

1 that. At various mock trials he would go on and on
2 and on -- try to go on and on and on about what a bad
3 mom Ms. Centofanti was, his ex-wife, and she was
4 sleeping around and a bad wife, and all sorts of
5 things. He talked about a lot of that stuff. And we
6 had to -- and yet, he didn't talk about that at the
7 trial in the same degree at all. There were many,
8 many differences.

9 BY MR. SCHWARTZER:

10 Q. He argues in the petition -- excuse me, in
11 the memorandum, that he was instructed not to attack
12 witnesses that spoke negatively about him, for
13 example, Sarah Smith or Adrian Atwood. Was that part
14 of these discussions you had during these mock
15 testimonies?

16 A. I never instructed him subsequently what he
17 should or shouldn't say ever. I never had with any
18 single witness in almost 35 years.

19 But I definitely talked to him about the
20 idea of if he goes off and attacks these witnesses,
21 that it could be taken negatively. That if he says a
22 witness -- the more he says a witness is a liar, the
23 more difficult it is for the jury to believe him. The
24 more times he has to present himself as being
25 against -- that he's the only one telling the truth

1 and everybody else is lying, the more difficult it is
2 for the jury to believe him.

3 So to the -- he should think about and to
4 the extent -- if the subject matter comes up and the
5 witness is absolutely wrong or something, there might
6 be a better way of saying it than saying that they
7 lied, rather than, "I don't remember it that way," or
8 "My recollection is different than that," or something
9 like that. Because he was very angry and he wanted to
10 blame everybody else and a lot of other people. It
11 was always him and everybody else was -- almost
12 everybody else was lying. But I observed in this
13 motion, this memorandum, 300-page plus memorandum
14 where he said I told him he had to say one thing or
15 another. That never happened.

16 Q. Okay. And Dr. Sessions --

17 A. Let me finish one thing.

18 Q. Sure.

19 A. However, with regards to that I can
20 understand where if I say that to him and harp on him
21 enough on that, "Look, Mr. Centofanti, you can't be
22 saying it this way. If you say it that way, they're
23 going to get that impression. Think about it
24 clearly." Maybe that's why he would take it as his
25 view that I was directing him to say one way or the

1 other. So I want to make it clear I can understand
2 why he might come to such a conclusion, but I never
3 would -- ever told him substantively this is how you
4 must testify or must not testify.

5 Q. Okay. With the Dr. Sessions incident,
6 Mr. Centofanti is the one that told you that the
7 doctor came out and said that Virginia, who we've
8 termed Gina, had a hole in her nose caused by crystal
9 meth; correct?

10 A. Yes.

11 Q. And you actually checked the medical
12 records?

13 A. Yes.

14 Q. Now, do you tell the person you represent
15 that it's very important to tell you the truth?

16 A. Yes.

17 Q. As a general course of practice, do you have
18 a set of sayings or a way of telling individuals that
19 you're going to defend that it's important to tell the
20 truth?

21 A. No.

22 Q. But you somehow communicate to them --

23 MR. CENTOFANTI: Hold on. Those last two
24 questions, did he answer in the affirmative because he
25 must be speaking low enough because the speaker is not

1 picking up. I didn't get answers to either one of
2 those.

3 MR. SCHWARTZER: He said no to the last
4 question.

5 MR. CENTOFANTI: Which one? Could it be
6 read back? I didn't hear a response.

7 MR. COLUCCI: Hold on. The court reporter
8 is going to read it back.

9 THE COURT REPORTER:

10 "Q Now, do you tell the person you
11 represent that it's very important to tell you
12 the truth?

13 "A Yes.

14 "Q As a general course of practice, do you
15 have a set of sayings or a way of telling
16 individuals that you're going to defend that it's
17 important to tell the truth?

18 "A No."

19 THE WITNESS: That's not to say I don't talk
20 to people about telling the truth, but that wasn't
21 your question. Your question was at the beginning is
22 there a standard way I do it.

23 BY MR. SCHWARTZER:

24 Q. Do you ever have a discussion through the
25 course of your defense of someone about the importance

1 of telling the truth?

2 A. Yes.

3 Q. How do you communicate that to an
4 individual?

5 A. It can vary in a variety ways. And with
6 Mr. Centofanti we discussed on a number of different
7 occasions over the course of many hours with him. And
8 I can tell them -- definitely tell them if it comes
9 up -- well, there's a bunch things that I say. One,
10 you're going to be cross-examined about everything.
11 If you get caught in a lie, if you lie in some
12 fashion, if it comes out in front of the jury, that's
13 going to be incredibly bad. They could disbelieve you
14 entirely.

15 I tell them that you can't tell me
16 something, one thing and tell me you're going to lie
17 about it. I can't put you on as a witness. I don't
18 say that in every case, but if it ever comes up, that
19 I think that the witness is sort of -- I'm sorry, my
20 client is sort of -- or a witness is inferring that
21 they're going to get up on the witness stand and lie.
22 I tell them -- if you tell me you're lying, I can't
23 put you on as a witness.

24 I don't remember if I told that to
25 Mr. Centofanti, but that's the -- you asked for

1 general things that I do. I talk about the importance
2 of telling the truth because it can have an impact on
3 the jury's perception of the witness.

4 Q. And you're not always able to run down
5 everything your client says to you. You have to rely
6 on at least some of the things they say as the truth?
7 I mean, you can't just run down everything --

8 A. Do you mean do I investigate every single
9 thing, every single word that a client tells me, the
10 answer is no. But the substantive materials that the
11 client tells me I try to confirm it.

12 But this was a -- this particular situation
13 of him telling me that the doctor told him this about
14 Virginia is something that I remember, that he
15 specifically told me. And he told me on a number of
16 occasions. And we talked about the idea of not having
17 to present it at all. We don't have to get the
18 records because it can be just what his mind was.
19 What his perception was. His state of mind was that
20 it was a critical thing.

21 But we all decided that it would be better
22 to try to get the records to support it, to confirm.
23 And he was absolutely sure that is what he was told,
24 and this is what he -- and he told me that several
25 different times.

1 Q. Okay. We talked about lesser included
2 offenses. Do you remember arguing for voluntary
3 manslaughter at all?

4 A. I sort of have a semi recollection that I
5 did, but I think the record would have to --

6 MR. COLUCCI: I'll stipulate that he did at
7 the end.

8 MR. SCHWARTZER: Okay.

9 MR. COLUCCI: Very briefly.

10 THE WITNESS: At the end when I was asking
11 for lessers?

12 MR. COLUCCI: Closing.

13 THE WITNESS: In the closing argument to the
14 jury?

15 MR. COLUCCI: Yes.

16 MR. SCHWARTZER: For the record, I'll just
17 go ahead and show Appendix Volume 5, Bates-stamped 230
18 where he argues for manslaughter.

19 THE WITNESS: To the jury?

20 MR. SCHWARTZER: To the jury.

21 THE WITNESS: Then I must have requested --
22 then I assume I requested lesser instructions from the
23 Court as well.

24 MR. COLUCCI: And I'll stipulate he did that
25 to manslaughter and second-degree.

1 BY MR. SCHWARTZER:

2 Q. Instruction 21 and Instruction 22.

3 All right. You also argued for separate
4 instruction of premeditation deliberation; is that
5 correct?

6 A. I don't remember.

7 Q. Is that something that you would do if they
8 were wanting instruction? In the general course.

9 A. I would -- yes.

10 Q. Why would you do something like that?

11 A. Well, this -- in this type of case, the
12 issue of eliminating the first-degree would have an
13 enormous impact on the exposure, the penalty that
14 Mr. Centofanti would be facing. If you can eliminate
15 first-degree, you can eliminate the life without. You
16 get to a lower sentence. As I sit here right now, I
17 don't remember the exact difference in sentence as of
18 the year 2004 in Nevada between second- and
19 first-degree. But if you eliminate first-degree, then
20 you get a lower sentence and of course that opens the
21 door also to manslaughter.

22 So you would want to highlight how much goes
23 in -- how much is required in order to establish
24 premeditation. And more importantly how much is --
25 really more importantly, although, people generally

1 think premeditation is a more -- it's a word that has
2 a connotation requiring more evaluation. In fact,
3 under the law deliberation is really the word which
4 is -- requires a greatest amount of thought.

5 Premeditation under the law is just thinking about
6 something beforehand. Deliberation is weighing and
7 balancing and looking at the pros and cons. So you
8 would obviously want to get an instruction that
9 highlighted that and try to break it down so we could
10 get the jury to focus on that particular instruction
11 to establish that they would have a doubt about it.

12 Q. Okay. Now, Defendant claims in his
13 memorandum that he provided you names of a lot of
14 potential witnesses. Do you recall that part of the
15 memorandum? People such as Mike Stevenson, who's an
16 attorney that used to work at Travelers Insurance. We
17 previously went over Amanda Pearson, other co-workers
18 of his.

19 A. I don't really remember that in this long
20 document, but I -- yes, I do remember that. I don't
21 remember the names, but I remember somewhere in this
22 document there was a claim that we didn't do effective
23 investigation.

24 Q. Any witness name that the defendant provided
25 to you, did you go and talk to that person or have an

1 investigator go and talk to that person?

2 A. To answer that question would require me,
3 one, to remember the names that were in there, and I
4 don't remember them all. And two, to then ask me to
5 remember -- I don't even remember all the names that
6 were in, let alone if we did. I do remember that we
7 had -- okay, let me start again.

8 I can't answer that question without you
9 getting more specific because you're asking me
10 generally do I remember every name which is in this
11 300-plus page memorandum that purportedly we
12 investigated and I don't. And then on top of that I
13 don't know about those unnamed people whether or not I
14 recall as I sit here now if we did investigation on
15 those particular people.

16 I can say in general, though, that we ran
17 down enormous amount of leads. Mr. Centofanti was a
18 fountain of information. And my general policy is
19 that even if it's something that might in even some
20 small way be of value, that it's worth talking about
21 and perhaps worth investigating. And I remember we
22 looked at many, many witnesses and tried to find many,
23 many witnesses, and there were many, many dead ends.
24 I remember lots of things having to do with
25 Virginia's, the decedent's background. Her -- lots of

1 people in San Diego about it. So I remember it
2 happening on a number of occasions.

3 Q. Okay. Do you recall any lay witness that
4 would have provided you very favorable information
5 that you were not able to call?

6 A. No. Well, yes. There was a guy name
7 Ricardo. I think his name was Ricardo. He was --
8 might not. Maybe it's Richard or something like that.
9 I think he was a boyfriend of Ms. Centofanti's before
10 she was married and before was Centofanti.

11 MR. COLUCCI: Ricardo Dominguez?

12 THE WITNESS: What was the name?

13 MR. COLUCCI: Ricardo Dominguez.

14 THE WITNESS: We were only able to talk to
15 his mother. And I don't think we could find him. She
16 was the mother and she didn't like Ms. Centofanti at
17 all. She said bad things about her, but she didn't
18 have any firsthand knowledge about it. But you asked
19 me was there somebody we couldn't run down that I
20 would have liked to. We tried very hard to find her
21 son. I think he had gone to Mexico or something like
22 that.

23 MR. SCHWARTZER: Ricardo Dominguez? Will we
24 stipulate that he testified in trial?

25 THE WITNESS: Did he testify at trial?

1 MR. COLUCCI: Yes.

2 THE WITNESS: Well, there was someone.

3 Obviously that's the wrong name then. I don't
4 remember the name of the person. What did Ricardo
5 Dominguez testify about?

6 BY MR. SCHWARTZER:

7 Q. He testified about an incident where
8 Mr. Centofanti saw them walking out of an apartment,
9 of her apartment, I believe, while he was dating her.
10 And they got in a car and drove. He followed them.
11 He got out of the car. They had lunch together.

12 A. Right. I remember that person. So we found
13 that person, but there was somebody else. There was
14 somebody else who was going to say bad things about
15 the decedent that we couldn't find because he moved
16 away.

17 Q. So there was an ex-boyfriend?

18 A. Something like that, that was going to say
19 bad things that we couldn't find. But we pursued it,
20 we just weren't able to find that person. I remember
21 that.

22 Q. He would have testified to her violent past?

23 A. Yes.

24 Q. Was there any violent incidence that you
25 recall that you were not able to get into the trial

1 regarding Ms. Centofanti?

2 A. I don't remember right -- I don't remember
3 what we got into the trial, to be honest. I really
4 don't recall what evidence we were able to present.
5 Some of the questions that Mr. Colucci a few minutes
6 ago, or earlier in this session, inferred that we
7 didn't present much in terms of her background and
8 only presented one day's worth. That's not my
9 recollection.

10 But to be honest, I don't really remember
11 all the evidence that we presented. I can say this:
12 We tracked down as much as we could. We presented
13 absolutely as much as we could. And my recollection
14 was we had -- I think we had a number of witnesses.
15 As I sit here now, I thought there was several
16 witnesses that talked about her bad background. But I
17 would have to review the transcript again to testify
18 about that.

19 Q. Well, we can agree that although Clark
20 Peterson made an effort during his closing to say this
21 all occurred on one day, you didn't necessarily agree
22 that's what the testimony that was presented stated?

23 A. That's exactly what I'm talking about. As I
24 sit here right now, you're telling me Peterson made
25 that argument that it happened in one day. I read

1 that in the 300-page document. I don't remember
2 him arguing to that fact. As I sit here right now, I
3 don't remember. But my general recollection is that
4 if he had said that, that would have been wrong
5 because we presented stuff to the jury that occurred
6 on more than one day.

7 Now, he has a right to argue what he wants.
8 That's different. The wings of the imagination is
9 what the U.S. Supreme Court says. Counsel has the
10 right to make its closing argument based on the wings
11 of its imagination. So Mr. Peterson can be as
12 imaginative, as argumentative or as much as he wants
13 at that part of the trial.

14 But my recollection is, as we're sitting
15 here now, that we did present evidence about
16 Ms. Centofanti's bad behavior that occurred on more
17 than one day. But if you tell me we didn't -- I mean,
18 the state of the record is what the state of the
19 record is. I'm telling you right now, as I recall, I
20 don't -- I can't be sure.

21 Q. Well, talking about Mr. Peterson, you said
22 there were several times that he objected on minutia,
23 on small things. And you decided not to argue it or
24 the judge just allowed it anyway. You just did not, I
25 guess, argue the small things with Mr. -- strike that.

1 Are there times where you felt like
2 Mr. Peterson was giving you a hard time about minutia
3 and decided that it looked not favorable to him and,
4 therefore, you decided not to argue in front of the
5 jury with him?

6 A. Yes. It wasn't just objections of things.
7 It was a way that he had. It was a mannerism that he,
8 Peterson, had when he made his comments. He would
9 enter objections or make comments in front of the jury
10 instead of going to the -- to the -- to the sidebar
11 and making comments. And there were a number of times
12 when I thought it looked silly, and the Court
13 overruled. There were a number of times when I
14 responded to it. And sometimes I would respond in
15 what I thought was a more professional way and go to
16 the sidebar, because I thought that would look good
17 for Mr. Centofanti in front of the jury. Because my
18 credibility is at issue too because you have to -- one
19 of the things you have to do is make sure that the
20 jury believes -- counsel believes me, because I'm
21 going in front of the jury as well on behalf of
22 Mr. Centofanti.

23 And then there were other times when I did
24 retaliate against Mr. Peterson and basically argue in
25 front of the jury as well and say, "He knows that's

1 improper. You shouldn't be doing that." I remember
2 specifically different times -- I can't tell you the
3 subject matter, but I remember specific different
4 times thinking in my head, okay, this is one where I
5 have to go after him and show what an idiot he was and
6 how improper his comment was, and I argued that in
7 front of the jury. So it was kind of a combination.

8 Q. You would classify these as tactical
9 decisions?

10 A. They were.

11 Q. Would there be times where you knew you can
12 object, but you didn't believe it affected the trial
13 and, therefore, you tactically did not object?

14 A. Yes. Or that I didn't object because by
15 objecting you highlight. I remember something in his
16 closing argument or maybe his opening statement, I
17 don't remember. Some time he was addressing the jury.
18 I think Ms. Goettsch addressed the jury some of the
19 time, I really -- maybe not. Maybe she just had
20 witnesses that she handled. But I thought she
21 addressed the jury and they split -- they split either
22 opening or closing or something like that.

23 But I remember some of -- whether it was her
24 or him, making a presentation to the jury that I
25 detected what would have been an objectionable

1 comment, something I thought was even beyond the wings
2 of the imagination. And I remember thinking, no -- I
3 remember a number of times, no, I don't want to
4 highlight that. If I object to it, it highlights it.
5 It makes it bigger. It makes it stronger in the
6 jurors' mind. So you always make those sorts of
7 tactical calls. And I think during his closing or
8 opening that I did interrupt and make objections as
9 well. I'm not positive of that, but that's my general
10 recollection. The record speaks for itself.

11 Q. Do you recall a New York social worker by
12 the name of Mark Smith who testified?

13 A. Yes.

14 Q. Do you remember what he testified about?

15 A. Yes.

16 Q. Do you recall that there was an issue about
17 privileged information? About the New York state law
18 about privileged information?

19 A. I remember reading that part in this
20 300-page memo. I don't really remember it as I sit
21 here right now. Well, let me change that. I do have
22 some sort of general recollection that issue was
23 covered. I don't think I can tell you too much more
24 about it than that. I do remember that it's something
25 to do with whether or not he could testify at all.

1 And I thought we made some objection or entered
2 some -- made some motion with regard to it, but I'm
3 not positive.

4 Q. Do you remember preparing for Mr. Smith even
5 though you were going to argue that the information
6 was privileged and, therefore, should not be included
7 in the trial?

8 A. No. I'm sure I did, but I don't remember
9 preparing for him.

10 Q. But even if you thought this -- as a general
11 course, even if you thought that this was privileged
12 information, would you have prepared for his
13 testimony?

14 A. Yes.

15 MR. COLUCCI: Can we take a short break?

16 MR. SCHWARTZER: Sure.

17 (Recess taken.)

18 BY MR. SCHWARTZER:

19 Q. We were previously discussing Mr. Smith.
20 Now, do you remember the testimony of Eva Cisneros?

21 A. Eva Cisneros? Not too -- not too much. She
22 was -- I believe she was a co-worker of
23 Mr. Centofanti's. As I sit here now, I think she was
24 an early call that he made. I think -- I think he
25 talked to her from jail while he was still in custody,

1 or some calls. I don't -- I remember there was an
2 issue of attorney/client. I remember that we were
3 constantly warned -- that she did not like
4 Mr. Centofanti. She did not -- she was very adverse
5 to him. I think so was Janine Munch. Both of them
6 were incredibly adverse to him. I'm not talking about
7 early. I'm talking about when I came on the case.
8 This attorney by the name of -- that you mentioned
9 earlier, whose name I wouldn't remember. It was a
10 name I wouldn't remember, but --

11 Q. James Moran, Jr.?

12 A. Moran. He told me that they were very
13 adverse. Dan Albregts had talked to me about his
14 investigation or preparation had found them to be very
15 adverse.

16 Q. By adverse do you have any specific
17 examples? How were they adverse?

18 A. Given any chance to say something, they were
19 going to say something negative about Mr. Centofanti.
20 That he was weird. That he was dangerous. That they
21 weren't surprised about him doing something like this.
22 That he was paranoid. That he was -- he would make
23 mountains out of molehills. That he was a danger in
24 the office. That they didn't like him in the office.
25 That he was obsessed with Ms. Centofanti. That he was

1 weird. That he was -- had a lot of negative traits as
2 a co-worker and a lot of negatives traits as a husband
3 and a dangerous person as a person. These types of
4 things --

5 Q. So you were --

6 A. -- were things that had been relayed to me
7 that they would say adverse things.

8 I think we talked to them eventually. And I
9 can't remember how much -- I'm sorry. We finally --
10 despite all that I said, "I don't care. I want to
11 talk to these people. I want to find out what
12 happened. They're his counsel. They can't say these
13 bad things about him. We're going to stop this," et
14 cetera, and so we pushed to find out from them, and
15 their demeanor and mannerisms were very negative
16 towards him as well.

17 Q. So even if they didn't discuss with you the
18 case, which they didn't for a large amount of time,
19 you were prepared for them as a negative witness? At
20 least Ms. Cisneros?

21 A. I don't -- as I sit here now, I don't
22 remember what preparation I had as to Ms. Cisneros
23 specifically. I don't recall. In general, I would
24 tell you I was prepared for every witness. And my
25 general course of conduct would have been to want to

1 speak to them beforehand. I do have a recollection of
2 speaking beforehand because I went to their office.
3 Or some office. Maybe it was Moran's office. And I
4 remember being in a conference room and thinking about
5 this matter. And I certainly as a general course
6 would have prepared to -- to cross-examine them or to
7 examine them knowing that they were adverse to
8 Mr. Centofanti.

9 Q. These photographs that Ms. Munch took at the
10 house on December 20th, do you think these are
11 photographs that would be -- that you would use --
12 excuse me. Strike that.

13 The photographs that Ms. Munch took on
14 December 20th, are those the type of things that you
15 would hand over to experts such as Mr. Trahin or
16 Dr. Eisele regarding their expert testimony?

17 A. I don't remember the photographs right now.
18 They're referred to in this big memo as photographs
19 that she took of the house on the night of the
20 shooting.

21 Let me change what I just said about not
22 remembering. I do have a general recollection that
23 she took photographs of the house, and I do remember
24 something about the photographs having to do with I
25 think it was an exercise bike that was there where

1 there was blood found on it. So it did have to do
2 with the scene and blood found, and so forth. But I
3 don't remember too much about it.

4 But in general, if they were pictures
5 involving the house, then I would have made an
6 independent evaluation of whether or not I should give
7 them to an expert. Just because I have them I don't
8 give them to the expert. Because if I give them to
9 the expert, they're definitely going to be
10 presented -- if the expert testifies a foundation
11 upon -- if he bases his opinion on part of them, then
12 it's going to be present at prosecution. So I don't
13 present everything to an expert because I know it's a
14 funnel to the District Attorney. So if I don't
15 believe the information is valuable or is important to
16 the case or could hurt, I wouldn't do it.

17 However, in this circumstance I believe
18 these are pictures which we would have presented to
19 Mr. Trahin or in any event which we would have had
20 them, because they would have been something that
21 could have been helpful.

22 Q. Now, you withdraw before sentencing; is that
23 correct? You withdrew from this case?

24 A. Yes. I -- yes.

25 Q. What was the reason for your withdrawal?

1 A. Mr. Centofanti wanted to get another lawyer.
2 I think he got Mr. Colucci to be his lawyer.

3 Q. Did Mr. Centofanti say anything about your
4 performance at that time?

5 A. Yes. Well, at that exact time, not at that
6 time. Throughout much of the trial he talked about my
7 performance.

8 Q. What are some of the things he would say
9 about your performance?

10 A. He was very positive. He said many positive
11 things. He thanked me very much. He appreciated very
12 much the work that I had done. He thanked me well
13 before the trial too, because he himself realized
14 how -- and he acknowledged how much he had this kind
15 of -- this anger, this venting, this kind of -- I
16 don't think it was paranoia. That's too strong of a
17 word. But this exaggeration that he tended to do.
18 And he appreciated me constantly trying to rein him in
19 and do better. But then after the trial and during
20 the trial, he said he appreciated the work that I had
21 done and he thanked me very much for his support, and
22 he knew how much I tried so hard for him and cared for
23 him.

24 And even after -- and then one time -- I
25 think just right after the verdict we talked about

1 that, and he said some phrase also along the lines as,
2 as sad he was -- he said something about, "I know you
3 tried very hard. I know you did your best," or
4 something like that.

5 Q. Did he ever tell you directly that he was
6 unhappy with your performance?

7 A. No. But if he had been unhappy with my
8 performance, I think he -- well, no.

9 Q. Did he ever express discontent for not
10 calling certain witnesses to the trial?

11 A. Throughout the entirety of the case he never
12 expressed any discontent. We had a number of
13 discussions of tactical evaluations and came to
14 decisions almost always as a unit, as a team. And
15 sometimes -- I mean, he was -- he was good to work
16 with in that regard. He was involved with his case in
17 a great degree, and he saw that I was involved with
18 his case to a great degree. And we came -- almost
19 everything was a mutual decision. But that's not to
20 say that I acceded to his wishes just because he said
21 so. It was very much a mutual effort.

22 But there was also a tendency as we got
23 close to trial -- or closer to trial, I kept seeing
24 that he wanted to be the lawyer. He wanted to be the
25 lawyer in the case in answering questions. And so as

1 we're getting to go to trial and we're prepping for
2 his testimony more and in greater detail, I finally
3 pulled away from him. I mean, I admonished him many,
4 many times: Don't be the lawyer in the case. You've
5 got to be the witness. It was difficult for him to
6 be.

7 Q. How was he acting as a lawyer besides when
8 you said about his own testimony?

9 A. Well, he has lawyer speak. Even as
10 Mr. Centofanti just spoke here today, "Could I have
11 the record read back," is what he said. He said that
12 off the record just a few moments ago or maybe it was
13 on record. He would say things like that. It's a
14 manner of speech. And it's not the image you want to
15 give in this case. Not just that lay people don't
16 necessarily like lawyers because they probably don't,
17 but maybe they do. It's that this was not the image
18 that we wanted, the demeanor that we wanted to express
19 to the jury.

20 He couldn't be some sort of precise
21 over-thinking technician. He had to be the -- a
22 grieved and poor father of his child who killed this
23 lady because he really thought she was crazy and was
24 going to attack. So it was very important that he not
25 show the professional demeanor but show the personal

1 demeanor.

2 Q. And he had problems with that?

3 A. He had many problems with that.

4 Q. And you believe that affected his testimony?

5 A. I absolutely believe it affected his
6 testimony.

7 Q. Now, in the record it stated that the State
8 offered you a deal. Do you recall that? The State
9 offering you a deal?

10 A. No.

11 Q. You don't recall the State offering you a
12 deal of life with --

13 A. Life with a chance of parole.

14 Q. Yes. After 20.

15 A. I do not remember.

16 Q. Do you remember offering the State a deal?

17 A. No.

18 Q. Did the defendant ever want to make a deal
19 with the State?

20 A. I don't remember. I think he did. But I
21 couldn't give you more specifics. I'm just going to
22 say in general -- I have a general recollection that,
23 of course, if we had been able to get something which
24 was like a -- like an assault or something like that,
25 that he would have accepted it, but I can't

1 specifically recall.

2 Q. Do you recall any other defenses that were
3 considered besides the ones that were mentioned at
4 this deposition?

5 A. No. Well, we would -- like I said, I go to
6 the beginning of the case. So I don't close my mind
7 when I come into the case. Just because I'm told he
8 was the shooter, just because I'm told that there's no
9 evidence that anybody else did the shooting, just
10 because I'm told that we're several years into the
11 case or a year or more into the case, that it's all
12 panning one way. I don't pick it up from Mr. Albregts
13 or from any prior counsel that I way. I start all
14 new. So your question, did I consider anything? Yes,
15 I considered everything from the beginning.

16 Q. But you made a tactical decision of
17 self-defense, along with your client, was the best --

18 A. Right. There wasn't -- there did not seem
19 to be any other defense that was viable.

20 Q. You indicated that even with self-defense it
21 would have been a tough case in front of a jury?

22 A. I don't understand your question. Was this
23 a tough case in front of a jury?

24 Q. Yes.

25 A. Yes.

1 Q. Why did you think this was a tough case in
2 front of a jury?

3 A. Because you have a small woman and a bigger
4 guy, and you have her shot, I believe, seven separate
5 times, and she doesn't have any weapon.

6 MR. SCHWARTZER: That's all I have.

7 MR. COLUCCI: I just have a couple of
8 questions and then we're done.

9 FURTHER EXAMINATION

10 BY MR. COLUCCI:

11 Q. After the verdict was rendered, did you
12 remain in Las Vegas?

13 A. I don't remember when I left Las Vegas. I
14 don't remember -- I left Las Vegas, but I don't
15 remember if it was -- how long after the verdict.

16 Q. Was it within a few days?

17 A. I really don't remember. Probably so.

18 Q. You don't remember staying for an extra two
19 weeks?

20 A. I did not stay for that long.

21 Q. And you didn't file any post-verdict
22 motions; correct?

23 A. I did not.

24 Q. Did you discuss with Mr. Centofanti any
25 post-verdict motions?

1 A. Yes.

2 Q. When did you do that?

3 A. Immediately -- I think it was after he
4 was -- I think it was after he was put in custody
5 before we left the courtroom. I think Judge Mosely
6 gave me a chance to speak with him. Probably
7 Ms. Navarro was with me. I don't think it was in a
8 jail setting. I think it was in the courtroom. And
9 we talked about what's going to happen next, what are
10 the things going to happen next. And I -- and we
11 probably talked about motions and sentencings and
12 appellate rights.

13 Q. At that time you didn't know anything about
14 the jury misconduct?

15 A. I didn't know anything about the testing.
16 And I didn't know anything about the false or not
17 false felony in Florida, or whatever state it was,
18 information. I might have known something about
19 somebody nodding off. I don't remember. And I don't
20 think I -- I can't remember if the issue of the
21 T-shirt was ever raised. I have some recollection of
22 some witness talking, but I don't think it was to our
23 jury. I think some witness talking to another --
24 jurors from another -- I may have had some general
25 recollection of the T-shirt thing. I can't remember

1 if that was something that was brought to my attention
2 then or not.

3 Q. But at that point in time you had no reason
4 to file a motion for a new trial?

5 A. Not based on any of those types of things or
6 anything like that.

7 Q. Did you have a basis for filing a motion for
8 a new trial for any other reason that you can think
9 of?

10 A. No. Not unless something would have come up
11 at some later time.

12 Q. Did you discuss with Gloria the time limits
13 or the time limit in Nevada for filing a motion for
14 new trial after the verdict?

15 A. I don't remember. Probably, but I don't
16 remember.

17 Q. Okay. And she would have been the person
18 you would have asked about that?

19 A. Almost certainly, I would have. I doubt
20 I -- I might have talked to Mr. Albregts about that
21 and asked him, but I don't remember having such a
22 conversation with him. I don't remember having with
23 Gloria -- my recollection is I probably did talk to
24 Gloria about it, Ms. Navarro about it. But I don't
25 remember per se.

1 MR. COLUCCI: Okay. That's all I have.

2 MR. SCHWARTZER: I have one follow-up to
3 that.

4 FURTHER EXAMINATION

5 BY MR. SCHWARTZER:

6 Q. As a general practice, you consider these
7 motions for new trials soon after the trial; is that
8 correct?

9 A. Say again?

10 Q. As a general practice when the trial is
11 over, do you consider motions for new trial?

12 A. Yes.

13 Q. Generally?

14 Now, would you be concerned about the
15 deadline you would have to file such a motion?

16 A. Yes.

17 Q. Would you want to know how many days you
18 have to file that motion?

19 A. Yes.

20 Q. And you would make sure you knew that
21 knowledge, you had that knowledge?

22 A. As a regular course, I would. I know now
23 Nevada has a seven-day period. I mean, I believe
24 Nevada had a seven-day period active at that time, but
25 I don't remember the aspects of --

1 Q. Okay.

2 A. I don't remember -- that was not a big,
3 important factor for us at that time.

4 MR. SCHWARTZER: Okay. Thank you. That's
5 all I have.

6 (Whereupon, the deposition concluded at 5:20 P.M.)
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DECLARATION UNDER PENALTY OF PERJURY

I, ALLEN R. BLOOM, do hereby certify under penalty of perjury under the laws of the State of California that I have read the foregoing transcript of my deposition taken on April 23, 2010; that I have made the necessary corrections, additions or changes to my answers that I deem necessary; that my testimony as contained herein, as corrected, is true and correct.

