike ever get violent with Jennifer?

Katy: No I don't think so.

Tony: How would you describe Mike's general personality and his rapport and relationship with Jennifer?

Katy: His is a very very laid back guy, um, I have never seen Mike mad ever, ever.

Tony: Have you ever seen Mike under the influence of any drugs?

Katy: Yes

Tony: What type of drugs?

Katy: Marijuana

Tony: Okay. How, what is his personality like when he is under the influence of marijuana?

Katy: Very subdued, um, in fact alot of the times when he gets high, he just lays down.

Tony: Would you described that type of personality of Mike when he is under the influence totally different from that of Alan when he is under the same type of influence.

Katy: Yeh

Tony: Being marijuana

Katy: Yeh

Tony: Who would be more violent or more apt to committ acts of violence while under the influence of marijuana, Mike or Alan?

katy: Alan

Tony: Did you ever witness any of Mike's ah actions or violent combative actions when he is under the influence of marijuana?

Katy: Mike?

Tony: Yes

Katy: No

Tony: Have you ever witnesses any aggressive acts that Alan would have had under the influence towards Jennifer or anyone else?

Katy: When he, everytime I saw him, in these violent rages he would usually take it out on something else, like there is holes in the apartment walls everywhere at our complex. Um, he would bash things, you know what I mean, I never saw him actually go towards someone, another person.

Tony: This interview with Katy concludes, the time is 10:31 a.m.

Rob: was there music playing, tv on?

Amy: Um, I think both.

Rob: Can you tell me what Jennifer's state of mind was at this point, did she seem happy, did she seem distracted?

Amy: She seemed high, um, uh she seemed rather happy, um I have been to parties before with her and that's basically the only way I knew her as being, as just that she was usually high.

Rob: Was there alcohol at this get together that night?

Amy: Um, I can't recall.

Rob: Was anyone smoking marijuana then?

Amy: Yes.

Rob: Did you see Jennifer smoking marijuana that night?

Amy: Yes.

Rob: When was the last time that you had seen Alan Beaman, prior to this night?

Amy: Um, we both worked for the summer company at Wesleyan Theater and there was a party the night one night and I'd spent the night and when I woke up he was awake and we talked a little bit about how he was feeling about Jennifer and that type of thing and he said he may quit the summer company because he was just it was hard for him and so then we went to work and he had quit whatever and that was the last time I saw him.

Rob: That conversation when you said that it was hard for him, what was hard for him?

Amy: To see him, to see her together with Swaine, and he felt like they were lying to him and he just wished that if something was going on for them to tell him.

Rob: Ok, did he know for sure if something was going on?

Amy: He talked to me, what he said as his reasoning for knowing some of this there was a box of condoms and he knew Brendan didn't engage in sexual activity and he didn't, and so it had to be Swaine and he knew that Swaine I guess had just started having sex over the summer and from what he told me, only three should have been gone and there should have been like so many left, like seven or something, but there were two extra missing and he knew that Swaine was kind of involved at Jennifer cause he had seen them like making out one night on

the couch and so he assumed then that they were having sex because there was two extra condoms missing and that Swaine had used them with Jennifer.

Rob: Did Alan ever say if he had sex with Jennifer?

Amy: Um, yes.

Rob: Did Alan say if Jennifer wanted him to use a condom or not when he had sexual intercourse with her?

Amy: Um, no.

Rob: Do you have anything else that you wish to add to the interview at this time?

Amy: Um, I don't know what would be relevant, what would, um, all I know is that they had problems and we used to talk alot during intermission or the first act about it and um,

Rob: You are referring to we as you and Alan?

Amy: Yes, and he just um

Rob: Would you describe Alan or Mike Swaine either one as being violent individual?

Amy: No, I mean not unless you're provoked, as anyone else would be?

Rob: When was the last time that you had seen Alan in Bloomington/Normal before the school year started?

Amy: It was the day that he quit and that was I guess he just kind of blew up at Swaine, he confronted him with it and then he went to Ohio with Jamie Thurman whose was a friend that stayed down and he went um there to just kind of escape from it all to get away from it.

Rob: Is there anything else that you can think of at this time to add to the interview?

Amy: It just depends on, I mean, I know alot about how they were together I don't know if that's pertinent?

Rob: Yea, why don't you explain that.

Amy: Um, the times their relationship was kind of rocky at first they were going out and things seemed really fine and they were engaged to be married and

Rob: Engaged, does did she have a ring?

AB: AS FAR AS THE EXTRA SEMESTER, THERE'S TOO MUCH STRESS IN THIS.

TF: OKAY.

