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REPORTER'S RECORD
VOLUME 6 OF 35 VOLUMES
TRIAL COURT CAUSE NO. 1008763-A

EX PARTE) IN THE DISTRICT COURT OF
DAVID MARK TEMPLE,)
Applicant)
)
) HARRIS COUNTY, TEXAS
)
) 178TH JUDICIAL DISTRICT

POST-CONVICTION WRIT HEARING

On the 19th day of December, 2014, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Larry Gist, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

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1 THE COURT: Thank you very much.

2 Call your next witness.

3 MS. GOTRO: Defense calls Jim Leitner,
4 Your Honor.

5 (Witness sworn)

6 MR. SCHNEIDER: Mr. Leitner is a lawyer.

7 THE COURT: I apologize. I take back the
8 oath.

9 Go ahead.

10 MS. GOTRO: Thank you.

11 **JIM LEITNER,**
12 being an officer of the court, testified as follows:

13 **DIRECT EXAMINATION**

14 Q (BY MS. GOTRO) Would you please introduce
15 yourself?

16 A My name is Jim Leitner.

17 Q And, Mr. Leitner, how are you currently
18 employed?

19 A I am currently the General Counsel for the
20 Harris County Sheriff's Office.

21 Q And how long have you had that position?

22 A I've had that position for a little over a
23 year.

24 Q So a little over a year, so 2013 perhaps?

25 A October 2013.

1 Q Is this a full-time position?

2 A Yes.

3 Q Now, before working full-time for the
4 Sheriff's Department, what did you do?

5 A You want me to do my whole lawyer background?

6 Q Yes, give us your lawyer spiel.

7 A Okay. I graduated from law school in 1975.
8 In 1974 I went to work for the Harris County District
9 Attorney's Office as an intern, and in '75 I became an
10 assistant. I was a prosecutor here in the Harris County
11 courts from '75 through '78. I worked my way up to a
12 number two in district court. I then went to Bell
13 County as their First Assistant for four years. After
14 that, I came back to Harris County, in the Special
15 Crimes Division. I was there, I don't know, about a
16 year or so, and then I was made chief in the 185th and I
17 left the DA's office to go in private practice, probably
18 sometime toward the end of 1983. I was in private
19 practice, primarily criminal defense work, until, I
20 guess it would have been October of 2008, when I came
21 back to the District Attorney's Office, Harris County
22 District Attorney's Office, under Ken Magidson.

23 Q Let me stop you right there, Mr. Leitner. Ken
24 Magidson had been appointed after Chuck Rosenthal
25 resigned; is that correct?

1 A That's correct.

2 Q How long was Ken the acting District Attorney?

3 A I don't remember. Maybe a year or so. I'm
4 not sure how long it was.

5 Q And you're familiar with a former employee,
6 Murray Newman, at the District Attorney's Office?

7 A Yes.

8 Q To your knowledge, he was terminated by Mr.
9 Magidson; is that correct?

10 A Yes.

11 Q Please continue.

12 A I came on kind of as Patricia Lykos'
13 transition team. So I was there from October to
14 January 1 on the transition team and then from January 1
15 until, I think, sometime in October of, I guess it would
16 be 2012, I was the First Assistant of Harris County.

17 Q Now, as First Assistant District Attorney,
18 what were your responsibilities, Mr. Leitner?

19 A Well, my primary responsibility was running
20 the office.

21 Q Personnel issues?

22 A All kinds of personnel issues.

23 Q Now, in October of 2012 when you left the
24 District Attorney's Office, where did you go?

25 A Well, I went in private practice, but I also

1 had a contract with the Harris County Sheriff's Office,
2 because they wanted someone who used to do the kind of
3 work that I'm doing for them now, and I was able to work
4 part-time on contract with them and have my own private
5 practice at the same time.

6 Q While you were First Assistant District
7 Attorney, did you have the opportunity to work closely
8 with the Sheriff's Department?

9 A Yes, with all the PDs and Sheriff's Office.

10 Q But specifically the Sheriff's Department,
11 were you instrumental in helping them with their
12 crowding issues?

13 A Well, they had come to me and they were
14 complaining about the fact that they were having to send
15 people to Louisiana to the tune of about a million
16 dollars a month when they thought they shouldn't have to
17 have that many people in the Harris County Jail, and we
18 looked at the 12.44(a) cases, and it was my opinion that
19 we could vastly reduce how many people we put in the
20 Harris County Jail under 12.44(a). I worked on that
21 with the division chiefs and we cut it down and
22 eliminated the need to send inmates to Louisiana.

23 Q And so you left the District Attorney's Office
24 in October of 2012; is that correct?

25 A Yes.

1 Q And you went into private practice, but you
2 were also working part-time for the Sheriff's
3 Department?

4 A That's correct.

5 Q Mr. Leitner, at any point during that period
6 of 2012 and since, have you been employed with Dick
7 DeGuerin?

8 A No.

9 Q Did you seek employment with Dick DeGuerin?

10 A No. I've never been employed by Dick
11 DeGuerin. I've never sought employment by Dick
12 DeGuerin. I know Dick DeGuerin. That's about it.

13 Q So you're familiar with an article that was
14 published sometime in 2012, stating that Leitner was
15 looking for a soft landing. Do you remember that?

16 A Murray's blog?

17 Q Yes, sir.

18 A There were a lot of things in Murray's blog
19 about me that weren't true. That was one of them.

20 Q So while you were working as the First
21 Assistant, at some point, Mr. Leitner, were you
22 approached by either Dick DeGuerin or Stan Schneider
23 about viewing the entirety of the Temple file?

24 A Yes.

25 Q Okay. Can you tell us about that?

1 A I can't tell you when it happened, but I know
2 that at some point in time it was either Stan or Dick
3 that came to me and they said that they didn't think
4 they had been afforded the ability to see the entire
5 Temple file and I said, "Well, I could never answer that
6 question. I mean, there's no way I would know that, but
7 I can get the file that we have in the office now and
8 you can look at it," and they said they wanted to do
9 that. And I believe I asked Brian Rose to bring the
10 file to me, because I had asked to see files before, and
11 wheeled the file up to me, put it in my office, and I
12 let Dick and Stan know that it was in my office. If
13 they wanted to come look at it, come look at it.

14 Q Did you ever go through that file,
15 Mr. Leitner?

16 A No.

17 Q Typically --

18 A I'm sure I opened it up and looked at some
19 things, but I never read the file.

20 Q Typically, when the defense or anybody asks
21 you or the District Attorney's Office to see the file,
22 are they referring to the District Attorney's trial
23 file, like your entire file; is that right?

24 A Well, my understanding was, they were asking
25 for any file the Harris County District Attorney's

1 Office had on David Temple, and when I asked for it,
2 that's what I was asking for.

3 Q Now, normally are offense reports included in
4 that file?

5 A Yes.

6 Q So one would expect if an offense report had
7 been generated for the prosecution of a particular case,
8 that those offense reports would be in that file?

9 A I would think so.

10 Q But you don't have any specific memory -- do
11 you have any specific memory of seeing offense reports
12 in that file?

13 A I never went through the file to see what was
14 in there. I left it up to them to look at it. I never
15 looked through the file.

16 Q While you were at the District Attorney's
17 Office, you created -- tell us about this Conviction
18 Integrity Unit.

19 A You know, I can't even remember -- I guess I'm
20 getting old -- what we called it, but it was like a
21 Conviction Integrity Unit. They have a Conviction
22 Integrity Unit in Dallas. We wanted to have a unit that
23 would look at cases that have already been convicted and
24 make sure that the integrity of those cases was good,
25 was true, and we formed such a unit when we came there.

1 The unit consisted of Baldwin Chin, Alicia O'Neill and
2 they had an investigator. I think the first
3 investigator was a big tall guy that became chief
4 investigator in Galveston. I cannot remember his name.

5 Q Is his name Tommy?

6 A That wasn't Tommy. Tommy, who I can't
7 remember his last name, came later.

8 Q J.J. Freeze.

9 A J.J. Freeze, that's who it was I thinking of.
10 I think he was the first investigator we had when we
11 created that. And I specifically got with Pat and she
12 agreed to let me create it this way, is that they would
13 work independently of the entire rest of the office. If
14 you look at the diagram of how the office was, it would
15 show Pat, myself, and from me there would be a branch
16 off that went to this unit, so that if they answered to
17 anybody, they only answered to myself and answered to
18 Pat Lykos.

19 Q Now, what was the purpose -- what was the
20 purpose of creating it that way, Mr. Leitner?

21 A Because I wanted them to be independent. I
22 had talked with Roe Wilson and told her what we were
23 doing and she --

24 Q Now, let me stop you there. Who is Roe
25 Wilson?

1 A Roe Wilson was, I guess not the Appellate
2 Section; she was chief of the Writ Section in the DA's
3 office.

4 Q Okay. So you talked to Roe Wilson about this
5 particular unit?

6 A About creating this unit, and she felt that we
7 already had such a unit. That was the Writ or Appellate
8 Section, but I told her I wanted it to be separate and
9 apart and I did not want them answering to her or
10 anybody else in the chain. I want them to be
11 independent of the rest of the office to do their work.
12 So that's how we created it.

13 Q Is there a particular reason that you did not
14 want them answering to Roe Wilson?

15 A I just didn't want them to have to answer to
16 anybody that was working on cases that may be cases they
17 were looking at. I wanted them to have an independent
18 perspective and that they knew that their task was to go
19 over everything and make sure everything was done right,
20 and if there was something wrong, not to be afraid to
21 say something about it. You know, I guess there's a
22 chance they could be looking at a case I tried at some
23 point in time, but the fact of the matter is, I wanted
24 them to have the freedom to be able to do all that was
25 necessary without worrying about a supervisor being mad

1 at them because they were in that chain.

2 Q Fair enough. At some point, Mr. Leitner, were
3 you approached with the notion that new evidence had
4 been discovered on the David Temple case?

5 A Was I approached that new evidence had been
6 discovered?

7 Q Yes, sir. A new witness had come forward?

8 A Well, I was approached by Steve Clappart, who
9 was an investigator in our office, whom I knew. He had
10 been a Houston police officer for a long time and he was
11 an investigator with our office, and he came to me, and
12 I can't remember exactly what he said, but I can give
13 you the gist of what he said.

14 Q Fair enough.

15 A He came to me and told me that he had come
16 across some evidence that made him have doubts about the
17 conviction.

18 Q And what was your response to that?

19 A I said, "Well, you're an investigator,
20 investigate it, find out," and I said "Before you do
21 anything," because, you know, let me just tell you, it
22 was a tough time in the DA's office. When Pat Lykos
23 won, we were considered to be outsiders.

24 Q And when you say "we," who do you mean?

25 A How did I say "we"?

1 Q You said "we were considered to be outsiders."

2 A Oh, the people that came in with Judge Lykos'
3 administration. So I didn't know if somebody set me up
4 to put something in Murray's blog or something else
5 again, so I said "Wait a minute, Steve," and I believe
6 it was right then and there when he was in the office, I
7 called -- I believe I called DeGuerin or I called
8 DeGuerin's office and said "I have just been told that
9 there's evidence that has to be Brady evidence that
10 exists in the Temple case. I want you and whomever you
11 want to be with you to come to the DA's office so we can
12 sit down and as they line it out to me, they're lining
13 it out to you at the same time, so nobody can ever say
14 that I've kept anything from you that's Brady." He
15 agreed, and I think we had a meeting set up that same
16 afternoon, I believe. I'm not sure about that.

17 But I didn't want to have a meeting with
18 me by myself either, so I asked, I believe, Baldwin and
19 Alicia and whoever was with them to come to the meeting,
20 too, so they could hear everything that was being said.

21 Q Just so that we're clear, the first meeting
22 that you had about this new evidence in David Temple's
23 case --

24 A And I think it was the first meeting. I
25 didn't keep notes or anything like that, but that's what

1 my account was.

2 Q Can we say one of the first meetings, one of
3 the early meetings?

4 A Yes.

5 Q So one of those early meetings that you had
6 about this new evidence in the Temple case, Mr. Baldwin
7 Chin and another member of the Conviction Integrity Unit
8 were present?

9 A I think so. Now, I can tell you this, Baldwin
10 would be better to tell you that, because it would be
11 the first time he was in on a meeting. I'm not sure
12 exactly which meeting it was. I think it was the same
13 day, but I'm not 100 percent sure. But I know I wanted
14 somebody in our office to know what was going on. I
15 didn't want to broadcast it to the entire office, but I
16 wanted someone in our office to know what was going on.

17 Q We'll come back to that broadcasting
18 statement. So you got a Conviction Integrity Unit right
19 there in your office. What made you decide to let Steve
20 Clappart investigate this as opposed to the Conviction
21 Integrity Unit?

22 A You know, I don't know that I even thought
23 about that issue at the time. But if I did, this is
24 what I'm sure I would have thought. I would have
25 thought that if we did this investigation, no matter

1 what the DA's office did, it would look suspect later on
2 that we had ulterior motives or whatever.

3 Well, Clappart came in on his own and
4 said "I have these doubts," and he's got the experience
5 that Clappart had, I wanted to turn it over to Clappart.
6 I told him "Steve, I'm going to give you the ability to
7 do whatever needs to be done to find out what the truth
8 is." I wasn't trying to say that it was good evidence
9 or bad evidence. Just if you believe there's some
10 evidence there, do it and, you know, let DeGuerin and
11 Stan and everybody else know what you find.

12 Q If I can just ask, the purpose of letting
13 DeGuerin and Stan know what Clappart had found was that
14 your effort is just being transparent with the defense
15 about potentially exculpatory evidence?

16 A Yeah. I felt that it had to be Brady evidence
17 if Clappart thought it was something that gave doubts to
18 it, and therefore under Brady, they needed -- as soon as
19 we knew about it, they needed to know about it.

20 One of the big things that I had pushed
21 when I was in the DA's office was that the time to turn
22 over Brady material is as soon as you find out about it
23 and not, you know, just when it's convenient somewhere
24 down the road. So I wanted to follow my own directives
25 and turn it over immediately.

1 Q Now, do you remember where Clappart had
2 obtained this evidence? How it had come into, I guess,
3 Clappart's knowledge?

4 A 100 percent, no, but I think that when he had
5 told me that he had had a conversation with John
6 Denholm. So I felt like maybe they already know all
7 this evidence, but I wanted to make sure they had known
8 anyway. That's why I brought everybody there.

9 Q So when you say maybe they already know all
10 this evidence, are you referring to the defense?

11 A Yes.

12 Q I want to back up to the statement you made
13 about broadcasting this throughout the office. You said
14 "I didn't want to broadcast this throughout the office."
15 What did you mean by that? What was your concerns about
16 broadcasting, Mr. Leitner?

17 A Well, what Clappart had told me would require
18 going out and talking to some witnesses, and I knew that
19 the Temple case was tried by Kelly Siegler. Kelly
20 Siegler was loved by many, many people in the office and
21 I didn't want anything to come in the way of Clappart
22 being able to freely talk to these witnesses, so I
23 wanted Clappart to have the ability to go out there and
24 do it. I didn't want to put people, I guess, probably
25 looking bad all on Alicia. If Clappart feels this way,

1 go out and find it out. And I was hoping he could find
2 it out on his own one way or the other, make this thing
3 come to a rest, and I didn't want to take a chance that
4 somebody would say "Hey, I don't like what you're doing
5 and we'll let the people know you're coming so you can't
6 get a statement from them." I guess that's what I was
7 thinking.

8 Q Did you authorize Steve Clappart to work any
9 overtime?

10 A I told him -- I don't know that I used the
11 exact words "You work overtime," but I told him, "Do
12 whatever is necessary. I will back you up on that.
13 Find out the truth about this," period. I meant that to
14 include overtime.

15 Q And at any point did Steve catch flack about
16 his overtime?

17 A Well, I didn't have him reporting back to me
18 on things. I just told him to go out and do what you
19 need to do on it. He called me -- called me or came by
20 and told me -- probably came by and told me. He said,
21 "My division chief won't sign my time sheet" and I said
22 "What are you talking about?" And he said "Lance Long
23 is my division chief and he refuses to sign my time
24 sheet because he said he did not authorize the overtime
25 I've done." So I said "Okay, I'll call him." So I

1 called Lance and told Lance that I had Clappart working
2 on this project and that he was authorized to do
3 overtime.

4 Q Let me stop you right there. When you told
5 him -- I mean, did you ask Lance what were his
6 objections to Steve's overtime?

7 A No.

8 Q What concerns, if any, did Lance express about
9 Steve's investigation or these hours, rather, these
10 extra hours?

11 A I got the impression that Lance didn't believe
12 that Steve should be doing this.

13 Q Doing what?

14 A Investigating this lead that he had.

15 Q Do you have any idea how Lance Long even knew
16 about this lead?

17 A Well, I just presumed that he talked to
18 Clappart about it. I mean, I figured that he wouldn't
19 sign Clappart's overtime sheet after Clappart explained
20 to him what he was doing, is what I thought. I still
21 think that.

22 Q And do you know Lance Long to have a personal
23 relationship with Kelly Siegler?

24 A Yes.

25 Q Did you tell Lance Long in that conversation

1 that you would sign Steve's time sheet?