Executed this _____ day of _____, 2010.

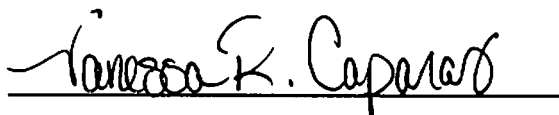
ALLEN R. BLOOM

REPORTER'S CERTIFICATION

I, VANESSA R. CAPARAS, Certified Shorthand Reporter
for the State of California, do hereby certify:

That the witness in the foregoing deposition was by me
first duly sworn to testify to the truth, the whole
truth, and nothing but the truth in the foregoing
cause; that the deposition was taken by me in machine
shorthand and later transcribed into typewriting,
under my direction, and that the foregoing contains a
true record of the testimony of the witness.

Dated: This 7th day of May, 2010, at San Diego,
California.



VANESSA R. CAPARAS
CSR No. 12231

ALLEN ROBERT BLOOM

1551 Fourth Avenue
Suite 801
San Diego, California 92101

(619) 235-0508

FAX: (619) 235-0516
EMAIL: sasha@adnc.com

EDUCATION:

Boston University School of Law
Doctor of Jurisprudence, 1975
Honors-Trial Advocacy
Honors-National Moot Court

Hastings College of Law
Center for Trial Advocacy, 1977

University of California, Los Angeles
Bachelor of Arts, 1972
Deans Honor Roll-six semesters
Certificate of Honors at Graduation

**PROFESSIONAL
AWARDS, MEMBERSHIPS,
RATING:**

Admitted California Bar, 1975
(California Bar No. 65235)

Admitted Federal District Court, Southern and Eastern
Districts; United States Court of Appeal, 9th Circuit

President, San Diego Criminal Defense Bar Association
(1998-99)

Vice-President, San Diego Criminal Defense Bar Association
(1997-98)

Board of Director, San Diego Criminal Defense Bar
Association
(1983-1984; 1996-present)

"San Diego Trial Attorney of the Year - Stanley Conant Award"
- 1998, as awarded by the San Diego County Defenders Board

**PROFESSIONAL AWARDS,
MEMBERSHIP, RATINGS,
con't:**

Martindale-Hubbell Attorney Rating: "AV"

The Martindale-Hubbell AV Rating indicates very high to pre-eminent legal ability and very high ethical standards as established by confidential opinions from members of the Bar.

An AV Rating signifies that the lawyer has reached the heights of professional excellence. He or she has usually practiced law for a number of years, and is recognized for the highest levels of skill and integrity.

(Ratings reflect the confidential opinions of bar members and the judiciary, and attest to the individual lawyer's legal ability and adherence to professional standards of ethics.

The Legal Ability Ratings (C, B, A) take into consideration the standard of ability for the area where the lawyer practices, the attorney's expertise, nature of practice and qualifications relevant to the profession. Where a lawyer's practice is limited or specialized, rating opinions are made on the basis of performance in those specific fields of law.

The General-Ethical Standards Rating (V) covers adherence to professional standards of conduct and ethics, reliability, diligence and other criteria relevant to the discharge of professional responsibilities.

**PROFESSIONAL
EXPERIENCE:**

1981 to present - Private Practice
1551 Fourth Avenue, Ste. 801
San Diego, California 92101

Rated as a Class 6 attorney (one of approximately 15 in the county of San Diego) - the highest rating available for attorneys as designated by the San Diego County Judicial Attorney Review Committee, indicating qualification level capable of handling cases as difficult as capital offenses.

**PROFESSIONAL
EXPERIENCE, con't:**

Specialization in criminal law. Extensive trial experience in defense of serious felony cases, homicides, capital cases, and post conviction matters.

Attorney of record in hundreds of serious felony trials, several thousand criminal cases, including juvenile and extradition matters. Also attorney of record in a variety of appellate/post-conviction cases which required the filing of Writs/Appeals to California Courts of Appeal, California Supreme Court, United States District Courts, United States Circuit Court of Appeal, and the United States Supreme Court.

Attorney of record in juvenile, administrative, and extradition cases.

Appearances in the following courts:

United States Supreme Court

United States 9th Circuit Court of Appeal

United States Southern and Central District of California;
California Supreme Court

California District Court of Appeal

California Superior and Municipal Courts in the counties of San Diego, Los Angeles, Orange, Riverside, San Francisco, Madera, Alameda;

Military tribunals in San Diego California;

Board of Correction and Paroles, State of California, Counties of San Luis Obispo, Kern and San Diego;

Superior Court and Municipal Court in the State of Massachusetts.

1981 - 1986 Judge, Pro Tem
Municipal Court, State of
California, County of San Diego

1982-1984 Adjunct Professor of Law
University of San Diego School of Law

1982 - 1985 Adjunct Professor of Law
Western State University School of Law

1984 Adjunct Professor of Law
National University School of Law

**PROFESSIONAL
EXPERIENCE, con't:**

1977 - 1981	Staff Attorney Defenders, Inc. San Diego, California 92101
1976	Deputy Public Defender Madera County Public Defender Office
1975 - 1976	V.I.S.T.A. Volunteer Staff Attorney Legal Aid Society of San Diego San Diego, California

**PROFESSIONAL
ACTIVITIES:**

President, San Diego Criminal Defense Bar Association
1998-1999

Co-chair, Criminal Subcommittee, Legislative
Committee, San Diego County Bar Association
(1982 - 1988)

Delegate, California State Bar Convention of
Delegates (1985, 1986, 1987)

Member, California State Bar Legal Services
Trust Fund Committee (Chair: Yvonne Braithwaite Burke,
1982)

Board of Directors, San Diego Criminal Defense
Bar Association (1983 - 1984; 1994 - present)

Member, San Diego Criminal Defense Bar Association (1982 -
present)

Member, California Attorneys for Criminal
Justice (1981 - present)

Member, California Public Defenders Association (1983 -
present)

Member, Steering Committee of San Diegans for an Independent
Judiciary (1985 - 1986)

Page five

Resume of Allen Bloom

PROFESSIONAL
ACTIVITIES, con't:

Co-editor, Contempt Defense Manual,

Published by California Attorneys for Criminal Justice,
1987, 1989, 1993, 1999

Author, Changes in Criminal Law, San Diego
Trial Lawyers Association Magazine

Author, California Criminal Law Reporter -
review, Forum Magazine, California
Attorneys for Criminal Justice

Author, California Criminal Law Reporter -
review, Dicta Magazine, San Diego County
Bar Association

Guest lecturer, San Diego County Probation
Department

Guest lecturer, California Western University
School of Law

Exhibit 2
Allen R. Bloom
4/23/10

ALLEN R. BLOOM

Firm Info

Achievements

General Info

Contact Us

**TRIAL ATTORNEY
OF THE YEAR**

**PRESIDENT
CRIMINAL DEFENSE
BAR ASSOCIATION**

**DEDICATED TO
DEFENDING THE
ACCUSED**



Recipient of San Diego Criminal Defense Bar Association "Career Service Award" (2008), "Conant Trial Attorney of the Year" (1998), "Directors Award for Excellence" (1999), and former President of the San Diego Criminal Defense Bar Association (1998-99), Attorney Allen Bloom is one of San Diego's most successful and effective Criminal Defense Attorneys.

For the past 33 years, he has dedicated his professional career to representing those accused of crimes and has handled - with considerable success - some of the most difficult and highly publicized cases in San Diego and throughout California and adjoining states.

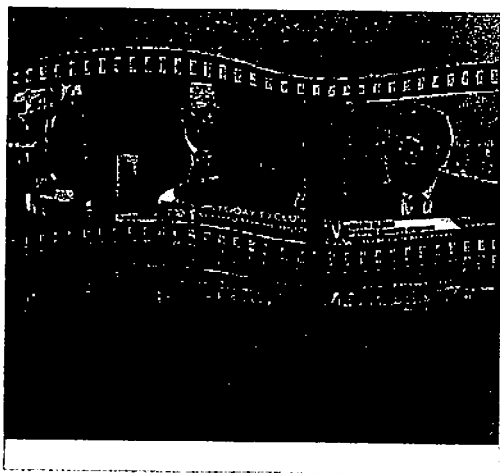
He has achieved an "AV" rating from the prestigious firm of Martindale Hubbell, signifying that he has reached the heights of professional excellence and is recognized as preeminent in his field and with the highest levels of skill and integrity. (Ratings reflect the confidential opinions of bar members and the judiciary, and attest to the individual lawyer's legal ability and adherence to professional standards of ethics.)

He is rated as a Class 6 attorney, one of very few throughout the county of San Diego, the highest rating available for attorneys as designated by the San Diego County Judicial Attorney Review Committee, indicating a qualification level capable of handling cases as difficult as capital murders.

He has extensive trial experience in defense of serious felony cases, homicides, capital cases, and extensive experience in post-conviction matters.

He has been attorney of record in hundreds of serious felony trials, several thousand criminal cases including juvenile matters and has filed writs, appeals, motions, and other matters in United States Supreme Court, Circuit Court of Appeal, District Courts, California Supreme Court, Courts of Appeal, Superior and Misdemeanor Courts in San Diego, Los Angeles, Orange, Riverside, San Francisco, Madera, Alameda, and in the state of Nevada.

He has acted as Judge, Pro Tem of the Municipal Court, State of California and as Adjunct Professor of Law at the University of San Diego School of Law, Thomas Jefferson/Western State University School, and National University School of Law.



FILED

MAR 12 10 24 AM '10

Allen R. Bloom
CLERK OF COURT

1 ORDR
2 CARMINE J. COLUCCI CHTD.
3 CARMINE J. COLUCCI, ESQ.
4 Nevada Bar No. 0881
5 629 South Sixth Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 384-1274
8 Fax: (702) 384-4453
9 Attorney for Petitioner
10 ALFRED P. CENTOFANTI III

DISTRICT COURT
CLARK COUNTY, NEVADA

11 ALFRED P. CENTOFANTI III,

12 Petitioner,

13 vs.

14 E.K. McDANIEL, WARDEN,
15 ELY STATE PRISON,

16 Respondent.

CASE NO. C172534
DEPT NO. VI

ORDER

17 IT IS HEREBY ORDERED that Allen R. Bloom, Esq., shall answer any and all
18 questions asked of him by the attorneys for the respective parties during his deposition
19 fully and completely, without regard to the source of said information and without
20 regard to where the information may lead unless an objection is interposed by counsel
21 for either party which requires a ruling by the court;

22 IT IS FURTHER ORDERED that if an objection is made by counsel for either
23 party, and they can resolve the objection without court intervention, then the
24 deposition shall continue without further delay until completed.

25 IT IS FURTHER ORDERED that if court intervention is required to resolve an
26 objection or procedural dispute between the parties, the parties may agree to certify
27 an objectionable area of inquiry or procedure and the court reporter, at the request of
28 either party, may certify those issues which will be resolved at a later time which is

1 convenient for the court.

2 DATED this 10 day of March ~~January~~, 2010.

3
4
5 *Erin F. Walsh*
6 DISTRICT JUDGE

7 Submitted by:

8 CARMINE J. COLUCCI, CHTD.

9 *Carmine J. Colucci*
10 CARMINE J. COLUCCI, ESQ.

11 Nevada Bar No. 0881

12 629 South Sixth Street

13 Las Vegas, Nevada 89101

14 Attorney for Petitioner

15 ALFRED P. CENTOFANTI III

16 Approved as to form and content:

17 DAVID ROGER

18 CLARK COUNTY DISTRICT ATTORNEY

19 BY *[Signature]*

20 MICHAEL SCHWARTZER, ESQ.

21 Deputy District Attorney

22 Nevada Bar No. 10747

23 200 South Third Street

24 Las Vegas, NV 89155

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CLERK OF THE COURT

MAR 12 2010

ALLEN R. BLOOM

ATTORNEY AT LAW

550 WEST "C" STREET, SUITE 1670

SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 235-0508

E-MAIL: ALLENBLOOM@SBCGLOBAL.NET • FAX (619) 235-0516

March 4, 2010

Mr. Carmine Colucci
629 South Sixth Street
Las Vegas, Nevada 89101 *Also sent via FAX to 702-384-4453*

Re: *Centofanti v. McDaniel*; C172534
Deposition scheduled for March 19, 2010

Dear Mr. Colucci,

This letter will confirm our phone conversation this date regarding the need for (a) a formal and global attorney-client privilege waiver from Mr. Centofanti and (b) an order from the court directing me to answer any and all questions fully and completely, no matter their source, in order to go forward with the deposition.

When we spoke in January, 2010 I expressed the same concern that I did in our phone conversation today, which is as follows:

Though, under Nevada law, the bringing of the allegations in the Petition and Memorandum *infers* as a waiver of Mr. Centofanti's attorney-client privilege *as to the specific issues raised*, because the issues raised are so broad and cover such a wide range of subject matters related to the case, and because the tactics that I used are, in many circumstances, a product of the entirety of information that I gained as Mr. Centofanti's attorney, including the entirety of his statements and the statements of witnesses to me before and during the trial both in and out of the courtroom, and because both you *and* the District Attorney will ask questions at the depositions, and because the questions asked by both of you could be very broad based and extend to the very edges of the case, and because by the nature of a deposition that a Judge will not be present to advise what is and what is not covered by attorney-client privilege, I believe it is necessary that Mr. Centofanti clearly, and under penalty of perjury, waive *all* attorney-client privilege as to me and request that I answer any and every question put to me and that the court then, based upon that waiver, direct me to fully answer any and all questions put to me at the deposition, no matter their source and no matter where they lead.

I am requesting this well before the deposition in order to allow you ample time to get the global waiver from Mr. Centofanti and the order from the court so as to insure that the deposition will not be halted or delayed should a question be put to me about which I am not sure if the inferred waiver actually covers the particular question asked.

Page two

March 4, 2010

You indicated that you would review several waivers that Mr. Centofanti has already sent you and will evaluate proceeding to the court for such an order and will advise me as soon as possible. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Bloom". The signature is fluid and cursive, with the first name "Allen" and last name "Bloom" clearly distinguishable.

Allen Bloom
Attorney at Law

March 12, 2010

Allen Bloom, Esq.
550 W. C Street, Suite 1670
San Diego, CA 92101

Re: Centofanti v. McDaniel
Case No. C172534

Dear Allen:

I am writing to you with regards to the above referenced matter. As you are now aware, an evidentiary hearing has been scheduled on the Petition for Writ of Habeas Corpus Post Conviction for March 19, 2010. My attorney, Carmine J. Colucci, has contacted you and it is my understanding that you are claiming some sort of attorney client privilege and are refusing to speak with him further on that basis.

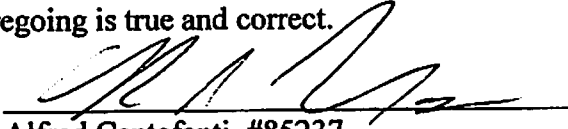
I hope the assertion of privilege was also communicated to the Office of the District Attorney, whom we understand has contacted you to discuss this matter.

Please be advised that under Nevada law I am the one who holds the privilege and I am hereby, by this letter, authorizing you to communicate with both Mr. Colucci and the Deputy District Attorney, Michael Schwartz, who I understand is handling this case, with whatever information, documents or other relevant materials you have to assist them in the preparation for the hearing. I cannot stress enough the importance of your anticipated cooperation.

For ease of reference, the Nevada Supreme Court has taken the position that you are allowed to disclose what is requested from you in this letter by nature of the claims of ineffective assistance of counsel, which will be litigated before the Court. See Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).

I am available to discuss this matter with you if necessary, but am confident this letter will suffice to set forth the applicable facts, law and other information necessary for you to now cooperate with Mr. Colucci and the Deputy District Attorney.

I declare under penalty of perjury that the foregoing is true and correct.


Alfred Centofanti, #85237
Ely State Prison
P.O. Box 1989
Ely, NV 89301

CARMINE J. COLUCCI, CHTD.
ATTORNEY AT LAW

629 SOUTH SIXTH STREET
LAS VEGAS, NEVADA 89101

(702) 384-1274
FAX: (702) 384-4453

March 18, 2010

Exhibit 6
Allen R. Bloom
4/23/10

Allen R. Bloom, Esq.
550 W. C Street, Suite 1670
San Diego, CA 92101

Re: Centofanti v. McDaniel

Dear Mr. Bloom:

As per our discussion, I am enclosing the revised original letter sent from Mr. Centofanti to me which he instructed that I send to you. This letter and the previously sent certified court order should suffice to constitute a full and valid waiver of the attorney-client privilege with which you were so concerned.

I am also enclosing the original envelope that it came in so there can be no question of the letter's authenticity. I have kept copies of both for my records.

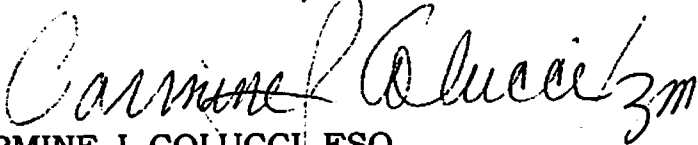
Additionally, Mr. Centofanti has informed me that he has also sent to you another original of this letter and waiver. This was just to make double sure that you received it.

If you have any further questions about the waiver, you could contact Mr. Centofanti by letter, at the return address on his letter, and ask him to contact you at a certain time on a specific date. When he calls you, you could conference call me in and we can take up this issue -if you think that is necessary.

I do not anticipate any further continuances at this time and I look forward to meeting you at the deposition.

Sincerely,

CARMINE J. COLUCCI, CHTD.



CARMINE J. COLUCCI, ESQ.

CJC:zam
Enclosures

1 used people here. I don't really remember who we
2 used, but we used investigation here to see if we
3 could find people to try to do that. I believe we
4 called witnesses in Nevada in the trial that talked
5 about it as well, but I'm not positive.

6 Q. Do you recall -- do you recall establishing
7 a timeline?

8 A. No, I don't.

9 Could we take a one-minute break?

10 (Recess taken.)

11 BY MR. COLUCCI:

12 Q. Mr. Bloom, do you remember having a
13 conversation with Mr. Centofanti about Gina's -- and I
14 say Gina -- it's Virginia Centofanti's -- past record?

15 A. Sure. I've had many conversations about
16 that.

17 Q. Do you recall having a conversation where
18 you advised him that her priors would not come in
19 unless he took the witness stand?

20 A. Not specifically, but the general subject of
21 admissibility of certain things -- of a variety of
22 things had to do with whether or not they were in his
23 mind or not. And the only way he could get his
24 mind -- if he wanted to testify, the only he could get
25 his mind -- if he wanted to testify, that was one way

1 that he could get in his state of mind, and then the
2 facts of what he knew could be supported because of
3 that.

4 Q. But he did not have to take the witness
5 stand in order for him to put on a self-defense case;
6 correct?

7 A. He wanted to take the stand no matter what,
8 but he did not have to take the witness stand to
9 present it.

10 Q. So if he was told that he had to take the
11 witness stand in order to present a self-defense
12 defense, that would be wrong?

13 A. Yes.

14 Q. That would be incorrect?

15 A. Yes.

16 Q. Do you recall whether or not you told him
17 that he had to take the stand in order to put forth a
18 self-defense?

19 A. I know I did not. The answer to your
20 question is yes, I remember, and I remember that I did
21 not tell him that.

22 Q. Do you recall a man by the name of Dan
23 Berkabile? Or Berkabile, as some people call him.

24 A. I think -- Berkabile, I think, was a person
25 who dealt with lab reports, I believe. A chemist, I

1 think. I'm not positive, but I think he's a Las Vegas
2 chemist. I'm not sure of that.

3 Q. Right.

4 A. That's the best I can remember.

5 Q. That's a good memory.

6 Did you retain Mr. Berkabile to do certain
7 things?

8 A. I don't remember.

9 Q. Do you know whether or not you gave him the
10 task of testing Virginia Centofanti's tissue and hair
11 for drugs and alcohol?

12 A. I don't. I would have wanted to test for
13 that, but I don't remember. Again, if you would show
14 me some records --

15 Q. I'll pull those records for you on our last
16 break, hopefully.

17 Do you recall during the trial being advised
18 by anyone that there -- that a couple of the jurors
19 were engaging in behavior which could be construed as
20 juror misconduct?

21 A. After the trial, I remember that it was
22 brought out -- you may have brought it out through
23 your investigation of witnesses or jurors or
24 something -- that some of the jurors had conducted
25 tests.

1 I think some of them -- one or -- I guess
2 one did a test having to do with how fast a gun would
3 fire or something like that. I think that was
4 something. And I think somebody was seen wearing -- I
5 can't remember, but at some point, I believe late in
6 the case -- I'm not sure, but I believe it was -- it
7 could have been -- I don't remember if it was
8 deliberations or not. Somebody had a T-shirt that
9 said something bad. Or maybe it was in the audience.
10 I don't recall. Or maybe the jurors had seen a
11 T-shirt that was bad.

12 And then there was something else. I think
13 it's possible one of the jurors was sleeping at some
14 point during the proceedings.

15 Q. Right. I meant -- basically, those are the
16 three things that I'm talking about.

17 Do you recall seeing a juror wearing a
18 T-shirt that said something along the lines of, "Do
19 you know what a killer looks like"?

20 A. No. I don't think I ever saw that.

21 Q. Did anyone ever bring that to your
22 attention?

23 A. Yes. I don't remember if it was after the
24 trial or not. I don't remember.

25 Q. Well, if it had been during the trial, what

1 would have been your course of conduct?

2 A. To bring it to the Court's attention so that
3 the matter could be pursued to see if the juror was
4 exhibiting bias and if the juror should be excused.
5 And depending on where they were in the proceedings,
6 whether an alternate should be placed or whether or
7 not an alternate should be put in that juror's place
8 in order to do the deliberations, deliberations to
9 commence in -- if it was afterwards, then whether or
10 not the jury should -- the verdict should be
11 overturned and result in a mistrial.

12 Q. And that would have been your course of
13 conduct for the other two issues as well, the firearm
14 test -- the unauthorized firearm test and the sleeping
15 juror?

16 A. The firearm test, without any question.
17 That would really be egregious. The T-shirt thing is
18 very equivocal. You should pursue it. You should
19 make the motion. You should see if it's something.
20 Because to this moment, I still don't quite know if
21 that exhibits bias in favor or against us. It does
22 exhibit bias. We were trying to say Virginia was a
23 bad person, so it could have been something involving
24 that.

25 But to do a test on their own -- there was

1 one other misconduct thing having to do with
2 misrepresentation of a felony record, of a juror
3 having a felony record. I'll get to that as a fourth
4 thing.

5 But back to your question about the testing.
6 That was -- if that was known, then the steps --
7 that's a very egregious and direct violation of what
8 the Court admonition to the jurors is. They should
9 not do that. And if that had been known, then all the
10 steps that I talked about definitely should have been
11 pursued.

12 The question of a juror nodding off or
13 sleeping usually -- unfortunately, because of
14 circulation, because of a variety of things, you get
15 jurors who are sometimes older. And it doesn't
16 necessarily even have to be an older person. Just
17 because courtrooms can be cramped, and there might not
18 be good circulation, and people can nod off.

19 And maybe I'm not -- maybe I'm a little bit
20 too boring or I drop my voice or maybe Mr. Peterson
21 was so annoying that the juror decided to disregard
22 him or something like that. So that wouldn't be
23 something that I would deal with anywhere near the
24 same level.

25 The sleeping situation, I would bring it to

1 the Court's attention, maybe ask the Court to pursue
2 it, maybe ask the Court to simply tell the jurors to
3 please stay awake or please stay alert or something
4 like that.

5 And then I do remember something about one
6 juror had ultimately got determined that a juror had
7 been convicted of a felony, I believe in another --
8 well, I know in another state. I believe the state to
9 have been Florida. I don't think I knew that until
10 afterwards. I think that was part of your appeal.

11 But you asked me if I was aware of any juror
12 misconduct, and I think she -- I think it was a woman,
13 and I think she had represented she had received some
14 sort of rehabilitation or some type of thing in
15 Florida's statutes that said she no longer was
16 convicted. And that was an issue.

17 Q. All right. But no one brought the juror
18 wearing a T-shirt to your attention during the trial?

19 A. I don't remember -- I don't remember ever
20 seeing it or it being brought to my attention during
21 the trial.

22 Q. And the firearm test, that was not brought
23 to your attention, and you didn't observe any of the
24 jurors sleeping?

25 A. The firearm test was not brought to my

1 attention in any way. And I don't remember if I ever
2 saw a juror nodding off or not nodding off. I don't
3 remember ever seeing it.

4 Q. You had several go-rounds with Judge Mosely
5 regarding, I guess, for lack of a better term, your
6 trial strategy, where he didn't think that painting
7 Gina as a bad mom was good trial strategy.

8 Do you recall that?

9 A. Not particularly. If you want to know, I
10 had a number of -- we had a number of disagreements
11 with Judge Mosely's ruling, and he was kind of a --
12 try to cut to the chase and speed things up kind of a
13 judge like many judges are. Just try to get the
14 internal -- what he thought was an internal set of
15 facts. But I don't remember that specific subject
16 coming up.

17 Q. Do you remember him saying that he didn't
18 think it was a good idea to go into her drug use?

19 A. No. It wouldn't surprise me if he did and
20 we had to fight that. I'm quite sure the District
21 Attorney sought efforts to stop it. I didn't think
22 Mosely was a District Attorney judge per se, although
23 he kind of had a law enforcement bent, but I didn't
24 think he did everything just because the D.A. wanted
25 it. But I'm sure -- it wouldn't surprise me if the

1 subject came up.

2 Q. And part of your -- well, part of your
3 strategy in this case was to show that Gina had a
4 history of drug use; am I right?

5 A. Well, anything we could show that would
6 support Mr. Centofanti's fear of her was important.
7 Anything that we could show Mr. Centofanti's fear of
8 Virginia as of the time of the shooting was important
9 in this case.

10 One of the things that he repeatedly told me
11 was about how bad a mom she was and how bad she was as
12 a lover and how bad she was as a wife and a variety of
13 things. And we had to constantly say, but those
14 things don't deal with your -- they don't rise to
15 being in fear of her.

16 The things that did rise to it or could
17 cause a problem, could provide a foundation for that,
18 we tried to show. And one of the things was that he
19 was fearful of her because of erratic behavior having
20 to do with drugs. And so it was one piece of it.

21 Q. Okay. But you had the coroner's report that
22 showed no drugs or alcohol in her system at the time
23 she was killed.

24 A. I really don't remember that, but I
25 believe -- to be honest -- I'm telling you, six years

1 ago, I truly don't recall the coroner's report. But
2 the issue, like a lot of things, was not whether or
3 not it actually was true, but whether or not he had a
4 belief that it was true. And his state of mind,
5 that's what was critical.

6 Q. And how reasonable that belief might be?

7 A. How subjectively accurate it was and how
8 objectively reasonable it was, yes.

9 Q. Okay. There was another issue that was
10 raised pretrial, and that was the validity of the
11 search warrant on the Centofanti residence.

12 Do you recall that?

13 A. No.

14 Q. Let me try to refresh your memory a little
15 bit. Maybe I should have had you read through the
16 whole transcript, through the whole proceeding.

17 Do you recall that the original warrant or a
18 copy of the warrant provided to you did not show that
19 the judge had signed the warrant?

20 A. As you mention it now, I have a recollection
21 that there was some defect in something having to do
22 with the Court not signing the original. And we
23 couldn't find the original or maybe it never existed
24 or maybe it never got filed or something.

25 If you're telling me it's a search warrant,

1 I believe it, but I remember the issue about a
2 judicial signature on a document, so that would have
3 probably been the search warrant.

4 Q. Do you recall the argument in court where
5 the D.A. basically represented that this was an oral
6 request for the search warrant, and that the request
7 was taped? The conversation between the police
8 officer requesting the warrant and the judge who
9 issued it was tape-recorded. Do you remember that?

10 A. No.

11 Q. Not at all?

12 A. No.

13 Q. Okay. Well, if you don't remember the
14 warrant, then obviously you did not file a motion to
15 suppress. If the warrant had been invalid, you would
16 have filed a motion to suppress?

17 A. I don't know if we filed a motion or not.
18 If you would show me the motion right now and say --

19 Q. No. I'm not saying you did. I'm saying if
20 you felt the warrant was invalid, you would have filed
21 a motion to suppress?

22 A. Yes.

23 Q. And of course you do not recall filing the
24 motion to suppress because you don't recall whether
25 the warrant -- if there was a problem with the

1 warrant?

2 A. I don't remember -- I don't remember if we
3 did file it or if we didn't file a motion.

4 Q. Okay.

5 A. I remember we reviewed a number of issues
6 beforehand. I remember we looked at the gathering of
7 the evidence in the case. It didn't strike me -- it
8 doesn't strike me even now that there was going to be
9 much issue about being able to stop the police from
10 coming into a crime scene location, so I don't --

11 Q. Under one of the exceptions to the search?

12 A. Yeah. Remember, on a search warrant, if
13 you're going to attack a search -- the failure -- an
14 invalid search afterwards, the courts independently
15 afterwards on appeal, they don't look at the technical
16 violations of the warrant and how you got them. They
17 look at whether or not the search would have been
18 valid, would have -- whether the materials which were
19 seized would have been admissible in some fashion or
20 not.

21 So it doesn't strike me as being a really
22 big issue right now, but I know we discussed it. I
23 know I talked about it with Ms. Navarro. And I know
24 we talked about it with Mr. Centofanti.

25 Q. And the decision was made not to challenge

1 the warrant at that point?

2 A. I don't remember. I don't remember that.

3 Q. Okay.

4 A. If you would show me the warrant that we
5 did -- the motion that we did file, I would say we
6 did, but I really don't remember if we did or didn't.

7 Q. Okay. I'm just determining right now
8 whether I'm done or not. I do have one more question.

9 With respect to Emeline Eisenman, does that
10 name ring a bell?

11 A. Yes.

12 Q. Do you know who she is?

13 A. Emeline. It's E-M-E-L-I-N-E, I think.
14 Emeline Eisenman, I believe, is the mother of Virginia
15 Eisenman -- of Virginia Centofanti. Grandmother to
16 their child.

17 Q. Did you -- do you recall putting her on a
18 witness list?

19 A. I read in the papers here that we put her on
20 the witness list, so -- but I don't recall doing it.
21 I remember being very happy when she didn't testify,
22 but I don't remember putting her on the list. The
23 witness list is --

24 Q. So you're basically saying that you wouldn't
25 have called her to testify?

1 A. I remember -- the best I can tell you -- the
2 best I can remember now about the decision to have her
3 testify or not was that we thought that she would be
4 very dangerous to testify, she would be an explosively
5 negative witness.

6 She was the mother of the decedent, and she
7 was also, according to what Mr. Centofanti had told me
8 and other things, a really devious, angry person who
9 would have taken any chance she could to say bad
10 things about Mr. Centofanti and be explosively
11 negative.