AB: DROPPED OUT OF CLASSICAL ACTING BECAUSE THE PROFESSOR WAS GOING TO FLUNK ME ON AN ASSIGNMENT THAT I MISSED THE FIRST QUARTER BECAUSE OF ALL THIS. I MEAN, ***INAUDIBLE***

TF: ALAN, WHY IS IT YOU NEVER TALK ABOUT HER. WHY IS IT YOU NEVER TALK ABOUT JENNIFER, OR THE TIMES THAT YOU HAD WITH HER? TALKING TO EVERYBODY ON CAMPUS, THE PEOPLE YOU'RE RUNNING AROUND WITH, YOUR FRIENDS, THEY SAY YOU NEVER TALK ABOUT IT. THEY BRING UP THE SUBJECT OF JENNIFER, YOU CHANGE THE SUBJECT, YOU KNOW?

AB: I DON'T KNOW ANYTHING ABOUT IT.

TF: NO, I MEAN, THEY JUST ASK YOU ABOUT THE PAST, YOU KNOW. YOU DON'T EVEN SEEM TO WANT TO TALK ABOUT THE PAST WITH THEM.

AB: I DON'T ***INAUDIBLE***

TF: I GUESS IF YOU CAN SEE WHERE I'M COMING FROM, TRYING TO MAKE SENSE OF IT, YOU SPEND A YEAR, MAYBE MORE THAN A YEAR, ALMOST A YEAR WITH THIS GIRL. YOU CAME OUT OF THE BOTTLE STRICTLY FOR HER. YOU WERE TOTALLY WRAPPED UP IN HER, TRYING TO GET HER TO CHANGE, AND THEN WHEN SHE GETS KILLED, YOU DON'T EVEN TALK ABOUT IT. YOU DON'T SAY ANYTHING.

AB: I GUESS ITS CAUSE SHE WASN'T MINE, SHE WAS SWAINE'S, I CAN'T WEAR BLACK, SHE WASN'T MINE. I TURNED MY BACK ON HER AND WALKED AWAY.

TF: YEA, I MEAN ARE YOU MORE UPSET AT SWAINE THAT THAT'S OVERSHADOWING WHAT ACTUALLY HAPPENED TO JENNIFER?

AB: I DON'T GIVE TWO SHITS ABOUT SWAINE, I DON'T GIVE TWO SHITS ABOUT HER AND IT'S BEEN OVER FOR LONGER THAN SHE'S BEEN DEAD. IT WAS OVER BEFORE SHE WAS DEAD. I WALKED AWAY FROM HER, I TURNED MY BACK ON HER AND I LEFT. WHEN SHE TRIED TO CONTACT ME I SAID, "NO I DON'T WANT TO TALK TO YOU". I SAID "YOU FUCKED MY FUCKING ROOMMATE AND I DON'T WANT TO TALK TO YOU" AND I HUNG UP THE PHONE. AND THAT'S THE LAST THING I EVER SAID TO HER. AND YEAH, I DON'T FEEL TOO GOOD ABOUT HER DEATH. I DON'T FEEL TOO GOOD ABOUT TELLING HER OFF AND THEN SHE DIES. YOU KNOW, I MEAN...BUT THERE'S NOTHING, THERE'S NOTHING I CAN SAY ABOUT THAT, THERE'S NOTHING I CAN DO ABOUT THAT. I DIDN'T KILL HER AND SHE WASN'T REALLY MINE SO I DON'T HAVE TO ...***INAUDIBLE***. I'M JUST TIRED OF THIS.

TF: I UNDERSTAND YOUR FOLKS WERE GONNA INTERCEPT ANY CALLS FOR YOU UP IN ROCKFORD AFTER, AFTER YOU FOUND OUT?

Mike: Um, jimminy whiskers, um, Laura Stevenson, um, Chris Carbone, ah, JC, um, gosh, just alot of people I can't think of everyone.

Tony: Do you know a Josh Whitney?

Mike: yeh.

Tony: Was he present?

Mike: No.

Tony: Was Alan Beaman present?

Mike: No, Alan was out of state at that time.

Tony: Ok, during mid August?

Mike: I think, I think it is August, I can't remember, yea, I think it was August that we had that party.

Tony: Where was, where was Alan?

Mike: He had left with Jamie and I don't know Jamie's last name, but this guy named Jamine that we all know, he had left with him to go home with him because he was getting away from Bloomington/Normal and everything.

Tony: Ok, what do you mean by everything?

Mike: Um, (pause) I gotta explain fully. When I first met Alan, I knew Alan he was a really great kid, you know, um when I knew him growing up he was a little (I can't undertand what he said), I mean he really didn't have his own personality, he had the personality that his parents had set out for him and it bugged him and you could tell it bugged him but he began to grow out of it but in constructive ways, you know, he got involved in theater and could express himself that way um, when I met him again, um, like last summer, he was still ok, he changed alot, he had grown his hair long and all this but he was still Alan, um but when he started seeing Jen, I mean, she would fuck with his head so much that he would just go crazy, I mean, he would be irrational and mood swings and um, she would just drive him nuts and he would, I mean for months on end that's all he ever talked about was him and Jen and how she was pissing him off and this and that and the other and that's all it ever was and I mean it just made him it made him suicidal I mean it was just nuts, um and she just drove him crazy and we just I mean, both of them were just psycho's at times I mean they were just schizophrenic and I would, and I I remember one time setting them both down without looking and Jen had expressed to me that she wanted out of the relationship and I said look, why don't you tell Alan that Ok, cause that is all he