2 A I said, "Lance, if you have a problem with it,
3 I'll sign it. I authorized it, I'll sign it."

4 Q Did you ever have any other communications
5 with Lance Long about the Temple investigation?

6 A If I did, I can't remember. We had more of a
7 talk about all this when we were on the phone then, but
8 if we talked about it after that, we might have, I just
9 don't remember.

10 Q Now, at some point Steve began to work on an
11 affidavit. Do you remember Steve talking to you about
12 an affidavit for arrest?

13 A Yes.

14 Q Do you remember -- well, actually we know that
15 you eventually sent him to Alan Curry to have Alan Curry
16 to look over that affidavit?

17 A Yes.

18 Q Can you tell us why you did that?

19 A I figured that Alan Curry was the end
20 decision-maker in the Harris County District Attorney's
21 Office on all issues of law and that if I made a
22 decision and he brings it to me and said "What do you
23 think about this," if I make the decision, then it will
24 always be questioned that I had ulterior motives. Why
25 anybody would think that, I didn't know, and I said "I

1 don't want to be making the decision. Take this down to
2 Alan Curry and have him look at it and give you an
3 opinion on it."

4 Q And to your knowledge, did Alan ultimately
5 give an opinion?

6 A To my knowledge, Alan said it was not probable
7 cause.

8 MR. CHIN: What did you say, sir?

9 A That it was not probable cause.

10 Q (BY MS. GOTRO) There was insufficient
11 information?

12 A Insufficient facts there to amount to probable
13 cause is what I was told.

14 Q Now, to your knowledge, Mr. Leitner, was Alan
15 Curry participating in Steve's investigation?

16 A I don't think so.

17 Q What about Kelly Siegler?

18 A Not to my knowledge.

19 Q Do you have an opinion, Mr. Leitner, about
20 whether or not it would have been appropriate for Kelly
21 Siegler to be participating in an investigation about
22 new evidence, possibly exculpatory evidence, on a case
23 where she had been a prosecutor?

24 A The reason I didn't want to broadcast it was
25 for that very reason. I thought that, you know, it's

1 better for her, it's better for the DA's office, it's
2 better for justice. It's better for everything else if
3 this issue gets run to its conclusion, find out what the
4 answer is independently by the people that were doing
5 it. So, no, I would not think she should be part of
6 that investigation.

7 Q Would it surprise you to know that she was in
8 fact part of that investigation, Mr. Leitner, or at
9 least receiving updates on a regular basis about that
10 investigation?

11 A Well, I would think as soon as I read about my
12 investigation in Murray's blog, I figured everybody knew
13 about it then.

14 Q Do you have any idea how the investigation was
15 getting -- how Murray was getting that information?

16 A Well, on the one particular one that I'm
17 referring to where it talked about -- first of all, the
18 answer to your question is no, I don't know how he got
19 the information. I can tell you what I thought, but I
20 don't know.

21 Q Okay. Which posting are you referring to?

22 A It was the very first time he posted anything
23 at all about there being a separate investigation and
24 that I authorized it and things like that in his blog.

25 Q Did you expect that the leak was coming inside

1 your office?

2 A Yes. I mean, the things that I read in the
3 blog were things that I talked to Lance about just
4 shortly before that.

5 Q Oh, when you were having the conversation
6 about Clappart?

7 A Yes, about the time sheets.

8 Q Did you discuss the details of this
9 investigation with Lance Long?

10 A I discussed the fact that it was an
11 investigation of a lead in the Temple case, because I
12 think he already knew that by the time I talked to him.
13 And I knew that Lance didn't think that it was proper,
14 and I had told him, I said, "I can't understand how you
15 could not think it's proper." I mean, what would you do
16 in that situation? If somebody comes and tells you I
17 have -- I believe there's evidence out there on any
18 case, you know, our job would be to investigate it and
19 see if it's true or not.

20 Q So Lance said to you directly he didn't think
21 this kind of investigation was proper?

22 A Well, he said something, that I knew he didn't
23 approve of it. What his exact words were, I don't know.

24 Q Was he the only person in the office that
25 expressed that kind of opinion to you while this case

1 was being investigated?

2 A Well, I'm sure that other people may have
3 talked to me about it; they probably never talked to me
4 about it. I don't think Alan really thought that it was
5 proper to do the investigation. I couldn't understand
6 that either. But I don't -- I don't recall anybody else
7 telling me it wasn't proper to investigate some lead.

8 Q So you said something just a moment ago,
9 Mr. Leitner. You said you felt like -- you got the
10 impression that Alan Curry -- he was the head of the
11 Appellate Section, correct?

12 A Right.

13 Q And you got the impression that he didn't
14 think this investigation was proper?

15 A I don't know where the process was on the
16 appellate, the direct appeal part of the case, and I
17 think that Alan, without saying, you know, "Jim Leitner,
18 you shouldn't have authorized anything," I think his
19 position was, "This isn't the time to be doing that. We
20 should finish what we're doing on the appeal part
21 first." But I felt like if somebody comes and says that
22 there's something out there, you better go try to find
23 it when it's there as opposed to waiting around.

24 Q Because then it may not be there anymore,
25 right?

1 A Of course.

2 Q You lose witnesses all the time, so it's
3 important when this information is brought to your
4 attention, that you investigate it?

5 A Yes.

6 Q Let me ask you, other than Steve Clappart and
7 yourself, was there anybody in the office, any single
8 person within the District Attorney's Office, that
9 thought -- that was supportive of this investigation?

10 A You know, I never went around trying to ask
11 people whether they support it or not, because I was
12 trying to keep it as hush-hush as I could so they could
13 do the investigation.

14 Q Mr. Leitner, you and I can both agree that it
15 didn't stay hush-hush for long, did it?

16 A No, it didn't stay hush-hush for long. I
17 don't think that Baldwin and Alicia thought that we were
18 doing the wrong thing. I think they thought when you
19 find something, you check it out.

20 Q So speaking of Baldwin and Alicia, did either
21 Baldwin or Alicia tell you that they thought it was
22 inappropriate for Steve Clappart to be investigating
23 this evidence?

24 A I don't remember that.

25 Q Even though -- I mean, Conviction Integrity

1 has got its own investigator. Neither one of them said
2 they thought it was inappropriate and that you should be
3 running this investigation through Conviction Integrity?

4 A I don't think anybody in the office would want
5 to touch that thing with a 10-foot pole, and they also
6 probably -- they also knew that I believed this was the
7 right way to do it. I don't recall them ever contesting
8 that.

9 Q Mr. Leitner, do you recall a time where the
10 defense right around this same time during the same
11 investigative period, 2012, where the defense obtained
12 an order for DNA testing? Does that sound familiar?

13 A Well, once again, I don't remember times. I
14 remember DNA testing being done. Now, whether it was
15 done at the defense's push or whether it was done by
16 Baldwin agreeing with the defense's push or how it was
17 done. I just know that it came to me that it needed to
18 be paid for, I believe, and I authorized the payment.
19 But I'm not sure that I remember how it got to me.

20 Q Was there something -- you say you authorized
21 the payment. Was there something special about the
22 testing that was sort of above and beyond your regular
23 DNA testing, if you recall?

24 A My recall is it was expensive. If that means
25 it's above and beyond, that's all I can remember.

1 Q But Baldwin Chin, I guess, would have been the
2 representative for the District Attorney's Office in
3 getting that DNA testing done; is that right?

4 A Well, I mean, Baldwin did so much of our DNA
5 testing. I assume it was him and that Clappart didn't
6 do it; he was just telling us about it, but I don't know
7 for absolutely sure.

8 Q Did you ever find out what the results of that
9 DNA testing was?

10 A I'm sure I did, but I don't even remember what
11 was tested and I do not remember the results as I'm
12 sitting here.

13 MS. GOTRO: May I approach the witness,
14 Judge?

15 THE COURT: Yes, ma'am.

16 Q (BY MS. GOTRO) I'm going to pass you a
17 document which is marked Defense Exhibit 78 for
18 identification purposes. I'm going to let you look at
19 it.

20 A (Complies.)

21 I've read 78.

22 Q Okay. And is that an email communication
23 between you and Mr. Alan Curry?

24 A It appears to be.

25 Q And what's the date of that email

1 correspondence?

2 A It was all on August 6th, 2012.

3 MS. GASTRO: At this point, Your Honor,
4 defense would move to enter Defense Exhibit 78 into
5 evidence and tenders to the prosecution.

6 MR. CHIN: I have no objection to
7 Defendant's Exhibit 78.

8 THE COURT: 78 is admitted.

9 Q (BY MS. GOTRO) So right around August the
10 6th, the defense, Mr. Schneider, had gone and gotten an
11 order from District Judge Frank Price to disclose
12 certain grand jury testimony. Is that about right?

13 A That's what the email says, yes.

14 Q Okay. In the email did you contact Alan Curry
15 first?

16 A It appears Alan contacted me.

17 Q So starting at the bottom, what's the first
18 email that's sent? Would you please read it out loud,
19 Mr. Leitner?

20 A It's from Alan Curry to me at 4:05 p.m. on
21 August the 6th, 2012: "Jim, I am just letting you know
22 that Stanley Schneider has gotten Frank Price," who is a
23 judge, "to sign an order giving the defense access to
24 all of the grand jury testimony in the case." Subject:
25 Temple at the top. "I am led to believe that you had

1 agreed, but just wanted to make sure."

2 Q And what's your response?

3 A My response at 4:24 on the same date was: "At
4 this point why wouldn't we want to agree. We don't have
5 anything to hide there, do we?" And he responded back
6 at 4:34, "I understand. I am not really contesting
7 that. It was just represented to me that you had
8 agreed, and I did not want to just acquiesce to that
9 without double-checking. That is fine.

10 "And we do not have anything to hide
11 obviously. I really do not know what the grand jury
12 testimony states. But I do note that the statute
13 (Article 20.02(d)) requires that a defendant show
14 'particularized need' before he can gain access to grand
15 jury testimony. I do not know what the defense has
16 shown, if anything, but I do not have any problem with
17 an agreement. I just wanted to make sure that had in
18 fact been done."

19 Q Okay. And so, Mr. Leitner, when Alan Curry
20 says that he didn't want to just acquiesce without
21 double-checking, did you know what he meant by that?

22 A Well, I guess what Alan Curry meant was he
23 wanted to make sure that Stanley didn't lie to him; that
24 there was an agreement for the grand jury testimony.

25 Q Well, it starts with Alan alerting you that

1 Stan has gotten an order from the Judge saying turn it
2 over, so what's left for Alan to acquiesce to, do you
3 know?

4 A All I'm saying is what I took that to mean,
5 and I could be not taking it right. But what I took
6 that to mean was Alan wanted to make sure that I had
7 agreed to it; that Frank Price hadn't been sold a bill
8 of goods, is what, I guess, he's saying.

9 Q Gotcha. And you had not seen the grand jury
10 testimony, had you?

11 A I don't think I've ever seen the grand jury
12 testimony.

13 Q Fair enough. You said something earlier,
14 Mr. Leitner. You were concerned about people perhaps
15 interfering with Clappart's investigation, and
16 specifically reaching out to certain witnesses before
17 Mr. Clappart got an opportunity to speak with them. Do
18 you remember that?

19 A I remember that.

20 Q Okay. At some point did you become aware that
21 Steve Clappart had gotten some -- excuse me -- was going
22 to execute some warrants for a Cody Ellis? Was that
23 ever part -- did you ever know about that?

24 A Steve Clappart came and told me things that
25 were going on in the investigation from time to time,

1 and I remember one time he talked to me about wanting to
2 get a warrant.

3 Q But did you have any specific knowledge about
4 his efforts to attempt to execute some municipal
5 warrants on Cody Ellis to do some investigation with
6 him?

7 A He may have told me. Are you talking about
8 municipal warrants?

9 Q Yes.

10 A I don't recall municipal warrants, but he
11 could have told me something about that. If he came and
12 told me "This is what I'm doing," I'd say "Do what you
13 need to do, Steve. Run this thing down totally and get
14 it over with."

15 Q At some point, Mr. Leitner, you all made the
16 decision that it might be time to involve a special
17 prosecutor; is that right?

18 A Yes.

19 Q Can you tell me how you got to that decision,
20 that it was time to hire a special prosecutor?

21 A You know, I should remember that. I would
22 think that what happened is that Clappart was coming to
23 me and telling me that people within the office were
24 interfering with his investigation and -- or he may have
25 said that there's a problem with me having authorizing

1 the investigation. I'm not sure what the deal was. But
2 I thought whatever it was he told me, that it would be
3 better if this was done as an independent investigation,
4 totally out of our office. It didn't have to come
5 through me. It would work strictly through an appointed
6 prosecutor to handle the case, and they would do it even
7 without me knowing what's going on, all his decisions,
8 and get to the bottom of this.

9 Q Now, Mr. Leitner, was the purpose of getting
10 this independent prosecutor not just to isolate the
11 investigation from you, but to isolate the investigation
12 from the District Attorney's Office?

13 A Yes.

14 Q And that was just to -- tell us why, again, in
15 the simplest terms why you felt the need to bring a
16 neutral third party in and isolate this entire District
17 Attorney's Office from investigating Brady evidence.

18 A Because my desire from the very beginning was
19 just to run this out, check all the leads out and come
20 to its final conclusion. Well, now, it was all these
21 things coming in that our office was blocking the
22 ability to do that, so you end up with more problems
23 than you started out with from a DA's office
24 perspective. So I said at this point "Let's get it out
25 of here, totally out of the office, and have somebody

1 else do what they can with it."

2 Q So is it fair to say, Mr. Leitner, that
3 once Brad Beers -- do you remember when Brad Beers was
4 appointed?

5 A No. There's an order somewhere, I'm sure,
6 when he was appointed pro tem, but I don't know the date
7 of the order.

8 Q Okay. Was he a true pro tem, in the sense
9 that a judge had appointed him because of an actual
10 conflict of interest?

11 A We usually only did it with a pro tem.
12 Whether we did it as a pro tem in that situation, I
13 mean, I think we did, but I don't remember.

14 Q Okay. That's fair. But once Brad Beers
15 became involved in this investigation, was it your
16 understanding that Brad Beers was to be the only
17 assistant district attorney that was running this
18 investigation into Brady evidence in the Temple
19 conviction?

20 A It was meant to be handled like we do any
21 special prosecutor case. He's got the case, he makes a
22 decision. I knew Brad Beers was a very competent
23 lawyer. He makes the decision and the office is out of
24 it.

25 Q So you wouldn't expect the head of the

1 Appellate Division to still be running parts of that
2 investigation, would you?

3 A No.

4 Q To your knowledge, was the Sheriff's
5 Department participating in any of Mr. Beers'
6 investigation, to your knowledge?

7 A You know, I honestly don't know. I mean, I
8 know that Denholm came out of the Sheriff's Office and
9 that the Sheriff's Office had done some investigation in
10 this case, and whether they were still going to them or
11 not, I'm not 100 percent sure.

12 Q But if an investigator needed to obtain some
13 evidence, for instance, and needed to get a grand jury
14 subpoena, wouldn't you expect that investigator to
15 approach the special prosecutor that's been appointed as
16 opposed to using a district attorney within the Harris
17 County District Attorney's Office?

18 A Are you asking me if Clappart was going to try
19 to get some evidence that he needed a grand jury
20 subpoena for, would he go to Brad Beers or some other
21 assistant DA? He would go to Brad Beers.

22 Q So any investigator who's working on that
23 case, you need a grand jury subpoena, you go to Brad
24 Beers. That's the reason he was appointed, right?

25 A We had appointed Brad Beers so he would handle

1 the entire investigation.

2 Q And so nobody else within the District
3 Attorney's Office would handle the investigation, yes?

4 A That was my position on it.

5 Q And you were the First Assistant District
6 Attorney?

7 A Yes.

8 Q Which means you were the number two person in
9 charge, right?

10 A Yes.

11 Q And the only person above you would have been
12 Pat Lykos. So can we all assume that you were acting
13 with Pat Lykos in specific authority, consent?

14 A Yes.

15 Q How did -- well, so you left the office in
16 October of 2012?

17 A Yes, I think that's when it was.

18 Q So when you left the office in October, do you
19 remember exactly what the state of affairs were with
20 respect to the Temple investigation?

21 A I mean, I think Brad Beers had it then. You
22 know, once I turned it over to Brad Beers, I tried to
23 Pontius Pilate it and play, "It's yours. You all don't
24 come to me with anything." Brad handled the thing, and
25 I didn't check to see how he was doing or anything like

1 that.

2 Q Now, I want to change gears for just a second.
3 You worked at the Harris County District Attorney's
4 Office when they had a policy where if defense attorneys
5 filed motions for examining trials, they closed the
6 file; is that right?

7 A I don't think you'll ever see a written policy
8 that said that. I don't recall that I ever saw it. But
9 there was many times that that happened. I mean, I
10 don't know if it happened specifically in the '70s or
11 when I was a defense attorney or what it was, but it was
12 the usual course of events that you had an open file if
13 you weren't going to have an examining trial, but if you
14 wanted an examining trial, they closed the file.

15 Q But that was never written anywhere?

16 A Well, it could have been. I just don't know.

17 Q To your knowledge, even in those days, didn't
18 prosecutors have the discretion to open the file if they
19 felt like it?

20 A Well, they had the ability to open the file.
21 You would have to ask Carol Vance, Johnny Holmes,
22 whether they had the discretion to do it or not.