12 Q. Right.

13 A. But I think she was also on our witness
14 list. And that could be because we wanted to cause
15 Mr. Peterson as much concern as possible. Because
16 when we have a witness list, we are required to put
17 anybody that theoretically could be put on that list.
18 And so we would have potentially put her on because
19 she -- Eisenman, the mother, might have theoretically
20 been somebody that could talk -- would all of a sudden
21 admit that her daughter was violent when she was a kid
22 or something like that.

23 So because it was theoretically possible, we
24 had to put it on. But my general reaction -- my
25 recollection now of calling her was that we never

1 realistically ever really wanted to call her as a
2 witness.

3 Q. Did you discuss that with Chip?

4 A. Absolutely.

5 Q. I'm sorry. I say Chip. It's Alfred
6 Centofanti.

7 A. Yes. Absolutely. We discussed that with --
8 she was explosively negative, and there was all sorts
9 of things -- I remember a number of discussions with
10 Mr. Centofanti which was, well, how are we going to
11 show this? And it would come down to a situation,
12 well, we're left with what her mom would say. And we
13 would discuss about the pros and cons of presenting
14 her mom.

15 And, for example, about the subject about
16 whether or not her mom went to court for her at
17 Juvenile Hall and could establish things that happened
18 at Juvenile Court and so forth. We felt, just using
19 this as an example, that her mom would try to paint
20 the picture that her daughter was an angel and that
21 her daughter hadn't done any of the bad stuff and her
22 daughter was a sweet and wonderful, kind person
23 without any faults at all, and Mr. Centofanti was
24 always the evil person dominating her and being mean
25 to her. So she was a very --

1 Q. And she would have denied having
2 conversations with Mr. Centofanti about Gina's past
3 and warning him to stay away from her?

4 A. Right.

5 Q. You were afraid of that too?

6 A. Yes. Because Mr. Centofanti said -- I
7 think -- when they were getting married, I think it
8 was here in San Diego. And when I say I think it was
9 in San Diego, I mean I wasn't present or I didn't have
10 a witness. I think Mr. Centofanti told me that during
11 a family visit early on, that she had turned -- yeah,
12 I remember this. She -- the mother had turned to
13 Mr. Centofanti and said, "You know, you don't know
14 what you're getting into. My daughter is a jerk," or
15 something, "a bad -- a wild, a crazy person or,"
16 something like that.

17 This was part of Mr. Centofanti's state of
18 mind and his knowledge, and that it came from Emeline
19 Eisenman at some of his early contact. Basically,
20 Emeline was telling Mr. Centofanti, watch out for my
21 own daughter. Don't have much of a relationship with
22 her because she's going to do to you what she did to
23 other guys or things like that.

24 But that was Mr. Centofanti's version, and
25 we felt, by the time we got to it, that calling the

1 mother to say that would incredibly backfire. That
2 was one of those circumstances where you felt,
3 tactically speaking, that it would --

4 Q. Didn't Emeline also --

5 A. -- would be bad.

6 Q. Okay. Didn't Emeline also coach Francisco
7 Sanchez Quito, Q-U-I-T-O--- didn't she coach Quito to
8 lie about Chip having the gun on December the 5th,
9 2000?

10 A. That's what Quito said. We had a
11 foundational hearing early on in front of Judge
12 Gibbons and -- before he was -- removed himself from
13 the case. And the hearing had to do under the guise
14 of Quito's competency to testify. That was the
15 foundational issue.

16 And in that, I was able to bring out the
17 fact that Quito had been coached by his grandmother,
18 Emeline, to say that Mr. Centofanti was the holder of
19 the weapon, not obviously on the day of the shooting,
20 but on the day of the domestic violence thing on
21 December 5th.

22 There was a weapon that was found inside the
23 house now. I do remember that.

24 Q. There were two.

25 A. I remember at least one weapon because

1 Mr. Centofanti said he took it, and he had to -- this
2 is on a different subject, but under the umbrella of
3 different than what I testified to before. He had
4 taken it and put it high up in the kitchen so that
5 Virginia couldn't find it. So when the police came
6 in, he, Mr. Centofanti, could point to the weapon. It
7 was up high in a cupboard or something.

8 But anyway, back to Emeline, that she had
9 coached Quito, and Quito had said that. We were able
10 to bring that out during the examination of Quito in
11 that foundational hearing. I believe it's called a
12 Petrocelli hearing in Nevada.

13 Q. Right.

14 Did you ever consider doing a motion in
15 limine to keep his testimony out completely?

16 A. Quito?

17 Q. Yes.

18 A. Yes.

19 Q. But you did not do so?

20 A. I didn't.

21 Q. And you had an expert who deals with
22 children and their credibility issues, do you not?

23 A. I -- are you saying did I have one available
24 or did I use one?

25 Q. Yes. Somebody that you've used before. Did

1 you discuss the possibility of using that expert with
2 Mr. Centofanti?

3 A. Okay. You asked several different
4 questions. Yes, I had a witness -- yes, I knew people
5 who could deal with the subject matter of competency
6 of children. And the case where I did it on was cited
7 in here involving a client by the name of -- a former
8 client of mine by the name of Mara Plascencia,
9 M-A-R-A, P-L-A-S-C-E-N-C-I-A. I can't remember the
10 name of the expert right now, but I remember that case
11 and remember that person. Yes, we had it available.

12 And I'm sure I discussed that matter with
13 Mr. Centofanti as to whether or not that was viable or
14 not. And I remember coming to the conclusion -- I
15 can't remember if we actually consulted with that
16 expert or other experts as to doing that, but it was
17 pretty clear to me we were not going to be able to
18 prevail in terms of being able to --

19 Q. Exclude his testimony?

20 A. -- exclude his testimony based on
21 competency. He was 10 years old at the time, and
22 there was plenty of information that would have gotten
23 over what is a very low bar as to competency.

24 In order for a court to be a gatekeeper and
25 keep out witnesses entirely, the bar is very low

1 because the inclination is let a juror decide one way
2 or another. Of course the courts can do that, but
3 it's a very difficult thing. And this case wasn't --
4 in my view, wasn't close to that.

5 That's not to say we couldn't cross-examine
6 him. And I assume we did, although I don't have the
7 record in front of me about -- in front of the jury
8 about mom coaching -- grandma coaching him and things
9 like that. I assume we did that as well. I'm not
10 positive.

11 To be honest, I assume Quito testified. I
12 remember -- even remember that. I remember the
13 Petrocelli hearing, the foundational hearing. I don't
14 remember his testimony at the other. I don't think
15 him to be very important at the trial, but I don't
16 remember if he testified. I assume he did.

17 Q. Okay. Do you remember the name Amanda
18 Pearson?

19 A. Yes.

20 Q. And what do you remember about Amanda
21 Pearson, if anything?

22 A. She was a person that Mr. Centofanti said
23 was going to help him, but turns out she was a very
24 negative witness. I think she was -- she was perhaps
25 a co-employee of his or she was a friend of

1 Mr. Centofanti's. I don't remember which now.

2 Q. Do you recall her being someone that he was
3 dating?

4 A. Oh, is that the person he was dating? Yeah.
5 I remember the person he was dating.

6 Q. Do you recall him telling you that the night
7 of the homicide, that he was supposed to go out on a
8 date that night?

9 A. Yes.

10 Q. Did you attempt to locate the person he was
11 supposed to go out on the date with?

12 A. My recollection is -- as I sit here right
13 now, my recollection is that we did attempt to contact
14 her, that we did contact her, that she said very
15 negative things about him.

16 I don't have the investigative reports in
17 front of me. I don't know what materials I gave you
18 in that regard. I don't know. But I have a
19 recollection that that person that he was going to go
20 out on a date for said, "Thank goodness" -- basically
21 said, "Thank goodness I didn't go out with him. He's
22 a killer. He's a dangerous person. I don't want
23 anything to do with him." And I can't tell you right
24 now if Jim Thomas found her.

25 Q. Would she not have been important because

1 she could have established that Mr. Centofanti was not
2 planning to kill his wife when she came over to pick
3 up the kid?

4 A. No. I don't think so. Well, it wouldn't
5 have hurt in that regard if -- I don't think there was
6 any dispute that he had his life and so forth. I
7 never -- I don't believe that the --

8 Q. Wasn't part of the State theory that he was
9 obsessed with her? I mean, isn't that what
10 Mr. Peterson and Ms. Goettsch -- wasn't that the crux
11 of their theory?

12 A. I thought the prosecution theory was,
13 amongst other things, that Mr. Centofanti was sitting
14 home waiting to kill his wife.

15 Q. Right.

16 A. I think that was true. I think that was
17 feeble and empty and without any support. It was
18 absurd, and it didn't have -- carry any weight. And I
19 don't think it carried any weight throughout the whole
20 case, and I still don't think it was supported by
21 anything.

22 And I thought it was typical of the
23 prosecution's effort to attempt to overkill. It was
24 almost something I welcomed. It was the idea that the
25 prosecution is going to make an absurd position rather

1 than stick to it.

2 I hate it when D.A.s try to be reasonable.
3 Peterson wasn't reasonable at all, and so I thought he
4 actually hurt their case in a lot of ways. And
5 pursuing such a theory, I thought, was negative.

6 So I don't think there was any -- I -- talk
7 about a straight face test, I didn't think it passed
8 the straight face test in terms of saying that
9 Mr. Centofanti was sitting home waiting to kill his
10 wife. He would have had many times to do that. It
11 was absurd that he would have been doing it for that
12 purpose.

13 So I don't think -- yes, the D.A. thought
14 about it, but no, I never thought it was anything that
15 was even slightly reasonable.

16 And -- but, Amanda Pearson, being the girl
17 that he was going to go out on a date with, certainly
18 could have been a helpful witness just to show his
19 regular conduct. He didn't have this -- I don't think
20 there was much dispute that this was sort of a
21 spontaneous explosion. I don't think the jury ever
22 thought any different than that. I don't think the
23 case came out any different.

24 Q. Except for premeditation.

25 A. Well --

1 Q. Premeditation and deliberation --

2 A. No, not all.

3 Q. -- and everything else.

4 A. No, no. You're completely wrong.

5 Premeditation and deliberation can be formed in a very
6 quick thing. It does not -- the law is very clear.

7 It can be formed in a very short period of time. In
8 fact, it's not measured in duration of time. It can
9 be formed in a very short period of time.

10 So I didn't think this idea of sitting and
11 waiting and kind of sitting in wait was ever
12 supported. I don't think the jury ever thought about
13 it. And their verdict finding him guilty, I don't
14 think changes that.

15 But my recollection was also that somehow we
16 had contacted Pearson, and she was horrible, and she
17 was really negative. I don't think she was any longer
18 in Nevada, but I couldn't -- as I sit here, I don't
19 know for sure. If you have some records on her that
20 I've given you, that will help me remember.

21 But my recollection is, as I've said, that
22 she was very negative towards Mr. Centofanti. A lot
23 of witnesses that Mr. Centofanti said he was supposed
24 to contact turned out to be very, very negative
25 towards him. It was as if he didn't even realize the

1 tremendously negative impact he had on people.

2 In this particular case, I don't think it
3 was his negative impact on her. It was what she had
4 put together afterwards, thinking, oh, my God, I could
5 have been out with this guy. He could have killed me
6 as well as killed the other person. So she was a --
7 she was somebody not to put on as a witness.

8 Q. Okay. Funding was not an issue as far as
9 investigative funds; is that correct?

10 A. That's true.

11 Q. Because you had private funding through
12 Marilee and Mr. Centofanti's family, and you also had
13 investigative funds authorized by the Court; correct?

14 A. Yes. I think they ran -- I think Marilee
15 ran -- I think Mr. Centofanti ran out of money. He
16 was working to get some. Marilee was his -- a very
17 caring person who wanted to support him in a lot of
18 ways, so she provided my fee and she provided funding
19 for -- I don't know if she provided my fee. She was
20 the one I actually got the money from, I believe, for
21 my fee.

22 Q. She knew you from San Diego?

23 A. Yes. She's a sister and -- she's a
24 stepsister of a friend of mine, a woman here from San
25 Diego.

1 So I don't think funding was ever an issue
2 in terms of being able to get something done. Well, I
3 think it was an issue in the sense that we had to
4 fight for it at times, but we got everything -- as far
5 as I know, we got everything that we needed in terms
6 of funding.

7 MR. COLUCCI: If I could just take a short
8 break, I might be close to being done.

9 (Recess taken.)

10 BY MR. COLUCCI:

11 Q. Mr. Bloom, do you know a gentleman by the
12 name of Scott Fraser?

13 A. Yes.

14 Q. Who is Scott Fraser?

15 A. Dr. Scott Fraser is a Ph.D. who works out of
16 the City of Los Angeles. He's a professor at USC and
17 several other universities. He is a psychologist.
18 But as I know him, he's -- as an expert on human
19 factors as well as eyewitness identification.

20 Q. Does he work with children?

21 A. He has worked with children, but not that --
22 very much. He doesn't have a clinical practice per
23 se. He's done a lot of research. I used him in the
24 Centofanti case as human factors expert to talk about
25 the physiological impact of how people respond and

1 have responded since caveman days to enormous stress.

2 Q. Okay. Were you inclined to use him with
3 respect to the testimony of Quito?

4 A. I don't remember if he -- if I consulted
5 with him with regard to Quito. He doesn't -- I don't
6 remember one way or the other. He doesn't have a
7 particular practice with kids, but he could convert --
8 since then, in a case actually I had last year, I used
9 him as it related to kids -- to a child, but it was
10 very much of a last-minute sort of a thing. He was
11 not the primary person. We had another doctor who was
12 going to testify who became very ill, so Dr. Fraser
13 who had been backup on research, came in to testify on
14 a recent case, last year's case, an '09 case, in a
15 capital homicide I had in this county.

16 But he had to really get knowledgeable about
17 factors involving kids because he -- that's not his
18 area of expertise.

19 Q. Okay. Was it your intention to use him with
20 regard to Quito's testimony in the Centofanti trial or
21 no?

22 A. I don't remember.

23 Q. Let's talk just briefly about the
24 disqualification of Dan Albregts. You recall that
25 situation, don't you?

1 A. I do.

2 Q. Isn't it true that back in 2001, that the
3 State had acknowledged that they were not going to use
4 Dan Albregts as a witness?

5 A. At some point in time, there was an
6 intent -- a claim by the State that Mr. Albregts had
7 to be relieved because he was potentially going to be
8 a witness having to do with Mr. Centofanti's conduct
9 about his property, about a property that he and his
10 ex-wife owned in California, I think San Diego, and a
11 piece of real estate.

12 And Mr. Albregts had given Mr. Centofanti
13 advice. Mr. Centofanti would act in such a way, I
14 think for the sale of the property, and had been
15 attacked by the prosecution as something devious and
16 fraudulent, which was not just a violation of his
17 bail, they argued, but also showed some sort of master
18 conspiracy as to why he would have wanted to kill his
19 wife. And Mr. Albregts was purportedly a witness.

20 At some point, the District -- we argued
21 against it. I don't know what happened before I came
22 on the case. I think there was an argument against
23 him to be relieved. But when I came on the case,
24 Mr. Centofanti didn't want Mr. Albregts on the case
25 for other reasons. He didn't want him to be a lawyer.

1 He didn't want Mr. Albregts to be his lawyer any
2 further on the case in any event.

3 Q. Do you remember what the reasons were?

4 A. Sure. The reason was that they felt that
5 Las Vegas is a very small town feel, that there was an
6 old boy network, that Mr. Albregts was too close to
7 the case, too close to the Las Vegas part of it, that
8 they very much wanted somebody outside that cocoon,
9 that small feel of the criminal defense cocoon which
10 was in Las Vegas.

11 There was too much friendliness between the
12 defense and the prosecution. There was too much
13 pressure on defense attorneys to be as aggressive as
14 they thought. I'm not telling you what I observed.
15 I'm telling you what Mr. Centofanti and Marilee told
16 me. They wanted to have it -- to come in.

17 Specifically, they went to me, amongst other
18 reasons, because I was outside of that cocoon and
19 independent. So by that point, by the time I came on,
20 Mr. Centofanti didn't want Mr. Albregts on the case
21 any further.

22 But there was still this issue about why was
23 he being removed and how it was improper and could he
24 assist. And Judge Gibbons worked out some sort of a
25 hybrid situation where, in fact, Mr. Albregts could

1 assist and be part of the defense team, but he
2 couldn't sit at counsel table.

3 And so Mr. Albregts, I think had been --
4 Albregts had been paid, and so he continued to assist,
5 and he did assist, being a fine attorney. I never saw
6 any indication of any sort of old boy network or
7 anything that ever cut anything short with
8 Mr. Albregts other than being a very effective,
9 hard-charging attorney who wasn't nearly as good as
10 I -- I say that with a tongue in cheek because we all
11 think we're the best attorneys.

12 Mr. Albregts, I thought, was a fine attorney
13 and a hard-charging attorney. Mr. Centofanti did not
14 want him any further on the case and told me that on a
15 number of occasions.

16 And at some point -- finally to get around
17 to the answer to your question, at some point the
18 D.A., in fact, did say they were not going to call
19 him. I don't know if that was in 2001 or not, but
20 they finally made some statement that this whole thing
21 about Albregts had to be removed because he was going
22 to be a witness was thrown out because they weren't
23 going to deal anything with the real estate.

24 I can't remember if they decided to throw
25 out the real estate because of our motion. Probably

1 it was because it left uncontrolled -- they would have
2 tried to get anything in. But at some point, they
3 made that statement.

4 Q. With Mr. Albregts now not being subject to
5 being called as a witness for the State, at least
6 technically he would have been eligible to be
7 reinstated as counsel or co-counsel?

8 A. Yes. I'd have to say, I never once even
9 contemplated that until you just now this moment asked
10 the question because Mr. Centofanti didn't want him
11 back on the case.

12 Q. Did he ever express that wish in front of
13 anybody else?

14 A. Who?

15 Q. Mr. Centofanti, that he didn't want
16 Mr. Albregts. For example, in front of Marilee, in
17 front of Gloria.

18 A. It was Marilee who told me first. So I
19 assumed that she had expressed it in front of Marilee.
20 I didn't hear him --

21 Q. Did he tell you that directly?

22 A. Did who tell me what?

23 Q. Did Mr. Centofanti tell you directly he did
24 not want Mr. Albregts on the case?

25 A. Yes.

1 Q. Okay.

2 A. Several times.

3 Q. Do you recall when that was? Either time or
4 both times.

5 A. What do you mean either time? There were
6 multiple times. He said several times, not just two.
7 I mean, it was -- he said it -- but it wasn't
8 something we discussed later on in the case. It would
9 have been something early on, relatively early on in
10 the case.

11 Q. In the very beginning?

12 A. He wasn't angry at Mr. Albregts. He just
13 felt he was -- that he was too close to the
14 prosecution, too close to it, and it was better that
15 he not come back onto the case.

16 Q. Did you feel that the State had listed
17 Mr. Albregts as a witness in bad faith?

18 A. Yes.

19 Q. And what's the basis for your opinion in
20 that regard?

21 A. I didn't trust -- Laurent?

22 Q. Laurent.

23 A. Laurent. Laurent seemed -- I didn't trust
24 the District Attorneys in that position. I just
25 didn't think there was support for that argument. I

1 thought it was a tactic to try to disrupt the -- to
2 separate Mr. Centofanti from his counsel.

3 I just got that sense. I never was told
4 otherwise. I thought it was a crock that they were
5 going to try to get the real estate in. I thought it
6 was unrelated to anything.

7 They were picking Mr. Centofanti -- they
8 were -- I know this. It really pissed them off that
9 he was out of custody. It pissed Mr. Laurent off, and
10 it pissed Peterson off. They said this to me on a
11 number of occasions, and they said it in my presence.
12 It really pissed them off that he was out of custody.

13 Here's a defendant charged with a murder,
14 and he was out of custody, and they were doing
15 everything they can to get him back in custody. That
16 really made them angry that he was out. And I felt
17 that this was another one of these examples of
18 attempting kind of in a petty way to try to get back
19 at Mr. Centofanti for that purpose.

20 But as I said, it was a -- it was a moot
21 issue because Mr. Centofanti didn't want him to be his
22 lawyer any further. He specifically wanted him not to
23 be his lawyer.

24 Q. Now, you later named Mr. Albregts as a
25 potential witness in one of your witness lists.

1 A. You're saying I did? I don't remember.

2 Q. I am saying you did.

3 MR. COLUCCI: Do you recall seeing the name
4 on the witness list?

5 MR. SCHWARTZER: I don't.

6 MR. COLUCCI: I'm going to -- I'll have to
7 find it. I'll find it during your --

8 MR. SCHWARTZER: I'm okay. Upon you proving
9 it, I'll stipulate.

10 MR. COLUCCI: I'll have to look for it.

11 THE WITNESS: You've handed me a document
12 which was labeled "Notice of Witness." And in the
13 upper right-hand corner, it shows it was filed, I
14 think, December 20th, 2001. And it has a label Number
15 98. That's probably an appellate number of some kind.

16 And it's my document that probably --
17 actually prepared in Ms. Navarro's office. But it
18 looks like all my witnesses, and the first one on
19 there is a misspelling of Mr. Albregts' name, and he's
20 listed as a witness. It's an alphabetical listing of
21 eight pages, almost eight pages.

22 BY MR. COLUCCI:

23 Q. So my question to you is: Why would
24 Mr. Albregts be listed as a witness?

25 A. I really don't remember right now, but

1 probably because -- well, first of all, as you can see
2 from eight pages of witnesses, you list everybody
3 theoretically who might have anything to do with it.

4 The tactic of doing this is because you
5 don't want to in any way lose a chance to call a
6 witness because they weren't listed on notice to the
7 D.A. And if it happened to have the impact that
8 Mr. Laurent or Mr. Peterson had to do a lot of work to
9 look at every one of these witnesses, well, I thought
10 that would be a good expenditure of their time.

11 But Mr. Albregts in particular, he would say
12 nice things about Mr. Centofanti or his demeanor would
13 be presented well. So if there was some -- I don't
14 remember what the subject -- it might have been the
15 real estate. It might have been something. I really
16 don't remember what it was.

17 It could have been having to do with
18 recovery of the bullets. Mr. Centofanti found, I
19 think, two casings. Not shells, but casings, I
20 believe. And I think he found them in a couch, like a
21 leather couch, much like that couch over there that
22 was in his den where the shooting had occurred or
23 dining area, den.

24 So he might have -- Mr. Albregts might have
25 talked about that because there was a certain transfer

1 of the bullets, the casings. Should he pick them up
2 and move them and leave them there, and when were they
3 found and the possession. So it might have been
4 something like that. I really don't recall.

5 Q. Okay. Would you just show that to Mike
6 Schwartz so he can take a look at it. He'll think
7 I'm trying to sneak something by him.

8 MR. SCHWARTZER: All right. I don't think
9 we need this as an exhibit to the depo.

10 BY MR. COLUCCI:

11 Q. Okay. The name Janine Munch, does that mean
12 anything to you?

13 A. Yes. I think she was -- I think she was a
14 Travelers attorney, an attorney. I'm not positive of
15 this. I think she was an attorney in Mr. Centofanti's
16 office.

17 Q. Would she have been involved on the night of
18 December 20th, 2000?

19 A. My recollection is that she was called -- I
20 think she was called by another lawyer. I think the
21 family -- I don't remember. I think she appeared at
22 the scene. I think she's a person that took pictures.
23 And I say that not so much because I actually
24 remember, but because that's what is stated in the
25 300-page document, and that's how she referred to --

1 and I believe that's -- this document, 300-page-plus
2 document, is the only one I've reviewed since
3 substantively about this really in any -- dealing with
4 most of this information.

5 Q. Do you recall a big to-do about
6 attorney/client materials that were inadvertently or
7 wrongfully transferred over to the District Attorney's
8 Office?

9 A. I do. I remember it being one of those
10 issues that gets presented at the beginning of the
11 case or throughout the case that turns out not to be
12 very important at all by the time you are done, but it
13 was an issue as to whether or not she should have been
14 able to reveal information or deliver the pictures, I
15 think it was, to the prosecution.

16 I think that -- by the time I came onto the
17 case, I believe the pictures had already been
18 presented. I know she -- but I did meet -- I probably
19 met with her.

20 Q. There was a hearing. There was a hearing
21 over all of this, right, with John Moran as her
22 attorney and Ms. Cisneros' attorney?

23 A. Yes. I think there was a hearing involving
24 Cisneros, who was kind of in the same position as
25 Mutch or Munch. I think they were pretty much that

1 same sort of thing, co-workers who had appeared or
2 talked to Mr. Centofanti in some regard.

3 And Mr. Moran, I believe, was their
4 attorney, meaning he was probably outside counsel. I
5 don't remember, but outside of Travelers. There was
6 some hearing as to something having to do with what
7 could be revealed. I think we raised that issue. I
8 think we filed motions. I think we raised that issue.
9 I think the Court ruled on it. It might have Gibbons.
10 It might have been Gibbons and Mosely. It might have
11 been both of them.

12 Q. Okay. Do you remember an issue being raised
13 about missing evidence? And by that I mean the
14 evidence relating to Virginia Centofanti's car, Palm
15 Pilot and keys?

16 A. Again, I read about it in this 300-page
17 document, so I recall that there was something about
18 that issue, that the materials had been handed back to
19 the family and therefore not available for some
20 further type of checking of some kind.

21 Q. Wouldn't at least the keys have been
22 important?

23 A. My recollection is, all that stuff was
24 actually very unimportant.

25 Q. Why?

1 A. But I just remember thinking in general,
2 these are not important issues. You don't know what
3 an important -- I'm talking about by the time the case
4 was -- you know, at the time we're getting ready for
5 trial, I didn't think these issues were important.

6 You don't know what's going to be important
7 or not, so you pursue it. I think we raised the
8 motion with regard to it. I'm not positive. We
9 probably did a written motion on it. We probably had
10 some sort of hearing on it.

11 The keys -- I think there was an issue as to
12 whether or not she broke in or burst into the house.
13 And maybe the keys were related to that. But I don't
14 remember.

15 Q. Didn't one of the police officers who
16 impounded the property say that the keys should have
17 been retained and listed on an inventory somewhere,
18 but they weren't?

19 A. I don't remember that. But it wouldn't
20 surprise me that they would have -- there were several
21 areas, as there is in every investigation of every
22 homicide I've ever done -- one of the things we
23 emphasize and attempt to do is try to show what was --
24 if there were -- to show mistakes, if there were any,
25 that the police had done with regard to their

1 investigation.

2 And I'm sure we pursued it. That's an
3 important tact to take. Sometimes it leads to
4 important stuff. Sometimes it doesn't. Sometimes we
5 find mistakes. Almost always you find some mistake.
6 In a big investigation, you're going to find some
7 mistakes. Sometimes they're important. Sometimes
8 they're not.

9 Q. Wouldn't the phone -- seizing the phone have
10 been important to get the records and see what
11 messages she might have had and things like that?

12 A. It's purely speculative, but yes, it
13 theoretically could be. There's no question, if I was
14 the first person on that case, things that I would
15 have done early on in that case to try to find out
16 this information, get court orders signed by the
17 judge, to direct the District Attorney to direct the
18 police to gather and preserve all that evidence, not
19 to destroy anything and stuff like that, I certainly
20 would have done it.

21 I came on the case I don't know how many
22 years -- when was the shooting? Was it in '99?

23 Q. 2000.

24 A. 2000. And I came on in what year, 2001? So
25 a year or a year and a half or some number of months

1 later, I came on. And this whole -- that had passed.
2 It wasn't as if it was an issue at that time, as if we
3 could say it was now an issue under the U.S. Supreme
4 Court case of Trombetta that deals with destruction of
5 evidence, that we were trying to raise the issue.

6 But as to -- so that's why you should try to
7 get that. But do I know what was on there? I have no
8 idea. For example, phone calls could have been made
9 from a particular cell site or something like that,
10 you know, where maybe you find out where she was.

11 I don't think that's too important, but it
12 might have shown -- I'm not quite sure -- there's no
13 question she showed up at the door. She would have
14 had to have been at a place earlier, so where she --

15 Q. I don't think there's any question that she
16 made phone calls either on her way or before she
17 headed that way.

18 A. That may be the case too. I just don't --
19 you'd have to find something -- the fact that she made
20 the phone calls and wasn't there is a piece of
21 information, but it's not important unless you find
22 some sort of statement where she made and said, I'm
23 going over there to kill Mr. Centofanti or something
24 like that.

25 I didn't expect to find any of that, but you

1 don't know, so of course you try to pursue all those
2 things. But at the point where I got the case, I
3 think it was very speculative as to what value that
4 lost evidence would have had.

5 Q. Okay. Let's talk about just two more
6 issues. Where did you stay during the trial?

7 A. Mr. Centofanti asked me to stay in his house
8 in order to save cost to him.

9 Q. Okay. And did you also use one of his cars
10 or did you have your own car or --

11 A. The agreement -- my fee agreement was that
12 he would have to pay for my travel costs from San
13 Diego, there and back, and whatever costs there were
14 of staying overnight or driving for all the hearings,
15 throughout all the years I was on the case. And at
16 the time of the trial, that was the situation as well.

17 I think somebody provided a car. It could
18 have been Marilee's car. It could have been
19 Mr. Centofanti's car. I don't remember whose car it
20 was.

21 Q. Okay.

22 A. So they could have paid -- the other -- I
23 didn't stay at the house except at the time of the
24 trial because I was extended. Every other time before
25 that, I had stayed at some hotel, and it was

1 expensive. Mr. Centofanti and Marilee were running
2 out of money. I was happy to do it.

3 Marilee lives right next door, and I knew
4 Marilee from a long time before, so I guess it was
5 sort of pleasant that she was adjacent to us, and so I
6 agreed to stay there. And there was no longer any
7 investigative value to the house.

8 Q. Did anybody stay at the house with you?

9 A. Yes.

10 Q. Who stayed at the house with you?

11 A. My girlfriend, Amanda.

12 Q. How long did she stay with you?

13 A. As far as I know -- she might have gone back
14 to San Diego at some time without me. As far as I
15 know, she stayed there with me the whole time. I
16 don't think we went back on the weekends because that
17 would have been expensive, but I'm not positive of
18 that.

19 I don't -- I think we might have even
20 brought her dogs, so we probably drove out or she
21 drove out. But I really don't remember.

22 Q. Okay.

23 A. This was at Marilee's request and
24 Mr. Centofanti's request, and it was without objection
25 from me. I wasn't complaining. But it was to save

1 costs. I think it was at -- it could have been a car
2 provided by his parents too, but I don't remember.

3 Q. During the trial, did you have occasion to
4 socialize with Mr. Albregts?

5 A. Yes.

6 Q. And by that I mean go play golf, go to
7 dinner, things like that?

8 A. Yes. I don't know if we went to dinner, but
9 he's a golfer, I'm a golfer. We -- and I know I
10 played golf with him. And I don't know if it was
11 during the trial per se that I played with him. I
12 think I played one or two rounds of golf on a weekend
13 day with -- during -- maybe one round of golf during
14 the trial, maybe two. I don't remember. And it might
15 have been with Mr. Albregts. I know I played with him
16 at different times, a couple of times.

