

**STATE OF ARIZONA  
IN THE COURT OF APPEALS  
DIVISION TWO**

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STATE OF ARIZONA  
Ex rel. M. LANDO VOYLES  
PINAL COUNTY ATTORNEY,  
Petitioner,

No. 2 CA-SA 2014-0050

v.

Pinal County CR 201201764

THE HONORABLE PETER J. CAHILL,  
VISITING JUDGE OF THE PINAL  
COUNTY SUPERIOR COURT,  
Respondent,

And

RICHARD T. WILSON,  
Real Party in Interest,  
Respondent.

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HEARING TRANSCRIPT: MAY 6, 2014

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF PINAL

STATE OF ARIZONA, )  
 )  
Plaintiff, )  
 )  
vs. ) No. CR201201764  
 )  
RICHARD TRAY WILSON, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

Florence, Arizona  
May 6, 2014  
9:24 a.m.

BEFORE: The Honorable PETER J. CAHILL, Judge

TAKEN BY: LAURA MILLER, RPR  
Certified Reporter  
Arizona No. 50505  
Official Court Reporter

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APPEARANCES

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1 Florence, Arizona  
2 May 6, 2014  
3 9:29 a.m.

4 **THE COURT:** Let's go on the record then,  
5 Counsel. We are here for the matter, of course, Arizona  
6 against -- I'm getting a feedback. This is Arizona  
7 against Wilson. Of course, this is our 2012-1764 matter.

8 And on behalf of Plaintiff, we have  
9 Ms. Eazer.

10 And do you have somebody who is going to  
11 assist you today?

12 **MS. EAZER:** Yes, Your Honor. This is  
13 Patrick Chapman. He is second chair on the case.

14 **MR. CHAPMAN:** Good morning, Your Honor.

15 **THE COURT:** Good morning.

16 And then, of course, on behalf of Defendant  
17 who is present in custody, Mr. Huggins and Mr. Soslowsky.

18 Counsel, I hope we have plenty of time  
19 today. I certainly have set aside all of our time until  
20 3:00 o'clock. I doubt if we will need all of that time,  
21 but we have plenty of time.

22 Let me go through what I think we should  
23 discuss today and then I want to make sure that you bring  
24 to my attention other matters that we had been planning to  
25 address today that I don't mention; any other matters that

1 perhaps we should address to assist you to get this case  
2 ready for trial.

3           Counsel, there's several pending motions to  
4 strike. I intend to address those in a group in just a  
5 second. Then I think logically we need to address issues  
6 in this way. There's various motions and supplemental  
7 motions and requests for reconsideration, but conceptually  
8 anyways, I think we ought to address the issues raised by  
9 Defendant with regard to Mr. Pierce's status, that is  
10 whether he as a victim -- that is "victim" with a capital  
11 V status under -- in the provisions of our Constitution,  
12 our statutes or our rules. And if not, just what his  
13 status is and perhaps we can address, if not agree on, a  
14 way in which we refer to Mr. Pierce in a way that does not  
15 conger up legal problems for any party.

16           Then I think the next issue is the issue of  
17 what I call access to Mr. Pierce's records. I'm not even  
18 sure where we are at in that regard. I did get some  
19 recent information from the Defendant in his -- one of his  
20 motions to strike about accessing those records. This, of  
21 course, is prompted in part by the State's July 2013  
22 Motion for Stay/Motion for Reconsideration.

23           Then conceptually anyway, there's a series  
24 of pleadings that have been filed raising claims that  
25 there ought to be some consequences for the manner in

1 which the State -- or excuse me, attorneys for the State  
2 accessed information about the Defense's attempt, as part  
3 of what they call mitigation, to access Mr. Pierce's  
4 records. And then let's discuss perhaps even in reverse  
5 order whether we are going to address the request for a  
6 probable cause determination or more properly,  
7 redetermination.

8           Now, there's been a couple of requests to  
9 determine probable cause by the Court. I did notice that  
10 I had had a minute entry issued the middle of last month  
11 referring to the fact that on April 9th, Defendant filed a  
12 Motion for Probable Cause Determination with Regard to  
13 Aggravating Circumstances. I think that's off -- or at  
14 least was in the past referred to as a *Chronis* hearing  
15 order, setting hearing on that for today.

16           Were you anticipating that we would address  
17 that perhaps with evidence today, Ms. Eazer?

18           **MS. EAZER:** Yes, Your Honor. I have the  
19 investigator here, which it would be literally one to two  
20 minutes of testimony on behalf of the State at least, and  
21 I also have the certified priors PEN pack for the second  
22 aggravator.

23           **THE COURT:** And I assume that's no surprise  
24 to you, Mr. Huggins?

25           **MR. HUGGINS:** None whatsoever.

1                   **THE COURT:** Okay. So that's good, we can  
2 tackle that.

3                   I do want to, of course, as we should  
4 because I don't think we have set a trial date, so perhaps  
5 at the end of our discussion today when we have a better  
6 idea; what we have done, what's left to do; setting a  
7 trial date.

8                   And Ms. Eazer, I know I asked you last time,  
9 but I have forgotten. What is the two-year anniversary of  
10 filing your death notice?

11                   **MS. EAZER:** I --

12                   **THE COURT:** We will address that later. At  
13 some point in the proceedings I will remind you of that.  
14 I'm perplexed about that.

15                   Okay. Now to start at the top. I don't  
16 blame you for filing a Motion to Strike if you think  
17 that's something that's needed. I just didn't fall off a  
18 turnip truck though. I know what pleadings are proper  
19 when somebody is asking for relief; that is a motion,  
20 response and reply. Sometimes there's a need and in this  
21 case, has been a little bit complicated, to file  
22 supplemental responses. At times there's a good reason to  
23 ask for permission to file a supplemental response, but I  
24 think what's going on is that either because you have new  
25 and additional argument that you've thought up or events

1 have transpired, you want to get the last word in so  
2 people are filing motions to strike to do that. I don't  
3 really think that's a good idea. It just complicates up  
4 the file.

5           So the Court will deny the following motions  
6 to strike: The State's Motion to Strike filed  
7 December 10, 2013; the Defendant's Motion to Strike  
8 Supplemental Memorandum filed May 5, 2014. So those  
9 motions are denied.

10           Now, the Court's ruling is without  
11 prejudice, of course, to the substantive issues addressed  
12 in either the Motion to Strike or the pleading you  
13 attempted to have stricken. I have never understood what  
14 happens when a motion to strike is granted, which is one  
15 reason why I don't have a lot of patience for them. There  
16 is no black marker that -- magic marker that descends from  
17 the sky and strikes out anything. If I were to grant it,  
18 it's still there, it's in the record. Arguably it could  
19 have some legal effect, but I don't think that it has the  
20 effect that you think.

21           Now if, Counsel, we were to address in turn  
22 Mr. Pierce's status accessing his records, the Defendant  
23 claims that there should be some consequence to the access  
24 of that information before we get to probable cause, and  
25 there's a lot of miscellaneous motions and pleadings on

1 all those issues, but does anybody think there is a big  
2 issue that we -- that I've overlooked?

3 Ms. Eazer?

4 **MS. EAZER:** I don't believe so, Your Honor.

5 **THE COURT:** Mr. Huggins?

6 **MR. HUGGINS:** No, Your Honor.

7 **THE COURT:** Okay. Well, on this issue,  
8 Ms. Eazer, I will start with you. Is there some reason  
9 that I'm missing that would give Mr. Pierce status as a  
10 victim with a capital V under our rules and statutes for  
11 victim's rights?

12 **MS. EAZER:** No, Your Honor.

13 **THE COURT:** Okay. But I understand from  
14 your pleadings, your point is that sadly from anybody's  
15 perspective, Mr. Pierce is involved in this case. He was  
16 found dead in his cell or cell that he shared with the  
17 Defendant?

18 **MS. EAZER:** Yes, Your Honor.

19 **THE COURT:** Okay. And we have an indictment  
20 that charges that the Defendant is responsible for  
21 Mr. Pierce's death. Charge, of course, is first degree  
22 homicide.

23 It seems like, Mr. Huggins, that we are  
24 going to have to refer to Mr. Pierce throughout the case.  
25 We may refer to his status and the issue is, what

1 reference to his status would be best.

2           **MR. HUGGINS:** Your Honor, the deceased --  
3 additionally, Your Honor, I have no dispute that  
4 Mr. Pierce and his personal representative and their  
5 lawful agents may have legal interests which can be  
6 considered by the Court, but what I tried to make clear is  
7 the State has no standing or authority to assert those  
8 claims. I will avow to the Court that I have had direct  
9 contact with the personal representative's counsel,  
10 Annette Findley, and that she is aware of our request for  
11 unredacted medical records, and has authorized me to  
12 inform the Court she has no objection to our access to  
13 unredacted medical records.

14           What I have tried to make clear in my  
15 pleadings is that what we object to is the State asserting  
16 victim's rights when there is no victim under statute or  
17 the Constitution, and the State has no legal authority to  
18 assert the position of the personal representative. So in  
19 response to the Judge's question, I would suggest that the  
20 way to refer to Mr. Pierce through the course of these  
21 proceedings is as the deceased.

22           **THE COURT:** Okay. Well, I suspect in our  
23 case there will be reference to Mr. Pierce as deceased.  
24 That's part of the State's element of proof. They have to  
25 prove that Mr. Pierce is deceased.

1                   But, you know, I think the State makes a  
2 point, Mr. Huggins, that long before anybody dreamed up  
3 these special rights, these special protections, if you  
4 will, for victims, which some may disagree that they go  
5 too far or some may say they don't go far enough, we refer  
6 to the deceased in a homicide case as the victim.

7                   **MR. HUGGINS:** I think that's inappropriate,  
8 Judge, because victim is a value term. It implies that he  
9 is the unlawful recipient of a cause of death. When you  
10 have issues of justification and sudden quarrel and heat  
11 of passion, and to use the term "victim" implies that in  
12 fact it has been an unlawful killing. That the jury can't  
13 assume nor should we use terms that carry that meaning  
14 short of their determination.

15                   **THE COURT:** Okay. Well, certainly what I  
16 think we are here for is the series of issues that have  
17 arisen as the result of actions that have been taken and  
18 references made to Mr. Pierce. The exclusion of  
19 Mr. Pierce or more correctly his family by definition as a  
20 victim entitled to the benefits and privileges of victim's  
21 rights legislation is an issue quite frankly that I'm glad  
22 we have addressed. I have never had occasion in my work  
23 as a lawyer or judge to deal with somebody who supposedly  
24 or allegedly had suffered from a crime and was in the  
25 Department of Corrections, so I have never had to deal

1 with the exception from the rule, so I'm glad we have  
2 addressed that.

3 But, you know, I suspect there has been more  
4 than one homicide prosecution where there was a successful  
5 defense, perhaps let's say self-defense, where -- and we  
6 find that out at the conclusion of the case or perhaps  
7 some dismissal by the State where no one would suggest  
8 otherwise that the person who is deceased was a victim.  
9 And perhaps it's only fair to refer to them as the alleged  
10 victim. And just because there was a successful assertion  
11 of a self-defense claim doesn't mean that they were not an  
12 alleged victim while the case was going on.

13 Now, probably too often prosecutors and  
14 perhaps judges as well, to say nothing of jurors, refer to  
15 victims as just that when they are really alleged victims.  
16 So to some extent you have a point. Mr. Pierce by  
17 agreement of everybody is deceased. We know that the  
18 person who your client is charged with killing is  
19 Mr. Pierce, so he's an alleged victim.

20 It seems to me, Mr. Huggins, the State fully  
21 recognizes now -- and I'm not going to get into whether  
22 there was any other recognition earlier, recognizes that  
23 Mr. Pierce does not have victim status under our victim's  
24 rights legislation, and I don't see anything wrong with  
25 the State referring to Mr. Pierce as somebody who has been

1 victimized by the charged crime. Now we will deal later  
2 with whether at trial where we have people quite a bit  
3 more uneducated in how the process works, even though I am  
4 going to explain to them your client is presumed innocent,  
5 I don't see any problem in referring to him with a small  
6 v, Mr. Pierce, as a victim.

7 **MR. HUGGINS:** Your Honor, I have never  
8 objected to that in argument to the Court and with  
9 counsel.

10 **THE COURT:** Okay. Good.

11 **MR. HUGGINS:** When we get to the jury, I  
12 think then the point may be made. The pleadings I filed  
13 on this point deal with the State asserting legal rights  
14 of a victim and the county attorney making press releases.

15 **THE COURT:** Well, we will get to that in  
16 just a second. We'll get to that.

17 **MR. HUGGINS:** Okay.

18 **THE COURT:** To the extent that the issue has  
19 been raised by various pleadings, the Court agrees with  
20 the State and Defendant that Mr. Pierce and his family are  
21 not entitled to victim status under Arizona Victim's  
22 Rights rules, statutes and that provision of our  
23 Constitution.

24 To the extent that this ruling addresses  
25 Defendant's April 15, 2014 motion to prevent State from

1 filing on behalf of -- excuse me, filing motions,  
2 pleadings or asserting positions on behalf of the victim,  
3 Mr. Pierce, the motion is denied.

4 At the request of either party prior to the  
5 jury trial, we can discuss whether or not the State can  
6 refer to Mr. Pierce as a small "v" victim.

7 Okay. So that's just preliminary to this  
8 issue of the Defense's access under the capital case rules  
9 to what I believe is properly referred to in light of the  
10 method used to obtain the records that is ex-parte  
11 mitigation material, that is Mr. Pierce's records.

12 First of all, do you have the records?

13 **MR. HUGGINS:** No.

14 **THE COURT:** Okay. And did you refer to an  
15 Annette Findley and what's her role in the case?

16 **MR. HUGGINS:** Annette Findley is the lawyer  
17 for the personal representative, Ms. -- I think Melonoski.  
18 I'm massacring her name. The mother of Nolan Pierce.

19 **THE COURT:** Okay. Now, Ms. Eazer, this  
20 jumps way ahead to all the issues about accessing those  
21 records and they are important issues. It doesn't -- my  
22 question though is not going to jump ahead to the claims  
23 for sanctions for accessing. I just want to talk  
24 practically first about whether anybody, and I guess we  
25 should talk specifically about Defendant, accessing those

1 records.

2           If the person who would have legal authority  
3 to authorize their release, and it may be some question  
4 that we should talk about, but let's assume Ms. Findley it  
5 is, and her client has the legal authority to release, to  
6 give authority to release the records, what's to prevent  
7 Defendant from getting those records?

8           **MS. EAZER:** Nothing, I don't think, Judge,  
9 but I would like to, you know, just briefly state number  
10 one, we have only heard about Ms. Findley and the  
11 permission that she's given Mr. Huggins to have these  
12 records within the last two weeks, so I suspect permission  
13 was granted after the fact, after Mr. Huggins filed the  
14 ex-parte motion.

15           I will say, Judge, you know, I still think  
16 this Court given what has happened in this case, and  
17 perhaps I don't have standing, maybe Mr. Huggins is right,  
18 but I still think what has happened in this case, it would  
19 be prudent to have a hearing where Ms. Findley is present  
20 and possibly Mr. Pierce's lawful representative because  
21 Ms. Findley doesn't represent Mr. Pierce as a victim in  
22 this case in any way dealing with the criminal case. She  
23 doesn't represent her for that reason.

24           I have some concerns as to why the victim's  
25 mother would be okay with her son's -- not just medical

1 records regarding this case, but all of his mental health  
2 records, all of his medical records being used or being  
3 given to the person who is representing the man who is  
4 alleged to have killed her son. She is, I believe, suing  
5 the Department of Corrections, the mother is, and that's  
6 where Ms. Findley's representation comes in.

7 **THE COURT:** I see.

8 **MS. EAZER:** And I guess I would be concerned  
9 about A, when was this consent obtained. Like I say, it  
10 wasn't certainly ever mentioned in any pleading by  
11 Mr. Huggins before, nor was it provided to the Court when  
12 he made his ex-parte motion. And quite frankly, he  
13 wouldn't have needed to make an ex-parte motion if he had  
14 a release, a signed release signed by the lawful  
15 representative of the victim. He could have obtained  
16 those records himself.

17 So, again, I'm speaking with just my  
18 respected concerns I would have as to what Ms. Pierce has  
19 been told about why Mr. Huggins is asking for boundless  
20 records that could be in the Department of Corrections'  
21 hands, and still believe it would merit a hearing because  
22 there is patient/physician privilege in this case.

23 And just one other thing, Judge. You had  
24 asked about whether the Defense has the records and I  
25 don't know if the Court is aware since you have only

1 recently come on the case. I believe the records are  
2 sealed and in the Court's possession. I don't know which  
3 of the judges here, but I know at one point in my review  
4 of the file, because I too only recently inherited this  
5 case when I came to the office like two months ago. But I  
6 was going back through records and saw that the Department  
7 of Corrections had sealed them because of the issues that  
8 were going on and had sent them directly to the court for  
9 safekeeping.

10 **THE COURT:** Okay.

11 **MR. HUGGINS:** Your Honor --

12 **THE COURT:** Mr. Huggins.

13 **MR. HUGGINS:** -- the State is not entitled  
14 to assert the position of Ms. Findley or Ms. Pierce, and  
15 she again tries to attack the Defense for asking for  
16 records and conducting an independent investigation. She  
17 has no right to know what it is or what I am doing or when  
18 I'm doing it. You have no authority to order the civil  
19 party into your court to explain why there is consents or  
20 not.

21 There is a provision on medical records that  
22 the State first mentioned in its Supplemental Memorandum.  
23 HIPPA has nothing to do with the criminal proceeding, but  
24 every medical provider with medical records has a duty to  
25 notify the patient or the patient's personal

1 representative or kin prior to disclosure of those  
2 records, and there is a legal process in the civil  
3 matters, as you are aware, for a person to assert their  
4 right to privilege or privacy. That is not in the  
5 criminal proceeding. Ms. Eazer can't do it here today or  
6 any other day.

7 **MS. EAZER:** Judge, just one brief thing.  
8 DOC did not notify Ms. Pierce and here is why, because  
9 there was a court order. Often times, as the Court is  
10 aware, agencies believe that the authority of the Court  
11 supersedes anything that they have to do otherwise and  
12 that was the issue with respect to getting the order.

13 **MR. HUGGINS:** HIPPA requires that the  
14 provider notify the person there has been a subpoena, a  
15 court order, so they can interject an objection if they  
16 wish to do so.

17 **THE COURT:** Okay. Now keep in mind all of  
18 this arose because Defendant was in a position then  
19 without releases and attempted to utilize the Court in  
20 getting the order that Ms. Eazer referred to to obtain the  
21 records. There is nothing, of course, that would prevent  
22 the Defense from -- with a lawful release that was going  
23 to be respected by the custodian of the record, to go to  
24 that custodian and ask for the records.

25 Now we know how skittish certain providers

1 are, some of them should be more sensitive, of course, but  
2 if Defendant gets what he wants with his release from the  
3 provider, then he doesn't need the assistance of the  
4 Court. Of course, then, the discovery and the disclosure  
5 rules kick in and that's all a set of complications on its  
6 own. The reason why the Court is involved though is the  
7 Defendant utilized the rule to obtain these records  
8 ex-parte.

9           Now I think what needs to be done in the  
10 case, specially since Defendant does not have the records  
11 but believes it has at least from his perspective and  
12 seemingly from Ms. Findley's perspective, the Defense has  
13 the opportunity to utilize the releases to request the  
14 records from any provider. Now if the providers are not  
15 as cooperative as the Defendant thinks they should be  
16 then, of course, what happens in that situation is there  
17 is a request for a subpoena to issue and the Court to  
18 order the party to turn over the records. But, of course,  
19 a lot of providers would prefer the protection of the  
20 court, the court's order, to insulate them from some  
21 liability that might arise for instance if Ms. Findley's  
22 authority were to be revoked at some time or if it's found  
23 to be nonsufficiently encompassing to provide the  
24 protection to the provider.

25           Now, you want to interrupt, Mr. Huggins?

1           **MR. HUGGINS:** Yes, Your Honor. The Court  
2 has indicated that a subpoena can be used. I think that  
3 is a serious doubt. *Carpenter v. Superior Court* said a  
4 subpoena cannot be used for discovery purposes, at least  
5 as to a party, and that the proper motion --

6           **THE COURT:** But don't you think I could  
7 order a deposition, issue a subpoena, and assist the court  
8 in getting records that were appropriate to be obtained?

9           **MR. HUGGINS:** I'm not certain you can under  
10 *Carpenter v. Superior Court*.

11           **THE COURT:** Ms. Eazer will remind you of  
12 that if you have any difficulties in investigating the  
13 matter. I will certainly do what I can to make sure that  
14 Defendant is able to obtain all of the records from third  
15 parties that he is entitled to as part of discovery. And  
16 if the third party is reluctant for legal or practical  
17 reasons or just doesn't want to help the Defendant, she or  
18 he might be facing a court order issued by the clerk or by  
19 this Court.

20           **MR. HUGGINS:** I shouldn't have to tell  
21 Ms. Eazer or get a court order that Ms. Eazer has access  
22 to tell her what investigation I'm doing, Judge.

23           **THE COURT:** Sure you shouldn't, but if you  
24 choose to, if you find a reluctant provider who won't  
25 honor Ms. Findley's release, you are going to have to get

1 the assistance of the Court. Now if it's proper  
2 mitigation evidence, then you may be able to do it under  
3 one rule, but if it's not, you will have to get it under  
4 another rule. Okay.

5 Why is it, Mr. Huggins, that you thought it  
6 was appropriate to use the rule that allowed the Defense  
7 to get -- apply for ex-parte, an order such as you used in  
8 this case to get Mr. Pierce's records? Why was that  
9 appropriate here?

10 **MR. HUGGINS:** Your Honor, I don't believe  
11 the State has any standing in this matter and I don't  
12 believe the State should be able to take part in this  
13 matter. They have illegal access to documents, made the  
14 objection, now the Court has just blown right past the  
15 question whether they can even do that and gone to the  
16 point, well, should I give them the relief they've asked  
17 for, and we objected.

18 Addressing the question you just put to me,  
19 the most recent case in explanation in regard to ex-parte  
20 access to mitigation evidence in a defense investigation  
21 in a capital case is *Morehart v. Barton*. And in *Morehart*  
22 *v. Barton*, the court specifically addressed defense  
23 counsel obtained information by an ex-parte order in  
24 regard to defense investigation, and the court noted that  
25 that was appropriate and denied the victim's authority to

1 intervene into the process.

2 Now in that case, you actually had a victim,  
3 Judge. In this case we have the State doing it on behalf  
4 of themselves where there is no victim. Again, *Barton*, if  
5 you look at it, they specifically talk about it. In that  
6 case, ex-parte subpoenas to providers of information  
7 telling them to come into court or you can just provide it  
8 to the defense counsel in an ex-parte proceeding without  
9 any hearing ever being held. Supreme Court had no problem  
10 at all with what the defense was doing in that case.

11 **THE COURT:** Did you want to be heard on this  
12 issue, Ms. Eazer?

13 **MS. EAZER:** Yes. I mean, number one, I  
14 think the Court's question to Counsel was appropriate  
15 because I -- as we have set forth in our pleadings, I  
16 completely disagree with Mr. Huggins' interpretation of  
17 what 15.9 allows for. And I think that the case law is  
18 very clear what it allows for, and you know, as I said in  
19 my motion, number one, it's not for obtaining disclosure  
20 unless it is perhaps records of the defendant the defense  
21 is trying to access and they have lawful releases and they  
22 are unable to access their own records. I think that's  
23 the only time I have seen an exception to where they can  
24 then go to the court and ask for an order of the  
25 defendant's records if someone is not cooperating.

1           It is not appropriate to get other  
2 disclosure of any type and in fact, in any circumstance  
3 when it is being requested, there has to be a very, very  
4 strong showing of why it is needed for mitigation, to  
5 which Mr. Huggins has never made a showing other than to  
6 say clearly this is mitigating evidence. He does not say  
7 why or how the victim's medical records could ever be  
8 considered mitigating evidence or why it even might be  
9 relevant. So, Mr. Huggins --

10           **THE COURT:** Of course, they may be relevant  
11 on the issue of guilt, but your point is discovery with  
12 regard to the guilt phase ought to be conducted in the  
13 usual manner, not privately with an ex-parte judge.

14           **MS. EAZER:** Correct, Judge.

15           **THE COURT:** In your Motion to Stay filed --  
16 let's see, my copy isn't dated, but it was filed last July  
17 to show you how long ago that was. You asked the Court to  
18 stay its order and reverse its ruling.

19           What is the date of that order and who is  
20 the author of the order, the Judge?

21           **MS. EAZER:** The Court ordered -- on July 29,  
22 2013, Judge Georgini ordered -- entered an order staying  
23 his previously granted order of June 18th of 2013.

24           **THE COURT:** And that's the order you seek to  
25 have reversed or vacated perhaps is a better word?