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is waiting for. He's in agony, he wants you to he thinks that you still want him and if he knows that you don't then it would be over and you two could live normal lives. I mean they were both fine by themselves but when they got together they were just, you couldn't stand them and so I told them they both needed to get apart from each other and just figure out who they are before they can help each other and all this she would just make him crazy and so they were talking about breaking up finally, um which had been going on all last summer or this summer I should say, they had been talking about it and because she had been feeling trapped because he needed alot of her attention but at the same time she needed him because she felt like she would be totally alone without him and all of her friends which are actually his friends would leave and um finally they broke up and he just wanted to get away from her and the places they had been which is basically Bloomington/Normal all of, so he was going to go with Jamie and and re-gather his thoughts and the next time I saw him was after she had already been, she was already dead, I went up to Rockford the day of her funeral because he didn't get to make it for obvious reasons and um, I felt really bad for him that he was alone right now and so I called into work and Chris Carbone took me up and we saw him for a few minutes that night and he looked never better, he it was like he had dealt with it, he dealt with it that she was gone and he had dealt with that there was nothing that he could do about it and that he just kind of reverted back into the old Alan, um so it's like when she died a part of him that was this crazy guy died too, he just he just like never better.

Tony: When you talked to ah when you and Chris talked to Alan, up in Rockford, last week during the week of the funeral, what did Alan tell you in regards to ah any contact with the police authorities?

Mike: Nothing, nothing really, nothing more than we didn't know just that they had contacted him and you know and he isn't supposed to talk about the case and we're not supposed to talk about the case and you know so we didn't talk about it.

Tony: You didn't talk about the case meaning, meaning what?

Mike; The whole Jen thing we the most we talked about Jen was her funeral who was there, how was it, um it sucked you couldn't go, that kind of thing and we talked about taking him out to her grave site like when he got to school.

Tony: Ok, do you still plan on doing that?

Mike: Um, I am not even sure if it is already done. They were going to talk about doing it last Sunday.

Tony: Who is they?

Mike: Chris Carbone was going to go and Josh was going to go cause the people who

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BUT, YOU KNOW, AS FAR AS MY KNOWLEDGE GOES, I THINK A PERSON WOULD ACT DIFFERENTLY IF, HE JUST ACTS REALLY SUSPICIOUS AND I DON'T KNOW IF I CAN EXPLAIN HOW HE DOES, BUT JUST WHEN WE'VE TALKED ABOUT IT, IT JUST SEEMS REALLY REALLY SUSPICIOUS HOW HE ACTS.

DANIELS: WAS THIS NORMAL FOR HIM?

SIEG: I DON'T KNOW, NOT REALLY. I MEAN, IT'S LIKE, UP UNTIL HE HAD MOVED OUT WE HAD TALKED ABOUT JENNIFER AND HIS FIGHTS WITH JENNIFER AND EVERYTHING AND ALL OF A SUDDEN HE WASN'T TALKING ABOUT REALLY ANYTHING.

DANIELS: PRIOR TO YOUR CALLING HIM UP IN ROCKFORD RIGHT AFTER JENNIFER'S DEATH, DO YOU RECALL TALKING TO HIM ANYTIME THE FIRST PART OF AUGUST?

SIEG: THE LAST TIME I TALKED TO HIM WAS RIGHT BEFORE HE LEFT FOR ROCKFORD, RIGHT BEFORE HE MOVED OUT OF THE APARTMENT.

DANIELS: WHO MADE THAT CONTACT?

SIEG: I THINK IT WAS, WE BASICALLY MET OUT ON THE FRONT PORCH BECAUSE LIKE I SAID I WAS LIVING UNDERNEATH THEM AND I HAD SEEN HIM OUTSIDE, SO I WENT UPSTAIRS TO SAY BYE TO HIM, YOU KNOW, AND GAVE HIM MY ADDRESS TO WRITE TO ME AND YOU KNOW, JUST TYPICAL GOODBYE STUFF BECAUSE HE WAS MOVING OUT AND I WASN'T GOING TO SEE HIM FOR AWHILE.

DANIELS: WHERE WAS HE GOING WHEN HE WAS MOVING OUT?

SIEG: LIKE THE LAST WEEK OF JULY OR LAST TWO WEEKS OF JULY TO GO TO CINCINNATI WITH JAMIE, I BELIEVE, THIS TIME HE WAS MOVING OUT HE WAS GOING STRAIGHT UP TO ROCKFORD TO HIS PARENTS HOME.

DANIELS: DID HE MENTION TO YOU AT THAT TIME WHAT HIS RELATIONSHIP WAS WITH JENNIFER?

