

Exhibit

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**Hearing Transcript: Far West Regional Public
Defender's Office**

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R E C O R D E R ' S R E C O R D

VOLUME 1 of 3

TRIAL COURT CAUSE NOS. 2081, 2090, 2044, 2087, 2078
1944, 2094, 1966, 2000, 2035, 2057, 2079,
2085, 2097, 2088

STATE OF TEXAS * IN THE DISTRICT COURT OF
*
v. * 394TH JUDICIAL DISTRICT
*
VARIOUS FELONY DEFENDANTS * CULBERSON COUNTY, TEXAS

TRANSCRIPT RE: HEARING

On the 18th day of November, 2024, beginning at
1:17 p.m., the following proceedings came on to be heard
in the above-entitled and numbered causes before the
Honorable Roy Ferguson, Judge presiding, held in Van
Horn, Culberson County, Texas.

Proceedings reported by electronic sound recording;
transcript prepared by Verbatim Reporting & Transcription
LLC.

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PROCEEDINGS

(Proceedings commenced at 1:17 p.m.)

THE COURT: Good afternoon. Let's be seated. Thank you. All right. Good afternoon, everyone. Welcome to the Culberson County courthouse. We are here today to call a felony plea docket. It's November the 18th, 2024. We have three pages of cases. So let's start with announcements, please.

MS. DELANEY: Good afternoon, Your Honor. Erin Delaney with the District Attorney's Office in El Paso.

THE COURT: Thank you.

MR. MCDERMOTT: Your Honor, James McDermott, Chief Public Defender with the Public Defender's Office. With me is Paul Chambers, Assistant Public Defender, as well as David Ortiz, friend of the office and is appearing here of counsel to -- for the cases. We also have Phil Baker sitting on the bench.

MR. BAKER: Good morning.

MR. MCDERMOTT: Who is with our office as well. And Judge, I think about 15 of the cases on this docket are the Public Defender's. These are not pleas. These are presented on motion. They're almost identical across each of the cases with substantially the same factual issues. We anticipate presenting substantially

1 the same evidence for each of those cases, and so we
2 suggest that they be called together. And we did file a
3 motion asking for that.

4 THE COURT: I did scan through them.
5 There were too many for me to memorize. But it does
6 appear that the legal argument you're making is
7 consistent.

8 MR. MCDERMOTT: Yes.

9 THE COURT: Although, each one has its
10 own facts about what you claim; you saw it and when and
11 what's missing and what and why.

12 MR. MCDERMOTT: Yes, sir. So there is
13 probably -- my guess right now is about an hour's worth
14 of evidence that is common between all of the cases.
15 And that is background informational to understand the
16 systems and how things are communicated, background
17 about how discovery was made, how discovery was made in
18 each of these cases that brought this charge to the
19 Court. And I believe that's in common between all of
20 those cases.

21 I separately believe that evidence for
22 each one of the cases that -- for the discovery issue
23 alone, is relevant for each of the others. And so I
24 believe that we would prefer one record to be made since
25 there are such intertwining issues and intertwining

1 facts.

2 THE COURT: All right. What's the
3 State's response to that?

4 MS. DELANEY: Yes, Your Honor. I am here
5 representing the State to defend, or actually on my
6 motions to quash subpoenas in seven of the cases that
7 the Defendants filed subpoenas or requested subpoenas
8 for. We also have filed responses to the motions to
9 dismiss and motions to dismiss for prosecutorial
10 misconduct that the Defendants filed in approximately 18
11 cases. So I'm here to represent the office on that
12 matter. And the State is okay with handling them en
13 masse, and break out with additional facts and details
14 pertinent to those specific cases as needed.

15 THE COURT: All right.

16 MR. MCDERMOTT: Judge, may I? I
17 anticipate that what I would do then is we would have
18 one section of evidence that would be in common between
19 all cases. I would then present and make it clear for
20 the record and for the Court, each individual case as I
21 was going through the specific things that were
22 pertinent for each one. And I'll try and make that as
23 clear as possible. If I was not making that clear,
24 either to the Court or to the State, I would invite an
25 interruption so I could make that clear.

1 THE COURT: I think that for clarity and
2 for judicial economy, we should try them, hear them
3 together. When it comes to the individualized facts for
4 each case, I think the cleanest way to do it is to pass
5 the witness for cross on that particular case and then
6 move on to the next, because otherwise, it's going to
7 start getting jumbled up when we hear 18 slightly
8 different explanations of facts; this one was in May,
9 that one was in June. I'm not sure anyone can keep that
10 straight.

11 MR. MCDERMOTT: Understood.

12 THE COURT: So what do you think about
13 that? If they -- I let them put on their -- I don't
14 know what --

15 MR. MCDERMOTT: General.

16 THE COURT: Yeah, just the whatever
17 applies to everything, and then as they go one at a time
18 through the individual cases, I'll take up the motion to
19 quash at that time, then we'll take evidence on that
20 particular case, if there is any, I'll have cross and
21 then we'll move to the next and we'll go one at a time
22 in that way.

23 MS. DELANEY: To the extent that the
24 Defense intends to introduce evidence through the
25 witnesses that they had subpoenaed and that I have filed

1 motions to quash for, I would ask that we handle that
2 prior to the calling of any of those witnesses.

3 THE COURT: Let's find out together.

4 MR. MCDERMOTT: Judge, at this point
5 we're intending to call Paul Chambers first.

6 THE COURT: Okay.

7 MR. MCDERMOTT: And then we will see
8 after that. But he will present evidence for each of
9 the cases is my intention, and do the pass back and
10 forth for cross-examination.

11 I also, based on what you have said, I
12 had not thought of this before, but based on what you
13 have said and the State's agreement, I will try to
14 clearly delineate when I finish that general portion so
15 that the Court can pass for cross-examination on the
16 general stuff, separate from the individual case as
17 well, if that makes sense.

18 THE COURT: So here's what I would say.
19 If in the course of this first portion he calls a
20 witness subject to one of those subpoenas and you want
21 to assert a quash, just rise and object.

22 MS. DELANEY: Okay.

23 THE COURT: And I'll take it right then.

24 MS. DELANEY: All right. Thank you, Your
25 Honor.

1 THE COURT: All right.

2 MR. MCDERMOTT: Judge, I have a couple
3 other things for the record, if I may.

4 THE COURT: All right.

5 MR. MCDERMOTT: There was an attempt made
6 by the State about 20 minutes ago to serve us with
7 additional discovery in court. I have, because of the
8 nature of the claims that we've made, in order to
9 preserve the status quo, I've refused acceptance of the
10 discovery that they attempted to make earlier today, and
11 I just want to be clear on the record in case it came up
12 later, the State has things that they attempted to give
13 me, I refused to receive it now. I will receive it
14 after the hearing is over.

15 THE COURT: Understood. And I'm sure
16 that will be explained probably by both sides.

17 MR. MCDERMOTT: Understood.

18 THE COURT: And interpreted different
19 ways.

20 MR. MCDERMOTT: The second issue is that
21 I anticipate offering into evidence some materials that
22 we have received from the State. And those things were
23 made available to us through their portal, through their
24 evidence portal. And we will explain on the record what
25 the evidence portal is and how we receive things through

1 it. But the -- what we're intending to offer as
2 exhibits are things like 39.14 disclosures as they're
3 generated by their system and screenshots of Portal
4 entries that don't print out that we have to take
5 screenshots. And those would be -- what I believe these
6 are statements by party opponents. One set would be
7 things that we generate actually from their system and
8 one thing would be photographs, because we can't
9 actually download the actual screen of the portal.

10 I am just -- for threshold purposes, I
11 would like to not bog down our hearing on predicates for
12 those. And so I just want to say that up front that
13 those are the two things, the two kinds of things I'm
14 anticipating putting into evidence.

15 THE COURT: Do I understand you to say
16 that both of those things are automatically generated by
17 the computer system in one way or another?

18 MR. MCDERMOTT: That's correct.

19 THE COURT: All right.

20 MR. MCDERMOTT: And we -- and our
21 testimony would be that we did not manipulate or alter
22 those in any way.

23 THE COURT: Have you tendered those to
24 see if there's any objection to their admission?

25 MR. MCDERMOTT: Judge, I have them

1 organized by case, and so I don't have them set in an
2 order that I can produce to them right now. Mr.
3 Chambers has them to be able to bring to the witness
4 stand when he's on the witness stand, and I can bring
5 them to them individually as I do those.

6 THE COURT: All right.

7 MR. MCDERMOTT: But those will be --
8 again, those -- things that we -- only things that we've
9 generated solely from their system.

10 MS. DELANEY: And the State would ask for
11 some clarification at this point, what we are here for
12 and what these witnesses are intended to do. Like what
13 is the purpose of this hearing? On the docket it is set
14 for a motion to suppress for discovery issues. And the
15 State would assert --

16 THE COURT: Think it was a motion to
17 dismiss for discovery issues as I understand.

18 MS. DELANEY: Our docket shows a motion
19 to suppress.

20 THE COURT: I don't generate the docket,
21 but I don't believe there is a -- is there a motion to
22 suppress?

23 MR. MCDERMOTT: Judge, no. There's a
24 motion to dismiss and I think the prayer asks for any
25 remedy that the Court deems appropriate. And so I

1 believe all that is potentially on the table. But the
2 title of our motion and our major prayer was a motion to
3 dismiss. I believe the clerk's office generates --

4 THE COURT: Right.

5 MR. MCDERMOTT: -- the docket. And I'm
6 not sure that that necessarily reflects always what our
7 --

8 THE COURT: I did set the cases on the
9 record and I set these hearings on the record in open
10 court. So I think it was clear to everyone that this is
11 what we were here to do.

12 MS. DELANEY: For a motion to dismiss.

13 THE COURT: Correct.

14 MS. DELANEY: Not a motion to suppress.

15 THE COURT: Correct.

16 MS. DELANEY: Okay. Perfect. Because I
17 --

18 THE COURT: I don't know what the clerk
19 puts on their documents.

20 MS. DELANEY: Yes.

21 THE COURT: I don't even see those --

22 MS. DELANEY: Okay.

23 THE COURT: -- until I get here.

24 MS. DELANEY: Very good. The State was
25 just going to say we've had no notice of any issues or

1 no -- no notice of a hearing of a motion to suppress and
2 that Defendant hadn't filed a motion to suppress, so the
3 State has no notice as to what evidentiary issues
4 they're --

5 THE COURT: Neither do I.

6 MS. DELANEY: Yeah. Perfect. Thank you.

7 THE COURT: You bet. Insofar as the
8 39.14 and the generated lists from the portal, do you --
9 assuming that they tender those and that's what they
10 are, do you anticipate having an objection so they need
11 to lay the foundation for each one?

12 MS. DELANEY: No.

13 THE COURT: All right.

14 MR. MCDERMOTT: Thank you. That will
15 speed up our afternoon.

16 THE COURT: All right.

17 MR. MCDERMOTT: I'll make sure they see
18 them before I offer them in evidence.

19 THE COURT: All right.

20 MR. MCDERMOTT: Or before I approach the
21 witness.

22 THE COURT: Do you wish to give an
23 opening statement?

24 MR. MCDERMOTT: Judge, I can.

25 We are here today because we had no other

1 option. We have struggled with the DA's Office with the
2 assigned assistant District Attorney, Mr. Marcantel, for
3 almost three years now with discovery issues. We have
4 done -- we have struggled with these in open court on
5 the record in front of you and in front of Judge
6 Dominguez in the 205th.

7 There will be testimony here to talk
8 about some of the struggles that we've had and attempts
9 that we've had to remedy those issues. And those issues
10 have been from missing videos, to lab reports, to late
11 revelation of discovery, including document dumps after
12 announcement of trial. As this Court is aware, this
13 Court sets a plea deadline and generally does not reopen
14 for plea after the plea deadline and we've got -- had
15 examples over the course of three years of documents
16 received well after the plea deadline, after we've
17 announced for trial, made evaluations of our cases based
18 on discovery that we've had.

19 We've been unable to adequately advise
20 our clients about plea offers, about trial rights, about
21 trial strategy because of missing discovery issues.
22 We're at a point now based on evidence that we hear, the
23 discoveries that we made in the last month or the last
24 month and a half, that we have no assurance at this
25 point that any discovery that we get from the State will

1 be complete because all we know is that they'll give us
2 the things that we identify are missing, but as we
3 continue to discover things, they continue to show.

4 I was really interested to see the
5 State's written reply to these complaints. I was hoping
6 they would file a written reply. And the thing that I
7 realized when I read their written reply was they don't
8 deny that they've been denying us discovery. They don't
9 deny the allegations that discovery is missing. They
10 don't deny the allegations that they have kept discovery
11 that they've known from us. They had three responses.

12 One, they said it was our fault. Two,
13 they said the Court can't do anything about it. And
14 three, they asked for us to be punished for raising it.
15 That was the State's reply.

16 You know that my office employees social
17 workers. In the social work field, that sounds like an
18 abusive relationship; it's your fault, nobody can do
19 anything about it, you need to be punished for raising
20 it. And that, I think, illustrates exactly what we've
21 been through for the last three years in these discovery
22 problems.

23 We have tried over and over again to give
24 the benefit of the doubt. We have tried over and over
25 again to be accommodating, to identify what was missing.

1 And then you're going to hear evidence from Mr. Chambers
2 as to what he discovered and what has happened since his
3 discovery.

4 I'm getting emotional hearing about it
5 because I don't like to believe that people lie. I like
6 to give everybody the benefit of the doubt. I'm a
7 defense lawyer. I do not like to accuse anybody of
8 misdeeds. And I was shocked by what I found. And that
9 is what we intend to present to the Court today.

10 THE COURT: All right. Thank you.

11 MS. DELANEY: To the extent we're doing
12 opening statements, I would like to introduce myself to
13 the Court. My name is Erin Delaney. I'm Chief of White
14 Collar and Public Integrity at the El Paso County
15 District Attorney's Office.

16 THE COURT: Pleasure.

17 MS. DELANEY: Thank you. You as well.

18 And I would like to respond to Defense
19 Counsel's characterization of the State's response to
20 the motion to dismiss for prosecutorial misconduct.

21 The State absolutely does not admit that
22 the State is intentionally withholding any evidence or
23 discovery from the Defense. That is of course not
24 what's happening. And the State did not allege that the
25 Court cannot do anything about it.

1 There are things that the Court can do,
2 such as order or compel discovery, and the State has
3 raised that issue for the Judge, for the Court. The
4 State has not indicated that it's not their fault. The
5 State has indicated that it is continually working to
6 receive discovery. And as we continue through this
7 hearing, you'll also hear evidence that law enforcement
8 agencies here in these counties are not terribly
9 forthcoming with the information that we continuously
10 request from them.

11 And finally, the State is requesting
12 sanctions for the Defense in this case, because they are
13 seeking a remedy that they know they are not entitled to
14 for any potential, if the Court were so to find,
15 violations of the discovery statute. That's all.

16 The State has cited law -- or the Defense
17 has cited law for a sanction on the Court that it's not
18 entitled to, and he knows that. And so that is a
19 frivolous pleading that he has filed and is a violation
20 of the code of ethics, and he should at least be
21 admonish on the record, which is all the State is
22 asking. That that was a frivolous and harassing
23 pleading that he knows he's not entitled to the remedy
24 he seeks, under the law he cites. Thank you.

25 THE COURT: All right. Thank you. Call

1 your first witness.

2 MR. MCDERMOTT: Defense calls Paul
3 Chambers.

4 THE COURT: Mr. Chambers, given that
5 you're a witness rather than officer of the Court today,
6 I'm going to swear you in. Raise your right hand.

7 (Oath administered)

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Have a seat, please.
10 Identify yourself for the record.

11 THE WITNESS: My name is Paul Chambers.

12 THE COURT: Your witness.

13 MR. MCDERMOTT: Thank you.

14 PAUL CHAMBERS
15 called as a witness on behalf of the Defendants, having
16 been first duly sworn, did testify upon his oath as
17 follows on:

18 DIRECT EXAMINATION

19 BY MR. MCDERMOTT:

20 Q Mr. Chambers, how are you employed?

21 A I am the First Assistant Public Defender at
22 the Far West Texas Regional Public Defender's Office.

23 Q How long have you been with the Public
24 Defender's Office?

25 A Since March of 2018, so close to seven, eight

1 years, something like that.