1                   **MS. EAZER:** Well, yes. The June 18th order  
2 releasing Mr. Pierce's medical records is what we are  
3 seeking to vacate. The order I just referred to was Judge  
4 Georgini. In fact, he was going to stay his order.

5                   **THE COURT:** So the order you are seeking to  
6 have vacated is dated June 18, 2013. And the judge that  
7 made the order is?

8                   **MS. EAZER:** Judge Georgini.

9                   **THE COURT:** Okay. Anything further,  
10 Mr. Huggins?

11                   **MR. HUGGINS:** Your Honor, they've just asked  
12 you to vacate an order they have no standing to have  
13 access to and you have allowed them to argue it. That is  
14 inappropriate. They have misstated *Morehart v. Bordan* --  
15 or *Morehart v. Barton*.

16                   **THE COURT:** I'm not sure Ms. Eazer referred  
17 to that case, but --

18                   **MR. HUGGINS:** She said Rule 15.9 does not  
19 authorize disclosure and that is the case construing 15.9  
20 and talking about *Apelt*, and talking about how it's been  
21 modified and the defense has a right to obtain material in  
22 investigation of the defense.

23                   **THE COURT:** Okay. Counsel, it's the ruling  
24 of the Court that the process that the Defendant used to  
25 obtain Mr. Pierce's medical records was not proper under

1 our Rules of Criminal Procedure. The orders that were  
2 made on Defendant's request, specifically Judge Georgini's  
3 June 18, 2013 order are vacated.

4 Now if the Court needs some assistance -- if  
5 the parties need some assistance of the Court to obtain  
6 Mr. Pierce's medical records, they are to use Rule 15.1(g)  
7 of the rules.

8 Now with the assurance that I have had from  
9 defense counsel with regard to people purporting -- I  
10 assume they know what they are talking about, purporting  
11 to have authority to release Mr. Pierce's records. It may  
12 be that the Court will not need to assist Defendant to  
13 obtain Mr. Pierce's records.

14 I will leave it to you, Mr. Huggins, to  
15 determine if the expeditious way to obtain what somebody  
16 thinks are already in the file, the Department of  
17 Corrections' records, if you think the way to obtain those  
18 records for the Defense is to seek an order of the Court  
19 to unseal them, then make that request. We will see if  
20 there is any opposition to it, and I will address it.

21 In that regard, when you are seeking to have  
22 a court order release or unseal, in this case, somebody  
23 else's record, you ought to give that party notice. That  
24 is the Department of Corrections. They are not  
25 represented by Ms. Eazer and have their own counsel. They

1 may or may not object. I will leave that up to them.

2           For instance if you need some assistance in  
3 obtaining Mr. Pierce's records with releases and you get  
4 resistance from a provider and you want to have the Court  
5 set up an order, formal discovery setting up records  
6 deposition with a subpoena to facilitate that to a third  
7 party, I would appreciate you giving notice to the  
8 appropriate people. That is the holder of the records  
9 and, of course, Mr. Pierce's lawful representative,  
10 Ms. Findley, I guess. And if they don't have any  
11 objections, specially if the State doesn't have any  
12 objections, then I will surely sign the order allowing you  
13 to get the records. It won't be ex-parte and we will go  
14 from there.

15           Now, you've referred, Mr. Huggins, in your  
16 argument just now to how all of this with regard to  
17 Mr. Pierce's records was revealed, discovered, and then  
18 what happened afterwards. You have referred in your  
19 pleadings to improper discussion by the county attorney's  
20 office about all of that.

21           Are you asking for relief now for anything  
22 arising out of that?

23           **MR. HUGGINS:** Yes, Your Honor.

24           **THE COURT:** Okay. Argue your reasons why I  
25 should grant relief and make sure you remind me what it is

1 you are wanting me to do.

2 **MR. HUGGINS:** Your Honor, whatever the  
3 merits or lack thereof, there was an ex-parte motion in a  
4 court file that was sealed. The Clerk of the Court was  
5 subpoenaed and he is present here. Chad Roche would  
6 indicate that that motion was received and sealed and not  
7 available to the public. A judge who had authority to  
8 hear this case and was acting as judge on the case granted  
9 that motion.

10 **THE COURT:** To seal?

11 **MR. HUGGINS:** Yes. And granted the ex-parte  
12 order that the records be provided, and ordered that that  
13 be sealed and the judge's order was sealed by Chad Roche  
14 and was always sealed.

15 But the Clerk of the Superior Court provides  
16 an access terminal to the county attorney's office that  
17 allows the county attorney to access confidential sealed  
18 documents. He does so because in many civil cases  
19 involving adoptions, it's necessary that the county  
20 attorney have access to those documents. But there is no  
21 way or was no way under the computer program he had to  
22 block access to properly sealed confidential documents  
23 without denying access to other confidential documents  
24 that the county attorney would have access to.

25 The county attorney used the clerk's office

1 terminal with access to confidential documents and Tari  
2 Parish accessed the confidential documents in regard to  
3 the ex-parte motion and provided them to the assigned  
4 attorney on this case, Greg Hazard. Greg Hazard knew --

5 **THE COURT:** You are still on what Mr. Roche  
6 supposedly would testify to?

7 **MR. HUGGINS:** Yes.

8 **THE COURT:** Go ahead.

9 **MR. HUGGINS:** Well, that's what Mr. -- I  
10 will go back to Mr. Roche. You told me to proffer  
11 evidence. I have subpoenaed witnesses indeed. You  
12 quashed those subpoenas and ordered me not to serve them,  
13 so I am going on to what Mr. Hazard and Ms. Parish would  
14 testify to, which I was not allowed to bring in because  
15 they are employees of the county attorney's office.

16 Ms. Parish --

17 **THE COURT:** Before you move on from  
18 Mr. Roche, do you dispute that's what Mr. Roche would say,  
19 Ms. Eazer?

20 **MS. EAZER:** I don't, Judge, with the  
21 exception that they weren't obviously sealed, but --

22 **THE COURT:** What do you mean that they  
23 weren't obviously sealed?

24 **MS. EAZER:** They weren't sealed in the  
25 computer. I mean now when we use the computer, which we

1 use daily as part of our practice, the sealed records we  
2 would not be able to open them. So it was not sealed.  
3 The intent was that they be sealed, but they obviously  
4 weren't.

5 **THE COURT:** Well, that's what Mr. Huggins  
6 said. Mr. Roche would testify that there was a motion  
7 filed, it was asked to be sealed. The judge ordered that  
8 the motion be sealed. The order granting the order for  
9 the records was ordered to be sealed also. There was  
10 access through some terminal somewhere that was used  
11 supposedly for some adoption records was used to access  
12 those records.

13 **MS. EAZER:** I agree with everything up to  
14 the point Mr. Huggins said the records were in fact sealed  
15 and on our computer terminal, which isn't just used for  
16 adoption records, which I understand Mr. Huggins is saying  
17 we might need to have access --

18 **THE COURT:** What's the difference between if  
19 they were ordered sealed, they were supposed to be ordered  
20 sealed? I don't see what the complaint is with regard to  
21 Mr. Huggins' request for relief.

22 **MS. EAZER:** The computer terminal which  
23 shows everything, pleadings filed by parties, minute  
24 entries and so forth that we have in our office, and we  
25 use it frequently to make sure there is, you know, see if

1 motions have been filed, responses have been filed, check  
2 minute entries, orders by the court and so forth, it would  
3 show as I said in my pleading, Ex-Parte Motion for Medical  
4 Records. At that time it showed -- it did not show who  
5 the filing party was and it --

6 **THE COURT:** Well, there's only two parties  
7 in this case. It would be either your office or the  
8 Defense.

9 **MS. EAZER:** Correct.

10 **THE COURT:** So whoever was looking at it had  
11 reason to think that it wasn't the Plaintiff that --

12 **MS. EAZER:** No. Actually, Judge, as I  
13 pointed out in our Response, we actually did believe it  
14 was the State that had filed the motion.

15 **THE COURT:** So somebody in your office was  
16 mistaken who filed it and decided to check?

17 **MS. EAZER:** Yes. Ms. Parish -- number one,  
18 Dave Powell, prosecutor with our office was the assigned  
19 prosecutor at the time. He was out on an extended medical  
20 leave at the time. Ms. Parish was checking the computer  
21 to see if there were any responses or anything --

22 **THE COURT:** But Mr. Roche wouldn't know all  
23 of that though.

24 **MS. EAZER:** No, Judge.

25 **THE COURT:** Do you dispute what Mr. Roche

1 says?

2 **MS. EAZER:** No, not up to the point of --  
3 that the records were sealed because they weren't because  
4 when Ms. Parish clicked on it they opened.

5 **THE COURT:** So your point is you do not  
6 dispute what Mr. Huggins said that Mr. Roche would testify  
7 to, your point is, however, that notwithstanding the order  
8 that certain things be sealed, that they weren't sealed at  
9 least for this computer and for whatever reason somebody  
10 looked at them.

11 **MS. EAZER:** Correct, Judge.

12 **THE COURT:** Okay. So that doesn't change  
13 what Mr. Roche would testify to.

14 **MR. HUGGINS:** Your Honor, also you will  
15 notice next to Mr. Roche is Odette Apodaca. If I called  
16 her -- subpoenaed her to testify, she would say that the  
17 motion and the order were both properly marked sealed,  
18 unavailable to the public in the computer records of AJACS  
19 and the clerk, and that the only way anyone could access  
20 those is through the clerk's computer.

21 Your Honor, Tari Parish accessed the motion,  
22 the ex-parte motion, and took a copy of it to the assigned  
23 attorney, Greg Hazard, former counsel on this case.

24 **THE COURT:** And your point is based on what  
25 you have avowed so far to the Court about what Mr. Roche

1 and the other individual would testify to, that the  
2 prosecutor, this Ms. Parish, was on notice of sufficient  
3 information so that she knew she was doing something  
4 wrong.

5 **MR. HUGGINS:** That that attorney knew. I  
6 believe the rules apply to a subordinate through the  
7 attorney.

8 **THE COURT:** Well, whoever it was. Whoever  
9 it was knew they were doing something wrong.

10 **MR. HUGGINS:** Yes, they knew it was an  
11 ex-parte order. She takes the motion -- you're missing a  
12 step. She takes the motion and takes it to Greg Hazard,  
13 the assigned attorney and says, we have this ex-parte  
14 motion from Mr. Huggins. Okay. He reads it. Okay. And  
15 an attorney seeing there is an ex-parte motion from the  
16 other side knows he is to stop reading, notify the Court,  
17 notify the other side I have accessed ex-parte documents.  
18 He does not do that. Instead --

19 **THE COURT:** What should I do about it?

20 **MR. HUGGINS:** Instead --

21 **THE COURT:** What should I do about it?

22 **MR. HUGGINS:** I will get to that.

23 **THE COURT:** Well, that's what I am asking.

24 **MR. HUGGINS:** I'm trying to make my record,  
25 Judge.

1                   **THE COURT:** Go ahead.

2                   **MR. HUGGINS:** Instead, he directs his  
3 employee, Tari Parish, to go back and get the order which  
4 is confidential and sealed, and it's a second access. At  
5 this point he files an affirmative motion based upon  
6 access to records he has illegally accessed, which is in  
7 direct violation of the Rules of Professional  
8 Responsibility and violates the Defendant's right to due  
9 process.

10                   When the State has rules and statutes, a  
11 Defendant has a federal substantive due process right that  
12 those rules and statutes be complied with. And the State  
13 then files a Motion for Affirmative Relief and asks for  
14 the stay which is ultimately granted by this Court and the  
15 order is vacated, in looking over Judge Georgini's  
16 shoulder. But then, not only does the State use that, but  
17 Greg Hazard provides this information to Lando Voyles, the  
18 County Attorney, who creates -- well, first, contacts Chad  
19 Roche and says: Hey, we've got these records.

20                   And Chad says: Wait, that's a mistake. You  
21 shouldn't have got them.

22                   And Mr. Voyles says: I am going to issue a  
23 press release talking about access to these illegal  
24 records or access to these records by defense counsel and  
25 the judge issuing an order to cover their tracks.

1                   And issues -- gives a copy of that to  
2 Mr. Roche. Says: Look over this. Give me your input.  
3 And Mr. Roche does.

4                   And then on July 30th, the county attorney  
5 issues a press release indicating defense has illegally  
6 accessed victim's rights. That the county attorney has a  
7 duty to protect this victim's rights, which I think you  
8 have indicated there is no victim's rights under the  
9 Constitution or rules, though he says that in his press  
10 release, and that the judge acted inappropriately and only  
11 through our intervention were we able to stop this  
12 terrible process, and he issues a press release.

13                   We file a Motion for Sanctions when the  
14 prosecutor attacks defense counsel and suggests the judge  
15 engaged in contact to cover the defense attorney's tracks.  
16 At that point the county attorney directs his public  
17 information officer, Jim Knupp, to issue an email to the  
18 assigned judge, Rudy Georgini, saying the press release  
19 that came out and was reported in the Casa Grande Dispatch  
20 is going to be corrected tomorrow.

21                   Judge, you cannot notify the judicial  
22 officer on a case of communications regarding that case by  
23 having a non-lawyer appointee email the judge after hours.  
24 And the fact that you send a copy to defense counsel  
25 doesn't make it any more appropriate under the rules.

1 That is illegal. That violates the rules as to the filing  
2 of pleadings and the filing of documents, and it violates  
3 the rules in regard to professional responsibility.  
4 Again, depriving the Defendant in this case of his federal  
5 due process rights.

6 We ask for sanctions. The State comes in  
7 and concedes, yes, they know they do not represent the  
8 victim. And there is no victim under the Constitution or  
9 the rules as was contained in the press release, as was  
10 contained in their claims, but it's okay. What  
11 Mr. Huggins did was inappropriate and wasn't a proper  
12 ex-parte motion so Judge, quash the order that another  
13 judge issued and find that Mr. Huggins' motion was  
14 inappropriate.

15 I, in support of this offer of proof, note  
16 we have documents that were previously provided to the  
17 State, I will go through them for you. Exhibit 1 is a  
18 formal report that Chad Roche had done of his office in  
19 regard to confidential documents and accessing of those  
20 documents, and they specifically show that the documents,  
21 the order, and the motion in this case were illegally  
22 accessed by the county attorney's terminal on the clerk's  
23 computer. That's Exhibit 1.

24 Exhibit Number 2 is emails between  
25 Mr. Roche's office and his employees, Lynn Hurley and Jim

1 Knupp, the county attorney's public information officer,  
2 regarding the press release and the activities involved.

3 Exhibit Number 3 -- or excuse me, 4 (sic),  
4 is emails from Thomas Watson to -- and Annette Apodaca  
5 (sic), to Steve Vilhauer and other members in the clerk's  
6 office regarding the illegally accessed documents and  
7 press release.

8 **THE COURT:** Who is Mr. Watson?

9 **MR. HUGGINS:** Mr. Watson is an employee of  
10 the clerk's office, the Superior Court Clerk's Office.

11 Your Honor, number -- the next exhibit, 4 --  
12 excuse me, that last one I gave you was 3 -- is the news  
13 release, the public records release Lando Voyles made in  
14 regard to this case dated July 30th.

15 Exhibit Number 5 is the newspaper article  
16 from the Casa Grande Dispatch where Lando Voyles said the  
17 judge -- the documents were sealed by the judge to cover  
18 the defense attorney's tracks.

19 Exhibit Number 6 is the email to Judge  
20 Georgini by Jim Knupp in regard to an alleged retraction  
21 by the Casa Grande Dispatch.

22 Exhibit Number 7 is an email from Presiding  
23 Judge Carter Olson in regard to the investigation of the  
24 illegally accessing of confidential documents.

25 Exhibit 8 had to do with notice to

1 Mr. Hazard and the State that these matters -- defense  
2 counsel was seeking an evidentiary hearing on.

3 Judge, when the State illegally accesses  
4 confidential documents, that violates due process. And  
5 for every violation of right, there must be a remedy.  
6 We've asked this case be dismissed based upon the State's  
7 intentional violation of the Rules of Professional  
8 Responsibility and the due process rights of the  
9 Defendant.

10 Understanding that the Court may view that  
11 as too harsh of a remedy, we've asked for the remedy that  
12 the Pinal County Attorney's Office be disqualified. That  
13 this case be assigned to an outside attorney and let them  
14 proceed. They don't have access to the ex-parte  
15 documents. They aren't infected by that process and they  
16 could go ahead with the prosecution.

17 And third, we've asked that if nothing else,  
18 that at least the Court report to the State Bar of Arizona  
19 that confidential documents, which were sealed, were  
20 intentionally accessed by the county attorney's office and  
21 the Court was not notified, defense counsel was not  
22 notified, affirmative relief was sought on those pleadings  
23 in violation of the Rules of Professional Responsibility.

24 Thank you, Your Honor.

25 **THE COURT:** With regard to your remedy, your

1 sanctions requested as a remedy for the violation of  
2 rights, what's the nexus between the violation and the  
3 remedy you request?

4 **MR. HUGGINS:** The remedy --

5 **THE COURT:** My concern is Mr. Wilson and how  
6 he's been prejudiced by what you say happened. I have yet  
7 to hear how he's been prejudiced.

8 **MR. HUGGINS:** Application for ex-parte order  
9 is confidential. The factual basis and information  
10 contained therein is not to be shared with anyone. If  
11 it's been shared with appointed counsel, his ability to  
12 rely on confidential communications and his attorney's  
13 ability to act on confidential communications --

14 **THE COURT:** What confidential -- you mean  
15 the ex-parte request to the Court?

16 **MR. HUGGINS:** Yes, and order. Nobody was  
17 entitled to that. The Court could say: Mr. Huggins, I  
18 don't think it's an appropriate ex-parte motion. I can  
19 withdraw it or I can file it and make it public at that  
20 point. There is no process for which the State can  
21 unilaterally come in and disclose it. And now that  
22 confidentiality is broken.

23 And when you break that bond of  
24 confidentiality that a defendant in a capital case is  
25 entitled to expect from his counsel and the court --

1           **THE COURT:** Have you made ex-parte requests  
2 after July, after all of this --

3           **MR. HUGGINS:** Yes.

4           **THE COURT:** -- happened?

5           **MR. HUGGINS:** Yes.

6           **THE COURT:** Well, how is your -- how has  
7 Mr. Wilson's ability to access ex-parte orders of the  
8 Court been adversely affected by this episode?

9           **MR. HUGGINS:** Because he cannot have the  
10 confidence --

11           **THE COURT:** Well, he seems like he has the  
12 confidence.

13           **MR. HUGGINS:** -- that would be expected --

14           **THE COURT:** You have continued to make  
15 requests, as I assume you have good reason for, for  
16 ex-parte orders.

17           **MR. HUGGINS:** Yes.

18           **THE COURT:** Okay. So how has Mr. Wilson's  
19 confidence in getting those orders been adversely  
20 affected?

21           **MR. HUGGINS:** Well, until the State was  
22 granted relief based upon accessing it, I don't think  
23 there were any. He could hope the judge would take  
24 appropriate action against illegally accessing  
25 confidential requests and it would be preserved.

1                   **THE COURT:** Well --

2                   **MR. HUGGINS:** But, yes, bonds of  
3 confidentiality between attorney/client, between  
4 court/client, and -- has been ruptured.

5                   **THE COURT:** So shouldn't the remedy then be  
6 appointment of new counsel?

7                   If you and Mr. Wilson want new counsel,  
8 that's the request to make, not to discharge Plaintiff's  
9 counsel.

10                   **MR. HUGGINS:** Mr. Wilson doesn't want to  
11 lose his attorney because the county attorney's office --

12                   **THE COURT:** Well, then don't ask for it.

13                   **MR. HUGGINS:** -- the attorney/client  
14 privilege.

15                   **THE COURT:** Don't ask for it.

16                   **MR. HUGGINS:** I have not.

17                   **THE COURT:** But if that relationship has  
18 been interfered with, you do need to bring it to the  
19 Court's attention and that would have to be the remedy,  
20 but --

21                   **MR. HUGGINS:** No.

22                   **THE COURT:** -- but if Mr. Wilson is perhaps  
23 even more confident in your representation because of your  
24 vigilant efforts to protect his rights and protect  
25 Mr. Roche's, the integrity of his process, protect the

1 integrity of the newspaper, address these public relation  
2 issues, that's fine. If he still wants you to represent  
3 him, I assume that the relationship has not been so  
4 adversely affected.

5           **MR. HUGGINS:** I think that's an improper  
6 assumption, Judge. And I would note under the Court's  
7 reasoning you have a case like *Pecard* where the State  
8 actually invades attorney/client communications, your  
9 remedy in that case, Judge, would get the defense attorney  
10 off the case because the State improperly interfered with  
11 attorney/client communications. That certainly wasn't a  
12 remedy the Supreme Court thought was appropriate.

13           **THE COURT:** I suspect because they were not  
14 invited to consider that remedy. You're telling me the  
15 relationship between you and Mr. Wilson has been adversely  
16 affected by these actions by the State. And if that's the  
17 case, I need to do something about it. You have just  
18 brought it up as a conceptual issue. You have not given  
19 me any reason to think that Mr. Wilson doesn't have  
20 anything but increased confidence in you and your  
21 relationship is untarnished.

22                           Well, let me hear from Ms. Eazer.

23                           Ms. Eazer.

24           **MS. EAZER:** Judge, I guess the one step  
25 Mr. Huggins is ignoring is the very first thing that set

1 this whole thing in motion, was an improper ex-parte  
2 communication which likewise violates the ethical rules in  
3 a number of ways.

4 **THE COURT:** Two wrongs don't make a right.

5 **MS. EAZER:** Absolutely not, Judge, and  
6 that's why I'm saying perhaps, you know, if the Court does  
7 have any concerns about how all this happened, maybe we  
8 should take testimony because what my avowal would be to  
9 you, Judge -- and I use this AJACS computer daily and  
10 everybody in my office does as well. And what my avowal  
11 to you is what is in the affidavit of Ms. Parish, is at  
12 the time that this happened -- while I have no doubt that  
13 Mr. Roche and the process was to seal that motion and  
14 order, whether they are proper or not, that they were not  
15 sealed, nor was there anything on the computer to show  
16 they were sealed and in fact, the only thing that showed  
17 was Ex-Parte Motion for Victim's Medical Records.

18 Because Mr. Powell was on extended medical  
19 leave, Ms. Parish believed, as what I would have quite  
20 frankly, Judge, that he must have made that motion because  
21 never in our wildest dreams would we expect a defense  
22 attorney would be filing an ex-parte motion to obtain the  
23 victim's medical records. And as I pointed out in my  
24 motion, even Mr. Huggins was using the word "victim" then.  
25 And so when Ms. Parish saw that, she believed that was

1 something Mr. Powell must have filed and that he didn't  
2 tell her about it, and as I said, he was out on an  
3 extended medical leave at the time, personal leave.

4 **MR. HUGGINS:** Your Honor, I have to object.

5 **THE COURT:** No, sit down. Sit down,  
6 Mr. Huggins.

7 **MR. HUGGINS:** Your Honor, Mr. Powell --

8 **THE COURT:** No.

9 **MR. HUGGINS:** Mr. Powell never entered a  
10 notice of appearance in this case. You can look through  
11 the file. This case was assigned to Greg Hazard at the  
12 time.

13 **THE COURT:** Mr. Huggins. Sit down,  
14 Mr. Huggins.

15 Go ahead.

16 **MS. EAZER:** Actually the case was assigned  
17 to Mr. Powell, Judge.

18 **THE COURT:** Go ahead.

19 **MS. EAZER:** In any event, Ms. Parish, when  
20 she saw that, clicked the little file thing that we know  
21 to click to open up the pleading. And when she saw that  
22 it was filed by the Defense, she was very concerned and  
23 immediately took it to her supervisor, Mr. Hazard, who was  
24 overseeing Mr. Powell's cases while he was out on leave.

25 Judge, at the time and it appears this way

1 from Mr. Hazard's motions, I haven't spoken to him myself  
2 personally, but it appears that -- just as the Court said,  
3 you weren't aware of the department -- you know, the  
4 provision in the victim's rights that if a victim was in  
5 custody at the time that they didn't share those rights.  
6 Mr. Hazard wasn't either and neither was Ms. Parish, and  
7 the State concedes that. At the time they felt this was a  
8 violation of victim's rights. I still believe it was a  
9 violation of patient/physician privilege, victim's rights  
10 aside because Mr. Huggins did not have a release from the  
11 victim's representative at the time he filed an improper  
12 ex-parte motion with the court.

13                   So at the time, Ms. Parish opened something  
14 that she had every reason to believe had perhaps been  
15 filed by the State, and every reason to believe would have  
16 never been filed by a defense attorney who would have no  
17 rights to the victim's records, let alone to ask for them  
18 ex-parte.