23 Q Well, what about if there's Brady evidence in
24 that file, but it's already been closed, do they still
25 have to ask Johnny Holmes and Carol Vance to turn that

1 over?

2 A They're under a duty to turn it over.

3 Q And so when we talk about Brady evidence, Mr.
4 Leitner, can you tell us what your understanding of the
5 type of evidence that's Brady?

6 A Exculpatory evidence, impeaching evidence,
7 evidence that mitigates any part of the defense's case.

8 Q Okay.

9 A I may have missed something, but that's
10 basically it.

11 Q Now, as a prosecutor, if you have a witness on
12 the stand, Mr. Leitner, and they answer a question that
13 you independently and only you know to be false, what is
14 your obligation as a prosecutor if you have a witness on
15 the stand saying things that you know they made
16 contradictory statements about in the past?

17 A Well, if you know somebody is lying, it's your
18 duty to bring that out even if it's your own witness.

19 Q Right. Even if it's your own witness, is that
20 what you said?

21 A Yes.

22 Q So a prosecutor has a duty to correct a false
23 impression that a witness would leave in front of a
24 jury, can we agree to that?

25 A Yes.

1 Q What if they don't, what's the harm?

2 A It depends on what the substance of the
3 falsity is. I mean, if they were saying, you know, it
4 was an oak tree in front of the house and it was a pine
5 tree, you know, it may not mean anything at all. If it
6 was, you know, I saw a man come out with a gun and they
7 saw a woman come out with a gun, big difference. It
8 just depends on what the facts are as to whether it's
9 material harm or not.

10 Q Yeah, if it's material. If it's material to
11 the State's case, can we agree that the State has an
12 obligation to correct any false impressions about that?

13 A Yes.

14 Q If it's material to the defense's case, can we
15 agree that the State has an obligation to correct that
16 as well?

17 A Yes. And I think if a defense attorney puts a
18 witness on and they lie, they have an obligation to
19 bring the truth out, too.

20 MS. GOTRO: Thank you, Mr. Leitner.

21 I'll pass the witness.

22 THE COURT: You may proceed.

23 MR. CHIN: Thank you, Judge.

24 **CROSS-EXAMINATION**

25 Q (BY MR. CHIN) Hi, Jim.

1 A Hello.

2 Q I'm going to call you, Mr. Leitner, though.

3 A That's fine.

4 Q We've known each other a while?

5 A A long time.

6 Q Since I've been a baby prosecutor; for 20
7 years or so?

8 A It's hard to imagine you as a baby, but go
9 ahead.

10 Q You are so right. Our relationship that we've
11 had over the past 20 some-odd years, that doesn't affect
12 any part of your testimony or the veracity therein,
13 correct?

14 A No.

15 Q All right. Let's talk about, Mr. Leitner, the
16 period before 2008, if you don't mind. You were a
17 criminal defense attorney for a number of years in
18 Harris County, correct?

19 A Over 20 years, I believe.

20 Q And you had tried numerous cases against a lot
21 of prosecutors in this office, right?

22 A Correct.

23 Q Now, had you tried many cases against Kelly
24 Siegler?

25 A You know, I know that Kelly was the chief of

1 Judge Kegans' court.

2 Q Which is the 230th District Court?

3 A Yes.

4 Q When Judge Kegans was still alive?

5 A Yeah, when Judge Kegans was still alive. And
6 I tried a lot of cases in there when Kelly was in there.
7 Now, whether Kelly was the chief prosecutor on the case
8 I was trying or not, I can't remember totally, but she
9 very well could have been.

10 Q Were you friends with Kelly Siegler?

11 A I thought I was.

12 Q Was she friendly to you?

13 A Yes.

14 Q And in your experience with her, whether as a
15 supervisor or as the actual trial prosecutor handling a
16 case, did you all develop a lot of animosity towards
17 each other or was it a good working relationship?

18 A I don't think that I engendered animosity by
19 very many people, Kelly included.

20 Q You know Murray Newman, correct?

21 A Yes.

22 Q And he was a prosecutor for a number of years
23 when you were a criminal defense attorney, correct?

24 A Correct.

25 Q Do you recall prior to 2008 whether you were

1 friends with him or whether you tried any cases with him
2 or against each other?

3 A Well, I know he was in Judge Cospers' court,
4 the 339th, for at least some period of time. I tried a
5 lot of cases in that court, too. I could have tried a
6 case against Murray. I just don't remember one way or
7 the other. I knew who he was and I would get offers
8 from him and talk to him and things like that.

9 Q Prior to 2008, was your relationship
10 professional, cordial, friendly, or was it acrimonious,
11 unhappy? How would you categorize it?

12 A My relationship with Murray Newman?

13 Q That is correct, sir.

14 A Professional.

15 Q Now, at some point in time Chuck Rosenthal --
16 at the time when you were a criminal defense attorney,
17 Chuck Rosenthal was the sitting District Attorney,
18 correct?

19 A Part of the time that I was a defense
20 attorney, Chuck Rosenthal was the sitting District
21 Attorney.

22 Q And let's be particular. If you recall, Chuck
23 Rosenthal was elected in 2000, correct?

24 A Correct.

25 Q And he was reelected in 2004, correct?

1 A Correct.

2 Q And in 2008 he was up for reelection again,
3 correct?

4 A Correct.

5 Q Now, at some point in time his administration,
6 what a lot of us bottom feeders call, blew up. Would
7 that be fair to say?

8 A True.

9 Q And ultimately he had to resign as the elected
10 District Attorney for Harris County, correct?

11 A Ultimately he resigned.

12 Q And it was under a lot of pressure and a lot
13 of public conversation concerning circumstances around
14 his administration, correct?

15 A Yes, he was under a lot of pressure.

16 Q Right. And so at the time that he resigned,
17 you had a choice to make as to whether you wanted to
18 consider running for District Attorney or not. Is that
19 fair to say?

20 A No.

21 Q You did not?

22 A You got the timing off.

23 Q Okay. And please correct me on my timing,
24 sir.

25 A Chuck was the District Attorney. The clock

1 was ticking down to the cut-off of filing a deadline. I
2 had been talking to Jared Woodfill and other people
3 about running for DA. They would never get back with me
4 to say anything. So my daughter and I went to the
5 Republican headquarters, just kind of camp out there in
6 the parking lot, and I saw Pat Lykos, and I thought it
7 was Judge Emmett -- I didn't know who it was -- drive up
8 and I thought to myself "They're going to go file and
9 nobody tell me about this."

10 So I went inside, as the clock was
11 ticking down, and I filed for DA. Chuck is still the
12 DA. I filed to run for it. The time ran out and I was
13 the only other person that had announced. Later Chuck
14 resigned, and when he resigned, it opened up a period of
15 like three days for people to go back in and announce.
16 Well, I had already announced, so his resigning had
17 nothing to do with me announcing, because I announced
18 before he resigned. I'm just trying to straighten that
19 out.

20 Q And, please, my question was very inartful,
21 and I apologize. So after the window closed and Chuck
22 Rosenthal was still like officially running and then he
23 resigned, and you said that a window opened up for new
24 filings, correct?

25 A For new filers.

1 Q And so who were the new filers that put in for
2 the position of District Attorney of Harris County?

3 A Pat Lykos, Kelly Siegler, Mike Stafford. I'm
4 not sure if Mike Stafford was 2008. The front runners
5 would have been Kelly Siegler and Pat Lykos.

6 Q Do you remember there was also a police
7 officer that really nobody considered to be serious?

8 A Oh, that's right. I think he was part-owner
9 of Treasures or something like that. Surprised us all.

10 Q Right. Kind of some crazy guy, right?

11 A Yes.

12 Q Okay. The bottom line is, you had three true
13 candidates for the Republican nomination for District
14 Attorney of Harris County, correct?

15 A We had four candidates.

16 Q Four candidates, but three true candidates,
17 right?

18 A Three that we thought would be in the running.

19 Q Okay. Up to that point you knew there was a
20 blog out there, is that fair to say?

21 A Yes.

22 Q And it had been created during the rough times
23 in the Rosenthal administration, right?

24 A I believe that would have been the time that
25 it was created.

1 Q And ultimately everybody had come to find out
2 that the author of that blog was Murray Newman, yes?

3 A It went on for a long and nobody knew who it
4 was, but ultimately we found out it was Murray Newman.

5 Q And it was written from a prosecutor's
6 perspective, yes, originally?

7 A It was written from Murray Newman's
8 perspective.

9 Q Okay. I defer. Ultimately you get into this
10 primary election involving Judge Lykos and yourself and
11 Kelly Siegler, and during that period, Murray Newman is
12 very active in writing about things about the election,
13 is that fair to say?

14 A That's fair to say.

15 Q And oftentimes not very flattering of Pat
16 Lykos, yes?

17 A Yes.

18 Q And so ultimately in the election Pat Lykos --
19 I mean, excuse me -- in the election Kelly Siegler won
20 just as one of the nominees, Pat Lykos came in second
21 and you came in third and then the police officer guy
22 came in fourth, correct? Is that fair to say?

23 A That's fair to say.

24 Q But Kelly Siegler didn't get 50 percent of the
25 vote, correct?

1 A So there was a runoff.

2 Q And it required a runoff between Pat Lykos and
3 Kelly Siegler, correct?

4 A Correct.

5 Q Now, at some point in time Murray Newman
6 continues to write about that part of the election, is
7 that fair to say?

8 A Yes.

9 Q And he is especially unflattering to Pat
10 Lykos, yes?

11 A Yes.

12 Q And very conciliatory, if not very supportive
13 of Kelly Siegler?

14 A Yes.

15 Q And so ultimately -- and this is not casting
16 any aspersions, but there is a point in time where you
17 decide you're going to support Pat Lykos, correct?

18 A Yes.

19 Q And so the primary happens and Pat Lykos wins
20 that runoff, correct?

21 A Yes.

22 Q Now, during that period of time, between the
23 election results and the runoff, was Murray Newman
24 speaking about you in any of his blog posts, if you
25 recall?

1 A I'm sure he was, but I don't recall the timing
2 of it.

3 Q Well, needless to say, he was never really
4 flattering to anybody who supported Judge Lykos, yes?

5 A That's true.

6 Q So when Judge Lykos ultimately won the
7 election over Clarence Bradford in the general election,
8 Murray Newman was still writing very harsh things about
9 Pat Lykos, is that fair to say?

10 A He was writing harsh, nasty things about Pat
11 Lykos throughout her entire term.

12 Q And I was going to go there. Now, despite the
13 fact that there was a change in administration beginning
14 January 1st of 2009 -- that's the date, correct?

15 A Yes.

16 Q And you were installed as the First Assistant
17 District Attorney for Harris County beginning
18 January the 1st, 2009?

19 A Yes.

20 Q Kelly Siegler still had a lot of friends in
21 the office, right?

22 A Yes.

23 Q Now, she ultimately resigned from the office
24 sometime after she lost the runoff and the general
25 election, is that fair to say?

1 A I believe it was between the runoff and
2 January 1st, sometime in that period.

3 Q Okay. But despite her leaving, she still had
4 a lot of friends in the District Attorney's office, yes?

5 A Absolutely.

6 Q And she had a lot of friends in this
7 courthouse?

8 A Yes.

9 Q And so she, as far as you know, she had a lot
10 of contacts?

11 A Yes.

12 Q So I want to talk to you about what -- you
13 talked about on direct a little bit with regards to the
14 Post-Conviction Review Section or what I think was
15 categorized as the Conviction Integrity Unit.

16 A Post-Conviction Review is what it's called.

17 Q Post-Conviction Review Section is what it was
18 entitled when it was first created in January of 2009,
19 correct, sir?

20 A That's correct.

21 Q Now, I don't want to contradict you. I just
22 want to see if I can refresh your memory and see if you
23 remember things my way or if maybe I'm wrong. Okay? Do
24 you recall that in creating the Post-Conviction Review
25 Unit, our offices originally were still in the

1 Post-Conviction Writs Division? Do you recall that?

2 A That your office was?

3 Q My office and Alicia O'Neill's office was
4 still on the wing of the building or on the floor of the
5 Post-Conviction Writs Division, is that fair to say?

6 A Yes.

7 Q Do you recall that?

8 A I think it was always on the same floor as the
9 Post-Conviction Writs.

10 Q Well, we were on the same wing that was
11 connected to the Post-Conviction Writs Division?

12 A Yes, I believe so.

13 Q And Roe Wilson was the chief of the
14 Post-Conviction Writs Division, is that fair to say?

15 A Yes.

16 Q At some point in time, whatever the impetus,
17 Alicia O'Neill and myself were pulled out of the offices
18 that were on the same side or on the wing of the
19 Post-Conviction Writs Division and moved closer to the
20 front of the office, what do they call it, the foyer
21 area?

22 A Closer to the front door.

23 Q Closer to the front door where the public
24 often comes in, correct?

25 A Yes.

1 Q Near the bathroom?

2 A Yes.

3 Q And I'm not complaining. I'm just saying
4 that's where we were geographically. And that was the
5 point in time where we were actually put in directly
6 under your supervision, where we answered to you and
7 Judge Lykos alone. Is that fair to say?

8 A I would have thought I set it up that way from
9 the very beginning, that you answered to myself and
10 Judge Lykos, even when you were housed in more spacious
11 offices. But when we moved to those offices, it was to
12 make you totally, even to look independent.

13 Q Okay. And that's fine. Now, you had kind of
14 left it to us to kind of create -- when I say "us," I
15 mean the Post-Conviction Review Section -- create the
16 protocol on how we were going to investigate cases. Is
17 that fair to say?

18 A Yes.

19 Q And so we created a general methodology of
20 agreeing to DNA testing if in fact a plausible theory, a
21 defense theory, could be presented to support DNA
22 testing with results establishing innocence, is that
23 fair to say?

24 A That's fair to say.

25 Q And we would also receive letters from

1 individuals and investigate those letters that provided
2 some information that would help us do an investigation
3 that would establish innocence; is that correct?

4 A That's correct.

5 Q Now, we were there, "we" being the
6 Post-Conviction Review Section, we were there to
7 facilitate forensic analysis, which was what Judge Lykos
8 wanted, and had promised her in the election, is that
9 fair to say?

10 A Yes.

11 Q And so as of 2012, do you recall that we had
12 three exonerations in Harris County as a result of the
13 Post-Conviction Review Unit work?

14 A I know that you all had exonerations. How
15 many and which year, I couldn't tell you for sure, but I
16 knew that you all were successful in doing what we want
17 the division to be able to do.

18 Q And do you recall that even one of your former
19 clients was one of the exonerations in Harris County
20 through the Post-Conviction Review Unit, and his name
21 being Allen Porter?

22 A Yes.

23 Q Now, you extricated yourself from supervising
24 us during that investigation, is that fair to say?

25 A Yes.

1 Q And that was because you did not want to
2 appear to have a conflict in regards to that
3 exoneration?

4 A Yes.

5 Q And the reason I'm asking that, I'm kind of
6 trying to link it to David Temple. You didn't really
7 want to have a lot to do with David Temple's
8 investigation, did you?

9 A No. I mean, personally I didn't see any
10 reason for me to be involved. I was just the
11 facilitator.

12 Q It was a no-win situation for you, is that
13 fair to say?

14 A It was a no-win situation for me.

15 Q Now, going back to Murray Newman for up to
16 2012, for three years or so or three-and-a-half years,
17 Murray Newman was really, really hard on the Lykos
18 administration in his blog?

19 A Yes.

20 Q And there were a lot of followers to his blog,
21 is that fair to say?

22 A You know, I don't remember how many followers
23 there actually was, but we imagined that there was a lot
24 of followers to his blog.

25 Q There were a lot of comments, how about that?

1 A A lot of comments, anonymous comments.
2 Whether Anonymous No. 1 or Anonymous No. 2 were the same
3 person or not, we would never know, but there were a lot
4 of people writing a lot of bad things.

5 Q Now, you said at some point in time, you as
6 First Assistant, you were contacted by either Dick
7 DeGuerin or Stan Schneider in relation to the David
8 Temple case?

9 A Yes.

10 Q And I think you said that whether it was
11 Mr. DeGuerin or Mr. Schneider, they told you that they
12 felt that something was not right in regards to that
13 prosecution, and we're going to get into the details in
14 just a second, but is that fair to say?

15 A That's fair to say.

16 Q Now, do you recall whether that conversation
17 took place in person or whether it was on the phone?

18 A Well, I think that -- I don't remember for
19 sure, but I think that Dick DeGuerin was at our office
20 talking to Judge Lykos for some reason, and as he was
21 walking away, he made the comment to me about the Temple
22 case.

23 Q And so do you remember whether that was early
24 in the administration, near 2009, or do you think it was
25 closer to the end of the administration, around 2012?

1 A Well, it was -- I believe that it was before,
2 you know, Clappart came to me and said anything.

3 Q And do you recall whether it was a small
4 period of time between DeGuerin talking to you about
5 Temple and Clappart's communication or do you think it
6 was a long period of time between those events?

7 A I think it was a pretty good period of time
8 difference.

9 Q I'm sorry?

10 A I think there was a pretty good time
11 difference. But I'm thinking, because I didn't keep
12 notes of any of that.