2 Q What are your duties as First Assistant Public
3 Defender?

4 A I supervise all of the cases in our office,
5 along with the Chief who is James McDermott. I
6 supervise the younger attorneys in our office,
7 particularly the investigators. I have some involvement
8 with the social workers and the administrative staff
9 general day-to-day duties.

10 Q All right. So let's clarify for the record,
11 because we know that Judge Ferguson knows who we are,
12 but this may go to an appellate court.

13 A Sure.

14 Q What is the Far West Texas Regional Public
15 Defender?

16 A It's a Public Defender's Office. It's a five
17 county Public Defender's Office that covers Hudspeth
18 County, Culberson County, Jeff Davis County, Brewster
19 County, and Presidio County. Those counties fund our
20 office at something like 20 percent of our annual
21 funding. The other 80 percent is funded by the State of
22 Texas. And we handle all of the indigent, adult
23 indigent criminal cases in those counties that we can if
24 there's not a conflict or other reason why we can't
25 handle it.

1 Q So percentage wise, can you make an estimate
2 as to the percentage of cases, of adult cases in
3 criminal courts, that we represent in?

4 A I mean, it's easily 85 to 95 percent of the
5 cases in those counties.

6 Q So a vast majority of cases?

7 A Yes.

8 Q How long have you been licensed as an
9 attorney?

10 A Sometime this month will be 10 years.

11 Q And have you always worked for the Public
12 Defender's Office?

13 A No, I have not.

14 Q How else have you worked?

15 A I started actually practicing law in January
16 of 2015. At that time, I practiced federal criminal
17 defense, family law, civil law, wills, trust and estate.
18 You name it, I practiced it for the first six years
19 about of my career.

20 Q So when you say federal criminal law, you did
21 federal criminal defense; is that correct?

22 A Federal criminal defense, state criminal
23 defense. I did divorces, like family law. I did CPS
24 cases that were appointments from the court. I've done
25 almost everything you could do. I haven't done

1 transactional work.

2 Q Given that, do you have some decent experience
3 in civil discovery rules?

4 A Yes, sir.

5 Q And do you have experience in criminal
6 discovery?

7 A Yes, sir.

8 Q Now, you were licensed after the Michael
9 Morton Act; is that correct?

10 A I don't know exactly when the Michael Morton
11 Act went into effect. I think it went into effect in
12 January 2015, but I was licensed in November of 2014, so
13 I don't know exactly when, but my entire criminal state
14 career has been under the Michael Morton Act.

15 Q How many prosecutors offices have you worked
16 discovery with?

17 A Including federal?

18 Q Yes.

19 A There was Mr. Ponton's office, which was the
20 83rd District Attorney's Office. There was Ms. Wilson's
21 83rd District Attorney's Office. There is now Mr.
22 White's 83rd District Attorney's Office. Jaime
23 Esparza's, I think it's the 34th in El Paso. Yvonne
24 Rosales I think was her name, was the 34th District
25 Attorney at some point, now Mr. Hicks. The U.S.

1 Attorney's Office for the Pecos Division, I think the
2 U.S. Attorney's Office for the El Paso Division for one
3 or two cases. Brewster, Culberson, Jeff Davis,
4 Hudspeth, Presidio County Attorney's Offices. They were
5 county attorney's offices and county attorney's offices
6 in Pecos County and Pecos the town, I forget what county
7 that is. I think it's Reeves County. Winkler County I
8 believe I had a case in at one time.

9 I don't know what District Attorney's
10 Office Laurie English is in, but that District
11 Attorney's Office I've had interactions with. So, yeah.

12 Q So it's safe to say that over 15 different
13 prosecutor's offices you've worked on cases that have
14 involved discovery?

15 A I didn't count them when I told you, so, yeah.

16 Q Do you know the general discovery procedures
17 that the office has with the 34th District Attorney's
18 Office?

19 A Yes, I do.

20 Q So let's start with a little history. When
21 you first started with this office, with the Public
22 Defender's Office, how was discovery handled with the
23 34th District Attorney?

24 A At that point in time, Mr. Patrick Gabaldon,
25 and I always butcher his last name, he was the attorney

1 handling the cases in these two, in Hudspeth and
2 Culberson County. At that time there was no Portal, so
3 there was no internet access to those things. Sometimes
4 we would receive discovery via email. That was rare.
5 Generally, what would happen is that we would come to
6 court, there would be a box of files on the table. I
7 was able to pull the file for whatever client I was
8 looking at, and I could see everything in the file,
9 whether there were CDs, paper, anything else like that.
10 And generally, someone in their office would have copies
11 of that to turn it over to us.

12 Q So what I hear is that there were paper files
13 that were brought to court or mailed to us and that we
14 received things in a physical form; is that correct?

15 A Yes. And we would get physical CDs or if it
16 was too big for a CD, I don't know if we ever got a
17 flash drive, but I'm sure we did at some point.

18 Q In June of 2020, did the process for receiving
19 discovery from the 34th District Attorney's Office
20 change?

21 A Yes.

22 Q How did it change?

23 A We got access to a version of their
24 proprietary case Portal, I think it's proprietary, and
25 they're the only people I know that use it.

1 Q All right. So what do you mean that we got
2 access to their portal?

3 A Well, part of their portal. So El Paso County
4 has a separate portal, from my understanding, than the
5 portal that is used for Culberson and Hudspeth County.
6 It's the same framework, I think it's in the same
7 system, but I don't think that the information goes into
8 it the same way. So the Case Portal gives us access to
9 whatever the District Attorney's Office puts on the
10 portal and allows us to see.

11 Q All right. So let me break that down.

12 A Yeah.

13 Q What kinds of discovery can we get through the
14 portal?

15 A We have received all different kinds of
16 discovery; paper, police reports, pictures, videos,
17 audios. The only thing that we generally don't get on
18 the portal are CAC videos or things that are protected
19 for some other reason.

20 Q All right. So I'm going to come back to that.

21 A Okay.

22 Q Let me make sure that I clarify.

23 On the Case Portal, which is an online system;
24 is that correct?

25 A That's correct. So, we -- I have a sign in, I

1 go to the -- the way to navigate it, if you haven't
2 bookmarked it, is that you go to the DA's website for El
3 Paso County, you click enter, you have to put your
4 password in, and then you get a list. We can generate a
5 -- not generate, like I can't print it, but there is a
6 list of the people that the District Attorney's Office
7 says are my cases, and I can pull up discovery on anyone
8 on that list.

9 Q All right. So, this is an online system that
10 you can access over the internet from your office?

11 A That's correct.

12 Q It is password protected so somebody can tell
13 that you were the one who logged in with your own unique
14 password?

15 A Yes.

16 Q And different people would have their
17 different login and different passwords; is that
18 correct?

19 A Generally, yes.

20 Q So for example, I, as your boss could use the
21 same login and password as you, or a different one?

22 A My understanding is that you use a different
23 one.

24 Q And in that portal, what I heard you say was
25 that you can see a list of all the cases that the DA's

1 Office believes are ours?

2 A Yes.

3 Q And that if you click on one of those cases,
4 you can see such items like police reports, videos,
5 pictures, lab reports, audio recordings, and other such
6 things like that; is that correct?

7 A That's correct. Anything that they have
8 uploaded and let us see.

9 Q Okay.

10 A But those are two distinct things.

11 Q In your experience, do we have access
12 immediately to all cases that we are appointed to?

13 A No.

14 Q Why not?

15 A I don't know.

16 Q Okay. What kinds of cases do we not have
17 access to?

18 A Any case that we have before arraignment, we
19 generally don't have access to.

20 Q All right. So to be clear for the record, in
21 our courts, what are the steps of the process before
22 trial and just where the docket names are?

23 A I'm not sure I understand your question.

24 Q What are the titles of the types of dockets
25 that we can show for a case?

1 A Oh. Well, there's the arraignment, the 28.01
2 hearing, and the plea deadline in Judge Ferguson's
3 courtroom.

4 Q All right. So those are three different
5 dates; is that correct?

6 A Generally, they are three different dates.
7 They generally, there's deviation from this, happen
8 every other month. So if the arraignment was in
9 January, the next docket which would be in February
10 normally, would be the 28.01 hearing, a month later
11 would be the plea deadline.

12 Q Okay. And you said that we do not get access
13 to a case file through the DA's Office before the
14 arraignment docket; is that correct?

15 A Not generally, no.

16 Q Okay.

17 A I can't say for every case that we have it,
18 but most of the time, no.

19 Q When you say most of the time, can you give me
20 an estimate of percentage?

21 A 85, 90 percent of the time.

22 Q Okay. I'll ask you some questions about the
23 portal then.

24 A Okay.

25 Q About how it functions. Are we told or do you

1 know if we are told by the DA's Office when a case is
2 indicted?

3 A The only time that I can recall ever knowing
4 about an indictment when something was being taken to
5 grand jury is either if it was being re-indicted after
6 it had already been indicted, or in one instance, where
7 Mr. Marcantel got a no bill for a particular client here
8 in Culberson County.

9 Q So in most cases then, do we know when a case
10 is indicted?

11 A No.

12 Q At the time of indictment?

13 A We know when it gets set for arraignment.

14 Q We know when it gets set for arraignment?

15 A That's the first time that we really figure
16 out. We don't generally get served with the
17 indictments. We do have agreements in other counties
18 for the DA's office to let us know when our clients get
19 indicted so that we can support, to start finding them
20 and, but --

21 Q Okay. In your experience, when a case is
22 indicted, does it get set for arraignment docket right
23 away?

24 A No.

25 Q How long can it take for a case to get set for

1 arraignment?

2 A It depends on how long it takes all that
3 process to work. It could be anywhere between two days
4 to six months. I don't -- I mean -- and in some courts,
5 longer than that.

6 Q And so you -- by some courts, you mean that
7 there's another court that -- so you're talking in
8 general about the 394th, but other, 205th, runs on a
9 different schedule?

10 A Oh, a much different schedule, yes.

11 Q In your experience, do we receive access to
12 our case files on the portal at the time of indictment?

13 THE COURT: Are you specific to Culberson
14 in this question?

15 BY MR. MCDERMOTT:

16 Q Let's talk about Culberson County. Do we get
17 access to our case file in the portal at the day the
18 case is indicted, or some other date?

19 A We don't get access the day the case is
20 indicted as far as I can tell. But there are -- so my
21 understanding of when we get it comes from when I look
22 for them, and I have looked for them before and they
23 have not been there, and I look for them around
24 arraignment and we get it.

25 Q In your experience, do we get them

1 automatically when the case is set for arraignment or is
2 there some other triggering event that makes the
3 discovery available?

4 A Generally, I have to send an email to request
5 access to it. That email normally goes to a woman by
6 the name -- that works at the DA's Office by the name of
7 Christina Varela, I think. Or I file a motion for it, a
8 request for discovery.

9 Q All right. And so, is there a place in the
10 clerk's office to file a request before there is a cause
11 number?

12 A Generally, no. So when we go in to file our
13 like waivers of arraignment, for instance, we have to
14 create the cause number for the clerk's office.

15 Q And --

16 A It's a new case -- it's like starting a new
17 case for a civil case.

18 Q So we need to know the case exists before we
19 file something into it?

20 A That's correct.

21 Q And so, if you do not know a case is indicted,
22 can you file a discovery request into the court system?

23 A Not for that case.

24 Q Okay. That's what I'm asking.

25 A Yeah.

1 Q So is there a habit or a policy in our office
2 about when discovery is requested?

3 A The policy is that we file 28.01 motions at
4 arraignment and our 28.01 motions are act -- one is an
5 actual motion that requests Brady and other things. And
6 one of them is actually a request that we file through
7 the Court for the discovery under 39.14.

8 Q And that discovery request, and that's filed
9 with the court filed; is that correct?

10 A In every case since 2019, 2020.

11 Q Does that request mirror the language of
12 39.14?

13 A I think it just copy and pastes it. I'm not a
14 hundred percent sure on that, but it's close.

15 Q I asked this before, does the DA's Office tell
16 us when a case is indicted?

17 A Not generally.

18 MR. MCDERMOTT: One second, Judge, I lost
19 track of myself.

20 BY MR. MCDERMOTT:

21 Q All right. In your experience, how many cases
22 have you looked at discovery through the DA's portal?

23 A Since we've got access to the portal?

24 Q Yes.

25 A I think there are like 453 cases on there or

1 something like that right now that are attributed to us,
2 me.

3 Q Okay. And --

4 A I don't know if they get rid of cases after we
5 plea or not.

6 Q Are you familiar with the indigent defense
7 process in Culberson County?

8 A Yes, I am.

9 Q How are you aware of the indigent defense
10 process in Culberson County?

11 A I mean, I've been practicing here since, I
12 don't know, 2016, 2017, and as far as like how people
13 get attorneys, I helped design the system with Ms.
14 Holguin and TIDC.

15 Q Can you briefly describe that system?

16 A So the magistration system, the magistrates,
17 when they magistrate someone, are supposed to go onto
18 this portal, and it's an online interface with an --
19 like a, I don't know, a regular website. You input
20 information, the defendant would input their financial
21 information, and then that gets sent to a bunch of
22 different places that generally determine whether or not
23 someone qualifies for counsel or not. And I believe
24 after the qualification determination monetarily is
25 made, it gets sent to the court, the court then clicks a

1 button and rules yes or no, then the paperwork gets
2 signed, it gets sent to the appropriate parties after
3 the case is assigned.

4 Q And when you say gets sent to the appropriate
5 parties, who do you mean by that?

6 A The DA's office, the clerk's office, the jail,
7 us, there are lots of people on those emails.

8 Q How do you know that the DA's Office is given
9 a copy of our appointment order when we're appointed?

10 A Before we had this hearing, I checked the
11 emails to see if they were on them.

12 Q Are we appointed -- at what point in time in a
13 case are we generally appointed?

14 A Here?

15 Q Yes.

16 A In Culberson County?

17 Q In Culberson County.

18 A It varies. Sometimes we're appointed at
19 arraignment. That happens, I'd say probably now about
20 40 percent of the time, if I had to guess. And the rest
21 of the time we're appointed while they're in jail.
22 Normally, what will happen is that we'll get a phone
23 call from the jail administrator saying that somebody's
24 in here and needs counsel.

25 Q Okay. So, if somebody's in jail pre-

1 indictment, do they often get to court appointed
2 counsel, pre-indictment?

3 A Yes. Now.

4 Q And for how long do you think that's been
5 true?

6 A I would say that the Culberson County Jail has
7 tried very hard to do that before the system, but it's
8 gotten better since the system.

9 Q So for how long do you think it's been true
10 that often a client gets appointed counsel when they're
11 in jail before indictment?

12 A I don't know how long the system's been out,
13 three or four years?

14 Q Yes.

15 A Something like that.

16 Q And you believe that the -- this District
17 Attorney's Office gets notice of our appointment when we
18 are appointed?

19 A Yes.

20 Q Okay. You have talked a little bit about how
21 Discovery worked under Mr. Gabaldon.

22 A Yes.

23 Q Did discovery process change after Mr.
24 Gabaldon was no longer employed with the District
25 Attorney's Office?

1 A No. It changed when we got access to the
2 portal. Mr. Gabaldon was still here when we got access
3 to the portal or left right before maybe, but I think he
4 was still here.

5 Q Did we have any questions about access or
6 completeness of discovery when Mr. Gabaldon was
7 providing discovery to us?

8 A Sometimes. And generally, it would take an
9 email. I would send him an email saying I'm missing
10 these things and he'd send them.

11 Q Did that process change at any point?

12 A Yes.

13 Q When?

14 A When Mr. Marcantel took over.

15 Q What changed?

16 A Well, the biggest real change was that we
17 would get to 28.01 deadlines and not have, for example,
18 videos on a DPS stop. Everybody who practices criminal
19 law knows that DPS has videos. They have in-camera
20 videos and dash cameras. And I would get to 28.01
21 hearings and not have them and have to ask for them.
22 And then 28.01 deadlines would get pushed or combined
23 with the plea deadline. And this happened over and over
24 and over again. I can't tell you how many times this
25 happened.

1 Q And this happened in Culberson County?

2 A It happened in Culberson County. It's
3 happened in Hudspeth County. It's happened in county
4 court in Hudspeth County.