17 Q. Okay. What's Amanda's last name?

18 A. Holley, H-O-L-L-E-Y.

19 Q. She lives in San Diego?

20 A. She does.

21 Q. Is she still your girlfriend?

22 A. She is.

23 Q. And do you have an address and phone for
24 her?

25 A. I do, but I don't want to give it to you

1 unless I'm ordered to do so. I think that's kind of
2 an issue. But if you tell me I have to and the judge
3 orders me to, then she'll be available, yes. She was
4 one of the people that interrupted this call.

5 Q. Not a problem.

6 MR. COLUCCI: Okay. I have no further
7 questions at this time.

8 MR. SCHWARTZER: Do you want to go off the
9 record so we can set up?

10 (Off the record.)

11 EXAMINATION

12 BY MR. SCHWARTZER:

13 Q. Good afternoon, Mr. Bloom. My name is
14 Michael Schwartzer, the District Attorney's Office.

15 A. Good afternoon.

16 Q. I'm going to go over the background, your
17 background a little bit more. You said that this was
18 your only case in Nevada; is that correct?

19 A. Yes.

20 Q. But this isn't your first murder case over
21 your 35 years?

22 A. Correct.

23 Q. How many trials have you conducted in your
24 law practice?

25 A. As of today?

1 Q. Yes.

2 A. I've lost count. Hundreds.

3 Q. How many of them would be first-degree
4 murder cases or open murder cases?

5 A. Homicide of some kind or another or life
6 cases or something, maybe -- somewhere in the range of
7 50 to 100.

8 Q. 50 to 100. You said one-third of your
9 practice is post-conviction; is that correct?

10 A. Yes.

11 Q. So you are aware of ineffective assistance
12 of counsel claims?

13 A. Yes.

14 Q. You stated that you've never conducted a
15 trial outside of California, though; is that correct?

16 A. If I had any other trials outside of
17 California?

18 MR. COLUCCI: Besides Centofanti?

19 BY MR. SCHWARTZER:

20 Q. Besides this case.

21 A. I don't think I have. Oh, yes, I had one
22 small trial in Massachusetts when I was in law school.

23 Q. Okay. Why did you decide to take on a
24 Nevada case?

25 A. Because Marilee contacted me and I knew her

1 from -- for a long period of time, and she said that
2 her very close friend, Mr. Centofanti, needed this
3 help. We talked about it. And I can't remember if I
4 spoke to Mr. Centofanti first before I decided -- if I
5 went there and talked to him or if I talked to him on
6 the phone or exactly how it was that the conversation
7 before I signed -- before we signed a retainer
8 agreement. I can't really remember. But it was
9 basically because he needed help and I was willing
10 to -- I was willing to provide it. I reduced my fee
11 enormously in order to help him because of Marilee.
12 But that was a reason why.

13 Q. Did the defendant, Mr. Centofanti, know that
14 this was going to be the only murder case you've ever
15 conducted in Nevada?

16 A. Absolutely. You mean the only case I had --
17 the first case I'd ever conducted in Nevada?

18 Q. Sure.

19 A. Absolutely.

20 Q. What precautions did you take in order --
21 when you went over to another jurisdiction, Nevada in
22 this case, in order to make sure that you knew the
23 law?

24 A. Well, I reviewed the law in Nevada. The law
25 was not very much different. There are small

1 procedural differences in Nevada. We don't call it a
2 Petrocelli hearing; we call it a foundational hearing.
3 The statute numbers are very different. The
4 definition of reasonable doubt, the definitions of
5 homicide and so forth are identical. I think entirely
6 identical.

7 We have a Flannel, F-L-A-N-N-E-L, case in
8 California, which is that one I talked about imperfect
9 self-defense case which had been reviewed and brought
10 and sought in Nevada, but the Court had not allowed
11 it.

12 So most of all are the same, but I reviewed
13 a lot of law. Confirmed that it was very similar,
14 which quiet frankly is the same in most states. Every
15 state is slightly different variation. There are some
16 procedural differences, but Nevada had a reverse
17 discovery or a defense discovery statute, which was
18 very similar to California's.

19 Q. If you had a question --

20 A. Ms. Navarro was on the case, and she was
21 going to assist. And Mr. Albregts was available to me
22 to assist as well with regards to any of the unique
23 characteristics of Nevada procedure.

24 Q. So if you ever had a question about the
25 differences in law, you would talk to either

1 Ms. Navarro or Mr. Albregts; is that correct?

2 A. Yes, I would direct Ms. Navarro to conduct
3 research on a particular subject or talk to
4 Mr. Albregts about it.

5 Q. Now, I want to go onto the mental health
6 experts. We never got back to Dr. Glen Lipson, which
7 I believe your keyword was "firefighter".

8 A. Yes, the reason -- I was talking about why
9 we wanted -- or what was the purpose for Dr. Lipson.
10 Again, we wanted to avoid -- because of concerns about
11 Mr. Centofanti's emotional condition and his own
12 personal psyche problems he had, we wanted to avoid
13 having to have him examined by the prosecution or put
14 in -- this psychiatric history or condition at issue.
15 So we wanted to call people to talk in general about
16 it.

17 It's my experience that if you have a shrink
18 talk -- examine a person and just make a general
19 presentation, the jurors don't just take the answer
20 from the shrink very much anyway. But they do in our
21 open if we're looking at the general subject matter.
22 And the general subject matter, like Dr. Fraser
23 talking about fight or flight human factors and
24 Dr. Lipson talking about how people respond to stress
25 and have problems are accepted. And Lipson in

1 particular had done the final --

2 (Disconnected phone interruption.)

3 MR. SCHWARTZER: Off the record.

4 (Off the record.)

5 MR. COLUCCI: Let's continue. I'll waive
6 his presence just for the deposition.

7 THE WITNESS: So Dr. Lipson had treated
8 firefighters and the first responders when the PSA
9 crash I think had come down. The PSA crash was a big
10 one in San Diego where an airplane had crashed and
11 left bodies strewn over a course of a long -- it was
12 horrible. Over a long number of -- I don't know if it
13 was miles, but it was long way, and there was a lot of
14 problems with that. And Dr. Lipson dealt with people
15 who were firefighters who had dealt with that pressure
16 much as if we were trying to show Lieutenant Frank how
17 people would deal under stress.

18 BY MR. SCHWARTZER:

19 Q. Dr. Lipson, he actually conducted an
20 evaluation of Mr. Centofanti?

21 A. I don't remember. I have a recollection
22 that he did conduct an evaluation.

23 Q. You want me to refresh your memory?

24 A. It might refresh my memory. I have a
25 recollection he did conduct an evaluation, but that we

1 didn't call him as a witness for that purpose.

2 Q. Well, I'm presenting to you right now -- I
3 don't have copies, but it's part of the transcripts.
4 It's December 21st, 2001 hearing. This is page 240.

5 Mr. Bloom, could you just read from 240 to
6 241. You don't have to read it out loud. Just read
7 it to yourself and see if that refreshes your memory.

8 I believe you actually call him Dr. Lipscom
9 in the hearing as well.

10 A. I doubt I did. That's probably the way it
11 was reported. But I wouldn't -- because I wouldn't
12 call him Lipscom because I've know of him for a while.

13 So that -- I have to tell you that that
14 doesn't refresh my memory. But I have a general
15 recollection that we called him -- I mean, that he did
16 examine -- I know Mr. Centofanti was examined by
17 psychologists that I had at my benefit. I can't be
18 positive if it was Dr. Lipson or not. That transcript
19 shows that it was. And that it was negative stuff, we
20 didn't want to present it, and so we called Dr. Lipson
21 just for a --

22 Q. General?

23 A. Just for the general background stuff, the
24 generic things of how people deal with stress and how
25 even trained people, like the firefighters who were

1 dealing with the terrible thing involving the PSA
2 crash, deal with a terrible stress and how they
3 respond in that way.

4 Q. What did you consider negative about the
5 evaluations?

6 (Mr. Centofanti returns telephonically.)

7 MR. SCHWARTZER: Mr. Centofanti, I was
8 talking about your evaluation with Dr. Lipson.

9 MR. CENTOFANTI: The last thing I got was
10 you talked to him about not putting the psychiatric
11 condition at issue, and then the phone cut off.
12 That's as far as I got.

13 MR. SCHWARTZER: We're still on that. We're
14 talking now specifically about your evaluation.

15 MR. CENTOFANTI: Okay.

16 BY MR. SCHWARTZER:

17 Q. And my question to Mr. Bloom was: What was
18 the negative aspects that you thought about the
19 evaluation?

20 A. Well, Mr. Centofanti has -- had a
21 psychiatric response that made small things really
22 big. Small problems that other people would have
23 objectively dealt with on a -- in a limited way became
24 really important, and he would overreact in a very
25 grandiose or dramatic way.

1 This was shown to me in my observations of
2 Mr. Centofanti in many -- virtually everyone who
3 talked to me about Mr. Centofanti, except his family
4 or Marilee, but everybody else, and was part of the
5 negative part of the psychiatric or the psychological
6 testing was done.

7 It was showing that he would make a mountain
8 out of a molehill. He would take a small thing and
9 exaggerate it, which was exactly what we did not want
10 to present in this case because the self-defense had
11 to be presented to show to be objectively reasonable
12 as opposed to just subjectively believed.

13 Q. So it was a strategic decision not to
14 present a psychological evaluation to the jury?

15 A. It was mine and Mr. Centofanti was aware of
16 it.

17 Q. And this was something that you discussed
18 with Mr. Centofanti?

19 A. At length. And not just about this issue
20 but because of that tendency of his came up a lot in
21 how he was going to present as a witness. So we had
22 to deal with that as well. And even if the psyche
23 eval was not presented, he had to overcome that
24 tremendous tendency.

25 Q. Okay.

1 A. I can't remember if the doctor said it was
2 paranoia or things like that, or a precise diagnosis.
3 But every indicator -- a lot of tests showed he had a
4 lot of what are called elevated scales, a lot of
5 problems in a lot of areas that were all dealing with
6 that subject.

7 Q. You said you also talked to an expert, not
8 an expert, but a gun store owner which we believe is
9 Robert Irwin; is that correct?

10 A. Yes. Well, I know we spoke to a gun store
11 owner. Robert Irwin is probably the person's name.

12 Q. And you made the decision, the strategic
13 decision not to call him; is that correct? At trial.

14 A. Yes.

15 Q. Why did you make that decision?

16 A. I don't remember. I'd have to look at my
17 notes. He was very favorable with his time, very
18 available with his time. He was somebody who had his
19 heart on our side of the case, and he was hopeful to
20 find things. But I believe it had to do with the fact
21 that he found some things that wouldn't have helped.
22 But I can't specific -- I know it had to do with the
23 things that I thought were going to hurt our case, but
24 I don't remember what it was.

25 Q. Jumping around a little bit. We talked

1 about Quito. Do you remember just discussing this?
2 With Mr. Colucci. The Quito's testimony.

3 A. With Mr. Centofanti?

4 Q. With Mr. Colucci.

5 MR. COLUCCI: Do you remember me asking you
6 questions?

7 BY MR. SCHWARTZER:

8 Q. Do you remember previously in the
9 deposition?

10 A. Do I remember an hour ago about talking
11 about it, yes.

12 Q. Now, you did try to keep his testimony out,
13 did you not?

14 A. I believe we did.

15 Q. And that was the point at the Petrocelli
16 hearing; is that correct?

17 A. Yes.

18 Q. Among other things?

19 A. I believe we renewed the motion at a later
20 time, but I'm not positive of that. But I believe we
21 renewed the motion not at just at the Petrocelli
22 hearing but at a later time. I know the Petrocelli
23 hearing was conducted in front of Judge Gibbons, and
24 then Judge Mosely was a long time later. And I
25 believe we raised the issue again, but I'm not

1 positive.

2 Q. Do you remember your cross-examination of
3 him? Of Quito.

4 A. In some regards, I do.

5 Q. Do you remember that although on direct, he
6 didn't bring up that he saw her, Mr. Centofanti with a
7 gun, you brought up the fact that he previously has
8 told people that?

9 A. I remember that the prosecution thought that
10 Quito was going to be a really important witness for
11 them because of Quito's statement to them or to
12 police, that Mr. Centofanti was really the bad guy and
13 had the weapon and was a bad person stemming from that
14 domestic violence issue. And then I remember
15 cross-examining Quito about all these subjects in a
16 way that you have to cross-examine a young child, and
17 that by the time we were done with him, he was an
18 incredibly powerful defense witness, who had made it
19 very clear that he didn't -- that Mr. Centofanti was
20 not the bad guy, and he had been coached to say he was
21 the bad guy.

22 Q. He said things like his mom, which was
23 Gina's mother actually, but Quito referred to her as
24 his mom, told him it was important to get the
25 defendant in jail?

1 A. Right.

2 Q. He said things such as they told him to say
3 that he saw a gun.

4 A. This is Ms. Eisenman. Emeline -- I think
5 her name is Emeline Eisenman -- had coached Quito to
6 say it was Mr. Centofanti's fault when, in fact, Quito
7 really never saw any of that at all. I think he was
8 underneath the bed or he never saw something. He
9 never saw it and she had brought it out. And she had
10 told him to do it. And we were able to bring that out
11 extensively on cross-examination. Almost to the point
12 where if there had been something like a claim that
13 the witness shouldn't testify because he had lied a
14 lot, Judge Gibbons wouldn't have allowed him in.
15 Obviously that's not the standard, the issue of
16 whether or not he's competent to testify.

17 Q. Okay. Now, you said you reviewed
18 Defendant's petition or points of authorities.

19 A. Right.

20 Q. In there, there's a lot of talk about how
21 you did not understand the discovery, the Nevada laws
22 of discovery.

23 A. Yes.

24 Q. Specifically he said you shouldn't have
25 handed over expert notes. Do you recall that?

1 A. Yes.

2 Q. Do you recall Judge Gibbons stating that his
3 position was that all underlining, data, work product,
4 notes, and et cetera done by the experts and their
5 analysis to come up with their opinion for both sides
6 is discoverable?

7 A. I don't remember if it was Judge Gibbons or
8 Mosely, but my guess it was Judge Gibbons who said it.
9 I remember receiving judicial notice or judicial
10 requirement that required that. And my -- I did a
11 recent evaluation or memo with regards to -- you know,
12 looks like the statute which had been in existence
13 since 1997, requires it itself.

14 Q. So based on your own analysis and judicial
15 notes that is the reason why you provided these notes
16 to the District Attorney?

17 A. Yes. And about this subject I also -- I'm
18 sure, though I can't -- I can't remember if a memo was
19 prepared or not. But we would have talked about it
20 with Ms. Navarro and talked about it with
21 Mr. Albregts. I probably talked about it with Phil
22 Kohn too. I'm not positive of that. I know I talked
23 to Mr. Kohn about procedural matters there as well.
24 Mr. Kohn was the head of this alternative or Special
25 Defender's Office. He was Ms. Navarro's boss. And he

1 happened to be somebody that I had gone to high school
2 with, so I knew him for that reason. And so I talked
3 with him about these matters.

4 Q. Okay. And based off those conversations,
5 that's why you revealed the discovery that you
6 revealed to the District Attorney? Or handed over --
7 the discovery that you handed over to the District
8 Attorney's Office?

9 A. Yes.

10 Q. I want to go back to the experts. You said
11 that you didn't call Lisa DiMeo for strategic reasons,
12 and that her testimony could possibly hurt the
13 defendant. How could the testimony have hurt the
14 defendant?

15 A. I really don't remember. I just remember in
16 general that -- that -- that she -- I remember
17 thinking about it, and I don't remember what it was,
18 but we decided not to call her. I have a -- I think
19 it was basically cumulative.

20 And she was very much less experienced than
21 Mr. James, who had literally written the book -- well,
22 not the very first book, but almost -- Herb McConnell
23 I think wrote the first book on blood splatter. But
24 James had written a recent book on blood splatter.
25 And DiMeo was relatively new on that subject. Since

1 then, she's gained a lot of knowledge in the last six,
2 seven years. But then she wasn't and so she -- and I
3 remember thinking she couldn't add very much. She was
4 very much just going to be a backup person for us, if
5 necessary. And I -- my recollection is that she
6 didn't say anything much different than James, and so
7 we didn't want to call her.

8 Q. That takes us to kind of expert witnesses as
9 a whole. What do you look for when you consider an
10 expert witness for trial in your general practice?

11 A. I look for somebody who has a lot of
12 experience in their discipline. Somebody who has a
13 lot of credibility, who has a lot of believability. I
14 look for somebody who is independent. I look for
15 somebody who is not testifying because I called them,
16 but is testifying as a scientist would to whatever
17 subject matter that there is. I look for them to be
18 able to communicate and explain things clearly. I
19 look for their background and their training. I look
20 for their prior times that they've testified.

21 Q. And you use this analysis for all the
22 experts that you used in this case, the Centofanti
23 case?

24 A. Yes.

25 Q. Is another aspect how they would play to the

1 jury?

2 A. It's not another one. I already said that,
3 yes.

4 Q. So if you choose not to use an expert
5 witness, is part of the reason because you don't think
6 it would play well for the jury and/or harm the
7 defendant's case?

8 A. Yes. Could be.

9 Q. Is there any expert witness besides the ones
10 that we named that you did not call because you
11 thought -- strike that.

12 Are there other expert witnesses that you
13 retained, but you did not call because you believed
14 their testimony would have negatively impacted
15 Mr. Centofanti's case?

16 A. Yes.

17 Q. Who are those experts?

18 A. I don't remember the name of the guy who
19 preceded Mr. Trahin, Jimmie Trahin.

20 Q. Fox? Does that ring a bell?

21 A. Fox.

22 Q. Richard Fox?

23 A. Could be. Yes, I think that's true.

24 But my recollection that the person -- that
25 there was an expert that we had retained who had

1 preceded Mr. Trahin who came up with conclusions I
2 didn't think were fair and objective, refused to
3 consider all the evidence. But from what he did say
4 would have -- would have presented a powerful support
5 for the prosecution's case.

6 He didn't -- I don't remember him coming up
7 with -- I don't remember him doing all the independent
8 work that Mr. Trahin had done. Mr. Trahin I remember
9 being at the house, seeing him at the house. I think
10 we had to get a court order for him to be able to see
11 the house, and he was there for hours, maybe multiple
12 days. I remember he had driven out with his wife,
13 Trahin's wife, and they were setting up -- when I came
14 over at the occasion, they were setting up all sorts
15 of measuring devices and things like that. I don't
16 think Fox did such an analysis.

17 Q. What was some of the non-favorable evidence
18 that Mr. Fox used as his opinion?

19 A. That he supported the prosecution's opinion
20 that it would have taken a longer time to do the
21 shooting. It was the prosecution's effort to
22 establish a kind of a prolonged thing and a prolonged
23 shooting, and then a final shot, which was as Peterson
24 attempted to describe it as a final coupe de grace
25 type of a shot. And Fox seemed to -- appeared to me

1 he would have supported that position.

2 Q. In fact, do you recall that Dr. Sims called
3 this an assassination shot?

4 A. I actually didn't recall that -- and I don't
5 recall it right now, but I do remember reading it in
6 the 300-page memo that's in there, so I believe it to
7 have been the case. But I don't -- as I sit here now,
8 I don't recall Sims calling it that.

9 Q. Okay.

10 A. I know he didn't say that by the time we got
11 done -- I know he had changed his opinion by the time
12 we got done with Dr. Sims on cross-examine, but I
13 don't remember what he said precisely in using that
14 phrase.

15 Q. And you presented the evidence from Trahin,
16 that this coup de grace or assassination shot was not
17 the case?

18 A. Well, we -- in this case there was not the
19 ability to establish that it had to be one way or the
20 other, but Trahin testified, as I recall, that there
21 was evidence which supported Mr. Centofanti's side,
22 that it was not a coup de grace, that it was a
23 spontaneous, sort or explosive action. So it was
24 consistent with the defense theory in the case.

25 But I think Trahin also had to admit, as I

1 knew he would going in, that there was evidence that
2 established it was consistent with the prosecution
3 theory as well.

4 Q. Okay. Now, we were talking about Lieutenant
5 Franks for a while, and you brought up the fact that
6 his wife had cancer, his wife was sick, and that was
7 the reason why he wouldn't honor his subpoena, and you
8 didn't want to force the issue. Do you recall
9 presenting this to the judge in front of the jury?

10 A. Yes. I think what we did -- I think what we
11 did was -- I'm not sure if we asked for a continuance.
12 This is at the very end of the case. Just before the
13 trial, Lieutenant Frank had been on board. My notes
14 refresh my memory. I looked at that note today, and I
15 told you about it when we came back from lunch.

16 But I remember that he was very helpful. It
17 was only the last minute that this terrible event
18 happened with his wife. And I'm -- my recollection is
19 that we made -- we brought this to the Court's
20 attention. That I'm sure of. But I can't recall
21 exactly what we asked to have done. I can't recall if
22 we specifically asked to have the case continued. And
23 Judge Mosely said, well, when will he be available,
24 and I said, I can't really tell you. He said, well,
25 I'm not going to indefinitely continue this, or

1 something like that.

2 And then we worked out some sort of hybrid
3 situation where we would explain why Lieutenant Franks
4 was unavailable to the jury and we would do that in
5 front of the jury, in effect, be testifying about his
6 unavailability.

7 Q. I'm going to hand you over a transcript from
8 April 14th, 2004. It's the trial. It's appellate
9 appendix, Volume 5, Bate-stamped 186.

10 Can you review page 3, 4 and 5 to yourself.
11 See if that refreshes your memory.

12 A. No, it doesn't refresh it anymore than I had
13 before, that we presented it in front of the jury.
14 This is a statement that I made in front of the jury.
15 My recollection is that we had worked out in chambers
16 an agreement with the Court, where he would allow me
17 to make this statement in front of the jury for the
18 reasons I've already mentioned.

19 Q. In those statements, you say that what
20 Lieutenant Franks would have testified to was
21 essentially covered by -- and I'm not quoting
22 verbatim -- by Dr. Fraser and Dr. Lipson?

23 A. Yes.

24 Q. Do you still believe that's the case?

25 A. Yes, essentially the same. Lieutenant

1 Franks, though, would have been a very nice witness
2 for us to have. And I wish we had had him. And I
3 wish his wife had not gotten ill because it would have
4 come from a lieutenant in the police department. The
5 substantive matter would not have been all that much
6 different.

7 Lipson talked about how even trained people
8 under enormous stress act differently. And Fraser
9 talked about people having difficulty responding in a
10 variety of different ways in a physiological --

11 Q. And they also brought up times --

12 A. And Franks would have talked about that --
13 about how police officers had done it. We may have
14 even brought it up that police officers had done it
15 with Dr. Lipson.

16 So Franks would have been a very nice
17 witness because he was a police officer with Metro,
18 and so that would have been in effect kind of vouching
19 for us in a big way. But the substance of the
20 material was going to be basically the same.

21 Q. Do you recall Dr. Fraser telling the jury
22 about a police officer who fired five or six times
23 without knowing, based off of reaction?

24 A. I don't remember, but it wouldn't surprise
25 me. I've worked with Dr. Fraser on several cases and

1 he's talked about different matters like that.

2 Q. Do you remember Mr. Trahin talking about
3 when the brain -- when you decide to stop firing, you
4 still squeeze off one or two more rounds?

5 A. I do remember that.

6 Q. I want to go over the canvass for
7 self-defense. I want to refresh your memory using
8 transcripts from March 12th, 2004, which I believe is
9 the status check for the trial.

10 Can you review pages 4, 5, and 61 to 63.

11 A. You want me to review pages 4, 5 and pages
12 61 to --

13 Q. To 63.

14 A. So this is the transcript from March 12th,
15 2004, in Department 14 before Judge Mosely. It
16 doesn't say if it's in front of the jury. I assume
17 it's not.

18 Q. It is not. Would you just read it to
19 yourself, please.

20 A. Page 4?

21 Q. Pages 3 and 4, please.

22 A. Okay.

23 Q. Does that refresh your memory on the
24 self-defense canvass?

25 A. No. It doesn't make me remember it anymore

1 than what I did before, but the record pretty much
2 makes it clear what I did.

3 Q. Do you believe based off those records that
4 you actually talked to the defendant about it?

5 A. Yes.

6 Q. It would be fair to say that since the
7 defendant went on and made the admission, that you
8 guys decided to do that together?

9 A. No, it doesn't say that at all. He may very
10 well have been following my advice to do it. I don't
11 know. I don't remember what I talked to him about
12 during that -- during -- it looks like the one or two
13 breaks, which were going on in the proceedings.

14 I don't recall what discussion we had about
15 that, other than some general recollection saying
16 we're going to go ahead and present this anyway. This
17 is the defense you want to present. This is how we're
18 going to go. No question about that. So this doesn't
19 really change the matter or hurt it in any way.

20 Q. So at the end of the day, you would
21 essentially have to admit that he was the shooter any
22 way in order to continue with the self-defense
23 argument in front of the jury?

24 A. It was more like this: He's going to
25 testify in any event. There's no question he's going

1 to testify in any event. He's going to make this
2 statement that he must have been the shooter,
3 although, he was saying he didn't remember actually
4 pulling the trigger or something. That there's no
5 question he was going to do that. And that he had
6 felt this fear and so forth beforehand. So this was
7 not going to be a matter of any importance.

8 Q. When we were talking about when
9 Mr. Centofanti decided to testify, that you did
10 several mock testimonies.

11 A. Hours of it. Not just -- I don't know --
12 many.

13 Q. You said 40 hours? Or 40 hours of
14 discussing, slash, mock testimony?

15 A. I'm going to estimate between 30 and 40
16 hours.

17 Q. Okay. You said there were some things that
18 he said during these mock testimonies that he did not
19 say at the trial? Or you indicated such.

20 A. I don't know what that means. I don't
21 understand your question.

22 Q. Every time Mr. Centofanti said that he
23 didn't remember something, was it the same answer that
24 he gave during the mock testimony?

25 A. I still don't understand what you're talking

1 about. When he didn't say he didn't remember what?
2 At the trial when he said --

3 Q. There were several things he said he didn't
4 remember about the incident and stuff leading up to
5 the incident.

6 A. That he says that now?

7 Q. No, at the trial.

8 A. Okay.

9 Q. Let me try to clarify it.

10 MR. COLUCCI: I think what he's trying to
11 say is, did he testify the same during the mock
12 testimony as he did during the trial? Is that what --

13 MR. SCHWARTZER: Sure.

14 THE WITNESS: No. He -- there were times
15 that he -- there's lots of things that he said
16 differently at the mock trial or mannerisms that he
17 said things differently at the trial that he didn't
18 testify at the trial. Many different things. But if
19 you're asking did he ever tell me beforehand that he
20 remembered everything and then yet at the trial, he
21 didn't remember, the answer to that is no.

22 But there were many, many differences. We
23 worked on a lot of different areas in a lot of
24 different ways to try to change the manner in which he
25 presented and things that he emphasized and stuff like

1 Q. And what did you expect Dr. Eisele to
2 testify to?

3 A. He would testify that the -- I was hoping he
4 would testify that the pathological evaluation was
5 consistent with a spontaneous shooting of self-defense
6 that Mr. Centofanti wanted to present in the case.

7 Q. Okay. And you worked with Dr. Eisele, I
8 imagine, before this case?

9 A. Yes.

10 Q. And he had been a good expert?

11 A. He had.

12 Q. Do you recall generally how many cases
13 before Mr. Centofanti's case you had worked with
14 Dr. Eisele?

15 A. Maybe three.

16 Q. Were they all here in San Diego?

17 A. Yes.

18 Q. Now, you provided information of Dr. Eisele
19 for him to use to prepare his analysis and opinion;
20 correct?

21 A. Hold on one second. I want to remind you
22 that I had remembered what we wanted Glen Lipson for
23 as well. I'll just make myself a note.

24 The answer to your question is yes, we had
25 provided -- the word for Dr. Lipson, if you want to

1 remember what will remind me, the keyword is
2 "firefighters".

3 Q. Okay.

4 A. But sticking with Dr. Eisele, I did provide
5 him considerable materials with regards to his work on
6 this case.

7 Q. What did you provide him, if you remember?

8 A. I don't remember, but I can tell you what
9 I -- my course of conduct would have been was to
10 provide him with all pathological materials
11 probably -- probably many, many pages of the police
12 reports as well. Access to all the photos of the
13 pathologist in the case. I think the pathologist's
14 name was Sims. I only remember that because it was in
15 the 300-plus page document. I think that's the name
16 that was in there.

17 I would have provided him with the State's
18 materials having to do with everything on the
19 pathology. Probably access to tissues, tissue
20 samples, lab work, lab findings, probably materials
21 having to do with ballistics, police reports that
22 would have clearly had to do with the crime scene.
23 Blood work, blood splatter.

24 Q. And you did use him to testify in order to
25 establish your self-defense defense; correct?

1 A. Yes.

2 Q. But, in fact, he testified to the opposite
3 under cross-examination?

4 A. No, that's not so.

5 Q. Do you recall Dr. Eisele being subject to
6 cross-examination by Clark Peterson?

7 A. Yes.

8 Q. Do you recall Dr. Eisele saying with respect
9 to whether Gina Centofanti had charged Chip Centofanti
10 in a threatening manner, Dr. Eisele in his notes and
11 in his testimony said, "I couldn't say that she
12 threatened him. From the information I have, I
13 couldn't say that she threatened him. Or it would be
14 hard to say that she threatened him." Something --

15 A. I think it was even worse than that. I
16 think it was something like, "I'm not sure this fits
17 with self-defense." Something like that was in his
18 early set of notes.

19 He was cross-examined about that. He didn't
20 testify about that -- I mean, in response to the
21 District Attorney's questions, Dr. Eisele testified
22 about something to that effect, and he did say that.

23 He said that that was an early opinion of
24 his, that it was before he had completed his full
25 evaluation. It was like a note that he was making to

1 himself, that there was a -- just didn't appear
2 consistent with self-defense or something like that,
3 at some early stage. So he had made the note. It was
4 not part of his final thoughts; it was not part of his
5 final conclusion. He had concluded otherwise
6 afterwards. The District Attorney did raise that
7 issue, though, that that was somewhere in his -- in
8 his materials.

9 Q. And that conclusion about this not being a
10 self-defense case you were aware of that from early on
11 in the case; am I correct?

12 A. Yes. I mean, this note, Eisele's note about
13 this weakness or his initial thought?

14 Q. Yes.

15 A. I was aware of that. So was Mr. Centofanti.
16 We were aware of that.

17 Q. And you discussed that with Dr. Eisele; is
18 that correct?

19 A. I did.

20 Q. Okay. So when were you made aware that he
21 didn't feel initially this was a self-defense case?

22 A. When I was aware of that note, you mean?

23 Q. Yes.

24 A. I don't remember. I really don't. He -- as
25 it is with all experts, you don't -- they get

1 materials. They do evaluations. It's a continuum.
2 They reach sort of like preliminary evaluations. You
3 provide more materials they look into additionally and
4 so forth, and they go on.

5 The experts, the two pathologists in the
6 case were interesting. They kind of ended up
7 presenting very unusual situations. Dr. Sims and
8 Dr. Eisele presented things that were bad for --
9 people that were calling them more on their demeanor
10 than their content.

11 But specifically -- to go to your specific
12 question of when I was aware that Dr. Eisele had
13 written this note, I don't recall.