SIEG: I DON'T THINK THEY WERE ON VERY GOOD TERMS. I MEAN THEY HAD BROKEN UP AND DECIDED TO BE FRIENDS, BUT IT JUST, RIGHT BEFORE HE MOVED OUT, HE HAD FOUND WHAT HE CALLED EVIDENCE THAT HER AND HIS ROOMMATE, MIKE SWAINE, WERE MESSING AROUND. SO HE WAS KINDA HE HAD COME DOWN TO ME, IT WAS EITHER THE NIGHT BEFORE HE MOVED OUT OR IT WAS IN THAT WEEK BEFORE HE MOVED OUT, AND CAME DOWN AND WAS UPSET THAT YOU KNOW HE HAD FOUND LIKE MISSING BIRTH CONTROL AND STUFF AND SUPPOSEDLY HE WAS THE ONLY PERSON THAT SHE WAS HAVING INTERCOURSE WITH AND YOU KNOW, THAT JUST MADE HIM SUSPICIOUS AND HE AH JUST FOUND LIKE THE CHAMPAIGN BUBBLE BATH, SOME OF IT WAS MISSING, AND THIS AND THAT AND THERE WERE A COUPLE THINGS, THAT HE CALLED EVIDENCE, THAT HIM AND HER AND SWAINE WERE MESSING AROUND SO HE WAS UPSET THAT NIGHT.

DANIELS: DID YOU SEE HIM AFTER THAT NIGHT?

SIEG: YES.

DANIELS: AND WHEN AND WHERE DID YOU SEE HIM?

SIEG: BACK AT THE APARTMENT. I THINK IT WAS THE NIGHT BEFORE HE LEFT, WAS YEA, IT WAS THE NIGHT BEFORE HE LEFT THAT HE CAME DOWN TO ME AND I SAW HIM THE NEXT THE DAY RIGHT BEFORE HE LEFT, LEFT TOWN.

DANIELS: WHAT WAS HIS STATE OF MIND WHEN YOU SAW HIM AT THAT TIME?

SIEG: IT WAS ONE OF THOSE HE WAS HURRYING TO GET OUT OF TOWN, HE JUST WANTED HE STATED THAT HE JUST WANTED TO GET AWAY FROM IT ALL, AND THAT HE WAS IN A HURRY, YOU KNOW, PACKING HIS STUFF AND GETTING READY TO LEAVE.

DANIELS: DID HE TELL YOU WHETHER OR NOT HE HAD ANY CONVERSATION WITH JENNIFER AT THAT TIME PRIOR TO HIS DEPARTURE?

SIEG: NOT THAT I CAN REMEMBER.

DANIELS: DID HE EVER MENTION TO YOU AT THAT TIME OR ANY OTHER TIME HOW HE WOULD HANDLE THE SITUATION BETWEEN MIKE SWAINE AND JENNIFER AND HIMSELF?

SIEG: SEE THAT'S WHERE I'M HAVING PROBLEMS BECAUSE THIS WILL SOUND REALLY WEIRD TO YOU, BUT I, FOR SOME REASON, I REMEMBER HIM SAYING THAT IF HE EVER CAUGHT THEM IN BED TOGETHER THAT HE WOULD KILL BOTH OF THEM. BUT I DON'T KNOW IF THAT WAS, IT'S HARD TO EXPLAIN, BUT I DON'T KNOW IF HE SAID THAT OR IF THAT'S THE, OR IF I HAD IT IN A DREAM OR SOMETHING, BUT FOR SOME REASON, IT STICKS OUT IN MY MIND THAT HE SAID SOMETHING LIKE THAT.

DANIELS: IS HE CAPABLE OF DOING SOMETHING LIKE THAT?

SIEG: I HONESTLY DON'T KNOW. I MEAN I'VE SEEN HIM GET VERY UPSET, VERY TEMPERAMENTAL, BUT I'VE NEVER SEEN HIM YOU KNOW HIT ANYTHING, YOU KNOW, I'VE SEEN HOLES IN HIS WALL WHERE HE KICKED OR PUNCHED A HOLE IN IT. BUT YOU KNOW ALL I CAN TELL YOU IS WHAT I HEARD FROM OTHER PEOPLE LIKE THEY'VE FOUGHTEN BEFORE YOU KNOW, PRETTY VIOLENTLY BUT THAT'S NOT THAT I'VE WITNESSED FIRSTHAND.

DANIELS: SINCE JENNIFER'S DEATH, HAVE YOU SEEN ALAN UNDER THE INFLUENCE OF ALCOHOL OR DRUGS?

SIEG: YES.

DANIELS: DURING THOSE TIMES, WOULD HE TALK ABOUT JENNIFER?

SIEG: NOT THAT I CAN RECALL. ONLY IF SOMEBODY ELSE BROUGHT IT UP YOU KNOW, OR ASKED HIM A QUESTION.

This is Detective Hospelhorn, we are at NPD in the middle interview room it is approximately 3:45 p.m. on September 3, 1993. Present with myself is a Meredith Haynes and Detective Tony Daniels.

Rob: Miss Haynes could you state your full name, your date of birth and spell your last name.

Meredith: My name is Meredith Holland Haynes. My date of birth is June 12, 1974. My last name is spelled HAYNES.