5 Q And so you talked about videos from DPS.

6 A Uh-huh.

7 Q And you suspected that those videos should
8 exist why?

9 A I've been doing this for 10 years. I've had,
10 I don't know, a thousand, 2000, 3000 cases at this point
11 that are criminal defense cases. I have literally only
12 tried felony cases. I've seen files from other district
13 attorney's offices that always have the video, and if
14 they don't, I'm told sometimes the videos are corrupted,
15 but I get told that the videos are corrupted. It's just
16 over and over and over again after 10 years of having
17 cases where DPS worked on them, there's a video of some
18 sort generally.

19 Q Were there other types of discovery problems
20 besides videos from DPS?

21 A Yes. There are missing police reports all the
22 time that are like obvious to anyone that reads the
23 police report this thing should exist. For example,
24 I'll read a DPS report and DPS generally is pretty good
25 at listing all the people that were on scene, and I'll

1 have three DPS officers, but one report, one set of body
2 cams.

3 Q Was that different than when Mr. Gabaldon was
4 handling cases here?

5 A In my opinion, yes.

6 Q When Mr. Gabaldon was handling cases, what
7 would you expect to see when you received discovery from
8 the State?

9 A Everything.

10 Q So you would expect to see the main report,
11 plus the reports from everybody else who was at the
12 scene?

13 A Yeah. So, if I had a, for example, if I had a
14 case, it was a DPS stop here in Culberson County or it
15 was not a DPS stop, let's change it a little bit because
16 this happens more frequently, actually. Culberson
17 County Sheriff's Office stopped somebody that they
18 suspect of DWI. They call DPS out to do the SFSTs,
19 which are the standard field sobriety tests. I would
20 have a DPS report, I would have a report from Culberson
21 County Sheriff's Office, and I would have video. I
22 would say more than half the time, I don't have the
23 sheriff's office report now. Or the video.

24 Q Is it safe to say that there were other kinds
25 of problems similar to the ones that you're listing now?

1 A Yes.

2 Q What reaction did you initially give to Mr.
3 Marcantel in light of -- when these problems were first
4 coming up in Culberson County, what reaction did you
5 give to Mr. Marcantel? What kind of communication did
6 you give to Mr. Marcantel regarding missing discovery?

7 A I've spent, I wouldn't say hours, but a couple
8 hours maybe on the phone with Mr. Marcantel when he
9 first started here in this Court, trying to be friendly,
10 trying to figure things out with him. He had my cell
11 phone number, I have his. I've emailed him requesting
12 the things, I've asked him in court. I mean, generally
13 that's what would happen at the beginning.

14 Q Did you jump to a conclusion initially that
15 Mr. Marcantel was doing something wrong, or did you give
16 him the benefit of the doubt?

17 A Gave him the benefit of the doubt each time.

18 Q Why?

19 A Things happen.

20 Q Can you explain that?

21 A I mean, nobody's perfect, right? So there are
22 things that can be mistakes. He would get into court
23 and say that this agency didn't give me this, or I have
24 requested it and I haven't gotten it back, my
25 investigator needs to go and get that. Things like

1 that. And I would hear that from other prosecutors, but
2 generally, they would get back to me with the discovery
3 before the month was out.

4 Q What kind of response did you have initially
5 to the missing discovery?

6 A In this -- in these cases?

7 Q In Culberson County in general.

8 A I just was trying to work with them to get the
9 stuff.

10 Q Would you just say I'm missing discovery, or
11 would you list out things that you thought were missing?

12 A I would list things. I would say that I'm
13 just missing stuff or it seems like more would be here,
14 but generally, I would list stuff.

15 Q Did you feel like you got a positive response
16 from Mr. Marcantel?

17 A No.

18 Q Why not?

19 A Because I didn't get any of his -- I didn't --
20 I'm not saying I didn't get any in every case, but I
21 didn't get lots of the discovery that I was asking for.
22 So then I changed my tactic.

23 Q How did you change your tactic?

24 A I just stopped asking for it.

25 Q Why?

1 A Because I could try cases and beat him.

2 Q And so you decided that maybe it was easier to
3 move forward, knowing that you were missing discovery?

4 A That's right.

5 Q Did you feel like you -- when you had, you
6 said that you had to address some of these issues in
7 court; is that correct?

8 A Yes, sir.

9 Q You'd address these in court on the record or
10 privately?

11 A Both.

12 Q And do you feel like -- and you said that you
13 had many conversations with Mr. Marcantel on the phone?

14 A Yeah, probably about two hours total. Like
15 not at one time.

16 Q And do you believe that you had emails that
17 you sent?

18 A Yes, sir. He sent me emails, I've sent him
19 emails. I mean, it's --

20 Q When you were in court reflecting on the
21 history of discovery discussions with Mr. Marcantel,
22 what kind of response do you think that you heard from
23 Mr. Marcantel in court?

24 A I mean, the best way to describe it would be
25 erratic.

1 Q Okay. What do you mean by that?

2 A He would tell me that he was doing something
3 on the phone and then he would tell the Judge something
4 different. He would not know that we were -- what we
5 were talking about sometimes on the record, and then
6 have to look for a different case and then say, oh, no,
7 he was talking about different cases. I mean, he's made
8 arguments about different cases that when they weren't
9 the cases that were being called, ignored that we talked
10 about things on the phone, so.

11 Q So do you believe that he accurately reflected
12 the nature of your conversations or the content of your
13 conversations?

14 A No. And I don't believe that he has many,
15 many times.

16 Q What do you mean by that?

17 A I mean, the first thing that comes to mind is
18 a case in Hudspeth County, like County Court. Can you
19 briefly describe what you mean by that, by referring to
20 that case?

21 A There was a particular issue. I don't know if
22 it was a motion to revoke or a PTD. I had requested
23 anything that would show why we were there to revoke a
24 PTD. He had argued that I wasn't entitled to it. The
25 next month I didn't go to court that month, Mr.

1 McDermott did. I believe that was the same argument,
2 but I wasn't there, I don't know. The third month I was
3 there, but I wasn't the one handling the cases,
4 particularly because it was this particular problem.
5 Mr. Marcantel stood up, looked at the Judge, walked past
6 Mr. McDermott's table, and threw a CD and a piece of
7 paper at him and then said, look, Judge, he's had it the
8 whole time.

9 Q So you believe that in that instance, what do
10 you think Mr. Mercantile was doing?

11 A Hiding the fact that he hadn't turned over the
12 discovery like he was supposed to.

13 Q Have you personally or our office, made any
14 attempts before this hearing, to try and address the
15 communication or discovery issues that we had with Mr.
16 Marcantel?

17 A Yes.

18 Q What efforts have been made?

19 A Another instance in Hudspeth County Court with
20 the judge there that devolved into an unproductive
21 meeting is the easiest thing to say. After that, we had
22 a -- or maybe before that, I don't know exactly what the
23 timeline was here, you and I had a meeting with -- I
24 don't remember his first name, Mr. Shapleigh, I think
25 he's the first assistant or was at the time., a woman

1 named Penny --

2 Q Penny Hamilton?

3 A I believe her name was Penny Hamilton. A man
4 with the last name Briggs, not the Briggs that I know
5 from CPS cases, another one. I think it's his brother
6 that works for the DA's Office. We met with those three
7 attorneys and a woman who I think was like the
8 receptionist or secretary for Mr. Hicks, in order to try
9 to get these issues resolved.

10 Q Was that meeting in May of 2022?

11 A Yes.

12 Q Were you able, or was our office able, to
13 express accurately what you thought the concerns were
14 with discovery and communication with Mr. Marcantel?

15 A I thought so. From what Mr. Marcantel said
16 since then, he thought we were coming after his job.

17 Q Did you feel like they heard our concerns?

18 A Not Ms. Hamilton.

19 Q Okay. Did anybody?

20 A I think -- I thought Mr. Briggs did, Mr.
21 Shipley or Shapleigh, however you say his name, and I
22 know his first name's not Elliot. I think that's his
23 brother. But anyway, I thought he did too, but nothing
24 changed.

25 Q So --

1 A Well, I say nothing changed; for some time
2 after that, Ms. Vallejo was coming to court with him.

3 Q And when Ms. Vallejo came to court with him,
4 was there any difference?

5 A Between Mr. Marcantel's attitude or like --

6 Q Yes.

7 A -- or --

8 Q Or the relationship with discovery
9 disclosures?

10 A She generally seemed more responsive. I don't
11 know that she actually gave us more discovery. I
12 haven't looked into that or checked, but she seemed like
13 she knew what I was talking about when I asked.

14 There was a particular time this year actually
15 where I asked for things in a letter in county court in
16 Hudspeth County and he -- I believe Mr. Marcantel
17 forwarded it to her. I don't know how she got it.
18 Maybe I CC'd her, I don't know. And she was responsive
19 within a day or so, saying that I wasn't entitled to it
20 and I wasn't going to get it.

21 Q And I just want to have you review one issue.

22 MR. MCDERMOTT: And if I may approach
23 Opposing Counsel, Judge?

24 THE COURT: You may.

25 MR. MCDERMOTT: And the witness.

1 MR. MCDERMOTT: Your Honor, I'm going to
2 approach the witness with what I'm marking Defense
3 Exhibit Number 1. I've tendered this to opposing
4 Counsel. Judge, this is a, at this point being offered
5 as a sample 39.14 disclosure form from the State that is
6 generated through their system. And I'll have the
7 witness identify it.

8 BY MR. MCDERMOTT:

9 Q Mr. Chambers, can you identify in general the
10 kind of document I handed you, not necessarily that's
11 tied to a specific case?

12 A This is a 39.14 disclosure form from the
13 District Attorney's Office in El Paso.

14 Q Are you familiar with that particular form?

15 A This form, yes. Very familiar.

16 Q Do you know where that form is generated from?

17 A There are two ways that we get it.

18 Q Okay.

19 A The first way that we get it is that it will
20 be sent with the plea paperwork that generally is
21 admitted into evidence with my client's signature and
22 mine on it. And the second way that we get it is that
23 we can go onto the Case Portal and we can, I think the
24 button to click says discovery list, and it generates
25 this document.

1 Q Does that document generate everything the
2 State has or something else?

3 A It generates everything that they've disclosed
4 to us, not necessarily everything the State has.

5 MR. MCDERMOTT: So right now, Judge, I
6 want to admit Defense Exhibit Number 1. I've got some
7 follow up questions.

8 THE COURT: Any objection?

9 MS. DELANEY: No, Your Honor.

10 THE COURT: D-1 is admitted.

11 (Defendants' Exhibit 1 admitted)

12 THE COURT: Go ahead.

13 BY MR. MCDERMOTT:

14 Q You made a statement here that there's a
15 difference between what the State has and what the State
16 has given us on the portal.

17 A Yes.

18 Q What do you mean by that?

19 A That there are things that they have that they
20 don't give to us on the portal sometimes.

21 Q Okay. So let me break that down.

22 When we get onto the portal, in your
23 experience with the portal, do we see everything they
24 have at a particular time or do we see something else?

25 A That's a -- that's --

1 Q Why don't you describe the process of --

2 A Right. So I think the problem that I'm having
3 is, it depends on when I print the disclosure.

4 Q Understood.

5 A If I print the disclosure and they have
6 revealed everything, then yes, it shows me everything
7 that they've revealed.

8 Q So let me rephrase my question.

9 A Okay.

10 Q In your experience, based on what you're able
11 to glean from using the portal.

12 A Uh-huh.

13 Q As a general rule, what are the steps that
14 appear to happen from the State side for us to get
15 access to something on the portal?

16 A Okay. So this is from my experience and from
17 the training that we had to do to get access to the
18 portal.

19 Q Understood.

20 A My understanding is that it's different than
21 El Paso. I don't know exactly what happens in El Paso,
22 but I think that the police officers and everything,
23 like upload the documents by themselves and Culberson
24 and Hudspeth counties, I believe that the DA's Office
25 has to get records from the agencies, whether it's DPS

1 or the sheriff's office or whoever. I don't know if
2 there's another agency. In one case we have like a
3 Texas Parks and Wildlife guy. And then they scan them
4 or upload the video. And from what I can tell, they can
5 either disclose it to us or not.

6 There's also a separate check before they
7 disclose it or not about who they connect it to. So,
8 we're not the only attorneys in Culberson County. We do
9 have conflict cases. I think that this information can
10 also be shared with attorneys from -- well, for other
11 cases.

12 Q Let me break down a little bit about what you
13 said.

14 A Yeah.

15 Q It sounded to me like you said that the DA's
16 Office, when they receive materials that are
17 discoverable, that they have -- that in your experience,
18 it seems that they have to upload that into the system.

19 A It's my understanding.

20 Q But that that uploading to the system does not
21 automatically make it available to us.

22 A I can say that -- I don't think so. Not at
23 all.

24 Q Why?

25 A Because I have cases that are on this docket

1 where there was stuff that was uploaded to the portal in
2 I think March of this year, was not on the disclosure
3 form on the beginning of October, and now is, with the
4 date in March.

5 Q So let me clarify that. On the portal, is
6 there a date on the portal?

7 A Sometimes.

8 Q And is there a date on the disclosure form?

9 A Yes. Sometimes. Well, there's always a date
10 on the disclosure form. There's also other dates on the
11 disclosure form. There's lots of dates on the
12 disclosure form.

13 Q Okay. So let me see if I can help you
14 clarify.

15 A Okay.

16 Q Are you saying that there are dates in the
17 portal that indicate to you a date that they -- what
18 does that date on the portal indicate to you?

19 A To me, the date that it was uploaded to their
20 system.

21 Q Okay. And does that date always match a date
22 that it was made available to us?

23 A No.

24 Q And how can you tell when there's a mismatch
25 between those two dates?

1 A By using the disclosure form and the
2 screenshots.

3 Q So explain that to me.

4 A So, the disclosure forms when we print them,
5 have a date at the bottom, 11/8 was when this one was
6 done. At this time on 11/8 at 7:34, which is in
7 mountain time a.m., this is what I had available to me,
8 to be able to see.

9 Now, whether it's corrupted or I can actually
10 pull anything up, that's a different story. But this is
11 what they think they've disclosed to me.

12 THE COURT: It's like a table of contents
13 of what's available to you in the portal on that case?

14 THE WITNESS: Yes, sir.

15 THE COURT: At that time?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. I got it.

18 THE WITNESS: But that is not always
19 meshed well with when the date -- so like, for instance,
20 this record has an effective date of 11/01/2024.
21 Sometimes that date doesn't show up when I have
22 something from before. Well, let me say that a
23 different way.

24 If I have some -- if I print out one of
25 these disclosure forms in January of this year, it gives

1 me a list of stuff, and then I print out something in
2 October of this year and that list is different, but it
3 has a date from 2023 on it. I didn't see it in January,
4 but now I see it in October.

5 THE COURT: So let me make sure I
6 understand what you're saying.

7 THE WITNESS: Yes, sir.

8 THE COURT: You're saying you print one
9 on one date and there's a particular item that is not on
10 the list. You print it a year later and that item's on
11 the list and the date it shows uploaded predates the
12 first report that you did?

13 THE WITNESS: That's correct.

14 THE COURT: All right. I got it. Go
15 ahead.

16 BY MR. MCDERMOTT:

17 Q All right. So have you been able to draw a
18 conclusion as to the dates that is on the portal, what
19 that represents?

20 A I believe that's the date that they received
21 the discovery, that they're -- when they get it and
22 upload it. I don't know if it's when they actually get
23 it.

24 Q Understood.

25 A In fact, I know it's not when they actually

1 get it.

2 Q How do you know that?

3 A Because I found discovery in one of these
4 cases and until I filed this motion, they didn't
5 disclose it, and they physically had the file.

6 Q And so what did that -- how did you know any
7 date issues?

8 A Because I saw it with my own eyes.

9 Q Okay. So you saw the physical discovery.

10 A I saw the discovery in the DA's Office when I
11 was supposed to be reviewing CAC videos. I took notes
12 about it, and then after I filed my motion, it gets put
13 in the system with a date later than when I saw it.

