

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

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.

HEARING TRANSCRIPT: MAY 8, 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,)
) No. CR201201764
 vs.)
)
 RICHARD TRAY WILSON,)
)
 Defendant.)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

CONTINUATION OF EVIDENTIARY HEARING

Florence, Arizona
May 8, 2014
2:39 p.m.

BEFORE: The Honorable **PETER J. CAHILL**, Judge

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



APPEARANCES

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For the Plaintiff:

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1 Florence, Arizona
2 May 8, 2014
3 2:39 p.m.

4 **THE COURT:** It looks like we are all set.

5 We are here then in the matter of Arizona
6 against Wilson, which of course is our 201201764 case.
7 With Ms. Eazer for the Plaintiff, and for the Defendant,
8 who is present in custody, of course, we have Mr. Huggins
9 and Mr. Soslowsky.

10 Counsel, I will just let you know that my
11 law clerk is on the telephone, just so you are aware she
12 is connected and listening.

13 Now we recessed two days ago to reconvene
14 today to have further testimony.

15 Did you want to present testimony from our
16 witness, Ms. Eazer, is that --

17 **MS. EAZER:** I believe Mr. Huggins wanted to
18 call a witness.

19 **THE COURT:** Mr. Huggins; is that correct?

20 **MR. HUGGINS:** That's correct, Your Honor.

21 **THE COURT:** Okay. So why don't you call
22 your witness.

23 **MR. HUGGINS:** Very well. I will call Greg
24 Hazard.

25 **THE COURT:** Sir, if you will come forward,

1 Mr. Hazard, our clerk will swear you in.

2 (Whereupon, the witness, Gregory Hazard, was
3 duly sworn by the Clerk of the Court.)

4 **THE COURT:** And have a seat there.

5 And go ahead, Mr. Huggins.

6 **MR. HUGGINS:** Thank you, Judge.

7

8

GREGORY HAZARD,

9 called as a witness herein, was examined and testified as
10 follows:

11

DIRECT EXAMINATION

12

BY MR. HUGGINS:

13

Q. Could you state your name?

14

A. Gregory Hazard, G-r-e-g-o-r-y.

15

Q. And Mr. Hazard, you are an attorney?

16

A. That's correct.

17

Q. And you are currently employed as an assistant
18 attorney general?

19

A. That's correct.

20

Q. Prior to that, you were a Deputy Pinal County
21 Attorney?

22

A. Yes.

23

Q. Okay. When did you go to work for the Pinal
24 County Attorney's Office?

25

A. I believe it was September of 2000 -- September,

1 2009.

2 Q. Okay. When did you leave the county attorney's
3 office to go work for the attorney general's office?

4 A. In November of 2013.

5 Q. Were you assigned the prosecution of State versus
6 Richard Tray Wilson, CR2012-1764?

7 A. Well, I was never the assigned prosecutor on that
8 case, but I did file the motion that -- or draft the
9 motion that was filed that I think is germane to these
10 proceedings.

11 Q. Did you write the motion?

12 A. Yes.

13 Q. Did you sign the motion?

14 A. Yes.

15 Q. You knew its contents when you signed the motion?

16 A. Yes.

17 Q. The factual allegations contained therein were
18 your own personal knowledge?

19 A. Yes.

20 Q. As a Deputy Pinal County Attorney, did you
21 supervise non-lawyer assistants and paralegals within your
22 office?

23 A. I did not supervise them, no.

24 Q. Did you supervise people when they worked with
25 you, non-lawyers and paralegals?

1 A. Well, I'm not sure what you mean by supervise. I
2 certainly asked them to do things.

3 Q. Did you give them legal direction?

4 A. Sure.

5 Q. Did you advise them of their ethical
6 responsibilities under the Rules of Professional
7 Responsibility?

8 A. Well, I -- they're not attorneys, so -- but I
9 certainly spoke openly and freely about my ethical
10 obligations, yes.

11 Q. But you were aware of your duty to supervise
12 non-lawyer assistants you were working with?

13 A. Well, again, I don't know. If you could define
14 supervise.

15 Q. Give them direction about legal matters which
16 they are working on for you.

17 A. Sure, I agree with that.

18 Q. Are you aware of your duties under ER 1.1 of the
19 Code of Professional Responsibility?

20 A. Yes.

21 Q. And that's to have the legal knowledge, skill,
22 thoroughness and preparation --

23 A. Yes.

24 Q. -- reasonably necessary for representation?

25 A. Yes.

1 Q. You were aware of the definition of "victim" as
2 set forth in Article 2, Section 2.1 of the Arizona
3 Constitution?

4 A. The Victim's Bill of Rights, yes.

5 Q. You are aware that a "victim" means a person
6 against whom the criminal offense has been committed or,
7 if the person is killed or incapacitated, the person's
8 spouse, parent, child or other lawful representative,
9 except if the person is in custody for an offense or is
10 the accused? You are aware of that?

11 A. Yes.

12 Q. And, of course, you knew prior to filing the
13 motion on July 23rd that Nolan Pierce in this case was in
14 custody of the Arizona Department of Corrections at the
15 time he died?

16 A. Yes.

17 Q. You were aware of the definition of victim under
18 Arizona statute, correct?

19 A. Yes.

20 Q. You're aware of the Arizona Supreme Court's
21 decision in regard to whether a person in custody is a
22 victim under the constitution, *Stapleford v. Houghton*,
23 aren't you?

24 A. I'm familiar with that case, yes.

25 Q. Were you familiar with that case before you filed

1 your motion on July 23, 2013?

2 A. That I'm not sure.

3 Q. On July 18th, 2013, you were approached by Tari
4 Parish?

5 A. Yeah. That was Thursday afternoon on that date,
6 that's correct.

7 Q. And Tari Parish brought you an ex-parte motion,
8 correct?

9 A. Well, that's not exactly how it went down, but
10 eventually, yes.

11 Q. When Tari Parish approached you, did she tell you
12 she had accessed an ex-parte motion?

13 A. During the initial conversation she had, I think
14 she communicated that.

15 Q. Okay. And did she communicate to you that that
16 ex-parte motion was a motion filed by the Defense for
17 Richard Wilson?

18 A. Yes.

19 Q. Did she tell you that she had viewed two separate
20 ex-parte motions?

21 A. No, I don't remember hearing that.

22 Q. Did she tell you that she had reviewed an
23 ex-parte motion that had been filed on April 4, 2013?

24 A. No.

25 Q. She told you about one ex-parte motion, correct?

1 A. Yes, the one that I responded to.

2 Q. And did you go look at that document?

3 A. She handed it to me, yes. And I looked at it and
4 I reviewed it and read it.

5 Q. And, of course, you saw it was an ex-parte motion
6 by the Defense --

7 A. Yes, that was on the caption.

8 Q. -- on this case?

9 A. Yes.

10 Q. Did she also give you the order at the same time?

11 A. No, not at the same time. She -- in the initial
12 conversation she had with me, she told me the contents of
13 the order, at least that the judge had ordered your
14 motion.

15 Q. She told you --

16 A. She was --

17 Q. She told you --

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

19 **THE COURT:** Sustained. Let him -- he
20 started his answer.

21 **THE WITNESS:** The following day on Friday is
22 when I actually reviewed the order itself.

23 **BY MR. HUGGINS:**

24 Q. So she shows you the ex-parte motion and at the
25 time she shows you the ex-parte motion, she tells you

1 there's also an ex-parte order?

2 A. She told me the judge granted your request, yes.

3 Q. But she didn't have a copy of the ex-parte order?

4 A. I don't know if she did or not. I just know that
5 I had your motion. I read your motion that day on
6 Thursday, and I know the following day on Friday when I
7 was having a meeting about this issue with Richard Wintory
8 and Tari Parish in her office, that's when I read the
9 order. So I don't know what she had on Thursday
10 afternoon, but I know that I just read your motion.

11 Q. Did you advise her that was a confidential
12 document she was not supposed to have?

13 A. Well, I completely disagree with the -- given the
14 nature and how improper that ex-parte proceeding was, how
15 unlawful it was, I do not accept your premise.

16 Q. So I'm asking, did you advise her that it was a
17 confidential document?

18 A. She knew what ex-parte meant, yes.

19 Q. Did you advise her of her duty of what to do with
20 a confidential document?

21 A. What to do with a confidential document?

22 Q. Yes.

23 A. I don't -- no. Again, I don't accept your
24 premise.

25 Q. She said you got very angry, is that true?

1 A. I was shocked. I was appalled. I would not say
2 angry, but yeah, I was shocked and appalled.

3 Q. Did you try and go to your supervisor,
4 Mr. Long --

5 **THE COURT:** Hold on just a second. Let's
6 make sure we understand what you were shocked and appalled
7 at. I assume you were shocked and being appalled at
8 someone viewing a sealed document; is that correct?

9 **THE WITNESS:** No.

10 **THE COURT:** Okay. Go ahead.