19                   **THE COURT:** But at some point it must have  
20 dawned on someone in your office, I would hope, that this  
21 request, proper or not, was not filed by your office. It  
22 must have dawned on somebody as soon as they looked at the  
23 top left-hand corner of the request, if not the order  
24 itself, where it said Bret Huggins and not this Voyles  
25 fellow.

1           **MS. EAZER:** Absolutely. And that's why the  
2 State immediately took steps to number one, notify the  
3 Court and number two, took steps to protect the victim's  
4 records because the State believed this was --

5           **THE COURT:** But, you know, as I understand  
6 the rules that apply, when you get communication that  
7 you're not supposed to look at, you're not supposed to  
8 seek relief based on the information you surreptitiously,  
9 improperly obtained, you are supposed to return it to the  
10 person who had access to it. You should have promptly --  
11 your office, I should say, should have promptly let  
12 Mr. Roche know that you had accessed something that it  
13 appears you ought not to have accessed and let Mr. Roche  
14 deal with the problem.

15           **MS. EAZER:** Yes, Judge. And again, I guess  
16 a lot of this now would get into something I would imagine  
17 would be dealt with by the State Bar if Mr. Huggins took  
18 proper means to address this issue if he in fact believes  
19 there was unethical behavior. But there was a balancing,  
20 Judge. If the State believed that the document never  
21 should been filed ex-parte, the request -- oh, my God.

22           **THE COURT:** Just for our record, there was  
23 quite a loud noise which has caused us some concern.

24           **MR. HUGGINS:** Judge, can we take a break?

25           **THE COURT:** It would be a good time. Let's

1 take a 15 minute break.

2 (Whereupon, the Court recessed at 10:37 a.m.  
3 and reconvened at 10:52 a.m.)

4 **THE COURT:** Okay. We are back on the record  
5 after taking a break. We understand that it was some sort  
6 of incident with a ladder that made some noise that  
7 disturbed all of us.

8 Ms. Eazer, we interrupted you. Over the  
9 break I was thinking about your suggestion that perhaps  
10 instead of talking about getting testimony, maybe we  
11 should just get the testimony. And in that regard, keep  
12 in mind in light of my ruling with regard to the subpoenas  
13 to your office, I'm likely to assume it's true the  
14 suggestions made by Defendant about what your office did  
15 or didn't do. So if you need to contradict that, that's  
16 fine, but otherwise that will be our record.

17 **MS. EAZER:** And I'm sorry, Judge, I --

18 **THE COURT:** Well, what I've done is I told  
19 the Defense that I would not allow them until at least the  
20 trial started, subpoenaing your associates in the office  
21 and start examining them about what they did and what they  
22 didn't do, even if it's past tense. But by making that  
23 ruling, I ought not to give you both a shield and a sword,  
24 so I'm likely to assume that what the Defense says that  
25 your office did, that is this Ms. Parish and this

1 Mr. Hazard looking at things that were filed, and then  
2 they have some understanding of what happened next from  
3 these exhibits. So if you think that's wrong, then maybe  
4 we need to take testimony from your office.

5 **MS. EAZER:** I believe that at least for  
6 Ms. Parish, she's a paralegal and at least so she can  
7 clarify what she saw on the computer at the time.

8 **THE COURT:** She saw the motion and the  
9 order.

10 **MS. EAZER:** Correct, but I mean as far as  
11 whether she had any reason to believe that it was  
12 something filed by the Defense.

13 **THE COURT:** How could she look at it and not  
14 think it was filed by the Defense if it had Mr. Huggins'  
15 name on it and his signature? What would make her think  
16 it was filed by Plaintiff?

17 **MS. EAZER:** No, I'm talking about when she's  
18 looking at the computer screen and before she hit open.  
19 I'm not contesting once she opened it, she knew it was  
20 filed by Mr. Huggins.

21 **THE COURT:** Okay.

22 **MS. EAZER:** I'm just talking because  
23 Mr. Huggins keeps saying it was surreptitious, she knew  
24 what she was doing. She knows she shouldn't have clicked  
25 open. That there was nothing on the computer that would

1 have given her any reason.

2           **THE COURT:** Let me finish hearing from you,  
3 but I'm thinking since I have two parties suggesting,  
4 perhaps we should hear from Mr. Roche. Although I think I  
5 have enough to rule, it seems like perhaps out of an  
6 abundance of caution if he's here, ready, willing and able  
7 to testify, maybe we should hear from him.

8           **MS. EAZER:** With respect to the State's  
9 argument, Judge, again the State is not disputing that  
10 once the motion was opened we were able to see it was a  
11 motion filed by Mr. Huggins. The question then becomes if  
12 we had good cause to believe that Mr. Huggins was  
13 improperly, unethically -- and I don't want to use the  
14 word illegal, but I mean, filing an improper ex-parte  
15 motion and that victim's rights were implicated, that is  
16 why the State then took action.

17           The State never denied that they viewed and  
18 read what they then knew was an ex-parte motion after it  
19 had been opened, but believed at the time (A), they had a  
20 duty to notify the Court that they believed Mr. Huggins  
21 was engaging in improper activity which was violative of  
22 the victim's rights. And I can say to this day, even  
23 though the victim does not have the same rights under Rule  
24 39 and the Constitution, I do to this day still believe  
25 that Mr. Huggins' filing the ex-parte request was

1 improper, as this Court has found that it was not properly  
2 filed under Rule 15.9, therefore he had no right to be  
3 asking for release of the victim's records in that manner.

4           **THE COURT:** I think the Defendant's point  
5 though is a bit different. His point is once these  
6 people, Parish and Hazard, put one and one together and  
7 came up with two, that is a sealed document, they accessed  
8 it, they realized because it was obvious that it was filed  
9 by the Defense. One and one equals two. They knew that  
10 they had accessed what was supposed to have been sealed,  
11 limited access materials, and instead of doing what  
12 Defendant says they should have, which is I guess just  
13 putting it back or returning the documents that they had  
14 improperly obtained and then asking for permission to use  
15 those records, they just went off to the newspaper.  
16 That's what they are saying.

17           **MS. EAZER:** Well, actually there is a step  
18 before the newspaper. I mean the news release was totally  
19 separate. The first thing the State did was file a  
20 motion -- bring it to the Court's attention number one,  
21 and number two, to file a motion to immediately --

22           **THE COURT:** Bringing to the Court's  
23 attention not what they had done wrong, but what they  
24 thought Mr. Huggins had done wrong.

25           **MS. EAZER:** Well, at the same time bringing

1 to the Court's attention that they had accessed something  
2 that they knew was ex-parte.

3 **THE COURT:** That was improperly obtained  
4 information.

5 **MS. EAZER:** I guess again --

6 **THE COURT:** How could it be anything but  
7 improper if you go into a computer system that you know  
8 something is filed under seal and then you look at it  
9 anyway and you realize that it's the defense that filed it  
10 and got the seal? You try to take maximum advantage of  
11 the computer breach.

12 **MS. EAZER:** But Judge, again, that's  
13 where -- that's where there is a huge disagreement. And  
14 then that's where the testimony will probably come in  
15 useful because it wasn't -- there wasn't this  
16 surreptitious Ms. Parish looking and seeing something on  
17 the computer system. Might even be helpful to show the  
18 Court what the computer system looked like before she  
19 opened the document. There was absolutely nothing to  
20 indicate to her that she was --

21 **THE COURT:** Well, I'm not sure if  
22 Mr. Huggins is willing to give it to you, but for the sake  
23 of argument I'm willing to give it to you that somehow she  
24 was ignorant of the fact that -- that her office had filed  
25 something and was under seal. If we give her that, if we

1 give her she didn't assume, as I think many people would,  
2 it was actually the Defense that filed it, it's not so  
3 much that. It's when the documents were obtained and then  
4 it was so obvious that it was the Defense that had filed  
5 it and sought the order sealing it that they didn't --  
6 whatever they did thereafter they did wrong, they should  
7 have done something else.

8           **MS. EAZER:** And I guess I would just -- and  
9 again, as I said, this might make a very interesting  
10 ethics opinion because -- and I will give just a very easy  
11 example by way of analogy. If the State accidentally came  
12 into possession of something and after looking at it they  
13 become aware it was privileged communications, but in the  
14 first two sentences of that document in my fake example,  
15 it's the defense -- again, defense attorney communicating  
16 with his client saying: Okay, we're set to shoot the  
17 witness tonight. So it becomes very apparent in the first  
18 two sentences of something it's unlawful conduct, what is  
19 the State's duty if that --

20           **THE COURT:** Your point is the State needs to  
21 do something and what your office did in this instance was  
22 nothing.

23           **MS. EAZER:** Was to try to protect the  
24 victim's right against what we believed was improper -- an  
25 improper ex-parte request for records that Mr. Huggins

1 should never have had.

2           **THE COURT:** To speak hypothetically -- I'm  
3 sure you would accept this hypothetical. Let's say  
4 instead of filing the motion, which I think admittedly  
5 could have been, perhaps should have been just a little  
6 bit different, but instead if the office, Hazard and  
7 Parish had run over to the Department of Corrections and  
8 said: Do not turn them over, do not turn over the  
9 records, keep them here. And gone over to the doctor's  
10 office and said: Do not do anything about this order that  
11 you might be getting from the judge. And interfered --  
12 and perhaps then the records were lost. Let's make the  
13 hypothetical rather complicated. So thanks to the county  
14 attorney's office, it utilizes improperly obtained  
15 information that spoiled it somehow.

16           Then you would agree that that situation,  
17 first of all, is different than this situation, and  
18 perhaps there should be some remedy there.

19           **MS. EAZER:** If there was some privileged  
20 material that --

21           **THE COURT:** Well, even just -- no, this  
22 material. Your office learned that the Defense was trying  
23 to get Mr. Pierce's medical records. Your office believed  
24 they should be going about it a different way. Your  
25 office correctly assumed it wasn't really true mitigation.

1 And if your office had done something, specially if it  
2 successfully prevented us from ever obtaining the  
3 evidence, that would be different.

4 **MS. EAZER:** Yes, Judge. If our office did  
5 something that then resulted in the loss of evidence that  
6 somehow then prejudiced the Defendant, I agree that there  
7 would then be a good argument for a remedy.

8 **THE COURT:** So should we have that testimony  
9 then now?

10 **MS. EAZER:** Absent a showing of prejudice by  
11 the Defendant I don't think it's necessary, Your Honor.

12 **THE COURT:** Okay. Well, you know, I'm sort  
13 of reminded of what Judge Fred Hyder had to do so long ago  
14 when he was considering the *Gerald Gault* case and he  
15 couldn't see a reason why Amelia Lewis should put on any  
16 evidence in the *In Re Gault Matter* and, of course, Justice  
17 Fortas thought otherwise, but the record had been made.

18 And perhaps because this is a capital case  
19 and even though I tend to agree with Ms. Eazer, if we have  
20 got a witness here that would illustrate your point,  
21 Mr. Huggins, specially if it would illustrate the State's  
22 point too, perhaps we ought to have it.

23 So, Mr. Roche, you have been requested --

24 **MS. EAZER:** Judge, if I could just beg a  
25 favor of the Court and Counsel. Is there any way we could

1 put on Investigator McCarthy very briefly? She is for the  
2 purpose of the *Chronis* hearing and all she is going to  
3 testify to is the Defendant was in custody at the time of  
4 the offense.

5 **THE COURT:** She has scheduling issues?

6 **MS. EAZER:** Yes, she does.

7 **MR. HUGGINS:** Your Honor, I object to that.  
8 We were in the middle of something and we are going to  
9 change everything around so the Department of Corrections  
10 employee can be inconvenienced?

11 **MS. EAZER:** I had asked actually at the  
12 beginning of the hearing if there was any way we could do  
13 that since it was just going to be two minutes and --

14 **THE COURT:** Well, I overlooked that. I  
15 don't see that there is any prejudice.

16 Specially, Mr. Roche, can we impose upon you  
17 to have you wait just a little bit longer?

18 **MR. ROCHE:** Absolutely, Your Honor.

19 **THE COURT:** Okay. Call your witness then.

20 **MS. EAZER:** The State calls Investigator  
21 Mary McCarthy.

22 **THE COURT:** Ma'am, if you will come forward,  
23 our clerk will swear you in. If you'll stand up over  
24 here, she will swear you in first.

25 ////

1                   (Whereupon, the witness, Mary McCarthy, was  
2 duly sworn by the Clerk of the Court.)

3                   **THE COURT:** Go ahead, Ms. Eazer.

4  
5                   **MARY McCARTHY,**

6 called as a witness herein, was examined and testified as  
7 follows:

8                   **DIRECT EXAMINATION**

9 **BY MS. EAZER:**

10           Q.     Good morning.

11                   For the record, can you please state your  
12 name and your occupation?

13           A.     I'm a criminal investigator with the Arizona  
14 Department of Corrections. My name is Mary McCarthy.

15                   **THE COURT:** Why don't you move that  
16 microphone, ma'am, just -- yeah, so it's -- go ahead.

17 **BY MS. EAZER:**

18           Q.     And how long have you been an investigator with  
19 the Department of Corrections?

20           A.     Five years.

21           Q.     And were you employed in that capacity back in  
22 March of 2012?

23           A.     Yes.

24           Q.     And on March 16th of 2012 were you assigned an  
25 investigation involving a person by the name of Richard

1 Wilson?

2 A. Yes.

3 Q. Do you see that person in court today?

4 A. Yes.

5 Q. Can you for the record please indicate where he  
6 is sitting and what he is wearing?

7 A. He's a white male to my left with balding head  
8 and an orange jumpsuit.

9 **MS. EAZER:** May the record reflect the  
10 witness identified the Defendant?

11 **THE COURT:** It may.

12 **BY MS. EAZER:**

13 Q. Now Detective McCarthy, based on your  
14 investigation -- and we are not necessarily going to get  
15 into the facts of the investigation, but was there a death  
16 of a person by the name of Nolan Pierce?

17 A. Yes.

18 Q. And on what date was Mr. Pierce's death  
19 discovered?

20 A. March 16, 2012.

21 Q. Okay. And did Mr. Pierce share a cell with  
22 anyone in the weeks prior to and leading up to March 16th  
23 of 2012?

24 A. Three weeks prior.

25 Q. Okay. And for the entire three weeks prior or

1 thereabouts?

2 A. Yes.

3 Q. Okay. And who did he share a cell with?

4 A. I cannot recall his name.

5 Q. Let me back up. Did Mr. Pierce share a cell with  
6 Richard Wilson at some point in time?

7 A. Yes, for approximately three weeks.

8 Q. And so was that three weeks prior to March 20 --  
9 I mean March 16th of 2012?

10 A. Yes.

11 Q. Okay. And so that just leads me to my last  
12 question, Detective -- or Investigator McCarthy. Was --  
13 to your knowledge and based on your investigation, was  
14 Richard Wilson in custody from the date of March 1st up  
15 until March 16th of 2012?

16 A. Yes.

17 Q. And he was in custody at the time that the death  
18 of Nolan Pierce occurred?

19 A. Yes.

20 **MS. EAZER:** Thank you very much. I have no  
21 further questions.

22

23

**EXAMINATION**

24

**BY THE COURT:**

25

Q. Ma'am, I am not sure I understand your testimony.

1 You testified that they shared a cell three weeks before  
2 the 16th; is that correct?

3 A. Approximately, yes.

4 Q. For just one day they shared a cell?

5 A. No. He had approximately been in SMU I where the  
6 Defendant was housed for approximately three weeks in the  
7 same cell.

8 Q. Okay. For the three weeks prior to March 16th?

9 A. Yes.

10 **THE COURT:** Okay. Mr. Huggins.

11  
12 **CROSS-EXAMINATION**

13 **BY MR. HUGGINS:**

14 Q. Investigator McCarthy, you don't know when the  
15 death occurred, do you?

16 A. No.

17 Q. There is indication this death may have occurred  
18 three days before it was discovered?

19 A. Possibly.

20 Q. You don't know who had access to that cell over  
21 the three days prior to March 16th, do you?

22 A. Several officers had access to the cell.

23 Q. You've got departmental policies that require  
24 three times a day that an officer personally confirm every  
25 inmate in SMU I is alive, don't you?

1           A.    Yes.

2           Q.    They are required to talk and communicate --

3                   **MS. EAZER:** Your Honor, I am going to object  
4 as to relevance. The only purpose of this testimony is to  
5 show the Defendant was in custody at the time of the  
6 offense.

7                   **THE COURT:** Mr. Huggins.

8                   **MR. HUGGINS:** Your Honor, I'm allowed to  
9 cross examine on any relevant matter and the time of the  
10 offense I assume is when the person died.

11                   **THE COURT:** Well, that's certainly true, but  
12 that's not Ms. Eazer's point. Her point is you were not  
13 cross examining on a relevant point.

14                   Why is your question relevant? That's what  
15 I need to hear from.

16                   **MR. HUGGINS:** Well, because she's gone into  
17 when the death occurred, where the death supposedly  
18 occurred, and I am cross examining as to the witness'  
19 basis of that knowledge and whether other people could be  
20 involved.

21                   **THE COURT:** Overruled then. Go ahead.

22 **BY MR. HUGGINS:**

23           Q.    So you have departmental policy that requires  
24 three times a shift -- or three times a day that you  
25 personally confirm one is alive?

1           A.     I know that they do security checks.  I don't  
2 know what the specific policy is.  I don't deal with  
3 policies.

4           Q.     Okay.  And in fact, your officers certified that  
5 Mr. Pierce was alive on the 13th, the 14th, the 15th, and  
6 the 16th of 2012?

7           A.     Wednesday was the last official recorded time  
8 that he had actually signed for his store.

9           Q.     And that would have been what date?

10          A.     He died -- well, he was found on the 16th, so it  
11 would have been the 14th.

12          Q.     You don't have custody of any departmental --  
13 you're not a custodian of records of any Department of  
14 Corrections' records, are you?

15          A.     No.

16          Q.     The information you have in regard to Mr. Wilson  
17 is information other people have provided you?

18          A.     From our database.

19          Q.     You're not -- you haven't been provided any  
20 certified court documents, have you?

21          A.     From?

22          Q.     Anywhere.

23          A.     No.

24          Q.     Who else had access to cells in SMU I from the  
25 period of the last week in April to the first two weeks in

1 March?

2 A. Officers that have been assigned on the different  
3 shifts.

4 Q. Do inmates move within SMU I?

5 A. Yes.

6 Q. Okay. Would inmates go by and communicate with  
7 each other in regard to being in SMU I?

8 A. In that specific pod I'm sure they do, but I  
9 wasn't there. I don't know.

10 **MR. HUGGINS:** No further questions.

11 **THE COURT:** Ms. Eazer.

12

13 **REDIRECT EXAMINATION**

14 **BY MS. EAZER:**

15 Q. Investigator McCarthy, you indicated that  
16 Mr. Pierce was determined to have at least been alive on  
17 March 14th; is that correct?

18 A. Yes.

19 Q. And then dead on March 16th --

20 A. Yes.

21 Q. -- is that correct?

22 And during that week to ten days surrounding  
23 March 14th to March 16th, was the Defendant, Richard  
24 Wilson, in custody of the Department of Corrections?

25 A. Yes.

1 Q. And in fact, did Mr. Wilson -- was Mr. Wilson the  
2 one who pointed out Mr. Pierce's dead body in the same  
3 cell that they shared?

4 A. Yes.

5 MS. EAZER: Thank you, Investigator. I have  
6 no further questions.

7 THE COURT: Thank you, ma'am.

8 MS. EAZER: May this witness be excused,  
9 Your Honor?

10 THE COURT: Yes, you may.

11 Let's readdress this probable cause when we  
12 can return after we have Mr. Roche testify.

13 MS. EAZER: Thank you, Your Honor.

14 THE COURT: Sir, if you will come forward  
15 and be sworn.

16 (Whereupon, the witness, Chad Roche, was  
17 duly sworn by the Clerk of the Court.)

18 THE COURT: It's your motion, Mr. Huggins.  
19 Go ahead.

20 CHAD ROCHE,

21 called as a witness herein, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. HUGGINS:

25 Q. Mr. Roche, you are here pursuant to a subpoena I

1 had issued for you, correct?

2 A. Yes.

3 Q. Okay. And just for the record, you are the  
4 elected Clerk of the Pinal County Superior Court?

5 A. I am.

6 Q. And how long have you been in that position?

7 A. About three and a half years.

8 Q. Okay. In regard to this matter, did you have  
9 occasion to have a report done on confidential documents  
10 held by your office?

11 A. The report was for sealed documents, but yes.

12 Q. Okay. And that period -- and did you prepare  
13 such a report that totals 14 pages?

14 A. Yes, I did.

15 Q. Could I hand you what's been marked as Exhibit 1  
16 and ask if you could identify this?

17 A. This would be a copy of the sealed records  
18 report.

19 Q. Is that the report you had prepared in the course  
20 of your duties as Clerk of the Superior Court at the  
21 request of the presiding judge?

22 A. It appears to be, yes.

23 Q. Is that a correct and accurate copy of the  
24 record?

25 A. Yes.

1 Q. Okay. I would ask you to review that. Do you  
2 see any improper accessing of confidential documents in  
3 regard to CR2012-1764?

4 A. Yes.

5 Q. Is that on page eight?

6 A. It is.

7 Q. Actually there were two separate occasions?

8 **MS. EAZER:** Objection, Your Honor. Leading.

9 **MR. HUGGINS:** Your Honor --

10 **THE COURT:** Well, make sure your question is  
11 not leading. Go ahead.

12 **MR. HUGGINS:** Your Honor, I would ask --  
13 this is a proceeding to the Court and I believe leading is  
14 appropriate.

15 **THE COURT:** The objection is sustained. Ask  
16 another question.

17 **BY MR. HUGGINS:**

18 Q. Are there two separate documents listed in red on  
19 your report?

20 A. There were, yes.

21 Q. Was a pleading filed on 4/4 of 2013 in  
22 CR2012-1764?

23 A. I'm not sure of the content of the document  
24 itself, but yes, a document was filed, yes.

25 Q. And it was sealed?

1 A. It was.

2 Q. And your records reflect it was sealed?

3 A. It does.

4 Q. Do you reflect what kind of document that was?

5 A. Without actually seeing the document itself, I  
6 can't. I don't know.

7 Q. Is it labeled as a miscellaneous sealed document?

8 A. It is.

9 Q. Is there some way you can check that for us so we  
10 can tell the Judge what it is?

11 A. Absolutely. If I'm allowed to access the AJACS  
12 system on the bench, I can look that up.

13 **MR. HUGGINS:** Your Honor, may the witness be  
14 allowed to do so?

15 **THE COURT:** You want to use this computer?

16 **THE WITNESS:** I can use the clerk's  
17 computer.

18 **THE COURT:** You mean your computer.

19 **THE WITNESS:** Sir?

20 **THE COURT:** You're the clerk.

21 (Whereupon, the witness Chad Roche accessed  
22 the AJACS system through the courtroom clerk's computer.)

23 **THE COURT:** Counsel, while we are waiting  
24 for the witness to review the computer as requested by  
25 Mr. Huggins, back on the issue of aggravating factors.

1           Ms. Eazer, what is the aggravating factor  
2 that Ms. McCarthy testified to and the wording?

3           **MS. EAZER:** That the Defendant was in the  
4 custody of the Department of Corrections at the time the  
5 offense was committed. And that would be 13-751(F)(7).

6           And with respect to the second aggravator,  
7 the State is going to be moving to submit the certified  
8 Department of Corrections Pen Pack.

9           **THE COURT:** And if I refer to the Department  
10 of Corrections aggravator, that's number one?

11          **MS. EAZER:** Yes, Your Honor. That is the  
12 first aggravator.

13          **THE COURT:** And the second aggravator is --

14          **MS. EAZER:** 13-706 -- boy, I should know  
15 this by heart, but I don't. I didn't write it down right.  
16 (F)(1) I think. 13-706(F)(1), and that is that he's  
17 previously been convicted of a serious offense in  
18 CR2005138499.

19          **THE COURT:** Okay. Our witness has left the  
20 deputy clerk's bench and is back on the witness stand.

21                 Are you ready to give an answer or do we  
22 need another question?

23          **THE WITNESS:** I can answer with the  
24 documents, Your Honor.

25          **THE COURT:** Go ahead.

1                   **THE WITNESS:** The document found on 4/4/13  
2 in CR2012-1764 is a sealed attachment for the motion.

3 **BY MR. HUGGINS:**

4       Q. That has nothing to do with victim -- or alleged  
5 victim's medical records at all, does it?

6       A. By the title of the document I would say no. I  
7 don't know.

8       Q. Isn't that, in fact, an ex-parte motion for court  
9 order to assist mitigation investigation and proposed  
10 order and the order?

11       A. I believe that is its title, yes.

12                   **MR. HUGGINS:** Your Honor, I would ask for  
13 leave to re-file my motion. This is an additional  
14 pleading that's been accessed that has not been before the  
15 Court.

16                   **THE COURT:** Well, if you want to get Court  
17 permission to file pleadings, let's do that without  
18 delaying Mr. Roche. Go ahead.