13 Q Would you have any reason to disagree that it
14 either took place in 2009 or 2010?

15 A It could have.

16 Q So as a result of that conversation, tell me
17 what you did.

18 A Well, I don't know if I did anything as a
19 result of the first time that was said to me, but at
20 some point in time it was relayed to me that they
21 thought that they had not been shown the entire file.

22 Q And was that close to the time to the initial
23 conversation with DeGuerin or was it a long time before
24 you had that conversation?

25 A I don't really remember all of it. I'm sorry,

1 but I just don't really remember. I just know at some
2 point they made it specific that they didn't believe
3 that they had been shown the entire file.

4 Q Okay. And as a result of that conversation,
5 did you do anything?

6 A Yes. I said, "Look, I'll never be able to
7 tell you whether you were shown the entire file or not
8 back whenever this thing happened, but I can get the
9 file that we have now and you can look at it and you can
10 determine, you can tell me whether you were shown all
11 the file or not." So I asked somebody, I probably asked
12 Brian Rose to get the file, he brought it to my office,
13 the First Assistant's office, sat it in a corner, and it
14 sat there for probably a year or so, I think.

15 Q You think it was longer than a year?

16 A Very well could have been longer than a year.

17 Q Do you think it could have been two years?

18 A It could have been two years. I don't know
19 how long, but it was in my office for a long time.

20 Q And just for purposes of the record, Brian
21 Rose, the person you just mentioned, he was actually or
22 was at the time a member of the General Counsel Office
23 of the District Attorney's Office, is that fair to say?

24 A That's correct. He would be the person that I
25 would always ask to get a file, because he would bring

1 files for lawyers to look at all the time, so I knew he
2 knew how to get access to files.

3 Q Because he handled open records requests; is
4 that right?

5 A Yes.

6 Q Now, again, I don't mean to belabor this, but
7 I think it's important for purposes of the record. Do
8 you believe the State's file sat in your office for a
9 long time or for a short time for you to allow Mr.
10 Schneider or Mr. DeGuerin to access it?

11 A I think it sat in my office for a long time.

12 Q You set your weights on there, is that fair to
13 say?

14 A I think I stacked the files up in like two
15 files and I had two 45-pound dumbbells in there and when
16 things were stressful, I would work out with them in the
17 office when nothing was going on, and I ended up setting
18 them on top of the boxes and you can look at the boxes
19 and the boxes still have curves in them.

20 Q They have the weight dents, correct?

21 A Yes. And when it got to be where it made too
22 big of a dent, I would pull that file off and put it in
23 the box and put a new file on it so you couldn't see it.

24 Q All right. Now, when you first -- now, for
25 the period of time before 2012 came along, can you tell

1 me whether Mr. DeGuerin or Mr. Schneider ever came to
2 your office to look at the State's file?

3 A I don't know that Mr. DeGuerin ever came. I
4 know Stan came. Stan, being Mr. Schneider.

5 Q Thank you. So during that period, though,
6 would you agree with me that it was when the David
7 Temple conviction case was on direct appeal?

8 A It would have been during the time it was on
9 direct appeal.

10 Q And you knew that Mr. Schneider and
11 Mr. DeGuerin worked together in relation to the David
12 Temple appeal?

13 A Well, it was my belief that they were working
14 together. Whether they were working together on the
15 appeal or not, you would have to ask them.

16 Q Okay. I hate to go back to this, but during
17 the 2009 to 2000 -- up to 2012, before you were
18 contacted by Mr. Schneider or Mr. DeGuerin, you were not
19 friends with Murray Newman at that point in time?

20 A No.

21 Q And he was really not welcomed in the District
22 Attorney's Office for the most part?

23 A I mean, the DA's office takes a lot of floors.
24 He probably came and gone and probably was welcomed by a
25 whole lot of people, but he never came to my office.

1 Q Okay. So he comes to you at some point in
2 time, and it is in 2012, is that fair to say?

3 A "He" who?

4 Q I apologize. And "he" is actually someone I
5 haven't mentioned during our conversation, so I'll start
6 over. 2012 Steve Clappart comes to your office and
7 talks to you, is that fair to say?

8 A Steve Clappart came and talked to me, I guess
9 it was 2012. Not 100 percent sure, but I guess it was
10 2012.

11 Q Well, I guess what I'm referring to is
12 specifically the conversation where he tells you that he
13 has a belief about the Temple case. Do you think that
14 was in 2012 or do you not believe it was in 2012?

15 A I think it was probably 2012. I mean, I don't
16 know for sure. He just came out of the blue. I wasn't
17 expecting Clappart. I wasn't thinking anything going
18 on. He just came out of the blue one day and said "I've
19 got something to talk to you about" and I said "Go
20 ahead."

21 Q That wasn't the first time he had come into
22 your office up to that point in the Lykos
23 administration, is that fair to say?

24 A No. I mean, I had talked with Steve Clappart
25 about other cases during the Lykos administration and I

1 remember one being a case that Barry Scheck was on, but
2 I don't remember the name of the case.

3 Q George Rodriguez?

4 A That's it. But there were other things he
5 talked about, too.

6 Q And so prior to 2009, you had known Steve
7 Clappart then as well, correct?

8 A Yes.

9 Q Steve Clappart is a talker, isn't he? He
10 likes to talk to people?

11 A Well, when he would come to my office, he
12 would talk. Now, whether he kiss and tells in open
13 county, if that's what you mean, I don't know anything
14 about that.

15 Q And I'm just saying that just with you, he
16 would come in your office and he'd just talk to you
17 about things where sometimes you may not want to listen
18 to all the details. Is that fair to say?

19 A Well, he probably did that, but he didn't do
20 that much with me. I mean, when people came to me, they
21 usually came to me for a reason and then they got out of
22 there. I think they were probably afraid of what might
23 happen if they stayed. But I don't recall him just
24 sitting around and talking where I had to finally say
25 "Steve, don't you have work to do or something?" I

1 don't recall that happening.

2 Q In any event, you received Clappart's concerns
3 about the Temple case. Did he mention to you that he
4 had prior involvement with the Temple case during or
5 sometime after that conversation?

6 A Well, I thought that he did and I thought that
7 that's why he was coming to me, that he had something to
8 do with the conviction. I don't know that I ever asked
9 him about that, but I assumed that.

10 Q Now, did he ever tell you who the source of
11 this information was that created this concern about the
12 Temple conviction?

13 A I'm sure he did.

14 Q Do you remember who that is today?

15 A Well, when I look at what's on this warrant --

16 Q Well, look at that piece of paper to refresh
17 your memory.

18 A When I look at that paperwork, it appears that
19 it was Denholm.

20 Q Okay.

21 A But I don't know if he got it some other way
22 or not. I just know that when he came in and told me
23 that, the first lightbulb that goes in my mind is this
24 has to be Brady if you believe that it makes you have a
25 doubt about the conviction and, therefore, I want to

1 make sure that they know all about it. And I just said
2 "Wait" and I called them and told them to come in. They
3 agreed that they would come in and then he spelled it
4 out all in the main conference room there at the DA's
5 office on the sixth floor.

6 Q Up to that point did you know that John
7 Denholm and Steve Clappart were friends?

8 A I at least knew they were acquaintances.
9 Whether they were friends or not, I don't know.

10 Q If in fact you did know that they were friends
11 for more than 20 years, do you believe that that would
12 have affected anything in your mind regarding any
13 instructions or any orders you gave him in regards to
14 this?

15 A No, probably not. I mean, because I trusted
16 the fact that Clappart was a true criminal investigator
17 with, you know, with a boatload of experience and that
18 he knew what he was talking about. I never really
19 thought about saying "Hey, I'm not going to consider
20 what you're saying because I think you're friends with
21 the other side." I figured even if I thought that, I
22 would have done the exact same thing, but I don't think
23 I ever really thought that.

24 Q Did you at least consider telling him to go to
25 the Post-Conviction Review Unit and talk to us there?

1 A Well, like I said before, I thought I had you
2 all at the meeting. Now, if I had you at the meeting,
3 you were at the meeting; he didn't have to go to you.
4 If you weren't at the meeting, then I obviously didn't
5 think about it then. But I know at some point in time
6 you all were in on it.

7 Q So would you have a reason to disagree with me
8 if I had told you that there was a meeting that was
9 arranged at the District Attorney's Office sixth floor
10 conference room involving Mr. Schneider; Mr. DeGuerin;
11 Mr. Denholm; yourself; Don McWilliams, who was the chief
12 investigator for the District Attorney's Office; myself;
13 Alicia O'Neill; and maybe some others? Do you have any
14 reason to dispute that?

15 A I think that's probably true, but wasn't
16 Clappart there also?

17 Q And Clappart, yes, sir. And the crux of this
18 meeting was to tell or make sure that Mr. Schneider and
19 Mr. DeGuerin knew about Clappart and Clappart's
20 investigative efforts, is that fair to say?

21 A Yes.

22 Q Now --

23 A The thrust of that meeting was to make sure
24 that I complied with all Brady requirements.

25 Q And I definitely appreciate that. And do you

1 recall that the Brady evidence essentially revolved
2 around a person that you came to know, not personally
3 but just for information purposes, as Daniel Glasscock?

4 A There was a Daniel Glasscock in the midst of
5 all that, I know that.

6 Q Do you recall that whoever the witness' name
7 was was a person who had heard other individuals making
8 statements back around the time of the Temple murder?

9 A I remember being told that.

10 Q Do you remember being told that people --
11 these individuals were making statements about entering
12 a house, yes?

13 A Yes.

14 Q And about killing a dog?

15 A Yes.

16 Q And about throwing the dog in a closet?

17 A Yes.

18 Q And then getting scared?

19 A Yes.

20 Q And then running out of the house?

21 A Yes. I think all of that was sent to me.

22 Q And there wasn't anything else extraneous to
23 those general facts of what the new evidence was
24 supposed to be?

25 A You know, Baldwin, I can't say for sure about

1 that. I just know that he was saying "This leads me to
2 doubt," and I figured that if you know that, you think
3 that you're going to find a whole lot more when you go
4 out there, too, so I didn't think anything was limited
5 to that.

6 Q I guess what my question is, Mr. Leitner, is
7 all the things you're talking about concerning Steve
8 Clappart's investigative efforts, they all stem from the
9 same general fact pattern of these guys talking about
10 being in a house, killing a dog, throwing it in the
11 closet and then running out of the house scared?

12 A It started like that. Whether they came
13 across other things or not, remember he wasn't reporting
14 to me on a daily basis. I don't know what all Clappart
15 found. You have to talk to Clappart about that.

16 Q And I agree with you. All I'm saying is
17 that's all that you knew as being the crux of the Brady
18 evidence?

19 A That's what I knew from the beginning as being
20 the crux of the Brady evidence.

21 Q And that's why you brought Mr. Schneider and
22 Mr. DeGuerin in to tell them or make sure they knew that
23 information?

24 A You know, I don't know that I even let him
25 finish. When he came to talk to me, you know, I knew

1 this is on the level. This is Brady evidence. If I'm
2 being set up, I'm going to make sure that I comply with
3 Brady, and I stopped and called the defense right away
4 to say "Steve Clappart is telling me things that would
5 be Brady. I want you to be in on it," and I probably
6 got the whole story in that office when everybody was
7 there.

8 Q And would it be fair to say that Alan Curry
9 was also asked to be in attendance at that meeting where
10 Mr. DeGuerin, Mr. Schneider, Mr. Denholm and others were
11 there to disclose the Brady evidence?

12 A You know, I very well could have asked him to
13 be there. I just don't remember whether I did or not.

14 Q Now, up to that time where you had the
15 meeting, Alan Curry had been the Appellate Division
16 chief the whole term of Judge Lykos' administration,
17 correct?

18 A That's correct.

19 Q During that period or -- excuse me -- before
20 that period had you developed an opinion about Alan
21 Curry and his legal acumen, for lack of a better word?

22 A Yes.

23 Q Did you believe that it was a good reputation
24 or a bad reputation?

25 A I believe that he had a good reputation; that

1 he was a very, very smart lawyer.

2 Q Did you find -- in your prior experience with
3 him before you came to the District Attorney's Office,
4 had you experienced any ethical issues where he was
5 involved?

6 A I personally never knew of any ethical issues
7 involving Alan Curry.

8 Q After you became First Assistant -- and that
9 was your only position in the District Attorney's Office
10 for the Lykos administration, correct?

11 A Once Pat Lykos became the District Attorney,
12 that was my only position.

13 Q During that period was your opinion of Alan
14 Curry and his legal acumen corroborated or conflicted
15 based upon your experience?

16 A I always, and still today, think that Alan
17 Curry is a very, very good, very smart lawyer.

18 Q And during that period of time as First
19 Assistant, did you find that he had some ethical issues
20 that you're aware of?

21 A I personally knew of no ethical issues with
22 Alan.

23 Q Okay. I forgot to ask you, at the meeting can
24 you tell me whether the Harris County Sheriff's Office
25 was invited to participate in the meeting with

1 Mr. DeGuerin and Schneider and all the others I
2 mentioned earlier?

3 A I just flat don't remember.

4 Q If I told you that they weren't there, would
5 you have any reason to dispute that?

6 A If you told me they were there or you told me
7 they weren't there, I wouldn't have any reason to
8 disagree either way.

9 Q Okay. That's fair. Now, during the meeting
10 there were suggestions, and you tell me if you recall
11 this, there were suggestions that the Post-Conviction
12 Review Section, meaning me and Alicia O'Neill, would do
13 the forensic analysis on some evidence related to the
14 Temple case; is that correct?

15 A At some point in time I believe you all were
16 supposed to do some forensic analysis. Whether that
17 came about in the course of the meeting, I just don't
18 remember.

19 Q Okay. At some point in time the office
20 approved about some \$7500 for DNA testing on the white
21 towel found with one of the shotguns and on some hair
22 found in a P-trap in a bathroom. Do you recall that or
23 not?

24 A All I recall is that I authorized payment of
25 some DNA things that were brought to me. What the

1 actual items were, I have no independent recollection.

2 MR. CHIN: May I have a moment, please,
3 Judge?

4 THE COURT: Yes.

5 MR. CHIN: Thank you.

6 Q (BY MR. CHIN) Mr. Leitner, after that
7 meeting, do you recall that we went back into your
8 office? When I say "we," I mean me and you and maybe a
9 few others?

10 A Probably did. I'm sure I went back there.

11 Q I'm sorry, sir?

12 A I'm sure I went back there.

13 Q Do you recall me ever talking to you and
14 saying that I would prefer not to do this investigation
15 even though I would do it if you tell me to do so?

16 A I seem to recall you saying "Jim, you don't
17 want any part of this investigation." I think you said
18 you didn't want any part of it, too, but you said I
19 shouldn't have any part of this investigation. "All it
20 can do is hurt you." That's what I remember.

21 Q Do you think I said that -- and this is just
22 based on your observation -- did you think that I said
23 that to harm you or to help you?

24 A Oh, I think you were definitely trying to help
25 me.

1 Q Do you remember me telling you that I felt
2 that this could not -- this investigation could never
3 look good for Judge Lykos?

4 A Honestly I don't remember. I think you said
5 it couldn't look good for me. You probably said Judge
6 Lykos, too. I mean, you were always looking out for us.
7 I'm pretty sure you said that.

8 Q But, still, would it be fair to say that I did
9 say I will do the investigation if you ask me to?

10 A Yes.

11 Q And do you recall me ever saying during that
12 conversation, "This investigation is messed up. It was
13 messed up from the very beginning, and that's why it can
14 only hurt you"?

15 A You could very well have said that. To me it
16 was a no-brainer: This was something that I had to get
17 involved in. And I did what I thought was right and I
18 thought you were trying to protect us, but I felt like
19 this was something I had to do.

20 Q Did you think it was just a matter of being a
21 county employee that was lazy or do you think it was a
22 matter of trying to protect the administration?

23 A Trying to protect the administration. You
24 weren't trying to be lazy.

25 Q And I'm not disagreeing that I'm lazy. I'm

1 just saying there is a distinction there, correct?

2 A Yes.

3 Q So in that regard would it be fair to say that
4 I did voice to you concerns about how this investigation
5 had been conducted up to this point and any future
6 results that would come from it?

7 A Yes, I believe you did.

8 Q And this is not the first time that you and I
9 had this type of conversation; is that correct?

10 A About this case or this kind of conversation?

11 Q This kind of conversation. Not about the
12 Temple case, but about other matters previously?

13 A Oh, absolutely.

14 Q And so this wasn't like unique to something as
15 related to David Temple?

16 A No. This was just Baldwin Chin being honest
17 with me.

18 Q Did you think I was saying it as a friend?

19 A Yes.

20 Q Okay. Now, you said that Clappart should do
21 what needed to be done to investigate this case,
22 correct?

23 A Yes.

24 Q And that included going out during non-working
25 hours to go investigate, if necessary?

1 A I would have authorized anything that was
2 reasonable that needed to be done.

3 Q Do you remember there was a conversation about
4 a fellow named Carlos Corro being a part of the boys
5 talking about killing a dog?

6 A I read his name in here. I didn't have any
7 independent recollection of his name before I read it in
8 the affidavit.

9 Q Does it refresh your memory at all or does it
10 not refresh your memory that that name was mentioned
11 back in 2012?