11 **THE WITNESS:** No.

12 **BY MR. HUGGINS:**

13 Q. You were shocked and appalled by the subject of
14 the ex-parte motion?

15 A. Yes.

16 Q. Did you contact your supervisor, Mr. Long?

17 A. Yes. I did talk to him on Thursday afternoon,
18 yes. He was out of town.

19 Q. Did you tell him you had reviewed the ex-parte
20 document?

21 A. I'm sure I did.

22 Q. Did you talk to the chief deputy, Richard
23 Wintory?

24 A. The following day, yes.

25 Q. Did you tell him you had reviewed an ex-parte

1 document?

2 A. Yes. He had the very document in his hand.

3 Q. Oh, you provided it to him?

4 A. No, I did not provide them to him.

5 Q. Who provided it to him?

6 A. I don't know.

7 Q. But it was the same ex-parte document?

8 A. I believe so, yes.

9 Q. Did you receive a copy of a court order on
10 July 19th?

11 A. That's Friday, July 19th; is that correct?
12 That's the next day, yes.

13 Q. And who brought you a copy of the judge's order?

14 A. That would be Tari Parish.

15 Q. And did you read the judge's order?

16 A. Yes, I did.

17 Q. Did you see that it said it was sealed?

18 A. I read that it was ordered under seal.

19 Q. Did you notify counsel for the Defendant on
20 July 18th or 19th that you had viewed an ex-parte
21 document?

22 A. No.

23 Q. Did you notify Judge Georgini or his staff on
24 July 18th or 19th that you had reviewed an ex-parte motion
25 and a sealed order?

1 A. No.

2 Q. Did you discuss the ex-parte motion and sealed
3 order with Lando Voyles?

4 A. I don't believe I have discussed it with him.

5 Q. Did you ever ask Ms. Parish whether she had
6 accessed any other sealed ex-parte documents?

7 A. No.

8 Q. Did you ever try to print any sealed ex-parte
9 documents?

10 A. No.

11 Q. Did you yourself ever access any documents in
12 regard to this on the AJACS computer?

13 A. No, I never used AJACS in all my years at Pinal
14 County.

15 Q. So your representations about this being a public
16 record on AJACS, which are contained within your July 23rd
17 motion, are completely based on the representations of
18 Ms. Parish, your paralegal, correct?

19 A. Well, it was Ms. Parish, it was Mr. Tasco. I
20 discussed it with Jason Easterday in our office, who was
21 the chair of our ethics committee. I apprised him of
22 everything. I discussed it with Richard Wintory,
23 discussed it with Matt Long.

24 Q. Well, let's go through this.

25 A. And I -- but with respect to the AJACS stuff, I

1 educated myself because I did not know much about AJACS
2 other than what had been told me. That it was similar to
3 ICIS, I-C-I-S, which is the Maricopa County Superior Court
4 information system, although different in respect that
5 instead of everyone having an individual account on your
6 desktop, there were specific computers. And that's why I
7 never used them, because they weren't readily accessible
8 to me.

9 But, yeah, I learned as much as I could.
10 And it was represented to me that anything that would be
11 on AJACS would be the same things that would have been on
12 ICIS, which would have been only documents that anyone
13 could go into the clerk's office. I could walk in and
14 obtain.

15 Q. Who told you that?

16 A. Mr. Tasco, Ms. Parish.

17 Q. Let me go through this first of all.

18 Who is Mr. Tasco?

19 A. He was my paralegal.

20 Q. So another employee of yours at the county
21 attorney's office?

22 A. Yes.

23 Q. Ms. Parish, she was an employee of the county
24 attorney's office?

25 A. Yes.

1 Q. Mr. Wintory, did he tell you that they were
2 public records?

3 A. I don't know about that.

4 Q. Did anybody else other than Mr. Tasco, your
5 employee, and Ms. Parish, your employee, represent to you
6 that these were public records?

7 A. Well, Mr. Easterday did, yes.

8 Q. And Mr. Easterday was a deputy county attorney
9 working for the Pinal County Attorney's Office?

10 A. That's correct.

11 Q. Did you ever check with anybody at the Pinal
12 County Superior Court Clerk's Office?

13 A. No.

14 Q. Did you ever check with the Pinal County Superior
15 Court?

16 A. No.

17 Q. Did you ever check with the Pinal County Superior
18 Court Administration?

19 A. No.

20 Q. Did you ever make a phone call to Chad Roche?

21 A. No.

22 Q. After July 19th, who else did you talk to about
23 these matters?

24 A. The same people.

25 Q. Did you ever talk to Ron Harris?

1 A. I probably did, yes. I know -- I know I
2 eventually talked to Mr. Harris. I know that I spoke to
3 him when I was in Washington, D.C. either on Tuesday the
4 23rd or Wednesday the 24th by telephone. I may have
5 spoken to him before.

6 Q. In fact, you knew -- you gave the records to him,
7 didn't you?

8 A. I don't -- I can't remember if I did. I think he
9 asked for them, and so they may have been sent over, but I
10 don't remember.

11 **THE COURT:** Counsel, who is Harris?

12 **BY MR. HUGGINS:**

13 Q. Ron Harris was a deputy with the Pinal County
14 Attorney's Office, correct?

15 A. Yes.

16 Q. He worked in your civil division, didn't he?

17 A. No, he was the appellate bureau chief of the
18 appellate bureau, and that's why Mr. Wintory wanted me to
19 discuss it with him. So I can't remember. I may have
20 talked to him before I left town, but I know -- I do
21 recall talking to him on the phone in Washington, D.C.
22 later after the motion been filed.

23 Q. When did you leave town?

24 A. There was a conference.

25 Q. When did you leave town?

1 A. Well, yes. I mean, it looks like it might be --
2 I can't tell whose signature it is.

3 Q. For Greg Hazard?

4 A. Yes. I did not draft this motion, I did not
5 write this motion.

6 Q. Have you ever seen it before?

7 A. No, but I do know that this was a motion that I
8 discussed with Ron Harris over the phone in -- when I was
9 in Washington, D.C.

10 Q. Did you approve of anyone to file this on your
11 behalf?

12 A. Not in my name. I would not have done that, no,
13 because it's not my motion.

14 Q. The filing of the motion on July 23rd was the
15 first time you brought to the Court's attention that you
16 had reviewed the ex-parte motion and the sealed court
17 order, correct?

18 A. Yes.

19 Q. Other than people in your office?

20 A. Yes. And yours, yes.

21 Q. You never told me prior to that?

22 A. That's correct.

23 Q. You never told Mr. Soslowsky prior to that?

24 A. Correct.

25 Q. You never told anybody working on behalf of

1 Defense prior to that?

2 A. Correct.

3 Q. Did you ever ask to print an ex-parte order filed
4 on April 4, 2013?

5 A. No.

6 Q. Did anybody tell you who had -- they had viewed
7 an ex-parte order filed April 4, 2013, on the county
8 attorney's office computers?

9 A. No, I don't remember hearing anything like that.

10 Q. Did anyone tell you someone had tried to print
11 that document on two separate occasions; one at 3:56 p.m.
12 and one at 3:59 p.m.?

13 A. No, this is the first time I am hearing that.

14 **MR. HUGGINS:** May I have a moment, Your
15 Honor?

16 **THE COURT:** You may.

17 (Whereupon, a discussion is held between
18 Mr. Huggins and Mr. Soslowsky off the record.)

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

20 **THE COURT:** Ms. Eazer.

21

22 **CROSS-EXAMINATION**

23 **BY MS. EAZER:**

24 Q. Mr. Hazard, when you first became aware of the
25 document, the ex-parte motion, what was your first

1 concern?

2 A. Okay. My first concern, aside from the fact that
3 we had on its face a violation of ER 3.5 and the Judicial
4 Code of Conduct Cannon 2.9, an unlawful ex-parte
5 communication, my first concern was to find out -- because
6 if memory serves me, the order was, I believe, a month to
7 the day old. And so my primary concern was to find out
8 whether the medical records of the victim had been
9 disclosed by DOC. Given the length of time that it had
10 been pending, I assumed that it probably had been, but I
11 wanted to find that out because I felt that was very
12 important to determine what action we would take next.

13 The other concern I had was -- and you know,
14 I understand where Mr. Huggins is going with the Victim's
15 Bill of Rights. But I was under the -- I'm familiar with
16 the language, but we had a situation with a deceased
17 victim, okay, and a next of kin, his mother, who our
18 office took as a victim. She had opted in for
19 notification. We had her contact information and I was
20 aware that she was represented by counsel on a civil
21 lawsuit where she was suing, I assume, the Defendant
22 and -- but certainly the Department of Corrections for
23 wrongful death.

24 So I wanted to get information to find out
25 if the records had been disclosed so I could then tell the

1 victim, so the victim could object through her attorney,
2 through her counsel.