19 **BY MR. HUGGINS:**

20       Q. Do you have a separate listing for documents  
21 filed on June 12, 2013?

22       A. I do.

23       Q. Okay. Was that improperly accessed?

24       A. (No oral response.)

25       Q. Was that accessed?

1 A. Yes, it was accessed.

2 Q. By other than a clerk?

3 A. Yes.

4 Q. Okay. In your research were you able to  
5 determine who had accessed these confidential documents  
6 and where they had been accessed?

7 A. We were able to determine the user, yes.

8 Q. And as to the documents filed 4/4/2013, who was  
9 the user that accessed those confidential documents?

10 A. It would be the County Attorney's Office Victim  
11 Assistance terminal.

12 Q. Is there a terminal you maintained in the County  
13 Attorney's Victim Assistance Office that allowed them to  
14 access confidential sealed documents?

15 A. There is, yes.

16 Q. Okay. That's not their computer, that's your  
17 computer terminal, correct?

18 A. It is, yes.

19 Q. And you heard what I told Judge Cahill earlier.  
20 That the reason for this was because you could not limit  
21 access to some confidential documents and not others,  
22 correct?

23 A. Correct.

24 Q. And so all documents had to be available,  
25 correct?

1 A. Yes.

2 Q. And the -- can you tell the Court, did the  
3 documents filed on June 12, 2013, were they accessed by  
4 the county attorney?

5 A. Yes, the Victim Assistance terminal.

6 Q. The documents in your system, are they identified  
7 as confidential documents not available to the public?

8 A. They are marked as sealed, yes.

9 Q. Okay. The only way you could get access to those  
10 is by having a computer with authorization of your office?

11 A. Correct.

12 Q. The public could not get access to these, could  
13 they?

14 A. No, they cannot.

15 Q. Because they have been sealed by court order?

16 A. Correct.

17 Q. Did it come to your attention that sealed  
18 documents had been accessed by the county attorney's  
19 office?

20 A. It did.

21 Q. And did you learn about that from the county  
22 attorney?

23 A. No, I first learned about it from one of my  
24 deputy clerks.

25 Q. And who would that be?

1 A. Toni Blanco.

2 Q. Okay. And what did you do when you learned about  
3 that?

4 A. I immediately had my IT director, Tom Watson,  
5 begin an investigation as to what document was accessed  
6 and when.

7 Q. Is that ultimately what resulted in this report?

8 A. It is.

9 Q. Did you and your office have communications by  
10 email with the county attorney?

11 A. We did.

12 Q. I hand you what's been marked as Exhibit 2 and  
13 ask if you could identify that.

14 A. This would be an email from Lynn Hurley to Jim  
15 Knupp.

16 Q. Lynn Hurley is your supervisor?

17 A. She was at the time, yes.

18 Q. Okay. And you prepared that document and  
19 provided it to me pursuant to a public records request?

20 A. I did.

21 Q. Is that a correct and accurate copy of the  
22 document?

23 A. As far as I can tell, yes.

24 **THE COURT:** Who was the recipient and what  
25 title and job does he have?

1                   **THE WITNESS:** The recipient, Your Honor, was  
2 Jim Knupp.

3 **BY MR. HUGGINS:**

4           Q.     And what is Jim Knupp's position?

5           A.     He is the PIO, Public Information Officer, for  
6 the county attorney's office.

7           Q.     He is not your employee?

8           A.     He is not, no.

9           Q.     He is the county attorney's public information  
10 officer?

11          A.     Correct.

12          Q.     I hand you what's been marked as Exhibit 3 and  
13 ask if you could identify this.

14          A.     This is an email chain beginning from Odette  
15 Apodaca to myself and my chief deputy, Steve Vilhauer,  
16 notifying us that Toni Blanco had talked to Mr. Huggins  
17 about the issue.

18          Q.     And again, Annette -- Odette Apodaca, the person  
19 here in the courtroom is your employee?

20          A.     Yes.

21          Q.     And that is, again, a record that you provided to  
22 us in regard to our public information request?

23          A.     It is.

24          Q.     Were you provided a copy of a proposed news  
25 release by Jim Knupp in regard to what Lando Voyles was

1 going to notify the press or issue for the press?

2 A. I was copied on an email between my PIO and his  
3 PIO, yes.

4 Q. And were you asked to comment on that?

5 A. My PIO was, yes.

6 Q. And did you give him instructions to comment on  
7 that?

8 A. I don't recall giving her direct instructions,  
9 but she did comment.

10 Q. Okay. I hand you what's been marked as  
11 Exhibit 4. Could you identify this?

12 A. This appears to be a news release from the Pinal  
13 County Attorney's Office.

14 Q. Is that what you were asked to comment on before  
15 it was issued?

16 A. Again, Counsel, I wasn't asked specifically, my  
17 PIO was, but yes, it appears to be the same document.

18 Q. I hand you what's been marked as Exhibit Number 5  
19 and ask if you could identify this.

20 A. This is a copy of an article from -- regarding a  
21 press release from my office.

22 Q. In fact, you issued that press release, didn't  
23 you?

24 A. I did, yes.

25 Q. And you were directly quoted in that report?

1 A. I believe so, yes.

2 Q. And is it a correct and accurate reporting of  
3 your comment?

4 A. Yes.

5 Q. You've indicated -- in regard to the access by  
6 the county attorney's victim assistance terminal on the  
7 documents filed on April 4, 2013, you were able to  
8 determine that was done?

9 A. Yes, I was.

10 Q. Can you tell us the date that was done?

11 A. This report, I do not know. According to this  
12 report I have in front of me, no, I do not have the date  
13 it was viewed.

14 Q. Is there some way you can tell if that was viewed  
15 on the same date as the document that was filed on  
16 June 12, 2014, or if it was a different date?

17 A. Yes. We can obtain that information, yes.

18 Q. Okay. What would you need to obtain that  
19 information?

20 A. My IT director would have to examine our OnBase  
21 Document Management System and compare dates of view.

22 Q. Could you do that for us?

23 A. I can.

24 **MR. HUGGINS:** Your Honor, I have no further  
25 questions.

1                   **THE COURT:** Ms. Eazer.

2                   **MS. EAZER:** May I approach the witness and  
3 look at the exhibit, Judge?

4                   **THE COURT:** Of course.

5

6                                   **CROSS-EXAMINATION**

7 **BY MS. EAZER:**

8           Q.     Good morning, Mr. Roche.

9                                   Mr. Huggins had asked you some questions  
10 about the documents in Defense Exhibit 1, and I am going  
11 to ask you to just explain a little bit further what does  
12 that exhibit in its entirety show.

13           A.     This exhibit in its entirety is a report of any  
14 and all sealed documents in our system, records management  
15 system, that shows when and how they were accessed by  
16 anybody who is outside of the clerk's office.

17           Q.     Okay. And what date were you asked to prepare  
18 that document or generate that document?

19           A.     I don't remember the exact date, but it was  
20 towards the end of July of last year.

21           Q.     Okay. So is it safe to say it was well -- well,  
22 at least 30 days or more after the actual documents were  
23 accessed and this matter was brought to the Court's  
24 attention?

25           A.     It was, yes.

1 Q. Okay. And I'm going to ask you some more  
2 questions about that document. Let me back up. Strike  
3 that.

4 Did it show any other occasions other than  
5 the April 4th one that Mr. Huggins just asked you about  
6 where the State had accessed documents that were intended  
7 to be sealed?

8 A. Yes.

9 Q. Okay. And what dates specifically?

10 A. I will have to look through the -- there is a  
11 document on 5/11/2007, 5/14 of 2007, 3/31 of 2008, 4/3 of  
12 2007.

13 Q. Oh, and I'm sorry. Well, let me ask you. First  
14 off with respect to those documents, are those documents  
15 that dealt with juvenile court or things of that nature or  
16 do you know?

17 A. Yes, they were otherwise permitted to be viewed.

18 Q. And I'm sorry, I asked too broad of a question.

19 Did it show any other occasion, other than  
20 the March 4, 2013 occasion that Mr. Huggins just asked you  
21 about, where the State had accessed documents which the  
22 State should not have accessed?

23 **MR. HUGGINS:** Your Honor, I believe the  
24 State's question is incorrect. She said March 4th. The  
25 document --

1                   **MS. EAZER:** I meant April 4th. I'm sorry.  
2 April 4th, 2013.

3                   **THE COURT:** Go ahead.

4                   **THE WITNESS:** Yes, there is April 4, 2013,  
5 6/12 of 2013, 3/20 of 2013.

6                   **MR. HUGGINS:** Is that in this case or other  
7 cases?

8                   **THE WITNESS:** These are other cases.  
9                   11/30 of 2007, 7/16 of 2012, 8/6 of 2012,  
10 and 2/20 of 2013.

11 **BY MS. EAZER:**

12           Q. Now with respect to the April 4, 2013 access that  
13 Mr. Huggins had asked you about, you indicated that that  
14 showed -- or to your knowledge that was an ex-parte  
15 request for mitigation and order; is that correct?

16           A. The April 4th document was a sealed attachment  
17 with the order and motion in it.

18           Q. Do you know if that document is still sealed?

19           A. It is.

20           Q. Okay. And how is it that you know that?

21           A. Through an audit of my case management system.

22           Q. When was that done?

23           A. It was done at this time.

24           Q. Okay. And when do you show access to that  
25 April 4, 2013?

1           A.    By this report I can't see that.

2           Q.    Okay.  But you are able to see something to show  
3 it was accessed?

4           A.    Yes.

5           Q.    All right.  I am going to show you what's been  
6 marked as State's -- or Plaintiff's Exhibit 10, and ask  
7 you, sir, if you recognize that as what we refer to as a  
8 minute entry order?

9           A.    It is.

10          Q.    Is that a minute entry order that was issued by  
11 Judge Kevin White?

12          A.    It is.

13          Q.    And sir, in that minute entry order does -- if  
14 you want to just read the highlighted portion or what have  
15 you.  Does it indicate that Judge White finds that the  
16 motion, ex-parte motion, which was filed by Defense was  
17 not proper and was going to be unsealed?

18                   **MR. HUGGINS:**  Your Honor, if I may.  She's  
19 talking about a completely separate document a year later.

20                   **THE COURT:**  Overruled.

21                   And by the way, what is the date of this  
22 minute entry?

23                   **THE WITNESS:**  It is April 13th of 2014  
24 (sic).

25                   **MR. HUGGINS:**  Your Honor, it's a year later.

1                   **MS. EAZER:** And which Mr. Huggins --

2                   **THE COURT:** No, just answer the question if  
3 you will.

4                   **THE WITNESS:** Do you want me to read the  
5 highlighted area verbatim?

6                   **MS. EAZER:** If you just want to read it to  
7 yourself, I'm just going to ask you a few general  
8 questions about it.

9                   **MR. HUGGINS:** Your Honor, I object. It's  
10 not relevant to these proceedings.

11                   **THE COURT:** Your objection is noted.

12 **BY MS. EAZER:**

13           Q.     Let me just go ahead and ask you a couple  
14 questions about this.

15                   In the second paragraph, does the minute  
16 entry indicate: Having reviewed the motion, the Court, as  
17 a preliminary matter, does not find the Defendant has made  
18 a proper showing of the need for confidentiality. Rule  
19 15.9(b) --

20           A.     That is what it says, yes.

21           Q.     And does the last sentence of that paragraph  
22 indicate: It appears appropriate to order that the motion  
23 be disclosed to the State to afford the opportunity to  
24 respond and the motion be referred back to the assigned  
25 judge for ruling?

1 A. That is what it says, yes.

2 Q. And on the second page --

3 MR. HUGGINS: Your Honor, I object to this  
4 witness being asked to read Judge White's minute entry.

5 THE COURT: Your objection is again noted.

6 BY MS. EAZER:

7 Q. On the second page, does it indicate giving the  
8 Defendant time to supplement the motion but that if no  
9 supplement is filed or if the supplement fails to show  
10 good cause for proceeding ex-parte, this Court will enter  
11 orders that the motion and any supplement hereto shall be  
12 disclosed to the State and the case shall be referred back  
13 to the assigned judge for a decision?

14 A. Yes, that's what it says.

15 Q. And sir, do you have any reason to doubt or  
16 dispute that that motion and order, which was sealed at  
17 the time you created that document, may have been  
18 subsequently unsealed by Judge Kevin White based on that  
19 minute entry I have just been referring to?

20 A. Yes, it would appear so.

21 Q. Okay. Now, so -- I will leave that alone.

22 Now going back to the documents which were  
23 accessed in June in reference to this case, we've been  
24 talking a lot about records that are sealed and back in  
25 June of 2013, I believe you've indicated that while

1 certain documents may have been sealed to perhaps the  
2 public computers, that because of the State's need to  
3 access other sealed type documents, the State's computer  
4 that was given to it by the clerk of the court didn't have  
5 the capability to be sealed at that time?

6 A. No. What it is, the system has a limitation that  
7 if we are to grant sealed access in a particular case  
8 type, for example criminal case types, we do not have the  
9 ability to go down randomly and say you can see this  
10 particular document, but you cannot see this other  
11 particular document. It's all or none, which is a flaw in  
12 the system.

13 Q. Okay. And was that anything to your knowledge  
14 that the State was ever aware of prior to this?

15 **MR. HUGGINS:** Objection. That calls for  
16 speculation as to what the State's aware of.

17 **THE COURT:** Overruled.

18 Answer only if you know, sir.

19 **BY MS. EAZER:**

20 Q. To your knowledge, sir, was there any discussion,  
21 meetings or anything that to your knowledge would have  
22 made the State aware that it could access certain  
23 documents that it should not?

24 A. Given the access happened in 2009 before I was in  
25 office, I don't know.

1 Q. Okay. Now as far as when we're talking about a  
2 sealed document -- in fact, even -- would you agree, sir,  
3 that even though the documents which we are referring to  
4 today in reference to this case were sealed to the public  
5 and were intended to be sealed to everyone other than the  
6 court, that in fact they weren't sealed on the State's  
7 computer; is that correct?

8 A. That is not correct.

9 Q. Okay. How -- and when I say sealed, would you  
10 agree the State was able to access them?

11 A. That is correct, yes.

12 Q. Okay. So when you are saying sealed, a document  
13 may show sealed, but yet it was still able to be accessed?

14 A. Yes. We control the security tree behind the  
15 scene on the database to say who can look at sealed  
16 documents and who cannot. For example, myself or a judge  
17 in a case. A document is sealed as far as the public or  
18 anybody who is not supposed to see it, but yes, we do  
19 control access to say who can look at a sealed document,  
20 but they are still sealed.

21 Q. But again, just the terminology sealed, you would  
22 agree in June of 2013 the State could click open on a  
23 document and it wouldn't be sealed in that the State  
24 couldn't access it?

25 A. The State -- the county attorney's office by the

1 State, did have access to view sealed documents, yes.

2 Q. And that has since been corrected?

3 A. Yes, it has.

4 Q. Where as if I was to go on today and there was a  
5 sealed document and I clicked on the little file to open  
6 it, I would not be able to open it, correct?

7 A. Correct, you would not.

8 Q. Okay. Now as far as the documents you have  
9 obtained for purposes of this hearing or your  
10 investigation, can you tell us -- can you tell the Court  
11 what steps did you immediately take after this problem was  
12 brought to your attention?

13 A. Immediately on the afternoon that we found out  
14 about it, I think it was the 23rd or 24th of July, we shut  
15 down all sealed access to any documents outside the  
16 clerk's office or judicial staff, so it was immediately  
17 repealed for everybody.

18 Q. All right. And did you take any other steps as  
19 far as doing anything with the computer?

20 A. We've since allowed access back slowly. But yes,  
21 we've redone our security trees and made sure -- double  
22 checked the securities are appropriate and accurate.

23 Q. And you indicated sometime in late July you were  
24 asked to prepare, I guess, what is a snapshot of the  
25 computer screen?

1           A.    No.  This is an Excel -- the printout is an Excel  
2 database of a report that we compiled, which took several  
3 months to go through all of our documents and look at who  
4 had looked at a sealed document that was not allowed to  
5 look at it, like a judge or a clerk doing action on that  
6 document.

7           Q.    Okay.  Now as far as the access in June of 2013,  
8 do you know what would have been -- what would have shown  
9 up on the screen in front of the person at the county  
10 attorney's office who was looking at it?

11          A.    Yes, I do.

12          Q.    And would you agree with me, sir, that I guess  
13 for just the Court's knowledge, the computer screen back  
14 then would show a box saying what the pleading or the  
15 motion or whatever the document was, correct?

16          A.    Yes.  It was a description of it, yes.

17          Q.    And would you agree in that box we're referring  
18 to -- what the documents we're referring to, it indicated  
19 it was an Ex-Parte Motion for Alleged Victim's Medical  
20 Record?

21          A.    It doesn't mark it -- Ex-Parte Motion for Mental  
22 Health Records of the Alleged Victim, yes.

23          Q.    And did it say Defendant's Ex-Parte Motion?

24          A.    Yes.

25          Q.    It did?

1           A.     Yes.  I believe it's the second or third column  
2 in on the register of actions, does delineate between  
3 which party filed the document.

4           Q.     Okay.  And you were indicating the screen in June  
5 showed defendant's motion?

6           A.     It doesn't say defendant's motion, it says which  
7 party filed it.  So there's an entire column that will say  
8 State of Arizona or whichever party filed in that  
9 particular document, so yes.

10          Q.     And what document do you have that would support  
11 that it shows it was the defendant's motion?

12          A.     Meaning -- I can print out the register of  
13 actions, but I don't have a document that says that.  It's  
14 just a column on the register of actions.

15          Q.     Correct.  But as far as what it would have shown  
16 on June -- let me ask you Mr. Roche.  Would you agree that  
17 still sometime today that you could go onto any random  
18 case and there's not always going to be anything in the  
19 party who filed the motion?

20          A.     No, the system won't allow that.

21          Q.     Okay.  Would you agree that there are occasions  
22 where something may say Defendant's supplemental  
23 disclosure, but in fact it's the State's supplemental  
24 disclosure?

25          A.     It would be in two different columns, but yes,

1 there could be a clerical error where somebody put it in  
2 incorrect, yes.

3 Q. And if I were to tell you that in fact in this  
4 and other cases there are several entries that show  
5 defendant's supplemental Rule 15 disclosure where there  
6 has been no disclosure filed by a defendant, that perhaps  
7 mistakes happen as far as who the filing party is?

8 A. (No oral response.)

9 Q. Or documenting who the filing party is?

10 A. Yes. Obviously mistakes do happen.

11 Q. Okay. And again, going back to specifically on  
12 June 12th of 2013 when these documents are accessed, you  
13 did not look at the computer screen on that date in the  
14 computer that the State had access to?

15 A. On that date, no.

16 Q. And in fact, you didn't look at that computer  
17 screen to see what it would have showed until sometime  
18 later when you were asked to create these documents,  
19 correct?

20 A. In this particular case, correct.

21 Q. Okay. Now as far as the motion itself and where  
22 we look at the box as to what the document is, again, in  
23 that box showing what the document is, it did not say  
24 defendant's motion, correct?

25 A. No, it does not.

1                   **MS. EAZER:** Okay. May I approach the  
2 witness again, Your Honor?

3                   **THE COURT:** You may.

4 **BY MS. EAZER:**

5           Q. During the weeks that followed this access, did  
6 the county attorney's office and yourself and employees of  
7 the court actively work together to come up with a  
8 solution so this kind of an incident couldn't happen  
9 again?

10          A. We did, yes.

11          Q. And did the county attorney's office, the Pinal  
12 County Attorney's Office, cooperate fully with you in  
13 attempting to give you whatever information you needed and  
14 work to finding a solution to the issues?

15          A. They did, yes.

16          Q. And just again so we are clear, Mr. Roche, at  
17 least at the time that this incident took place in June of  
18 2013, the State didn't have to take any additional steps  
19 or any surreptitious steps to access a sealed document or  
20 what your records show were sealed or they were sealed in  
21 the court other than click on the file that would open the  
22 document?

23          A. In June of 2013, no, there was no other access --  
24 no other extra steps.

25                   **MS. EAZER:** If I could have just one moment,

1 Your Honor.

2 **THE COURT:** Sure.

3 **BY MS. EAZER:**

4 Q. To your knowledge, Mr. Roche, when a matter has  
5 been sealed but then subsequently unsealed, such as the  
6 one by order of the court by Judge White on another  
7 ex-parte motion in this matter, will it still show sealed  
8 on the court's -- on the computer screen?

9 A. Until such a time as one of my deputy clerks mark  
10 it as unsealed, yes. But once it's marked unsealed, no.

11 Q. Would it surprise you to learn that the April 4th  
12 document still shows sealed, but in fact it has been in  
13 fact unsealed?

14 **MR. HUGGINS:** Objection. Counsel is  
15 testifying. This report does not even cover this period,  
16 Your Honor.

17 **THE COURT:** Well, overruled.

18 Can you answer the question?

19 **THE WITNESS:** No. In fact, it would not  
20 surprise me. This is human error on data entry so  
21 probably it hasn't gotten acted upon yet.

22 **BY MS. EAZER:**

23 Q. But if a judge finds that something was  
24 inappropriately sealed, they have the ability and the  
25 authority to unseal it, correct?

1 A. Absolutely.

2 MS. EAZER: Okay. Thank you, sir. I have  
3 no further questions.

4 THE COURT: Okay. Mr. Huggins.

5

6 REDIRECT EXAMINATION

7 BY MR. HUGGINS:

8 Q. Mr. Roche, can I ask you to look at Exhibit 1?  
9 That's the report you prepared, right?

10 A. It is, yes.

11 Q. Can you tell the Judge -- that report was  
12 prepared before January 21st of 2014, wasn't it?

13 A. I believe that was the time frame.

14 Q. Did you come here with a hearing with Judge  
15 Johnson before, and me, with that report to testify?

16 A. I'm sorry, could you restate the question?

17 Q. Did you come here for a hearing back on  
18 January 24, 2014?

19 A. Yes, I did.

20 Q. And you had given me that report before then?

21 A. Yes, I had.

22 Q. So there is no way it would contain any  
23 information at all about what Judge White ordered three  
24 months later, is there?

25 A. It would not, no.

1 Q. In regard to the April 4th, 2014, sealed order,  
2 that was a year -- more than a year ago, correct?

3 A. It was, yes.

4 Q. Okay. And you say you can print out a register  
5 of actions for that item?

6 A. Well, the register of actions is every filing in  
7 that particular case, yes.

8 Q. Could you print out a register of actions on that  
9 filing?

10 A. It's not a register of actions, but yes, I can do  
11 a report from a different database as to when it was  
12 opened and who opened it.

13 Q. And it would show that that document was filed by  
14 the defense?

15 A. It would show that my clerks marked it as such.  
16 That the defense -- whatever party filed it, filed it.

17 Q. And if we gave you time, you could print that out  
18 so we could have that as an exhibit for Judge Cahill?

19 A. Yes.

20 **MR. HUGGINS:** Thank you.

21 Judge, no further questions at this time.

22 **THE COURT:** Sir, if you take off with those  
23 exhibits you will get in trouble with the clerk.

24 **MS. EAZER:** And I have some too, Your Honor.  
25 If I may approach with them.

1           **MR. HUGGINS:** Your Honor, I would move for  
2 the admission of all the documents.

3           **THE COURT:** For purposes of our hearing  
4 today, any objection, Ms. Eazer?

5           **MS. EAZER:** No, Your Honor.

6           **THE COURT:** And you are excused.

7           But do you want the witness to be recalled  
8 this afternoon on this issue that you inquired about?

9           **MR. HUGGINS:** Yes, Your Honor.

10          **THE COURT:** Okay. So if you could get that  
11 information for us, Mr. Roche.

12                 Why don't you bring it up.

13                 Counsel, would you discuss -- I don't know  
14 what Mr. Roche is going to bring up. I suspect a piece of  
15 paper or set of papers. If we can admit that by  
16 stipulation, fine. If you need more testimony for him and  
17 he's available, we will take testimony.

18          **MR. HUGGINS:** I think what he was going to  
19 do is get the dates of access of the documents and a copy  
20 of a printout of the register of actions, but I have no  
21 objection to stipulating that in.

22          **THE COURT:** Well, after lunch, Mr. Roche, if  
23 you could send that up, the lawyers will look it over. We  
24 will take things a step at a time.

25          **THE WITNESS:** I will get it as fast as I

1 can, Your Honor.

2 **THE COURT:** Okay. So the exhibits are  
3 admitted.

4 And Mr. Huggins, any more testimony?

5 **MR. HUGGINS:** Did you want me to call Odette  
6 Apodaca, the clerk herself?

7 **THE COURT:** I don't want you to call  
8 anybody, but I want you to call everybody you should call.

9 **MR. HUGGINS:** Okay. I would call Odette  
10 Apodaca.

11 **THE COURT:** Ma'am, if you would come  
12 forward.