14 Q Understood. So --

15 THE COURT: Wait. With a date later than
16 when you saw it?

17 THE WITNESS: That's correct, Judge.

18 THE COURT: Meaning it was --

19 THE WITNESS: So I have -- they bring a
20 file for me to look at discover -- or CAC videos. That
21 CAC video has a CD. They put the CD in the TV and they
22 open it. It's a computer. And they open a file drive.
23 And in that file drive for the particular case that I'm
24 talking about has 21 files in it. So I wonder what are
25 these 21 files, and so I take notes on it. I physically

1 see them in there, 2000-some-odd documents in all of
2 these files. Then, after I file my motion in that case,
3 a day later some of that stuff gets uploaded or seven
4 days later, I don't know the timeline, it gets uploaded,
5 and the date on the article 39.14 disclosure form where
6 it says effective date or created date or whatever, is
7 not 11 -- no, not 10/7 when I saw it, but 10/30. So
8 they had possession of it, they hadn't uploaded it yet.

9 THE COURT: All right. So you're saying
10 it indicates that they have items that they don't upload
11 for a while after they're in their possession, so
12 they're not made available to you?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. I understand.

15 MR. MCDERMOTT: And we're going to go
16 through a specific example of this.

17 THE COURT: Right. I'm just trying to
18 understand the --

19 MR. MCDERMOTT: Understood.

20 THE COURT: -- the argument.

21 BY MR. MCDERMOTT:

22 Q So that was a full explanation of that. With
23 Defense Exhibit Number 1 which you said is it's a table
24 of contents we can download from their system. It also
25 comes in the plea papers for us to sign and our client

1 to sign; is that correct?

2 A Effectively, yes.

3 Q Okay. Is there any kind of waiver on that
4 form?

5 A There is.

6 Q And have you reviewed that waiver?

7 A I have.

8 Q Has that waiver been the same the entire time
9 you've been practicing against the 34th District
10 Attorney's Office?

11 A I don't think so. I can't say for sure, but I
12 don't think so.

13 Q What does -- do you know what it asks you to
14 waive now, as the lawyer?

15 A Not just me, but my client, waive any further
16 disclosures by the State that would otherwise be
17 entitled under Brady v. Maryland, Article 39.14 of the
18 Texas Code of Criminal Procedure, Rule 3.09 of the Texas
19 Rules of Professional Responsibility, had I gone to
20 trial. It also --

21 THE COURT: Can I see the document?

22 THE WITNESS: Oh, I'll hand it to you,
23 Your Honor.

24 THE COURT: Unless you have a copy.

25 THE WITNESS: Let me put it back in

1 order, Judge. Sorry.

2 THE COURT: Thank you. You are referring
3 to the last page, the bottom half of the last page?

4 THE WITNESS: Yes, sir. The paragraph at
5 the bottom, right before the signatures.

6 THE COURT: And this is required for any
7 plea is what you're saying?

8 THE WITNESS: There has only been one
9 plea that that hasn't been required for, and that
10 happened in county court after I found out, and I
11 refused to sign it. And I -- my client refused to sign
12 it on my advice. I think.

13 THE COURT: All right. Thank you.

14 BY MR. MCDERMOTT:

15 Q You just testified that you advised your
16 client to refuse to sign this form?

17 A The one in Hudspeth County. The one person
18 that I represented since I found this out, that has
19 pled, yes.

20 Q And why did you advise your client in that
21 case to refuse to sign that form?

22 A I don't know what's out there now.

23 Q So based on your reading as a lawyer of that
24 waiver, what was it asking you to waive?

25 A Any claim that they would have, the

1 prosecutor's responsibility to disclose those things.
2 And I know that there's a line in there that says that
3 they, you know, notwithstanding their professional
4 responsibility or anything like that, but what's my
5 client going to do if he's already waived all that? And
6 if there's an intentional hiding of discovery, that
7 would be actionable I think. I don't practice that type
8 of law, so I don't know.

9 Q All right. So, I want to talk about the
10 process now that led to these hearings.

11 A Okay.

12 Q And you can hold onto Defense Exhibit Number 1
13 right now.

14 A I'll just put it right here if that's okay
15 with the Court.

16 Q You have testified that for the length of time
17 that you've been working with Mr. Marcantel that you've
18 generally been trying to work with him to identify
19 missing discovery, to give him the benefit of the doubt
20 and sometimes deciding to go to trial knowing that some
21 discovery was missing.

22 A Yes.

23 Q But not blaming him for that missing discovery
24 or the DA's Office.

25 A Yeah, I think generally I wouldn't blame him

1 for it. Sometimes I would, but I don't think I would.
2 I would more often than not give him the benefit of the
3 doubt.

4 Q Now, something changed in October of 2024; is
5 that correct?

6 A Yes, sir.

7 Q What was going on? I want to go step by step
8 --

9 A Okay.

10 Q -- time-wise. What were you doing when the --
11 this --

12 A I understand your question, if that is a
13 question, if the Court doesn't mind. Okay.

14 In sex cases, particularly child sex cases,
15 there are generally things called CAC videos. I was
16 going to El Paso to watch CAC videos in I believe five
17 cases.

18 Q All right. If I may interrupt you.

19 Can you describe for the record please what a
20 CAC video is?

21 A CAC video is a Child Advocacy Center
22 interview. It is an interview with someone who is the
23 alleged victim of a sexual assault that is a child. And
24 it's an interview by -- most of the time, by a special
25 interviewer that's supposed to get information. They're

1 also not subject under the law to be turned over by
2 39.14, although we do have the opportunity to view them
3 and we can take notes, and we can also ask if it is
4 appropriate to get a transcript of them. But in order
5 to see them for the DA's Office in El Paso, I have to go
6 to El Paso to see them.

7 Q Now, generally there has been an effort, just
8 for clarification, by the DA's Office to try and
9 accommodate and meet us in Culberson County?

10 A Sometimes they try to do that. They have
11 definitely offered, I don't know that we've ever taken
12 them up on that offer.

13 Q But just to be clear, we're not demonizing
14 every decision that they've made.

15 A No. I don't -- well, my argument is with the
16 law on that, not necessarily with the DA's Office.

17 Q That's correct. But under the law, your
18 understanding is that we're not allowed to have a copy
19 --

20 A That's correct.

21 Q -- under most circumstances?

22 A That's correct.

23 Q And so you made the choice on this occasion to
24 go to El Paso to view this, to view a CAC video in
25 multiple cases?

1 A Yes, sir. I think it was five cases. And I
2 went up there with Mr. Baker and Ms. Kimberly Baeza.

3 Q So for the record purposes, Mr. Baker is whom?

4 A Mr. Baker is an employee of the Public
5 Defender's Office. He's an attorney.

6 Q And Ms. Baeza is whom?

7 A She's a caseworker with the social work
8 department for the Far West Texas Regional Public
9 Defender.

10 Q So you went up with a team to review the CAC
11 video. In what case?

12 A The first case that we were going to look at
13 was Juan Miguel Sanchez.

14 Q Do you know the cause number for Juan Miguel
15 Sanchez and what county it's in?

16 A I know it's in Hudspeth County. It's a 205th
17 case, but I don't know the cause number without looking
18 at my notes.

19 Q Can you look at your notes? Do you have notes
20 with you?

21 A I do. I think it's also the disclosure that
22 you handed me, that's DX-1.

23 Q All right. Can you look at that and see what
24 the cause number is?

25 A 7703-205.

1 Q So to clarify the record, that is not a 394th
2 case; is that right?

3 A It is not.

4 Q So we're just going to be talking about this
5 because this is the first case you looked at when you
6 made a discovery that just -- that caused you to react;
7 is that correct?

8 A That's correct.

9 Q All right. So, when you got to the DA's
10 Office to review that CAC video, what happened?

11 A So, I had sent an email beforehand trying to
12 schedule that. I think most of my emails back and
13 forthwith were with Christina Varela. I scheduled it
14 before, I had to cancel because I think I had a doctor's
15 appointment or something, but I had to reschedule it, so
16 I rescheduled it and they accommodated the rescheduling.
17 I think that I emailed her that morning saying that we
18 would be in, or the day before, I don't know exactly
19 when it was, and she said, great. Expecting you there
20 at eight o'clock in the morning and that I was supposed
21 to meet with an investigator from the DA's Office in
22 order to watch these CAC videos who was not the
23 investigator that normally comes to court with Mr.
24 Marcantel.

25 Q To clarify real quick, there's not only a

1 policy by the DA's Office, but also I believe a court
2 order in one of the cases that we're hearing today, that
3 the DA's Office is allowed to have an investigator watch
4 us while we watch these CAC videos; is that correct?

5 A I don't know about the Court order, but that's
6 their policy.

7 Q And you were complying with that?

8 A Yeah, there was a investigator there the whole
9 time.

10 Q And let's offer some names just to clarify the
11 record. You said that there is an investigator normally
12 assigned to the courts in Culberson and Hudspeth County.
13 Do you know his name?

14 A I believe his name is Anthony Vigil.

15 Q And Anthony was not the person who came down
16 that morning?

17 A He showed up later.

18 Q Okay. So I'm talking about the moment you
19 walked in.

20 A No, I think the last -- the man's last name
21 was Norez or Nunez, something like that. I've never
22 seen him before. I haven't seen him since.

23 Q All right. And what happened when Mr. -- when
24 that investigator came?

25 A I was late. I think I was like 20 minutes

1 late. And he was already in there waiting for us.

2 Q All right.

3 A We showed up, he had all the files with him
4 that -- for the listed cases for the CAC interviews that
5 we were going to watch. I asked him if we could watch,
6 or the first one on the list was Juan Miguel Sanchez.
7 It happened to be that that's the one that I wanted to
8 watch. I don't know how that sort of played out, first,
9 because that's the only one that one of -- one of the
10 two people that were with me were interested in.

11 And so he put the CD into the computer and
12 pulled up the file list. And the file list had, I think
13 it's 19 plus two additional supplement -- or there were
14 19 things labeled supplement, I think. And two other
15 files in it.

16 MR. MCDERMOTT: May I approach Opposing
17 Counsel and then the witness, Your Honor?

18 THE COURT: You may.

19 MR. MCDERMOTT: Your Honor, I'm going to
20 approach the witness with Defense Exhibits 2, 3, and 4.
21 I've shown them to the State.

22 Defense Exhibit 1 for the record, Your
23 Honor, was a 39.14 disclosure in Cause Number 7703-205,
24 which Mr. Chambers has been testifying about. That was
25 dated November 8th of 2024.

1 Defense Exhibit 2 is a disclosure in the
2 same case from July 9th, so previous by several months.
3 And by October 8th -- and the one of October 8th is
4 Defense Exhibit Number 3. Defense Exhibit Number 4 are
5 screenshots of the State's portal in this case.

6 Ask them to be admitted, Your Honor.

7 THE COURT: What's the date on the
8 screenshots or are they various?

9 MR. MCDERMOTT: These -- the witness will
10 testify that he printed -- that he took the screenshots
11 in the last week or so.

12 THE COURT: All right. Recently?

13 MR. MCDERMOTT: Yes.

14 THE COURT: All right. Thank you. Any
15 objection to D-2, 3, and 4?

16 MS. DELANEY: No, Your Honor.

17 THE COURT: D-2, D-3, and D-4, are each
18 admitted.

19 (Defendants' Exhibits 2 through 4 admitted)

20 BY MR. MCDERMOTT:

21 Q All right. So let's go through, first of all,
22 when did this -- when you looked at this case at the
23 DA's Office, what did you notice?

24 A There appeared to be a lot more discovery on
25 that CD than what had been turned over to us.

1 Q How did you know that?

2 A Before I went to go watch the CAC videos, I
3 became generally familiar with what had been disclosed
4 to us.

5 Q And that general familiarity for you meant
6 what kinds of things were you expecting to see?

7 A I am not sure I understand your question.

8 Q So let me ask you this. Defense Exhibits
9 Number 2 and Number 3, what are those?

10 A Oh, these are 39.14 disclosure forms printed
11 on -- Defense Exhibit 2 was printed on 7/9/2024 and
12 Defense Exhibit 3 was printed on 10/8/2024.

13 Q All right. So, what are the significance of
14 those two dates? Do you know?

15 A I don't know what the significance of 7/9 is.

16 Q Except that that is discovery that we had on
17 July the 9th; is that right?

18 A Yes.

19 Q All right. And what is the significance of
20 10/8?

21 A 10/8 was the day after I went to the DA's
22 Office.

23 Q So you went to the DA's Office to watch this
24 CAC video on October 7th of 2024?

25 A That's correct.

1 Q What kind of discovery did we have in July?

2 A According to this, we had a complete report
3 that's listed as one page. It was not one page. I
4 can't tell you how many pages it was without looking at
5 my notes. We had some media and photos that are listed
6 here, Snapchat locations of victims, S19A1 from the
7 Texas Ranger, another Snapchat location of victims from
8 the Texas Ranger, and then several, a page and a half or
9 so, of JPEGs that were images. I looked at all those
10 images before I went. And then there was also a video
11 on 7/9 of an interview with Mr. Sanchez, the Defendant.

12 Q And then on October 8th, why did you print out
13 the discovery disclosure on October 8th?

14 A Because at that point I had -- I feared that
15 without a record they were going to try to put
16 everything in there and say we had it from the
17 beginning.

18 Q Okay. So let me clarify.

19 On October 7th, you saw a disc at the DA's
20 Office; is that correct?

21 A That's correct.

22 Q And on that disc you saw discovery that you
23 thought we did not have?

24 A Yes, sir. Lots of discovery.

25 Q When you came back to our office, did you

1 review our discovery to see if you were correct or if
2 you were mistaken?

3 A Yes, sir.

4 Q And what did you discover when you did that
5 review?

6 A We didn't have lots of things. One file in
7 there is a zip file that they've disclosed since that
8 I'm guessing if it's what I saw and that it had 1500
9 documents on it.

10 Q Okay. So you saw it at their office?

11 A Yes, sir.

12 Q And on October 8th, did you come back to our
13 office and see if that had previously been disclosed to
14 us?

15 A I looked for CDs in our office that we may
16 have misplaced and didn't put on our Google Drive. I
17 looked in our Google Drive, which is where we keep the
18 discovery after we download it. I also looked in the
19 portal and didn't see it either.

20 Q Did you review -- did you take notes when you
21 were in the DA's Office of things that you saw in this
22 Mr. Sanchez's case?

23 A Yes, sir.

24 Q And things that you thought of that you
25 suspected were missing?

1 A Not what was missing; everything that I saw on
2 the CD.

3 Q Understood. Do you have those notes with you
4 today?

5 A No. But it looks like you have them.

6 Q Can I hand them to you? Would it help you to
7 refresh your memory if you had these notes in front of
8 you?

9 A Sure.

10 Q If you're able to compare between the
11 disclosure that you printed out on October 8th of 2024
12 and the notes that you took on October 7th, are you able
13 to see things that were in the State's file that we did
14 not have on October 8th?

15 A You have to ask that question again.

16 Q Okay. Can you look at your notes, which were
17 taken on October 7th?

18 A Uh-huh.

19 Q And can you compare that to the disclosure
20 form that we have from October 8th?

21 A I don't need to do that. There was stuff that
22 was in the file that was -- it was in the file at the
23 DA's Office that was not in this list.

24 Q What were those things? Are you able to
25 identify those things?

1 A First of all, I don't need these, these are my
2 personal notes on the CAC video.

3 Q Understood.

4 A Supplement one on this case that was in the
5 file appeared to be empty.

6 Supplement two was an admin subpoena for
7 suspect and victim collection. It was two PDFs, I'm not
8 sure whether we had that or not.

9 Supplement three was the CAC video and SANE-
10 something. The CAC video, if I remember this case,
11 didn't play well. No, this is the one we watched the
12 full video on. There -- I didn't see any SANE paperwork
13 or anything like that.

14 Supplement four was Monica Mendez's (ph)
15 statements. Unless that was in the complete report,
16 which I have notes on what was in that, it wasn't turned
17 over.

18 Lilianas Pantoya (ph) was a TREDPS with two
19 pics. That was supplement five. I don't believe that
20 was turned over.

21 Supplement six was Marfa Nunez (ph). And that
22 -- I think that there were at least -- there might've
23 been two files in that, or it may have just been two
24 photos. I'm not sure whether we had those. We did have
25 photos that were disclosed at that time. I'm not sure.