12 A I'm sure it was, but I don't remember.

13 Q Do you remember that there may have been a
14 conversation concerning Carlos Corro being in Mexico?

15 A I don't recall.

16 Q I'm sorry, sir?

17 A I don't recall.

18 Q Then I'll move on. Now, as First Assistant,
19 you were in charge of financial matters at the office,
20 including all the other personnel stuff and all the
21 other prosecutorial stuff, and you had to deal with the
22 money issues as well, correct?

23 A Some of the money issues, yes.

24 Q Was there ever a time that you had to go to
25 Commissioners' Court to get either parts or all of the

1 budget approved at some points in time?

2 A Yes. I don't know that I went over there, but
3 the office had to go to Commissioners' Court.

4 Q Okay. And you would get to see or maybe you
5 would have to see people's requested expenses concerning
6 things that were charged to the office, is that fair to
7 say?

8 A Yes.

9 Q For example, if someone in one of the courts
10 wanted a record from like a motion to suppress hearing
11 to prepare for trial, you would have to approve paying
12 for that expense for the court reporter to transcribe
13 her notes?

14 A I was doing things like that all the time.

15 Q Do you recall whether there was some sort of
16 limitation or some sort of financial element to
17 investigators building comp time? When I say "comp
18 time," I apologize. That meaning compensatory time.

19 A I know that there was a 240-hour limit that
20 you could get comp time. Whether you had to pay
21 investigators over the 240 hours or not, you know, I
22 know how it is in the Sheriff's Office. I don't
23 remember how it was at the DA's office. But I thought
24 the 240-hour limit was everybody.

25 Q Okay. Do you recall that for like

1 prosecutors, once we hit 240 hours of comp time, we just
2 basically are working for the County for free?

3 A Correct.

4 Q And when I say compensatory time, I'm saying
5 hours outside of eight hours a day, is that fair to say?

6 A Correct.

7 Q And so do you recall that there was something
8 where there was a threshold in those comp hours for an
9 investigator that over that, the County would have to
10 pay time-and-a-half of their hourly salary?

11 A There probably was, yes.

12 Q Do you recall whether there was, prior to the
13 Temple situation, conversations with department heads in
14 the administration concerning making sure that
15 investigators do not get close to that threshold,
16 whatever that number is, so that the office can avoid
17 paying the time-and-a-half overtime?

18 A I wouldn't doubt that that was said. I just
19 don't remember it.

20 Q Do you think that --

21 A We say that at the Sheriff's Office all the
22 time.

23 Q Because, I mean, whether it's the District
24 Attorney's Office or the Sheriff's Office, we all have
25 limited budgets, right?

1 A Right.

2 Q And so the less overtime we can pay, the
3 better in terms of finances alone, is that fair to say?

4 A Yes.

5 Q And so if in fact that was an issue for
6 department heads to be aware of, that would be something
7 that you would make sure that these department heads
8 were aware of that rule, is that fair to say?

9 A That's fair to say.

10 Q I believe you talked about after this period,
11 you being contacted by Steve Clappart concerning Lance
12 Long not wanting to approve or not wanting to sign off
13 on a time sheet. Do you recall talking about that?

14 A Yes.

15 MR. CHIN: Judge, may I please approach
16 the witness?

17 THE COURT: Yes.

18 MR. CHIN: Thank you, sir.

19 Q (BY MR. CHIN) Mr. Leitner, I'm going to show
20 you -- I'm not really sure what that number is. Is that
21 a 1 or 2?

22 A It looks like a 1.

23 Q I think it is, too, but I just wanted to make
24 sure. I'm going to show you State's Exhibit No. 1,
25 which essentially is a bunch of papers that are clipped

1 together with a binder clip. Is that fair to say?

2 A Yes.

3 Q Now, there's a little arrow sticky and it's
4 somewhere in the middle of State's Exhibit No. 1, and
5 would you look at the one that has that orange sticky
6 right there, Mr. Leitner, for me just really quickly?

7 A (Complies.)

8 I'm looking at it.

9 Q Would it be fair to say that that document is
10 Steve Clappart's time sheet for the period of July 14th,
11 2012, through July 27th of 2012?

12 A Yes.

13 Q And the second sheet that you have in your
14 right hand, would it be fair to say that would
15 potentially be the back side of that document you have
16 in your left hand?

17 A Yes.

18 Q If you don't mind, I'm going to put it on the
19 big window screen and if you want to look at the screen
20 to your left, just so that we can all see this.

21 Mr. Leitner, this is the same document I
22 was showing you -- the document on the screen is what I
23 was showing you earlier while I visited you at the
24 witness stand; is that correct?

25 A Yes.

1 Q Now, would it be fair to say that the time
2 sheets indicate July 18th of 2012, which is right there
3 in the middle of the first big grouping of boxes. Do
4 you see that?

5 A Yes.

6 Q That on July 18th, 2012, Mr. Clappart earned
7 one hour of comp time?

8 A Yes.

9 Q And then July 19th of 2012, right below that,
10 Mr. Clappart built up two hours of comp time?

11 A Yes.

12 Q And below that, Mr. Clappart built up one hour
13 of comp time on Friday, July the 20th, 2012?

14 A Yes.

15 Q Going to the next week right where my finger
16 is, Saturday, July 21st, 2012, Mr. Clappart earned six
17 hours of comp time on a Saturday, is that fair to say?

18 A Yes.

19 Q Which essentially, if my math is correct, on
20 this time sheet alone, he earned ten hours of comp time,
21 is that fair?

22 A Yes.

23 Q Now, I'm going to go to the back side really
24 fast, and let's make sure, those four dates, July 18th,
25 2012; July 19th, 2012; July 20th, 2012; and July 21st,

1 2012, would it be fair to say that Mr. Clappart earned
2 that comp time -- I'm sorry, Mr. Leitner, I'm not really
3 adept at working this machine. Can you see that?

4 A Yes.

5 Q Okay. Good. On those dates that I mentioned
6 earlier, from July 18th, 2012 to July 21st, 2012,
7 Mr. Clappart was working on what is written as HCSO case
8 number 99-01112596?

9 A That's correct.

10 Q Would you have any disagreement with me if I
11 told you -- well, before I get there, HCSO, would it be
12 fair to say, means Harris County Sheriff's Office in
13 your mind?

14 A Correct.

15 Q If I told you the case number from the
16 Sheriff's Office, 99-01112596, was the Temple case,
17 would you have any reason to dispute that?

18 A I'd have no reason to dispute that.

19 Q In regards to that time sheet, do you remember
20 whether or not you signed the time sheet based upon the
21 issues raised by Lance Long or do you know whether Lance
22 Long signed it?

23 A That appears to have Lance Long's signature.

24 Q Let me put this document, which is the front
25 side of the time sheet, up there, if you don't mind.

1 Down at the very bottom, is that Steve Clappart's
2 signature right here on the left?

3 A Yes.

4 Q Where my finger is?

5 A Yes.

6 Q Do you recognize Lance Long's signature,
7 Mr. Leitner?

8 A You know, I think I'd remember Lance's
9 signature, and I think the U-G is Lance Long.

10 Q That's the kind of squiggly line on the
11 right-hand side where my finger is, correct?

12 A That's Lance Long's signature, to my memory.

13 Q And if I told you it was Lance Long's
14 signature, you wouldn't have any reason to disagree with
15 me, right?

16 A No, I would not.

17 MR. CHIN: May I approach the witness
18 again, Judge?

19 THE COURT: Yes, sir.

20 MR. CHIN: Thank you, sir.

21 Q (BY MR. CHIN) I'm going to put that one
22 purple sticky document back inside the pile of State's
23 Exhibit No. 1, and if you would do me a favor and look
24 through the pages which are time sheets from March 24th,
25 2012, and there's a whole number of time sheets, but it

1 goes to July 13th of 2012. If would you examine those
2 for me really quickly, sir.

3 A (Complies.)

4 Q I'm sorry, I didn't mean to be particular, Mr.
5 Leitner. If we could do the whole flip-over thing, I
6 would appreciate it. Thank you.

7 A (Complies.)

8 I've looked at them.

9 Q Okay. Let me see if I can -- how many pay
10 periods are reflected on the time sheets you have in
11 your hand starting with March 24th to July 13th of 2012?

12 A I believe there's eight pay periods.

13 Q And can you tell me -- go ahead and hold on to
14 them for a second, sir. Can you tell me how many comp
15 hours did Mr. Clappart build up from March 24th, 2012,
16 to July 13th of 2012 over that eighth pay period --
17 excuse me -- eight pay periods?

18 A If I'm reading it right, he accumulated two
19 hours of comp.

20 Q Just so that we're clear, at least for
21 purposes of the record, during the eight pay periods
22 preceding the pay period of July 14th, 2012, to
23 July 27th, 2012, Mr. Clappart had only built up two
24 hours of comp?

25 A Correct.

1 Q And then on the single pay period of
2 July 14th, 2012, to July 27th, 2012, he built up in this
3 one pay period alone ten hours?

4 A Yes.

5 Q Now, would you agree with me that that might
6 be somewhat curious for a supervisor?

7 A Yes.

8 Q Now, do you recall whether in fact at the
9 District Attorney's Office supervisors or managers would
10 get reports every so often that summarized the
11 investigators' comp hours that had been built?

12 A I never recall seeing such a report, but I
13 wouldn't quarrel with you if there is one.

14 Q Would you think that if overtime is an issue,
15 at least overtime would be an issue for investigators,
16 that such a report would be generated to make sure that
17 they stay away from the threshold?

18 A Should be.

19 Q Now, Lance Long, we've talked about him.
20 Let's talk about him a little bit more. He was the
21 chief, the division chief, over the court in which
22 Stephen Clappart was assigned, is that fair to say?

23 A I believe so.

24 Q And so at some point in time, at least in
25 terms of how policy is concerning time sheets, usually

1 the time sheet of an individual in a court would go to
2 their court chief, correct?

3 A Yes.

4 Q Now, if in fact the court chief was not
5 available for whatever reason, it gets shipped up to the
6 division chief for the division chief to sign and
7 approve, is that fair to say?

8 A Somebody over that person has to sign the time
9 sheet.

10 Q Someone over the court chief who may not be
11 available who's over the individual turning in the time
12 sheet would need to approve of that particular time
13 sheet, correct?

14 A Correct.

15 Q So it's not out of the ordinary that if in
16 fact since Clappart was Lance Long's division, that
17 Lance Long would have to approve the time sheet provided
18 by or submitted by Stephen Clappart?

19 A I have no independent knowledge of how it got
20 from Steve to Lance, but the fact that I was talking to
21 Lance about it, that didn't surprise me.

22 Q And having a chief approve time sheets is
23 important just so that you can make sure there's not
24 abuse or make sure there's not errors regarding time
25 sheets, would that be fair to say?

1 A Should be.

2 Q Can you tell me whether you informed Lance
3 Long or anybody else in Stephen Clappart's court, that
4 he was authorized to build up as much comp hours as
5 necessary to investigate the David Temple case?

6 A Prior to talking to Lance, I had not. When I
7 talked to Lance, I did tell him that.

8 Q And I apologize for interrupting. Do you
9 recall whether anybody below Lance Long was informed of
10 Steve Clappart's authorization for building comp time?

11 A You know, I may have told you, Alicia, J.J.

12 Q Well, let me stop you right there. J.J.
13 Freeze was no longer our investigator?

14 A Tommy.

15 Q When I say "our," I mean, the Post-Conviction
16 Review Section. J.J. Freeze was no longer
17 Post-Conviction Review Section's investigator, is that
18 fair to say?

19 A At some point in time he left.

20 Q Right. J.J. Freeze left to become the chief
21 investigator in the Galveston County District Attorney's
22 Office, correct?

23 A Yes.

24 Q And then the administration then assigned
25 Investigator Tommy Strange to the Post-Conviction Review

1 Section, correct?

2 A Yes.

3 Q So it would have been Tommy Strange that
4 you're taking about, correct?

5 A Yes. I mean, I could have told other people.

6 Q And I apologize. I'm not being particular or
7 poking at you. I just want to make sure that everything
8 is accurate.

9 A That's fine.

10 Q But Alicia or myself or Tommy would not be
11 Stephen Clappart's supervisor, correct?

12 A That's correct.

13 Q I'm assuming that you wouldn't have expected
14 me or Alicia or Tommy to go talk to Lance Long or
15 whoever Lance Long's court chief was over Steve
16 Clappart, is that fair to say?

17 A I would not. I did not expect anybody to know
18 about it until I talked to Lance about it, unless
19 Clappart told him about it.

20 Q Would you expect whoever is signing the time
21 sheet to make sure all the office priorities and
22 policies and the need for accuracy, do you think that
23 you would want that manager who is signing the time
24 sheet to make sure that all those things were complied
25 with before approving it?

1 A There was nothing wrong with Lance Long
2 questioning overtime hours.

3 Q Now, you did seem to indicate, though, that
4 you believe that Lance Long questioning this time sheet
5 was problematic in your mind?

6 A Well, I felt like when Lance found out what he
7 was doing was problematic to Lance.

8 Q Did you feel that Lance Long was stopping or
9 inhibiting or just flat-out not signing the time sheet
10 up to that point, trying to stop his investigation?
11 When I say "his," I'm talking about Steve Clappart.

12 A I had no idea what the intent of Lance was,
13 because it didn't go on for very long, because Clappart
14 got a hold of me and said "Lance won't sign my time
15 sheet." So I called him to make sure he understood what
16 it was all about.

17 Q But you would agree with me that that time
18 sheet that had ten hours on there, that that was
19 approved by Lance Long, assuming that that is his
20 signature?

21 A Yes.

22 Q And not to quibble with you, but would you
23 disagree with me that Lance calling you about Clappart's
24 time sheet actually could be the result of responsible
25 management?

1 A I don't think Lance called me. I think
2 Clappart called me and I called Lance.

3 Q I apologize.

4 A But I don't believe that it was anything but
5 proper management at that point because I don't know --
6 yeah, I guess Clappart told him. I'm not sure, but I
7 told him.

8 Q When you say "him" --

9 A I told Lance. I said, "Lance, I have
10 authorized this and I want him to do whatever needs to
11 be done, and if you don't sign it, I'll sign it."
12 Obviously Lance signed it, though.

13 Q Now, you talked about Alan Curry earlier.

14 MR. CHIN: May I approach the witness,
15 Judge?

16 THE COURT: Yes, sir.

17 Q (BY MR. CHIN) Mr. Leitner, I'm going to show
18 you what has been marked for identification purposes as
19 State's Exhibit No. 28, and would you review that for me
20 briefly, if you don't mind, sir?

21 A (Complies.)

22 I've read it.

23 Q Do you remember receiving State's Exhibit 28?

24 A I remember being informed. I guess it was by
25 email. I don't recall the specific email.

1 Q Do you have any qualm that is the email that
2 Alan Curry sent you back on July 23rd, 2012?

3 A I don't have any qualms.

4 Q Thank you, sir.

5 MR. CHIN: At this time I will offer into
6 evidence State's Exhibit No. 28 and I will tender to
7 counsel for inspection.

8 MS. GOTRO: No objections, Judge. None
9 at all.

10 THE COURT: State's 28 is admitted.

11 Q (BY MR. CHIN) I want to start off just
12 talking to you about the second part of the sentence and
13 then I'm going to come back to the first sentence, if
14 you don't mind. Well, before we go there, once you read
15 it, I'll ask you some questions, if you don't mind.

16 A Okay.

17 Q I believe that you indicated -- and please
18 correct me if I'm wrong -- that you had a thought, an
19 inclination, that Alan Curry did not approve of the
20 David Temple investigation conducted by Stephen
21 Clappart?

22 A Yes.

23 Q Does this email in any way change your mind
24 about Alan Curry's belief concerning the investigation?

25 A What this email tells me is that Alan felt

1 that I felt that Alan thought this investigation
2 shouldn't happen and he was just telling me, "I want to
3 make it clear that I believe that an investigation
4 should continue." I don't think he just came out of the
5 blue with that.

6 Q Just so we're clear, the sentence actually
7 says "But I also want to make it clear that I believe
8 that an investigation should continue, so I am available
9 to help in that regard."

10 A Yes, that's what it says.

11 Q So he at least indicates that he believes an
12 investigation is necessary?

13 A Yes.

14 Q But you don't think that he's really telling
15 the truth here?

16 A No, that's not what I'm saying. What I'm
17 saying is, at that point I believe Alan knew that I
18 thought this investigation should happen and he was
19 believing that I believed that he didn't agree with that
20 and he was trying to make amends, so to speak, and let
21 me know "Hey, even though I don't agree, I don't believe
22 there's probable cause, the investigation should
23 continue."

24 Q Well, let me ask you this. In your
25 conversations with me, me, Baldwin Chin, during the

1 course of your participation or at least your
2 involvement in the Steve Clappart investigation, do you
3 believe that I was someone who believed or disbelieved
4 in this investigation?

5 A Well, I wouldn't say you believed or
6 disbelieved. You believed I shouldn't -- that I
7 shouldn't have my fingerprints on it and Pat Lykos
8 shouldn't, but you never told me that it was the wrong
9 thing to do, to follow up on a lead if someone has been
10 convicted.

11 Q And me being or you knowing me the way that
12 you do, do you think that I would have told you that if
13 in fact I would have believed that?