13 (Whereupon, the witness, Odette Apodaca, was  
14 duly sworn by the Clerk of the Court.)

15 **THE COURT:** Have a seat here, ma'am.

16

17 **ODETTE APODACA,**

18 called as a witness herein, was examined and testified as  
19 follows:

20 **DIRECT EXAMINATION**

21 **BY MR. HUGGINS:**

22 Q. Could you state your name?

23 A. Yes, my name is Odette Apodaca.

24 Q. And what is your position, Odette?

25 A. I am the case management director in the clerk's

1 office.

2 Q. And how long have you been in that position?

3 A. In that position, the last three and a half  
4 years -- well, the last year and a half.

5 Q. Okay. Are you in charge of making sure about  
6 access to confidential documents in the clerk's office?

7 A. Not specifically. It's not my main duty.

8 Q. Is it one of your duties?

9 A. It can be if a staff member brings it to my  
10 attention.

11 Q. Okay. Odette, were you contacted by me earlier  
12 this year in regard to accessing of ex-parte documents?

13 A. I believe it was last year in July.

14 Q. You're right.

15 Okay. And did it relate to this case  
16 number?

17 A. It did.

18 Q. Okay. And did you research that?

19 A. Yes. While I had you on the phone I pulled up  
20 the case.

21 Q. Okay. And at the time you did that, were the  
22 documents properly sealed?

23 A. They were.

24 Q. Did your records reflect that they were sealed?

25 A. They did.

1 Q. And did -- as Mr. Roche indicated, a print of  
2 register of actions show who filed those documents?

3 A. I wouldn't have access to a printed register of  
4 actions, but my screen would tell me who filed the  
5 document.

6 Q. Okay. Can you tell me, did you ever look into  
7 the documents that were filed on April 4, 2013, in that  
8 action?

9 A. I wouldn't recall. I would have looked at every  
10 sealed document filed in there.

11 Q. Can I hand you what's been marked as Exhibit 1 to  
12 review?

13 A. Sure.

14 Q. Can I ask you to refer to page eight?

15 A. Okay.

16 Q. Are there two documents on that page that were  
17 referred to as improperly accessed?

18 A. There are.

19 Q. And the date one was filed was 4/4/2013?

20 A. Correct.

21 Q. And the other was filed 6/12 of 2013?

22 A. Correct.

23 Q. These are separate documents?

24 A. Yes.

25 Q. Did you ever review what the document was that

1 was accessed that had been filed on 4/4 of 2013?

2 A. In my research and audit of the case I would  
3 have.

4 Q. Okay. Was that a separate document from the one  
5 about victim records?

6 A. This report tells me they were two different  
7 entries.

8 Q. Okay. Do you know when that document was  
9 accessed?

10 A. Not by this report.

11 Q. Did you ever find that out?

12 A. Not to my knowledge. This is what my  
13 understanding is what we will be finding out after this is  
14 done.

15 Q. Neither of these documents was ever unsealed by  
16 the Court, was it?

17 A. Not to my knowledge. I doubt they were.

18 Q. Your system -- had you received that, you would  
19 have properly documented that in your system?

20 A. Correct.

21 **MR. HUGGINS:** No further questions, Judge.

22 **THE COURT:** Ms. Eazer.

23 **MS. EAZER:** No questions, Your Honor.

24 **THE COURT:** Thank you.

25 **THE WITNESS:** You are welcome.

1                   **THE COURT:** You are excused by the way.

2                   Mr. Huggins.

3                   **MR. HUGGINS:** That was the witness from the  
4 clerk's office, Your Honor.

5                   **THE COURT:** Now we will get that additional  
6 information from Mr. Roche's office.

7                   What other testimony do you want to present  
8 on this issue, Mr. Huggins?

9                   **MR. HUGGINS:** Just the testimony in regard  
10 to the county attorney's office. And in light of the  
11 Court's ruling, I don't have any other clerks to testify.

12                   **THE COURT:** Okay. Well, let's discuss this  
13 once we get that information from Mr. Roche.

14                   And so the lawyers will be looking for you  
15 after lunch, Mr. Roche.

16                   **MS. APODACA:** At 1:00? You are breaking for  
17 lunch?

18                   **THE COURT:** Well, in a few minutes, but you  
19 are excused to get that.

20                   **MS. EAZER:** Judge, since Mr. Huggins chose  
21 to call witnesses, is the Court going to allow me to  
22 briefly call Ms. Parish?

23                   **THE COURT:** Well, any objection?

24                   **MR. HUGGINS:** If she's allowed to call  
25 Ms. Parish, I want to be allowed to call the other

1 witnesses as well.

2 **MS. EAZER:** Judge, I will stipulate that  
3 Mr. Hazard looked at the motion, that Mr. Hazard looked at  
4 the order. I don't think there is any question Mr. Hazard  
5 admitted to looking at the motion, looking at the order  
6 and taking action by filing a motion with the court. I  
7 just want Ms. Parish to testify as to what she could see  
8 on her screen as opposed to what a document printout done  
9 some 30 days later shows.

10 **THE COURT:** Well, we will take things a step  
11 at a time. The State's on notice, of course, that the  
12 Defendant has this argument that by opening the door it's  
13 open. So we will deal with that in due course, but sure.  
14 Is she here?

15 **MS. EAZER:** Yes, she is.

16 **THE COURT:** Okay. Ma'am, if you will come  
17 forward, we will have you be sworn first.

18 (Whereupon, the witness, Tari Parish, was  
19 duly sworn by the Clerk of the Court.)

20 **THE COURT:** Have a seat here, ma'am.

21

22

**TARI PARISH,**

23 called as a witness herein, was examined and testified as  
24 follows:

25

## 1 DIRECT EXAMINATION

2 BY MS. EAZER:

3 Q. Good morning.

4 Can you please state your name and  
5 occupation for the record.6 A. I am Tari Parish, and my position is senior  
7 paralegal.

8 Q. How long have you been a paralegal, Ms. Parish?

9 A. Almost 20 years now.

10 Q. And have you always worked exclusively in  
11 criminal during those 20 years?

12 A. Yes.

13 Q. And how long have you been with the Pinal County  
14 Attorney's Office?

15 A. Since February of last year.

16 Q. And were you the paralegal assigned to work on  
17 the Richard Wilson case since you began at the office?

18 A. Yes.

19 Q. All right. And were you assigned in that  
20 capacity in June of last year?

21 A. Yes.

22 Q. Now Ms. Parish, had you had an opportunity to  
23 work with the AJACS system prior to July -- or I'm sorry,  
24 June of 2013 when the incidents we're talking about herein  
25 occurred?

1           A.     I had, yes.

2           Q.     Okay.  And had -- is it something that you would  
3 use routinely in the course of your job as a paralegal?

4           A.     Yes.  I was learning how to, you know, look  
5 things up on it that I needed.  When I didn't have motions  
6 or whatever in my file, then I would go and pull them off.

7           Q.     And just real briefly, tell the Court what types  
8 of things might you need to use the AJACS system for.

9           A.     Minute entries in our office tend to get lost a  
10 lot so I have to go find them and make sure that there's  
11 no orders or anything that I need to do as far as -- I've  
12 had occasion that my attorney has said:  Do you have a  
13 copy of, you know, this motion or that motion?  And it's  
14 not in my file so I run and get it off of AJACS.

15          Q.     Now let me ask you.  When you say minute entries  
16 have a way of getting lost in the office, Ms. Parish, has  
17 there been a lot of changes in attorneys and assignments  
18 over the past year and a half?

19          A.     Yes.  Yes.

20          Q.     Okay.  All right.  So is that one of the primary  
21 reasons --

22          A.     Yes.  It's put in the wrong attorney's basket or  
23 whatever, so it -- and it sits there until that attorney  
24 happens to go through their in-basket, so yes.

25          Q.     Okay.  Now on July 18th of 2013, did you have

1 occasion to be checking on the AJACS system in the matter  
2 of the Richard Wilson case?

3 A. Yes. I had gone to -- Mr. Powell was out on  
4 medical leave. I had gone to his mail box up front and  
5 pulled -- because I was going up there everyday or so and  
6 checking to see what had come in. If I needed to give --  
7 because there were a number of different attorneys  
8 covering his cases while he was gone. So I would go up  
9 and if there was something that needed attention, I would  
10 give it to whoever was covering that particular case for  
11 Mr. Powell.

12 Q. Okay. And let me back you up and ask you. Prior  
13 to going out on medical leave, was this case in fact  
14 assigned to Mr. Powell?

15 A. Yes.

16 Q. You were working as a paralegal on the case?

17 A. Yes, I was.

18 Q. Okay. Now you had gone up to get the mail and  
19 what about the mail that caused you to go to the AJACS  
20 computer?

21 A. There was a motion from Mr. Huggins for  
22 reconsideration of probable cause and I knew that this  
23 case had already been remanded once, and so I wanted to  
24 get -- I wanted to take this to Mr. Hazard, and so I  
25 wanted to get the old State's motion for reconsideration

1 and the State's response to that recon --

2 Q. Remand.

3 A. -- remand. To give all this to Mr. Hazard so  
4 that he would have all the material he needed to do a  
5 response to this second motion for reconsideration.

6 Q. Of the remand?

7 A. Right.

8 Q. Okay. And while you were looking on the AJACS  
9 computer, did you come across a motion regarding the  
10 victim's medical record?

11 A. I did.

12 Q. All right. Now can you tell the Court as you sit  
13 here today, what you saw that caused you concern?

14 A. Well, again, Mr. Powell had been out for about --  
15 at that point maybe not quite a month. I was going  
16 through trying to find all these -- the motions for the  
17 reconsideration stuff and found -- the title of the motion  
18 that was filed simply said -- and I may not be verbatim,  
19 but it simply said: Ex-parte motion for release of  
20 victim's medical and mental records.

21 Q. Okay. And was there anything to suggest that  
22 that had been filed by the Defendant?

23 A. I did not see anything, no.

24 Q. And in your 20 years as a criminal paralegal,  
25 have you ever known of a defendant to file an ex-parte

1 motion for victim's medical records?

2 A. No.

3 Q. All right. And at the time, did that cause you  
4 some -- well, let me ask you. So what did you think when  
5 you saw the ex-parte motion for victim's medical records?

6 A. I believed that it was something that Mr. Powell  
7 had filed in reference to getting the records for  
8 Mr. Pierce, and so -- and he had, you know, forgotten to  
9 tell me maybe in his -- you know, getting ready to leave  
10 or whatever and had forgotten to tell me, so I was  
11 concerned I needed to be on the lookout for something.  
12 And if -- and to see if it needed to be -- you know, I  
13 needed to call somebody to check on status or something.

14 Q. Okay. And to your recollection, was there  
15 anything indicating that that motion was sealed?

16 A. No.

17 Q. All right. And did you open the document?

18 A. I did.

19 Q. Was there anything that -- when you clicked open  
20 on the document that told you that it was supposed to be  
21 sealed?

22 A. When I clicked on open, there was a  
23 handwritten -- I assume what they might call a cover page.  
24 And again, it said -- it had the case number. And again,  
25 it said: Ex-parte Motion for Victim's Medical and Mental

1 Records, and then on the bottom it was written "sealed".

2 Q. And did you --

3 A. Again, there was nothing to indicate who had  
4 filed it at that point.

5 Q. And so at this point in time when you have now  
6 seen the cover sheet, is it still your belief that this  
7 was a motion that was filed by the State?

8 A. Yes, since I was able to open it and in my  
9 previous employment with the State, all sealed records if  
10 we were not supposed to be viewing them, I could not open  
11 them. So it was pretty much my thought that I opened it,  
12 it opened, so therefore it's our record or our motion.

13 Q. And when you looked -- went further to look at  
14 the document, did you become aware that it was filed by  
15 the Defendant?

16 A. Yes. When I went to the second page, it had  
17 Mr. Huggins' letterhead on top.

18 Q. And was there anything about that discovery that  
19 concerned you?

20 A. Yes.

21 Q. And what was that?

22 A. The fact that a defense attorney was asking --  
23 doing an ex-parte motion number one, for a victim's  
24 medical records.

25 Q. What did you do as a result of that discovery?

1           A.     I contacted Mr. Hazard immediately and told him  
2 what I had found.

3           Q.     Now did you also see an order disclosing the  
4 medical records?

5           A.     Well, his question for me was what was the order  
6 because it had motion and order on the title, and so that  
7 prompted me to look up the order then.

8           Q.     And you printed those both out to provide them to  
9 Mr. Hazard?

10          A.     I did.

11          Q.     Now after this all occurred, did you do anything  
12 or take any steps to document what you had done, what you  
13 had seen on the computer and so forth while it was all  
14 still very fresh in your mind?

15          A.     Oh, yes. I did a memo to the file of all the  
16 steps and all the directions I was given, you know, from  
17 exactly what I did that afternoon when I found the mail.  
18 And I mean, I did step by step exactly and documented  
19 everything that happened.

20          Q.     Okay. And can you -- did you do that very near  
21 in time to when you first opened the document?

22          A.     Within a day or two.

23          Q.     Okay. And for purposes of this hearing, were you  
24 asked to prepare an affidavit which contains some of the  
25 information from your memorandum?

1           A.     I was.

2           Q.     And I am going to show you what's been marked as  
3 State's Exhibit 11 and ask you if that is an accurate copy  
4 of the affidavit you prepared?

5           A.     Yes, it is.

6           Q.     Now is that the entire memo you did over the  
7 course of the next several days?

8           A.     Oh, no.  No.

9           Q.     Okay.  Does it contain information though derived  
10 from your notes?

11          A.     Yes.

12          Q.     And those would be the notes that were made near  
13 in time while your memory was still very fresh about this  
14 incident?

15          A.     Yes.  I was actually documenting it as I went so  
16 that I didn't miss anything.

17          Q.     And as you sit here today, Ms. Parish, based upon  
18 your review of your notes as well as your memory of this  
19 incident, any question in your mind that when you looked  
20 at that computer screen on AJACS that there was anything  
21 to show you on the screen that this was a motion that had  
22 been filed ex-parte by the Defendant?

23          A.     No.

24          Q.     And had you seen an ex-parte motion to be filed  
25 by the Defendant, would that have registered with you that

1 that might not be something you should open?

2 A. Yes.

3 Q. All right. Did you -- when you opened and viewed  
4 this document, did you have any surreptitious plan in your  
5 mind to access documents you were not supposed to see?

6 A. No, I was not. It was something like, I said, I  
7 should be looking for.

8 **MS. EAZER:** Thank you. I have no further  
9 questions.

10 **THE COURT:** Let's take our lunchtime break.  
11 We will reconvene at 1:30.

12 Are you able to come back?

13 **THE WITNESS:** Oh, yes.

14 **THE COURT:** Okay.

15 **MR. HUGGINS:** Your Honor --

16 **THE COURT:** Yes.

17 **MR. HUGGINS:** -- before we break, could I  
18 ask the Court to direct the witness to bring back her  
19 memo, the file she mentioned that she prepared the  
20 affidavit from? I think I'm entitled to a copy of that.

21 **MS. EAZER:** Happy to do that, Judge.

22 **THE COURT:** Okay. Bring that back, if you  
23 could, ma'am.

24 **THE WITNESS:** Yes.

25 **THE COURT:** 1:30 then.

1                   **THE WITNESS:** With numerous copies then?

2                   **THE COURT:** Talk to Ms. Eazer.

3                   **THE WITNESS:** All right.

4                   (Whereupon, the Court recessed at 12:03 p.m.  
5 and reconvened at 1:27 p.m.)

6                   **THE COURT:** We are back in session. And  
7 let's see, did you want to wait for Mr. Soslowsky?

8                   **MR. HUGGINS:** Yes.

9                   **THE COURT:** Okay. We will wait just a  
10 minute, but ma'am, why don't you come on up and retake  
11 your seat. We do have counsel for the State present.  
12 Mr. Huggins is here, the Defendant is present.

13                   Counsel, while we are waiting, did you  
14 address the additional exhibit from Mr. Roche?

15                   **MR. HUGGINS:** I have not heard from  
16 Mr. Roche.

17                   **THE COURT:** Okay. We will hear from him  
18 soon, but we will wait just a few more minutes here.

19                   **MS. EAZER:** Your Honor, just so the Court is  
20 aware, Mr. Chapman is going to have to leave at 2:00  
21 because he has to be up in Phoenix, so I just wanted to  
22 let the Court know.

23                   **THE COURT:** Okay, thanks. No problem.

24                   Oh, there was that question, Ms. Eazer, I  
25 neglected to write down when I asked you before the date

1 of the death notice, so we have a two-year idea.

2 **MS. EAZER:** Oh, for goodness sakes. I can  
3 actually get that for you, Judge.

4 **THE COURT:** Okay.

5 **MS. EAZER:** November 5th of 2012, Your  
6 Honor.

7 **MR. HUGGINS:** I'm ready to proceed.

8 **THE COURT:** So we are back on the record and  
9 we have Mr. Soslowsky present.

10 **MR. HUGGINS:** He was present, he stepped  
11 out, Your Honor.

12 **THE COURT:** And he's gone now. Any  
13 objection to proceeding?

14 **MR. HUGGINS:** No, Your Honor.

15 **THE COURT:** Okay. Our witness is on the  
16 stand, still under oath, and cross-examination,  
17 Mr. Huggins.

18 Go ahead.

19

20 **CROSS-EXAMINATION**

21 **BY MR. HUGGINS:**

22 Q. Ms. Parish, when did you go to work for the Pinal  
23 county attorney's office?

24 A. I think February -- either 4th or 5th of last  
25 year, '13, was my first day.

1 Q. Prior to that you had worked with Chief Deputy  
2 County Attorney Richard Wintory in Tucson?

3 A. Yes.

4 Q. How long have you been with Mr. Wintory?

5 A. When he first -- when I was at Pima County when  
6 he first arrived down there. I want to say 2005.

7 Q. When he went to the Attorney General's Office,  
8 did you go with him there?

9 A. Yes, I did follow him there.

10 Q. And when he came to Pinal County, he hired you to  
11 follow him here?

12 A. Yes, sir.

13 Q. Ms. Parish, did you access any other confidential  
14 records in this case other than the incident we talked  
15 about on June 18th?

16 A. On June 18th? The first time I accessed --

17 Q. I'm sorry, July 18th.

18 A. Yes. I mean the motion and the order was the  
19 only thing I opened up.

20 Q. Did you open up more than one motion?

21 A. Not that I can recall.

22 Q. Is it possible you did that and just don't  
23 remember now?

24 A. Or I didn't know -- yeah. Yes, it is possible.

25 Q. Do you have access to the file before going and

1 opening up pleadings on the --

2 A. Yes.

3 Q. -- computer terminal?

4 Had you checked to see whether there had  
5 been any notice of ex-parte filings filed in the Richard  
6 Wilson case?

7 A. That's not what I was looking for. I was  
8 looking -- when I first started the search that day, I was  
9 looking specifically for a response to your original  
10 motion for the first case to reconsider for probable  
11 cause.

12 Q. Did you ever bother to look into the county  
13 attorney's file to see if there was an ex-parte motion in  
14 the file?

15 A. No.

16 Q. Did you look into the county attorney's file to  
17 see if there was a notice of an ex-parte motion in the  
18 file?

19 A. No.

20 Q. Did you ever look in the county attorney's file  
21 to see if there had been more than one notice of ex-parte  
22 motion in the file?

23 A. Not at that time, no.

24 Q. So you see there's a Motion for Court Ordered  
25 Disclosure of Medical/Mental Health Records of Alleged

1 Victim?

2 A. Um-hum.

3 Q. And you click on that to open it up?

4 A. Yes.

5 Q. And it opens up?

6 A. Um-hum.

7 Q. And before you print it, you see it says Law  
8 Office of Bret Huggins and Law Office of James Soslowsky?

9 A. No, the first page was not that. The first page  
10 was that handwritten cover page.

11 Q. So you went to the second page?

12 A. Yes, I did.

13 Q. Then you saw it?

14 A. I did.

15 Q. And then you read it?

16 A. I did.

17 Q. And then you went through the sealed Order of the  
18 Court for Disclosure of Medical/Mental Health Records of  
19 the Alleged Victim?

20 A. I don't know if I did that before or after I  
21 talked with Mr. Hazard.

22 Q. Okay. Well, let me ask you this. Did you print  
23 out what you saw on the computer?

24 A. I don't know that I did or not.

25 Q. But you went in to see one of your bosses?

1 A. Yes.

2 Q. Which one?

3 A. Mr. Hazard. He was the only one there at the  
4 time.

5 Q. And did you show him the motion?

6 A. I told him about the motion.

7 Q. Did you tell him it was an ex-parte motion?

8 A. For the victim's records, yes.

9 Q. You told him it was an ex-parte motion?

10 A. Um-hum.

11 Q. Did he look at the motion?

12 A. I believe so, yes. After -- like I said, I don't  
13 know if he asked me then to go print it out and I did.

14 Q. Okay.

15 A. I can't remember the order.

16 Q. So he may have asked you to actually print it out  
17 and you did, but you remember providing him a copy of the  
18 motion?

19 A. Yes.

20 Q. Did he ask you to go print out a copy of the  
21 order?

22 A. I believe so.

23 Q. And the order said in bold print on the front:  
24 Sealed Order of the Court for Disclosure of Medical/Mental  
25 Health Records of Alleged Victim?

1 A. Yes.

2 Q. You had read that?

3 A. Yes.

4 Q. You showed him the order?

5 A. Yes.

6 Q. Did he say you shouldn't have accessed these?

7 A. I do not recall him making that statement. His  
8 initial response was anger at you, sir.

9 Q. Oh, he was angry at me?

10 A. Yes, sir.

11 Q. Does he ever suggest notifying the Court that you  
12 accessed these documents?

13 A. Not to me he did not make that statement.

14 Q. He never told you that once even until the point  
15 he left months later?

16 A. I'm sorry.

17 Q. He never told you that?

18 A. I don't remember that statement, no.

19 Q. You also on July 18th tried to contact Mr. Long?

20 A. Oh, at DOC.

21 Q. No, your boss, Matt Long.

22 A. Oh, Matt Long, yes. I'm sorry.

23 Q. Did you ever talk to Matt Long about the motion  
24 or the order?

25 A. Yes.

1 Q. When?

2 A. Probably within the course of the next day or so.  
3 I believe that day the only reason I went directly to  
4 Mr. Hazard is Mr. Long was at a conference. He was not in  
5 the office that day, so I don't know if I spoke to him  
6 that day or the next day when he got back in the office.  
7 I don't recall if -- I don't believe I spoke to him on the  
8 phone.

9 Q. That's not reflected at all in your memo, is it?

10 A. I was mainly dealing with Mr. Hazard.

11 Q. Because Mr. Hazard was the assigned lawyer on the  
12 case, correct?

13 A. He was assigned to babysit it until Mr. Powell  
14 got back.

15 Q. When did Mr. Powell go on medical leave?

16 A. I don't remember the date, sir.

17 Q. When did Mr. Powell come back from medical leave?

18 A. Just before the end of the year, I believe.  
19 December something or other.

20 Q. December two thousand --

21 A. Thirteen.

22 Q. -- thirteen?

23 A. Um-hum.

24 Q. Did you have any communication with Mr. Powell in  
25 regard to either the motion or the order?

1 A. No.

2 Q. You contacted the Department of Corrections?

3 A. I did. I was instructed to do so.

4 Q. But there was no victim that was there?

5 A. We believed him to be a victim.

6 Q. Under the Constitution and under the statutes?

7 A. I was not aware of that. I was instructed to  
8 call DOC in reference to the victim's rights issue.

9 Q. Were you asked to prepare a motion on this  
10 issue --

11 A. Prepare a motion, no, sir.

12 Q. -- for the attorneys?

13 A. No.

14 Q. Did you actually take any part in preparing the  
15 State's Motion for Stay of Court's Ruling Regarding  
16 Disclosure of Victim's Medical Records?

17 A. I spoke to Mr. -- to our attorney in the civil  
18 division in reference to what had transpired and he wrote  
19 the motion.

20 Q. But it was signed -- and the civil attorney would  
21 have been Ron Harris?

22 A. No, it wasn't Mr. Harris, I don't believe. I  
23 cannot remember, I'm sorry.

24 Q. Did you write in your memo who you talked to --

25 A. Perhaps.

1 Q. -- from the civil division?

2 A. Or appeals. Perhaps it was appeals.

3 MR. HUGGINS: May I approach the witness?

4 THE COURT: You may.

5 BY MR. HUGGINS:

6 Q. The next to the last paragraph on page two.

7 A. Mr. Harris. Yes, it was Ron Harris.

8 Q. You also talked with the legal representative for  
9 Mr. Pierce's family, didn't you?

10 A. Ms. Findley, yes. I was again instructed to call  
11 her and contact her.

12 Q. That was Ms. Findley, wasn't it?

13 A. Yes.

14 Q. Annette Findley?

15 A. Yes.

16 Q. Is that what you wrote in your memo?

17 A. That I talked to Ms. Findley, yes.

18 Q. Didn't you write Ms. Findling (Phonetic)?

19 A. I believe that's how it is in the bar because I  
20 took it off the bar.

21 Q. Didn't Ms. Findley tell you that Nolan Pierce had  
22 no objection to the request?

23 A. No, she was not aware of any of your motions at  
24 the time.

25 Q. Did she have any objection?

1           A.     She did not. Her answer to me was I guess if the  
2 Court ordered it there's nothing we can do about it now,  
3 or something along those lines.