3 Q. So let me back up. Based on that answer, at the
4 time that you viewed the ex-parte motion, did you believe
5 that the victim's rights or the next of kin of the victim,
6 that their rights may have been violated?

7 A. Yes.

8 Q. And what -- so that was your first concern, that
9 there was a victim's rights violation, and perhaps that
10 privileged medical records had been disclosed?

11 A. Yes, that was a big concern, and also the fact
12 that this was an unlawful ex-parte communication.

13 Q. And I am going to ask you a little bit more about
14 that in particular, but going back to the victim's rights
15 in this matter, is that something that throughout the
16 course of your career you have taken quite seriously,
17 victim's rights?

18 A. Yes. I can be sued as a prosecutor. I can be
19 held personally liable if I violate victim's rights.

20 Q. And how long have you been a prosecutor?

21 A. More than nine years.

22 Q. And is that about how long you have practiced law
23 as well?

24 A. Yes.

25 Q. And during the course of your time as a

1 prosecutor, have you ever in your career seen any defense
2 attorney file an ex-parte motion for victim's medical
3 records?

4 A. No.

5 Q. So this is one of the things that concerned you,
6 that there was perhaps a violation of victim's rights?

7 A. Yes.

8 Q. Okay. And you also indicated that you had
9 immediate concerns about the nature of the ex-parte
10 motion?

11 A. Yes.

12 Q. And let me ask you, Mr. Hazard. Prior to this
13 date, were you familiar with the nature of when ex-parte
14 proceedings are allowed?

15 A. Yes, I was familiar with Rule 15.9. I was
16 familiar with *Morehart v. Barton*, I was familiar with
17 *State v. Apelt*, which preceded 15.9, but nonetheless held
18 and is still good law that criminal defendants, even death
19 penalty cases, are not constitutionally -- do not have a
20 constitutional right for ex-parte proceedings. So 15.9 is
21 one of the narrow exceptions. And I was very familiar
22 with 15.9, but I got the rule out again and did the
23 limited research.

24 I knew *Morehart v. Barton*. That was really
25 the only published opinion. That really wasn't on point,

1 that's a victim's rights case where the essence of what
2 15.9 stands for was not addressed because the State --
3 there was an assumption that 15.9 was properly followed in
4 that case.

5 But I was very familiar. I can read the
6 rule, the plain language of the rule. There is no way on
7 God's green earth that that motion would be acceptable and
8 therefore, it was per se unethical under Rule 3.5.

9 Q. Okay. And let me ask you now. Did you -- were
10 you aware of that which you have just described for us at
11 the time you -- this motion was brought to you?

12 A. I was aware of that before Ms. Parish came into
13 my office at 4:00 p.m. on Thursday and told me what was in
14 the motion, that the judge had ordered it, and before I
15 read it, yes.

16 Q. And when you indicated -- and we are going to get
17 into the people you took this to and spoke to about this,
18 but when you indicated that you immediately recognized
19 this as improper, did you state that opinion to others?

20 A. I'm sure I did, yes.

21 Q. And if Ms. Parish said you were very angry about
22 what had -- what you had discovered or what had been
23 provided to you -- you said you were shocked and appalled.
24 I mean, did this anger you that this type of a motion was
25 filed by defense counsel?

1 A. Yes, I was -- I was disappointed, I was
2 frustrated, I was offended by it, yes, and I'm sure I used
3 strong language.

4 Q. Okay. I don't think she snitched on you for the
5 strong language.

6 All right. Now as far as accessing or --
7 and reading an ex-parte motion, knowing that Ms. Parish
8 printed it out and provided it to you, did you have
9 initial concerns, if you can recall, about -- this is an
10 ex-parte motion, maybe I shouldn't read it?

11 A. Yeah, pretty -- I mean it was -- that was why I
12 discussed this issue with Jason Easterday. Jason
13 Easterday was not only the chairperson of our ethics
14 committee at our office, but for more than four years he
15 prosecuted bar complaints at the Arizona State Bar. He
16 was our resident expert on ethical rules. He also -- and
17 I know that I spoke to him that day on Thursday. I know
18 that I spent a lot of time with him on Friday and probably
19 Monday. He had his rule books out, he did research, and I
20 took his counsel and his position was --

21 **MR. HUGGINS:** Objection, Your Honor. It
22 goes to hearsay.

23 **THE COURT:** Excuse me.

24 **MR. HUGGINS:** This is a legal opinion.
25 They're waiving attorney/client privilege if they raise

1 this, Your Honor.

2 **THE COURT:** We will le
3 Overruled.

4 Go ahead.

5 **THE WITNESS:** Well, the conclusio.
6 came to was that since the information was obtained by
7 simple click on a computer information system, not because
8 of doing anything improper, whatever the judge had
9 ordered, clearly it was not under seal. That's the way it
10 was expressed to me and it made perfect sense. So -- but
11 nonetheless, yes, I was concerned because I understand
12 that we didn't have notice of this. That's a problem,
13 that's the ethical violation. But, yeah, it certainly was
14 something that I considered.

15 I talked to -- consulted with Mr. Easterday.
16 We did research on it, and 8.3 -- all you have to do is
17 not only read 8.3, Ethical Rule 8.3, but that first
18 comment. I had an obligation, I had a duty to
19 investigate. I couldn't just say no. And that was
20 impressed upon me, and I agree with that. That I had an
21 absolute obligation to investigate to see if this is a
22 mandatory reportable offense. And how can we do an
23 investigation if we pretend that nothing bad happened
24 because we shouldn't have seen it in the first place.

25 ////

1 **BY MS. EAZER:**

2 Q. And that's why I am going to kind of back up and
3 ask you specifically when you say you spoke to Jason
4 Easterday, did you specifically address with him what do
5 we do, we have this ex-parte motion --

6 A. Yes.

7 Q. -- what steps should we take?

8 A. Yes. Oh, absolutely, and with Mr. Wintory the
9 following day on Friday. Yes, all of that was discussed
10 with Mr. Long. We discussed this openly.

11 Q. So it wasn't something where you said: Oh, who
12 cares about it being ex-parte, you know, I'm just going
13 to --

14 A. No, I was very much aware of the intent behind
15 it. But the problem is, you can't unring the bell.
16 Pandora's Box is open, to mix metaphors. I'm aware of
17 this. I feel I have no choice but an ethical duty to
18 continue to investigate. And not only that, but I had --
19 I believe I had a duty to the victim to inform the victim,
20 which I did through her attorney, Ms. Findley, on Friday.
21 I apprised her of the situation and that we had to seek
22 redress.

23 Now the problem is, we -- I was stuck
24 because Ms. Parish was trying to get in touch with Kelly
25 Dudley. Mind you, this was not my case. I was dealing

1 with an issue --

2 **THE COURT:** Who is Kelly Dudley?

3 **THE WITNESS:** Kelly Dudley is, I believe,
4 general counsel for the Arizona Department of Corrections
5 or he's an attorney for the Arizona Department of
6 Corrections.

7 **BY MS. EAZER:**

8 Q. And let me just interrupt you for a moment. As
9 far as her trying to get a hold of Kelly Dudley, was that
10 to determine whether or not the order had already been
11 carried out and the records disclosed?

12 A. Yes, that's correct. We were trying to get
13 information and we could not get it. They just could not
14 answer our question. Everyone we talked to -- and by "we"
15 I mean Ms. Parish, and she was reporting to me they
16 weren't sure.

17 Q. And let me interrupt you again, sir, and ask you,
18 you are taking all these steps immediately after
19 discovering this motion, and by these steps I mean these
20 steps to notify somebody that the victim's privacy rights
21 may have been breached, right?

22 A. Yes, correct.

23 Q. So would it be safe to say that's because you
24 were very, very concerned. That that was at the top of
25 your list of concerns?

1 A. Yes.

2 Q. Okay. Go on.

3 **MR. HUGGINS:** Your Honor, there is no
4 question before the witness.

5 **MS. EAZER:** Well, actually there was.

6 **THE COURT:** Ask your next question.

7 **BY MS. EAZER:**

8 Q. Okay. So now you -- I had asked you if you had
9 taken this seriously as far as whether -- you know, that
10 this was an ex-parte motion and what you should do
11 nonetheless, and you indicated you had taken it very
12 seriously and you were trying to make contact with Kelly
13 Dudley --

14 **MR. HUGGINS:** Your Honor, I am going to
15 object to counsel restating the witness' testimony.
16 Please direct her to ask a question.

17 **THE COURT:** Overruled. Go ahead.

18 **BY MS. EAZER:**

19 Q. That you had made steps to contact Ms. Dudley
20 to -- or have Tari contact Ms. Dudley to let her -- to
21 find out whether or not the records had been disclosed and
22 you said that wasn't -- you weren't able to do that. What
23 was your next step?