14 Q. You were provided with his notes and his
15 report at some time prior to trial; correct?

16 A. Yes.

17 Q. And you provided those to the District
18 Attorney; correct?

19 A. Yes.

20 Q. So you knew that they were going to have
21 this note about not fitting in the self-defense
22 theory?

23 A. Yes.

24 Q. And you decided to put Dr. Eisele on the
25 stand despite that?

1 A. Sure. Yes. Absolutely.

2 Q. And you figured he could probably explain
3 that or you could get information out of him to
4 explain why he put that note in?

5 A. Well, Dr. Eisele had been a very effective
6 witness in prior cases that I had worked with him on.
7 There's been several cases that I had worked with him
8 before. He was not an effective witness in this case,
9 in my opinion, but we didn't know that until after he
10 testified. It wasn't so much as content as much as, I
11 think, his demeanor.

12 So going into the trial -- going into the
13 trial, I had no idea what Dr. Sims was going to say
14 per se. And there was no question that we felt that
15 Dr. Eisele was critical to us presenting and
16 supporting our theory of defense. We anticipated
17 Dr. Sims would say bad things, more favorable to the
18 prosecution and that we would need Dr. Eisele.

19 Then, as of course the situation is, the
20 prosecution calls their witnesses first, and so we had
21 a chance to see Dr. Sims testify. Dr. Sims ended up
22 testifying as a result of my cross-examination very
23 favorably to the defense. I think the District
24 Attorney was very upset about how in effect I was able
25 to turn Dr. Sims to being a very powerful defense

1 witness. Interestingly enough, I think it was the
2 presentation of Dr. Eisele's materials to the D.A.,
3 which then presented them to Dr. Sims. And I think I
4 spoke to Dr. Sims beforehand before the trial as well.

5 I think it was that pressure or Dr. Sims --
6 this is my impression; he never told me this. It was
7 my impression that that information of Dr. Sims caused
8 Dr. Sims to back off from a very powerful prosecution
9 oriented posture and realize that there could very
10 well be an explanation for the pathology as being
11 consistent with self-defense. And Dr. Sims when he
12 testified, more or less, I think was considerably more
13 favorable to the defense in presenting the idea that
14 this was information which would -- the facts of the
15 case were consistent with self-defense. He never
16 said -- my recollection is he never said that it could
17 only be self-defense. It could have been this
18 intentional protracted thought process the D.A. was
19 arguing, but yes, that it was very consistent with
20 self-defense.

21 Q. So you felt --

22 A. So then I had to re-evaluate whether or not
23 to call Eisele at that point, because that's what --
24 having decided to call him beforehand doesn't mean
25 that you're going to continue to call him later on.

1 And I talked to Mr. Centofanti about that. We talked
2 about it.

3 Then I made the ultimate decision, and Mr.
4 Centofanti agreed, that Dr. Eisele had always been a
5 good witness for me in the past and his demeanor would
6 be strong. This comment about their -- and this
7 initial impression about it not being -- not
8 consistent with self-defense was early in his
9 evaluation. It was not powerful and Dr. Eisele would
10 respond to it. I talked to Dr. Eisele to make sure
11 that he felt he'd be able to respond to it. So I made
12 the decision, and Mr. Centofanti agreed, but it was my
13 call. Made the decision to put Dr. Eisele on because
14 even though Dr. Sims had helped, I thought Dr. Eisele
15 could still overcome -- could still be even more help.

16 We're dealing with -- you know, when you're
17 dealing with this theory that -- the jury is really
18 going to say that somebody is not guilty unless proven
19 beyond a reasonable doubt. In many circumstances it's
20 not the case. They look -- despite what the jury is
21 instructed to do, to give the reasonable doubt to the
22 defendant, in fact, it often goes the other way, that
23 the defense has to prove innocence. And this was for
24 many reasons why I felt that Dr. -- tactically Dr.
25 Eisele should testify. So I made that evaluation

1 after Dr. Sims as well, and put Dr. Eisele on the
2 stand.

3 Q. Dr. Sims left the door open for your
4 self-defense theory?

5 A. Absolutely.

6 Q. And you were in a better position after
7 Dr. Sims testified than you were after Dr. Eisele
8 testified?

9 A. Well, not the substance of the material, no.
10 The actual substance of what Dr. Eisele said supported
11 Dr. Sims as well. So on paper we were just as strong
12 in both ways. But Dr. Eisele for the first time that
13 I had ever seen him -- and I haven't used him on a
14 case since because of it -- his demeanor was not as
15 sharp as I felt it should have been. His demeanor was
16 not as sharp as it had been when I had spoken to him
17 about these issues.

18 The demeanor of a witness is very important.
19 So on paper, if you look at the transcript -- to my
20 recollection -- I don't think I've looked at the
21 transcript. But if I were to look at the transcript,
22 my recollection would be that on paper he still left
23 it open, that it was consistent for self-defense. I'm
24 quite sure that he said that. And when he was
25 cross-examined by the District Attorney, I'm quite

1 sure that I re-crossed him or re-directed and in
2 effect rehabilitated him, got him to in effect say on
3 paper that it was still consistent -- the facts are
4 consistent with self-defense.

5 But you're right that I felt that Eisele's
6 demeanor hurt our case. Because he just didn't seem
7 as sharp as he should have been. I think he got
8 confused. It says in here -- here, being this
9 300-plus page memo -- that he got confused as to how
10 many bullets were fired. I didn't remember that until
11 I read it in here. And I think I remember that now.
12 I remember thinking that Dr. Eisele is not up to his
13 game. He was not presenting as sharp a presentation.

14 Q. When had you interviewed Dr. Eisele prior to
15 putting him on the stand?

16 A. When had I last interviewed?

17 Q. Yes.

18 A. Probably the day he testified. Probably --
19 probably. I remember speaking to him on a fairly
20 regular basis, so I talked to him a short time before
21 he testified. Whether it was the night before, I
22 don't remember. I really don't remember what time of
23 day he testified, so I don't know. But it would have
24 been when -- it could have been that I met him the
25 night before he testified. It could have been that

1 very morning. I know it was within a short period of
2 time.

3 He gave no indication at all that he was
4 confused about anything. He has a kind of an
5 ah-shucks kind of a Columbo, if you remember the T.V.
6 show "Columbo" with Peter Falk, where he kind of
7 stumbles around and happens to fall into the right
8 thing. Dr. Eisele has kind of an ah-shucks Jimmy
9 Stewart kind of a manner about him anyway. So that --
10 and that had been effective on prior cases, but this
11 time it was not.

12 Q. But would you agree the bottom line is that
13 under cross-examination by Clark Peterson he caved in
14 when he said, "I couldn't say that this -- I couldn't
15 present this case as her threatening him," meaning
16 Gina threatening Mr. Centofanti?

17 A. I don't remember if those precise words were
18 spoken. I do remember -- if you would show me
19 something in the transcript --

20 Q. I'll locate it. We'll take a little break.

21 A. There's no question that he -- Peterson got
22 Eisele to say things in a negative way -- in negative
23 way about the case. And that I had to rehabilitate
24 him to get him back to say it was consistent with
25 self-defense.

1 But I don't remember the precise words or
2 exactly what it was that he messed up on. But I, of
3 course, had no idea that he was going to be befuddled
4 in this way and not present it as he done -- as he had
5 as we had talked about before he testified.

6 MR. COLUCCI: Would you have an objection to
7 taking a little break or a lunch break? Let's take a
8 break.

9 (Lunch recess.)

10 BY MR. COLUCCI:

11 Q. Mr. Bloom, we're going back on the record.
12 During the break I found what I believe is the quote
13 we were looking for on Dr. Eisele. And I --

14 A. And during the break I also took a look at
15 my notes regarding Lieutenant Frank.

16 Q. Oh, good. Okay. Do you recall Dr. Eisele
17 testifying in response to a question from Clark
18 Peterson it is difficult to present this as him
19 threatening -- as her threatening him? Does that
20 sound --

21 A. No.

22 Q. You don't recall that?

23 A. I don't recall those words.

24 Q. Well, if they are in the record, you have no
25 reason to dispute that he said that?

1 A. I do not.

2 Q. And wouldn't you agree that his testimony
3 weakened the defense case?

4 A. It didn't helped. My hesitation has to do
5 with whether it weakened it or left it neutral. It
6 certainly was not as effective as I was hoping. In my
7 opinion, he was not a good witness because you don't
8 call witnesses just to leave it neutral. You hope you
9 call witnesses to advance your case. He did not
10 advance the case. So I guess the only -- that's I
11 guess the best way of answering it.

12 Q. With respect to Lieutenant Franks you said
13 you checked your notes.

14 A. Yeah, I wanted to go back. My computer
15 crashed when I went back to the office, so I had to
16 open it in a special way. It's called safe mode. So
17 I couldn't get to everything real quickly. But what I
18 was able to find out was on a note that I made, that
19 Jim Thomas told me that was dated just before the
20 trial, I think, February 2004, saying that I just
21 checked with Lieutenant Frank. He's still on board --
22 fully on board with our position. Something like
23 that. Would like a subpoena. Wants to have a
24 subpoena just to deal with the superiors. So we
25 probably -- probably only served him a subpoena after

1 that date, although, I don't remember that. And I
2 wanted to --

3 Q. Did you --

4 A. -- tell you that I checked that note.

5 Q. Okay. And I appreciate that.

6 Did you talk to him between the February
7 2004 time you talked to Thomas and the date of trial?

8 A. I don't remember anything else. I don't
9 even remember Jim Thomas writing me this note. I'm
10 just telling you what the note said. So what I told
11 you before about not recalling precisely when I spoke
12 to Lieutenant Frank or when I communicated with
13 Lieutenant Frank or how that I went, my recollection
14 hasn't changed since I answered your questions an hour
15 or two ago. But I did have that note in my computer
16 regarding Lieutenant Frank, and so I wanted to tell
17 you.

18 Q. Okay. Appreciate that.

19 Let's talk about self-defense for a minute.
20 How was the decision made to use self-defense in this
21 case?

22 A. That decision was probably started when
23 Mr. Centofanti said that's what happened. And you're
24 talking about the origin of it? Is that your
25 question?

1 Q. Yes.

2 A. Then it would have been when Mr. Centofanti
3 told me what happened.

4 Q. So you heard his version of what happened
5 and you decided that self-defense was going to be a
6 viable defense in the case?

7 A. Yes. Mr. Centofanti used the word
8 "self-defense." Used those words.

9 Q. Mr. Centofanti, to the best of your
10 knowledge, was a civil lawyer, was he not?

11 A. Yes.

12 Q. And by that, I mean he practiced mainly in
13 the areas of family law, business law, construction
14 defect, things like that?

15 A. I don't know about construction defect. I
16 believe he handled some family law cases that I know
17 of. I believe he handled -- I know he worked for
18 Travelers Insurance having something to do with
19 whatever those issues were about. If your import is
20 that he -- as far as I knew, didn't do criminal law.
21 That's correct.

22 Q. Okay. And at that point in time you had
23 been a criminal defense lawyer for over 30 years?

24 A. I had been a criminal defense attorney for a
25 long time. I was admitted to the bar December 16,

1 1975, so whatever the date that was. I think -- I
2 don't know exactly when I came onto the case, but --

3 Q. 29 years. I'm off a year.

4 A. By the time of the trial, I think I was on
5 the case a year or more before that. I don't remember
6 exactly when I came on the case. I've been an
7 attorney for a very long time and all in criminal
8 defense.

9 Q. Okay. Did you make an assessment as to
10 whether or not, based on your knowledge of the facts
11 of the case, whether self-defense was a viable
12 defense?

13 A. I did.

14 Q. And what was that assessment?

15 A. That it was.

16 Q. As we discussed earlier you had access to
17 all of the D.A.'s discovery, in addition, you did all
18 your own investigation; correct?

19 A. Yes.

20 Q. The D.A.'s -- well, strike that.

21 I'm going to show you something. Tell me if
22 you recognize it. You had a large amount of discovery
23 you had to deal with; correct?

24 A. Yes.

25 Q. Your own and through the District Attorney's

1 Office. Did you prepare this document? We'll have it
2 marked if we need to.

3 A. I don't know. This is a five-page document
4 entitled "Defense Discovery Prepared 2/28/04."

5 Q. It also bears a Bate-stamp at the bottom.

6 A. Right. Has a Bate-stamp D3282 through
7 D3286. I don't know if I prepared this or caused it
8 to be prepared or asked Ms. Navarro to prepare it or
9 some of my staff to prepare it.

10 Q. Would that accurately reflect some or all of
11 the discovery that you had at your disposal prior to
12 the Centofanti trial?

13 A. I haven't read it all. I would believe it
14 would accurately depict it.

15 MR. COLUCCI: I'm going to show you one just
16 of these -- another document. Let's just have that
17 marked next in order. This would be -- that would be
18 7.

19 (Exhibit 7 was marked for identification.)

20 BY MR. COLUCCI:

21 Q. Would you take a look at that and see if you
22 recognize that. There's some duplicates in there, but
23 just -- yeah, just the top one. Thank you.

24 A. Do I recognize this?

25 Q. Yes.

1 A. Yes.

2 Q. Is that part of the material that you sent
3 over to my office?

4 A. I assume so.

5 MR. COLUCCI: Okay. And I have some other
6 ones I'd like to show you. I'll just show you all of
7 them. Let's just go off the record for a minute.

8 (Off the record.)

9 MR. COLUCCI: You've had a chance to look at
10 all these indexes, haven't you? I'll give you each a
11 complete set.

12 (Exhibit 8 was marked for identification.)

13 BY MR. COLUCCI:

14 Q. I'm not going to ask you any specific
15 questions about any of the documents in there, only to
16 ask you: Does that look like -- does that look like
17 the indexes that you -- of the discovery that was
18 furnished to me through your office?

19 A. I don't recognize those pages really. But
20 they certainly -- meaning, I don't remember those
21 particular pages.

22 But to answer your question, yes. They look
23 like the indexes of all the materials. It looks like
24 the index to the defense discovery in the case. And I
25 assume I provided it to your office.

1 You know what's most identifiable about that
2 is the cover, the Xerox of the outer thing is the type
3 of notebooks that I use with my materials. So I
4 believe those to be the type -- the indexes that I
5 would have prepared or caused to be prepared to index
6 the defense discovery in the case. And I assume I
7 provided them all to you.

8 Q. Okay. And you would have organized
9 thousands of pages of discovery generated by both you
10 and by the District Attorney's Office in this fashion;
11 correct?

12 A. Yes.

13 Q. Just having you look at the two that are
14 labeled "D.A. Discovery Volume 1 and Volume 2," does
15 that -- would that have been organized by you as well
16 and represents the material furnished to you by the
17 District Attorney's Office?

18 A. I would have organized all the discovery in
19 the case. The D.A. discovery and the defense
20 discovery. These particular sheets here I'm quite
21 sure were not organized by me. I don't organize them
22 this way. I would have organized them in an entirely
23 different way.

24 This was probably done by somebody else,
25 maybe Ms. Navarro or maybe before I even came on the

1 case, maybe Mr. Albregts, that would have started it
2 like this. But it's an index of it and I probably
3 used it and referred to it.

4 Q. Does that appear to be as well in the same
5 type of binder that you used to organize your
6 discovery?

7 A. Yes. But you can see the way this
8 particular way is organized is different than the way
9 it appears to be, the Volume 1 of 2, Part 2. This
10 could be another way that I have done it.

11 Q. Okay. Do you have any reason to believe
12 that you did not have access to those -- the documents
13 depicted in those indexes for trial preparation
14 purpose?

15 A. No, I think I had -- your question is do I
16 believe I had access to all these materials?

17 Q. Yes.

18 A. Yes, I believe I did.

19 MR. COLUCCI: And I'm going to hand you
20 these other two documents back. They appear to be the
21 same thing.

22 (Exhibit 9 was marked for identification.)

23 BY MR. COLUCCI:

24 Q. Is that something that you would have
25 prepared?

1 A. Yes. Well, I've answered about -- this is
2 the thing called "Defense Discovery Prepared 2/28/04,
3 State versus Centofanti." It's Bate-stamped D3282
4 through 3286.

5 I would have done something like this, and I
6 would have presented it to the District Attorney.
7 This looks like probably something I prepared and
8 provided to the D.A., and maybe I provided it. Maybe
9 I just organized it for myself or perhaps I provided
10 it to the Court.

11 Q. In any event, is there any reason to believe
12 you would not have had in your possession the
13 documents depicted in that index prior to --

14 A. It's a five-page document, so I haven't
15 looked through each of the probably 200 lines of items
16 on here. But I would assume I have had everything in
17 here.

18 Q. Is there any reason to dispute the date at
19 the top as being the date of preparation, 2/28/04?

20 A. No.

21 Q. And that would have been the date prior to
22 the commencement of the Centofanti trial?

23 A. Yes, I think the trial started -- I don't
24 remember when the trial started. Didn't it start
25 sometime in February and go to sometime in March?

1 Q. Yes.

2 We'll have that marked separately.

3 A. We probably had in limine motions that
4 preceded it, but I don't remember the date that jury
5 selection commenced.

6 Q. So we talked about the selection of
7 self-defense as a viable defense in this case. And
8 based on the information at your disposal, which a lot
9 of it is depicted in these indexes, you made a
10 decision that self-defense was in fact a viable
11 defense and decided to pursue that; correct?

12 A. Yes.

13 Q. And that defense basically was the main
14 thrust of Mr. Centofanti's case --

15 A. Yes.

16 Q. -- is that correct?

17 Now, based on the evidence it would have
18 also been possible to attempt to get a lesser included
19 offense instead of first-degree murder, second or
20 manslaughter would also have been possible
21 verdicts; is that correct?

22 A. Is manslaughter a lesser included offense of
23 murder, yes.

24 Q. And second degree would be available if
25 premeditation and certain other things were not proven

1 by the State; correct?

2 A. Right.

3 Q. Self-defense is kind of an all or nothing
4 defense; is that right?

5 A. Self-defense is not an all or nothing
6 defense.

7 Q. Well, if the jury doesn't believe the
8 self-defense, they're going to find him guilty of
9 something; correct? And if they do, they will find
10 him -- they will acquit him.

11 A. Self-defense is not inconsistent necessarily
12 with the defense of some sort of mental state defense.
13 You can have them both. They can both exist.

14 Q. But you did not pursue a mental defense
15 case?

16 A. I don't remember if we asked for lessers in
17 the case at all. It was not supported by the evidence
18 that I saw in the case very much. It existed to a
19 certain degree, but not very much. And so we
20 certainly emphasized the self-defense.

21 I don't -- like I said, I don't know if we
22 asked for lessers in the case. Self-defense does have
23 a component where you could sort of present the
24 urgency of spontaneous combustibility type of thing
25 that could support LIO.

1 Q. And you had access to the autopsy report,
2 Dr. Sims' report, correct, prior to trial?

3 A. Yes.

4 Q. The autopsy report showed the two shots to
5 the head, two shots to the arm and the balance of the
6 shots to the body. Is that how you remember?

7 A. I don't remember.

8 Q. Okay. Do you remember -- in fact, there
9 might have been three shots to the head. Do you
10 remember the shot in the mouth that produced the
11 stippling around the lips?

12 A. As I sit here now, I haven't look at the
13 autopsy materials for six years or more, so I don't
14 know the content. My recollection is that there were
15 shots to the body and shots to the head. I thought
16 there were three shots to the head, but I may be
17 mistaken.

18 I remember one shot had stippling. I really
19 I don't remember if it was to the mouth or not. But I
20 don't even remember if it was a single shot that had
21 stippling. I remember stippling as part of it as
22 well.

23 There was a big issue as to the course of
24 the shots, the -- an issue as to which shots came
25 first, but I don't recall the content of the -- of

1 Dr. Sims' autopsy report.

2 Q. And Mr. Trahin also prepared diagrams at
3 your direction to try to reconstruct the angles of the
4 bullets; correct?

5 A. He -- the material -- I didn't tell
6 Mr. Trahin what he should do in the preparation of
7 documents. So it wasn't at my direction in the sense
8 that I said, show it to be this way or show it to be
9 that way. But at my direction, he conducted a full
10 evaluation and, at my request or direction, he used
11 the -- his evaluation of everything and did do --
12 create a lot of diagrams.

13 I think he might have created a -- somebody
14 had a Styrofoam body, I think, or head perhaps or --
15 so we had lots of diagrams and evidence regarding
16 angles of wounds and angles of the shots and things
17 like that.

18 Q. So you would have had -- you would have had
19 the benefit of his report prior to starting the trial
20 in this case; right?

21 A. Yes.

22 Q. Let's talk about Mr. Centofanti's testimony
23 for a second. At some point in time, it was -- a
24 decision was made to put Mr. Centofanti on the witness
25 stand. How did that come about?

1 A. It came about almost from the very beginning
2 of the case. He adamantly wanted to testify in the
3 case. And if you're talking about the origin of it,
4 very, very early on in the case, very, very early on
5 in my participation in it he made it very clear that
6 he wanted to testify, and we talked about the aspect
7 of him testifying.

8 Q. Did you talk about the dangers of testifying
9 and cross-examination?

10 A. Yes. We talked about him testifying and the
11 ups and downs of him testifying and the pros and cons
12 of his testifying for the course of hours. I'm going
13 to say -- I'm going to say probably 30 or 40 hours of
14 time. I'm talking about you take 60 minutes and
15 multiply it by 30, or 60 minutes and multiply it by
16 40, whatever that number is, that would be the
17 cumulative number of time that I spoke to
18 Mr. Centofanti about various subjects having to do
19 with him testifying, the advantages, the
20 disadvantages, his demeanor, which was a considerable
21 problem, and steps that we took to try to deal with
22 his demeanor.

23 Q. Did you ever advise him that you thought it
24 might be better if he did not take the witness stand?

25 A. As you ask the question, no. But the

1 subject of whether or not he should or should not take
2 the stand and the disadvantages of him doing it and
3 the advantages of him doing it and the law with
4 regards to him doing it and the fact that the choice
5 deposits ultimately with him, those were all discussed
6 in incredible detail many, many times.

7 But your question was, like, did I ever tell
8 him, don't testify; I advise you not to testify? No,
9 I never made such a statement, nor did I ever tell him
10 I advise him to testify. I don't do that with
11 clients.

12 I tell them, if you want to testify -- first
13 I tell them, the choice is 100 percent yours. There's
14 advantages if you do this, disadvantages if you don't.
15 Most of the calls in a trial are literally the buck
16 stops with me. I make the final call on them. And I
17 tell people, even though I have the ultimate power to
18 do those things, even with those situations, I discuss
19 them with you and make them as a team with you.

20 But with regard to the specific issue of
21 whether or not you testify, that's one of the three
22 areas of the law where you make that final decision
23 100 percent on your own. I can't make it for you.
24 Even if you tell me to make it for you, I can't make
25 it for you.

1 So all of that was discussed with him. And
2 incorporated within that is multiple, multiple times
3 where we would talk about the advantages and the
4 disadvantages of his testimony.

5 Q. Did you talk to him about credibility?

6 A. His credibility?

7 Q. Yes.

8 A. Yes.

9 Q. And you actually did like some mock
10 testimony sessions?

11 A. Multiple -- we worked with Mr. Centofanti
12 more than any other witness I had ever in my life. He
13 was the most -- he had a lot of problems as a witness.
14 His demeanor had many, many difficulties.

15 Q. What kind?

16 A. Oh, he was incredibly angry. He was
17 incredibly angry at his ex-wife, the decedent. He
18 couldn't let go being a lawyer. He wanted to
19 constantly rant against her. He -- at the same token,
20 he would vacillate almost bipolar like back and forth
21 between being calm and then being incredibly
22 aggravated.

23 He -- he had -- we had to work with him on
24 demeanor in so many different ways. And virtually --
25 for example, every time we would have a

1 conversation -- we had many, many, many conversations
2 together, he and I. We would -- it would come up, and
3 I would stop and say, all right, let's use this as an
4 example. If you say it that way and so forth, you're
5 going to get cross-examined about it this way. It's
6 going to give the appearance that you're angry or give
7 the appearance that she's a bad person, things like
8 that.

9 He was extremely angry at his ex-wife at
10 being a bad mom, being a slut, being a drunkard, being
11 a bad person. He couldn't get over that. He couldn't
12 get over being a lawyer on the case. He constantly
13 wanted to do what Bill Clinton did when he was
14 examined during the impeachment -- or not examined,
15 but asked things like, well, it depends what "is" is,
16 how you define "is."

17 Mr. Centofanti was incredibly parsing his
18 words, incredibly trying to -- he was trying to be a
19 lawyer on the case. So there were many problems like
20 that that came up many different times and demanded a
21 tremendous amount of my attention.

22 Q. And did you --

23 A. And I gave it.

24 Q. Did you explain to him that all of those
25 things would play a critical part in the jury's

1 assessment of his credibility?

2 A. Yes.

3 Q. Did you -- and you said you never advised
4 him, despite that, not to take the stand?

5 A. I never advised him to take the stand. I
6 never advised him not to take the stand. I would
7 constantly bring up the problems if he did testify,
8 and I would constantly remind him, look, if you don't
9 want to testify, you don't have to testify, et cetera,
10 but if you do testify, we have to deal with this.

11 He was adamant he wanted to testify, so we
12 set about the process of attempting to deal with his
13 very negative demeanor.

14 Q. Well, isn't it true that he didn't remember
15 much about what happened that evening?

16 A. No.

17 Q. And -- but it is true that when he was
18 questioned on the witness stand, he was unable to
19 answer a lot of your questions and a lot of the D.A.'s
20 questions?

21 A. I don't know if he was unable to answer or
22 not. I know he did not -- he said he did not remember
23 some things, a number of things.

24 Q. And did he indicate during the mock trial
25 sessions that he didn't remember certain things?

1 A. He never indicated anything before trial
2 that was different than he testified to trial. He
3 never indicated to me in any way he was going to get
4 on the witness stand and lie. Subsequent to his
5 testimony, he said a number of things which were
6 contrary to that.

7 Q. So my question is: During your mock trial
8 sessions, did it come out that he was unable to
9 remember things about that evening?

10 A. Yes. Well, just come out. He had
11 already -- it got repeated, if that's what you mean,
12 yes.

13 Q. And did you explain to him by not
14 remembering certain things or not being able to answer
15 certain questions, he might look evasive on the
16 witness stand?

17 A. We talked about that. That wasn't my
18 biggest concern, but we talked about that. That dealt
19 with more of the substance of it. His problem wasn't
20 substance as much as it was demeanor, but we talked
21 about that substance.

22 Q. Okay. Let's talk about Dr. Sessions for a
23 minute. Do you know who Dr. Sessions is?

24 A. No. I don't remember.

25 Q. Do you remember Gina Centofanti having

1 plastic surgery done?

2 A. Yes. I remember Dr. Sessions now.

3 Q. And Dr. Sessions was one of the experts you
4 put on your expert witness list?

5 A. I think so. I don't think he was called as
6 a -- did I put him as an expert or just as a witness?
7 I don't remember.

8 Q. I'm asking. I don't know.

9 A. I don't -- I don't think I would have put
10 him on as an expert witness. My guess is we put him
11 on as a witness.

12 Q. Okay. To the best of your knowledge,
13 Dr. Sessions did some plastic surgery work on Gina
14 Centofanti?

15 A. That's what Mr. Centofanti told me, yes.

16 Q. Did you obtain records from Dr. Sessions
17 that verified that?

18 A. Yes.

19 Q. Did Dr. Sessions have a partner?

20 A. I think, yes.

21 Q. Do you remember his name?

22 A. No.

23 Q. Would Dr. Escajeda -- does that sound like
24 the right name?

25 A. It doesn't, but I do remember it being what

1 I thought was a Hispanic name. But I don't remember
2 Dr. Escajeda's name.

3 Q. All right. But he did have a partner that
4 you know of?

5 A. That's what I believe. I think so, yes.

6 Q. And wasn't part of Mr. Centofanti's defense
7 that Gina had done drugs in the past, and whenever she
8 did drugs, she was aggressive?

9 A. No, not as you stated it.

10 Q. Well, how would you state it?

11 A. Mr. Centofanti told me that she had done
12 drugs before and that he had been told by
13 Dr. Sessions -- I think it was Dr. Sessions he told me
14 had come out when he was doing plastic surgery on her
15 and said that she had a hole in her nose, in the
16 septum, I believe, as a function of having done too
17 much drugs. I think it was crystal, but it could have
18 been coke. But it was ingesting drugs through the
19 nose.

20 And that -- Mr. Centofanti told me that
21 after the surgery, before she had ever left the
22 office, the doctor had come out and told him, we had
23 to do more -- we had to do -- we found something more
24 than what we thought we would have. It had to do with
25 this hole in her nose.

1 This was a part of the defense to establish
2 Mr. Centofanti's fear of her. But your question said
3 that she always did drugs and then she always got
4 violent.

5 Q. I don't think I used the word "violent." I
6 said aggressive.

7 A. Aggressive. But that she had a history of,
8 you know, every time she did drugs, she got
9 aggressive. I don't remember the history of it, the
10 constantness of it. I do remember that incident about
11 it. And we were attempting to establish this pattern
12 of her prior aggression. So there were things that
13 dealt with that.

14 Q. So in an effort to establish that, you
15 secured Dr. Sessions' medical records --

16 A. Yes.

17 Q. -- of the rhinoplasty on Gina Centofanti?

18 A. Yes.

19 Q. And you got those records probably early on
20 in the case; am I correct?

21 A. Well, I don't know. Certainly what I would
22 estimate to be a -- I don't remember when we got them,
23 so I'd be totally speculating as to when it was in
24 relationship to the exact start of the trial. My
25 recollection is it was a considerable time before the

1 trial.

2 Q. Okay. So you had those records in your
3 possession prior to the trial in 2004?

4 A. Yes. So did Mr. Centofanti.

5 Q. You sent those records to him?

6 A. I sent -- Mr. Centofanti either had or
7 reviewed every record that we had in the case.

8 Q. And did he review those records with anyone?

9 A. I don't know.

10 Q. Such as Gloria or --

11 A. Oh, I see. I'm sure he reviewed a number of
12 records with me. You're talking about Dr. Sessions'
13 records per se?

14 Q. Yes, Dr. Sessions' records, for example.
15 You don't know?

16 A. I have no idea. In general, he, I believe,
17 would get the materials to him. Ms. Navarro would
18 send him some things or I would send him some things
19 or she would talk to him about it. Primarily it was
20 me talking to him, though, not so much Ms. Navarro.
21 She was not -- she had a number of talks with
22 Mr. Centofanti, to my recollection, but review of
23 materials and tactics and all of that was primarily
24 done by me.

25 But I'm sure Mr. Thomas, our investigator --

1 Jim, when he would talk to a witness, he would also
2 convey what he found. And I probably told Jim, well,
3 tell Mr. Centofanti what we have there or something
4 like that.

5 Q. Did you review these medical records of
6 Dr. Sessions before the trial?

7 A. Yes.

8 Q. Did you review the records with
9 Dr. Sessions?

10 A. No.

11 Q. Did you review the records with any other
12 doctor or medical provider who could interpret the
13 records for you?

14 A. I don't remember.

15 Q. And based upon your conversations with
16 Mr. Centofanti, you decided that when you put
17 Mr. Centofanti on the witness stand, you were going to
18 question him about the hole in the nose situation?