1 Supplement seven was subscriber results for
2 Cricket Wireless. I don't remember ever seeing those in
3 the file before.

4 Q Were those on the disclosure that were on
5 October 8th?

6 A Not particularly listed. Again, if they were
7 in the complete report, they were there, but I have
8 notes on it that I can look at in a second.

9 Supplement nine was Joshua Hernandez's
10 statement, the Texas Ranger. That wasn't individually
11 listed unless it was in the complete report.

12 Supplement 10 was Cassandra's Snap pics, PDF
13 of Snap, and a statement from the Texas Ranger. Unless
14 that was in the report, it wasn't there.

15 Supplement 11 was Juan -- I can't remember his
16 name. There was a voluntary statement without rights, a
17 buccal search warrant, a lab submission, interviews and
18 affidavits and warrants. And I never saw any search
19 warrant information and I definitely didn't have lab
20 reports at that time.

21 Supplement 12 was an AT&T warrant, a Sprint
22 warrant, a Facebook warrant, a Snapchat warrant, and a
23 preservation request. Some parts of those warrants were
24 probably in the complete report, but --

25 Supplement 13 was AT&T records.

1 Q All right. So let me clarify here.

2 Did you review our file --

3 A Yes, sir.

4 Q -- after you did this discovery, after you did
5 this discovery review that day in El Paso?

6 A Yes, sir.

7 Q Did you take notes about what you saw in our
8 file?

9 A Yes.

10 Q Is it true that we received a disclosure first
11 around January 10th of 2023?

12 A I would have to look at my notes. Can I look
13 at my notes?

14 Q You may.

15 A The first disclosure date -- I would say the
16 first upload date, that's more accurate I think, is the
17 January 10th called a complete report. That was a 37
18 page report with an indictment, 32 pages of a Texas
19 Ranger report, an affidavit of probable cause, and a
20 warrant of arrest and one blank page.

21 Q Okay. So previously you've just testified
22 that many of these supplements you did not know if they
23 were in the complete report?

24 A Right.

25 Q Are you changing your testimony now?

1 A I'm -- based on the amount of stuff that I
2 saw, yeah, there's only 37 pages in this.

3 Q Okay. And then -- and when you said the
4 disclosure date, what do you mean by that? And you said
5 that was different than --

6 A So I've -- I started with Mr. Sanchez's case
7 when I was going through this. I actually didn't know
8 that the upload date and the disclosure date were
9 different until I was dealing with all this.

10 Q Okay.

11 A So this is the first one that I took notes on,
12 on 11/11, and I was mistitled them disclosure date, but
13 then I found out it wasn't.

14 Q Okay. Understood. The second disclosure date
15 was when?

16 A It was actually an upload date, which was
17 January 23rd, 2023. That was 57 photographs. Those are
18 the pho -- and an interview that was an .mp4.

19 Q All right. So, just to be clear, do you know
20 when we were appointed on this case?

21 A I do.

22 Q When was that?

23 A January 23rd, 2023.

24 Q And when was this case indicted?

25 A May 20th of 2022.

1 Q And do you know when it was set for
2 arraignment?

3 A I don't.

4 Q And this case is in the 205th, so is that easy
5 or difficult to discern?

6 A It's not very easy to discern.

7 Q Why?

8 A Judge Dominguez once he gets a hold of a case
9 keeps pretty good track of it, but until then.

10 Q So when was the first hearing that you were
11 able to identify that we had in this case?

12 A May 2nd, 2024.

13 Q And did we file a discovery request at that
14 time?

15 A We did.

16 Q All right. So there was some --

17 A Well, file deadline was July 28th. I'm sorry.

18 Q Okay.

19 A That was the first hearing.

20 Q When did we file our request for discovery?

21 A May 2nd.

22 Q Of 2024?

23 A Of May 2024.

24 Q All right. So, did we -- we filed a motion to
25 dismiss in this case that's being heard in the 205th; is

1 that right?

2 A It's not set yet.

3 Q But we filed a motion; is that right?

4 A On October the 9th.

5 Q All right.

6 A Of this year.

7 Q Did we receive discovery after October 9th of
8 2024?

9 A Yes, sir.

10 Q What did we receive?

11 A On October 17th, we received supplements one
12 through 12, which was 79 pages; supplements 17 and 18,
13 which were an additional 39 pages; supplements 13, 14,
14 15, 16 and 19. 13 through 16 were the large zip files
15 that probably are the things that I saw with the
16 thousand or so documents in it. I haven't been able to
17 look at them, but they're huge zip files.

18 Q Okay.

19 A There was also on that day an interview of
20 Janae Ramirez that was uploaded.

21 Q Has there been any other disclosures since
22 October 17th of 2024 in this case?

23 A There has.

24 Q What?

25 A Monday, October 21st, there were 52

1 photographs that were uploaded, 30 of those were PNG
2 files with various labels, 22 of those were PNG files
3 with different labels.

4 Q Understood. Anything else?

5 A On November the 1st, the lab report PDF1, lab
6 report PDF2, there are two, they're not labeled one and
7 two. And a lab report, TIFF was uploaded.

8 Q Anything else?

9 A On November the 4th there were AT&T records.
10 They looked like records when I first looked at them. I
11 think now they're just a key to read the records. And
12 an affidavit for search warrant. So the AT&T records
13 were 15 pages and the search warrant was 12 pages. I
14 last looked at this on November the 11th.

15 Q November the 11th was last Monday; is that
16 correct?

17 A Yes.

18 Q All right. So volume wise, how much discovery
19 do you think we've received since you filed the motion
20 to dismiss in this case?

21 A If those zip files are what I saw?

22 Q Yes.

23 A Thousands of pages, 2000 pages, 2,500 pages.

24 Q Do you know -- and there were some videos and
25 pictures in there as well; is that right?

1 A Yes, there were videos and pictures. I
2 haven't had time to go through and see which ones
3 particularly apply to those pictures that were -- so
4 there, we had 57 photographs before and they disclosed
5 52, I haven't been able to compare to see what are
6 there.

7 Q Have you been able to identify how much data
8 volume the disclosure was since we filed the motion to
9 dismiss?

10 A Just on the 394th cases total?

11 Q No, on this case.

12 A No.

13 Q Understood. But you believe it's thousands of
14 documents?

15 A Yes.

16 Q Now, have we received any communication about
17 this case, about Juan Miguel Sanchez from Mr. Marcantel,
18 since you filed the motion to dismiss in this case?

19 A I think so. I think we got a plea offer and a
20 deadline for that plea offer.

21 Q And what was the plea deadline for that plea
22 offer?

23 A Well, so we started sending plea offers right
24 after, and I remember one being the 17th, that might be
25 it, which was yesterday.

1 Q Would you like to look at your notes and see
2 if that will refresh your memory?

3 A Yes, please. Yeah, 5:00 p.m. on November 17th
4 was the plea -- the plea deadline.

5 Q So the plea deadline in this case -- so let me
6 be clear. There are thousands of pages of documents
7 that were -- and videos that were disclosed after the
8 motion to dismiss was filed?

9 A That's correct.

10 Q And in those intervening weeks, there was also
11 a plea offer made that was to expire yesterday?

12 A It was rejected before then, but the plea
13 offer was made on October 16th.

14 Q To expire on the day before this hearing?

15 A That's correct.

16 MR. MCDERMOTT: May I approach Opposing
17 Counsel, Your Honor?

18 THE COURT: You may.

19 MR. MCDERMOTT: Your Honor, I have
20 offered for review to the State an email exchange
21 between Mr. Marcantel and Mr. Chambers. I'm identifying
22 this as Defense Exhibit 5. May I approach the witness?

23 THE COURT: You may.

24 BY MR. MCDERMOTT:

25 Q Do you recognize this, Mr. Chambers?

1 A Give me a second. I'm looking over it. Yes,
2 sir.

3 Q What is it?

4 A It is an email exchange between me, Kevin
5 Marcantel, with a bunch of other people CC'd on it, and
6 a forward that I made to Ms. Santillan who works in our
7 office.

8 Q Was the email communication initiated by you
9 or Mr. Marcantel?

10 A It was initiated by Mr. Marcantel.

11 Q And on what day was it initiated?

12 A October 16th of 2024, at 6:17. I think it's
13 my time, I'm not sure.

14 Q How many days after the motion to dismiss was
15 filed in this case was that email sent?

16 A I believe I filed this on the 9th or the 10th,
17 so six or seven days.

18 Q And does this email accurate -- does this
19 document accurately reflect what you testified to about
20 the email exchange between Mr. Marcantel and you?

21 A Yes.

22 MR. MCDERMOTT: I'd like to offer Defense
23 Exhibit Number 5.

24 THE COURT: Any objection?

25 MS. DELANEY: No, Your Honor.

1 THE COURT: 5 is admitted.

2 (Defendants' Exhibit 5 admitted)

3 BY MR. MCDERMOTT:

4 Q Okay. So that was a little off track. To get
5 back, after you noticed all these things at the DA's
6 Office when you were there that day, what happened next?

7 A Well, so I was taking notes and I tried to
8 watch the rest of the CAC videos. I don't know if it
9 was in the middle of, or at the, like the tail end of
10 the first one or before we started the second one, or in
11 the middle of the second one, the investigator, and I'm
12 going to call him Mr. Norez, I'm not sure that's his
13 name, left because Mr. Vigil showed up.

14 Q What did you do next?

15 A I started going through the cases.

16 Q Why?

17 A Because I was there to watch CAC videos. So I
18 -- the next case, I don't remember which one it was, we
19 tried to watch the CAC video. I don't know if that one
20 worked or not. Only about -- out of the five, only
21 about two and a half videos worked. I say half because
22 one of them we were watching and it cut out sort of in
23 the middle of it, it wasn't even a CAC interview, it was
24 an interview that the alleged victim had with the Texas
25 Ranger. And then when that one cut out, I think that's

1 the one that Mr. Vigil said he would get fixed for us
2 and he would try to fix all the other ones. And I don't
3 remember exactly what he said, but he seemed to be
4 apologetic that I had come all the way out there and
5 didn't get to watch the two and a half videos.

6 Q Did you leave at that point?

7 A After I tried to watch all five, but while I
8 was sitting there and they would put the CDs in, I would
9 take notes on each case about what the file said.

10 Q When you left, what did you do?

11 A We went to eat, we flew back. I -- before I
12 got to the place to eat, I called you. I was a little
13 bit in shock.

14 Q What were you in shock about?

15 A That's a lot of documents not to have turned
16 over. That's a lot of documents in a relatively serious
17 case, I would think.

18 Q What was the case? What kind of case is it?

19 A It's a sexual assault of a child. I don't
20 know exactly what it's indicted for, but the allegation
21 is that our client slept with a child who was underage.

22 Q And our 28.01 deadline for the 205th in this
23 case was when?

24 A I'd have to look at my notes for that.

25 Q Can you look at your notes? Go ahead and keep

1 them out.

2 A July 28th, 2024.

3 Q And that's the deadline by which we need to
4 file any contested pretrial or evidentiary motions; is
5 that right?

6 A That's right. But I will say I hadn't even
7 attempted to watch the CAC video at that point, so I
8 suspect that the announcement on that case, I don't know
9 for sure, but I suspect that the announcement was that I
10 still needed to watch the CAC video and without --
11 before I could make a real announcement.

12 Q Relevant for this hearing, after you got back
13 to Alpine, what did you do? Did you start reviewing
14 other cases? Did you just sit on this case and not tell
15 anybody? What did you do that might be relevant for the
16 issue about discovery issues with the State?

17 A Once I got back to Alpine?

18 Q Yes.

19 A I started printing 39.14 disclosures,
20 disclosure forms, for every case on the Case Portal.

21 Q Why did you start printing those then?

22 A Because I was afraid that they were going to
23 start disclosing stuff and then say that we've had it
24 all along.

25 Q Okay. So the disclosure form that you've

1 testified earlier does not say when we got it, it just
2 says that we had it on the date that you look at the
3 disclosure form; is that correct?

4 A That's correct.

5 Q And had we had a problem before with the State
6 disclosing things late and then asserting that we'd had
7 them earlier?

8 A I've been in court and seen something like
9 that happen.

10 Q Can you describe that?

11 A You had made an announcement to the Court that
12 something was missing. I had also looked for that thing
13 and it wasn't on the portal. And then you made the
14 announcement and while you were making an announcement,
15 it showed up.

16 Q And did the disclosure form change while that
17 -- when that was put up?

18 A As far as I know. I didn't print the
19 disclosure form. I suspect it did.

20 Q So you were concerned in these case -- in the
21 case that we had pending, that disclosure forms would be
22 updated and not accurately reflect what we had on
23 October 7th or October 8th; is that correct?

24 A I was concerned that what -- well, what
25 actually ended up happening would happen, that I would

1 get a 39.14 disclosure form printed yesterday that would
2 have a bunch of stuff listed in all these cases and the
3 State would argue like they did in their motion that it
4 didn't matter because I have it now.

5 Q Were you afraid that they would say that we
6 had it before?

7 A If it was Mr. Marcantel arguing it, yes.

8 Q Because you'd seen that happen before?

9 A I've seen it happen before.

10 Q So at what point did you decide to file
11 motions to dismiss? What happened?

12 A For this case or for all the cases?

13 Q In general, why did it -- what led to the
14 conclusion that you needed to do that?

15 A I looked through all the discovery, saw
16 obvious things that if anyone was reading a police
17 report should see and should ask for, went and checked
18 whether or not we had filed our 39.14 or request and how
19 long ago it was, and then the Court's deadlines, before
20 I made a decision to file in any case.

21 Q So let me clarify. You reviewed the discovery
22 on every indicted case that we had open in Hudspeth and
23 Culberson Counties?

24 A No, sir.

25 Q Which ones did you review?

1 A I reviewed the discovery in every indicted
2 case that was either at or very close to a plea deadline
3 because the Court doesn't like to extend his plea
4 deadlines if he doesn't have to.

5 Q Did you limit yourself initially to Culberson
6 County?

7 A Except for Mr. Sanchez's case, yes.

8 Q Why did you limit yourself to Culberson
9 County?

10 A We have way more cases in Hudspeth County.

11 Q Was there also a docket coming up in Culberson
12 County?

13 A So the Culberson County docket happened. So,
14 I went on Monday to see the CAC videos, and then on
15 Wednesday was the docket. And at that docket I told
16 Judge Ferguson that in Mr. Nunez's case who's sitting
17 here, that I had filed the motion and that there were
18 more going to come.

19 Q And is that because there were cases set for
20 plea deadline on that docket?

21 A Yes, sir.

22 Q And so you decided to review only the plea
23 deadline cases or all the cases on that docket?

24 A I tried to review everything on that docket,
25 but I wanted to -- I paid particular attention to the

1 Court's deadlines.

2 Q And when you reviewed the cases on that
3 docket, what did you discover in a general sense? And
4 we'll go through individual cases in a little bit.

5 A There was stuff missing, obvious stuff that
6 was missing.

7 Q In some cases or all cases or a few cases?

8 A So I want to say all. I want to say all. I
9 don't -- I mean, with -- every case that I filed a
10 motion on has something missing.

11 Q And it was missing on October 7th?

12 A The day -- it was missing on the day that I
13 looked and it was missing on the day that I filed.

14 Q Since the day that you have filed any of the
15 motions to dismiss, have there been any changes on these
16 cases?

17 A Yes, there have. What

18 Q kind of changes?

19 A Since then the DA's Office -- can I look at my
20 notes?

21 Q Yes.

22 A Has disclosed 324 pages of discovery, 151
23 pics, and 224.35 gigabytes of video.

24 Q I don't know what a gigabyte is. Can you tell
25 me how much video that is in a term that I can

1 understand?

2 A It's a -- well, a gigabyte is a thousand
3 megabytes, but according to Disney's website, a standard
4 definition video is two gigabytes. So that's 112
5 standard definition movies.

6 Q That have been disclosed since when?

7 A Since -- well, it could have been disclosed
8 between the 9th and the 24th or after the 24th, 25th
9 when most of the motions were filed.

10 Q So, let me clarify. Since October 9th --

11 A Uh-huh.

12 Q -- you believe that we have had disclosure of
13 videos in one month amounting to how many Disney movies?

14 A A hundred and twelve.

15 Q Thank you. Have you reviewed any case in your
16 review with eyes towards these discovery problems, that
17 have not had a problem?