24 A. It was literally waiting on that information. I
25 know Ms. Parish contacted a number of people. And as I

1 mentioned, we discussed -- we had a meeting with Richard
2 Wintory. He discussed that we would file a motion. That
3 I would be the one that would write the motion to file
4 seeking a stay of the order, and basically demanding to be
5 heard and have a hearing on it. And all of this was
6 discussed with Mr. Long and Mr. Easterday.

7 Q. Okay. And backing up just a moment. You had
8 said that you sought counsel from the resident ethics
9 attorney or the person that had a great deal of ethics
10 background, and was it specifically discussed with
11 Mr. Easterday: Hey, do I -- you know, because this was an
12 ex-parte motion, is there a choice? Should we just turn
13 it over and turn it -- you know, and pretend like we
14 didn't see it or return it to defense counsel or should we
15 go forward?

16 A. Oh, yes. Oh, absolutely. Yeah. ER 4.4, we
17 looked at that. This was not sent. You read the ER 4.4
18 and you read the comment. This is not analogous to
19 discovery or a letter or email that gets inadvertently
20 sent. This was not something that was sent, it was filed.
21 So 4.4 is out, so we discuss that. The most critical
22 thing was 8.3. That's the driving force behind everything
23 that I did because if you read that and you read the
24 comment, there is -- I would be derelict in my obligation
25 as an attorney if I did not further investigate to

1 determine whether this was a mandatory duty to report or
2 not.

3 And so it was not just seeking counsel from
4 Mr. Easterday because of his wisdom and his knowledge on
5 these very issues, but also he was chair of the ethics
6 committee. And so if -- if there is a mandatory duty to
7 report, given that we established that, I'm also in
8 essence reporting that to our ethics committee to
9 determine and they can do what they want at that point.
10 But I am -- so it's making sure that I'm fulfilling my
11 obligations under ER 8.3, and also trying to learn what
12 exactly we were dealing with. Whether the victim's
13 medical records had been disclosed and what kind of
14 redress we were going to seek.

15 Q. Now you said you spoke with Ms. Findley on
16 Friday, the attorney that was representing the victim, the
17 victim representative in this case?

18 A. Yes.

19 Q. Did she indicate to you that she had -- prior to
20 that she had given any type of consent for these records
21 to be released?

22 A. No. No.

23 Q. And did she in fact on that day indicate to you
24 that she was going to take steps to perhaps prevent this
25 from happening?

1 A. Yes. She told me that she wanted the CR number
2 and the assigned judge, and she told me she was going to
3 file a motion to object. And I gave her my number and
4 asked her to call me if she needed any other additional
5 information, but to my knowledge she never filed anything.

6 Q. And --

7 A. But I had informed her under what I believed was
8 an absolute obligation to inform the victim. And since
9 she was represented by counsel, albeit on another case, I
10 didn't feel comfortable contacting the victim directly. I
11 contacted her attorney and that's why I spoke to
12 Ms. Findley, to apprise her of the situation.

13 Q. And I am going to ask this question just -- and I
14 don't want to get into details, but it's only pertinent to
15 this proceeding as to why you may have even felt more
16 strongly about this issue. But had there been prior
17 occasions in your dealings with Mr. Huggins where you had
18 concerns about him following the rules?

19 A. Yes.

20 Q. And if you were to access -- or if you were to go
21 under the same circumstances today with the paralegal
22 bringing you an ex-parte motion that they -- that they
23 inadvertently or otherwise opened on the computer, would
24 you still feel you had a duty to do as you did in this
25 case today?

1 A. Yes.

2 **MS. EAZER:** Thank you, sir.

3 I have no further questions.

4 **THE COURT:** Any questions?

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

6

7

REDIRECT EXAMINATION

8

BY MR. HUGGINS:

9 Q. Mr. Hazard, you say you had a duty to
10 investigate, correct?

11 A. Yes, under 8.3.

12 Q. Did you ever check with anybody at the clerk's
13 office about whether an ex-parte document was a sealed
14 document?

15 A. Well --

16 Q. Did you ever check with --

17 A. No. No, I did not.

18 Q. Did you ever check with the clerk's office to see
19 if the sealed order was a sealed document?

20 A. No.

21 Q. Did you ever check with anybody in the court to
22 see whether the ex-parte motion was a sealed document?

23 A. No.

24 Q. Did you ever check with anybody in the court as
25 to whether the sealed order was a sealed order?

1 A. No.

2 Q. You didn't check with anybody outside of the
3 Pinal County Attorney's Office in investigating this
4 matter, did you?

5 A. Well --

6 Q. Did you talk to anybody outside?

7 **THE COURT:** Let him answer.

8 **THE WITNESS:** The answer is no. I don't
9 know how I would inform the Court without violating ER 3.5
10 because that would be an ex-parte communication. But no,
11 I did not speak to anyone outside of the county attorney's
12 office about this issue aside from the people that I
13 discussed. Ms. Findley, that was the only person that I
14 directly spoke to.

15 **BY MR. HUGGINS:**

16 Q. You believed Judge Georgini had executed an
17 illegal order in violation of the Judicial Code of
18 Conduct?

19 A. Well --

20 Q. Isn't that correct?

21 A. Yes. It was an unlawful ex-parte communication,
22 yes.

23 Q. Did you go to the presiding judge --

24 A. No.

25 Q. -- as the administrative head of the court?

1 A. No.

2 Q. Did you contact the Judicial Conduct Commission?

3 A. No. Let me make something --

4 Q. Did you contact the State Bar and ask for an
5 informal ethics opinion?

6 A. No.

7 Can I make something perfectly clear?

8 **MR. HUGGINS:** Your Honor, this is not his
9 time to explain.

10 **BY MR. HUGGINS:**

11 Q. You're aware and you were aware at the time that
12 there was no victim under the Arizona Constitution in this
13 case, correct?

14 A. I disagree with that.

15 Q. Had you -- you said you reviewed the legal
16 research, didn't you?

17 Are there any cases defining victim out of
18 the Arizona Supreme Court, Mr. Hazard?

19 A. Mr. Huggins, that's correct, but I'm aware of no
20 case --

21 Q. Were you aware --

22 A. -- where you have --

23 **THE COURT:** Let him finish.

24 **THE WITNESS:** -- you have a deceased victim
25 that was in custody and an appellate court in Arizona

1 saying the next of kin is completely shut out of all
2 proceedings. I understand living, breathing inmates who
3 were in custody at the time of the offense, I am aware of
4 that.

5 **BY MR. HUGGINS:**

6 Q. But you're aware, you said you were aware --

7 A. And I have worked for three prosecution offices
8 and all of them go with the assumption, even if it is
9 incorrect, that those next of kin are victims. We notify
10 them, we treat them as victims under the Victims' Bill of
11 Rights. I understand where you were coming from from a --

12 Q. But in this case --

13 **THE COURT:** Let him finish, please.

14 **THE WITNESS:** I'm aware of the language.
15 I'm aware of the language in the constitution, I'm aware
16 of the language in 13 -- I think that it's 13-4401, all
17 right. I wasn't looking up that language when this was
18 going down because I had other concerns, but I'm aware of
19 that now and I understand how a person can take the
20 position that an inmate can never be a victim ever. I
21 understand that. I disagree with that, but I understand
22 that. So I don't know if that answers your question.

23 **BY MR. HUGGINS:**

24 Q. Had you reviewed the cases defining victim by the
25 Arizona Supreme Court?

1 A. Yeah. I know that I probably did some research
2 on that for my motion, yes.

3 Q. And isn't that exactly what *Stapleford v.*
4 *Houghton* said? You cannot be a victim under the victim's
5 rights statute or rulings if you are in custody for the
6 offense?

7 A. That's a living victim though, Mr. Huggins. That
8 victim wasn't murdered by the defendant in the case.

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

10 **MS. EAZER:** Judge, may I have a question on
11 cross -- or recross about the Judge Georgini issue which
12 was brought up for the first time on redirect?

13 **THE COURT:** Yes, go ahead.

14

15 **REXCROSS-EXAMINATION**

16 **BY MS. EAZER:**

17 Q. Mr. Huggins asked you about whether you are of
18 the opinion that Judge Georgini had issued an illegal
19 order and whether you investigated that or reported that,
20 and you wanted to explain something. Can you go ahead and
21 explain, please?

22 A. Yes. I -- then and now, I never questioned the
23 integrity of Judge Georgini or his fitness to be on the
24 bench. He made a bad call. He made a wrong ruling, but I
25 never, ever suspected his integrity or his fitness for the

1 bench, and therefore I wouldn't have a mandatory duty to
2 report him to the Judicial Conduct Committee.

3 And, you know, one more thing that I would
4 like to say to that is the Arizona Supreme Court has held
5 that no matter how pure the motive, and we don't have a
6 pure motive here, but even if we did, how pure the motive
7 of the ex-parte contact is, it is still improper because
8 it could still incorrectly inform the judge or improperly
9 influence the judge. That's what's at stake. Our entire
10 adversarial system is at stake when ex-parte motions that
11 are not -- or 15.9 is not followed where the parties have
12 a right to be heard before the ex-parte communication even
13 comes into effect. That's step one. That wasn't even
14 done here.