Rob: Ok, Miss Haynes, could you also state your address and phone number?

Meredith: At present?

Rob: Yes.

Meredith: Um, 1506 North Roosevelt, Apt. #1, in Bloomington and my phone number is 828-4737.

Rob: Ok, did you know a Jennifer Lockmiller?

Meredith: Yes.

Rob: Ok, how long had you known Jennifer.

Meredith: About a year.

Rob: And where did you meet her at?

Meredith: I met her through Alan Beaman who was dating her at the time I knew several other people.

Rob: Ok, so you knew Alan Beaman also?

Meredith: Yes.

Rob: And Michael Swaine?

Meredith; Yes.

Rob: Do you know a John Murray?

Meredith: Yes.

Rob: A Joe Murray?

Meredith: No.

Rob: A David Olson?

Meredith: No.

Rob: How about a Chris Carbone?

Meredith: Chris Carbone?

Rob: Yes.

Meredith: Yes.

Rob: How long had you known Alan?

Meredith: About a year.

Rob: Did you used date Alan?

Meredith: No, we were sort of interested in each other for a time but we never dated.

Rob: Ok, when was the last time that you saw Alan?

Meredith: Um, it was the last I believe the last week in July, I don't know the date, but it was at the end of the summer Theater program at IWU.

Rob: Ok, do you know what month that was?

Meredith: July.

Rob: Ok, the end of it?

Meredith: Yea.

Rob: Have you talked to Alan since then either by phone or in person?

Meredith: No.

Rob: When was the last time that you seen Jennifer?

Meredith: About two weeks ago, I can't remember the day, maybe it was Thursday night,

Meredith: Very frequent, well every time I saw them they would have an argument.

Tony: Which was how often did you see them?

Meredith: During school probably about once a week and I would always hear about them having an argument.

Tony: Did you ever hear directly from Alan any threats that he may have made in regards to him committing suicide over Jennifer?

Meredith: Yes.

Tony: How often would he make these comments?

Meredith: I only heard him say that probably once or twice.

Tony: Ok, what was the circumstances that he would say this to you?

Meredith: It wasn't really to me, it was just in front of a bunch of people. I mean he is kind of over dramatic and when they would have an argument he would say things like that just to be dramatic, usually when they were arguing.

Tony: Ok. So it was a result basically of the argument, the outcome of the argument that you would hear these comments in ah these comments about how he was going to commit suicide.

Meredith: Yea.

Tony: Did you ever hear him make any comments on how he was going to take his anger out on Jennifer?

Meredith: No.

Tony: Did you ever see him strike Jennifer?

Meredith; No.

Tony: Did you ever hear of him striking Jennifer?

Meredith: Yes.

Tony: Ok, how did you hear that?

Meredith: Through Jennifer.

Tony: Through Jennifer. Could you be more descriptive in what she had told you?

Meredith: She said that like several times that he had broken into her apartment or broke down the door to her apartment and the apartment people know all about that and that he pushed her around and knocked things over, and just stuff like that.

Tony: How close of an acquaintance are you with John Murray?

Meredith: Barely, I just met him a couple of times at parties, that's all.

Tony: And how about Chris Carbone?

Meredith: Um, he is a Theater major like me so I was in alot of classes with him so I did I was in his company alot during the year.

Tony: Have you heard of a Joshua Whitney?

Meredith: Yea, that is Alan's cousin.

Tony: Alan's cousin? Have you heard of a Mike Mackey?

Meredith: Yes.

Tony: Ok, who is Mike Mackey?

Meredith: He is a friend of, he is a friend of Alan's, I think and Chris, but I don't think that is where I met him.

Tony: These names that I just gave you, have you witnessed them doing marijuana in the past?

Meredith: Which names, Mike and?

Tony: John Murray, Chris Carbone, Mackey and Joshua Whitney.

Meredith: Yes.

Tony: Do you know where their supplier where their supply came from?

Meredith: No I have no idea.

Tony: Meredith is there anything you wish to say at this point in regard to any relationship that Jennifer may had with any boy?

Meredith: I don't think so, I think that her relationship with Alan was it was more for show,

1 Murray?

2 A. No, I don't.

3 Q. So this Exhibit 1 on the front page at least
4 is the totality of your notes with respect to your
5 contacts with the police department?

6 A. Yes.

7 Q. The second page of Exhibit Number 1, is that
8 the -- that's the backside of your polygraph
9 worksheet?

10 A. Yes.

11 Q. This one is a little bit more difficult to
12 read probably than the original. So if we can do our
13 best to try to read what it says, I think it would be
14 helpful.

15 A. I do have the original in front of me. Do
16 you want me to do off the original or -- this copy is
17 pretty faint on my part.

18 Q. Right. Maybe just read from the original and
19 then we'll at least have the transcript.

20 A. Okay. All right. The backside says -- first
21 of all, it's a symbol that I used for a just a blurb
22 that we used for the report. The backside is
23 essentially what I gave to our clerical staff to type
24 the report. So it would have been something -- that

1 symbol is the purpose of the polygraph test was to
2 determine whether, and then what I have written is:
3 "The subject was involved in the strangulation death
4 of Jennifer Lockmiller on or about 8-25-93."