14 A Yes.

15 Q Now, do you recall that --

16 MR. CHIN: May I approach?

17 MS. GOTRO: May we approach the bench
18 while we're up there?

19 THE COURT: Yes, ma'am.

20 (Discussion off the record)

21 THE COURT: We'll be in recess for ten
22 minutes.

23 (Recess taken)

24 THE COURT: Mr. Chin.

25 MR. CHIN: Thank you for the break,

1 Judge. I appreciate it very much. May I approach the
2 witness, please, sir?

3 THE COURT: Yes, sir.

4 Q (BY MR. CHIN) Mr. Leitner, on direct
5 examination you were asked about an email string that
6 was introduced and admitted into evidence as Defendant's
7 78. Do you remember that, sir?

8 A Yes.

9 Q And this had to do with -- you read it. If I
10 can hold it, if you don't mind, so I can re-read it.
11 This had to do with -- Defendant's 78 had to do with
12 Alan Curry sending you an email, asking you about Mr.
13 Schneider getting Judge Frank Price to signing an order,
14 granting the defense access to all the grand jury
15 testimony in the case. That's correct, right?

16 A Correct.

17 Q And then you responded something to the effect
18 of "Why wouldn't we agree to this," correct?

19 A Correct.

20 Q "We don't have anything to hide, do we,"
21 correct?

22 A That's what I said.

23 Q Alan Curry responds, "I understand. I'm not
24 really contesting that." And more than anything, he was
25 concerned about the statutory provisions concerning the

1 release of grand jury testimony. Is that fair to say?

2 A More than anything, you would have to ask Alan
3 Curry what he was thinking. That's what that says.

4 Q Do you get an impression from this email Mr.
5 Curry was trying to keep the defense or Mr. Schneider or
6 Mr. DeGuerin from getting the grand jury testimony?

7 A I think what the deal was, would he have given
8 it to them? Would he have agreed to it on his own? No,
9 he wouldn't. And if he had heard that I agreed to it,
10 he just wanted to make sure. And of course at that
11 point with all that was happening, my response back was
12 "Why wouldn't we want to agree to it at this point?"

13 Q First of all, you are or you were his
14 supervisor at the time, right?

15 A Yes.

16 Q So generally in regards to a supervisor and a
17 supervisee relationship usually you want to do what the
18 supervisor wants, correct?

19 A I think you should as long as it's legal.

20 Q As long as it's legal. And I completely agree
21 with you. The statute, though, in regards to the
22 release of grand jury testimony says that there is a
23 requirement for the defense to show a particularized
24 need before the release of grand jury testimony, right?

25 A Right.

1 Q Because that has to do with grand jury secrecy
2 rules and things of that nature, correct?

3 A Yes.

4 Q And so do you take this email as Mr. Curry's
5 effort to slow down the defense from investigating the
6 David Temple case? When I say "the defense," I'm saying
7 Mr. Schneider and Mr. DeGuerin in 2012.

8 A Do I think that Alan would have liked to have
9 slowed it down? Yes, I think Alan would have liked to
10 have slowed it down. This is just what it says. I
11 mean, he's saying basically "They said you agreed to it
12 and I want to make sure you agree to it," and my
13 response back was "Why wouldn't I agree to it. Do we
14 have anything to hide?" And then you see his response
15 back. It is what it says.

16 Q Okay. I'm going to show you, Mr. Leitner,
17 what has been marked for identification purposes as
18 State's Exhibit 29, and there are attachments and, tell
19 me, sir, if you recognize that document.

20 A Yes. That is my signature.

21 Q And isn't in fact State's Exhibit 29 a
22 certified copy of a certified public document as
23 demonstrated by the little back seal there?

24 A Yes.

25 MR. CHIN: At this point in time, Judge,

1 I would offer into evidence State's Exhibit 29 and
2 tender to counsel for inspection.

3 MS. GOTRO: I have no objections, Judge.

4 THE COURT: Thank you. State's 29 is
5 admitted.

6 Q (BY MR. CHIN) Now, Mr. Leitner, State's
7 Exhibit 29 is an agreed motion to file motion under
8 seal. Is that fair to say?

9 A Yes.

10 Q And that's a document that is signed by you
11 and Mr. Schneider, correct?

12 A Yes.

13 Q And it's signed by also Judge Frank Price on
14 August the 2nd of 2012; is that correct?

15 A Correct.

16 Q Can you tell me whether State's 29 relates to
17 the grand jury testimony?

18 A I don't know what State's 29 refers to.

19 Q Would it be fair to say -- we've already
20 talked about State's 29 being signed by Judge Price on
21 August 2nd the 2012, correct?

22 A Yes.

23 Q And State's Exhibit -- excuse me --
24 Defendant's Exhibit 78 is the email string between you
25 and Alan Curry, where you talk about -- excuse me --

1 where Mr. Curry talks about Judge Price signing an order
2 to release grand jury testimony?

3 A On August 6th, yes.

4 Q Are these two documents related in your mind?

5 A I mean, there may be a third document. They
6 probably are.

7 Q And you did agree to --

8 A File motion under seal.

9 Q No, I'm sorry, I'll get to that one in a
10 second. Did you agree to allow Mr. Schneider the grand
11 jury testimony by motion, in writing or whatnot?

12 A I don't specifically recall doing it, but I
13 would have done it.

14 Q You would have signed a document showing your
15 assent to releasing the document, correct?

16 A Yes.

17 Q And then after that, this document was signed
18 or around that period where Judge Price signs the order
19 to seal a motion, correct?

20 A Yes.

21 Q Do you have any recollection that that motion
22 to seal relates to the grand jury testimony?

23 A No. It probably does, but I don't have any
24 recollection.

25 Q Well, is that something that you think that

1 you would do, that being, getting an order to seal an
2 order releasing grand jury testimony?

3 A I think that I would agree that he should have
4 the right at this point in time to see the grand jury
5 testimony. Would I ask the Judge to sign an order to
6 seal another motion that's coming down the path so
7 nobody can see what the motion is? I don't know that I
8 would do that. I would have never done it before. I
9 would have just openly said, acquiesce to the grand jury
10 testimony.

11 Q And this agreed motion to file motion under
12 seal is actually styled In Re: Grand Jury with the David
13 Temple Cause No. of 1008763, is that fair to say?

14 A If that's the David Temple cause number,
15 that's what it says, and it is In Re: Grand Jury.

16 Q If I tell you that the cause number for David
17 Temple's conviction case is 1008763, do you have reason
18 to disagree with that?

19 A I would have reason to believe that is
20 referring to the grand jury testimony in the David
21 Temple case.

22 Q Now, is there a reason why -- since you made
23 the connection, is there a reason why you would sign or
24 at least agree to a motion to seal records releasing
25 grand jury testimony to Mr. Schneider?

1 A Now, whether I was -- that was my idea or not,
2 I don't know, but I wouldn't object to it, because what
3 I was trying to do, I would imagine, is find out what
4 all those things say without having everybody in the
5 office talking to everybody on the blog and everybody
6 else about it. That's all I can think of.

7 Q Did you feel that you had an issue with people
8 knowing that you had agreed to the grand jury testimony
9 release?

10 A Well, I didn't care who knew that I released
11 the grand jury testimony, but I did not want to hamper
12 their investigation so all this was for naught.

13 Q Did you feel that people knowing that you had
14 assented to the release of grand jury testimony would
15 inhibit or cause a problem with Clappart's
16 investigation, just the fact that the grand jury
17 testimony had been released?

18 A It shouldn't. It should have no effect
19 whatsoever, but that didn't mean that it wouldn't.

20 Q Okay. And you were aware, Mr. Leitner, that
21 Mr. Schneider and Mr. DeGuerin filed a document entitled
22 Out-of-Time Motion for New Trial or Alternative
23 Application for Writ of Habeas Corpus Based on Actual
24 Innocence, Newly Discovered Evidence and Willful
25 Suppression of Exculpatory Evidence. Do you recall

1 that?

2 A Can you tell me what date that was filed?

3 Q Sure, I'll be more than happy to.

4 MR. CHIN: Judge, may I approach the
5 witness?

6 THE COURT: Yes.

7 MR. CHIN: Thank you.

8 Q (BY MR. CHIN) I'm going to hand you an
9 unmarked document because it's from a file and I don't
10 want to lose it, but it's a copy that I have. I'm going
11 to hand this to you.

12 MR. SCHNEIDER: Mr. Chin, there's the
13 original in the box.

14 MR. CHIN: I tried to look for it, but I
15 cannot find it and I spoke with Madam Clerk.

16 MR. SCHNEIDER: Would you like me to find
17 it for you?

18 MR. CHIN: If you can, I would appreciate
19 your gracious assistance.

20 A This is a document filed in September of 2010.

21 Q (BY MR. CHIN) I'm not a rocket scientist
22 here, but I think the year when it starts is September
23 the 10th.

24 A Oh, of 2012.

25 Q Yes, sir. Do you have any reason to dispute

1 that it was filed on or about September the 10th, 2012?

2 A I have no idea when it was filed.

3 Q Okay. Do you recall that in fact a document
4 like that was filed in conjunction with the David Temple
5 case while you were the First Assistant?

6 A You know, I'm sure somebody told me about it
7 at some point in time. I don't have an independent
8 recollection of it.

9 Q Okay. Let me show you what I've marked for
10 identification purposes as State's Exhibit No. 31, and I
11 am going to hand it to you so you can tell me if you
12 recognize it.

13 MR. CHIN: This is 31, Judge.

14 THE COURT: What happened to 30?

15 MR. CHIN: I have premarked something and
16 I apologize, and that will be coming in a second, sir.

17 THE COURT: All right.

18 MR. SCHNEIDER: Mr. Chin, here's the
19 original right here.

20 MR. CHIN: Thank you.

21 A I've read 31.

22 Q (BY MR. CHIN) Number one, let me put this one
23 back on my desk before I lose my mind and lose it.

24 Okay. Do you recall that that's an email
25 that you received from Alan Curry?

1 A I'm sure it is.

2 Q You received hundreds of emails during the day
3 as First Assistant, is that fair to say?

4 A Correct. But do I specifically remember this
5 one? No, but I'm sure it's one I received.

6 MR. CHIN: At this point I would offer
7 into evidence State's Exhibit 31 and I will tender to
8 counsel for inspection.

9 MS. GOTRO: Thank you, sir.

10 No objections, Judge.

11 THE COURT: 31 is admitted.

12 Q (BY MR. CHIN) So Mr. Curry informed you in
13 State's Exhibit 31 that there would be a filing from Mr.
14 Schneider entitled something to the effect of
15 Out-of-Time Motion for New Trial and David Temple based
16 upon this email?

17 A Yes.

18 Q And he was actually correct, is it fair to
19 say, because this is the original that I'm handing you
20 from the clerk's file? It says original on there, does
21 it not?

22 A Yes.

23 Q And it says the word "Original" is stamped on
24 that document, correct?

25 A Correct.

1 Q And it's in Cause No. 1008763, State of Texas
2 vs. David Temple; is that correct?

3 A Right.

4 Q So does this refresh your recollection that,
5 number one, there was a filing entitled Out-of-Time
6 Motion for New Trial and that you were made aware of it?

7 A It doesn't refresh my memory, but I'm sure all
8 that happened.

9 Q If you recall, and if you don't recall, that's
10 fine. Do you remember what the Office's position was
11 with regard to that Out-of-Time Motion for New Trial?

12 A Well, I'm sure that the Office's position on
13 any Out-of-Time Motion for New Trial would be that there
14 is a statutory period for it. There's no such as an
15 Out-of-Time Motion for New Trial.

16 Q It's one of those creative tools of expedience
17 sometimes that people use when they don't really want to
18 follow the law, is that fair to say?

19 A Yes. I'm sure that I have used it in the
20 past. For example, you plead somebody out to a drug
21 case and then the lab report comes back that it wasn't
22 the drug you pled him out to and everybody agrees to an
23 Out-of-Time Motion for New Trial. There's a lot of
24 times we tried things like that.

25 Q It basically backs out the conviction in a

1 quick and expedient way so long as nobody disagrees,
2 correct?

3 A Yes.

4 Q Do you remember whether the Office gave any
5 instructions to -- well, do you remember that Alan Curry
6 handled, primarily handled, that Out-of-Time Motion for
7 New Trial, slash, all the other stuff that was written
8 behind it?

9 A I think Alan Curry handled everything on the
10 David Temple case post-trial.

11 Q I'm sorry?

12 A I think Alan Curry handled everything on David
13 Temple post-trial.

14 Q Everything after notice of appeal was filed,
15 Alan Curry handled, correct?

16 A I think.

17 Q Do you remember, if you do, whether any
18 instructions were given to Alan Curry as to how he
19 should approach that motion, Out-of-Time Motion for New
20 Trial? Any specific instructions?

21 A From me?

22 Q Yes, sir.

23 A I don't believe so.

24 Q Do you remember if Alan Curry ever came to
25 visit you about it to find out a position from the

1 administration about such a document?

2 A I don't recall.

3 Q Do you know whatever happened to that
4 Out-of-Time Motion for New Trial?

5 A No.

6 MR. CHIN: Judge, may I please approach
7 the witness?

8 THE COURT: Yes, sir.

9 MR. CHIN: Thank you.

10 Q (BY MR. CHIN) Mr. Leitner, I'm going to show
11 you what has been marked for identification purposes as
12 State's Exhibit 32 and its single attachment.

13 A I can say this, since we're here today, I can
14 assume it wasn't granted.

15 Q You know what, I think that's a fair
16 assumption. Let's just see if we can get this piece of
17 paper admitted.

18 MR. CHIN: And, Judge, I still recognize
19 that I'm missing 30 and I'm about to get to it.

20 A What were you asking me about this?

21 Q (BY MR. CHIN) I was just wondering if you
22 remember the disposition of the Out-of-Time Motion for
23 New Trial?

24 A Like I said, obviously I know what the
25 disposition is. Do I have any independent memory of it,

1 no.

2 Q Is this essentially a signed order by Judge
3 Mendoza addressing the Out-of-Time Motion for New Trial?

4 A It appears to be.

5 MR. CHIN: At this point in time, Judge,
6 I'd offer into evidence State's Exhibit 32 and tender to
7 defense counsel for her inspection .

8 MS. GOTRO: I have no objection to the
9 authenticity of the document.

10 THE COURT: 32 is admitted.

11 Q (BY MR. CHIN) So it was dismissed and the
12 Out-of-Time Motion for New Trial went away, correct?

13 A I would think, yes.

14 Q Do you believe that Alan Curry did his job in
15 regards to the Out-of-Time Motion for New Trial in
16 essentially arguing that it should be dismissed?

17 A You know, I don't know what all Alan Curry
18 did. If Alan Curry in any case would say there is no
19 legal vehicle as to an Out-of-Time Motion for New Trial,
20 I believe he would be doing his job.

21 Q Okay. Last area, Mr. Leitner. Okay? We're
22 now at the home stretch. Do you recall that
23 Mr. Clappart prepared an affidavit to support a capital
24 murder arrest warrant for an individual named Cody Ray
25 Ellis?

1 A Yes.

2 Q Do you remember him bringing it to you for you
3 to review during your time as First Assistant?

4 A I believe he did.

5 Q Do you know how many versions or machinations
6 of that affidavit that he brought to you? Do you
7 understand my question?

8 A How many different -- like here's the first
9 version, here's the second version, third version?

10 Q Yes, sir.

11 A As far as I can recall, I only saw one
12 version. Now, there could be others, but I just don't
13 recall it.

14 Q I'm going to talk to you about an exhibit real
15 fast.

16 MR. CHIN: Judge, may I approach the
17 witness real fast?

18 THE COURT: Yes, sir.

19 MR. CHIN: Thank you, sir.

20 Q (BY MR. CHIN) I'm going to go back and talk
21 to you about State's Exhibit 28 and go back to the first
22 sentence. If you would refresh your memory with that
23 sentence, sir.

24 A (Complies.)

25 Yes.

1 Q That first sentence essentially says that
2 Steve Clappart gave him, "him" being Alan Curry, an
3 affidavit for an arrest warrant, and I don't remember if
4 it says for Cody Ellis. It just says an arrest warrant,
5 and that he believed that it was insufficient probable
6 cause there. Is that fair to say?

7 A Yes.

8 Q What date was that that he sent you that
9 email?

10 A July 23rd, 2012.

11 Q So does that indicate to you that Mr. Clappart
12 wanted to get that warrant signed on that date or
13 approved?

14 A I don't know what happened on that date. I
15 can remember that Clappart brought a warrant to me and,
16 you know, there was like all this going on in the office
17 and I said "Let's let Alan Curry -- he's the big
18 expert -- look at it."

19 Q So you referred Clappart to Alan Curry to make
20 sure Alan Curry approved, correct?

21 A I believe that's what the course of events
22 were. In my memory, I sent Clappart to Alan Curry.

23 Q And the reason why you did that is because you
24 believed that Alan Curry was an expert in regards to
25 probable cause supporting an arrest warrant?

1 A And I believed that, you know, everything
2 would hit the fan if there was another warrant signed on
3 a capital murder case in the David Temple case, and I
4 figured it was better off all the way along if somebody
5 in the office looked at it and said it was a good
6 warrant.

7 Q And so when you say "and," that meant that,
8 yes, you referred him there because he was -- at least
9 you considered him an expert on probable cause for an
10 arrest warrant?