18 A I have --

19 THE COURT: I need to jump in real quick
20 before you move on.

21 THE WITNESS: Yes, sir.

22 THE COURT: Those items that you just
23 described.

24 THE WITNESS: Yes.

25 THE COURT: Are those confined to just

1 the cases for which motions to dismiss have been filed
2 or is that all Culberson cases?

3 THE WITNESS: That is only the cases that
4 are in the 394th that are on this docket, Judge.

5 THE COURT: All right.

6 MR. MCDERMOTT: Sorry I did not make that
7 clear.

8 THE COURT: Thank you.

9 BY MR. MCDERMOTT:

10 Q So there's other videos and other disclosures
11 in other cases?

12 A Maybe.

13 Q But right now you know that this is 394th
14 cases in Culberson County?

15 A I didn't come up with that number until after
16 I was told that the cases that we were for sure hearing.
17 I think I came up with that number on Friday.

18 Q You came up with, or you were able to identify
19 through?

20 A Went through and wrote down all the numbers
21 and added them together.

22 Q Have you reviewed any case so far from the
23 DA's Office in El Paso that has not revealed discovery
24 problems, since October 9th?

25 A I don't know that I would say not revealed

1 discovery problems, but I didn't file in some cases or
2 in two companion cases for two people that are on this
3 docket and I didn't file in some other cases here.

4 Q Understood.

5 A For various reasons.

6 Q Have I missed anything in the process of
7 getting to these hearings?

8 A I don't think so.

9 MR. MCDERMOTT: Judge, at this point, I'm
10 passing the witness for the purpose of the general
11 issues, not specific cases that are set for the docket
12 today.

13 THE COURT: All right. We've been going
14 about an hour and a half. Let's go ahead and take our
15 first break. We'll take about 15 minutes, and we'll
16 come back for cross-examination. We're in recess.

17 THE BAILIFF: All rise.

18 (Off record)

19 THE COURT: Thank you. Let's be seated.

20 All right. Let's go back on the record.

21 I understand there's -- has there been a discussion
22 about you reopening?

23 MR. MCDERMOTT: No, Judge, I've not
24 talked to the State about this. I just would request to
25 reopen only to present a illustrative slideshow that

1 involves the exhibits that we've already done to help
2 sort of clarify the testimony that we've given already.

3 THE COURT: Would that not more
4 appropriately follow after cross when you close the
5 portion of your presentation related to all?

6 MR. MCDERMOTT: I can do it then too,
7 Judge.

8 THE COURT: I think that would be more
9 appropriate.

10 MR. MCDERMOTT: Just related to the one
11 that we've already discussed.

12 THE COURT: Understood.

13 MR. MCDERMOTT: Thank you, Judge.

14 THE COURT: All right. All right. Mr.
15 Chambers has now passed for cross-examination by Ms.
16 Delaney. Go ahead.

17 MS. DELANEY: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. DELANEY:

20 Q I would like to refer you back to the case
21 that we were talking about towards the end of your
22 testimony. I think it was Cause Number 7703, The State
23 of Texas v. Juan Miguel Sanchez.

24 A Yes, ma'am.

25 Q Okay. That case is a sexual assault of a

1 child case, correct?

2 A Yes.

3 Q Yeah. And would you agree with me that many
4 items of evidence in those types of cases are very
5 sensitive in nature?

6 A You're going to have to define sensitive for
7 me.

8 Q Naked photographs.

9 A Some of those could be, yeah.

10 Q Videos of sexually explicit conduct.

11 A It could be. I'm not saying that it happened
12 in this case.

13 Q Okay. Isn't it common in sexual assault of
14 children cases to find evidence of sensitive nature like
15 that? Would you agree with me?

16 A No.

17 Q Okay. And when you went down to El Paso to
18 view the Child Advocacy Center videos on October 8th,
19 you were there to look at them in that particular case,
20 7703?

21 A I think it was the 7th.

22 Q Sorry, 7th, October 7th.

23 A And five cases.

24 Q Okay. Was 7703 one of those cases?

25 A It was.

1 Q Okay. And was it that case where -- when the
2 disc was put in for you to view those videos that are
3 sensitive in nature and therefore not placed on portal,
4 is that when you saw the additional supplements that you
5 refer to in your motion to dismiss?

6 A Yes.

7 Q Okay. And were you given an opportunity to
8 look at those?

9 A I asked the investigator if I could take notes
10 on what was in there and he showed -- he opened each
11 file, yes.

12 Q Okay. And you were able to take notes on
13 them?

14 A I was.

15 Q Okay. And so therefore, they were not hidden
16 from you, in other words? You were given an opportunity
17 to look at them and you did look at them?

18 A The information that I saw in there was
19 discoverable and should have been turned over under
20 39.14.

21 MS. DELANEY: Okay. I would object to
22 nonresponsive.

23 BY MS. DELANEY:

24 Q You were able to look at them and they were
25 not hidden from you; is that correct?

1 A When?

2 Q On October 7th, 2024, when you were there to
3 look at the videos?

4 A No. On October 7th they weren't hidden
5 anymore, because I saw them.

6 Q Okay. And you were given an opportunity to
7 look at them?

8 A On October 7th.

9 Q And you did take notes on it?

10 A I already answered that question, yes.

11 Q Okay. And since that day you also have
12 received those additional supplements that you said you
13 had not previously received; is that correct?

14 A I have received what appears to be those.

15 Q Okay. Have you had an opportunity to look at
16 that?

17 A No.

18 Q Okay.

19 A Not in detail.

20 Q And you haven't been to trial yet in that
21 case?

22 A No.

23 Q Hasn't pled?

24 A No, it's set for trial.

25 Q Set for trial. In March, correct?

1 A I think it's March. I'm not a hundred percent
2 on that, but it's next year, early sometime.

3 Q And you did receive an offer from the State.
4 Do you remember what that offer was?

5 A No, I don't remember what it was. I remember
6 it was rejected.

7 Q Five years deferred probation. Does that
8 sound right?

9 A I don't remember. I'd have to look at my --
10 the email.

11 Q Okay. And do you have access to the --

12 A I do.

13 Q Okay. Could you please check your email --

14 A Sure.

15 Q -- to confirm what the offer was?

16 A Plead guilty to the charges as indicted,
17 sexual assault of a child, and the Defendant will be
18 sentenced to five years deferred probation, a thousand
19 dollars fine, court costs, curfew, no contact with the
20 victim, I'm not going to say the victim's name out loud,
21 300 hours of community service, lifetime sex offender
22 registration and sex offender counseling, and the other
23 usual terms and conditions of probation. Pleas (sic)
24 bargain offer -- I -- he meant plea bargain, sorry;
25 offer expires and the case must plead no later than 5:00

1 p.m. on November 17th, 2024. That was his offer.

2 Q And so -- and what date -- what was the date
3 of that offer extended to you?

4 A Wednesday, October 16th at seven -- or 6:17
5 p.m. I'm not sure if that's Mountain or Central time.

6 Q So was that approximately -- were you given
7 approximately one month to review the additional
8 discovery that you had received and already reviewed on
9 October 7th, to speak with your client about that
10 particular plea offer?

11 A So you're making it seem like I had time in
12 the -- on the 7th to review 2000 documents worth of
13 information, and that's just not true. I took notes on
14 it.

15 Q Understood. But you were given at least a
16 month, correct?

17 A I was --

18 Q From the --

19 A The deadline --

20 Q -- the time we made disclosure to the time
21 that the plea offer expires, you were given at least a
22 month; is that right?

23 A I don't know when the disclosure was. I know
24 when the upload was.

25 Q Okay. And when was that upload?

1 A Oh, let's see. I'm sorry, I misspoke. I know
2 that the upload was on October 17th for supplements one
3 through 12. Supplement 17 and 18 were uploaded that
4 same day, 13 through 19; 13, 14, 15, 16 and 19 were
5 uploaded that same day, as well as a video. That was
6 October 17.

7 Q And where are you getting --

8 A And then --

9 Q I'm sorry.

10 A -- on October 21st, there were 52 photographs
11 that were uploaded. And on November 1st, those -- there
12 were three lab reports that were uploaded. On November
13 4th, there were AT&T records and a search warrant
14 affidavit maybe, that was uploaded. And I'm getting
15 those directly from the pictures on the Case Portal.

16 Q On the portal.

17 A Yeah, there's a date that says date created or
18 date -- I don't know if it says date uploaded, but it'll
19 have some sort of -- on the portal. Generally, it's not
20 on the 39.14 disclosure.

21 Q And I believe it does say date created.

22 A Some of them do.

23 Q On the portal.

24 A I have the pictures here.

25 Q So you are aware in fact that when uploads are

1 made to portal, that portal timestamps that particular
2 upload?

3 A I believe that's an accurate statement of what
4 I've discovered. Yes, ma'am. Excuse me.

5 Q So in other words, when you say that the State
6 could change that upload date, that would be incorrect,
7 you know that to be incorrect?

8 A I don't know that to be incorrect. I have no
9 idea.

10 Q But you do know that portal timestamps when
11 it's actually uploaded?

12 A I know that the -- that there are timestamps
13 on there and they appear to be when they are uploaded.
14 I can't say whether you can change that.

15 Q Now, so from the very last thing that you
16 received, approximately 12 days were given before the
17 expiration of your plea offer on November 17th, correct?
18 Or maybe 15 days?

19 A I don't know if anything's been given since
20 when I last looked on the 11th. I haven't looked at the
21 case since.

22 Q But you show that the last upload was November
23 4th, at least on the document that you possess?

24 A I believe that the last upload was, let me
25 make sure, November 4th.

1 Q Okay. And your deadline was November 17th?

2 A The deadline in the email was November 17th.

3 Yes, ma'am.

4 Q Okay. And had you had an opportunity to
5 review probably what amounts to extensive discovery in
6 that time period?

7 A I'm -- I don't understand your question. I'm
8 sorry.

9 Q Have you had an opportunity to review the
10 discovery provided in that particular case?

11 A No.

12 Q Okay. So, could you have requested from Mr.
13 Marcantel an extension of his plea offer deadline in
14 order to give you time to review that discovery?

15 A Could I have? I mean, I guess.

16 Q You could have, right?

17 A I guess I could have.

18 Q You still can, correct?

19 A No. The deadline's passed.

20 Q You can request an extension of that deadline
21 by communicating with Mr. Marcantel, isn't that correct?

22 A I'm -- it is possible for me to do that. Yes,
23 ma'am.

24 Q Perfect.

25 A Okay.

1 Q And this is a case in Hudspeth County, right?
2 The 205th District Court. And I believe you testified
3 that the 28.01, which is your deadline to file any
4 pretrial motions, was passed in July of 2024?

5 A We're still talking about the same case?

6 Q I believe so; that's my question.

7 A Okay. 28.01 deadline was set for July 28th.
8 Yes, ma'am.

9 Q All right. So that's passed?

10 A Yes, ma'am.

11 Q Do you agree with me that you also could
12 request an extension of that 28.01 deadline on the basis
13 that you've received additional discovery?

14 A I could.

15 Q Okay. When a defendant is indicted and you
16 are appointed to that particular defendant's case, who
17 is it that appoints you to that case?

18 A Depends on when you're talking about and in
19 what court.

20 Q Okay. Let's talk about the 17 cases that are
21 in this -- filed in this court.

22 A I think it's 15, but yes, ma'am.

23 Q Actually, it's 17.

24 A Is there 17? I thought it was 15.

25 Q So in the 17 cases that we are here discussing

1 today in this particular court --

2 THE COURT: I show 15 in my list.

3 Plaintiff --

4 MS. DELANEY: On the document filed
5 November 4th, 2024, motion to consolidate for hearing,
6 there's a list of 18 cases.

7 THE COURT: Well -- ah, three of those
8 are 205th cases that I'm not considering. I'm only
9 considering the 394th, in spite of my overlapping
10 jurisdiction.

11 MS. DELANEY: The State is relying on the
12 Defendants' filing and only one is listed as a 205th
13 case.

14 THE WITNESS: It was -- I was mistaken on
15 two cases.

16 BY MS. DELANEY:

17 Q Okay. Can you tell me which of the other two
18 cases are 205th cases?

19 A It would be easier for me to tell you which
20 are 394th cases.

21 THE COURT: Why don't you let me call
22 them out?

23 THE WITNESS: Okay.

24 MS. DELANEY: Sounds good.

25 THE COURT: I had planned to do that at

1 the close of this part of the chapter.

2 THE WITNESS: All right.

3 MS. DELANEY: Thank you, Your Honor.

4 THE COURT: So, all right. We have 2081,
5 Baeza; we have 2090, Nunez; 2044, Rodriguez; 2087,
6 Guillory; 2078, Niko; 1944, Hagan; 2094, Urias; 1966,
7 Galaviz-Lopez; 2000, Nunez-Chavez; 2035, Valenzuela;
8 2057, Olivas; 2079, Carrillo; 2085, Sinclair; 2097,
9 Fodge; and 2088, Almaguer.

10 BY MS. DELANEY:

11 Q So I believe that leaves 2042, 1998, and 7703
12 all being 205th cases in Hudspeth. Does that sound
13 correct?

14 A I don't know the number's off the top of my
15 head.

16 THE COURT: The coordinator's nodding,
17 she says yes.

18 MS. DELANEY: Okay. Perfect. Thank you.

19 THE COURT: Thank you for clearing that
20 up.

21 BY MS. DELANEY:

22 Q So let's talk about the 15 cases that are
23 pending before this Court today. Who appoints you to
24 those particular cases?

25 A It depends on when.

1 Q Okay. Can you elaborate on that?

2 A Yeah, sure. If they are -- if they apply for
3 counsel before indictment, it goes through this system,
4 the automated system, and Judge Ferguson appoints us.

5 Q Before indictment?

6 A Sometimes.

7 Q Okay. And if it's an after indictment case,
8 who appoints you?

9 A It would depend on if that's in court or if
10 that's outside of court.

11 Q Okay. If it's in court, who does that?

12 A In these 15 cases or cases like these 15, I
13 guess, it would be Judge Ferguson in person or if it
14 wasn't in person, then it would be the automated system
15 that would ultimately go to Judge Ferguson.

16 Q So that would --

17 A There are different processes in which that
18 happens is why I --

19 Q So that would be the outside of court
20 situation you're talking about?

21 A Yes.

22 Q Okay. So in all cases, at whatever time, it
23 would be Judge Ferguson who appoints you?

24 A No. If there are 205th cases or county court
25 cases, they get appointed by those judges.

1 Q I'm referring to the 15 cases that are
2 currently pending in front of this Court.

3 A Judge Ferguson appointed me.

4 Q Okay.

5 A Or he appointed the Public Defender's Office
6 is a better way to --

7 Q Understood. And you are aware, aren't you,
8 that you're not granted Portal access from our office
9 until you file your notice of appearance or deliver to
10 us your -- I'm sorry, file in the papers of the court,
11 your notice of appearance in the case?

12 A That's -- we've never filed a notice of
13 appearance. We don't file notices of appearance. So
14 I'm given access without that, if that's the -- if
15 that's the answer to your question.

16 Q Okay. So how do you get access? Are you
17 asking --

18 A When I file my waiver of arraignment, my 28.01
19 motions, and my request for discovery, generally, that's
20 when I get it. I do not get it when the Judge appoints
21 me, which is the notice that I am on the case.

22 Q Okay. So when you file documents in the
23 papers of the court, which alert everyone that you are,
24 in fact, the attorney of record for that particular
25 defendant, that's when you are granted Portal access by

1 the State of Texas?

2 A Sometimes. But that's not when you get notice
3 or your office gets notice, not you in particular.

4 Q Sometimes you have to send an email directly
5 to our office requesting it, correct?

6 A You got notice or your office got notice when
7 I was appointed because you're on the email chain.

8 MS. DELANEY: Objection, nonresponsive.

9 THE COURT: Sustained.

10 BY MS. DELANEY:

11 Q You have to send it -- sometimes you have to
12 send an email to our office requesting access to Portal
13 for a particular case?

14 A Sometimes.

15 Q Do you normally send that notice or request
16 for Portal access as soon as you are appointed?

17 A No.

18 Q Generally, how long does it take you?

19 A When I know that my client is indicted.

20 Q So do you -- is it fair to say that you send a
21 request for Portal access as soon as your client is in
22 indicted?