5 Q. There's a notation to the left of that?

6 A. Yes.

7 Q. That says same for both?

8 A. Both suspects. When a second person would
9 come in, I would put that to indicate that that would
10 be the same blurb that I would use for the report on
11 the second person who came in.

12 Q. So this blurb would be used for both Gates
13 and Murray?

14 A. Yes.

15 Q. What about under the result section?

16 A. Under the results, again, same symbol. Under
17 results would be prior to the polygraph examination
18 would be the blurb, that symbol represents, and then
19 the subject denied strangling Jennifer Lockmiller and
20 denied having any knowledge regarding who did.

21 Q. And then list Q?

22 A. List Q list means list -- this is for the
23 clerical section. List Q 3, 5, 8, and 9, 4 D's. What
24 that means is list questions numbers 3, 5, 8 and 9

1 from my question sheet. Four D's is the indicator for
2 inconclusive.

3 Q. What does 4 D's stand for?

4 A. D is an actual term that John Reid used for
5 doubtful, when the results of the test are doubtful.
6 They're not truthful. They're not untruthful.
7 They're doubtful.

8 Q. There's a notation on the side that says
9 "regarding Stacey Gates 9-8-93"?

10 A. Yes.

11 Q. So does that mean that those particular
12 results, the 4 D's, are inconclusive applied to
13 Mr. Gates only?

14 A. Yes.

15 Q. Is there a portion of the results that apply
16 just to Mr. Murray?

17 A. Yes.

18 Q. Can you read that portion, please.

19 A. Yes. That's below this part that I just
20 said. It says: "Throughout the course of his
21 polygraph examination, the subject did not follow
22 specific directions given to him which are necessary
23 for the proper completion of a polygraph examination.
24 After being advised several times to follow

1 directions, the subject informed this examiner that he
2 was not able to comply. Subsequently the subject was
3 dismissed from this laboratory."

4 Q. And that was with respect to Mr. Murray only?

5 A. Yes.

6 Q. So this second page of Exhibit Number 1 is
7 what you gave to your clerical staff or what you gave
8 to your clerical staff to type up reports with respect
9 to Mr. Gates and Mr. Murray?

10 A. That's correct.

11 Q. Did you give the clerical staff anything else
12 other than just the worksheet?

13 A. They actually received my whole file which
14 would contain the worksheet, consent form, the
15 question sheets, polygraph test charts. Anything that
16 I had generated at that point would be in that file,
17 and I gave the entire file to the clerical section to
18 keep it all together.

19 Q. Let's take a look at those question sheets.

20 This will be Number 2.

21 (Whereupon, McCann Deposition
22 Exhibit No. 2 was marked.)

23 BY MS. BARTON:

24 Q. For the record, Exhibit 2 is Bates stamped

1 whatever reason, it's not uncommon for them to be
2 fidgety, unable to sit still, taking a lot of deep
3 breaths during the test. It could be because of that,
4 or it could be for other reasons. We just don't know.

5 Q. So 19 deep breaths and six times being
6 reminded how to answer doesn't itself tell you that
7 this is some -- isn't suspicious in itself?

8 A. It could raise red flags, but I can't say for
9 sure that that's what it was.

10 Q. Can you say -- not just for sure, but can you
11 say at all that's what it was?

12 A. Could have been.

13 Q. You're speculating, though?

14 A. Exactly.

15 Q. And could not have been?

16 A. It could not have been as well, yes.

17 Q. One deep breath came before you even asked
18 him a question, right, during the adjustment period?

19 A. Yes.

20 Q. At least one. I think it might have been
21 three according to my notes. Three deep breaths came
22 during the adjustment period.

23 So that means you hadn't even started asking
24 him questions yet, and he's already deep breathing?

1 A. Yes.

2 Q. I would think that after -- well, let's see,
3 might not have been 9,000 yet. But as of 1993, it
4 would maybe be 5,000 or so exams you've given. You
5 would be pretty good at detecting attempts to disrupt
6 the conclusiveness of the exam?

7 A. Yeah. I don't know how many I had done by
8 that time, but it had been a lot, yes.

9 Q. By 1993, you were pretty good at it?

10 A. I would hope so.

11 Q. And today you're even better?

12 A. I hope so.

13 Q. Looking back on this file with the scrutiny
14 that we've asked you to do for the last five hours had
15 and in the past, you still don't see purposeful
16 manipulation?

17 A. I can't say for sure that it happened, that
18 what happened was purposeful. I can't say that it
19 wasn't. I can only say that it was a lot of deep
20 breaths and movements during the test which kept me
21 from rendering an opinion.

22 Q. During the post-conviction testimony you
23 gave, you were asked a question of whether
24 Mr. Murray's conduct could be deceptive which you

1 answer, yes, it could be. It was not, though, your
2 opinion at that time that it was, correct?