11 A Yes.

12 Q I'm going to show you what's been marked for
13 identification purposes as State's Exhibit 30 now and
14 tell me if you recognize that.

15 A What are you asking me about 30?

16 Q If you recognize it, sir.

17 A I mean, it appears to be another email from
18 Alan Curry to me on September 10th, 2012.

19 Q Do you have a reason to doubt that that is
20 what it is or at least what you think it is?

21 A I have no reason to doubt that's what I think
22 it is.

23 MR. CHIN: At this time, Your Honor, I
24 will offer into evidence State's Exhibit 30 and tender
25 to counsel for her inspection.

1 MS. GOTRO: No objections, Judge.

2 THE COURT: 30 is admitted.

3 Q (BY MR. CHIN) Almost done. Mr. Leitner,
4 handing you State's Exhibit 30. That email indicates to
5 you, would you agree, that that is Alan Curry expressing
6 a belief that Mr. Clappart tried to get the arrest
7 warrant signed again, is that fair to say?

8 A It appears that Alan Curry heard from hearsay
9 somewhere that Clappart was trying to get a warrant
10 signed.

11 Q Do you think that's a different warrant than
12 the warrant Alan Curry expressed concern about earlier
13 in July?

14 A It appears to me that Alan thinks it's the
15 same one.

16 Q Does that lead you to think it's the same one?

17 A Well, I mean, I don't ever remember this
18 happening. All I would have had is Alan's email.

19 Q Okay. In any event, Mr. Curry says that,
20 again, he doesn't think the warrant is sufficient to
21 justify the arrest of Cody Ellis or anybody else. Is
22 that fair to say?

23 A He says "Unless something has dramatically
24 changed with regard to the contents of the warrant."
25 What he's telling me is his original opinion stays the

1 same if the warrant hadn't changed.

2 Q Okay. I gave you -- well, I didn't give you.
3 I let you read a document over lunch, which is that
4 document off to your left; is that right?

5 A Correct.

6 Q And it was only for --

7 A Saving time.

8 Q Yes. And I'm going to hand you now
9 Defendant's Exhibit No. 7, which is an affidavit for an
10 arrest warrant by Steve Clappart. Can you tell me, if
11 you go through it really quickly, if State's (sic)
12 Exhibit 7 and the document you read over lunchtime is
13 the same document?

14 A (Complies.)

15 They appear to be the same document.

16 Q And based upon your review of Defendant's
17 Exhibit 7, have you read Defendant's 7 then?

18 A Yes.

19 Q And have you examined it for the manner that I
20 asked you to, and that would be to give me an opinion as
21 to whether you believe there to be sufficient probable
22 cause to support an arrest for capital murder against
23 Cody Ellis?

24 A I have read it and you asked me to look at
25 that, and in my own honest opinion, if I had been a

1 judge, I would have probably signed the warrant.

2 Q You would have signed that warrant?

3 A Yes. But let me just tell you this. I did
4 not want to make the call. I wanted the call to go to
5 Alan Curry, and when Alan Curry said it wasn't there, I
6 wasn't confident enough to say order it.

7 Q Well, you were the First Assistant,
8 Mr. Leitner.

9 A Yeah, I could have ordered it if I wanted to,
10 and, you know, I still may be making the wrong call, but
11 that's the call that I made.

12 MR. CHIN: Thank you, Mr. Leitner, for
13 your time.

14 THE COURT: Any redirect?

15 MS. GOTRO: Yes, sir. May I approach the
16 witness, Judge?

17 THE COURT: Yes.

18 **REDIRECT EXAMINATION**

19 Q (BY MS. GOTRO) Mr. Leitner, as First
20 Assistant of the District Attorney, can you and I agree
21 that you, sir, you're a public servant, aren't you?

22 A Yes.

23 Q You are a public servant, which means you
24 serve the citizens of Harris County, right?

25 A Yes.

1 Q And if you have a new witness that comes
2 forward that raises doubts about the guilt of David
3 Temple, then that means it's the same as evidence that
4 would lead us to believe that the killer is still out
5 there, right?

6 A If the evidence is true, then that would mean
7 the killer is still out there.

8 Q That would mean the man that stuck a shotgun
9 to the back of a pregnant woman's head and blew her face
10 off is still out there, right, possibly?

11 A Possibly.

12 Q So do you think the citizens of Harris County
13 would be okay with maybe nine hours of overtime to
14 figure out whether or not we've got the right guy in
15 jail?

16 A I would have been happy with 900 hours of
17 overtime if it closed the issue.

18 Q But it's certainly worth nine hours of
19 overtime?

20 A Certainly.

21 Q Mr. Chin says to you that the investigation --
22 no, what was it? The administration doesn't need any
23 part of this investigation. Is that what he said to
24 you?

25 A Something to that effect.

1 Q What did that mean to you, Mr. Leitner?

2 A It just means to me that the whole office is
3 going to hate you and hate Pat Lykos. Not that they
4 didn't already hate me and Pat Lykos. If you take this
5 to be Brady evidence, it needs to be investigated.

6 Q But Mr. Chin's position was the whole office
7 is going to hate you and going to hate Pat Lykos if you
8 touch the Temple conviction?

9 A Yes.

10 Q Is that because the whole office loves Kelly
11 Siegler?

12 A You know, the term "the whole office" is used
13 loosely. It wouldn't mean that. But, I mean, obviously
14 the office would not want anybody, especially these two
15 outsiders that have come in, to look at anything that
16 they did with a questionable eye.

17 Q Well, then, let me ask you, Mr. Leitner,
18 what's the point of even having a Conviction Integrity
19 Unit if this office doesn't want you looking at what
20 they've done with a critical eye?

21 A I didn't say that I agreed with that. That's
22 why to me there was no question it had to be looked at.
23 And because I had Clappart who believed in going after
24 it and I knew he had -- knew what he was doing and he
25 was working with John Denholm and your people on it, I

1 thought that's the way to get this down to its clearest
2 end. I didn't think Clappart would ever come back to me
3 and say something's there that's not there. I trusted
4 that.

5 Q So you read over this affidavit that Clappart
6 drafted for an arrest warrant on a capital murder
7 charge?

8 A Yes. Defendant's Exhibit 7.

9 Q And if I heard you correctly, you said if you
10 would have been a judge, you would have signed it?

11 A Yes.

12 Q Why did you punt? Why did you send it up to
13 Alan Curry?

14 A Because I thought that he was sharper than I
15 was on an issue like that and I was wanting him to make
16 the call.

17 Q And at that time did you believe him to be
18 fair and impartial?

19 A Yes.

20 Q Objective even?

21 A Yes.

22 Q Am I correct in saying that a District
23 Attorney, an Assistant District Attorney, represents the
24 State of Texas, right?

25 A Yes.

1 Q You do not represent victims?

2 A We represent all the citizens of Harris
3 County.

4 Q And you certainly do not represent the family
5 members of victims, right?

6 A Well, they are part of the citizens of Harris
7 County. I represent everybody.

8 Q Better said. I will agree with you on that,
9 Mr. Leitner, but you don't represent the victims, yes?

10 A Well, I mean, other than what I just said. We
11 represent all of the county. We don't say that we cut
12 out victims.

13 Q Right. But is it appropriate for the head of
14 the Appellate Section to say to Belinda Temple's family
15 that "I will always be Belinda's biggest advocate" or
16 something like that? Is that an appropriate statement
17 to make, while this investigation is going on, to
18 Belinda Temple's family?

19 A If a statement like that is made, those are
20 the kind of statements that just cause nothing but
21 problems. If he said that, he would probably say that
22 because he wants to make them feel good, but they always
23 end up in the middle of a case in something like this.
24 I mean, so you're always better off just looking at
25 everything, you know, as part of the process and just

1 handling it.

2 Q Objectively?

3 A Objectively.

4 Q I'm going to pass you what's been marked
5 Defendant's Exhibit 79, Mr. Leitner. Does that appear
6 to be an email exchange to you?

7 A Well, the first page appears to be an email
8 exchange from Brad Beers to John Denholm.

9 Q And just for the record's sake, that is
10 actually a three-page exhibit, correct?

11 A Correct.

12 Q All right. And am I correct in saying that
13 that is a -- John Denholm is forwarding an email
14 exchange between he and Kelly Siegler to Mr. Beers'
15 attention?

16 A I was looking and trying to find me in here
17 somewhere, but I didn't find me in here, but let me look
18 at it closely.

19 Q Sure. Are you copied on any of those emails,
20 Mr. Leitner?

21 A No, I don't see me anywhere. They're talking
22 about me, but I don't see me.

23 Q They're talking about you, but you're not
24 copied on it, right?

25 A If it is, I haven't found it.

1 Q Fair enough.

2 MS. GOTRO: Your Honor, at this time I
3 would tender Defense Exhibit 79 to the State and ask
4 they be admitted. These are part of the emails that
5 were recently tendered by the State, Judge.

6 THE COURT: Okay.

7 Q (BY MS. GOTRO) While the State looks that
8 over, Mr. Leitner, do you know who Johnny Bonds is?

9 A Yes.

10 Q Do you know him to be a colleague of Kelly
11 Siegler's?

12 A I know that Johnny Bonds was a colleague of
13 Clappart, myself, Kelly Siegler. He was an investigator
14 for the DA's office for a long time. He was with HPD
15 before that, just like Clappart was.

16 MR. CHIN: Despite the lack of
17 foundation, I have no objection to Defense Exhibit 79.

18 THE COURT: 79 is admitted.

19 Q (BY MS. GOTRO) Now, you saw that they were
20 actually speaking about you in this document, but your
21 email is not actually on here, right?

22 A Right.

23 Q I believe when Mr. Chin was talking with you
24 about Mr. Clappart's time sheet, was this right around
25 July 24th, 2012? Does that seem about right?

1 A It seems like it was around there.

2 Q Actually I'm going to start at the beginning.
3 When you first read this email, Mr. Leitner, it appears
4 to be John Denholm forwarding an email exchange to Brad
5 Beers, the special prosecutor; is that right?

6 A That's correct. I mean, the emails themselves
7 read from backwards to forwards as opposed to what you
8 normally read something.

9 Q Okay. And Mr. Denholm states that Johnny is
10 Johnny Bonds. Do you see that on there?

11 A Yes, I think Johnny is Johnny Bonds.

12 Q All right. I'm going to back that up to that
13 last page. Can you see that, Mr. Leitner?

14 A Yes.

15 Q Will you read out loud for us where it says
16 the email, where it's from Johnny Bonds to
17 blessinggirltexas, and will you start with the paragraph
18 "Hey"?

19 A "Hey, you may have heard this already, but I'm
20 spreading this third-hand info anyway. Supposedly
21 Baldwin Chin has approached Lykos to allow him to ask
22 for Temple's conviction to be set aside by admitting
23 error. It has something to do with a convict who
24 supposedly overheard the conversation, where some
25 unknown convict admitted doing the murder. Also, John

1 Denholm has jumped on DeGuerin's bandwagon because he
2 thinks Temple is innocent. Picked this up at Thursday's
3 lunch. Thought you would want to know. I don't know if
4 any of it is fact.

5 "Are you home yet? How was your trip?
6 Is your daughter still in the jungle and how is she
7 handling it? John."

8 Q Fair enough. And what is the date on that
9 email?

10 A July 22nd, 2012.

11 Q And what time?

12 A 4:51 p.m.

13 Q I'm going to scoot you up the page just a
14 little bit. Do you see the section July 22nd, 2012, at
15 19:57?

16 A 19:57?

17 Q Right here.

18 A "Is this true?"

19 Q And then right above that, we see "Partially,"
20 and this comes from John Denholm. Would you read that
21 out loud?

22 A "Partially a witness has come forward --
23 conscious got him -- and it is not anyone currently
24 incarcerated nor is it in any way related to the
25 supposed convict informant. Witness seems pretty solid

1 because he has nothing to gain and a lot to lose. And,
2 yes, it appears Temple may be innocent. John P.
3 Denholm."

4 Q John P. Denholm. Do you know John Denholm,
5 Mr. Leitner?

6 A Yes.

7 Q If we move to the next page, could you begin
8 with this paragraph, and this is from blessinggirltexas.

9 A "That witness has his own issues. Dick is
10 trying to make one last run at Leitner before he's gone
11 and I can't believe neither you or Clappart bothered to
12 talk to me or Goodhart."

13 Q And so Kelly believes that Dick is making a
14 run -- you're the Leitner she's referring to, yes?

15 A Yes.

16 Q "I Cannot believe you or Clappart bothered to
17 talk to me or Goodhart." Let me ask you something,
18 Mr. Leitner. Do you think it would have been
19 appropriate, given the allegations, for Mr. Clappart to
20 approach either Kelly or Mr. Goodhart?

21 A I don't even know why Craig Goodhart is even
22 mentioned on the thing, but I do not believe that he
23 should have gone to them and asked them permission or
24 whatever, whatever it was Kelly was asking there.

25 Q And I'll take you up to this last message from

1 Mr. Denholm on the 22nd, 2012. He says, "Well, if you
2 know all that, why are you even asking?" So can we
3 agree it's safe to say that Kelly found out somewhere
4 around July 22nd, 2012, that your office was
5 investigating new evidence in the David Temple
6 conviction?

7 A Well, if you go back to the very beginning of
8 that.

9 Q I'm going to bring you the exhibit so you can
10 work with it.

11 A If you go to the very beginning, Johnny Bonds
12 is saying that supposedly Baldwin Chin has approached
13 Lykos to allow him to ask for Temple's conviction to be
14 set aside by admitting error. I don't know where that's
15 coming from, but it just shows you that when you start
16 running your mouth to say something is going on, it
17 spreads like wildfire everywhere, and that's why from
18 the very beginning I wanted this to be, you know, get
19 the job done, see what the witnesses find out, find all
20 that out and get it over with and not have it blocked by
21 things like this going on.

22 Q The part where Mr. Denholm responds or clears
23 it up for Kelly, is that factually -- do you believe
24 Mr. Denholm's explanation, clarification, is accurate as
25 far as this new testimony is concerned?

1 A Well, I would think that the most important
2 thing about this that Kelly would be looking at is
3 supposedly Baldwin Chin has approached Lykos to allow
4 him to ask for Temple's conviction to be set aside by
5 admitting error. No, Denholm does not respond to that.
6 Denholm responds to the facts of the case.

7 Q True cop, right?

8 A Yes.

9 Q And this happens on July 22nd, right?

10 A It starts on July 22nd and it goes between
11 Johnny, Kelly and Denholm on July 22nd, and then Denholm
12 sends it to Brad Beers on September 12th.

13 Q Okay. But on July 22nd we can definitively
14 say Kelly was certainly aware about at least parts of
15 this investigation by then, is that fair?

16 A Obviously, yes.

17 Q And then it's July 23rd when -- correct me if
18 I'm wrong now -- it's July 23rd when Alan Curry tells
19 Steve Clappart "You know what, that affidavit just isn't
20 sufficient for arrest purposes." Does that sound about
21 right?

22 A Yeah. I don't remember. It was around that
23 time.

24 Q Okay. I want to back up to State's Exhibit
25 No. 1, when we were having a conversation about

1 Mr. Clappart's time sheet. I'm going to take it back to
2 the Elmo. So the 22nd we've got Kelly finding out. The
3 23rd, we've got Alan Curry saying that that affidavit is
4 insufficient. And then if you could tell me the date
5 that Stephen Clappart signed this particular time sheet.

6 A July 25th, where your finger is.

7 Q Right, July 25th. And you told us the
8 July 26th is Lance Long's signature?

9 A Yes, what I remember to be Lance Long's
10 signature.

11 Q So it's safe for us to say that at some point
12 that week, some point in that week of July 26th, you had
13 a conversation with Lance?

14 A That I had a conversation with Lance?

15 Q Yes.

16 A Yes.

17 Q About Steve's overtime?

18 A Yes.

19 Q Mr. Leitner, if I told you that Lance Long in
20 cell phone records that have been obtained but not
21 admitted just yet, if I told you that Lance Long had a
22 40-minute conversation with Kelly Siegler on the 23rd,
23 would that surprise you at all, July 23rd?

24 A Surprise, I guess nothing surprises me at this
25 point. I didn't know that.

1 Q Yeah. She strike you as the kind of person to
2 get to the bottom of what this investigation is about,
3 though, right?

4 A Who?

5 Q Kelly.

6 A That she would have struck me as a person
7 trying to get to the bottom of this investigation?

8 Q Absolutely.

9 A I don't know how you mean that.

10 Q Well, let me put it to you this way. So Kelly
11 is off, she's no longer at the office. You've told us
12 she's got a lot of friends left in the DA's office,
13 right?

14 A Correct.

15 Q And she finds out through Denholm and Johnny
16 Bonds that somebody is jacking around with the Temple
17 conviction, correct?

18 A I mean, it surprised me if she didn't find out
19 until that email. I would have thought she knew long
20 before that, but I don't have any idea when she first
21 found out.

22 Q Sure. But can you and I agree that the moment
23 she found out, that it certainly makes sense for her to
24 get on the phone to her buddies back at the DA's office
25 to figure out what's going on with that investigation?

1 A You know, that's speculation on my part. I
2 can't have any idea why -- any other reason why Lance
3 and Kelly were talking, but I don't know why they were
4 talking.