23 A I think it's more fair to say as soon as I
24 know that my client is indicted.

25 Q Okay. I believe you testified that there was

1 -- you had a meeting with the District Attorney Bill
2 Hicks, Penny Hamilton, Briggs, and Shapleigh?

3 A No, ma'am. Mr. Hicks was not there.

4 Q Okay. I'm sorry, I misheard. What about --
5 when was this meeting with Penny Hamilton, Briggs, and
6 Mr. Shapleigh? Can you refresh my memory?

7 A Last year, early last year, maybe the year
8 before, early last --

9 Q Did you testify that it was in May of 2022?

10 A Yeah.

11 Q Okay.

12 A That sounds about right.

13 Q And was it on behalf of the District Attorney,
14 Bill Hicks, his new administration, this meeting took
15 place?

16 A I'm -- I don't understand your question. I'm
17 sorry.

18 Q This meeting with Penny Hamilton, Briggs --

19 A Uh-huh.

20 Q -- and Mr. Shapleigh, was it on behalf of the
21 administration for Bill Hicks?

22 A We had tried to set up a meeting with Mr.
23 Hicks. I believe those are the people he sent to me.

24 Q Okay.

25 A I don't know what the process was for him to

1 do that, so. Or if he did. I'm not even sure he was
2 aware.

3 Q Okay. But you are aware those people
4 represent the administration of Bill Hicks?

5 A They did at that time. I don't know if they
6 do now.

7 Q In May of 2022?

8 A They purported to be the administration of Mr.
9 Hicks at that time. Yes, ma'am.

10 Q But you are aware that Bill Hicks did not take
11 office actually until December of 2022, correct?

12 A No, I'm not. I don't know when Mr. Hicks took
13 office or -- I know that I met with Shapleigh, Briggs
14 and what -- Penny, whatever her name was.

15 Q So are you --

16 A And a receptionist or something like that?
17 That's all.

18 Q Are you testifying before this Court that you
19 met with the administration of Bill Hicks prior to his
20 taking office?

21 A Well, if you are telling me that he didn't
22 take it until then, then I must have been confused about
23 the date.

24 Q Okay.

25 A But I met with those people and I don't know

1 whose administration it was then. My understanding was
2 that it was Bill Hicks' administration.

3 Q And you said that it's your belief that every
4 case pending in front of this Court, the 15, that there
5 is something missing in every single one of those cases
6 in terms of discovery?

7 A When I filed the motion, yes, ma'am.

8 Q Okay.

9 A Whether or not it's missing now, I can't say.

10 Q But you actually don't know for sure if there
11 was anything missing in those cases at that time. You
12 can't say that, can you?

13 A Oh, I can pretty much say that.

14 Q Pretty much.

15 A Uh-huh.

16 Q But you can't say it for sure.

17 A I mean, I'm not Jesus.

18 MR. MCDERMOTT: Your Honor, we're going
19 to be going through each case as -- after this cross-
20 exam, after this witness is done with this phase. And
21 so that will be answered as we go through each case.

22 THE COURT: All right. Go ahead.

23 BY MS. DELANEY:

24 Q So you filed your motion in Cause Number 2081,
25 which is a case pending in front of this Court. And

1 you're requesting photographs and video recordings from
2 the trooper and a U.S. border patrol agent, but all of
3 the discovery had been uploaded in March.

4 MR. MCDERMOTT: Objection, Your Honor. I
5 think according to the rules that were set before the
6 hearing started, that we'll be going through each case
7 separately. Right now we've done general information
8 and the triggering event, which was Case 27703 from the
9 205th, which was the triggering event. But we will be
10 going through those other cases.

11 THE COURT: That was the procedure I set
12 down.

13 MS. DELANEY: Yes, Your Honor.

14 THE COURT: It wouldn't be fair to cross
15 him when I haven't allowed them to put that evidence on
16 yet. So if you'll stay on the general topic and then
17 this other case that has been discussed in such great
18 detail.

19 MS. DELANEY: Okay.

20 BY MS. DELANEY:

21 Q What is your basis of belief that you know for
22 sure whether something has -- is missing or not?

23 A In what case?

24 Q Any case, in general, since I'm not allowed to
25 go into that particular.

1 Q In the case that I've talked about already, I
2 saw it. In other cases, it would be my training and
3 experience.

4 Q But your training and experience can't be
5 applied to every particular case at all times, correct?

6 A No, I think it would.

7 Q Okay. And if you're wrong, we'll be able to
8 prove that, correct?

9 A I don't know.

10 Q Okay. So, you don't know if a trooper didn't
11 write a report in any particular case, you wouldn't know
12 that?

13 A I would know whether or not a trooper was
14 supposed to have written one. I can't say whether or
15 not they physically did. I wouldn't -- I'm not a
16 witness.

17 Q So if your training and experience told you
18 that they were supposed to, but they in fact did not, is
19 that one of the cases that you're saying that
20 something's missing? That you know something's missing?

21 A Could be.

22 Q Okay. But if they didn't write a report, it
23 wouldn't actually be missing, would it?

24 A It depends on what case we're talking about.

25 Q Would you agree with me that if a trooper did

1 not write a report in a particular case, it's not in
2 fact missing from discovery? That the State has
3 provided --

4 A It depends on what case we're talking about.
5 I can't give you a better answer.

6 Q In any and every case?

7 A Yes. It depends case by case.

8 Q Okay. Let's take one particular case. If a
9 deputy or a trooper did not write a report in that
10 particular case, you would not know if it's missing or
11 not?

12 A Which case?

13 Q Any case.

14 A It would depend on the case.

15 Q Okay.

16 MS. DELANEY: I would object to
17 argumentative and nonresponsive.

18 THE COURT: I think you've made the
19 point, even though --

20 MS. DELANEY: Thank you.

21 THE COURT: -- he won't answer the
22 question. I get your point.

23 MS. DELANEY: Thank you, Your Honor.

24 BY MS. DELANEY:

25 Q So of the 15 cases that are pending in front

1 of this Court, have any of them been to trial yet?

2 A Not that I'm aware of.

3 Q Have the minds of the jurors been prejudiced
4 or tainted in any way in those cases?

5 A Don't know that I would know that.

6 Q If they haven't been to trial, have the
7 Defendants in those cases been deprived of a fair and
8 impartial trial in that case?

9 A Yes.

10 Q If they haven't -- if those cases have not
11 been to trial, they've been deprived of a fair and
12 impartial trial?

13 A Yes.

14 Q Okay. Have you announced ready for trial in
15 any of those cases?

16 A I've announced for trial in some of these
17 cases. I don't know --

18 Q Which ones?

19 A -- which ones.

20 Q Do you have the notes of that?

21 A I would have to go through each case.

22 MR. MCDERMOTT: Judge, we will be going
23 through that, and that will be a question asked in the
24 case.

25 BY MS. DELANEY:

1 Q Has the State announced ready for trial on any
2 of those cases?

3 A I am certain that in the 394th, if it was
4 announced for trial, Mr. Marcantel also announced for
5 trial. The Judge wouldn't set it if both parties didn't
6 announce for trial. In fact, his script is, do both
7 parties announce ready for trial? The State says yes,
8 then I would say yes, and then he would ask Mr.
9 Marcantel, how many days do you need for the trial? And
10 then ask me, without disclosing any defensive posture,
11 how many do you need? Excluding punishment.

12 Q Okay. And so your testimony on behalf of the
13 Court is that's how it works here?

14 A Every time.

15 Q Okay. If you do not have sufficient time to
16 look at discovery that has been provided to you in a
17 case, do you have the opportunity to request a
18 continuance of your trial?

19 A I can ask for one. It doesn't mean it would
20 be granted.

21 Q But you can request it, correct?

22 A I can request all kinds of things.

23 Q Okay. As a matter of fact, only four of the
24 18 cases in your motion are even set for trial.

25 A I couldn't say.

1 Q You don't know that, of your own cases that
2 you have filed a motion on, you don't know which ones
3 are set for trial?

4 A I would have to look at my notes.

5 Q Okay. Well, only four, I've already looked --
6 only three of the ones pending in this Court have been
7 set for trial. And in the 18 cases for which you have
8 filed motions to dismiss for prosecutorial misconduct,
9 it has been two months or less since you filed requests
10 for discovery.

11 Are you aware of that?

12 A I'm sorry?

13 Q In half of the cases that you have filed
14 motions to dismiss for prosecutorial misconduct, half of
15 those you have only filed a request for discovery two
16 months or less ago.

17 Are you aware of that?

18 A If what you're telling me is true, then sure.

19 Q Okay.

20 A I don't know if it's true.

21 Q I'm telling you the truth.

22 In fact, one of the cases that is pending in
23 front of this Court that you filed a motion for -- a
24 motion to dismiss for prosecutorial misconduct, you only
25 filed your motion -- or notice or request for discovery

1 16 days before you filed your motion.

2 MR. MCDERMOTT: Judge, again we --

3 BY MS. DELANEY:

4 Q Are you aware of that?

5 MR. MCDERMOTT: We're going to be going -
6 - objection.

7 MS. DELANEY: I was still --

8 MR. MCDERMOTT: Objection.

9 MS. DELANEY: -- in my question. You
10 interrupted me.

11 THE COURT: All right. Let's address the
12 Court, not each other, please.

13 MR. MCDERMOTT: We will be going through
14 each case separately. The Court's rules at the
15 beginning of the hearing was that we would do the
16 general issues and the issues related to the case that
17 was presented as the triggering agent, and then we'll be
18 going through each case individually.

19 THE COURT: All right. Let's stick with
20 the Court's announced procedure, please.

21 BY MS. DELANEY:

22 Q And it's your testimony here that you have
23 ceased trying to work with the State to obtain discovery
24 in your cases; is that correct?

25 A No.

1 Q You didn't testify that you've stopped asking
2 Mr. Marcantel for discovery?

3 A I stopped asking Marcantel -- Mr. Marcantel
4 for additional discovery at some point because it was
5 useless.

6 Q But you could ask for additional discovery,
7 but you refused to do so?

8 A That's not what I'm testifying to.

9 Q Okay. You're testifying that you do not ask
10 Mr. Marcantel for additional discovery?

11 A Sometimes.

12 Q Okay.

13 MS. DELANEY: Pass the witness, Your
14 Honor.

15 THE COURT: All right. I have a few
16 questions before we go around.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Mr. Chambers, I
19 need to follow up on three things.

20 On October the 17th, you said there was a
21 supplement that included an interview video?

22 THE WITNESS: Yes, sir.

23 THE COURT: What was the date that the
24 interview took place?

25 THE WITNESS: I don't know.

1 THE COURT: I'll have to get that from
2 the State.

3 On November the 1st, you said there were
4 PDF lab reports that were produced to you. What was the
5 date on the report?

6 THE WITNESS: If I can look through the
7 discovery, I could tell you, Judge.

8 THE COURT: All right.

9 MR. MCDERMOTT: Judge, may I approach
10 with the lab reports for him to review?

11 THE COURT: You may. And I want to be
12 specific. The report I'm asking about, or reports, are
13 those turned over on November the 1st in Cause 7703.

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Go ahead.

16 THE WITNESS: The laboratory report on
17 this case was issued on September 22nd, 2020 --

18 THE COURT: 2020, 2-0-2-0?

19 THE WITNESS: Yes, sir. That was for the
20 sexual assault kit and a yellow envelope, that's the DNA
21 extract and buccal swabs. That was a three page report.
22 There was an attachment to that. That doesn't have page
23 numbers on it, Judge, that explains the likelihood of
24 the DNA. It's called a DNA report appendix, that also
25 has the date of September 22nd, 2020.

1 There is a disclosure form from the
2 forensic scientist, Agatha Eason, that was updated on
3 9/1/2020. There is a statement of qualifications last
4 updated on 9/1/2020, for Agatha Eason.

5 There is a laboratory biology report or
6 biology laboratory report from the Texas Department of
7 Public Safety that was issued on August 28th, 2020.

8 THE COURT: All right.

9 THE WITNESS: There's more, Judge, if you
10 want me to keep going.

11 THE COURT: That's enough for now.

12 THE WITNESS: Okay.

13 THE COURT: On November the 4th, there
14 was a search warrant affidavit that you said was
15 produced of 12 pages. What was the date on that?

16 THE WITNESS: I'd have to look through
17 the discovery to be able to tell you, Judge.

18 MR. MCDERMOTT: May I hand him the
19 discovery file, Your Honor?

20 THE WITNESS: Actually, Judge, it would
21 be easier if I pulled it up on Portal right now.

22 THE COURT: Just tell me what you have
23 there if you can. If not, I'll get it from the stand.

24 THE WITNESS: All right. Your Honor, I
25 can't say without pulling it up on the portal.

1 THE COURT: All right. Let me see, I
2 think that was all I had. Just one moment.

3 And you've not had a chance to review the
4 items that were produced since October the 9th in that
5 case, I think you said it was 225 or so gigabytes and
6 then 300 plus pages?

7 THE WITNESS: In that case, Judge, no.
8 There was one file that was like 2.5 gigabytes combined.
9 In the -- in Cause Number 77 --

10 THE COURT: It was all of them.

11 THE WITNESS: It was all of them --

12 THE COURT: All right.

13 THE WITNESS: -- for the 394th, Judge.

14 THE COURT: Understood. All right.

15 That's all the questions I had. Mr. McDermott, back to
16 you if you have any follow up questions.

17 MR. MCDERMOTT: I do, Your Honor. Thank
18 you. And to clarify, while the Court was looking at
19 some notes, I handed Mr. Chambers an affidavit for
20 search warrant if he can review it since he's been on
21 the stand.

22 REDIRECT EXAMINATION

23 BY MR. MCDERMOTT:

24 Q And did you ascertain a date, Mr. Chambers?

25 A I -- that search warrant says that it was

1 issued in 2020.

2 Q There was some questions that the State asked
3 you about communications with Mr. Marcantel.

4 Do you remember that?

5 A I remember that.

6 Q All right. The question as I wrote it down
7 was that the question that was presented to you was that
8 you had testified that it was useless to ask Kevin
9 Marcantel for discovery.

10 Do you remember that question?

11 A Something like that, I guess.

12 Q Was there a point in history with the
13 relationship with Mr. Marcantel where you would call,
14 email, and request things on a regular basis?

15 A Yes. All the time.

16 Q Did that change?

17 A Yes.

18 Q When did that change?

19 A It changed when he -- well, there was an
20 incident that happened in Hudspeth County at county
21 court with an employee of mine, and I was no longer --
22 there was a letter that was sent and we were no longer
23 allowed to talk to Mr. Marcantel directly, unless it was
24 written.

25 Q Did you --

1 A Or on the record.

2 Q Were you part of that decision?

3 A I was.

4 Q Was that decision made in part because you
5 believed that Mr. Marcantel had been untruthful in court
6 about communications you'd had with him?

7 A Yes. In fact, he lied about his supervisor
8 directly to the Judge, with me standing right next to
9 him.

10 Q And so when you said -- when the question was
11 asked to you, was it useless to ask Kevin Marcantel for
12 discovery, I want to piece that out.

13 A Okay.

14 Q When it is useless to ask him for discovery,
15 what does that mean?

16 A It means a lot of things. It means that I can
17 ask, and I'm probably not going to get it. It means
18 that I've come to court and ask, and he'll show up the
19 next month and say that he forgot about it or didn't do
20 it. I mean, that's happened I don't know how many
21 times. It means that he'll tell us that things don't
22 exist when in my experience they should. It means that
23 he has said something doesn't exist and turned it over
24 maybe, I can't think of a particular time that that
25 happened, so I don't want to.

1 Q Okay.

2 A Not say that.

3 Q There was a question earlier about meeting
4 with the staff of Mr. Hicks' office.

5 Do you remember that?

6 A Yes.

7 Q And on direct, was it me who gave you the date
8 of 2022?

9 A Yes.

10 Q Is it possible that it was actually in 2023?

11 A Yeah, my testimony was, it was like last year
12 sometime, but that -- the date came up. I don't
13 remember when the date was. It was in the springtime at
14 some point.