15 You can't have an ex-parte communication to
16 get permission to do more ex-parte communication.

17 So, we had such a blatant violation of 15.9
18 of ER 3.5. And again, not necessarily calling into
19 question Mr. Huggins' fitness to practice law. That's a
20 big step to go from one motion to that, okay. But it's
21 enough to where I have to investigate. I'm a party for
22 the State, I have to let the victims know. And I have to
23 do exactly what I did, and that was act like an adversary;
24 file a motion in court, give Mr. Huggins an opportunity to
25 respond and seek redress, and that's what I did.

1 **MS. EAZER:** Thank you, sir.
2 I don't have anything further.

3

4

EXAMINATION

5

BY THE COURT:

6

7

8

9

Q. Now, sir, I understand from your testimony that it was late in the afternoon, 4:00 p.m., July 18, 2013, that Ms. Parish came to you with certain records that she had printed out.

10

A. Yes.

11

12

13

14

Q. Okay. And at some point after her talking to you and showing you the records, you came to conclude that they were records that had been filed under seal; is that correct?

15

A. No, I became aware of that after.

16

Q. Thank you.

17

A. Um --

18

Q. Okay. Stop.

19

A. Okay. All right.

20

21

Q. You don't have the floor to give another speech, you understand?

22

A. Oh, okay. I'm sorry, Judge.

23

Q. Good. Thank you.

24

25

Okay. So at 4:00 p.m. on July 18th, Ms. Parish came to you. Did she have the documents

1 printed out? Yes or no.

2 A. I believe she did, yes.

3 Q. And obviously she told you they were from the
4 State v. Wilson case; is that correct?

5 A. Yes.

6 Q. Okay. And did she tell you that she had gotten
7 them from doing some sort of a document check using the
8 computer?

9 A. Yes.

10 Q. Okay. Did she tell you that they were filed
11 ex-parte?

12 A. Yeah, I think that was part of her initial
13 conversation with me. Yes.

14 Q. Okay. And are you saying you didn't learn at
15 that time that they had been ordered to be filed under
16 seal?

17 A. At that time, that's correct.

18 Q. When did you learn that?

19 A. That would have been when I read the order on the
20 19th. And if I'm not mistaken, I think the judge's order
21 states ordered under seal.

22 Q. Would you -- would your duties have included
23 reviewing a pleading that was filed by the Defense,
24 assuming you had received a copy of it, of course, mid
25 June of 2013?

1 A. No.

2 Q. So when Ms. Parish came to you the middle of July
3 and showed you the afternoon of the 18th at about 4:00
4 o'clock a motion that had been filed a month earlier, that
5 wouldn't have caught your attention that it was an
6 ex-parte motion? The fact that you hadn't seen it is what
7 I'm trying to ask.

8 A. No, I wasn't the assigned prosecutor so this is
9 the only work I have ever done on this case and the
10 only --

11 Q. Okay.

12 A. I don't know if that answers --

13 Q. It does.

14 But you understood from looking on the 18th
15 at the motion itself that it was an ex-parte motion?

16 A. Yes.

17 Q. But it wasn't until the next day, the 19th, when
18 you read the order signed by Judge Georgini that you
19 realized that both the motion and the order had been filed
20 under seal?

21 A. Right.

22 Q. Am I correct in assuming, therefore, that
23 Ms. Parish must not have told you that before you saw the
24 order?

25 A. Yeah, I don't remember her ever using the word

1 under seal or anything like that.

2 **THE COURT:** Okay. Now follow-up questions,
3 Mr. Huggins, based on my questions?

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

5 **THE COURT:** Ms. Eazer?

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

7 **THE COURT:** Okay. Thank you. You are
8 excused.

9 **THE WITNESS:** Thank you, Judge.

10 **THE COURT:** Okay. Counsel.

11 **MR. HUGGINS:** I would like to renew my
12 request to call additional witnesses. The additional
13 attorneys, Jason Easterday, Richard Wintory.

14 **THE COURT:** Well, hold on.

15 **MR. HUGGINS:** Matt Long.

16 **THE COURT:** Slow down a second.

17 I've caught up with you. Wintory.

18 **MR. HUGGINS:** Richard Wintory, Matt Long.

19 **THE COURT:** What's Long's first name?

20 **MR. HUGGINS:** Matthew.

21 **THE COURT:** Okay.

22 **MR. HUGGINS:** Jason Easterday and Ron
23 Harris.

24 **THE COURT:** And any objection?

25 **MS. EAZER:** Yes, Your Honor. I think this

1 is a collateral issue to that which we are here for. I
2 don't think there's been any dispute, and I've said this
3 time and time again, since the beginning of these
4 proceedings, that an ex-parte motion that was intended to
5 be filed under seal but wasn't actually under seal at
6 least as far as the computer in the county attorney's
7 office was concerned, otherwise it would not have opened,
8 was in fact accessed as Ms. Parish said and the Court can
9 make its own determination. The access was inadvertent,
10 as far as inadvertent that she thought it was the State's
11 motion. And I think everybody has been frankly quite
12 candid about once upon opening it, knew that it was a
13 Defendant ex-parte motion, but made the decision to
14 nonetheless go forward in the manner which you've heard
15 described today and by Ms. Parish on Tuesday. So there's
16 no question an ex-parte motion was accessed.

17 And just as we said early on in these
18 proceedings back in front of Judge Georgini, if
19 Mr. Huggins believes that there's been unethical conduct
20 on the part of one or more people in the Pinal County
21 office, his duty would be to report that conduct to the
22 State Bar.

23 In this particular case, Judge, the facts
24 are what they are. And as the Court even pointed out on
25 Tuesday, there hasn't been any prejudice to the Defendant

1 on behalf -- I mean as a result of us accessing a motion
2 that this Court itself later found should never have been
3 filed under 15.9 in the first place. There's been no
4 prejudice, there's been no showing that this was
5 intentional conduct beyond that of the witnesses saying
6 yes, even once we found it was ex-parte we did read it and
7 we acted upon it because we thought it was improper.

8 And so now I think we are getting into
9 collateral proceedings that would be much more appropriate
10 to be heard before the State Bar if in fact the State Bar
11 believes that this is a claim in the first place, which is
12 what they are there for, and Mr. Huggins can certainly
13 file a complaint. I will tell this Court that at the
14 hearing in front of Judge Georgini, Judge Georgini even
15 asked him, he said if you have a complaint about this --
16 and mind you, this is after Judge Georgini himself after
17 reading the State's motion and requesting that the order
18 be stayed and that the issue be reconsidered, immediately
19 stayed his own order.

20 And he told Mr. Huggins, and I apologize, I
21 have the transcript and I left it on my desk, but he told
22 Mr. Huggins: If you feel that there's been unethical
23 conduct on the part of the State, then why didn't you file
24 a motion with the -- a complaint with the State Bar?

25 Mr. Huggins' words were to the effect of: I

1 looked into it, Judge, and unfortunately I can't. It has
2 to be the Court.

3 And I would submit to the Court, he's trying
4 to pass the buck by having these proceedings here in court
5 because he says: I can't. I looked at the rules, Judge,
6 and I can't do it.

7 Well, ER 8.3 states: A lawyer who knows
8 that another lawyer has committed a violation of the Rules
9 of Professional Conduct that raises a substantial question
10 as to that lawyer's honesty, trustworthiness or fitness as
11 a lawyer in other respects, shall inform the appropriate
12 professional authority except as otherwise provided by
13 these rules.

14 I cannot count the number of times, both in
15 his pleadings and in this court and in Judge Georgini's
16 court, Mr. Huggins has used words like unlawful, illegal,
17 unethical when he is referring to the actions of the
18 people in the Pinal County Attorney's Office. And that
19 certainly --

20 **THE COURT:** Looking at sealed documents.

21 **MS. EAZER:** Pardon me.

22 **THE COURT:** Looking at sealed documents.

23 **MS. EAZER:** No, he's -- yet he's used those
24 words with respect to our conduct, not in just --

25 **THE COURT:** Looking at sealed documents.

1 **MS. EAZER:** I'm sorry.

2 **THE COURT:** Is Mr. Huggins using those
3 inflammatory words when he's referring to the conduct of
4 people in your office looking at documents that were filed
5 under seal?

6 **MS. EAZER:** Yes, Your Honor. And so he's
7 using those words in hearings, in his pleadings. He used
8 them in the headings of his pleadings. And so to say he
9 can't file a complaint with the State Bar because it just
10 doesn't fit, that doesn't fit because he's alleging that
11 we have acted unlawfully, unethically, illegally. And
12 certainly if he believes that, then by all means he should
13 file a complaint under Rule 8.3 reporting this misconduct.

14 **THE COURT:** And you could file a complaint
15 against him for not complying with his ethical
16 obligations, I suppose.