19 A. He insisted on it. He wanted to talk about
20 that. We talked about not presenting any of that
21 information at all. But like I said, the ultimate
22 decision was mine at that point, but I make these
23 decisions in conjunction with my clients. I made it
24 in conjunction with him.

25 I feel it's very important to make this as a

1 group or a team decision. That's not to say that if I
2 thought that my client wanted to present some evidence
3 that I was sure was going to shoot him in the foot and
4 would be harmful to him that I would do so because I
5 wouldn't.

6 But I felt that it was -- that it's kind of
7 a team effort. Mr. Centofanti is an intelligent
8 person, and I think my clients have a right to present
9 their side in court, and I hate to try to cut them out
10 and stop them and not let them present their side in
11 court.

12 Specifically with regards to him testifying
13 about it, he wanted to testify about it. That's a --
14 what he -- him being called as a witness and the
15 content of his testimony resides exclusively with the
16 client, but I certainly worked with him and talked
17 with him about various subjects. We talked many, many
18 hours about the advantages and disadvantages of all of
19 his testimony.

20 Q. Let me ask you this about the medical
21 records. In your review of the medical records, did
22 you find any reference in the medical records to a
23 hole in the nose --

24 A. I don't remember.

25 Q. -- of Gina Centofanti?

1 A. I don't remember.

2 Q. Would you have looked for that?

3 A. Yes.

4 Q. Would you have made any notes?

5 A. I don't know.

6 Q. And assuming just for the sake of discussion

7 that you found a reference to a hole in the nose in

8 the record, would you not have called Dr. Sessions to

9 confirm that?

10 A. Too many negatives. I don't understand your

11 question.

12 Q. You're not sure if you found the hole in the

13 nose reference in the records; right?

14 A. Correct.

15 Q. If you had found a reference in the records

16 to the hole in the nose, wouldn't you have called

17 Dr. Sessions to confirm it?

18 A. Maybe not. We might have just put it in as

19 a business record exception and put the records in.

20 That could have been a way to do it. But we might

21 have called Dr. Sessions as well.

22 Q. Wouldn't you have considered calling

23 Dr. Sessions?

24 A. Yes.

25 Q. Because even if you put it in as a business

1 record, the only way to establish the cause would be
2 to have an expert.

3 A. Yeah, but if we didn't get confirmation of
4 it, you might have not have needed that. The issue
5 wasn't really whether or not she had a hole in her
6 nose. The issue was whether or not Mr. Centofanti
7 thought she did. That's really what it was. His
8 state of mind was the issue.

9 And so we talked to him about -- I spent a
10 number of hours, a number of discussions talking to
11 him about the idea of the distinction between that,
12 how we could present it based upon what he thought as
13 opposed to what really happened, and that if you open
14 the door to what really happened, then you end up --
15 you have to prove that, and it becomes more difficult.

16 If you can limit it to what he thought, that
17 has an advantage of that you don't open the door to
18 all this collateral stuff. It has a disadvantage that
19 it might not be supported by the evidence.

20 So we talked about that. The issue wasn't
21 whether or not she had a hole. The issue was whether
22 or not he believed that to be the case, which was part
23 of his thinking -- that would have been part of his
24 thinking as to her danger, her use of drugs, whether
25 she was using drugs again, whether she was going to be

1 aggressive or dangerous. And so his frame of mind was
2 the most important thing.

3 Q. Wasn't the bottom line on that the
4 reasonableness of his belief that she was a drug user?

5 A. The self-defense -- in order to have a
6 perfected self-defense, it has to be both subjective
7 and objectively founded. It has to be reasonable.
8 You have to use a reasonable amount of force. You
9 have to feel that the force that you're using is in
10 balance to the force that you're facing.

11 And this, of course, was a critical problem
12 in the case because she was unarmed, and she was --
13 and he -- and he fired the weapon, I believe, seven
14 times, killing an unarmed person. But there was
15 contrary stuff to that, and one of the contrary things
16 was it happened in his house and she barged in his
17 house.

18 Another contrary thing was that he believed
19 it -- that she had a history of violence and that she
20 was explosive and that it was -- she had this history,
21 part of which was this thing involving -- one of the
22 pieces was this thing about the drug and the nose.
23 That wasn't the only piece by any means, but that was
24 one of the pieces.

25 Q. Wouldn't it have been important --

1 A. You could establish that --

2 Q. Wouldn't it have been important to establish
3 that by providing objective proof that there was, in
4 fact, a hole in the nose?

5 A. Yes. That could have been, yes. That's one
6 of the ways of doing it. But you asked -- I thought
7 your question sort of before was, was it the only
8 thing that you had to do. You asked me, Wouldn't you
9 have presented that? And my response was, Maybe --
10 depending on the circumstances, we would have. If
11 you're asking me, is that why we presented it, yeah,
12 that's why we presented it, but that's not the only
13 way you could have gone.

14 Q. And wouldn't it sink the ship, so to speak,
15 to have Mr. Centofanti testify to something that, in
16 fact, wasn't true or at least was proven not to be
17 true?

18 A. Well, if the jury felt he was lying, that
19 would be an important factor, of course. It would be
20 a critical factor.

21 Q. And if he testifies there's a hole in the
22 nose and there's no way to prove that, wouldn't that
23 weaken his case, weaken his testimony?

24 A. Yes.

25 Q. And wouldn't it weaken it further if the

1 State brought in the doctor who did the surgery and --
2 who was Dr. Sessions and get from Dr. Sessions his
3 testimony that there was no hole in the nose?

4 A. That would weaken it further if he was going
5 to insist on testifying that he had been told there
6 was a hole in the nose by that same doctor.

7 Q. Right. And so that's the next step. Not
8 only is there not a hole in the nose, but Dr. Sessions
9 gets up and says, "And I never told him there was a
10 hole in the nose." So that's several lies that
11 Mr. Centofanti was labeled with; is that true?

12 A. Well, several lies -- I don't know if it's a
13 lie, but it's several inconsistencies that
14 Mr. Centofanti testified to. He told me that he had
15 talked to the doctor. He told me he had been told by
16 the doctor, as I've already said, that, we found more
17 problems than we thought, that there was a hole in the
18 nose. He thought this was very important to testify.
19 We talked about the advantages, the disadvantages. He
20 wanted to testify to that. He did testify to that,
21 and he was cross-examined about the absence of the
22 hole in the nose and the absence -- and then the
23 doctor saying that, "I never told him that."

24 Q. And after Mr. Centofanti told you he had
25 spoken with Dr. Sessions and Dr. Sessions had told him

1 there was a hole in her nose, you made no effort to
2 contact Dr. Sessions to confirm that?

3 A. No. I think we found -- we went and got
4 records. In terms of the sequence, after he told me
5 that, when we did it, I think after he told me that,
6 we went to get records. So we made a considerable
7 effort to get it, and we had records, and it didn't
8 show the hole in the nose, but that --

9 Q. Did you confront Mr. Centofanti about that?

10 A. Yes.

11 Q. And what was his response?

12 A. That the records were wrong.

13 Q. So did you contact Dr. Sessions to find out
14 if the records were wrong?

15 A. No. I didn't think contacting Dr. Sessions
16 to ask -- find out if he could remember something
17 beyond which is his own records in a matter that
18 was -- I don't remember how many months or years
19 before it was, but it was a fairly long time.

20 Q. Well, the District Attorney had no problems
21 contacting Dr. Sessions and getting him to come in and
22 say, "I remember this. I remember the surgery. There
23 is no hole in the nose." Is that a correct statement?

24 A. I don't know how much trouble they did or
25 didn't have. I just didn't expect Dr. Sessions to say

1 anything different than what were in the records, and
2 he didn't say anything different than what were in the
3 records.

4 Q. You didn't attempt to contact his partner to
5 see if his partner had anything different to say about
6 the hole in the nose?

7 A. I didn't think his partner had anything to
8 do with the matter. I don't believe we had made any
9 effort to contact the doctor. Did you say his name
10 was Escajeda? I don't believe -- I don't remember if
11 we did or not, to be honest, if we attempted to
12 contact Dr. Escajeda or not.

13 I don't remember the other doctor having --
14 me having been told by Mr. Centofanti that the other
15 doctor had anything to do with it. Except I think
16 Mr. Centofanti said something -- he might have said
17 something about that after the trial or towards the
18 end of the trial itself. But I don't remember.

19 Q. Okay. Going just back to the self-defense
20 issue for a second. There was some discussion about
21 whether or not Mr. Centofanti would have to take the
22 witness stand in order to have this self-defense
23 available to him at trial. Do you remember that?

24 A. Did I have discussions with him about that?

25 Q. No, that there was some discussions in court

1 about whether he would have to take the witness stand
2 or not in order to establish self-defense.

3 A. I don't remember. My guess is -- it's
4 really just a guess. My guess is yes, that that
5 subject did come up.

6 Q. Do you remember the State making a motion to
7 have Mr. Centofanti canvassed about being the shooter
8 in the case?

9 A. Yes.

10 Q. And they made that motion twice, did they
11 not?

12 A. I don't know.

13 Q. Do you remember initially in front of Judge
14 Gibbons, the State making a motion to have
15 Mr. Centofanti canvassed?

16 A. No.

17 Q. Do you -- so you obviously don't remember
18 the District Court judge denying the motion to have
19 him canvassed back in 2001 or 2002?

20 A. No.

21 MR. COLUCCI: Counsel, you'll stipulate that
22 that's what happened, would you not?

23 MR. SCHWARTZER: The two canvasses?

24 MR. COLUCCI: Yes.

25 MR. SCHWARTZER: Yes.

1 MR. COLUCCI: And that one of the canvasses
2 was in 2001 or 2002, and it was denied?

3 MR. SCHWARTZER: I believe it was in 2001.

4 MR. COLUCCI: 2001. And the second --

5 MR. SCHWARTZER: Denied without prejudice.

6 MR. COLUCCI: Denied without prejudice. And
7 then the State made the second motion to have the
8 defendant --

9 MR. SCHWARTZER: March of 2004, if I
10 remember right.

11 MR. COLUCCI: Right. Yes, you're correct.

12 MR. SCHWARTZER: And March 12, 2004.

13 BY MR. COLUCCI:

14 Q. Do you recall the second one closer to the
15 trial date, the motion for -- to have the defendant
16 canvassed on whether or not he was the shooter in the
17 case?

18 A. Well, if it was March 12th, 2004, wasn't
19 that in the trial? Because I don't really remember
20 the trial dates.

21 Q. I think it was before the trial started.

22 A. Was it?

23 Q. Yes. The trial was like the 15th or the
24 16th.

25 A. I see. I have a recollection of a very

1 brief request by the -- by Mr. Peterson. I think it's
2 Mr. Peterson. It might have been Ms. Goettsch. I
3 don't know. It was more devious and sneaky, so my
4 guess is Mr. Peterson because he was the more devious
5 and sneaky of the people.

6 And it was really an attempt to -- I
7 don't know -- shine some particular issue that the
8 D.A. wanted to get on the record under some guise of
9 protecting Mr. Centofanti, which wasn't really to
10 protect him at all, to have him say that he wanted to
11 go on the theory of self-defense. And that had
12 already been quite clear that that was the theory we
13 were pursuing. So I remember Mr. Centofanti answered
14 a question.

15 I think -- when you say canvassed, I think
16 you mean questioned. And my guess is that he was
17 asked a question, "Is this your request," or "Is that
18 what you're doing?" I think Mr. Centofanti said yes.
19 I'm not sure how much else he said besides the word
20 "yes," but that's about all that I remember was asked
21 of him. I don't remember there ever being a question
22 put to him about who did what and how did this happen
23 or anything like that, but I remember that.

24 MR. COLUCCI: I'm going to ask you to look
25 at Petitioner's Exhibit 10.

1 (Exhibit 10 was marked for identification.)

2 BY MR. COLUCCI:

3 Q. And aside from the writing on it, which is
4 mine, does that look like the opposition that you
5 filed to the State's motion to have Mr. Centofanti
6 canvassed on the self-defense or whether he was the
7 shooter?

8 A. This looks more like the writing of
9 Ms. Navarro that I had sent to her. This is our
10 defense motion. I notice she signed for me. If
11 you're -- so I believe this is the motion we filed in
12 opposition to the -- to -- it looks like this was the
13 one that's filed in December of '01.

14 Q. Right. And in that opposition, didn't you
15 contend that it would be a violation of his Fifth
16 Amendment right, privilege against self-incrimination
17 to go ahead and admit -- be forced to admit that he
18 was the shooter?

19 A. Yes.

20 Q. Now, there was a second motion to have the
21 canvass, and that happened right before the trial. We
22 were just talking about that. Do you have any
23 recollection of that at all?

24 A. That's what I just told you.

25 Q. Okay. At that proceeding, the canvass was

1 allowed to go forward. Do you recall that?

2 A. Yes. I don't remember how it was -- I
3 haven't read the transcripts in six years, so I don't
4 have a recollection of what transpired with regards to
5 that, but I do remember it went forward, and my
6 recollection is, like I said, that Mr. Peterson or
7 Ms. Goettsch -- the D.A. was allowed to ask the
8 question, "Do you plan -- do you want to pursue a
9 self-defense theory," or something like that. And I
10 believe Mr. Centofanti said yes.

11 Q. Was it your belief that Mr. Centofanti had
12 to admit being the shooter in order to pursue the
13 self-defense?

14 A. I don't remember that now. I don't remember
15 if we litigated it again. I don't remember if I
16 objected to it again.

17 Q. Do you recall talking to Mr. Centofanti
18 about it before he was canvassed about being the
19 shooter?

20 A. My guess is -- no, I don't really recall
21 doing that. I can't remember if I talked to him about
22 it. Again, I just don't recall right now. I'm not
23 saying I couldn't be refreshed, and maybe even the
24 content of the transcript might refresh my memory, but
25 I really don't remember one way or the other. It was

1 not a terribly big factor in the case at all.

2 Q. You didn't think him admitting that he was
3 the shooter in the case was a big factor?

4 A. Not at that stage. Absolutely not.

5 Q. Why not?

6 A. He was going to testify. We were about to
7 start the trial. He absolutely insisted on
8 testifying. There was not going to be any question.
9 There wasn't anybody else that could have been the
10 shooter. He was going to say -- his must -- he was
11 going to say that he must have been the shooter, but
12 he couldn't recall actually pulling the trigger.
13 There wasn't anybody else that would have done the
14 shooting. That wasn't an issue. It never was a
15 question.

16 This whole case never revolved around the
17 issue of who did the shooting. It was a question of
18 how it was done and why it was done. So the who
19 aspect of it never was an issue, never ever had been
20 an issue. And at this stage, the question of whether
21 or not he had to admit at that stage that he was going
22 to say that he had been the shooter was a non-issue.

23 Q. Well, isn't it true that trials aren't
24 static events and that evidence sometimes comes in in
25 a different way during the trial that enables the

1 defense to take a different posture than originally
2 put forward?

3 A. Theoretically, that can happen. It didn't
4 happen in this case. And I would have -- I think
5 we -- if we had to do this case a thousand times, I
6 don't think it ever would have happened again. In
7 other words, it never -- I can't imagine a -- well, I
8 can imagine because I can imagine anything. I can't
9 believe in any reasonable way that there could be
10 anything but a -- just nothing more than an imaginary
11 thought that at some point the defense would change in
12 this case, that Mr. Centofanti was not the shooter and
13 that somebody else had been the shooter, either that
14 she had shot herself or that somebody else had been in
15 there to be the shooter or something like that.

16 There just -- these facts were absolutely
17 sure that that was not going to happen. So the issue
18 of whether or not he was the shooter or not was not
19 going to be the issue.

20 Then the question of -- I think a stronger
21 question would be whether or not it was thought that
22 maybe the defense might change. Instead of being
23 self-defense and mental state defense or something
24 like that, that's, I guess, slightly more or slightly
25 less implausible. But still, it was not going to

1 happen. Mr. Centofanti was going to testify. He
2 wanted to testify.

3 And the issue of his mental state, we had
4 thought about it and gone over it as to whether or not
5 he could in any way have any plausible thought that he
6 was realistically shooting out of something other than
7 self-defense, and there was -- the answer was no. And
8 there were great -- because of his mental condition,
9 there was great dangers of doing that. So in this
10 case, no.

11 Q. Okay. Let's talk about the beginning of the
12 trial. You've processed all the discovery, processed
13 the grand jury transcript, processed all the
14 information that was available to you and decided to
15 proceed with a self-defense defense. And you made
16 your opening -- well, strike that.

17 You started the jury selection process. And
18 as part of that jury selection process, you were
19 allowed to make a short presentation to the jury --
20 the potential jurors prior to trial. Do you remember
21 that?

22 A. Presentation about what?

23 Q. Just basically give a short presentation as
24 to what the case was about. Do you remember that?
25 Introducing yourself, introducing your co-counsel,

1 reading the list of witnesses, things like that.

2 A. I don't remember. I'm sure something like
3 that introductory happened.

4 Q. Do you recall the veniremen being asked
5 about if there was any reason why they couldn't serve
6 as unbiased jurors and the response to the
7 presentation of self-defense would be used? Do you
8 remember thinking along those lines?

9 A. I don't. I just haven't looked at the
10 transcripts in all these years. I'm not saying it
11 didn't happen.

12 Q. Okay.

13 A. But to be perfectly frank, I would say yes,
14 it did happen. But I would just be guessing because I
15 really don't remember right now.

16 Q. Okay. Do you not recall on March 15th when
17 the prospective jurors were addressed by the Court and
18 the issue of self-defense had been told to them, that
19 several of the jurors stated that they couldn't --
20 they could not believe self-defense?

21 A. I sort of have that -- I actually think I do
22 remember that.

23 Q. I'm going to show you the transcript of
24 July -- I'm sorry -- of March 15th of 2004, and ask
25 you just to kind of take a look at that. I don't have

1 one of those fancy computers, so I have to hand you a
2 paper transcript.

3 A. You've given me -- you haven't given me the
4 entire transcript, so you've given me --

5 Q. I have not.

6 A. You've given me page 20 and 26 through -- 26
7 and 27, page 50 and 51 and page 158. So I'll be happy
8 to look at those.

9 Q. Okay. Please.

10 MR. SCHWARTZER: While the witness is going
11 through the pages, could we go off the record?

12 MR. COLUCCI: Sure.

13 (Recess taken.)

14 BY MR. COLUCCI:

15 Q. Mr. Bloom, have you had an opportunity to
16 review that transcript that I gave you?

17 A. Yes. I've read these pages that I've
18 mentioned.

19 Q. It is a partial transcript, the various
20 pages that you've identified.

21 Have you had an opportunity to see the
22 responses by the prospective jurors to the
23 self-defense argument?

24 A. I wasn't -- I did read the areas that you --
25 that you highlighted in the entire pages. I don't see

1 it as much as their responses with regards to
2 self-defense, more with regards to the issue of
3 whether or not they could be fair as it related to how
4 many shots were fired.

5 These three that you've highlighted here all
6 had concern and indicated they couldn't be fair
7 because of Mr. Centofanti firing seven shots, the
8 number of shots. And one prospective juror said he
9 couldn't be fair because the seven shots -- he says
10 it's one thing if it's self-defense, but it's the
11 seven shots, seven times. So I have read that.

12 Q. Did that raise any flags to you that the
13 self-defense defense might not work?

14 A. I don't understand your question. Are you
15 asking me back then did those factors cause me to
16 believe that it's a possibility the self-defense might
17 not work?

18 Q. Yes.

19 A. These factors and many others, and a number
20 of other factors caused me to have a concern as to
21 whether or not the defense we were going to be
22 presenting, self-defense, was going to be successful
23 or not.

24 Q. But did these -- the responses by these
25 three jurors, did that raise a red flag in your mind

1 that the self-defense was not a viable defense?

2 A. No. These jurors would tell me that it was
3 going to be difficult with Mr. Centofanti shooting his
4 ex-wife seven times when she was unarmed is
5 problematic, is a difficult thing for the defense to
6 prevail on in the case. And these factors here
7 obviously expressed how these jurors felt they
8 couldn't be fair because of it.

9 And I think in each one of these cases, it
10 looked like Judge Mosely excused them. I can't tell
11 on the last one, but the first two, he did. But
12 nonetheless, I didn't need these people to tell me
13 that I knew that that was going to be a factor. That
14 of course was a factor in this case from the
15 beginning.

16 Q. Did it cause you any concern that these
17 jurors expressed their opinions in front of the other
18 prospective jurors?

19 A. I don't remember my state of mind at the
20 moment these jurors said that. Obviously, voir dire
21 is fraught with that. Whenever you have a group of
22 jurors who are asked questions in front of other
23 jurors, you have both the benefit and the detriment
24 that what they say can be -- can influence the other
25 jurors in a negative way.

1 I'm quite positive in this case, because
2 I've seen it in every single of the hundreds of cases
3 I've defended in front of the thousands of jurors I've
4 appeared that there were times when I took advantage
5 of that situation and brought out information which
6 was detrimental to the Government's case, to the
7 State's case.

8 I don't remember per se which ones I did in
9 this case, but I would virtually guarantee that I did
10 the same thing, meaning during my voir dire of the
11 jurors, I would try to highlight what is negative to
12 the prosecution's case and try to get one juror or
13 multiple jurors to talk about why that's -- why the
14 Government's case is bad. So that happens during voir
15 dire.

16 Q. Did you ever consider abandoning the
17 self-defense defense?

18 A. From the time we're in trial -- we talked
19 about which way to go in this case, but by the time
20 we're in trial, of course not. I don't have any
21 recollection of ever thinking -- no.

22 Q. How about prior to trial?

23 A. No. It was very much adamant
24 Mr. Centofanti -- to me, this was a -- you don't go --
25 I don't remember exactly when I formulated the idea or

1 gave up on the idea of presenting other defenses, but
2 you go into a case -- going back to very beginning, I
3 was, I think, the fourth lawyer in this case, but I
4 refused to pick up the case at the end of where
5 Mr. Albregts had handed it to me. I went right back
6 to the beginning of the case and started my analysis
7 as if it was fresh and all new.

8 And it appeared the self-defense case was
9 not just Mr. Centofanti's desire to present, it was,
10 in my opinion, the best defense that was going to be
11 available in this case. And then, of course, that was
12 confirmed by the fact he insisted on testifying. So
13 that was going to -- but it was the best defense that
14 was available.

15 It was a difficult case for the reasons I've
16 stated, but there were things that supported it, and
17 that was the best way to go.

18 Q. There were things that supported a
19 manslaughter charge as well, isn't there?

20 A. You mean a manslaughter defense?

21 Q. A manslaughter defense.

22 A. Like what?

23 Q. Well, you know the elements of manslaughter
24 better than I do. Such as heat of passion. You said
25 she rushed into the house. She was upset because she

1 had to come pick up the kid against her wishes, that
2 type of thing.

3 A. Yeah. There is a number of defenses that
4 you think about. Some of them don't even pass the
5 straight face test. Like you would feel the need to
6 kill somebody because she was late picking up her kids
7 doesn't even pass straight face test.

8 Q. How about the heat of passion?

9 A. Heat of what passion? He didn't
10 anticipate -- he didn't come in on to her. We
11 actually talked about heat of passion in the case. I
12 think Ms. Navarro actually wrote a memo regarding
13 manslaughter and the elements and trying to show kind
14 of a diminished capacity sort of a type of situation.

15 But I think our strongest thing that we were
16 hoping to find was a -- what existed in California,
17 but doesn't exist in Nevada or didn't exist at that
18 time was a -- what is called an incomplete
19 self-defense type of situation where it's subjectively
20 felt, but objectively not supported.

21 My recollection is that it didn't have such
22 a judicially created defense. California does, but
23 Nevada doesn't, is my recollection. I don't know if
24 it does now, but I don't believe it did at that time.
25 And so that wasn't available.

1 But the idea that there would be some other
2 defenses were looked at, but I didn't believe then and
3 I don't believe now that there was evidence to support
4 it.

5 Q. So the only defense that you felt was a
6 viable defense was self-defense?

7 A. Viable. That was the best defense that
8 could be presented. We still tried to present as much
9 of the emotion, the passion that you've talked about.
10 Because that helps self-defense, and it also softens
11 the jury. And we might have -- I don't know. You can
12 tell me if I asked for lessers in the case. I
13 probably did. If I could, I probably did. I don't
14 recall right now if I did or did not.

15 And just because you don't pursue a
16 particular defense doesn't mean that you can't try to
17 kind of back-door or get it in in any event. So you'd
18 have to -- I don't know. You'd have to look at the --
19 what I requested in the jury instructions, if there
20 was enough to ask for an LIO of the manslaughter.

21 But the elements of premeditation and
22 deliberation are countered by this introduction of the
23 passion that you talked about. So of course we
24 emphasize that, but I didn't -- I still don't see any
25 defense that raises to the level of any real chance of

1 dealing with some sort of non-intentional act.

2 A manslaughter is an intentional shooting
3 with some explanation or the non-intentional shooting.
4 We didn't see anything here that would show anything
5 that was non-intentional in terms of Mr. Centofanti
6 doing the shooting.

7 Q. Okay. We discussed Mr. Centofanti's
8 credibility during his testimony. Thank you.

9 And another one of the areas where he was
10 attacked by the State was his testimony that he had
11 taken his son Nicholas -- their son Nicholas to the
12 doctor on the evening of December 4th, 2000, with
13 December 5th being the date of that domestic battery
14 where Gina was arrested.

15 The State tried to play that up that he was
16 exaggerating the child's illness and, in fact,
17 attempted to impeach him with that.

18 Did you, in fact, attempt to get medical
19 records to add credibility to Mr. Centofanti's
20 testimony?

21 A. I'm almost sure we did. I don't actually
22 remember doing it right as I sit here now, but even
23 that list you gave me before, which was a list of the
24 defense discovery provided -- that was sometime in
25 February, I believe -- lists records that we got from

1 that clinic. I know we contacted the clinic. I know
2 we got materials from them.

3 Q. And wasn't the December 5th, 2000 incident a
4 major part of the murder case?

5 A. Yes. Because he wasn't -- he wasn't -- she
6 wasn't armed on the date of -- the date of the
7 shooting. So we had to attempt to establish that
8 Mr. Centofanti's fear of her was real, that he didn't
9 have the chance to wait until he could see if she was
10 going to pull out a weapon.

11 So her prior history with him -- I don't
12 remember how long before the shooting this was. A few
13 weeks or --

14 Q. Two weeks.

15 A. Two weeks or so? Relatively -- a fairly
16 recent event where she had been aggressive towards
17 him. And it's my recollection a weapon was found in
18 her car, I think, outside. I don't think she had -- I
19 can't remember. You'll have to refresh my memory
20 about the weapon part, but there was a weapon involved
21 at an earlier time.

22 So all of that was important to establish
23 this pattern that would have justified -- made his
24 fear of her and the eruption of conduct that he had to
25 use to shoot her justified.

1 Q. Weren't the medical records and the -- to
2 the doctor on December the 4th important to establish
3 his credibility?

4 A. Again, no. I mean, you could do this in
5 different ways. Mr. Centofanti had all these records.
6 He had an adamancy about what he wanted to testify,
7 and we had kind of a constant -- I don't want to call
8 it a battle, but a constant discussion about him
9 losing the chip on his shoulder, the anger that he
10 had, the venting, the rant that he wanted to show.

11 And so what's important -- I can't remember
12 the exact importance of the records the day before.
13 They seemed to have relatively minimal importance.
14 But it could be just that -- of what he did, and the
15 confirming records didn't necessarily have to be
16 presented. He really wanted them to be presented. I
17 thought that they -- after talking with him, I thought
18 we should present them.

19 I can't remember now as I'm sitting here --
20 maybe you'll refresh my memory -- why we wanted to
21 present what had happened the day before. I think it
22 had to do under the category of her being a bad mom.
23 He wanted to present so much about her being a mad
24 mom, and that wasn't really relevant. And I remember
25 many conversations with him about saying, it's not

1 just her motherhood which is at issue, although if we
2 can get it in in front of the jury, that may sour the
3 juror towards her, so that's good, but it has to have
4 some relevance to the case.

5 But as I sit here right now, I can't even
6 recall the precise thing that had to do with the
7 importance of him picking up the kids the day before.
8 I think, as best I can recall, it was simply what led
9 up to her being so violent the next day.

10 I don't think so much the details of what
11 happened the night before were itself critical, just
12 that it kind of was the flow that led to her being
13 violent the next day. And in that regard, it's even
14 less reason why you would have to present the
15 specifics of it.

16 Q. But isn't it true that the D.A. picked away
17 at Mr. Centofanti's testimony saying, you were
18 exaggerating the kid's condition. You didn't really
19 pick the kid up from school. They brought in the
20 people from the school to say that they didn't
21 remember Mr. Centofanti picking up the kid; is that
22 right?

23 A. Yes. About this subject, I remember --

24 Q. So shouldn't some type of rehabilitation
25 have been undertaken or records produced that were

1 clearly available?

2 A. Actually, in this situation, I think they
3 made -- I think my cross-examination of them -- I
4 don't know why I remember this, but I believe my
5 cross-examination of those witnesses were -- well, in
6 fact, was pretty strong in the idea that these records
7 are not very good in terms of who picks people up.
8 They're not very accurate. It's not really a solid
9 thing that -- the records might not reflect -- might
10 not reflect anything -- might not reflect him picking
11 it up. In fact, he did, but they often were like
12 little check marks. It wasn't really accurate.

13 And I think we did go after that. I do know
14 he told me for sure he wanted to testify that he
15 did -- that he did pick up Nicholas and so forth, so
16 he was going to testify to that, no matter what.

17 Q. But that's not the same as the medical
18 records situation because you did have the medical
19 records for his son, did you not?

20 A. You lost me.

21 Q. Let's go back to the medical situation where
22 he took his son to see Dr. Calixico. And you remember
23 Dr. Calixico, the name?

24 A. I do.

25 Q. He was on the witness list. He was on your

1 witness list?

2 A. Yes. And that's probably why I remember it.
3 I don't remember too much about it.

4 Q. And he was available to testify that Chip,
5 in fact, did bring Nicholas in and that Nicholas was,
6 in fact, very sick on the night of December the 4th,
7 2000?

8 A. I don't remember.

9 Q. Okay. Well, if Chip testified that he did
10 that and the State attempted to impeach him, saying
11 that he exaggerated and didn't do it, wouldn't it have
12 been important to help maintain Mr. Centofanti's
13 credibility by bring in the doctor and bringing in the
14 records?

15 A. Okay. So your question is if Mr. Centofanti
16 testified that the date before December 4th, he had
17 brought his son in for medical attention, and then the
18 D.A. said that you didn't, could the records have
19 helped? The answer is yes.

20 Q. And Dr. Calixico could have helped as well?

21 A. He could have, I guess. I don't know the
22 context any more than your question. To be honest, I
23 don't remember the context of all of this, to be
24 honest. But as you framed the question, the answer
25 is, it could have helped. I don't remember if -- to

1 be honest, I don't even remember if we called
2 Dr. Calixico, if we called any records, if we
3 presented them in some way. It was not a terribly big
4 part of the case, in my view.

5 In many respects, I have to tell you, Clark
6 Peterson was a really aggressive type of an attorney,
7 and in many respects I thought did himself a
8 tremendous disservice. I thought he did a lousy job
9 in a lot of different ways.