4           Q.     She never asked you to do anything on behalf of  
5 the family?

6           A.     No, she didn't ask me to do anything. She talked  
7 to Mr. Hazard.

8           Q.     The motion doesn't get filed until July 23rd,  
9 correct?

10          A.     I had nothing to do with the filing of the  
11 motion, sir.

12          Q.     Did you take part in the Motion for Stay?

13          A.     Take part in it?

14          Q.     Yeah.

15          A.     I did not write it. I did not -- the only thing  
16 I did with that was after it was in fact written, I  
17 believe by Mr. Hazard, I copied and filed it and faxed it  
18 to DOC.

19          Q.     Your memo doesn't say you did that on behalf of  
20 Mr. Hazard, does it?

21          A.     I'm sorry.

22          Q.     Would you like to look at your memo again?

23          A.     I would, yes.

24          Q.     Doesn't it say you filed it for Mr. Harris?

25          A.     Mr. Harris, Mr. Hazard, they were working on it

1 together.

2 Q. Your memo says Mr. Harris?

3 A. Okay. I filed it for Mr. Harris then.

4 Q. Didn't you view five minutes, six minutes before  
5 you opened the medical record ex-parte document, a  
6 separate ex-parte document that had been filed in April?

7 A. I do not recall, sir.

8 Q. If the clerk's office indicated that the same  
9 terminal that document filed in April was viewed at  
10 3:07 p.m. and the ex-parte document regarding medical  
11 records was viewed at 3:13 p.m., would you have any reason  
12 to dispute that?

13 A. No.

14 Q. If it indicates that on July 18th of 2013 there  
15 were two attempts to print the April 4th ex-parte  
16 document, would you have any reason to dispute that you  
17 were the one trying to print those documents?

18 A. I do not recall.

19 Q. It could have been you?

20 A. It could have been.

21 **MR. HUGGINS:** Nothing further, Your Honor.

22 **THE COURT:** Ms. Eazer.

23 **REDIRECT EXAMINATION**

24 **BY MS. EAZER:**

25 Q. Ms. Parish, prior to coming to the Pinal county

1 attorney's office, had you had a great deal of experience  
2 with ex-parte motions?

3 A. Motions, no.

4 Q. Had you to your knowledge worked on any capital  
5 cases prior to coming to the Pinal county attorney's  
6 office?

7 A. Oh, yes.

8 Q. And as far as your experience in working with  
9 capital cases, do you recall if you ever had any  
10 experience dealing with ex-parte motions by the defense  
11 prior to this?

12 A. No. I don't know that I have dealt with defense  
13 filing an ex-parte motion or even prosecutors that I can  
14 recall.

15 Q. And had you ever seen an ex-parte motion  
16 requesting victim medical records?

17 A. No.

18 Q. When you spoke to Ms. Findley, you said that she  
19 indicated she had -- was not aware at all of the Defense  
20 filing this motion; is that correct?

21 A. That's correct.

22 Q. When -- on the date that you discovered this  
23 motion and brought this to Mr. Hazard's attention, what  
24 was your primary concern?

25 A. That there had been a serious breach or -- I lost

1 my words -- a serious problem with a -- with the victim's  
2 rights being no longer followed.

3 Q. Violated?

4 A. Thank you.

5 Q. Is that the word you are searching for?

6 A. (No oral response.)

7 Q. And I think you answered this when Mr. Huggins  
8 asked you, but at the time that you accessed this record,  
9 you weren't aware that the victim did not technically have  
10 rights because of being in custody?

11 A. Correct, I was not aware of that. I've never had  
12 a deceased that was a DOC inmate before.

13 **MS. EAZER:** Thank you very much. I have no  
14 further questions.

15 **MR. HUGGINS:** Can I have recross?

16 **THE COURT:** For an amended question?

17 **MR. HUGGINS:** Yes.

18 **THE COURT:** Go ahead.

19

20 **REXCROSS-EXAMINATION**

21 **BY MR. HUGGINS:**

22 Q. You worked on a capital case with Richard Wintory  
23 at the Pima county attorney's office, didn't you?

24 A. Yes, I did. Well, not at Pima.

25 Q. Richard Wintory was disciplined by Judge Tang for

1 his conduct --

2 **MS. EAZER:** Objection, Your Honor  
3 irrelevant.

4 **BY MR. HUGGINS:**

5 Q. -- and you were a witness on that case?

6 **THE COURT:** Wait just a second. What's the  
7 relevance?

8 **MR. HUGGINS:** Can I finish the question?

9 **THE COURT:** You have gotten, I think, far  
10 enough into the question so that I can address it.

11 **MR. HUGGINS:** Okay.

12 **THE COURT:** Why would what happened in that  
13 case, that other case, why would it have any materiality  
14 in this case?

15 **MR. HUGGINS:** Because she said she has no  
16 experience with confidential matters that involve access  
17 to a confidential intermedia, a confidential ex-parte  
18 matter in a capital case, Judge.

19 **THE COURT:** Okay. Sustained.

20 **MR. HUGGINS:** Thank you. No further  
21 questions.

22 **THE COURT:** Okay. Redirect, Ms. Eazer?

23 **MS. EAZER:** No, Your Honor.

24 **THE COURT:** Okay. Let's see. Do you have  
25 any of our exhibits over there?

1                   Thank you. You're excused, ma'am. You can  
2 go or stay, whatever you wish.

3                   Ms. Eazer.

4                   **MS. EAZER:** Nothing further, Your Honor.

5                   **MR. HUGGINS:** I think they've opened the  
6 door and I renew my request to call Greg Hazard as a  
7 witness and call the attorneys from the Pinal county  
8 attorney's office, including now Mr. Harris and Mr. Long  
9 and Mr. Powell.

10                  **THE COURT:** Ms. Eazer.

11                  **MS. EAZER:** Judge, I guess I would ask that  
12 Mr. Huggins make an offer of proof as to what he thinks  
13 these witnesses would say or what they would add, and  
14 quite frankly, as I said, the State would probably  
15 stipulate that they opened and accessed -- or not opened,  
16 but they had access to ex-parte motions. Again, the only  
17 reason I called Ms. Parish was because of the language  
18 used by the Clerk of the Court about sealed. That seemed  
19 to give rise to an inference that Ms. Parish should have  
20 known they were sealed and were the Defendant's motions.

21                  **THE COURT:** Okay. Now the lawyer that  
22 Ms. Parish -- let me see, I may be able to tell this from  
23 my notes.

24                  The lawyer that she told immediately was  
25 Hazard, right?

1                   **MS. EAZER:** Yes, Your Honor.

2                   **THE COURT:** So it does seem to me that that  
3 door has been opened. Let's talk about Hazard first.

4                   What is it that we would learn from Hazard  
5 beyond that which we know now?

6                   **MR. HUGGINS:** We would find out if he had  
7 accessed multiple ex-parte motions because Judge, I want  
8 to make an avowal based upon the evidence we have, we now  
9 know that a separate ex-parte motion filed on April 4th  
10 has been accessed by the county attorney's office on the  
11 same day in question and they never mentioned anything  
12 about that to the Court. We would know whether he had the  
13 actual motion and reviewed it and the order. She claims  
14 she didn't remember whether she had given it to him, and  
15 whether he was aware of his ethical obligation to disclose  
16 the fact of that access to ex-parte documents and his  
17 ethical obligation to stop reading and notify the Court  
18 and counsel.

19                   We would know in talking to Matt Long --

20                   **THE COURT:** Well, let's just stop there with  
21 that. I guess the only thing that could help you is if he  
22 came in here and made a fool of himself and said no, I  
23 looked at the computer, I looked at the paperwork, I saw  
24 that it was sealed, I saw that it was filed by the  
25 Defense, I saw it was ex-parte and I couldn't figure out

1 that I wasn't supposed to look at that. I don't know what  
2 you would get from that testimony other than that.

3 **MR. HUGGINS:** Well, among other things, he's  
4 the one that filed this motion that you got on July 23rd  
5 that said this should be quashed for one reason, violation  
6 of victim's rights. No other basis given for quashing  
7 the --

8 **THE COURT:** So that's the only reason to  
9 call Hazard, is did he review the motion?

10 **MR. HUGGINS:** No, that's an additional  
11 reason. Did he review this motion, was that his position?

12 **THE COURT:** But, you know, it sounds like  
13 what you have already proved is that the county attorney's  
14 office accessed the sealed records that they ought not to  
15 have looked at. You have established also that shortly  
16 after when they first looked at it, when Ms. Parish got  
17 beyond page one, that any illusions that she had that  
18 perhaps her office filed it so therefore it was proper for  
19 her to be unsealing sealed records, which is a big  
20 question all by itself whether -- even if her office had  
21 filed it, sealed means sealed. But in any case, once she  
22 turned the page and got to the page that made it clear  
23 that her idea, her supposition that she went into this,  
24 that maybe it was her office that filed it so therefore  
25 notwithstanding what the judge had ordered that it was

1 sealed, she could look at it, she had some privilege to  
2 look at it. That was destroyed when she saw your office  
3 filed it. And then what she's told us is she promptly  
4 printed it out and went and talked to Hazard or talked to  
5 Hazard and then printed it out and then it was  
6 distributed, so I don't know what more Hazard would tell  
7 you.

8 **MR. HUGGINS:** What about the April 4th  
9 order, Judge?

10 **THE COURT:** Well, I assume he did exactly  
11 what we learned here.

12 **MR. HUGGINS:** Now we have a pattern, but  
13 they have never admitted that. There's no record on it  
14 and I think I am entitled to ask about it.

15 They didn't have to call Ms. Parish, Judge.  
16 They did.

17 **THE COURT:** I know, I know. Hold on a  
18 second.

19 Now Counsel, I have been given this single  
20 paged document that we ought to mark. Do you have --

21 **MR. HUGGINS:** Judge, we probably would like  
22 to call Chad Roche back up.

23 **THE COURT:** Okay. Well, before we deal with  
24 Hazard -- is Hazard here by the way?

25 **MS. EAZER:** No, Your Honor.

1                   **THE COURT:** Okay. Before we deal with a  
2 witness who is not here and cannot testify, let's deal  
3 with a witness who is here.

4                   Mr. Roche, if you would come forward. You  
5 are still under oath.

6                   I've been given this piece of paper which we  
7 are marking as Exhibit 12.

8                   And Counsel, I am giving the witness Exhibit  
9 12.

10                  Now when I was given my copy of Exhibit 12,  
11 along with it was another piece -- another set of papers.  
12 Is this something new?

13                  **MR. ROCHE:** Yes, Your Honor.

14                  **THE COURT:** Okay. Let's have this marked  
15 then and that will be number 13. I will give that to the  
16 witness.

17                  And do you want to get going first?

18                  **MR. HUGGINS:** Yes, Your Honor.

19                  **THE COURT:** Okay, go ahead.

20  
21   **CHAD ROCHE,**  
22 called as a witness herein, having been previously duly  
23 sworn, was examined and testified as follows:

24                  ////

25                  ///



1 A. Yes.

2 Q. And the party designation record also shows it is  
3 a sealed envelope and document?

4 A. Yes, it does.

5 **MR. HUGGINS:** Your Honor, I move for  
6 admission of Exhibit 13.

7 **THE COURT:** Any objection to 13, Ms. Eazer?

8 **MS. EAZER:** If I Could ask a question on  
9 voir dire?

10 **THE COURT:** Go ahead.

11

12 **VOIR DIRE EXAMINATION**

13 **BY MS. EAZER:**

14 Q. Sir, you printed this document that Mr. Huggins  
15 is referring to today; is that correct?

16 A. Yes, it is.

17 Q. Did you look at the computer screen and more  
18 specifically, the computer screen in the AJACS computer  
19 that was in the county attorney's office back in July of  
20 2013 and actually June of 2013 as well?

21 Did you ever view that during that time  
22 frame to see what -- how the records appeared on the  
23 screen at that time?

24 A. No.

25 Q. So this tells us how they appear today, but it

1 doesn't necessarily tell us how they appeared back in  
2 2013, correct?

3 A. It's a correct reflection of the register of  
4 actions. It doesn't change.

5 Q. But again, you did not ever look at the computer  
6 back then to see if it showed anything different than that  
7 which it does today?

8 A. No.

9 Q. And you are saying that this never changed --

10 **MR. HUGGINS:** Your Honor, I am going to  
11 object. She said she had one question on voir dire.  
12 She's taken over.

13 **THE COURT:** Overruled. Go ahead.

14 **BY MS. EAZER:**

15 Q. You said this record would never change. So if I  
16 have something from three months ago, presumably it should  
17 show exactly what's here today?

18 A. It should, yes.

19 Q. And likewise, something from a year ago should  
20 show exactly what is here today?

21 A. Obviously unless new filings are added on  
22 subsequently, yes, it should show the same thing.

23 **MS. EAZER:** I will have further examination,  
24 but not on voir dire. I have no objection.

25 **THE COURT:** The exhibit is admitted then,

1 13.

2 Go ahead, Mr. Huggins.

3

4 **DIRECT EXAMINATION CONTINUED**

5 **BY MR. HUGGINS:**

6 Q. Do you have what's been marked as Exhibit  
7 Number 12?

8 A. Yes.

9 Q. Does it say "Untitled"?

10 A. Yes, it does.

11 Q. Does it reflect that you've gone back and checked  
12 the record for the motion filed on April 4, 2013?

13 A. Yes, it does.

14 Q. Did it indicate that that document was viewed?

15 A. Yes, it does.

16 Q. Did it give you a number with the viewing?

17 A. It does.

18 Q. What does that number refer to?

19 A. That number is a unique document ID for our  
20 OnBase document management system.

21 Q. Okay. When was the document viewed?

22 A. It was viewed four separate times on July the  
23 18th of 2013.

24 Q. The same document?

25 A. Correction. Correction. It was viewed twice

1 that day. I'm sorry.

2 Q. Document 2932159 is the document that was filed  
3 on April 4, 2013?

4 A. It is, yes.

5 Q. And it was viewed twice?

6 A. Yes.

7 Q. By the county attorney's office?

8 A. This is a report for the county attorney's victim  
9 advocate login, the CAVA login.

10 Q. And it was viewed at 3:07 p.m.?

11 A. Yes.

12 Q. And again at 3:54 p.m.?

13 A. Yes.

14 Q. That document, it says: Unity Retrieved  
15 Document. What does that mean?

16 A. At this time my staff is actually researching the  
17 definition of that for me. To my knowledge it means  
18 either printed or attempted to print.

19 Q. And was that document attempted or -- printed or  
20 attempted to be printed twice on July 18th?

21 A. Yes, it was.

22 Q. And at 3:56 p.m.?

23 A. Yes.

24 Q. And again at 3:59 p.m.?

25 A. Yes.

1 Q. As to the June 12th ex-parte motion and order,  
2 does it indicate it was viewed?

3 A. Yes, it does.

4 Q. Does it indicate the date that motion was filed?

5 A. Yes.

6 Q. What date?

7 A. 6/12 of 2013.

8 Q. When was it viewed?

9 A. It was viewed 7/18 of 2013 at 3:13 p.m.

10 Q. Was that document attempted to be printed or  
11 printed on July 18th?

12 A. Yes, at 3:15 p.m.

13 MR. HUGGINS: Your Honor, I move for the  
14 admission of Exhibit 12.

15 MS. EAZER: No objection.

16 THE COURT: Exhibit 12 is admitted.

17 MR. HUGGINS: No further questions, Your  
18 Honor.

19 THE COURT: Ms. Eazer.

20 MS. EAZER: Nothing further, Judge.

21 THE COURT: Okay. Thank you, sir.

22 And may I excuse Mr. Roche?

23 MR. HUGGINS: You may, Your Honor.

24 MS. EAZER: Subject to recall, Judge.

25 THE COURT: Okay. Thank you, sir.

1           Okay. Back to Defense's request now with an  
2 open door to inquire of and have testimony from several  
3 deputy county attorneys. We are talking about Mr. Hazard.

4           Is Mr. Hazard still employed in your office,  
5 Ms. Eazer?

6           **MS. EAZER:** No, Your Honor.

7           **THE COURT:** Okay. What we were talking  
8 about, Mr. Huggins, was just what Mr. Hazard would testify  
9 to. I would conclude -- I would assume that you would  
10 make an offer of proof that he improperly reviewed,  
11 accessed, distributed documents which the Court had  
12 ordered sealed.

13           **MR. HUGGINS:** Correct.

14           **THE COURT:** Anything else?

15           **MR. HUGGINS:** I think he would tell us about  
16 the April 4th order that's never been mentioned that  
17 didn't come up until today, Judge. And I think that's got  
18 to be disturbing to the Court as well. We have a separate  
19 ex-parte motion and order that's been accessed and printed  
20 by the county attorney's office, and in all this  
21 litigation nobody ever bothered to mention that to Judge  
22 Johnson, to Judge Georgini, to you or to me. I think I'm  
23 entitled to file a brief on that issue as well and to  
24 examine about that as well.

25           **MS. EAZER:** May I be heard briefly, Judge?

1                   **THE COURT:** Well, wait just a second.

2                   Is the June 12, 2013 motion and order, I  
3 guess -- Mr. Huggins, is that involving Mr. Pierce's  
4 records?

5                   **MR. HUGGINS:** Yes, Your Honor.

6                   **THE COURT:** And now I'm not asking you what  
7 the April 4, 2013 motion and order is. That was -- I  
8 assume it's under seal. That's what everybody is assuming  
9 here.

10                   You are familiar with that, I assume. You  
11 prepared it, either you or Mr. Soslowsky?

12                   **MR. HUGGINS:** I prepared it.

13                   **THE COURT:** Okay. Since we have evidence  
14 from Mr. Roche, Mr. Huggins, that the viewing July 18th of  
15 not only the June 12th motion but the April 4th motion was  
16 done by somebody logging in with the county attorney's  
17 office access ID, it seems like you are urging me to draw  
18 the same conclusion with regard to the April motion as you  
19 are urging for the June motion.

20                   **MR. HUGGINS:** Yes, Your Honor, but there's  
21 something very disturbing. They have told you that the  
22 reason this drew their attention is the victim's medical  
23 records, but if you look at this uncontradicted document  
24 from Mr. Roche, it indicates the other motion was accessed  
25 first. It was accessed and then the other motion was

1 accessed.

2 Judge, I mean, I guess it's possible the  
3 county attorney had multiple people looking at the  
4 documents in my client's file, but I think the reasonable  
5 implication is Ms. Parish did these, and that her  
6 testimony here is not accurate or in compliance with the  
7 known facts.

8 **THE COURT:** Now you said you wanted to be  
9 heard, Ms. Eazer?

10 **MS. EAZER:** Yes, Your Honor. I guess first,  
11 not knowing what the April 4th motion or attachment is,  
12 we're really kind of at a loss to say whether it was  
13 viewed or accessed. And quite frankly, you know, I can  
14 tell the Court --

15 **THE COURT:** Why wouldn't I conclude that  
16 based on Mr. Roche's testimony that your office viewed the  
17 April 4th motion at 3:07 p.m.?

18 I don't know who did, somebody logging in.

19 **MS. EAZER:** Well, there's a couple of --  
20 there's a couple of things that happened on the AJACS  
21 computer. So part of -- some of -- part of my concern  
22 here and without knowing further is the Defense will file  
23 a notice of filing ex-parte motion that is not sealed. We  
24 see those. That's their notice to us that they are filing  
25 it. And then the motion itself won't even show up on

1 AJACS in most instances.

2                   So I can't say right now because of what  
3 Mr. Roche has said, as to whether the sealed document was  
4 viewed or possibly it was just the notice that was viewed  
5 because quite frankly I will tell you, Judge, just from  
6 everything I have read and done my own little  
7 investigation just as coming on this case two months ago,  
8 nobody understood this system last year. Obviously nobody  
9 knew that records which were supposed to be sealed could  
10 be opened with the click of the button in the county  
11 attorney's office.

12                   What we do have, Judge, is the one issue  
13 before the Court which deals with the victim's medical  
14 records. And whether or not there is some sanction that  
15 this Court should deliver, which I hadn't even got to  
16 arguing that part because we were taking the evidence. I  
17 mean the Court has already accepted the motion was  
18 improper so he wasn't entitled to get the records that  
19 way, and then the next step is, is there a sanction to be  
20 imposed regarding that specific motion.

21                   You know, if Mr. Huggins wants to file a  
22 separate motion with respect to the April 4th and the  
23 State can somehow have some notice as to what that motion  
24 was -- I will tell the Court that there's some conflicting  
25 minute entries as well that suggest that the April 4th

1 motion was unsealed because it wasn't proper under 15.9,  
2 but then I just realized there's a second minute entry  
3 from Judge White which says that was the February 25th  
4 motion. So I have two minute entries that I can present  
5 to the Court with respect to another ex-parte request that  
6 was made by Mr. Huggins, which has been unsealed and  
7 delivered to the Court -- or I'm sorry, I mean to the  
8 State. In one minute entry he says it was the April 4,  
9 2013 motion and in another minute entry he says it was the  
10 February 25, 2014 motion.

11 So I think there's a great deal of confusion  
12 here, but all I'm asking today is that the April 4th  
13 issue, which Mr. Huggins has kind of just sprung on us and  
14 he did it this morning early on with his questioning of  
15 Mr. Roche, and I get this back from Mr. Roche saying it  
16 shows something was accessed. I don't know what was  
17 accessed. Ms. Parish has said she doesn't recall  
18 accessing anything else. We don't even know what it is so  
19 how can she say whether she accessed it.

20 **THE COURT:** Have you ever seen Exhibit  
21 Number 1 which is -- that I'm showing you? Had you ever  
22 seen that before today?

23 **MS. EAZER:** Yes.

24 **THE COURT:** Okay. So you know Exhibit  
25 Number 1 is a compilation of access of sealed documents.

1 Most of them, of course, are colored green which means  
2 okay to view. And it shows with regard to what we have  
3 been talking about all day, access to the sealed document  
4 dated 6/12/2013. And it shows access in red, improper  
5 access, I believe, for April 4th. So you have known,  
6 presumably Mr. Huggins has known, so nobody should be  
7 claiming surprise, either you or he, that there was access  
8 to the April 4th filing.

9 Now we learned this afternoon, of course,  
10 that the access to those two filings was all the afternoon  
11 of July 18th. It seems like, at least what we knew this  
12 hearing was going to be about, that the door has been  
13 opened and I ought to allow testimony by at least Hazard  
14 based on the testimony of Ms. Parish. But now there's all  
15 this issue of somebody else, presumably not Ms. Parish.

16 She essentially denied accessing the  
17 April 4th document. Specifically her testimony was that  
18 she went in looking for the June 12th motion, whereas the  
19 facts would show that somebody else, assuming as I do that  
20 Ms. Parish has told us the truth, obviously there was  
21 somebody else six minutes before using that same logon ID  
22 that viewed the April 4th document. So, I think I have no  
23 choice but to allow Defendant to make further inquiry,  
24 specially since I quashed his earlier subpoenas.

25 Now I'm skeptical for the reasons we have

1 discussed a time or two, just what remedy is left for me.  
2 I will have to hear all the evidence before I make a  
3 ruling, but I haven't heard anything yet anyway as to  
4 either dismiss the charges, disqualify the county  
5 attorney's office, but as Mr. Huggins would remind me, we  
6 haven't heard all the evidence yet. If the county  
7 attorney's office is not just inadvertently viewing one  
8 sealed document, but the evidence shows a practice and a  
9 pattern of doing so, perhaps some relief ought to be  
10 ordered. It sounds like the appropriate relief has  
11 already been provided by Mr. Roche, which is to change  
12 access to sealed documents.

13                   Okay. So Hazard is not here. What would  
14 Harris, Long -- and did you say Power?

15                   **MR. HUGGINS:** Powell.

16                   **THE COURT:** Powell.

17                   What would those individuals add,  
18 Mr. Huggins?

19                   **MR. HUGGINS:** They have now raised the  
20 question, would not everybody in the county attorney's  
21 office with access to the computer be able to provide  
22 relevant evidence whether they accessed the 4/4 document  
23 on July 18th?

24                   **THE COURT:** Well, I'm not going to sit here  
25 listening to you go fishing by examining everybody in the

1 office.

2 **MR. HUGGINS:** Well, Judge, I think I've got  
3 to be able to find out who's accessed confidential  
4 documents. And if that requires fishing at the county  
5 attorney's office because they did it, I think I am  
6 entitled to do that, but I understand your position.