3 A. There was no conclusive proof that it was.

4 Q. Right.

5 A. I don't know if it was or not.

6 Q. So if somebody had decided or made the
7 decision to ask you the follow-up question of could it
8 not have been deception, your answer would have been,
9 yes, it could not have been deception?

10 A. It might not have been deception.

11 MR. DiCIANNI: All right. That's all I have.

12 MS. BARTON: I just have a few.

13 REDIRECT EXAMINATION

14 BY MS. BARTON:

15 Q. When you received the subpoena in Exhibit 8,
16 did you seek permission from Mr. Murray to produce the
17 report in response to the subpoena?

18 A. I don't recall specifically if I did or not,
19 but I would have just generally -- in general, I would
20 have just responded to the subpoena without requesting
21 permission from anyone because --

22 Q. Right?

23 A. -- that's ordered by the Court, so...

24 Q. Back in 1993, did you keep, like, phone logs

1 or notes of conversations you had with people over the
2 phone with respect to certain investigations?

3 A. Sometimes I would -- it would depend upon the
4 nature of the conversation. I would get phone calls
5 all the time requesting a test, requesting I sent a
6 report, requesting different things about a case file.
7 I generally would not log those.

8 If it was a significant request that -- I
9 don't know what significant would be. But if it was
10 something that warranted a log, I would have put that
11 in the file.

12 MS. BARTON: No further questions.

13 MR. SHAPIRO: I have a couple questions
14 following up on those.

15 FURTHER RECROSS-EXAMINATION
16 BY MR. SHAPIRO:

17 Q. I think there was some confusion, and it
18 might have been mine -- I'm not sure -- about the --
19 some of the questions that I asked you about whether
20 you had ever received a subpoena in a criminal trial
21 for polygraph reports about someone other than the
22 defendant.

23 So let me just first ask you, I mean, you
24 understand generally that there's a period in a

This is an interview conducted by Detective Hospelhorn with a Todd Barth. September 2, 1993 and 1:34 p.m., we are at the Normal Police Department.

Rob: Mr. Barth could you state your full name and date of birth and spell your last name?

Todd: Todd L. Barth, B A R T H, 4-20-71.

Rob: Ok, Mr. Barth, did you know Jennifer Lockmiller?

Todd: Yes I did.

Rob: Did you know Michael Swaine.

Todd: Uh, no I didn't.

Rob: Um, Alan Beaman.

Todd: Uh, no I didn't, personally.

Rob: Can you tell me how you knew Jennifer Lockmiller?

Todd: She was a casual friend. We met Freshman year of college at IWU.

Rob: Can you tell me the last time you spoke with Jennifer?

Todd: Probably about July 11 or 12th in that area.

Rob: Of 93?

Todd: of 93.

Rob: Where did you talk to her at that time?

Todd: She visited me at work at Toys R Us parking lot we were having a clearance sale and her and her friend Morgan Keefe and her other friend Heidi came.

Rob: OK, did she ever speak to you about Michael Swaine or Alan Beaman?

Todd: She spoke to us of Alan Beaman um just as one of her ex-boyfriends, being that she was dating him and that ah he had she had broken up with him.

Rob: Do you know when she broke up with him?

Todd: I believe it was before the July 4th weekend, around that time.

Rob: Did she ever tell you anything about Alan?

Todd: Um no, she kept that, we really didn't know very much about Alan at all.

Rob: You had brought a cassette tape with you today that you said you couldn't find anything on, do you know what was the reason for you bringing that?

Todd: Well, we received a phone call about 3:00 in the morning, around say like July 5th or 6th around that time, and um, Jennifer had called Michael and I because someone was trying to break into her apartment, we didn't have phones in our rooms at the time so I heard the answering machine go off, by the time I got to the answering machine the person had hung up, so I played the message and Jennifer was on the answering machine saying Todd or Mike, pick up the phone, there is someone trying to break into my apartment, it wasn't until late, she called later on that night and Mike picked the phone and he had talked to her I don't know exactly what they said, but when I talked to him the next morning he had said that Alan was trying to break in and kicked in the door and that they had to move the dresser in front of the door.

Rob: On the tape, how did Jennifer sound, was she calm or?

Todd: She sounded very frantic and she was crying like almost, it sounded like she was afraid for her life almost.

Rob: You haven't had any contact with Jennifer since then?

Todd: No I haven't.

Rob: Or Alan Beaman?

Todd: Not I haven't.

Rob: Or Michael Swaine?

Todd: No.

Rob: Interview is concluding and 1:37 p.m. on September 2, 1993.

add?

David: Uh, noticed that one of her cats, the black cat, which like I say I knew she had three cats, my girlfriend knew it was her cat because she had seen it and somehow it got out of the apartment either Friday or Saturday, so we thought well, you know, we didn't think much about it at the time, but we did notice that somehow it had got out.