10 And one of the ways I thought he did a very
11 lousy job that I thought distanced him from the jury
12 was that he was like an ankle biter of a little dog.
13 He was constantly picking on tiny little things. I
14 thought the jury looked at it very negatively.

15 So a lot of that stuff that he was
16 constantly harping on, that he was constantly picking
17 on, I thought the jury to a great extent not only
18 disregarded it, but thought it was petty and
19 immaterial.

20 So my sense of some of these things, to be
21 honest -- was it this particular thing, I don't
22 remember. I remember this general thought as it
23 relates to Peterson a lot. A lot of these things
24 are -- it demeans us. It makes us look bad or worse
25 by attempting to pick -- you know, to respond to all

1 these little -- silly little peccadilloes that
2 Peterson thought were so important.

3 I don't remember, though -- if you're going
4 to -- to be frank, I do not recall if this -- if I had
5 such a thought when it related to Dr. Calixico's idea.

6 Q. Okay. Let's go to Gina's violent history.
7 You did subpoena her juvenile records?

8 A. Yes.

9 Q. And there was evidence of acts of violence
10 in her past?

11 A. Yes. You used the word "plural," and I'm
12 trying to remember -- I think there were multiple
13 ones.

14 Q. Let me see if this refreshes your memory.
15 Do you recall her being involved in an incident where
16 she tried to run somebody down with a van?

17 A. I think it had to -- I don't remember the
18 van. If you really want to -- see, I would look at
19 these records, and my memory would be refreshed
20 probably pretty quickly. But I haven't looked at
21 anything for six years. But I remember having to do
22 with a crosswalk lady and hurting somebody like that.

23 Q. Do you remember her hitting the crosswalk
24 lady with a chair?

25 A. I don't -- no. But I do remember there was

1 an incident. I mean, you -- literally, I have to take
2 a look at my records and probably remember all of this
3 very quickly, but I do remember that she had this
4 violent past and that -- in San Diego, that she was
5 trying to -- that we were attempting to bring out.

6 It wasn't relatively recently. It was a
7 fair number of years before. I don't remember how old
8 she was when she died, but I think this was when she
9 was still a juvenile, which would have made her under
10 18.

11 Q. Do you remember her resisting arrest and
12 breaking her arm?

13 A. Yes.

14 Q. Do you remember that?

15 A. Yes. That might have been from the arrest
16 that came about from that same incident, but it might
17 have been a different incident. But I remember that
18 she had to be -- the inference where she had to be so
19 restrained. She was so aggressive towards the officer
20 arresting her that he broke her arm or that she had to
21 be held in such a manner that her arm got broken.

22 Q. Do you remember an incident where she struck
23 another girl at the juvenile facility with the arm
24 with the cast on it?

25 A. As you mention it now, I do have a

1 recollection of that.

2 Q. And do you remember the closing argument of
3 Clark Peterson where he emphasizes that all of these
4 events that we've spoken about with Gina all occurred
5 in one day?

6 A. No. I saw it in the materials here.

7 Q. Okay.

8 A. In the 300-page document --

9 Q. And that doesn't refresh your memory?

10 A. No.

11 Q. Okay. Would it not have been important to
12 show that this was a pattern that occurred over a
13 period of time greater than one day?

14 A. Yeah. Of course.

15 Q. And was any evidence provided to the jury to
16 show that this activity was provided -- occurred over
17 a period greater than one day?

18 A. I don't know what we actually were able to
19 present. I know we attempted to investigate her
20 entire history, and we spent a lot of time trying to
21 do it. There were a lot of dead ends. It was a
22 fairly long time beforehand. And records and
23 availability of records and witnesses' availability.
24 And we had investigation done in San Diego.

25 Jim Thomas was a Las Vegas investigator. We

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED P. CENTOFANTI III,)
)
)
Appellant,)
)
vs.)
)
E.K. McDANIEL, WARDEN,)
ELY STATE PRISON)
)
Respondent.)
_____)

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CERTIFIED COPY

DISTRICT COURT
CLARK COUNTY, NEVADA

ALFRED P. CENTOFANTI, III,

Petitioner,

vs.

E.K. McDANIEL, WARDEN, ELY
STATE PRISON,

Respondent.

CASE NO. C172534

DEPT NO. VI

DEPOSITION OF ALLEN R. BLOOM

SAN DIEGO, CALIFORNIA

FRIDAY, APRIL 23, 2010

Vanessa R. Caparas, Certified Shorthand Reporter No. 12231
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This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

DISTRICT COURT
CLARK COUNTY, NEVADA

ALFRED P. CENTOFANTI III,

Petitioner,

vs.

E.K. McDANIEL, WARDEN,
ELY STATE PRISON,

Respondent,

CASE NO. C172534
DEPT NO. VI

DEPOSITION OF ALLEN R. BLOOM,

taken on behalf of the Petitioner at Greco,
Traficante, Schulz & Brick, 185 West F Street, Suite
400, San Diego, California, on Friday, April 23, 2010,
at 10:10 a.m., before Vanessa R. Caparas,
CSR No. 12231, Certified Shorthand Reporter, in and
for the County of San Diego, State of California.

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15
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I N D E X

WITNESS: ALLEN R. BLOOM, ESQ.

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-oOo-

MR. COLUCCI: Chip, will you identify yourself, please, for the record.

MR. CENTOFANTI: Alfred Centofanti, C-E-N-T-O-F-A-N-T-I.

MR. COLUCCI: And it's the III; correct?

MR. CENTOFANTI: Yes.

MR. COLUCCI: And you are presently incarcerated in the Ely State Prison in Ely, Nevada?

MR. CENTOFANTI: Nevada, yes.

MR. COLUCCI: Okay. And from the D.A.'s Office is Michael Schwartz.

MR. SCHWARTZER: Yes. Michael J. Schwartz from the Clark County District Attorney's Office.

MR. COLUCCI: Allen Bloom is the deponent. My name is Carmine Colucci, and I'm representing the petitioner in this case.

ALLEN R. BLOOM,
having been first duly affirmed, was examined and testified as follows:

EXAMINATION

BY MR. COLUCCI:

Q. Mr. Bloom, you've had your deposition taken

1 before?

2 A. No.

3 Q. You understand the deposition process?

4 A. Yes.

5 Q. Have you, in fact, yourself taken any
6 depositions before?

7 A. Maybe one.

8 Q. Was that recently?

9 A. No.

10 Q. Was it a civil case?

11 A. Yes.

12 Q. What we're going to do here in the
13 deposition is I'm going to ask you a series of
14 questions, and Mr. Schwartz may ask you a series of
15 questions, and you'll be required to give us answers.
16 At the conclusion of the deposition, at some time in
17 the near future the court reporter will reduce our
18 questions and your answers into a typewritten booklet,
19 which you will have an opportunity to review.

20 You will have an opportunity to also make
21 any changes in your testimony at the time you review
22 the deposition. However, if you make any changes,
23 Mr. Schwartz and I can comment on those changes if
24 that testimony is used in a subsequent proceeding.

25 Do you understand that?

1 A. Yes.

2 Q. The oath you took is the same oath that you
3 would be given in a court of law with the same
4 solemnity and effect. Do you understand that as well?

5 A. Yes.

6 Q. Do you have any questions about anything?

7 A. No.

8 Q. If I ask you a question or Mr. Schwartzer
9 asks you a question and you don't understand the
10 question, please ask either one of us to rephrase the
11 question. We'll be happy to do so, okay?

12 How long have you been an attorney?

13 A. I think -- if you don't me saying, first,
14 Carmine, you didn't ask me if I had any questions. I
15 do think there's one thing I do want to state. I had
16 been concerned regarding attorney/client privilege in
17 a number of conversations that I had with you and
18 several communications, probably through e-mail. I
19 know at least several letters. I expressed concern
20 that by answering questions to you and exposing myself
21 to cross-examination by the District Attorney's
22 Office, that I may be denying to my client,
23 Mr. Centofanti, the attorney/client privilege. So
24 towards that end we had a number of communications.

25 Q. Yes.

1 A. And ultimately what I received was
2 sufficient in my mind to cause me to come here to
3 answer all the questions in the deposition. But I
4 think it's appropriate for me to state what those
5 things, the two things that I got which caused me to
6 do that.

7 Q. You brought some documents with you. Do you
8 want to just have those marked and made exhibits to
9 the deposition? I'll have them marked as my exhibits.

10 A. No, they don't have to be. I don't need
11 them to be. It's up to you if you want to, or you
12 can. The one was the court order that you provided me
13 from the District Court of Clark County. It's file
14 stamped March 12, 2010, and it's signed by a judge
15 whose name I can't read. L --

16 Q. Cadish? C-A-D-I-S-H.

17 A. I can't read that. It looks like something
18 like Judge Cadish.

19 Q. I think the D.A. will stipulate to that.

20 MR. SCHWARTZER: We will.

21 THE WITNESS: But it has both your signature
22 and Mr. Schwartzer's signature on the copy of the
23 document. It's a certified copy. And it says that I
24 shall answer any and all questions asked of me by the
25 attorneys for the respective parties during the

1 deposition full and completely without regard to the
2 sources of said information and without regard to
3 where the information may lead, unless an objection is
4 interposed by counsel for either party which requires
5 a ruling by the Court. I got that.

6 And then shortly thereafter at my request I
7 had asked for a letter from Mr. Centofanti or some
8 direction from him advising me of that. And on March
9 12, 2010 -- I didn't receive it that day. I got it in
10 a mailing postmarked March 17, 2010. I got a letter
11 that said that -- signed by Mr. Centofanti from Ely
12 State Prison. And the relevant part says that he's
13 aware that -- he has an understanding that I was
14 claiming some sort of attorney/client privilege. And
15 that I should be advised that under Nevada law he is
16 the one who holds the privilege, and he is hereby by
17 this letter authorizing me to communicate with
18 Mr. Colucci and Deputy District Attorney Michael
19 Schwartzer with whatever information, documents or
20 other relevant materials I have to assist him in
21 preparation for the hearing. And then he cites to a
22 Nevada Supreme Court, Molina versus State, which says
23 that under Nevada law by the nature of his claim of
24 ineffective assistance of counsel, that I'm allowed to
25 disclose what is requested of me.

And I took that to mean to answer not just any questions in preparation for today's depo, but any questions at the deposition as well. And so as far as I can see -- and you have represented to me that Mr. Centofanti has waived all attorney/client privilege with regard to me making statements at this deposition. So with that information --

MR. COLUCCI: Mr. Centofanti, is that a correct statement?

MR. CENTOFANTI: Yes.

MR. COLUCCI: Can you hear?

MR. CENTOFANTI: I'm having a little difficulty, but I think I heard enough of it.

MR. COLUCCI: Okay. You heard about the waiver and you agree to waive the attorney/client privilege for the deposition?

MR. CENTOFANTI: Well, what I agreed to is that under Nevada law he's required to, you know, basically to defend himself against any allegations of ineffective assistance to counsel and answer any questions that are asked of him at the deposition regarding that.

BY MR. COLUCCI:

Q. Okay. We're going to proceed on the --

A. Let me tell you that --

1 Q. Go ahead.

2 A. See, that's a concern of mine right there.
3 That's not a waiver by Mr. Centofanti. That seems to
4 be different than what he wrote to me in the letter.
5 I'm not operating under Nevada law. Under Nevada law
6 I think what -- the Nevada law is that I -- that he
7 waives any attorney/client privilege as it relates to
8 any particular issue which is part of this hearing.
9 And that my concern was in answering these questions,
10 that there might be a question of whether or not I'm
11 going beyond what's in this, if it might be later
12 determined that I have exceeded the scope of answering
13 this question -- of a particular question.

14 If I've exceeded the scope of answering a
15 particular question and gone into areas which is not a
16 waiver, and the only way to know that would be if I
17 was in front of a judge and the judge would tell me,
18 no, this question deals with attorney/client; this one
19 deals with this particular issue. You are under
20 waiver by Nevada law. You are directed to answer the
21 question.

22 So that's why I had concerns with regards to
23 conducting a deposition where there wouldn't be a
24 judge present to rule on any concerns that I had about
25 it. So in response to that we got the court order.

1 And then in response to that I said, well, I
2 think that can only be a lawful order if
3 Mr. Centofanti waives attorney/client privilege. So
4 then you said you would arrange for that and you did,
5 and I got this letter which I talked about, March 12.
6 And maybe now since the letter is now going to be at
7 issue, maybe we ought to have it --

8 Q. It's not going to be an issue and this is
9 what I think what we need to do. In order to protect
10 you and to make the waiver by Mr. Centofanti clear, I
11 think we should take a little break. We should get
12 the letter and the order and all the documents that
13 you have regarding the waiver marked, and I'll have
14 them marked as my exhibits in order and made part of
15 the deposition. And you have a court order. You
16 should have a certified court order ordering you to
17 answer the questions. We'll take a little break. Let
18 some documents be made.

19 A. I think that's a good idea. The problem is
20 the letter that I've received appears to be in
21 contradiction to what Mr. Centofanti just said.

22 Q. We're going to clear that up because we're
23 going to take a break, and I'm going to talk to him,
24 and he's going to clear that up.

25 (Recess taken.)

1 BY MR. COLUCCI:

2 Q. Back on the record. We have just furnished
3 the court reporter four documents: The court order
4 entered in this case, filed on March 12th of 2010,
5 wherein the Court ordered Mr. Bloom to answer any and
6 all questions asked by me and Mr. Schwartzer in this
7 deposition.

8 We also have a March 4th letter, which is
9 from Mr. Bloom to me confirming our conversation
10 regarding a need for a global attorney/client
11 privilege waiver from Mr. Centofanti and for a court
12 order.

13 And another letter from Mr. Bloom dated
14 March 12 -- I'm sorry. This is a letter from -- this
15 is Exhibit 5, and it is a letter from Mr. Centofanti
16 to Mr. Bloom dated March 12th, 2010, wherein he
17 attempts, according to Molina versus State, to advise
18 Mr. Bloom about the waiver of the attorney/client
19 privilege.

20 And then my letter of March 18th, 2010, to
21 Mr. Bloom where I confirm our conversation and enclose
22 the revised original letter sent from Mr. Centofanti.
23 And also a copy of the court order that was marked as
24 Exhibit 3.

25 Is that correct, Mr. Bloom?

1 A. Yes. Actually, the March 18th letter has
2 attached a copy of Mr. Centofanti's March 12th letter.

3 Q. Okay. Thank you for clarifying.
4 (Exhibits 3 through 6 were marked for identification.)

5 MR. COLUCCI: Mr. Centofanti, are you on the
6 line?

7 MR. CENTOFANTI: Yes.

8 MR. COLUCCI: There was a previous
9 discussion which you heard between me and Mr. Bloom
10 regarding the waiver of the attorney/client privilege.
11 So right now I'm going to ask you to put on the record
12 that you are going to give Mr. Bloom a global waiver
13 of your attorney/client privilege with him and enable
14 him to authorize him to answer any and all questions
15 put to him during this deposition by me and
16 Mr. Schwartzer no matter where those answers may lead
17 or no matter what those questions ask for.

18 Is that correct?

19 MR. CENTOFANTI: Yes, that is correct.

20 BY MR. COLUCCI:

21 Q. Mr. Bloom, do you have anything else that
22 you want me to ask Mr. Centofanti regarding the
23 attorney/client privilege waiver?

24 A. No.

25 ///

1 Q. You're satisfied?

2 A. Yes. I think that's a -- I think
3 Mr. Centofanti and all these documents make it clear
4 that he has entered a global waiver and directed me to
5 answer any questions put to me.

6 Q. Okay. What is your business address?

7 A. 550 West C Street, Suite 1670, San Diego,
8 California 92101.

9 Q. Before we get into the deposition questions,
10 I want to ask you would you be available to testify in
11 Las Vegas on May 21st, 2010, at the scheduled
12 evidentiary hearing in this matter without us going
13 through the subpoena process if we have to?

14 A. I wish you would have asked me to bring my
15 calendar. I didn't have any idea there was another
16 hearing -- the date of whatever hearing was going to
17 be scheduled. So you're telling me May 21st?

18 Q. At 9:00 o'clock.

19 A. That's the first time I've heard that date.
20 I can answer that question in a few minutes by going
21 to my calendar and letting you know. I did not bring
22 my calendar with me. I'd have to call my office or go
23 online to get it. But in terms of whatever available
24 date, I'm happy to come without a subpoena as long as
25 travel expenses are provided.

1 Q. Okay. Very good.

2 How long have you been an attorney?

3 A. Almost 35 years.

4 Q. What states are you admitted to practice in?

5 A. California.

6 Q. You've obviously handled a case in Nevada.

7 Have you handled any other cases in Nevada, aside from
8 the Centofanti case?

9 A. No.

10 Q. Any other states?

11 A. Have I had any cases in any other state?

12 Q. Yes.

13 A. I have consulted with clients -- I guess you
14 would say I've handled cases -- in the State of
15 Washington and I believe the State of Oregon. And
16 when I was in law school, I handled a case in
17 Massachusetts. Maybe I assisted on several cases in
18 Massachusetts. And I've filed papers and made various
19 appearances in federal courts, the United States
20 Supreme Court, but that's not a state court.

21 Q. Where were the federal courts located?

22 A. I -- federal courts I don't think were
23 located out of the State of California, except for the
24 United States Supreme Court. Although, I appeared in
25 front of the Nevada Supreme Court on Mr. Centofanti's

1 case, but I don't believe my federal work has been in
2 any other district outside of California. It might
3 have been -- I think there were some cases, but I
4 can't recall where I filed papers in other states or
5 other districts of the federal court, outside of
6 California. But I can't recall right now.

7 Q. When you say you filed papers, that would
8 mean you entered an appearance as attorney of record?

9 A. Yes. But without making a personal
10 appearance. A portion of my work, give or take,
11 one-third of my work is post-conviction work, so I do
12 writs and appeals and petitions where I don't make
13 physical appearances, but file papers in other courts.
14 And so I've never -- I've never made a physical
15 appearance in a district court outside the State of
16 California, a federal court outside the State of
17 California.

18 Q. Do you have -- I know California has
19 specialization. Have you specialized in any
20 particular area?

21 A. I have specialized in the past. I was a
22 criminal law specialist, but that was a long time ago,
23 and the cost of keeping it up and the benefits of the
24 program seemed to be very di minimus. So though my
25 specialty is in criminal law, I have not gone further

1 with any -- I stopped sending in the things involving
2 the specialist.

3 Q. When did you do that?

4 A. I don't remember.

5 Q. Do you remember the years where you were
6 certified as a criminal law specialist?

7 A. No.

8 Q. Did you --

9 A. I think what happened was I got a ticket, a
10 drunk driving ticket. And I think when you get a
11 drunk driving ticket, they make you go through extra
12 hoops afterwards or something like that. And I think
13 it was related to that that I said this wasn't worth
14 it. I don't remember exactly what it was, but that
15 was probably --

16 Q. That would have been back in the '90s?

17 A. It was well over a decade ago, but I really
18 don't remember.

19 Q. What percentage of your work presently is
20 strictly criminal?

21 A. All of it. Well, no. I help some friends
22 out occasionally and do some things outside of that,
23 so I would say 99 percent plus is criminal. But by
24 criminal I mean trial work and post-conviction.

25 Q. In 2001, would that percentage have been the

1 same?

2 A. Yes.

3 Q. And in 2004, would that percentage have been
4 the same?

5 A. Yes. I probably do some administrative work
6 like licensing for people. I've represented people
7 who are -- were doctors, attorneys.

8 Q. Kind of quasi-criminal?

9 A. Quasi-criminal. Related to criminal charges
10 they've asked me to do their administrative hearings
11 involving licensings, pharmacists and things like
12 that.

13 Q. How did you meet Mr. Centofanti?

14 A. His neighbor Marilee Wright contacted me and
15 asked me to meet him.

16 Q. Do you recall when that was?

17 A. No.

18 Q. Was it in 2001?

19 A. I have no recollection as to the date.

20 Q. Was it after the homicide in Las Vegas
21 involving Mr. Centofanti and his wife?

22 A. Yes. It was several -- I was -- it was a
23 number of months, maybe a year or more after that
24 because I was not -- I think I was the fourth attorney
25 consulted, something like that. Maybe the fourth or

1 fifth attorney consulted.

2 Q. Do you know who the attorney was before you?

3 A. Dan Albregts.

4 Q. Did you first meet Mr. Centofanti in Las
5 Vegas?

6 A. I don't remember. I don't think I met him
7 anywhere but Las Vegas, but I can't remember per se.

8 Q. And he was out of custody at the time?

9 A. Yes.

10 Q. So I assume that you've met Mr. Albregts --

11 A. He was in a -- in a kind of a specialized
12 custody. He was not in custody, but he was under
13 strict conditions on bail. I think they were calling
14 it some sort of house arrest custody. But I think
15 your question imported whether or not he was in jail.
16 He certainly was not in jail.

17 Q. Okay. You're acquainted with Mr. Albregts
18 as well?

19 A. Yes.

20 Q. That would be Daniel Albregts?

21 A. Yes.

22 Q. He is a Las Vegas attorney; correct?

23 A. He was then. I assume he is now.

24 Q. Did you meet him about the same time that
25 you stepped into Mr. Centofanti's case?

1 A. I met Mr. Centofanti first obviously, but
2 then sometime afterward, probably -- I don't remember
3 when, but yes, sometime I would estimate shortly
4 afterward I met Mr. Albregts.

5 Q. Did Mr. Albregts turn over his files to you
6 as Mr. Centofanti's new attorney?

7 A. At some point he did.

8 Q. Are you acquainted with an attorney by the
9 name of Gloria Navarro?

10 A. Yes.

11 Q. How do you know Gloria? I'm sorry.
12 Ms. Navarro. Soon to be Judge Navarro.

13 A. Ms. Navarro was a staff attorney in the
14 Public Defender's Office. Or maybe the alternate
15 public defender.

16 Q. Special Public Defender's Office?

17 A. Okay. It was not the public defender. It
18 was an alternative or if you've given its name Special
19 Defense Public Defender, I'll accept that.

20 I understood it was an office created to
21 handle conflict cases, a public defender handling
22 first appointment and the alternate of Ms. Navarro's
23 office to handle conflict cases. And she was a staff
24 attorney in that office.

25 Q. So you met her in Las Vegas as well?

1 A. Yes.

2 Q. Was she appointed by the Court to assist you
3 as local counsel?

4 A. Yes.

5 Q. Let's talk about her role as local counsel.
6 You had contact with her from approximately 2001
7 through the conclusion of Mr. Centofanti's trial in
8 2004?

9 A. My hesitation is I don't remember the exact
10 date I started on the case. But from when I started,
11 soon after I started on the case up until I was --
12 after the verdict in Mr. Centofanti's case and shortly
13 after the verdict was my official affiliation with
14 Ms. Navarro. I don't believe I've had much of any
15 contact with her after she and I were relieved from
16 Mr. Centofanti's case.

17 Q. Do you recall if you've had any contact with
18 her since the verdict in this case?

19 A. I do.

20 Q. Did you have contact with her?

21 A. Yes.

22 Q. And over what period of time and how many
23 times?

24 A. I can only estimate that it was a short
25 period of time, and it was a few times of a content.

1 Q. Have you had any contact with her in the
2 last year?

3 A. No.

4 Q. What was her function as your local counsel?
5 How did she assist you with your preparation for
6 Mr. Centofanti's trial?

7 A. She was an assistant in the case, and
8 provided assistance in a wide variety of areas. She
9 helped in administrative matters like getting
10 documents and filing motions and --

11 Q. Did she prepare motions?

12 A. I believe she did. Or at least she prepared
13 drafts.

14 Q. Were those prepared at your instructions?
15 By your instructions?

16 A. There's no question that she prepared -- I
17 really don't remember. She, in general, assisted and
18 probably prepared, actually wrote some motions I
19 believe or drafted some motions, but I don't remember
20 which ones. If she did so, she did it at my general
21 direction. She may have on her own said, well, we
22 should do something like this also and added her
23 input, but I don't recall. But mostly she was working
24 at my direction.

25 Q. Did she draft on her own any substantive

1 motions?

2 A. I don't remember.

3 Q. At the time she was appointed to assist you
4 as local counsel, she had been an attorney for quite a
5 while; is that correct?

6 A. I don't know.

7 Q. How about Mr. Albregts?

8 A. Are you asking how long he had been an
9 attorney?

10 Q. Yes. What was your impression how long he
11 had been an attorney prior to you meeting him?

12 A. I would have estimated he was an attorney
13 for anywhere between 10 and 20 years.

14 Q. He was well experienced; correct?

15 A. Yes.

16 Q. And so was Gloria Navarro; correct?

17 A. I don't really remember. I think
18 Ms. Navarro's experience was not as extensive as
19 Mr. Albregts'. I don't think she had had the breadth
20 of cases that he had had. I don't really know. My
21 general recollection is that she was an experienced
22 attorney, but I could not tell you how many years she
23 had. I don't believe -- I'm not sure, but I don't
24 believe she had ever handled a homicide case on her
25 own as of that date.

1 Q. Did she indicate to you that she had had
2 jury trial experience?

3 A. Yes.

4 Q. Did she indicate to you that she had been a
5 private lawyer prior to being in the Special Public
6 Defender's Office?

7 A. I don't know. She may have. I have no
8 recollection of that.

9 Q. Prior to coming to the deposition today did
10 you review any documents to prepare you?

11 A. Yes.

12 Q. What documents did you review?

13 A. I reviewed the memorandum of points and
14 authorities in support of petition for writ of habeas
15 corpus post-conviction, and the 333-page document that
16 was provided to me, I believe, by Mr. Schwartz or
17 his office. And I think you confirmed that I had
18 received a copy of it. So I reviewed some of the
19 materials in there.

20 I reviewed all of the exhibits that we have
21 marked 2, 3, 4 and 5. I reviewed some general
22 correspondence from you, cover sheets having to do
23 with 2, 3, 4 and 5, and a prior letter of
24 Mr. Centofanti's that had to do with attorney/client
25 issues. Including -- that letter was January 26,

1 2010.

2 I looked at a February 3rd, 2010 order
3 signed by Judge Cadish. It's a stamped document.
4 Order allowing discovery. And a February 5th, 2010
5 notice to take my deposition.

6 I also had my office prepare a memo
7 regarding defense discovery in Nevada, to refresh my
8 memory. And I have here a copy of the case, which I
9 think deals with it. The case is called Floyd v.
10 Nevada. 18 Nevada 156.

11 And I have with me here the two letters that
12 I wrote to Mr. Centofanti: May 6th, 2004 and May
13 16th, 2004. I don't have a signed copy of them, so I
14 must have printed these off my computer because
15 they're not on my letterhead, and I wouldn't have sent
16 them if they weren't on my letterhead. I think these
17 were -- they appear to be letters written shortly
18 after the verdict. And I think that's all the
19 materials that I've reviewed.

20 Q. Did you review Mr. Centofanti's petition, a
21 copy of his petition for writ of habeas corpus
22 post-conviction? Not the points and authorities in
23 support but the petition itself?

24 A. No. I don't think I have ever been
25 provided.

1 Q. Were you able to review the State's answer
2 or response to that petition?

3 A. I assume I was able to, but I did not.

4 Q. Were you not provided with a copy?

5 A. I was not provided with a copy. I didn't
6 know such a petition existed or the State had
7 answered. I just assumed there had been other
8 litigation filed, but I didn't receive it.

9 Q. Do you have in your possession any other
10 documents relating to the petition for
11 post-conviction?

12 A. Yes.

13 Q. What other documents do you have?

14 A. I have at my office probably thousands of
15 pages of materials that relate to his trial.

16 Q. I know you sent me somewhere between four
17 and six boxes of material. Did you retain a copy of
18 all of the items that you sent to my office?

19 A. I don't know. I doubt it. I really don't
20 know. I did not look to see what I had left here.

21 You had communicated with me a long time
22 ago, not just recently in preparation for this
23 petition or this depo all the materials, because it's
24 my understanding that you've been his appellate
25 attorney for a long time. I don't really remember

1 when, but I'm sure it's a number of years. And you
2 and I have communicated to some degree back at that
3 time. And I don't remember when that was, but my --
4 if you had -- I'm guessing four or five years ago
5 probably. And so I don't remember what letters, what
6 materials I've actually sent to you if I kept copies
7 of them.

8 Q. Would it refresh your memory if I told you
9 that I represented him at sentencing, so that I took
10 your place prior to sentencing? Does that sound right
11 to you?

12 A. Yes.

13 Q. And prior to sentencing, you sent me, like I
14 said, four to six boxes of discovery. The discovery
15 that you sent to me was that discovery that was
16 provided to you by the District Attorney's Office?

17 A. I have -- I couldn't -- I'm sure it did
18 contain that, but I don't remember the materials that
19 I sent to you.

20 I can tell you my general practice in that
21 regard would be to send you everything that I had in
22 my possession, whether or not I had given it to
23 Mr. Centofanti already. And I had given him copies of
24 everything that we -- he had copies of all materials
25 in this case before I let -- while I was representing

1 him. He had copies of all of the discovery, all of
2 defense discovery, all of the materials that we
3 received. And so he had everything.

4 But my general policy would have been --
5 because -- would be to have sent you copies of
6 everything that I had. And so I suspect that I sent
7 you everything that I had or copies of everything.

8 I probably sent you originals to some degree
9 because I didn't want to make copies of them. But I
10 also -- I'm sure I sent you copies of other materials.
11 But your question is what exactly I had, I could not
12 recall.

13 MR. COLUCCI: I'm going to show you what's
14 been marked as Exhibit 1 and 2. Would you take a look
15 at that.

16 (Exhibits 1 and 2 were marked for identification.)

17 BY MR. COLUCCI:

18 Q. One, being a copy of your resume or C.V.; is
19 that accurate?

20 A. I don't know. I don't remember which date
21 this is or when this was, but if you want me to look
22 at it line by line for every item, I can do that. Can
23 you tell me when this was --

24 Q. I can't tell you. And if it's not updated,
25 that's fine. But are the representations made on the

1 C.V. correct as they stand?

2 A. Well, it shows my address on Fourth Avenue,
3 and I haven't been on Fourth Avenue probably for seven
4 or eight years, so my guess is this is old as of that
5 time. So there probably is additional information on
6 here -- I mean, additional information than that which
7 is on here.

8 Q. Okay.

9 A. Because I obviously have continued to
10 practice law. And I see here I used an old e-mail
11 address, which I haven't used in probably -- I don't
12 know -- probably 10 or 12 years, so I think this is
13 relatively dated. But except for the address and the
14 e-mail, all the information on this is correct.

15 Q. Except for your address and e-mail?

16 A. Except for address and e-mail. But it's
17 incomplete because I've continued to practice since
18 whenever this was -- whenever that document was
19 created.

20 Q. I'm going to show you what's been marked as
21 Exhibit 2. And this looks like an Internet web page,
22 I guess. Help me out over here. Is it a web page?
23 What do we call it?

24 A. Web page.

25 MR. SCHWARTZER: Web page.

1 THE WITNESS: This is a copy of the first --
2 I think the opening page of my web page.

3 BY MR. COLUCCI:

4 Q. Is the information on that document correct?

5 A. Yes.

6 Q. Now, getting to the point where we are going
7 to talk about the first scheduled trial in
8 Mr. Centofanti's case, that first trial was scheduled
9 sometime in 2001. Do you recall that?