7 In regard to Powell, I'm not certain Powell  
8 actually had any communication on this case because what  
9 we've got is he's out on medical leave. And I don't  
10 remember -- and I am going to be candid with you, Judge, I  
11 don't remember in any pleadings or any testimony, anybody  
12 referring to talking to David Powell or David Powell  
13 having access to the records.

14 **THE COURT:** How about Long?

15 **MR. HUGGINS:** Long actually was contacted.  
16 According to Parish, she tried to call him immediately and  
17 then contacted him within two days, and he takes part then  
18 in the filings of the Motions for Affirmative Relief as  
19 does Ron Harris.

20 **THE COURT:** But you know, if she couldn't --  
21 if Ms. Parish couldn't contact Long for a couple of days,  
22 that would be -- literally a couple of days, it would be  
23 July 20th. And there is no -- according to Mr. Roche's  
24 records, there's no improper access after July 18th.

25 **MR. HUGGINS:** Yes, but the question is, are

1 they complying with their obligation to notify the Court,  
2 our office, our staff, have accessed it. And now we know  
3 they are frantically preparing motions for affirmative  
4 relief and that multiple parties are taking part in it, at  
5 minimum Hazard and Harris.

6 **THE COURT:** Do you believe the date is  
7 accurate for the State's filing of its Motion to Stay the  
8 Court's Ruling? That should be dated or was dated, I  
9 should say, July 23rd.

10 **MR. HUGGINS:** Yes.

11 **THE COURT:** Well, okay. Harris, why would  
12 Harris testify?

13 **MR. HUGGINS:** Because again, he now has  
14 access to the confidential sealed document. He's viewing  
15 it and he's preparing, according to the testimony of  
16 Ms. Parish, the writ. Other request that you didn't  
17 mention on July 24th for an expedited ruling, but that's  
18 also signed by Mr. Hazard. For the Court's information,  
19 Mr. Harris no longer works for the county attorney's  
20 office either.

21 **THE COURT:** Well, you know, it seems to me,  
22 Mr. Huggins, is that what Harris and Long did is of  
23 record. These pleadings are of record and it doesn't seem  
24 like their involvement is really in dispute.

25 Now Hazard was there that afternoon.

1 Ms. Parish got him involved promptly and it does seem like  
2 his testimony would be appropriate.

3 Does anybody know where he works?

4 **MS. EAZER:** Yes, Judge.

5 **MR. HUGGINS:** He was subpoenaed for the June  
6 -- January 24th hearing and was present. He works at the  
7 attorney general's office and he was previously subpoenaed  
8 for the hearing before his subpoena was quashed.

9 **THE COURT:** I know, I know.

10 Can we get Mr. Hazard here as quickly as  
11 either tomorrow or Thursday?

12 **MS. EAZER:** I will ask Ms. Parish if she can  
13 step out and make some calls and come back to report to  
14 the Court.

15 **THE COURT:** Okay. Let's do that. Now how  
16 do you propose to address some -- the issue of accessing  
17 the April 4th filing?

18 Neither -- I suspect neither Ms. Eazer and  
19 certainly not me, wish to have this improper accessing of  
20 the pleading destroy the effect that the judge wanted to  
21 accomplish by sealing those documents. If you choose to  
22 reveal them that's your choice, but neither Ms. Eazer nor  
23 I want to maneuver things so that you feel that you are  
24 constrained to disclose that.

25 **MS. EAZER:** Judge, I believe they have been

1 disclosed.

2 **THE COURT:** They have been disclosed?

3 **MS. EAZER:** Yes.

4 **MR. HUGGINS:** No, the motion has never been  
5 disclosed.

6 **MS. EAZER:** Mr. Huggins, it's the one where  
7 you asked for all the Defendant's records and his family  
8 members' records. The Court disclosed it to the State as  
9 did you because he ordered it was improper under 15.9.

10 And I believe I have it right here with me,  
11 Judge.

12 **THE COURT:** Well, I might have it here too.  
13 I do.

14 **MR. HUGGINS:** If that is the motion, the  
15 trouble we have, Your Honor, is this was filed a year  
16 before the minute entry and Judge White's order unsealing  
17 it also maintains certain confidentiality from the State.  
18 If you review -- it doesn't indicate who it's in regard to  
19 or who it's directed to, so it's only partially been  
20 unsealed. But what I was going to say is clearly the  
21 register of actions that has been admitted as Exhibit 13  
22 has it listed.

23 It says: Notice. Filing notice.

24 And then right below it: Miscellaneous  
25 sealed document. Sealed attachment to Notice of Ex-parte

1 Motion.

2 So it's -- the character is here without the  
3 motion itself being disclosed, but if it is the same  
4 motion that Judge White ordered largely disclosed upheld,  
5 I have no problem.

6 **THE COURT:** So at least we can talk about it  
7 without forcing you to disclose something you shouldn't?

8 **MR. HUGGINS:** Yes.

9 **THE COURT:** Which as you pointed out, thanks  
10 to this redaction, by talking about the order on the  
11 ex-parte motion for record, it doesn't disclose anything.

12 But your point is, Mr. Huggins, is that the  
13 State has reviewed this order without the redactions; is  
14 that correct?

15 **MR. HUGGINS:** Yes, if that is a reasonable  
16 interpretation of Exhibit 12.

17 **THE COURT:** I don't know what other  
18 interpretation it could be. It looks like it was reviewed  
19 twice and printed or attempted to be printed twice.

20 That's your conclusion?

21 **MR. HUGGINS:** Yes, Your Honor.

22 **MS. EAZER:** And the State would add to that,  
23 Judge -- and this is why I'm -- you know, I understand the  
24 Court is saying that that document that shows the  
25 different accessing should have put the State on notice

1 somehow that we were going to deal with something that had  
2 been illegally accessed on April 4th, but it's never been  
3 raised -- and I have got to tell you, Judge, again, and  
4 boy it may take me awhile but I believe I will be able to  
5 show you, you know, number one, I can show you three  
6 different inconsistencies. The same motion with different  
7 dates of filing on it, just that I pulled here since  
8 discovering this morning, late this morning, that we are  
9 dealing with an April 4th issue.

10 I'm telling you this computer had a great  
11 deal of problems. And I likewise can show you, and  
12 actually printed them over the lunch hour, at least ten  
13 entries in this computer that say they were State -- I  
14 mean a Defense motion or supplemental disclosure. When  
15 you open it, it is not. I can literally show the Court  
16 ten examples of something where you open it and it is not  
17 what it purports to be on the screen.

18 So I have significant concerns about a  
19 document that Mr. Roche brings in saying: Well, here,  
20 this is what this document was and it was opened by the  
21 State.

22 I'm not disputing that something was opened  
23 by the State. I quite frankly believe that one of them  
24 was a motion and one of them was the order that went with  
25 the motion, because we know both of those were accessed,

1 correct?

2 We know the State got the motion for the  
3 victim's medical records, the ex-parte motion for the  
4 victim's medical records. And we likewise know the State  
5 went and accessed the order, so where is that? Where is  
6 that showing on Mr. Roche's record that we got a separate  
7 order as well?

8 I just -- it's --

9 **THE COURT:** I'm not going to decide it  
10 today, of course.

11 Any word on Mr. Hazard's availability?

12 **MS. PARISH:** I have a call into his cell  
13 phone. I got no answer, left a message.

14 **MS. EAZER:** I'm holding, Your Honor, minute  
15 entries -- or not minute entries, orders that have to do  
16 with the April 4th, 2013 order and motion that say they  
17 were filed by the Pinal County Clerk of the Court on March  
18 13, 2014. There are issues here and I guess -- and I'm  
19 not meaning to get a little heated, Judge, but I really  
20 didn't know that there was going to be any issue about  
21 April 4th, and I really am taking exception to Mr. Huggins  
22 stating that clearly this is a pattern of conduct by the  
23 State when Ms. Parish, Mr. Hazard, everybody right away  
24 said we accessed these documents.

25 **THE COURT:** Okay.

1                   **MR. HUGGINS:** Your Honor --

2                   **THE COURT:** No, no. No, Mr. Huggins.

3                   **MR. HUGGINS:** Can I just correct --

4                   **THE COURT:** No, no, you don't need to.

5 Counsel, we are going to have further hearing on this.

6                   I think it's only fair, Mr. Huggins, to give  
7 some notice to the State of how you see the disclosures,  
8 surprise or not, with regard to the testimony of access to  
9 the April 4th document. You mentioned earlier that you  
10 were inclined to supplement your motion. Why don't you  
11 get that in and then we'll return for -- and I will order  
12 that Mr. Hazard testify. I will rely on Ms. Eazer and  
13 staff to obtain his presence without a subpoena unless, of  
14 course, he needs it for his purposes.

15                   **MS. EAZER:** I'm sure it won't be a problem.

16                   **THE COURT:** I can get coverage tomorrow or  
17 Thursday looking short term. I don't know what your  
18 schedules would permit. Once we go beyond Thursday  
19 though, with a trial that I have next week, attendance at  
20 a conference of Chief Justices' Summit in Seattle the  
21 following week, and then a series of trials I won't bore  
22 you with, the next available date that I have is mid June,  
23 June 17th. So -- and that's going to require me to get  
24 some coverage to replace my sitting on some cases. And  
25 then if we don't get it done June 17th, I hate to think

1 how long after that.

2 So, are you available tomorrow or Thursday?  
3 Are there some times I should work around?

4 **MS. EAZER:** I am available, Judge, both  
5 days. Obviously I don't know yet with respect to  
6 Mr. Hazard.

7 **THE COURT:** Well, I won't come back unless  
8 Mr. Hazard is here.

9 **MR. HUGGINS:** Your Honor, it appears I'm in  
10 an evidentiary hearing all day tomorrow. I have got  
11 matters set on Thursday in the morning and afternoon, but  
12 this is a priority case. I could bounce my matters on  
13 Thursday.

14 **THE COURT:** It looks like we ought to focus  
15 with Mr. Hazard on Thursday, Counsel.

16 **MR. HUGGINS:** Oh, Judge -- thank you very  
17 much, Deputy. Deputy says we've got real problems on a  
18 transportation order getting him back for Thursday.

19 **THE SHERIFF DEPUTY:** If you get it done  
20 today, we might be able.

21 **MR. HUGGINS:** You told me last week if I got  
22 it to you on Tuesday, I could get him on Friday.

23 **THE COURT:** Ms. Eazer, we need to focus on  
24 getting Mr. Hazard here on Thursday. We've got a  
25 transport problem, but maybe we can help the sheriff out

1 today. Why don't I go ahead and set a further hearing for  
2 Thursday, May 8th, at 2:30 p.m. here in Florence. I will  
3 order and direct that the Defendant be transported.

4 Deputy, what is it that I can do to help  
5 you? Do you need a separate signed order?

6 **THE SHERIFF DEPUTY:** I need a transport  
7 order signed by the end of today.

8 **THE COURT:** Okay. Madam Clerk, can you help  
9 us out?

10 Mr. Roche is looking on carefully. All  
11 clerks are always very helpful.

12 Maybe, ma'am, it would -- just a separate  
13 signed minute entry.

14 Now Ms. Eazer, if you get grumblings from  
15 Mr. Hazard that he has important things to do, you  
16 might -- I'm sure you will emphasize to him how important  
17 it is that we do this. If it's absolutely impossible that  
18 he can't be here in the afternoon, somebody's going to  
19 have to check with the sheriff's office to see if the  
20 Defendant can be here. If he cannot be here we are going  
21 to put this off a long time, so hopefully Mr. Hazard can  
22 be here at that time.

23 If he can be here Thursday afternoon, but  
24 only later, that's fine. Just let everybody know. We'll  
25 have -- the sheriff, I'm sure, will do what he can to have

1 Mr. Wilson here. We'll just wait for Mr. Hazard until he  
2 gets here. That's fine.

3 Now I will leave it up to you, Mr. Huggins,  
4 whether you want to in the short interval between now and  
5 then with your juvenile hearing scheduled to start in a  
6 few minutes and your evidentiary hearing tomorrow, if you  
7 want to file that supplementation between now and Thursday  
8 afternoon. If you can't get that done, then it's not  
9 likely that I will be able to decide the matter on  
10 Thursday. We will just get Hazard's testimony taken, and  
11 I will give both sides an opportunity to be heard perhaps  
12 only in writing afterwards.

13 Now we've jumped around quite a lot today.

14 Ms. Eazer, there's two *Chronis* allegations  
15 of aggravation that you wanted to prove up today. We have  
16 presented testimony on the -- number one, that the  
17 Defendant was in custody, and number two was his supposed  
18 convictions of a serious offense.

19 And in support of that aggravating factor  
20 your proof is?

21 **MS. EAZER:** I have a certified DOC Pen Pack,  
22 Your Honor, which I have marked as an exhibit. However,  
23 just as kind of a caveat, I either -- I am going to need  
24 this back for trial. So I don't know. I'm still  
25 unfamiliar how Pinal works, so I need to either make sure

1 it stays with the file or have it released back to the  
2 State so we can use it for the file as well. And I can  
3 substitute it with a copy as well.

4 **THE COURT:** Substituting with a copy would  
5 be best.

6 **MS. EAZER:** Okay. Okay. So --

7 **THE COURT:** Marked as exhibit --

8 **MS. EAZER:** It is marked as Plaintiff's  
9 Exhibit Number 9, and it is the certified Arizona  
10 Department of Corrections, what's referred to commonly as  
11 a Pen Pack, which shows that the Defendant was in fact  
12 committed to the Arizona Department of Corrections  
13 February 5, 2008, from a new conviction out of Maricopa  
14 County, which is the conviction that the State has  
15 alleged. That being -- that being CR2005138499. That he  
16 was -- after processing at Alhambra he was received at the  
17 Browning Unit in February -- I'm sorry, May 18th. I  
18 apologize, February 5, 2008, where he was serving a life  
19 sentence.

20 The document -- the certified copy evidences  
21 the CR number in the case for which Mr. Wilson was  
22 convicted and the State alleged. It likewise has a  
23 photograph of Mr. Wilson, which is one of the reasons that  
24 the State decided it doesn't need to use fingerprints or  
25 anything else to identify him. If I may approach and hand

1 the exhibit to the Court, the Court will see.

2 **THE COURT:** What's the conviction you seek  
3 to have me find?

4 **MS. EAZER:** That the Defendant was  
5 previously convicted of a serious offense, which first  
6 degree murder is considered a serious offense under the  
7 statute and that was in CR2005138499.

8 **THE COURT:** And the date of the conviction?

9 **MS. EAZER:** I'm sorry, Judge, I have AJACS  
10 computer records covering my paperwork.

11 February 1, 2008.

12 **THE COURT:** Okay. And you rest then on that  
13 proof?

14 **MS. EAZER:** I'm just double checking my  
15 date. If I could have just one moment, Your Honor.

16 Yes. And I was just checking because it was  
17 a plea and sentencing at the same time, so I just wanted  
18 to make sure the conviction date was the same as the  
19 sentencing date.

20 **THE COURT:** And the level of proof that you  
21 are required to show is?

22 **MS. EAZER:** I'm not sure if they've actually  
23 determined that yet, Judge, whether it's a probable cause  
24 finding similar to that at grand jury or clear and  
25 convincing. But I would submit with the certified Pen

1 Pack, Your Honor, which is as I said, has a photograph of  
2 the Defendant in it which clearly identifies that he is by  
3 his tattoos the person that was convicted of first degree  
4 murder on the aforementioned CR, on the aforementioned  
5 date.

6 **MR. HUGGINS:** Your Honor, that is not what  
7 was presented. The investigator indicated my client was  
8 in custody and my client was Richard Wilson. She  
9 indicated she was not a custodian of record, has no  
10 ability to certify or exemplify these records. There has  
11 been no records from Maricopa County, which she's been  
12 relying on to try and suggest that conviction is the basis  
13 of this document, so she hasn't presented adequate proof.  
14 At the *Chronis* hearing they have to present the actual  
15 witnesses that will introduce those documents at trial;  
16 they haven't done that.

17 **MS. EAZER:** Judge, as the Court is aware,  
18 it's a certified document, it's self-authenticating. The  
19 State is not required to call a witness, nor does the  
20 State intend to call a witness at the guilt phase -- I  
21 mean the punishment phase. I'm sorry.

22 **THE COURT:** If we get to the punishment  
23 phase, we'll deal with that then.

24 Anything else, Mr. Huggins?

25 **MR. HUGGINS:** No, Your Honor.

1                   **THE COURT:** Counsel, I will find that the  
2 State has made a sufficient showing at this stage of the  
3 proceedings, in what we are calling today's hearing a  
4 *Chronis* hearing. That the two aggravating factors alleged  
5 have been shown by sufficient evidence. As a matter of  
6 fact, the evidence here is both clear and convincing. The  
7 evidence is related, of course. That is any shortcomings  
8 alleged to exist with regard to the testimony regarding  
9 aggravating factor number one are certainly dealt with by  
10 the testimony that Defendant was sentenced to a life term  
11 as is shown in the Pen Pack material offered by the State  
12 in support of aggravating factor number two.

13                   Okay. Counsel, we did have a discussion  
14 last time about a trial date. I think I probably punted a  
15 bit and said we should talk about it today. We have got  
16 these issues raised by the Defense about access to sealed  
17 documents, but we need to have a trial date that we can  
18 rely on. Of course, the rules would suggest that our  
19 trial should start November 4th if not before.

20                   Any reason why I should order a trial after  
21 that date?

22                   **MR. HUGGINS:** Yes, Your Honor.

23                   **THE COURT:** Why?

24                   **MR. HUGGINS:** There have been excluded  
25 periods pursuant to a remand from the original motion as

1 well as --

2 **THE COURT:** Submitted under what?

3 **MR. HUGGINS:** -- excluded periods. This  
4 matter was previously remanded to the grand jury. All of  
5 that would be excluded from the two year period and add to  
6 additional time, as well as the currently pending remand  
7 motion that hasn't been addressed yet. We think that  
8 would be far too quick to set this in November, Judge, and  
9 we would waive time to do so.

10 I will tell the Court there have been no  
11 interviews of fact witnesses done to this point by  
12 counsel.

13 **THE COURT:** That's probably because you do  
14 not have a trial date. Nobody is interviewing fact  
15 witnesses.

16 **MR. HUGGINS:** I have never been one to say  
17 the only time I do trial interviews is when I've got a  
18 trial date, Judge.

19 **THE COURT:** Well, you need to be doing  
20 interviews.

21 **MR. HUGGINS:** I will be more than happy to  
22 do so. We haven't had a consistent assigned prosecutor  
23 until Ms. Eazer came on.

24 **THE COURT:** Well, you have one now.

25 **MR. HUGGINS:** Yes.

1                   **MS. EAZER:** And I will begin setting up  
2 interviews and the State will be ready to go to court -- I  
3 mean go to trial by November of 2014.

4                   **THE COURT:** Now Ms. Eazer, the Defense urges  
5 delay and in support of that suggests that if I'm trying  
6 to comply with the rule that says set the trial within --  
7 have the trial within two years, at least start it I  
8 guess, that I ought to -- if I'm counting time, I ought to  
9 also exclude time. And, of course, we are very familiar  
10 with all of that; waived time, excluded time in connection  
11 with Rule 8.

12                   What is your response to the argument that I  
13 should exclude a bunch of time in this case?

14                   **MS. EAZER:** Judge, I would object to  
15 excluding too much time in this case. I totally agree  
16 with the Court's suggestion that perhaps if we had a firm  
17 trial date we would move this case along and that is  
18 certainly the State's desire. I have made that known to  
19 Mr. Huggins, and I'm ready to start setting up interviews.  
20 I have also -- well, I have a letter that I've offered to  
21 him today telling him I will have my *Romero* list done by  
22 the end of this week cutting down the initial witness list  
23 significantly.

24                   This is not -- I shouldn't say it's not a  
25 complex trial, Judge, because every capital case is

1 complex to a certain degree, but this compared to others  
2 isn't as complex, and I don't believe that there are going  
3 to be as many witnesses in this case as in other capital  
4 cases.

5 As far as excluding time, Judge, I've seen  
6 repeated requests to continue the pretrial conference in  
7 this case saying we're not ready to set a trial date yet,  
8 and the State would very strongly urge this Court to set a  
9 trial date if not within the two year time period, then  
10 very shortly thereafter.

11 **THE COURT:** Counsel, I am going to order  
12 that our trial begin Wednesday, November 12th, here in  
13 Florence, of course. Now I would order that our trial  
14 start at 9:30 if I was in Globe, but I don't want to  
15 disrupt things.

16 Is that what time trial would ordinarily  
17 start here?

18 **MR. HUGGINS:** Your Honor, it depends on the  
19 judge. Some start it as early as 8:30, some start it  
20 later in the day.

21 **THE COURT:** Well, of course, we don't select  
22 judges on the basis of merit in Gila County as I guess you  
23 do here.

24 **MR. HUGGINS:** I think your voters do select  
25 judges based on merit.

1                   **THE COURT:** Well, that's disputed.

2                   Well, we don't require jurors to get down to  
3 Payson and then drive to Globe so they can be there at  
4 8:30, so I will order that it start at 9:30. Now we will  
5 leave until later further details with regard to jury  
6 selection, use of a juror questionnaire which will  
7 require, of course, some advanced planning.

8 Questionnaires are, of course, particularly of valuable  
9 use in death penalty cases which would allow us to move  
10 jury selection on. I won't order use of a questionnaire,  
11 but my suggestion is that you at least discuss how it  
12 could assist you in your part in the jury selection.

13                   Now I have the motion for remand somewhere  
14 in this mess of papers.

15                   A Motion for Redetermination of Probable  
16 Cause filed in July. Now it looks like that was when  
17 Mr. Long was in charge of the case, Ms. Eazer, because he  
18 filed a response and then a reply was filed shortly  
19 thereafter. It's not set for argument today. Because I  
20 need to move things along, I either need to get this case  
21 remanded to the grand jury, probably vacate the jury trial  
22 or get you a decision otherwise on the motion so you know  
23 that it's been resolved. Nobody's requested oral  
24 argument, so --

25                   **MR. HUGGINS:** I thought we agreed there

1 would be oral argument on that at our last hearing.

2 **MS. EAZER:** I didn't recall that, Judge.

3 **THE COURT:** Well, go ahead then,  
4 Mr. Huggins.

5 **MR. HUGGINS:** If she's not prepared I don't  
6 want to catch her off guard, but that was my  
7 understanding.

8 **THE COURT:** Well, Ms. Eazer is pretty quick  
9 on her feet.

10 **MR. HUGGINS:** Your Honor, in this case, the  
11 case was presented to the grand jury in Pinal County. The  
12 grand jurors are instructed on law at the empanelment.  
13 This was the 147th grand jury that was empanelled on  
14 May 2, 2013. An empanelment -- or the day after  
15 empanelment on May 2, 2013, they bring them in and  
16 basically have an automated reading of the criminal code  
17 to all prospective members of the grand jury. And as  
18 that's being done, they provide written books called  
19 statute books for the grand jury.

20 At the time this was presented, they read  
21 the presumptions from ARS Section 13-1101 verbatim, and  
22 that statute was provided in the grand jury book at that  
23 time. In *State v. Thompson* in 2004, the Supreme Court  
24 indicated that reading the statute was inappropriate and  
25 was potentially misleading to the jury.

1                   When this specific investigation was  
2 presented to the grand jury weeks later, the prosecutor at  
3 that time, and I believe this is before Mr. Powell went on  
4 vacation, came in and read the RAJI instruction, but he  
5 told the grand jurors they could consider this in  
6 connection with the improper instruction under 1101 in  
7 *Thompson*.

8                   **THE COURT:** Wasn't there on June 5th though  
9 a corrected instruction given?

10                   **MR. HUGGINS:** An additional hand copy was  
11 given, but they were never told to give back or told to  
12 disregard the instruction appearing in their book.

13                   **THE COURT:** Wouldn't it be more likely that  
14 the grand jury would follow the most recent instruction  
15 that they received?

16                   **MR. HUGGINS:** I don't believe that's  
17 necessarily the case at all. I would think that what you  
18 read you are more likely to follow, specially if you have  
19 been using it over a course of several weeks, but that is  
20 one possibility. The trouble is, Judge, we can't tell.  
21 It is equally possible that some grand jurors used the  
22 improper instruction and others used the proper one, but  
23 together they were instructed by this county attorney on  
24 this occasion, read them together.

25                   **THE COURT:** Why was the case, Mr. Huggins,

1 remanded to the grand jury before?

2 Did you say it had been?

3 **MR. HUGGINS:** Yes.

4 **THE COURT:** Because why?

5 **MR. HUGGINS:** Based upon *Thompson*. They  
6 read that grand jury the improper instruction under 1101  
7 and because at the prior presentation they commented on  
8 Mr. Wilson's invocation of his right to remain silent.

9 **THE COURT:** So then it was presented to a  
10 new -- a different grand jury or the same?