17 **MS. EAZER:** Absolutely. But my point being,
18 Judge, is that the impact on this case, the impact on the
19 issues in this case, I believe has been shown to be
20 nothing in that there is no prejudice to the Defendant.
21 And I think that Mr. Huggins, by asking to call now many
22 other witnesses, is now asking the Court to address
23 collateral issues when this Court has already found there
24 was no prejudice as a result of the State looking at the
25 documents. Whether the Court believes it was right or

1 wrong or whether the Court believes it's a matter that
2 should be referred to the State Bar or not, I'm not
3 commenting on the right or wrong of it, Judge. I am just
4 saying that I believe it's collateral to the issue in this
5 case, which was the State's Motion to Vacate the Court
6 Order -- Court Order Disclosure of the Alleged Victim's --
7 victim with a small "v" or however we want to put it --
8 Medical Records in this case. That was the issue.

9 Mr. Huggins asked for sanctions, and I
10 believe this Court found that there weren't -- the
11 sanction of dismissal or recusal of the county attorney's
12 office would likely not be appropriate because there was
13 no prejudice, and then we were moving on to should there
14 be a referral to the State Bar about the matter. And if
15 based on everything that's been presented so far, if
16 anybody believes that this is a matter for the State Bar,
17 then it seems like the calling of numerous witnesses would
18 be more appropriate in that forum than this forum in this
19 particular case.

20 **THE COURT:** Mr. Huggins.

21 **MR. HUGGINS:** I would like to briefly
22 respond.

23 Your question was whether these witnesses
24 should be called and she has given you a final argument.
25 I would remind the Court, as I'm sure you would remind us,

1 you have made no rulings on this issue. You have not even
2 heard final argument on this issue and you have asked that
3 we brief this issue, and I am certain the Court has not
4 foreclosed any remedy under the due process clause in
5 regard to these matters.

6 She's told you and represented to you that I
7 said I can't do it. I never made any such statement nor
8 will the record reflect that. She was talking to you
9 about the wrong judge. Again, Judge, I ask you to look at
10 the transcript on January 23rd. The judge was Judge
11 Johnson that I was talking to, and I never said anything
12 about not being able to do so. I told him I did not have
13 an obligation to do so.

14 Judge, the question is, does due process
15 require a remedy if there has been illegal access --

16 **THE COURT:** Well, remember the question was,
17 whether the State had any objection to calling those --
18 you being allowed to call those five witnesses.

19 **MR. HUGGINS:** And to that point, I am saying
20 that we know from the record now these people all had
21 access to this document and the pervasiveness of the
22 disclosure of the ex-parte document is one of the factors
23 the Court may consider in fashioning a remedy.

24 Thank you.

25 **THE COURT:** Well, it seems like we ought to

1 talk about a remedy before I make a decision about the
2 witnesses.

3 You know, there's at least a couple of
4 questions. That is the propriety of the access. The
5 State still insisting it was proper to access the records,
6 and I think I have enough evidence to address that point.

7 Then the next issue is the issue of the
8 further distribution of the sealed records which
9 Mr. Hazard testified at length today.

10 It seems like I have enough on all of that,
11 Mr. Huggins.

12 **MR. HUGGINS:** Thank you, Your Honor.

13 **THE COURT:** So I'm not going to allow you at
14 least at this point to call all those other witnesses.

15 And I will share with you how I want to
16 approach what I have heard so far anyways. That is I
17 think I need to make some rulings on this issue of the
18 access, but quite frankly I don't think I need to make any
19 orders with regard to a remedy.

20 If I recall and understand Mr. Roche's
21 testimony, the problem's been resolved. The county
22 attorney's not at least getting access in this way anymore
23 to sealed records.

24 Now the concern that the Defendant has, I
25 believe, however, is whether the county attorney's office

1 now having been foiled in their attempts to get access to
2 sealed records this way, whether it may attempt some other
3 way, and it's likely that the Defense has not been
4 reassured by the testimony that's been given here that
5 they won't do that in light of their legal position both
6 back in July and their legal position here. That they
7 were fully entitled to have Ms. Parish accidentally,
8 apparently is the position, stumble upon these records,
9 and then just because she stumbled upon them they can
10 distribute them, believing that in a self-righteous
11 understanding that they were the law, they could
12 distribute sealed records. So I think we need to address
13 that, and I don't think that these witnesses would have
14 any further bearing on that.

15 You know, you have requested, Mr. Huggins,
16 the sanction of dismissal and I have not heard anything
17 yet that would justify dismissal.

18 Your next request for relief is to relieve
19 this county attorney's office. And I will take note, of
20 course, that Mr. Hazard never was in charge of the case
21 and is gone, is not in the office, and that Ms. Eazer from
22 another office is now in charge of this case. I suspect
23 that if I pressed Ms. Eazer to tell me that she and people
24 under her control would no longer seek to access sealed
25 records, I suspect as long as I made it clear that my

1 question was without prejudice to whatever has happened up
2 until today, she would assure me that she and those in her
3 direction and control would not seek to access that which
4 they ought not to because of a court order sealing the
5 records.

6 So explain to me why I should grant,
7 nevertheless, relieve this county attorney's office from
8 representation of the Plaintiff in this case or any other
9 really.

10 **MR. HUGGINS:** Your Honor, again, we -- your
11 order indicated that we could brief this and I would like
12 that opportunity. I have not been able to brief it in the
13 last two days because I have been in front of you except
14 yesterday. But I would remind the Court that there are
15 two separate incidents of accessing ex-parte documents.

16 **THE COURT:** As shown by Exhibit 12?

17 **MR. HUGGINS:** The record shows the April 4,
18 2013, ex-parte document. It was accessed from the county
19 attorney's office and printed or attempted to be printed
20 on two occasions. It also shows that this June 12th file
21 was accessed by the county attorney's office, as was the
22 order of the court. I would note that there is in the
23 record a press release from the county attorney and there
24 is evidence in the record that the county attorney, the
25 chief deputy county attorney, Richard Wintory, Matt Long,

1 Jason Easterday, Greg Hazard, all had access to ex-parte
2 pleadings and the Court's sealed order.

3 Your Honor, there is case law that says when
4 information is obtained in violation of privilege by
5 adverse counsel that one of the remedies the court can
6 impose short of dismissal, which is the most drastic
7 remedy, is disqualification of that office. Regardless of
8 what Ms. Eazer would do and tell you, she still has a boss
9 and her boss is Lando Voyles, and his chief deputy,
10 Richard Wintory, they have had access to this and they
11 direct this prosecution.

12 We have two ex-parte filings that have been
13 accessed. She tries to suggest to you that these are
14 public documents. There is not one iota of evidence
15 before the Court that these documents are public records
16 or ever were. They, according to unequivocal testimony of
17 Mr. Roche, the court clerk, they were sealed documents and
18 they were always sealed documents from the point they were
19 filed until we have a pattern of accessing illegal access.

20 **THE COURT:** Well, if Exhibit 12,
21 Mr. Huggins, establishes a pattern, I guess you are right.
22 But you know what Exhibit 12 shows is that there was
23 access to a sealed document by somebody who had logged in
24 from the county attorney's office at 3:07 checking a
25 sealed document, the April 4th, and then just six minutes

1 later checking another sealed document, the June 12th
2 motion and order, and then printing it, that June 12th
3 motion and order two minutes later. And then something
4 happened. I suspect that's when Mr. Hazard was dragged
5 into this probably to his great regret, and then somebody
6 went back and looked within the hour, within the
7 3:00 o'clock hour, looked back into the sealed order of
8 April 4th at 3:54 and then printed it at 3:56, and for
9 some reason three minutes later printed it. So if that's
10 a pattern, that's a pattern. But, you know, it's not much
11 of a pattern.

12 It's looking at two sealed records and
13 printing them, but I don't think you are going to get too
14 far on showing some sort of a pattern that entitles you to
15 relief just within the 3:00 o'clock hour on July 18th.

16 **MR. HUGGINS:** They accessed them there. You
17 cannot limit their access to that point because we know
18 for the next several days they were talking about sealed
19 documents within their office.

20 **THE COURT:** So what you are saying is that
21 there was a pattern of distribution of improperly obtained
22 sealed records?

23 **MR. HUGGINS:** Correct.

24 **THE COURT:** Okay. Go ahead.

25 **MR. HUGGINS:** It is our position that

1 violation of a capital defendant's right to the
2 attorney/client privilege and confidentiality --

3 **THE COURT:** What's the attorney/client
4 privilege got to do with this?

5 **MR. HUGGINS:** What I communicate, what he
6 communicates in regard to ex-parte motions and defense
7 counsel's investigation are covered by the attorney/client
8 privilege, Judge.

9 **THE COURT:** I understand.