5 Q Oh, come on, Mr. Leitner. You saw the email:
6 "I can't believe you didn't call me and Mr. Goodhart."
7 You can't say right now today that you don't believe
8 Kelly is going to pick up the phone and call every
9 single person she knows in this District Attorney's
10 Office to figure out what's going on with that
11 investigation?

12 MR. CHIN: I object. That's been asked
13 and answered, Judge.

14 THE COURT: Overruled.

15 A Well, it doesn't surprise me that she would do
16 that. That particular phone call, do I know the reason
17 for that particular phone call?

18 Q (BY MS. GOTRO) Uh-huh.

19 A I don't know the reason for that particular
20 phone call, but I'm sure that she had been talking to
21 all of them about the David Temple thing and what was
22 going on, especially if they were already making up
23 things like Baldwin is saying that he's going to ask Pat
24 Lykos to admit error.

25 Q I want to talk to you about grand jury

1 transcripts for just a second. Whenever you present a
2 witness before the grand jury, they don't transcribe the
3 testimony immediately, do they?

4 A Transcribe it immediately?

5 Q Yes, sir.

6 A Not unless you ask them to.

7 Q As an assistant district attorney, if you want
8 grand jury testimony, does the assistant district
9 attorney have to show that particularized need before
10 they can get it transcribed or do they just have ready
11 access to it?

12 A They have ready access to it.

13 MS. GOTRO: May I approach the witness,
14 Judge?

15 THE COURT: Yes.

16 A Just to make that clear, it's not like a hard
17 drive somewhere and everybody in the office can look at
18 it. You present a witness to the grand jury and you
19 want a copy of that testimony, you handle that
20 investigation, you can get it. That's what I meant.

21 Q (BY MS. GOTRO) And when an assistant district
22 attorney gets a copy of that grand jury testimony, does
23 it stay in the State's work product file?

24 A I don't know where prosecutors -- when you say
25 work product file, most prosecutors that get the grand

1 jury testimony will not put it in the regular file when
2 they open a file to the defense. They will wait to get
3 an order from a court to do it.

4 Q They will wait to get an order from the court
5 to do what?

6 A To disclose it to the defense.

7 Q Right. But you and I can both agree that they
8 don't need an order from a court in order to get it
9 transcribed, right?

10 A Right. We have our own court reporters and,
11 you know, we bring them to the grand jury with us and we
12 tell them what we want to do. I say "we." District
13 Attorney's Office.

14 Q I understand. I'm going to show you what has
15 been marked for demonstrative purposes only as Defense
16 Exhibit 80, and it's just an easier copy to handle of
17 Mr. Riley Joe Sanders' grand jury testimony, which is
18 already in the record, Your Honor.

19 THE COURT: All right.

20 Q (BY MS. GOTRO) Now, Defense Exhibit 80, some
21 grand jury testimony. This is the back page where the
22 court reporter certifies that everything she has written
23 down is true and correct. Does that look about right?

24 A That's the affidavit that the court reporter
25 puts on the back page.

1 Q And what date is this?

2 A The date on what I'm looking at right now says
3 September -- excuse me -- December 6th, 2004.

4 Q And what date would that be, as far as you
5 know?

6 A Just December 6th, 2004.

7 Q Is that not the date that it was actually
8 transcribed, Mr. Leitner?

9 A Well --

10 Q And sworn to is correct?

11 A Well, it's whenever they swore to it. I would
12 think that they probably swear to it the same day they
13 transcribe it, but I don't know for sure. What's the
14 date of the testimony?

15 Q If I told you that the date of the testimony
16 was the 21st day of April, 1999 --

17 A That means that somebody way down the road
18 asked for a copy of this. They probably had their tapes
19 like the old style had tapes, and they had the tapes
20 sitting somewhere and somebody asked them to transcribe
21 it, is what I would think.

22 Q Sure. And so if the testimony was given on
23 the 21st day of April, 1999, somebody made a request for
24 a transcription on the 6th day of December of 2004?

25 A Putting two and two together, that's what I

1 would think.

2 Q Safe assumption. Now, a prosecutor can't turn
3 grand jury testimony over to a defense attorney without
4 a court order; is that right?

5 A They should have a court order.

6 Q What if it's Brady, Mr. Leitner?

7 A I would still tell them to go get a court
8 order. There's no judge that's going to say, "Hey, I've
9 got grand jury testimony that's Brady," that's going to
10 say "I'm going to hide it from them."

11 Q What if the grand jury testimony is about an
12 alternate suspect like a -- yeah, a suspect, somebody
13 other than the defendant may have committed this crime,
14 you can't turn that over to the defense attorney either,
15 can you?

16 A Still I would say that the prosecutor should
17 go to the judge, show them what they've got, get an
18 order to disclose it. I think Brady needs to be
19 disclosed, no matter how you get it.

20 Q I think a lot of people feel that way. Can
21 you think of a good reason to sit on it? Like why would
22 you wait? Why would a prosecutor wait for years until
23 right before trial to disclose any kind of evidence?
24 What's the purpose of that?

25 A I can't think of any good purpose.

1 Q Yeah, neither can I.

2 MS. GOTRO: I pass the witness.

3 Thank you, Mr. Leitner.

4 THE COURT: Mr. Chin?

5 MR. CHIN: I do have a few more, and I
6 apologize.

7 **RECROSS-EXAMINATION**

8 Q (BY MR. CHIN) Mr. Leitner, in looking at the
9 arrest warrant or the affidavit for the arrest warrant,
10 do you remember reading anywhere in there where Cody
11 Ellis makes any statement admitting to participating in
12 the shooting the dog, entry of the house and running
13 out?

14 A I don't remember.

15 Q You don't remember seeing it? Okay. Do you
16 remember seeing anywhere inside that affidavit for the
17 arrest warrant where Cody Ellis is identified by anybody
18 as being, you know, the burglar or shooting a dog or
19 running out of the house?

20 A As I sit here right now, I don't remember what
21 that said. I remember there was three people together
22 that were talking at somebody's house and Cody Ellis was
23 one of them, and, you know, I don't remember much more
24 about it.

25 Q Do you remember reading the fact that it was

1 Riley Joe Sanders who was doing the talking?

2 A Well, I mean, it says whatever it says.

3 Q That's fair.

4 A That's better than my memory.

5 Q I understand, sir. Now, in regards to
6 investigations concerning innocence, would it be fair to
7 say that --

8 A Concerning what?

9 Q Regarding innocence. I apologize. Kind of
10 like with the Post-Conviction Review Section under the
11 Lykos administration, it was the policy of -- I don't
12 know if we really had a written policy. Is that fair to
13 say?

14 A That's fair to say.

15 Q But we had a general methodology, right? Yes?

16 A Yes.

17 Q And would you agree with me that when we did
18 these investigations, we ultimately contacted the
19 prosecutors in each one of those exonerations to find
20 out their position concerning our being the
21 Post-Conviction Review Section's investigation?

22 A Yeah, we didn't do anything behind anybody's
23 back. We let everybody know about it.

24 Q So like the prosecutor for Allen Porter, we
25 contacted that prosecutor. Do you remember that?

1 A Was that Bill Hawkins?

2 Q No, that was George Rodriguez.

3 A Oh. You know, I don't know when you contacted
4 him, but I know they're contacted. I don't think you
5 contacted them until you thought you had evidence that
6 was going to go somewhere.

7 Q Do you feel that's inappropriate to do that?

8 A I mean, once you have the evidence and you see
9 what you think it tells you to get their view of it, I
10 think that's totally appropriate.

11 Q Thank you. You were shown --

12 MR. CHIN: Judge, may I please approach
13 the witness?

14 THE COURT: Yes, sir.

15 Q (BY MR. CHIN) I want to make this perfectly
16 clear, Mr. Leitner. On this Defense Exhibit 79 where it
17 says "Supposedly Baldwin Chen," spelled C-h-e-n, is that
18 the way to spell my last name?

19 A They don't even know how to spell your name.

20 Q It's actually C-h-i-n, correct?

21 A Correct.

22 Q "Supposedly Baldwin Chen has approached Lykos
23 to allow him to ask for Temple's conviction to be set
24 aside by admitting error." It says that, correct?

25 A Yes.

1 Q Do you remember me ever approaching Judge
2 Lykos to talk to her about David Temple or admitting
3 error or really talking to Judge Lykos about anything
4 concerning David Temple?

5 A Concerning David Temple, no, I don't recall
6 you ever approaching Judge Lykos.

7 Q And was it ever my practice, in your
8 experience, that I've ever talked to Judge Lykos before
9 I'd ever talk to you about a matter?

10 A No. You would talk to me first.

11 Q Always?

12 A I believe always you would.

13 Q Now, did I ever speak to you about admitting
14 error in relation to David Temple's case or conviction
15 in any way?

16 A No.

17 Q Now, I don't remember if I got this out, so
18 I'm going to ask you one more time if I didn't already.
19 Did I tell you that I felt that these allegations needed
20 to be investigated in regards to Daniel Glasscock?

21 A I'm sure you did. That's what you would have
22 said if I had asked you.

23 Q I'm not going to ask you these questions to
24 pump myself up, but I do need to ask them, Mr. Leitner.
25 Taking an objective view, not as my friend but as a

1 supervisor for me and Mr. Curry, do you feel that Alan
2 Curry objectively served the citizens of Harris County
3 diligently and faithfully?

4 A Do I think Alan Curry serves the citizens?
5 Yeah, I think he serves the citizens objectively and
6 faithfully.

7 Q Do you feel that I serve the citizens of
8 Harris County objectively and faithfully in regards to
9 the David Temple investigation and all the other stuff I
10 did for the Lykos administration?

11 MS. GOTRO: Your Honor, I'm going to
12 object to that line of questioning. Mr. Chin has
13 inserted himself into these proceedings and made himself
14 a witness, so this is inappropriate. If he would like
15 to take the stand and testify, we can do that, but this
16 line of questioning is inappropriate.

17 THE COURT: Okay. It came out through, I
18 believe, your testimony, didn't it?

19 MS. GOTRO: Which part?

20 THE COURT: The email that we were
21 talking about.

22 MS. GOTRO: His character?

23 THE COURT: His participation.

24 MS. GOTRO: His participation is one
25 thing, but his character for being a hard worker and

1 serving the citizens of Harris County, I never raised
2 that at all.

3 THE COURT: All right. Sustained.

4 Go ahead.

5 Q (BY MR. CHIN) Did I ever do a disservice to
6 Harris County?

7 A Not in my opinion.

8 MR. CHIN: Thank you, Mr. Leitner.

9 Pass the witness, Judge.

10 THE COURT: Anything further?

11 MS. GOTRO: Yes, sir.

12 **FURTHER REDIRECT EXAMINATION**

13 Q (BY MS. GOTRO) Mr. Leitner, do you remember
14 going into chambers with Mr. Schneider to get an agreed
15 order to disclose grand jury testimony on August the 2nd
16 of 2012?

17 A Do I remember going to see Frank Price and
18 getting him to sign it? No, but I can tell by my
19 signature that I must have agreed to it. I may have
20 gone in there. I just don't remember.

21 Q Do you remember the particularized need being
22 a Brady claim that the defense was making?

23 A Oh, yeah, I knew all about what the defense
24 was saying about that. I thought you should have the
25 grand jury testimony. That's why I agreed to it.

1 Q And this was on August the 2nd, right?

2 A Well, I don't know what day it was. I presume
3 it was August 2nd.

4 Q If the document says August the 2nd, you don't
5 have any reason to disagree with that, right?

6 A I don't disagree with what the document says.

7 Q So August the 2nd you get your order signed.
8 Would it surprise you to know that that very afternoon
9 Baldwin Chin was text-messaging with Kelly Siegler?
10 Would that surprise you? Just yes or no.

11 A Did he text-message her about the grand jury
12 testimony?

13 Q I don't know. I didn't ask you about the
14 content. I'm just asking you, would it surprise you to
15 know that they were close enough friends that they
16 text-messaged each other?

17 A Once again, it would depend on whatever the
18 substance of that source was. She could text-message
19 him and he responds to it out of the blue. I mean,
20 Kelly could text-message me.

21 Q Fair enough. Let me rephrase my question.
22 Did you know that Baldwin was close enough to Kelly that
23 they had that kind of communication with each other?

24 A No.

25 Q Mr. Leitner, did you know that the writ of

1 habeas corpus that David Temple filed that we're having
2 this hearing on involves a Brady claim in the grand jury
3 testimony that the State didn't turn over to us? Were
4 you aware of that?

5 A No. You know, Stan could have told me that,
6 but I can't remember if anybody ever told me that.

7 Q Okay. I have another question for you. If
8 Alan Curry is working on the direct appeal and he's
9 responding to Mr. Schneider's Out-of-Time Motion for New
10 Trial, is he going to have access to the entirety of the
11 State's file in preparing those responses?

12 A If he wanted to have access to them, he could
13 have access to them.

14 Q I guess that would include grand jury
15 testimony, too, wouldn't it?

16 A If he needed it. I mean, whether he would
17 look at the grand jury testimony to write a direct
18 appeal or not, I don't know.

19 Q Well, I'm not asking you to speculate,
20 Mr. Leitner. I just want to know if he would have ready
21 access to those files.

22 A He would have ready access.

23 MS. GOTRO: Thank you, Mr. Leitner.

24 I pass the witness, Judge.

25 THE COURT: Mr. Chin?

1 MR. CHIN: Would you allow me a couple
2 more? It will be really quick.

3 **FURTHER RECROSS-EXAMINATION**

4 Q (BY MR. CHIN) Do you recall, Mr. Leitner,
5 that I actually gave money to Kelly Siegler in her
6 campaign for elected District Attorney in Harris County?

7 A I don't recall that.

8 Q If I told you that, would you have any reason
9 to disagree with me?

10 A No.

11 Q Do you recall or can you tell me if you know
12 whether I actually walked blocks for Kelly Siegler
13 during her campaign for District Attorney?

14 A I don't know that, but you probably did. You
15 wouldn't be asking me if you hadn't done it, so I'm sure
16 you did.

17 Q So would you imagine that I actually am
18 friends with Kelly Siegler?

19 A Yeah. You may be close friends with Kelly for
20 all I know. Is there anything wrong -- do I think
21 there's anything wrong that you're friends with Kelly
22 Siegler? No.

23 Q Were you aware of whether I received an email
24 from Kelly Siegler which basically said that that
25 paragraph including that Baldwin Chen supposedly asked

1 Pat Lykos something or other?

2 A If you ever received that email, I don't
3 remember if I was ever told that you received it. First
4 of all, if you ever received it, I don't know. If you
5 received it, was I ever told about it? I don't remember
6 if I was.

7 Q If I told you I received that, would you have
8 any reason to disagree with me?

9 A No.

10 Q Did I ever tell you that I in fact did not
11 respond to any Kelly Siegler phone call or email?

12 A Baldwin, I don't remember.

13 Q You don't remember? That's fair.

14 MR. CHIN: Thank you, Mr. Leitner. I
15 appreciate your time.

16 I pass the witness.

17 MS. GOTRO: No further questions.

18 THE COURT: May Mr. Leitner be excused?

19 MS. GOTRO: He may.

20 MR. CHIN: Pending, I'm assuming, if they
21 want to recall him concerning review of the emails, I
22 have no objection to releasing Mr. Leitner.

23 MR. SCHNEIDER: No objection, Your Honor.
24 I know where to find him.

25 THE COURT: Would it be convenient to

1 reconvene at 9 o' clock Monday morning?

2 MR. SCHNEIDER: Your Honor, there's one
3 thing I wanted to ask the Court. There is a sealed
4 envelope that appears to be an envelope from my office
5 that may be the sealed motion that there's been
6 questions about this afternoon. If the Court wants to
7 unseal it and look at it and see if it is the motion
8 that is pertinent and it be unsealed, then I would ask
9 the Court to do that.

10 THE COURT: Is that the motion for the
11 grand jury testimony?

12 MR. SCHNEIDER: Yes, I believe it is.
13 I'm not sure. It looks like the envelope that we gave
14 to Judge Price back in 2012.

15 THE COURT: Is there some reason that you
16 think I can do that?

17 MR. SCHNEIDER: It's been raised that
18 there may be something -- some reason why or what was
19 the reason why Mr. Leitner agreed to it. If the Court
20 wishes to see it, I believe it's right there and I would
21 ask the Court to unseal it so that there be no question
22 that proper procedures were followed in 2012 by
23 Mr. Leitner.

24 THE COURT: Sir?

25 MR. CHIN: I'm good, Judge.

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THE COURT: Okay, I will do that.

Is 9 o'clock Monday morning agreeable to
both of you?

MR. SMITH: Yes, Judge.

MR. SCHNEIDER: Yes, Your Honor.

1 STATE OF TEXAS

2 COUNTY OF HARRIS

3
4 I, Gina Bench, Deputy Court Reporter in and for the
5 178th District Court of Harris County, State of Texas,
6 do hereby certify that the above and foregoing contains
7 a true and correct transcription of all portions of
8 evidence and other proceedings requested in writing by
9 counsel for the parties to be included in this volume of
10 the Reporter's Record in the above-styled and numbered
11 cause, all of which occurred in open court or in
12 chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$_____ and
18 was paid/will be paid by Harris County.

19 /s/Gina Bench_____

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21 Gina Bench, CSR, RPR, RMR
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