11 **MR. HUGGINS:** A different grand jury.

12 **THE COURT:** Okay.

13 **MR. HUGGINS:** They were again given 1101,  
14 but now told there was an additional instruction. So this  
15 grand jury gets the RAJI in addition to 1101, but again in  
16 this presentation, again they directly comment on  
17 Mr. Wilson's invocation of his Fifth Amendment privilege.

18 Your Honor, I have documented that in my  
19 motion. So basically the same problems that led to the  
20 first remand were repeated. Judge, our courts have been  
21 absolutely clear. It is improper to comment on a  
22 defendant's silence. They comment on the Defendant's  
23 silence and then they try and suggest to the Court: Well,  
24 because the prosecutor told the grand jurors not to pay  
25 any attention to that that they must not have done so.

1                   Judge, that's just plain fast and loose law.  
2                   And I've cited for you the repeated Arizona decisions that  
3                   said we've cautioned, we've cautioned, we've cautioned  
4                   about this and you keep doing the same thing. We are not  
5                   going to deal with this anymore. We are going to create a  
6                   clear rule and that rule is you comment on silence, it  
7                   gets reversed.

8                   Judge, it is so simple to remand this to the  
9                   grand jury and take care of this.

10                   **THE COURT:** Well, it sounds like you are  
11                   saying it's not so simple. It was remanded once, that  
12                   didn't work out too well for you. You're saying they made  
13                   the same mistake again, so it's not as simple as you are  
14                   saying.

15                   **MR. HUGGINS:** No, I believe it is, Your  
16                   Honor. It shouldn't be hard to adequately instruct a  
17                   grand jury on the law and to provide factual matters that  
18                   delete comment on right to remain silent. You are  
19                   obviously being facetious with me when you suggest --

20                   **THE COURT:** I am. I am.

21                   **MR. HUGGINS:** -- that is not a difficult --  
22                   or simple matter to accomplish.

23                   **THE COURT:** I know.

24                   **MR. HUGGINS:** And we are asking that this  
25                   matter be remanded.

1                   **THE COURT:** Well, it looks, Ms. Eazer, like  
2 there's two arguments. There's this problem caused by the  
3 giving of the statutory instruction disapproved in  
4 *Thompson*. It's argued that was cured by the June 5th  
5 presentation. That's issue number one.

6                   Then there's this issue that in response to  
7 a question by the grand jury, the testifying officer said:  
8 Well, and then I got to this specific topic of *Pierce*.  
9 And the witness said that Mr. Wilson supposedly said  
10 quote, I'm not talking about that.

11                   And Mr. Huggins makes reference to the fact  
12 that it's pretty astounding that having this -- what he  
13 says was an identical error, and I'm not familiar with the  
14 prior motion, but he says it was identical, that it  
15 happened again. And now Mr. Long, of course, suggests  
16 that whatever happened, there was a curative instruction.  
17 This is not a situation where Defendant's refusal to  
18 answer a question was made -- was brought before the grand  
19 jury in a way that was a comment that the Defendant was  
20 guilty. Mr. Long points out apparently, and I don't have  
21 this grand jury testimony, that there was testimony to the  
22 grand jury that Mr. Wilson apparently voluntarily made  
23 numerous statements that were inculpatory and presented to  
24 the grand jury.

25                   Apparently those voluntary statements it's

1 claimed were admissions to quote, doing it, unquote, with  
2 a cord. Stating supposedly, referring to Mr. Pierce, as  
3 we didn't get along, I just didn't like him, et cetera.

4 So why shouldn't this matter be remanded  
5 once again?

6 **MS. EAZER:** Your Honor, first with respect  
7 to the initial instruction that was given to the grand  
8 jury, there was a curative instruction and I don't think  
9 that the law permits for Mr. Huggins to stand before the  
10 Court and ask the Court to speculate whether the jury, the  
11 grand jury, ignored the curative instruction and further  
12 instruction they received. In fact, I think quite to the  
13 contrary that absent something to suggest that they  
14 ignored the instructions that they were given, that you  
15 have to presume that they did in fact follow the --

16 **THE COURT:** Otherwise I would be setting a  
17 rule, specifically if I was affirmed. The Court of  
18 Appeals would be setting a rule once a jury has been  
19 instructed one way, perhaps not the best way, that there's  
20 no fixing.

21 **MS. EAZER:** Correct.

22 **THE COURT:** You just have to dismiss that  
23 grand jury and deal with all of their indictments, and  
24 there would be no reason to give curative instructions.  
25 Okay.

1                   **MS. EAZER:** That's correct, Your Honor. And  
2 as I said, I think we have to presume the grand jury did  
3 its duty and listened to the corrective instruction and  
4 followed the corrective law that was given.

5                   With respect to the second claim raised that  
6 there was a violation about the Defendant invoking his  
7 *Miranda* rights, I've got to say number one, there's an  
8 issue as to whether it was an actual invocation to begin  
9 with. But even if you want to presume for purposes of  
10 this hearing -- the State is fine with the Court presuming  
11 for purposes of this hearing that was an unequivocal  
12 invocation. Number one, curative steps were taken, again,  
13 and addressed by the county attorney, but two, in light of  
14 the numerous statements that the Defendant did make and  
15 that were presented, the State would submit that even if  
16 the Court was to find error, it would not be any type of  
17 error requiring remand in this case.

18                   I don't think that there is any case law to  
19 support the proposition that if a defendant's invocation,  
20 equivocal or unequivocal, of his *Miranda* rights is  
21 mentioned during grand jury proceedings but corrective  
22 steps are taken and the grand jurors are instructed that  
23 they should not ever hold that against the defendant, that  
24 in each and every case that requires a remand. In fact, I  
25 think quite to the contrary. The courts more frequently

1 hold that any such error, specially if the grand jury is  
2 instructed that the defendant has an absolute right to  
3 remain silent and they should never, even when testimony  
4 is presented about same, hold that against him or use that  
5 in any way, shape or form in their determination.

6 I think the Defendant has failed to  
7 establish that any substantive law was broken in the  
8 presentation in this case, and the State would argue that  
9 there are no grounds for a further remand of this matter.

10 **THE COURT:** Okay. Thank you.

11 Mr. Huggins.

12 **MR. HUGGINS:** Briefly, Your Honor.

13 You know, when you give a further  
14 instruction, you tell the jurors the law I gave you before  
15 is incorrect, you now follow these instructions. The  
16 grand jurors are never told that. The grand jurors were  
17 told when they were given the new instruction to quote,  
18 read them together. He's not saying this replaces the  
19 prior instruction, he says read them together. Judge --

20 **THE COURT:** But what I am told the  
21 prosecutor told the grand jury was that she or he was  
22 going to do something unusual. They had the 1101, it's in  
23 your booklet, but the Supreme Court has made some  
24 alterations to that statute so I am going to provide you  
25 with a new definition of premeditation.

1                   What more could he do other than ringing the  
2 bell again and telling people not to think about the bell  
3 that had just been rung?

4                   **MR. HUGGINS:** Well, he can certainly say the  
5 instruction you have in your book is incorrect, please  
6 give that back to me, or the instruction you were  
7 previously given is wrong. He doesn't say either of  
8 those, he doesn't do either of those. He says: Let's  
9 read them together.

10                  **THE COURT:** Well, I am going to give you a  
11 new definition of premeditation is what he says.

12                  **MR. HUGGINS:** I've given you the quote in my  
13 motion, Judge.

14                  I believe in the statutes that you've been  
15 provided the Arizona Supreme Court has made some  
16 alterations to that statute, so I am going to provide you  
17 with a new definition of premeditation. I made copies for  
18 each of you and then I will -- we can read them together.  
19 I won't belabor that point.

20                  Next, they comment on the invocation of  
21 right of silence. Okay. And Investigator Mary McCarthy  
22 says Mr. Wilson indicates he does not want to talk about  
23 that; invoking his *Miranda* rights. The quotes Mr. Long  
24 put in his motion then follow from Officer Bello. After  
25 McCarthy walked out of the room, the interrogation

1 continues by Officer Bello about matters that Mr. Wilson  
2 has just invoked on, and they try and argue that you can  
3 consider those facts.

4 Here you know there's an invocation of  
5 *Miranda* and intentional ignorance of it or ignoring of it  
6 by the State and the prosecutors going into the very  
7 things which he's invoked as to, and therefore you can  
8 consider these in determining probable cause.

9 Mr. Wilson told them clearly this was an  
10 argument we had. It was suddenly. I didn't plan the  
11 homicide.

12 The grand jurors were never instructed about  
13 sudden quarrel, heat of passion. Never instructed upon  
14 the difference between first, second degree murder and  
15 manslaughter, and are given improper premeditation  
16 instructions, even if it is belatedly corrected.

17 And we believe Mr. Wilson's entitled to due  
18 process in the grand jury context. That's accurate  
19 instruction and a fair depiction of the relevant facts,  
20 and that he's been denied these things.

21 Thank you, Judge.

22 **THE COURT:** Thank you.

23 Counsel, Defendant's Motion for  
24 Redetermination of Probable Cause filed July 17th of 2013  
25 is taken under advisement.

1           Now, Counsel, we have used up the time until  
2 my next hearing here. We have a trial date. I have under  
3 advisement the probable cause determination. We'll  
4 address the *Chronis* factors. We've addressed Mr. Pierce's  
5 status, a number of motions to strike.

6           Not yet resolved, of course, is the issue of  
7 what consequences should result from the access of the  
8 sealed documents.

9           Any word from Mr. Hazard?

10          **MS. EAZER:** I am going to have her try  
11 calling again.

12          **THE COURT:** Okay.

13          **MR. HUGGINS:** Judge, you have not addressed  
14 a couple other motions that were pending.

15          **THE COURT:** Well, you better help me out  
16 with those then.

17          **MR. HUGGINS:** Well, there's the Motion to  
18 Strike Improper Communications/Emails to Judge Georgini by  
19 a Public Information Officer.

20          **THE COURT:** What would I -- you want me to  
21 strike the communications? What would I do if I granted  
22 your motion?

23          **MR. HUGGINS:** You would strike the  
24 communication and you would order the State to not have  
25 any lawyers other than the assigned lawyer file matters

1 according to the Rules of Criminal Procedure with the  
2 Court, with copies to counsel. I cannot be responding to  
3 a public information officer's emails at 7:00 o'clock at  
4 night to my assigned judge.

5 **THE COURT:** This is separate and apart from  
6 this motion that we had about non-attorneys filing things  
7 that I dealt with last time?

8 **MS. EAZER:** He's referring to the email that  
9 Mr. Voyles instructed his communications director to send  
10 to Judge Georgini informing him that we had made -- the  
11 office had made a request that the Casa Grande Dispatch  
12 correct the misquote in the article. It was an email  
13 saying that was not what was said. We've requested that  
14 they print a redaction or correction, I can assure you  
15 that wasn't what was said.

16 Mr. Huggins has provided the Court with the  
17 email. It was copied to Mr. Huggins. It was not a  
18 pleading, it was nothing that was filed. And as I said in  
19 my Response, I'm going to assure the Court, I don't see  
20 that there are going to be issues with any other ex-parte  
21 communications. I don't think it was an ex-parte  
22 communication, but I don't see that this will arise again.

23 **THE COURT:** Last word, Mr. Huggins.

24 **MR. HUGGINS:** It was an improper  
25 communication, clearly, and something needs to be done.

1 If the State is improperly communicating with a judge,  
2 they have got to be ordered not to do that.

3 And then we had an additional motion, Judge.

4 **THE COURT:** Well, let's take them up one at  
5 a time.

6 **MR. HUGGINS:** Okay.

7 **THE COURT:** Defendant's Motion to Strike  
8 Improper Communication with Court and for Sanctions filed  
9 August 8, 2013, is denied.

10 Next motion.

11 **MR. HUGGINS:** Next motion, Your Honor, is --  
12 I filed a motion requesting the State not to be allowed to  
13 file pleadings on behalf of the victim. There's no  
14 victim.

15 **THE COURT:** I have addressed that.

16 **MR. HUGGINS:** Okay.

17 **THE COURT:** Counsel, to the extent that that  
18 motion is not clearly resolved by the Court's ruling this  
19 morning, the fact that the State now concedes the Court  
20 has ruled that Mr. Pierce was not a victim as defined by  
21 the Constitution, the statute and the rules, the Court  
22 does not think any further ruling is necessary.

23 Mr. Huggins, anything else further?

24 **MR. SOSLOWSKY:** Your Honor, may I address  
25 the trial date just briefly?

1                   **THE COURT:** Surely.

2                   **MR. SOSLOWSKY:** Your Honor, my role in this  
3 case is with regard to mitigation and I understand that  
4 Your Honor set the trial date on November 12th of this  
5 year. Judge, I just wanted to make a record and give the  
6 Court a little bit of background on the challenges that we  
7 are going to face to meet our statutory obligations to be  
8 prepared for the trial.

9                   Judge, prior to Ms. Eazer starting with the  
10 county attorney's office, Mr. Powell had essentially been  
11 the first chair on the vast majority of the capital cases,  
12 and this county has gone from just a handful up to almost  
13 20 capital cases within a year. Mr. Powell had advised  
14 me -- I am first chair on other capital cases. He advised  
15 me earlier this year that it was his office's intention to  
16 try the cases in chronological order. I can't avow to the  
17 Court as to how many cases will be prior to Mr. Wilson,  
18 but I can say it's somewhere between five and ten. To my  
19 knowledge only one case has a firm trial date before the  
20 November date here.

21                   Judge, the process of mitigation is a step  
22 by step process. Sometimes doors open, sometimes they  
23 close. We are still in the process and I can avow to the  
24 Court that we are very diligently working on mitigation  
25 and we always have been, but we are still in the process

1 of identifying experts and getting proper evaluations  
2 done. With the November trial date, we are going to run  
3 up with deadlines coming up in the next few months that I  
4 certainly can't avow to the Court, but I have grave  
5 concern that we are not going to be able to meet.

6 Certainly I would want to talk to the  
7 expert, talk to our mitigation expert to be able to advise  
8 the Court further, but I want to make a record regarding  
9 the county attorney's office had clearly indicated to me  
10 that one of my other cases, which is a 2010 case, was the  
11 next priority at least on my case load. Mr. Powell  
12 advised Judge Georgini of that in open court. I agreed.  
13 That matter it was discussed would not be ready for trial  
14 until 2015. We do not have a trial date set on that case.

15 With this case being set for November, that  
16 has now -- Ms. Eazer is creating intentionally or  
17 unintentionally a different time line than what her  
18 predecessor --

19 **THE COURT:** Ms. Eazer didn't write the two  
20 year rule, somebody else did, the Supreme Court did.  
21 There's no surprise that these cases are supposed to be  
22 resolved. Trial should start within two years.

23 **MR. SOSLOWSKY:** I understand, Your Honor. I  
24 can also go back and point to at least seven or eight  
25 assigned county attorneys in this case and to a period of

1 time we had no assigned court.

2 I'm avowing to the Court that we are  
3 diligently doing our due process, but when the county  
4 attorney's office tells me that they would like to have a  
5 certain chronological order and that was agreed upon, my  
6 priorities were focused on other matters. Regarding  
7 mitigation in this case, I can avow to the Court that if  
8 the November trial date holds and we are bound by our  
9 statutory obligation, that I have grave concerns that we  
10 are going to be able to meet that, and I'm sure that both  
11 Ms. Eazer and Your Honor have concerns about doing this  
12 case right the first time.

13 Judge, I just want to make my record  
14 regarding that. Certainly I know Your Honor mentioned  
15 before that we had that deadline coming up. I don't think  
16 that we realistically expected to have a trial date set  
17 that soon. Certainly that affects the promises that I've  
18 made to other judges in other capital cases.

19 So, Judge, I just wanted to make that court  
20 record. Certainly we can address it with a formal motion  
21 at a certain time with specificity, but I wanted to make  
22 that record. I didn't want Your Honor to think that we  
23 are acquiescing voluntarily to the current court date.

24 **MS. EAZER:** I can assure the Court that  
25 Mr. Powell has not got any specific order in mind and no

1 trial dates have been set, even in cases that are five and  
2 seven years old in this jurisdiction and some of which  
3 Mr. Soslowsky was on. Judge, I can assure the Court that  
4 if there is a conflict, we'll bring it to the Court's  
5 attention, but there shouldn't be any conflict with  
6 Mr. Powell's anticipated schedule on his cases. And as I  
7 say, if there is, I will be certainly happy to bring it to  
8 the Court's attention right away.

9 Judge, I am not trying to get the last word  
10 on something, but I didn't want to speak up earlier and  
11 correct a misstatement unless I was sure I was correcting  
12 it. Mr. Huggins with respect to the *Miranda* issue on the  
13 grand jury indicated that the statements Mr. Long quoted  
14 in his Response to his Motion were all made after he had  
15 invoked. Aside from the fact that *Miranda* doesn't apply  
16 to the evidence presented at the grand jury proceeding, I  
17 do need to correct that statement in that the statements  
18 were made prior to; days, weeks prior to the time that he  
19 was interviewed by Investigator McCarthy and made the  
20 invocation.

21 So again, even if the State presented  
22 statements at grand jury that *Miranda* -- were *Miranda*  
23 violated which they did not, I think that the case law is  
24 clear that can be considered by the grand jury because the  
25 rules of evidence do not apply at grand jury proceedings,

1 but the statements referred to in Mr. Long's Response were  
2 made long before the alleged invocation.

3 **THE COURT:** Okay. Well, Mr. Soslowsky,  
4 lawyers are always put under pressure when trial dates are  
5 set, but cases would never be tried if we didn't set trial  
6 dates and I'm confident with your good efforts you'll do  
7 what you can to be ready for trial on November 12th as  
8 scheduled, and if you're not, you'll bring that to our  
9 attention. Perhaps sometime in the future in the summer  
10 or perhaps even in the fall we'll wish we had reserved  
11 December or January or February instead for the trial, and  
12 it might not be available when we next consider it and we  
13 will regret setting the trial date, but there is the rule  
14 these cases are too long delayed and usually for good  
15 reason as we have seen in this case and in others. So I  
16 will look at any other motion when you decide to file.

17 Now I hate to keep bringing up some of these  
18 ex-parte motion issues, but Counsel, you'll remember --  
19 specially you, Defense Counsel. This Kevin White minute  
20 entry order from February 13th, which is Exhibit 10 in our  
21 hearing today, you'll recall, Counsel, this is the one  
22 that gave you leave to supplement the motion to further  
23 explain the confidentiality. You were granted,  
24 Mr. Huggins, until later in February to supplement your  
25 motion for -- to assist mitigation investigation. Perhaps

1 I should be addressing you, Mr. Soslowsky. And if there  
2 was no supplement, the motion would be referred back to  
3 the assigned judge. I guess that's me.

4 Has this been addressed?

5 **MR. HUGGINS:** Your Honor, if you look,  
6 there's a March 12th minute entry Judge White also issued.  
7 I did a supplemental memorandum on ex-parte or not, and  
8 then he indicated he would be ruling that he was finding  
9 that it was not sufficiently based to grant the ex-parte  
10 motion and that he would be issuing the order, I believe  
11 he said after the State had an opportunity to reply on  
12 March 28th. Ms. Eazer asked for time to brief it, she  
13 did.

14 Then he issued an order indicating that  
15 everything that was being requested, the name of the  
16 individual was redacted from it. And the agency that was  
17 being requested and the records requested from the agency  
18 were redacted, but I don't think he ever issued the order.  
19 The time for Ms. Eazer -- Ms. Eazer did file a Reply. I  
20 told her she could have an extension, but she got it in  
21 within time, and I don't think he's ever ruled. That  
22 dealt with agency records.

23 And the last order I had from Judge White  
24 indicated the agency and the names were still redacted but  
25 the balance of the order was ordered disclosed. And I

1 think I gave a copy in response to that to Ms. Eazer of  
2 what I had proposed. That it was even more disclosure  
3 than what the judge ultimately ordered.

4 **THE COURT:** Do you still need an order from  
5 some judge?

6 **MR. HUGGINS:** Yes, for the agency records  
7 for the individuals.

8 **MS. EAZER:** No, what Judge White has ordered  
9 is this was improper for an ex-parte request, therefore he  
10 unsealed it all. And now if Mr. Huggins chooses to treat  
11 this as a request for Rule 15 disclosure, then this Court  
12 can hear that. And as the State said in its supplement in  
13 its Reply, he's in no way entitled to have a court -- I  
14 don't know. Number one, if he wants to ask this Court to  
15 consider this as Rule 15, he's going to have to unredact  
16 the order. The judge said, I am going to not order you to  
17 do that now, that's your decision tactically as to whether  
18 you still want to request in open court under Rule 15 that  
19 these agencies supply these records, but I don't know if  
20 the Court had a chance to review the Response. I mean  
21 Mr. Huggins was asking on many, many agencies to have  
22 unfettered access to family members' records which again,  
23 he has no right to. Those folks have --

24 **THE COURT:** We will deal with the rights  
25 later, okay.

1                   **MR. HUGGINS:** Your Honor, it's my  
2 understanding that the March 12th issue said he would  
3 address it. If he's issued a subsequent minute entry, I  
4 don't think I've got that, and so I would request an  
5 opportunity to check back with you. I thought he had  
6 ordered these records be produced, but the issue was  
7 whether it was going to be a court order open to what we  
8 were asking for or something else, and I may be wrong.

9                   **THE COURT:** Okay. Here's how we are going  
10 to resolve it. I need you to look. It's your motion,  
11 however it was styled, whether it was right or wrong. So  
12 if you think Judge White needs to enter an order, I will  
13 ask him direct, Mr. Huggins, that you bring it to the  
14 judge's attention.

15                   If upon your review of the matters it looks  
16 like the ball is in my court instead and you need and want  
17 some order, discovery order I guess it would be, you need  
18 to bring that to my attention by filing or writing,  
19 explaining why it's before me and attaching the pleadings.  
20 Now there's been so many motions to strike and  
21 supplemental motions to strike and you are misnaming a lot  
22 of these motions, I'm afraid I have overlooked something  
23 and I don't want to do that.

24                   Ms. Eazer, of course, will make sure that  
25 you included any pleadings from her office that need to be

1 included. If you don't, she will make sure I get them,  
2 and then I will be fully informed and reminded that I need  
3 to make an order because I don't want to find out later  
4 that some judge should have done something, and I was  
5 thinking Judge White was going to do it and he was  
6 thinking I was going to do it.

7 **MS. EAZER:** And Judge, just so we're clear,  
8 it is the March 4th order -- minute entry, and he says  
9 this is not appropriate for ex-parte, and so the ball is  
10 in this Court's -- in this Court's court. But, Judge, one  
11 thing I would ask. Number one, I guess for the record, I  
12 don't think it's appropriate Mr. Huggins file anything  
13 with Judge White because the Court has recused itself, but  
14 if he does, I just want to make sure it's not ex-parte  
15 dealing with this issue.

16 **THE COURT:** Judge White is still the  
17 ex-parte judge.

18 **MS. EAZER:** Correct, but Judge White has  
19 said Mr. Huggins does not get to file this ex-parte, so I  
20 just want to --

21 **THE COURT:** Well, if Mr. Huggins believes  
22 that there's something yet undone --

23 **MR. HUGGINS:** There is.

24 **THE COURT:** -- with Judge White, he should  
25 tell Judge White. Judge White will see things as they

1 are, I'm sure.

2 **MR. HUGGINS:** I propose, Judge, I will tell  
3 Judge White either -- if you are going to issue the order,  
4 I need to know that. If not, tell us and we will refer it  
5 to Judge Cahill.

6 **THE COURT:** Good. Okay.

7 Now we are still waiting for Mr. Hazard. No  
8 word?

9 **MS. PARISH:** I called again and there's no  
10 answer.

11 **THE COURT:** So do we have an order for --  
12 Deputy, I am signing the transport order.

13 **MR. HUGGINS:** I believe he's going to need  
14 you to put that through the sheriff's office downstairs.  
15 They won't let him deliver it back to his office.

16 Is that correct, Deputy?

17 **THE SHERIFF DEPUTY:** Yes.

18 **THE COURT:** Well, I'm sure the clerk will  
19 help us. Give it to whoever needs it.

20 Okay. Thank you.

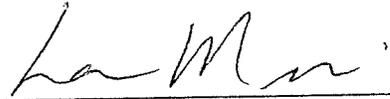
21 The clerk has asked for clarification on  
22 which exhibits were admitted. They were all admitted. I  
23 didn't sustain any objection.

24 (Whereupon, the proceedings concluded at  
25 3:22 p.m.)

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I, LAURA MILLER, having been first duly sworn and appointed as Official Court Reporter herein, do hereby certify that the foregoing pages, numbered from 1 to 181, constitute a full, true and correct transcript of all proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 10th day of June, 2014.



LAURA MILLER, RPR  
Certified Reporter  
Arizona No. 50505  
Official Court Reporter

COPY