10 **MR. HUGGINS:** And there is nothing more
11 fundamental than attempts by the State to intentionally
12 invade that privilege, and there is undisputed evidence in
13 fact it was invaded. You get to choose the remedy --

14 **THE COURT:** They looked at and copied and
15 distributed orders that they knew by a lawful order of the
16 court were sealed. Now they disagree and they think they
17 can decide the law, but we know they are wrong. So, you
18 know, you have a point there, but isn't it a bit of a
19 stretch to say that they were also invading the
20 attorney/client privilege?

21 **MR. HUGGINS:** No, because that's the very
22 essence of this, Judge. That is why this is important,
23 because a defendant in a capital case must know he has the
24 ability to communicate in a confidential manner and the
25 orders that the court enters will be honored by the State.

1 **THE COURT:** So --

2 **MR. HUGGINS:** You decide the remedy, Judge.
3 If you don't agree with my remedy and think that it's too
4 drastic, you will fashion the appropriate one. But to
5 tell the State there is no violation, whatever you did,
6 I'm not going to do anything, we just won't do it anymore
7 is not in compliance with the Fourteenth Amendment, it's
8 not in compliance with the Eighth Amendment that requires
9 heightened standards of due process in a capital case.

10 Thank you, Judge.

11 **THE COURT:** Okay. Well, I am going to let
12 counsel brief it.

13 Now, Ms. Eazer, what I'm likely to do is
14 give the opportunity to file briefs, of course, but you
15 know what's perplexing here to me with testimony that's
16 been rather surprisingly disclosed, it is your office's
17 continued position that because of your view, which your
18 office is free to have the view, that the relief requested
19 in the ex-parte order was improperly requested and
20 improvidently, maybe even incorrectly, granted by the
21 judge when he signed the order. That that justifies
22 taking the law into your office's own hands and
23 distributing sealed records. And it raises -- it sort of
24 makes Mr. Huggins' point for him that your office can't be
25 trusted in the future to respect the Court's orders,

1 particularly with regard to sealed orders.

2 So my question to you is, without trying to
3 hold your feet to the fire, without trying to be -- felt
4 to have -- to be extracting anything from you, I'm
5 interested in what I can do to reassure Defendant and
6 defense counsel that in the future, under any scenario,
7 which would be hard quite frankly to imagine and conjure
8 up, that I would have assurances that the State would not,
9 even if you inadvertently were to receive documents that
10 were filed under seal, that you would do the right thing
11 with them. That's my predicament.

12 **MS. EAZER:** I can say a couple things,
13 Judge, and I want to address the Court's -- the Court's
14 inquiry.

15 You know, I thought -- because I wasn't part
16 of this, I thought, what would I have done?

17 And it's real easy to kind of sit back and,
18 you know, be the armchair quarterback and say what would I
19 have done or what could we have done differently. And a
20 part of me, a very large part of me believes I probably
21 would have done the same thing and probably just
22 because -- I'm not saying that's right, Judge, I'm just
23 being really, really honest. I do believe one hundred
24 percent the access was inadvertent. I do believe one
25 hundred percent that Ms. Parish did believe this was a

1 motion filed by the State because I quite frankly would
2 have thought the same thing if I saw an ex-parte motion
3 for victim's medical records and didn't see that it was
4 filed by the defense.

5 And I can -- I would testify that I can avow
6 she would not have known that from looking at the screen.
7 So that's number one. That I do believe the access was
8 inadvertent, but then when seeing what the caption was, I
9 think we could have in seeing the caption and now knowing
10 it was the Defendant who filed it, we could have
11 immediately not read anymore and immediately brought it to
12 the Court's attention and demanded a hearing saying, you
13 know, we don't know what the motion says, but we know he's
14 asking for something he's not entitled to.

15 And again, I think that that in hindsight
16 would have been the right thing to do, but I've questioned
17 myself over the course of the last several days going
18 through these proceedings, would I have reacted the same
19 way because of a very strong feeling that (A), we need to
20 protect victim's rights and (B), this was a very, very
21 improper and, in my opinion, unethical motion that was
22 violative of a number of ethical rules.

23 And I -- and I honestly, like I said, I have
24 to be honest. I very likely would have done the same
25 thing and consulted with my superiors. However, having

1 said that, having thought through everything and again,
2 seeing what now in hindsight would have been the proper
3 thing to do, I had already thought that this is a very
4 good training issue because the situation doesn't come up
5 everyday, and hopefully never will come up again,
6 specially because the computer situation has been fixed.
7 But it's a very good training issue to assure that okay,
8 before we react in a way that I think was -- again, I'm
9 not going to -- I understand why Mr. Hazard did what he
10 did, and I think that he had a duty to immediately protect
11 the victim's rights which we are taught from day one that
12 it is our duty and so -- but perhaps there would be
13 another way to do it.

14 And Judge, if you will just humor me for
15 one minute to address the other access. I spent a lot of
16 time talking to Mr. Roche, and I don't know if he's here
17 today and he doesn't appear to, and he and I were going to
18 try to get together but he was out of the office for an
19 emergency and we were not able to get together.

20 But I will tell the Court -- and even in my
21 conversations with Mr. Roche, he said there are flaws with
22 this system, there are flaws with documents being
23 mislabeled and so forth. I brought several examples of
24 documents that said they were one thing and in fact said
25 they were filed by the defendant that are in fact filed by

1 the State and they are completely different documents.

2 **THE COURT:** Your point being that I should
3 keep in mind the entire context that Ms. Parish may have
4 had on that fateful afternoon when -- even if she saw or
5 overlooked a designation that the motion had been filed by
6 defendant, that may not have meant exactly what we in the
7 calm recollection months later have figured out. It could
8 have meant a number of things. It could have been filed
9 by plaintiff or defendant.

10 **MS. EAZER:** Yes. And I actually --
11 Mr. Roche was actually going to walk me through the AJACS
12 system because I tell you what I think happened. If the
13 Court may recall --

14 **MR. HUGGINS:** Your Honor, I am going to
15 object. She is vouching. This was not in evidence, it's
16 not appropriate.

17 **THE COURT:** Well, Ms. Eazer, be careful not
18 to interject facts and testimony. You can talk to me
19 about the context and the conclusions you think I should
20 draw from the testimony that was presented or we can come
21 back for Mr. Roche again.

22 **MS. EAZER:** What I would just like the Court
23 to consider is that the testimony was that initially there
24 was a motion accessed, not the order that then I believe
25 she was asked to go back and check and see if an order had

1 already been entered on this matter. And she went back
2 and checked to see if an order had been entered, and found
3 that it had been entered and printed it out. She printed
4 the motion first and then was asked to go back and see if
5 there had been a signed order, if the motion had been
6 granted, and she went back and she found the order and she
7 printed it.

8 **THE COURT:** Which of course isn't exactly
9 what the computer evidence, Exhibit 12, suggests.

10 **MS. EAZER:** If -- that's the document that
11 says "untitled" at the top?

12 **THE COURT:** Yes.

13 **MS. EAZER:** Okay. So Mr. Roche did say that
14 and clarified that these were not attempts to print, that
15 they were in fact printed. He said he's since learned
16 since his testimony, and he can come tell the Court that
17 as well. That "unity retrieved document" does mean it was
18 printed. So I would submit to the Court -- and again,
19 that's why I said there's been many, and even Mr. Roche
20 admitted this in his testimony, there's been many times
21 that documents are mislabelled and entered into the
22 computer system. And since this is the sum total of what
23 was accessed and printed on July 18th, I would submit to
24 the Court that there is a strong likelihood that the
25 4/4/13 was actually the motion of 6/12/13, and the 6/12/13

1 motion was the order because two things were printed, two
2 things were accessed.

3 **MR. HUGGINS:** Objection, Your Honor.

4 There's no evidence in the record --

5 **THE COURT:** She's asking me to draw a
6 conclusion from the evidence that's included in number 12.

7 **MS. EAZER:** And the testimony, Judge,
8 because that was the testimony, was that the motion was
9 accessed and printed, and then she went back and accessed
10 the order and printed the order. This document shows that
11 there were two things accessed that day and two things
12 printed.

13 And the only other thing I would offer,
14 Judge, is -- as I have said and it's been provided to the
15 Court, the other motion, the other ex-parte motion that
16 the Defense filed in this case which was filed on 4/4, I
17 since have that motion because Judge White unsealed it.
18 And I will tell the Court that it was almost as shocking
19 to me as the victim's motion, but didn't carry the same
20 gravity because it didn't deal with the victim, but it was
21 almost as shocking to me, and I would just submit to the
22 Court had Ms. Parish accessed it, it likely would have
23 been brought to Mr. Hazard's attention and probably would
24 have been the subject of -- included in the motion. I
25 guess my concern is --

1 **THE COURT:** Was that dated April 4, 2013?