Rob: So just to double check on this, was there at anytime during the week, other than Sunday afternoon or Monday when you seen Jennifer, did you see anyone enter or exit apartment [REDACTED]

David: No sir I did not.

Rob: Did you see anyone around apartment number [REDACTED] between that time other than Jennifer on Sunday afternoon or Monday?

David: No sir I did not.

Rob: Anything else that you wish to add?

David: I don't know if this is really has to do with this but ah. There is an instance that took place back in mid July she had a friend she

Rob: She meaning?

David: She meaning Jennifer,

Rob: Ok.

David: had a friend and he tried to break into her apartment.

Rob: And do you know what this friend's name is?

David: No, I do not.

Rob: Ok. Do you know what he looked like?

David: Yes. Uh, he had long hair. I would say he was probably about 5'9". He was early 20's at best and he was real lanky. He probably weighed only about 140 or 145. He had long straight black or dark brown hair. Like I say, he tried to break into her apartment. It was about 1:30 or 2:00 in the morning because we had been sleeping there and all of a sudden just all this racket started going on and she yelled something to the effect of she being Jennifer, yelled something like what are you doing here. How did you get here and he said something to the effect he said I need to talk to you and he said I came to get my fucking keys. Jennifer said you know just get out of here. Just leave. He said I rode my bicycle over here but I want to talk with you and then she said

leave or I'll call the cops and he just said fucking bitch and he just kept I don't know of he was kicking in the door or throwing himself against the door or what he was doing but then he quit and he ran outside and he was running around the building and I could hear her sobbing, crying and I don't know. I couldn't hear what she was saying but I knew she was crying. He came back in about three or four more times and he was real calm at first but then it was like all of a sudden he really just exploded like he's really out of control he could come in and talk to her and like he was real calm, like he had calmed down and kind of get her calmed down, then all of a sudden he would just fly off the handle and start busting in the door.

Rob: Do you know if this person ever struck Jennifer?

David: No. I do not.

Rob: You don't know or no he didn't?

David: I don't know if he did?

Rob: Did this person, how did this person leave?

David: He, he came back in like I say about three or four more times he wanted in real bad he finally ran back outside and he was running around the parking lot and he yelled ah he yelled something like slut and something like that and he paused briefly outside our window there and he saw me and of course I got a good look at him he didn't say anything he just ran away he came back in and he was able to get into her apartment and then I could hear him yell something like I see your cherry stain on the bed then he ran out yelling you slept with him but you wouldn't sleep with me and then he said the only reason you dated me was to go to bed with my friend and I believe he yelled something when he was leaving he was like I knew him first.

Rob: Ok. Did you see that person around the apartment other than that night? Had you seen him there before?

David: Yes. I have seen him one other time and at the time I believe he was driving a gray Ford Escort there was always a lot of junk in the Ford Escort and it had some kind of Star Trek bumper sticker on it or something like that.

Rob: Had you seen that person or vehicle at the apartment since that in July?

David: No sir I haven't.

Rob: Is there anything else that you wish to add?

David: No sir. Not at this time.

1 very, very little in the abdominal cavity, so I think she
2 lived a very short time after receiving the stab wounds. But
3 she was alive at the time that she received them. Her heart
4 was still beating, although she could have been already
5 strangled.

6 Q What is the time of death roughly between when
7 someone's strangled to when they're actually deceased? What
8 time period --

9 A Well, you have to maintain the strangulation for
10 probably three to five minutes. Of course in this case it was
11 tied, so the person would not have had to keep holding the
12 neck for three to five minutes, once that had been tied. But
13 the lack of oxygen to the brain has to be held for say -- you
14 can lose consciousness in say 60 seconds, but to die you
15 probably would have to keep that on the neck for about three
16 to five minutes. But the heart can continue beating for --
17 weakly for some period of time after that, for a few minutes
18 after that.

19 Q Doctor, based upon your examination and your
20 observation of the body, did you come to an opinion as to the
21 time of death for Jennifer Lockmiller?

22 A There would be a rough estimate approximation based
23 on the fact that she has gone into this process of
24 decomposition, and I thought my range for the time of death

1 was between two to four days before I examined her at autopsy,
2 which would be from nine a.m. on the 25th of August, 1993,
3 until nine a.m. on the 27th of August, 1993. I felt that
4 that's probably the interval in which she died.

5 MS. DIMMICK: I have no further questions, judge.

6 THE COURT: All right, you may cross examine, Mr. Beu.

7 MR. BEU: One moment.

8
9 CROSS EXAMINATION

10
11 BY MR. BEU:

12
13 Q Good morning, doctor.

14 A Good morning.

15 Q Doctor, in the area of the neck structure where this
16 ligature was placed, internally are there structures inside
17 the neck that could be fractured or crushed in a strangulation
18 type injury?

19 A Yes.

20 Q What are some of those structures please?

21 A Well, right beneath the skin of the neck you have a
22 little bit of fatty layer. Then you start to have the
23 muscles, sterno-mastoid, the strap muscles of the neck that go
24 from the cartilage of the neck to attach to the sternum and so