10 A. No.

11 Q. Does that date sound right to you?

12 A. It doesn't, no.

13 Q. The year doesn't?

14 A. I have absolutely --

15 Q. Would looking at --

16 A. All I can tell you is there was a number of
17 dates.

18 Q. Would looking at the minutes of the court
19 proceedings, would that assist you in refreshing your
20 memory?

21 A. No. I would assume the minutes would be
22 correct, but I don't really remember the dates. And
23 looking at a document that said it was would not make
24 my memory think it was. I don't dispute it, but I
25 really don't remember.

1 Q. There were two sections of time where you
2 prepared for trial in Mr. Centofanti's case; is that
3 right?

4 A. No.

5 Q. No? There was the first proceeding and
6 first trial setting back before 2004, and then the
7 preparation for the 2004; is that not correct?

8 A. That's not correct.

9 Q. Well, tell me what is correct.

10 A. There were more than that because my
11 recollection is there were a number of trial dates.

12 Q. Okay.

13 A. But I think what you're getting at is that
14 there were -- those trial dates were separated by a
15 suspension of the criminal proceedings where the
16 District Attorney brought a writ and sought to gain
17 relief from the Nevada Supreme Court with regards to a
18 trial court ruling. A ruling that dealt with the
19 subject of whether or not they could force
20 Mr. Centofanti to submit to a psychological test. And
21 that is correct.

22 So there was a ready-to-go-to-trial period,
23 and then there was this break because there was
24 litigation or suspension of the trial and litigation
25 having to do with the Supreme Court writ brought by

1 the State of Nevada. And when that writ was over and
2 we prevailed, Nevada was -- the D.A. was not allowed
3 to go forward or not allowed to subject him to a
4 psychological review. Then there was a recent joining
5 of the trial period. But my recollection is that for
6 both trial periods there were multiple trial dates.

7 Q. Okay.

8 A. So for the first time when we're getting
9 ready, I don't think it was just one date that we were
10 getting ready. My estimation would be that we had a
11 date and it had to get continued for various reasons,
12 and probably had to get continued another time. So I
13 couldn't tell you how many times.

14 And the same thing after the trial court
15 resumed its jurisdiction, that there were a number of
16 dates in there.

17 Q. Okay. Prior to the Supreme Court issuing
18 its stay order with respect to the ruling on the writ
19 of mandamus filed by the State for the psychological
20 evaluation, you were in the process of preparing for
21 trial; is that correct?

22 A. I'm sure that's the case, yes.

23 Q. Discovery was made available to you from the
24 D.A.'s Office; correct?

25 A. I don't understand your question.

1 Q. In your preparation for trial before the
2 suspension of proceedings, you were given discovery by
3 the District Attorney's Office; is that correct?

4 A. Yes. I had either gotten it from
5 Mr. Albregts or I got it directly from the D.A.'s
6 Office. Or both, probably.

7 Q. And that discovery included the police
8 reports, their expert reports, test results, things
9 like that?

10 A. Things like that, though, I couldn't tell
11 you what experts or precisely what pages were provide
12 or when.

13 Q. The D.A.'s Office usually has an open file
14 policy. Did they have an open file policy with
15 respect to this case?

16 A. I don't know what they usually have. So the
17 premise of your question says that they do. And if
18 they do, they do. I don't know what that means.

19 Q. Did they offer you an open file review? In
20 other words, did they suggest to you that you could
21 come up to their office and look through their file to
22 make sure you had all of their discovery?

23 A. I don't remember. I really don't remember
24 if those words were ever said to me.

25 My general recollection is that something

1 like that was said to me.

2 Q. Do you recall whether you visited their
3 office to review their files prior to the 2004 trial?

4 A. You're asking me at any point prior to 2004,
5 did I ever go to the D.A.'s Office to look at any
6 materials?

7 Q. Let me just say subsequent to the ruling by
8 the Supreme Court allowing the criminal proceeding to
9 continue.

10 A. Yeah, the time period then after we got back
11 in trial mode or trial jurisdiction, did I go to the
12 D.A.'s Office, I don't remember. I'm sure I must have
13 gone to the D.A.'s Office, but I don't remember.

14 Q. Aside from going to the D.A.'s Office, do
15 you recall having any meetings with either Clark
16 Peterson or Becky Goettsch regarding discovery issues
17 and obtaining discovery?

18 A. Yes.

19 Q. Was that after the writ of mandamus was
20 decided?

21 A. I'm sure I had meetings before. I don't
22 remember if Mr. Peterson was on the case before the
23 Supreme Court matter or not. I think Ms. Goettsch was
24 on the case. But I know I met with them regarding
25 issues on the case throughout the entire time period

1 that I was attorney on the case.

2 Q. Did you participate in an exchange of
3 discovery throughout the time that you were involved
4 in the case?

5 A. I don't know what that means.

6 Q. While you were representing Mr. Centofanti,
7 did you engage in an exchange of discovery between you
8 and the District Attorney's Office? And by that I
9 mean, police reports, lab reports, expert reports,
10 transcripts, things like that.

11 A. Are you asking if I got materials or gave
12 materials or both?

13 Q. Both.

14 A. Yes, I received materials from the D.A.'s
15 Office, and I provided defense discovery to the D.A.'s
16 Office.

17 Q. Do you recall was it a large amount of
18 discovery from the D.A.'s Office?

19 A. Yes.

20 Q. And in your investigation did you generate a
21 large amount of discovery as well?

22 A. Yes.

23 Q. And you retained experts as part of your
24 trial preparation for Mr. Centofanti's trial; correct?

25 A. Yes.

1 Q. And as a result of that, you provided
2 discovery relating to the experts to the District
3 Attorney's Office.

4 A. Some of them, yes.

5 Q. Do you recall which ones you provided
6 discovery on? If I gave you a name, could you
7 maybe --

8 A. Well, my recollection is from looking at the
9 memorandum that we talked about, the 333-page
10 memorandum, I know the name Jimmie Trahin was someone
11 that we finally were able to get us to assist on
12 criminalistic reconstruction issues.

13 There was a -- I think his name was Stuart.
14 Although, I can't remember for sure. He's a blood
15 splatter expert.

16 Q. Stuart James?

17 A. Stuart James, a blood splatter expert. I
18 think Lisa DiMeo assisted in blood splatter materials.
19 I think Glen Lipson was a psychologist who we
20 retained. Scott Fraser, I think, was a human factors
21 person that we retained. John Eisele was a
22 pathologist that we retained.

23 Those people that I've given -- that list
24 that I've just started with, Trahin to Eisele, were
25 ones that we retained and were actually -- we decided

1 to use and use materials we did provide to the
2 District Attorney. There were some other experts that
3 we retained but did not use. They weren't -- they
4 didn't provide favorable evidence, so we didn't call
5 them as witnesses, and we didn't present them as
6 witnesses. So we didn't provide information with
7 regards to them.

8 Q. Do you --

9 A. I can't remember if there were other
10 experts. I also know we had a Lieutenant Frank. I
11 don't remember his first name. He was going to
12 testify as an expert on police procedures. His wife
13 became ill, had cancer and he refused to go forward.
14 He was unavailable. I'm sure that we presented
15 materials to him -- about him.

16 And then we had our investigator, not an
17 expert, but he was an investigator. And I'm sure he
18 generated reports. His name slips my mind right now.
19 Big, tall guy. Nice guy.

20 Q. Jim Thomas?

21 A. Jim Thomas. That's about the most I can
22 remember right now.

23 Q. Okay. With respect to James Trahin, is it
24 T-R-A-H-I-N?

25 A. Yes. I think he's Jimmie. I think he

1 refuses to call himself James.

2 Q. Okay. You provided information about his
3 work to the District Attorney's Office?

4 A. I'm sure I did. I don't actually remember
5 handing it to them, but I'm positive that I would have
6 done so.

7 Q. He testified at trial, did he not?

8 A. He did.

9 Q. And Stuart James, you gave the D.A.'s Office
10 information about him?

11 A. Yes.

12 Q. The information from both these guys would
13 have included a C.V., notes and any reports; correct?

14 A. It should have. I would assume it did.

15 Q. Same with Lisa DiMeo?

16 A. Probably so, yes.

17 Q. What about Scott Lip- -- Scott Fraser?

18 A. Scott was testifying -- my recollection is
19 as a human factors person. How people would have
20 reacted under fight or flight. How people respond to
21 pressure. What happens. How it's a physiological
22 function; it's not just an emotional one. Or the
23 emotions are borne of physiological responses the same
24 way that a caveman would run away from the
25 saber-toothed tiger. The body would react in a

1 particular way. Blood would flow away from the
2 stomach into the brain. Various things would be
3 emphasized. Thinking would be impacted a great deal.

4 But I don't believe he -- I don't know. If
5 he wrote a report, I would have provide it. I'm sure
6 I would have provided his C.V. I probably had to
7 provide the pages upon which he relied. But he was
8 not making an evaluation of Mr. Centofanti himself.
9 He is a Ph.D. He is a psychologist, so he's qualified
10 to have done so, but he wasn't doing so. So I don't
11 think there were -- I don't know if he generated any
12 notes per se, but if he did, I would have provided
13 them.

14 And Dr. Lipson testified also in general is
15 my recollection, as opposed to an actual evaluation of
16 Mr. Centofanti. But I don't remember -- it was much
17 like Dr. Fraser. We were trying to protect
18 Mr. Centofanti and trying to ensure that he would not
19 be subject to evaluation by the State. So we didn't
20 want Dr. Lipson to do a full evaluation or render a
21 psychological opinion on him.

22 Q. Okay.

23 A. But I assume -- I can't remember exactly
24 what Dr. Lipson testified to, but I believe it was
25 just general subject matter having to do with how

1 people would psychologically respond to fear or things
2 like that.

3 Q. Okay. And Dr. Eisele, you provided his
4 C.V., notes and reports to the D.A. as part of your --

5 A. Yes.

6 Q. -- reciprocal discovery obligations?

7 A. Yes.

8 Q. The same with Lieutenant Franks?

9 A. I'm sure I did. Although, Lieutenant
10 Franks, I don't know if he created any notes. But I'm
11 sure that he was -- I'm sure Lieutenant Franks was
12 provided materials. I'm sure he was provided a lot of
13 materials with regard to police practices.

14 Q. Now, there was a point in time in the very
15 beginning of the case where Judge Gibbons kind of put
16 your feet to the fire to identify experts because the
17 State was complaining that they hadn't received any
18 reports. Do you recall that?

19 A. Sort of. I vaguely remember that happening.
20 You say it was with Judge Gibbons? I really don't
21 remember that, but I do remember it happening.

22 Q. And as a result of that you identified
23 certain experts for the State and ultimately provided
24 them with the expert witness notices that were
25 required; correct?

1 A. Yes.

2 Q. Okay. And Lieutenant Franks was part of
3 that process; am I right? You identified him to --

4 A. I identified --

5 Q. -- one of the district court judges?

6 And if there was a transcript that showed it
7 was Gibbons, that then would be correct?

8 A. Yes.

9 Q. Do you recall having a discussion with
10 either Ms. Goettsch or with Clark Peterson where they
11 complained that Lieutenant Franks wouldn't cooperate
12 because he wouldn't testify on behalf of the defense
13 due to his Metro connections?

14 A. You having said that now I do remember
15 something like that.

16 Q. Do you recall having that discussion in
17 court?

18 A. No.

19 Q. Okay. What did you remember when I
20 mentioned that to you?

21 A. That I in some fashion turned to the
22 District Attorney and told them they can have any
23 belief that they want, but they're mistaken.
24 Lieutenant Frank is going to be available. He's going
25 to do it. And I may have even said something to them,

1 and if I found anything that -- of any pressure by
2 them in an attempt to stop him in some way, that would
3 be sanctionable. I don't remember what I said to them
4 in court.

5 We probably had a conversation about that
6 subject on more than one occasion. But I remember --
7 I remember saying something to them or saying
8 something to the Court or to them in the Court's
9 presence or maybe in their presence to the effect that
10 they can have any guess they want, but they're wrong.

11 Q. Okay. Do you recall making a representation
12 to the Court that Lieutenant Franks would honor his
13 subpoena? Had told you that he would honor his
14 subpoena?

15 A. I'm sure I did.

16 Q. Do you recall when this discussion about
17 whether he would honor the subpoena or not, the judge
18 asked you whether he was going to appear, and you
19 indicated to the Court that you were going to meet
20 with him at lunchtime and discuss that? Do you recall
21 that?

22 A. No. Is that supposedly to Judge Gibbons?

23 Q. Yes. That's what I think.

24 A. I don't remember.

25 Q. How many times did you meet with Lieutenant

1 Franks?

2 A. I don't remember.

3 Q. Was it more than once?

4 A. I don't remember.

5 Q. Do you remember meeting him the first time?

6 A. I don't remember. Most of the meetings with
7 Lieutenant Frank were through -- were done on behalf
8 of the investigator. The initial contact, finding him
9 and so forth was done by -- what's his name?

10 Q. Jim Thomas?

11 A. Jim Thomas. Mr. Thomas and Lieutenant Frank
12 I think had some good working relationship. So most
13 of those contacts I think were by Mr. Thomas. But I
14 could not tell you how many times I met Lieutenant
15 Frank.

16 Q. But you did meet him?

17 A. I don't even remember that. I truly don't
18 even recall that.

19 Q. Wouldn't you have prepped him for trial?

20 A. Yes. You're asking if I absolutely
21 remember. I really don't remember meeting him. But
22 if you ask me my general course of conduct, that's
23 something else.

24 Q. Okay. In your general course of conduct,
25 would you have met with Lieutenant Franks if in fact

1 you were going to use him for trial?

2 A. Yes.

3 Q. Do you recall in your opening statements
4 telling the judge that Lieutenant Franks was going to
5 come in a testify?

6 A. Yes.

7 Q. So with that in mind, would you have met
8 with Lieutenant Franks in order to prep him for trial?

9 A. Yes.

10 Q. Did you make any notes of your meetings with
11 Lieutenant Franks?

12 A. I don't know.

13 Q. Would your regular course of conduct be that
14 you would make notes of an interview with, I would
15 imagine, a fairly important witness?

16 A. I don't remember. He was telling -- yes.
17 The answer is yes.

18 Q. Wasn't he scheduled to testify about
19 shooting procedures and officer shooting
20 investigations?

21 A. Yes.

22 Q. And wasn't he supposed to testify about the
23 failure of officers to realize how many shots they had
24 fired in a short period of time?

25 A. Yes.

1 Q. Is that a correct characterization or do you
2 have another characterization?

3 A. No. Now that you mentioned, I couldn't
4 remember exactly what police procedure you're talking
5 about. But now that you've mention it, yes, that's
6 why we retained him so that we could talk about --
7 hold on one second. Because I just remembered another
8 expert that we contacted also. I can go back and
9 answer that. It didn't have to do with Lieutenant
10 Frank. If you want me to amend that --

11 Q. Sure. Would you just go ahead and tell me
12 who that expert was?

13 A. I don't remember his name, but he was the
14 owner of a gun shop in Nevada, in Las Vegas.

15 Q. Would it be Robert Irwin?

16 A. I don't remember his name, but I had -- if
17 that's his name, I apologize. He was a very giving
18 person of his time; he felt strongly about the case.
19 And I spent a long time with him on several different
20 occasions. And I hadn't remembered his name until --

21 Q. Did you actually go to his gun shop?

22 A. Several times.

23 Q. Was it The Survival Store?

24 A. I couldn't tell you.

25 Q. Was it on Tropicana?

1 A. I don't think so. I think it was -- is
2 Tropicana a street that runs -- crosses --

3 Q. East and west.

4 A. -- the strip?

5 Q. Yes.

6 A. Yes, then it was. It could have been on
7 Tropicana. I went to his shop. It's a big, big shop.
8 It's a gun shop. It has -- you mentioned survival
9 store. It has lots of things in it, like shooting
10 range and things like in it and --

11 Q. One of the big sales point is that they
12 allow people to come in and shoot machine guns. Does
13 that ring a bell?

14 A. No. But I do remember a lot of people and a
15 big staff, and he was mostly the head of this whole --
16 I don't know if he was the owner, but he was certainly
17 the head of it. And they were dealing with -- the
18 things they sold involved things like knives and
19 survival gear and all sorts of stuff like that. I had
20 forgotten him as another person that I had talked to.

21 Q. Do you remember him being a large heavysset
22 man?

23 A. I apologize to him because he was very nice
24 and giving of his time. But I really don't recall as
25 I sit here right now. I probably would recognize him

1 if he walked into this room. But if you ask me to
2 give a physical description, I truly don't recall.

3 I have a recollection of where we were in
4 his building and where we were meeting. I can
5 describe that. And I remember going there on several
6 different occasions, but I do not recall what he
7 looked like.

8 And now back to the Lieutenant Frank, yes.
9 You having said that Lieutenant Frank -- what we were
10 going to call Lieutenant Frank for was going to be to
11 try to show that -- the deficits in Mr. Centofanti's
12 testimony having to do with not being able to remember
13 certain things or not knowing how many times he fired
14 a weapon, how he would respond. How officers -- even
15 officers who are trained will fire multiple times when
16 it's quote, not necessary, unquote.

17 Lieutenant Frank was going to speak about
18 how that happens, not just for lay people but for
19 officers.

20 Q. Okay. You do recall putting Officer Franks
21 on your expert witness though; is that correct?

22 A. Yes.

23 Q. And did he give you any notes or reports or
24 any opinions of any kind that you were going to use
25 him to back up at trial?

1 A. You're asking me did he provide me written
2 materials?

3 Q. Written materials or an oral statement.

4 A. Well, he did -- I don't remember if he
5 provided any written materials. He did tell us
6 what -- that he would testify just as I just said.
7 That he would testify that what we were asserting from
8 Mr. Centofanti had happened was an explosion of
9 conduct in a small period of time and a reaction that
10 can happen to officers and has happened to officers as
11 well. So he told -- he told us that.

12 Q. When you say "us," he told you and Jim
13 Thomas?

14 A. Yes. I can't remember Lieutenant Frank
15 without looking at any notes and this being a number
16 of years ago. I don't know. Trial was six years ago.
17 I guess talking with him must have been at least six
18 years ago. I don't remember it precisely to whom he
19 spoke, and -- but in general, that's what he had told
20 us.

21 Q. Do you recall hearing his explanation about
22 this explosion of conduct?

23 A. What do you mean explosion of conduct?

24 Q. Well, that's the term you used, I think,
25 didn't you? About Chip's explosion of conduct?

1 A. I don't know if Lieutenant Frank used that.
2 I said we were using it to try -- I was characterizing
3 Mr. Centofanti's conduct as being kind of an
4 explosion. Something in a short period of time, just
5 exploded.

6 The District Attorney was trying to show
7 this was long, it was over a long period, it was well
8 thought out. It was -- judging by the number of
9 shots, that it was a calculated conduct. And we were
10 trying to show very much the opposite. That it was
11 very spontaneous, unthought, provoked, an explosion
12 type of situation. And Lieutenant Frank was going to
13 testify that there had been examples where he -- I
14 think, it was he who actually reviewed or had done --
15 talked to police officers.

16 And that also reminds me of why we called
17 Dr. Lipson too. Okay. But that he, Lieutenant Frank,
18 had interviewed police officers or reviewed shootings,
19 and there had been this -- he observed circumstances
20 where officers did not recall how many times they had
21 fired and didn't -- and that they had quote,
22 overreacted, of what somebody not in the middle of
23 that situation would have thought was reasonable but
24 in response to the fear that they faced, that that's
25 how they reacted.

1 Q. In making a decision of whether or not to
2 use him as a witness, he told you about these things
3 that you've just mentioned to us?

4 A. Yes.

5 Q. About reviewing the police policies,
6 procedures and being able -- being an expert in the
7 area of where he'd be giving an opinion about officers
8 not remembering or realizing how much shots they had
9 fired?

10 A. Yes.

11 Q. And after, I'm assuming at least one
12 conversation with him, you made the decision to use
13 him as an expert?

14 A. Yes.

15 Q. Do you recall if Jim Thomas was present with
16 you when you had this discussion with Lieutenant
17 Franks?

18 A. No.

19 Q. Lieutenant Franks' first name, by the way,
20 is Steven. If that helps your memory at all.

21 A. I doesn't. I can tell you that my course --
22 my regular course of conduct or business would have
23 been that Jim Thomas would have been there with me.

24 Q. Okay. Where did you usually have your
25 meetings when you were in Las Vegas? Did you meet any

1 of the experts in Las Vegas?

2 A. Yes.

3 Q. Aside from Lieutenant Franks?

4 A. I'm sorry. I don't -- aside from Lieutenant
5 Franks, what do you mean?

6 Q. I said did you --

7 A. You mean the other --

8 Q. Did you meet the experts in Las Vegas?

9 A. Yes, I believe every -- well, probably --
10 Dr. Lipson and Fraser are from San Diego, so I
11 probably met them in San Diego. Well, they're not
12 from San Diego. Lipson's from San Diego. Frasier's
13 from L.A. I probably met them or spoke to them when I
14 was in San Diego.

15 Lisa DiMeo is from San Diego. Eisele, I
16 believe, was living in Northern California, so I
17 probably spoke to him on the phone. Trahin, I think
18 he's from L.A. I know I met him at least the one day
19 that we had access to the condo in Las Vegas. And I
20 probably met him on several occasions.

21 Stuart James, I know I met him in Las Vegas.
22 The ballistics man whose name I can't remember. The
23 Survival Store.

24 Q. Irwin.

25 A. Robert Irwin?

1 Q. Robert Irwin.

2 A. I know I met him in Las Vegas.

3 Q. Did you mention Lieutenant Franks to Robert
4 Irwin in your discussions with him about firearms?

5 A. I don't remember.

6 Q. Would you have provided to Lieutenant Franks
7 information about the gun that was used and the type
8 of weapon, the safety features, perhaps even a picture
9 during your discussions with him?

10 A. Probably.

11 Q. That would be your normal course of conduct?

12 A. I don't remember. I don't know if we
13 were -- I would have provided him some information
14 obviously about the shooting. And Jim Thomas would
15 have provided him some information that had to do with
16 police reports about the shooting.

17 I don't know if we were asking him to give
18 an opinion. I don't know if he was qualified to give
19 an opinion with regards to the particular weapon that
20 was used to kill the decedent in the case. I'm almost
21 positive that that weapon is what we presented to
22 Mr. Irwin, and that he was evaluating that type of
23 weapon and that specific weapon, and probably looking
24 at ammunition as well, and things like that. But I
25 don't remember if Lieutenant Franks qualified for that

1 purpose or if we would have provided it to him.

2 Q. Irwin did not testify at trial, am I
3 correct?

4 A. I don't believe Irwin testified at trial.

5 Q. So at the end of the trial when Judge Mosely
6 asked you if you had any other witnesses, you
7 mentioned to him Lieutenant Franks, and you mentioned
8 to him I think Lisa DiMeo. I could be wrong on that.
9 But two witnesses that you were going to call were not
10 available for some reason. Does that ring a bell with
11 you?

12 A. I don't remember Ms. DiMeo not being
13 unavailable. My recollection is Ms. DiMeo was
14 ultimately not called because we had -- I don't think
15 she could have helped at that stage. I think we came
16 to the conclusion that she probably would hurt the
17 case.

18 Lieutenant Frank definitely was not called
19 for a tactical reason. He was not called because he
20 refused to testify. We couldn't find him; he was not
21 responding to us. And we felt that if we enforce the
22 subpoena, that he would be -- he would be angry and
23 upset at us and present testimony in a manner which
24 would hurt us or in a demeanor that would hurt us.
25 That was a tactical call.

1 I believe his wife had either just died or
2 had become gravely ill, and he needed to attend to
3 her. He had just -- something about cancer and his
4 wife had just occurred right about the same time as
5 his testimony. It occurred a very short time
6 beforehand. It had come out of the blue; nobody had
7 any idea this was going to happen. I had no idea it
8 was going to happen, and Mr. Thomas had no idea it was
9 going to happen. And all of a sudden it happened.
10 And we felt that -- I felt that if we attempted to
11 enforce a subpoena, that he would present in a
12 negative way. He might very well take it out on us.

13 And the -- his testimony was going to be
14 important only if he seemed to be vouching for the
15 side of our case. Obviously he would never ever be
16 allowed to say, "I'm in favor of Mr. Centofanti. I am
17 the against the District Attorney," or something like
18 that. He would never be allowed to testify about
19 that. But the demeanor of a witness is very important
20 when they testify. And we felt that considering what
21 he had told Mr. Thomas, that he didn't want to
22 testify, he had to back out of testifying, he refused
23 to testify, something along the lines of, "You can try
24 to enforce a subpoena if you want, but I'm not going
25 to be there. My wife comes first." Something like

1 that. That caused me to say that this would be too
2 great of a risk to call.

3 Q. Did you ever talk to him about the situation
4 with his wife's illness?

5 A. I don't remember. Somebody communicated
6 with him. I don't remember. My guess -- my estimate
7 would be that it was Jim Thomas.

8 Q. Would you have instructed Jim Thomas to
9 release him from the subpoena?

10 A. I don't know if I told him to release him
11 or -- if he was released from the subpoena, it would
12 have been at my direction. Jim Thomas would not have
13 done so if I hadn't have directed him to do so. I
14 don't know if we've ever released him from the
15 subpoena. I don't know. Even to this moment if we've
16 ever released him from the subpoena.

17 But we made a decision not to call him for
18 the reasons I've stated. But the actual release from
19 the subpoena I don't remember.

20 Q. So you communicated that decision to
21 Mr. Thomas and then he somehow communicated that to
22 Lieutenant Franks?

23 A. I don't know if it was that way or
24 Lieutenant Frank said, "I'm not coming in under any
25 circumstances. It's too important for my wife. My

1 wife takes precedence over this, and I have to be here
2 to do it." It was left like that, and then we were
3 left with the situation of having to try to convince
4 him -- I mean, enforce the subpoena to come in.

5 There might have been a final communication
6 with Lieutenant Frank where we said, okay, don't come
7 in, but I don't remember that per se.

8 I do remember making the tactical decision
9 that I just told you about not calling him, but I
10 don't remember what the follow-up process was with
11 regards to Lieutenant Frank.

12 Q. Would Franks have communicated "my wife
13 comes first" to you or would he -- did he communicate
14 that to your investigator?

15 A. Well, I know he first communicated it to Jim
16 Thomas. I don't remember if he also communicated it
17 to me. I know we made a number of efforts to try to
18 get -- to turn Lieutenant Frank around, to try to
19 accommodate his circumstance. The death -- or the
20 illness, I don't think it was the death, but I think
21 it was impending. I don't really -- can't remember
22 what the emergency was. But I know we made a number
23 of efforts to try to accommodate it in some fashion,
24 but -- and that would have been me directing
25 Mr. Thomas to see if -- what if we do it this way?

1 What if we do it that way? Can we adjust it in some
2 fashion? Or something like that.

3 Q. Did you ever try personally to turn
4 Lieutenant Franks around to come in and testify?

5 A. I may have. I don't remember.

6 Q. Would that have been your normal course of
7 conduct?

8 A. It depends. Number one, this happened in
9 trial towards the very end of the trial, so I'm very
10 heavily occupied working many, many, many hours every
11 single day and throughout the week. Even on the
12 abbreviated schedule that Judge Mosely had where we
13 were working, I think, half days. I don't remember.
14 I think in the afternoon. But still we were very busy
15 throughout. That might have been one reason where I
16 might not have talked to Lieutenant Frank.

17 But also more importantly I think than that,
18 though I had some sort of a relationship, I had in
19 some fashion communicated with Lieutenant Frank in
20 some way -- I don't really remember right now how -- I
21 had a very -- I was not his friend. Jim Thomas was
22 his -- was the person who knew him. And my
23 recollection is if Jim Thomas couldn't do it, I
24 certainly wouldn't have been able to do it. Jim
25 Thomas had the street cred with Lieutenant Frank, the

1 history with him. I don't know if they had been both
2 in the Metro together, working together. He had the
3 relationship of substance with Lieutenant Frank, and I
4 did not. And so you asked, would I have been the one
5 to do it? In every single case, I might have not. I
6 mean --

7 Q. You said earlier that you had decided to
8 retain him and then to have him come in as an expert
9 witness. How was that decision initially made to use
10 Lieutenant Franks?

11 A. I don't remember exactly. I can tell you it
12 probably was one of two ways: One, that we felt that
13 we wanted to get such a person, and I would have
14 originated that thought probably in discussions with
15 Mr. Centofanti and probably in discussions with Jim
16 Thomas. Thinking this would be a tactic, this would
17 be a good thing if we could do it. And then, asking
18 Mr. Thomas to see if he knew of anyone. Or maybe
19 asking other sources I had here in San Diego if they
20 knew of anyone that could do it. So that could have
21 been the way it originated.

22 Or it could have come the other way where
23 Jim Thomas told me or Mr. Centofanti told me, but I
24 don't think it was Mr. Centofanti in this case. I
25 think it would have been Mr. Thomas who would have

1 told me, "By the way, I think a good person to do --
2 to present a good issue on this would be about how
3 police sometimes don't know about that. And I
4 remember taking a course from Lieutenant Franks or
5 working with Lieutenant Franks," or "I have a
6 relationship with Lieutenant Franks, and he can
7 probably testified to that." So it probably would
8 have been one of those two ways.

9 Q. And would you have made a decision to use
10 Lieutenant Franks without meeting him first? You must
11 have met him at some point.

12 A. I'm -- I don't recall meeting Lieutenant
13 Franks, calling him on the phone or meeting him in
14 person or how I met him. But if you're asking was my
15 normal course of conduct to have talked to him,
16 somehow meet him first, yes. The answer is yes.

17 Q. You wouldn't put a witness or an expert on
18 the stand that you hadn't at least talked to; correct?

19 A. Correct. Although, in this case it was a
20 little unusual because my recollection is that Jim
21 Thomas knew this person so well for such a long period
22 of time. But I never would have put him on the stand
23 without having some communication with him, some
24 confirmation in some fashion that he was -- about what
25 he was going to testify.

1 Q. And you certainly wouldn't have mentioned to
2 the jury in your opening statement that he was going
3 to testify unless you had done that pretrial, I would
4 assume?

5 A. I would not have told the jury I expect him
6 to testify unless I expected him to testify. And I
7 wouldn't have expected him to testify without having
8 had some confirmation in some fashion, maybe through
9 Jim Thomas because he knew him so well or probably in
10 combination with Jim Thomas and me talking to
11 Lieutenant Frank.

12 Q. You certainly wouldn't let Jim Thomas make a
13 decision as to what witnesses you were going to call
14 and what they were going to testify about? I can't
15 imagine that.

16 A. Jim Thomas wouldn't have made such a
17 decision, but Jim Thomas' input with Lieutenant Frank
18 would have had a considerable impact in this type of
19 situation with regard to Lieutenant Frank. For
20 example, it could have come in and Jim Thomas
21 providing information about his long history about it.

22 Q. Okay. Let's talk about Dr. Eisele now.
23 Dr. Eisele was also -- he was on your expert witness
24 list; correct?

25 A. Yes.