2 **MS. EAZER:** That second ex-parte motion was
3 dated April 4, 2013, and it was not -- it's not even in --
4 it doesn't even show up on the system on April 4th of
5 2013, Judge, not at all. It shows up later when Judge
6 White just a couple of months ago ordered it unsealed, and
7 so I just -- I guess I don't want the Court just to take
8 this at face value because Mr. Huggins is saying: Oh, the
9 State illegally accessed another document, and I really
10 don't think with a computer system that has significant
11 flaws as even Mr. Roche indicates, I think it's unfair to
12 assume that when there is no other evidence that the
13 State, in fact, looked at another motion.

14 And so I hope that with what I've said about
15 in hindsight what would have perhaps been the better
16 practice in this case, Judge, and that it should and will
17 be a training issue, that the Court can accept the State's
18 assurances that we would never seek to nor would we ever
19 access ex-parte documents in this case or others.

20 **THE COURT:** Mr. Huggins.

21 **MR. HUGGINS:** Your Honor, she just changed
22 the evidence again. You have Exhibit 12. She's trying to
23 suggest that this document listed 2972166, which was
24 accessed one time and printed one time, when in fact there
25 were two documents. That the ex-parte motion of June 12th

1 was accessed and printed, if you believe the testimony of
2 Ms. Parish and Mr. Hazard, and then later she went back
3 and accessed the order and printed it. Judge, if that
4 happened, there would be four entries here, not two.
5 Mr. Roche told you each one of these documents has a
6 specific identifying number. The 2932159 refers to the
7 April 4th ex-parte motion filed under seal.

8 **THE COURT:** To which you gave notice of the
9 filing of your ex-parte motion on the date you filed it,
10 April 4th?

11 **MR. HUGGINS:** Correct.

12 **THE COURT:** Okay. Go ahead.

13 **MR. HUGGINS:** And I did the same thing on
14 the June 12th motion.

15 Your Honor, I would like an opportunity to
16 brief this. I don't think until after we have the
17 briefing argument is appropriate. If you want me to go
18 ahead and argue the motion more, I will do so now.

19 **THE COURT:** Well, I will certainly allow
20 Defendant to brief it. And Ms. Eazer, if I review the
21 pleading by Defendant, I'll set a further briefing
22 schedule.

23 Now neither you nor I know exactly what is
24 going to be in Mr. Huggins' pleading. When you get that
25 pleading from him and you think that the record would be

1 incomplete, if you are not allowed to respond you can ask
2 me for permission to respond. But I may be able to make a
3 ruling just after I get Mr. Huggins' pleading.

4 Mr. Huggins, one thing I would like you to
5 address is any insufficiency you think there is in the
6 Court's remedy that -- essentially telling Ms. Eazer that
7 she should do just what she told me she would do in this
8 case, is make sure that there were no further access of
9 sealed documents, and if that happened inadvertently that
10 the Court would be promptly notified and your client
11 properly notified so that protective measures could be
12 taken.

13 I think the assumption that Ms. Eazer has
14 and that the Court would certainly have is it's unlikely
15 for that to happen again in this case. So if you think
16 that remedy is inadequate, make sure you see to it that I
17 understand why it would be inadequate.

18 Now did we set a further hearing the day
19 before yesterday in this case, other than today? I don't
20 think so.

21 **MR. HUGGINS:** I don't believe we have, Your
22 Honor. I think you had a very difficult schedule.

23 **THE COURT:** I do. Now in the proceeding,
24 Ms. Eazer, that we had after this hearing on Tuesday, we
25 set a further hearing, a disposition in a juvenile case,

1 for -- in just a couple of weeks actually, May 29th. I
2 mentioned to counsel in that case that I have a jury trial
3 that week that may put that hearing in jeopardy. I
4 mention it because if I am going to be here on this
5 juvenile case, perhaps we can take care of some business
6 when I come here on May 29th.

7 **MR. HUGGINS:** Your Honor, just for the
8 Court's information, Mr. Soslowsky will not be available
9 on May 29th.

10 **THE COURT:** Okay. So there's a problem with
11 the 29th.

12 But when do you think, Ms. Eazer, it would
13 benefit us to reconvene and address any matters that have
14 not yet -- that we need to take care of?

15 **MS. EAZER:** Judge, I will make myself
16 available anytime the Court is available.

17 **THE COURT:** And, of course, we've focused so
18 much on this issue of access to records, we've got to keep
19 an eye on the rest of the things in the case.

20 **MS. EAZER:** I don't think there are many
21 other motions or any other issues pending because we did
22 address some of those on Tuesday. I was going to speak to
23 Mr. Huggins about perhaps seeing if we can come up with
24 our own -- and Mr. Soslowsky. I'm sorry, I don't mean to
25 leave out Mr. Soslowsky. To see if we can come up with

1 our own management plan when we believe we can have our
2 interviews done, our motions filed, so we can submit that
3 to the Court. If we are unable to come up with the same,
4 then the State would be asking for the Court's assistance
5 with that, but I think that would be prudent to get
6 started on.

7 **THE COURT:** Do you see anything on the
8 horizon, Mr. Huggins, that I should set a hearing on
9 promptly to assist you in moving the case along?

10 **MR. HUGGINS:** Well, obviously if the Court
11 should conclude that disqualification is appropriate, we
12 are going to have to come back and address that.

13 **THE COURT:** Sure. We will.

14 **MR. HUGGINS:** There are going to be motions,
15 I'm certain of that. There are going to be ex-parte
16 motions as well. I'm assuming what was previously stated,
17 those motions would go to the ex-parte judge, Judge White,
18 and then I would come and advise you of any problems in
19 that regard.

20 So, Judge, we have got the judicial
21 conference coming up, we have the State Bar Convention
22 coming up at the end of June. You indicated you may have
23 one day on June 17th. We may want to have a hearing in
24 July if just briefly, and I don't object because of the
25 Court's schedule if you want to set that by a telephonic

1 conference. That may be the best way to go.

2 **THE COURT:** Okay. Counsel, if I hear from
3 you that we need a hearing, we will work on setting that
4 up within the perimeters that you tell me.

5 I encourage you to work with each other
6 about this case management plan that Ms. Eazer was
7 referring to. I will rely on counsel to bring it to my
8 attention if you need help in having me get that plan
9 ordered. It does appear likely that we will need a
10 mid-summer hearing, perhaps merely with me appearing by
11 telephone, if issues are under control. But if the
12 history of this case is any guide, it may be more than
13 that, but it seems like a mid-summer hearing will be
14 necessary, and then we will be setting further hearings,
15 of course, after that. So, I will have my staff get in
16 touch with you about setting that.

17 Mr. Huggins, would ten days be too soon in
18 light of your schedule to have you brief your request for
19 relief based on the access to the sealed records?

20 **MR. HUGGINS:** I can get it done in ten days,
21 Your Honor.

22 **THE COURT:** Okay. So the Court will order
23 then that Defense Counsel submit within ten days his
24 memorandum in support of sanctions. The Court will review
25 that and determine whether further briefing is necessary

1 from the State. If the prosecutor believes that some
2 response is mandated, a request can be made.

3 **MS. EAZER:** Judge --

4 **THE COURT:** Yes.

5 **MS. EAZER:** -- may I have marked and
6 introduced into evidence for purposes of this hearing the
7 transcript from the January 24, 2014 hearing that I
8 referred to earlier wherein -- and I was wrong, it was
9 Judge Johnson asked Mr. Huggins if he thought this was not
10 better a matter for the State Bar and why doesn't he
11 report it himself.

12 **THE COURT:** Well, let's not argue the point
13 now, but technically, of course, court transcripts are not
14 ordinarily made exhibits, but because there may be a need
15 for appellate review by some court somewhere, someday,
16 sometime, if it was made an exhibit it would keep things
17 together and somebody can look back at this exhibit that
18 Ms. Eazer believes is important.

19 So any objection?

20 **MR. HUGGINS:** Yes, Your Honor. I don't
21 think it should be made an exhibit. It's already part of
22 the record. It's part of the official transcript. And as
23 you know on an appeal, you can refer -- designate that as
24 part of your record on appeal and refer to anything that
25 is in the designated record.

1 **THE COURT:** Overruled.

2 And ma'am, the transcript can be made an
3 exhibit.

4 **MS. EAZER:** And just for the Court's
5 reference as far as the pertinence of Counsel's and my
6 statements, it's page eight of the record Mr. Huggins
7 indicated I was being untruthful about.

8 **THE COURT:** Let's not argue it, Ms. Eazer.
9 It's not going to be admitted. It's an exhibit to our
10 hearing.

11 Okay. I will see you next time. Thank you.

12 **MR. HUGGINS:** Thank you.

13 (Whereupon, the proceedings concluded at
14 4:08 p.m.)

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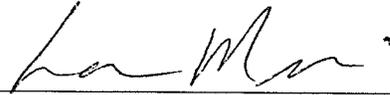
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I, LAURA MILLER, having been first duly sworn and appointed as Official Court Reporter herein, do hereby certify that the foregoing pages, numbered from 1 to 69, constitute a full, true and correct transcript of all proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 13th day of June, 2014.



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