15 Q It was --

16 A Last year or the year before.

17 Q Okay. And you --

18 THE COURT: Hang on one second, Counsel.

19 MR. MCDERMOTT: Yes.

20 (Pause)

21 THE COURT: All right. You may proceed,
22 sir.

23 BY MR. MCDERMOTT:

24 Q Was it your belief at the time that you were
25 meeting with the staff, the upper level management staff

1 of Bill Hicks?

2 A Yes.

3 Q You were not confused and thinking that you
4 were meeting with the staff of Yvonne Rosales?

5 A No. I don't even know -- I never even
6 attempted to meet with Yvonne Rosales.

7 Q Was the meeting with the staff of Bill Hicks,
8 was that at their office or somewhere else?

9 A It was at their office in person in a big, I
10 don't know, conference room, board room. It was big.
11 It was a big table.

12 Q Was that meeting instigated at their behest or
13 instigated at our behest?

14 A I think we asked for it.

15 Q Had we had any reach out from their staff
16 before then, asking about relationships between our
17 offices?

18 A Well, we had reached out before then, but we
19 got no response until -- I don't know. I think you
20 actually set it up. I don't know how you actually got a
21 response and got a meeting. You, Mr. McDermott.

22 Q Thank you. Do you remember, did that meeting
23 start on time?

24 A I don't think it did. I don't remember for
25 sure, but I don't think it did and I don't think it was

1 our fault. We sat there for a while.

2 Q Let's talk about there's some confusion about
3 the appointment system.

4 A Okay.

5 Q I'm going to ask you some questions about
6 that.

7 A Yes, sir.

8 Q Cases -- people get arrested in Culberson
9 County; is that right?

10 A People get arrested in Culberson County. Yes,
11 sir.

12 Q And generally the procedure that is set by the
13 Court has procedures for magistration, follow the
14 statute that require the magistrate to review with them
15 whether or not they want to apply for court appointed
16 counsel and whether they qualify for court appointed
17 counsel.

18 A It does follow the statute is my
19 understanding.

20 Q All right. So if we're following the proper
21 procedure, and if a person is arrested and is not
22 indicted, who determines whether or not they qualify for
23 court appointed counsel and who signs the appointment
24 order, pre-indictment?

25 A Is that county -- is it for --

1 Q For example, we're only talking about felonies
2 in Culberson County.

3 A Then that would be Judge Ferguson.

4 Q For all cases pre-indictment?

5 A Yes, sir.

6 Q All right. So post-indictment, if a case is
7 filed in the 394th, who reviews the application for
8 counsel and signs the appointment order?

9 A Judge Ferguson.

10 Q In the 205th post-indictment, who reviews the
11 case for qualifications and appoints counsel?

12 A I assume it's Judge Dominguez. I haven't had
13 a direct conversation with them about that.

14 Q Do you know, have you seen any appointment
15 orders?

16 A Yes. And they have Judge Dominguez's
17 signature on them.

18 Q Thank you. Do you know, based on your
19 experience in setting up and helping to monitor the
20 appointment system, if the DA's Office is served with
21 our appointment order.

22 A I don't know that I would say served.

23 Q Is --

24 A They are emailed when we get appointed the
25 affidavit of indigence with our appointment on it.

1 Q Who is it emailed to? At the DA's Office?

2 A I couldn't say. I think Kevin's on there.
3 Well, it depends on what county. We're only talking --

4 Q Only talking about Culberson County.

5 A -- Culberson County. I know that Mr.
6 Marcantel is on there. I looked at that yesterday I
7 think. Maybe Christina Varela who works at the DA's
8 Office.

9 Q And you've had seven years of experience
10 working with Christina Varela; is that correct?

11 A I have.

12 Q Do you believe that she does a competent job?

13 A I believe she does.

14 Q Has she been reliable on her communications
15 with you?

16 A I believe she is.

17 Q If she received an appointment order for a
18 case, do you believe that she would've, in your
19 experience with her, have put it in the appropriate
20 place?

21 A Whatever the appropriate place for the DA's
22 Office is. I don't know what that is.

23 Q Does the appointment order have an attorney's
24 name on it?

25 A It has --

1 Q If it --

2 A Well, technically --

3 Q If it's appointed to our office, does it have
4 an attorney's listed birth name on it?

5 A So I -- you're asking a different question.

6 Q I'm asking that question.

7 A I understand what question you're asking. The
8 Judge's name is on there and he's an attorney. But our
9 office is appointed as the Far West Texas Regional
10 Public Defender.

11 Q It does not say Paul Chambers or James
12 McDermott or Phil Baker?

13 A No, sir.

14 Q It says the Far West Texas Regional Public
15 Defender?

16 A Or FWTXRPDs.

17 Q So do you believe that the State has notice at
18 appointment that we've been appointed for cases?

19 A Yes. By the way, that's also how all the plea
20 paperwork is done. It doesn't have an individual's name
21 on it, so they -- it's not like it's hiding.

22 Q So the -- in your understanding, that -- DA's
23 Office understands that because they write our plea
24 paperwork for the Far West Texas Regional Public
25 Defender, not for an individual attorney; is that right?

1 A Yes.

2 Q Okay. You practiced in private practice
3 before you worked for the public defender; is that
4 right?

5 A Yes, sir.

6 Q You were appoint -- you were on an appointment
7 list; is that correct?

8 A I was.

9 Q You were on an appointment list in federal
10 court as well; is that correct?

11 A I was.

12 Q In federal court or when you were in private
13 practice in state court, when you were appointed on a
14 case, did you ever separately file a notice of
15 appearance?

16 A Never.

17 Q In any of those courts? For an appointment?

18 A Not for a criminal -- not for a criminal.

19 Q Not for a criminal appointment. The
20 appointment was your appearance; is that correct?

21 A That's correct.

22 Q All right. Try not to speak over me. All
23 right?

24 A Sorry. You had some testimony earlier about
25 on cross-examination, and there were some words used,

1 upload and disclose, in relation to the portal.

2 Do you remember that?

3 A I remember the cross-examination and someone
4 using those words, yes.

5 Q Okay. I want to clarify. Is there a
6 difference for you, when reviewing the portal, between
7 when something is uploaded and when it's disclosed or
8 are those the same thing?

9 A No, they're different.

10 Q So can you describe the difference to me,
11 please?

12 A The difference is upload seems to mean --
13 well, I'm using upload to mean the day that's on there
14 that they put it on their portal, which is the date that
15 shows up on the screenshots is my understanding.

16 Q Okay. So let me clarify that.

17 A Sure.

18 Q You testified earlier that there are two steps
19 in the portal --

20 A As far as I can tell.

21 Q -- from what you can tell from the State; is
22 that correct?

23 A Yes.

24 Q And that one step is when they put the
25 document or material in their system; is that correct?

1 A Uh-huh. Yes.

2 Q And that there's a separate step of after it's
3 in their system, when they actually make it available to
4 us; is that correct?

5 A Yes.

6 Q When you say something is uploaded and there's
7 a date on their portal that says it was uploaded, do you
8 mean the date that they put it in their system or do you
9 mean the date that it was made available to us?

10 A The date they put it in their system.

11 Q And those often are different dates?

12 A I can't say often, but they are different
13 dates sometimes, yes.

14 Q Okay. So can you tell from the upload date
15 when the State received that material?

16 A No.

17 Q Do we have any access to understanding when
18 the State received that material?

19 A No.

20 Q So earlier in this hearing, the Judge asked
21 you a question, for example, about dates on lab reports.

22 A Yes.

23 Q What is the significance of the date on the
24 lab report if the lab report is from 2020 and the upload
25 date is sometime in 2024 and that you were able to see

1 it made available to you sometime later than that, what
2 is the meaning of those dates to you?

3 A That they likely had it closer to the date
4 that it was -- that is on the lab report, for example.

5 Q In your experience, do you believe that that
6 lab report would've been produced much earlier than the
7 date that they made it available to us?

8 A Yes.

9 Q This -- in your cross-examination, the State
10 asked you a question and they used the word hidden. Do
11 you remember that?

12 A I don't remember the question, but I do
13 remember hearing the word hidden.

14 Q Understood. Do you believe based on your
15 review of the discovery, that there is discovery that
16 they had, that maybe they even had in their system, but
17 they did not make available to us until some later date?

18 A Yes.

19 Q Did you -- what did you, in general, did you
20 base that opinion?

21 A Well, two things. One, and at least one of
22 the cases I saw it, which I've already testified to.

23 Q So we're only talking about particular cases.
24 We're only talking about 7703, which we've already
25 testified to, right?

1 A That's correct. I saw it.

2 Q You physically saw it in their physical file?

3 A Looked at it. That's what I testified with
4 the Opposing Counsel.

5 Q And so to be clear, I want to make clear
6 because I think the question and answer got a little
7 confusing there. When you saw it and were able to take
8 notes about -- were you able to take notes about the
9 contents or about the existence?

10 A The existence. I didn't -- so, to be clear, I
11 didn't ask to look at the contents other than to list
12 documents.

13 Q Understood.

14 A I didn't have 80 hours to look at 2000
15 documents.

16 Q Okay.

17 A I was there to look --

18 THE COURT: Are you saying you saw the
19 list of table of contents in the portal, but you didn't
20 open each document and read it?

21 THE WITNESS: No, Judge.

22 THE COURT: Is that what you're saying?

23 THE WITNESS: No, Judge. What I'm
24 talking about particularly is when I was there
25 physically.

1 THE COURT: Right.

2 THE WITNESS: And there -- it wasn't in
3 the portal, it was a CD that they had in a paper file.

4 THE COURT: It was the table of contents
5 of items on there.

6 THE WITNESS: It was the file directory,
7 yes.

8 THE COURT: That is the table of contents
9 in the system.

10 THE WITNESS: I just wanted to make sure
11 that I'm on the same.

12 THE COURT: And the distinction that
13 you've been drawing is that you saw what was on there,
14 but you didn't open and read each one?

15 THE WITNESS: Not each document, no, sir.

16 THE COURT: All right.

17 BY MR. MCDERMOTT:

18 Q You did see the volume of what they probably
19 were.

20 A Yes, sir.

21 Q Talking about the portal, are we given notice
22 when the State makes something available to us on the
23 portal, or is it our responsibility to be reviewing
24 cases to see what might be new?

25 A We don't get any notice.

1 Q So if the State, while we were in court right
2 now, for example, put something on the portal, would we
3 know about it?

4 A Unless Mr. Marcantel or Ms. Varela or somebody
5 at the DA's Office sent us a separate email saying that
6 they uploaded something, no, we don't get an automatic
7 like update, something was uploaded in this case.

8 Q Does that -- do we get that kind of email from
9 Ms. Varela or Mr. Marcantel regularly?

10 A I can't think of a time that we have, but I
11 can't say that he hasn't.

12 Q So it's common that we do not?

13 A Yes.

14 Q So, if the State made something available to
15 us, when would we find out?

16 A When we went and looked.

17 Q And how many cases do we have open in
18 Culberson County? Do you know?

19 A I don't know off the top of my head. I know
20 that on that portal there are somewhere in the
21 neighborhood of 450 for our office.

22 Q Do we have the staffing to have somebody
23 review all those cases every day?

24 A No.

25 Q I want to review, go back to 7703. I believe

1 --

2 THE COURT: Let's make sure we don't
3 repeat the question.

4 MR. MCDERMOTT: We're not going to
5 repeat.

6 THE COURT: I'm paying close attention.

7 MR. MCDERMOTT: I understand.

8 THE COURT: Time is running out.

9 MR. MCDERMOTT: I understand.

10 BY MR. MCDERMOTT:

11 Q You prepared a slideshow to illustrate the
12 differences in the timelines that was not confusing; is
13 that correct?

14 A Yes, sir.

15 Q Would you like to present that now?

16 A Sure.

17 MR. MCDERMOTT: Judge, I believe he's
18 connected to the screen here.

19 THE WITNESS: Well, I need to connect.

20 THE COURT: And this is demonstrative?

21 MR. MCDERMOTT: This is demonstrative.

22 THE COURT: Based on the evidence that
23 I've heard?

24 MR. MCDERMOTT: Based on the exhibits
25 that are already admitted, Judge.

1 THE COURT: Now, you don't talk over me.

2 MR. MCDERMOTT: Sorry, Judge.

3 THE COURT: That was a yes.

4 MR. MCDERMOTT: Yes, sir.

5 THE COURT: Thank you.

6 THE WITNESS: It's connecting.

7 MR. MCDERMOTT: May I retrieve the lab
8 reports, Judge, if they're still up there?

9 THE COURT: They probably should come up
10 to me if it's the evidence that's been admitted. If
11 it's not, then yeah. Go ahead, sir.

12 BY MR. MCDERMOTT:

13 Q So, Mr. Chambers, this is a slideshow based on
14 evidence that's been admitted in this case?

15 A Yes.

16 MS. DELANEY: Your Honor, may I -- I
17 would just like to object that this is not a case that's
18 actually pending in front of this Court. And as to
19 relevance, I would say --

20 THE COURT: It's all already come in from
21 everyone, so it's in. It really sounds more like
22 argument here if you're summarizing the evidence that
23 I've received up to now.

24 MR. MCDERMOTT: Understood, Judge. We'll
25 move on.

1 THE COURT: Let's save it for closing
2 argument.

3 MR. MCDERMOTT: Understood.

4 THE COURT: I want to hear new stuff, not
5 revisit old stuff at this point.

6 BY MR. MCDERMOTT:

7 Q Mr. Chambers, there was a series of questions
8 from the State about whether, if a report is not given
9 to you, whether you can know that that report is there
10 and not being given to you, or if that report just
11 doesn't exist.

12 Do you remember that series of questions?

13 A I remember questions like that. Yes, sir.

14 Q Okay. Given your review of these cases, do
15 you have any confidence that missing discovery that
16 you've been able to identify exists, but is -- or does
17 not exist that has not been, was not created in the
18 first place?

19 A I did --

20 THE COURT: Restate that question.

21 MR. MCDERMOTT: Sorry.

22 THE COURT: You contradicted yourself and
23 I got lost.

24 MR. MCDERMOTT: Understood.

25 BY MR. MCDERMOTT:

1 Q Given your review of the case, of the cases
2 that you reviewed, are you able to give the benefit of
3 the doubt that you have been able to give in the past,
4 to assume that the evidence just does not exist if the
5 State says it does not exist?

6 A So, no, because I have almost, if not 10, 10
7 years of experience doing this. And the documents that
8 are listed should be there in each of the cases. There
9 are cases that I have that are indicted that I did not
10 file these motions on, whether it was because I don't
11 think that they should exist or even though that this --
12 or I didn't do something timely, right? Like, I didn't
13 just shotgun a bunch of motions. I looked at each one
14 of these individually and found things that were obvious
15 to me that should exist. Not like I'm an expert and
16 have to look like, like if you practice law for less
17 than six months, you should know these things exist.

18 Q In your experience, Mr. Marcantel's statements
19 that something doesn't exist have turned out not to be
20 true; is that correct?

21 A Sometimes, yes.

22 Q And in your experience, in the last month
23 since you started identifying things that have been
24 missing, a huge volume suddenly was dumped on us.

25 A That's correct.

1 Q Do you have any confidence that things -- that
2 you've been able to identify everything that the State
3 might have?

4 A It's everything that I identified, the State
5 might have, yes.

6 Q Do you have confidence that you've been able
7 to identify that -- everything the State could possibly
8 have?

9 A No.

10 MR. MCDERMOTT: Pass the witness, Your
11 Honor.

12 THE COURT: All right. Do you have any
13 follow up questions for him on this portion?

14 MS. DELANEY: Yes, briefly, Your Honor.

15 THE COURT: Go ahead.

16 RECROSS-EXAMINATION

17 BY MS. DELANEY:

18 Q I believe when we were talking about case 7703
19 --

20 A Yes, ma'am.

21 Q -- not pending in front of this Court, and you
22 were at the DA's Office in El Paso on October 7th, 2024
23 --

24 A Yes, ma'am.

25 Q -- looking at the CAC videos, that you were

1 able to see the table of contents of additional stuff
2 that you hadn't yet received?

3 A Yes, ma'am.

4 Q And you -- so you took notes of that?

5 A Yes, ma'am.

6 Q But you were also -- I believe you testified
7 previously that you were able to click into that just to
8 see what it was?

9 A No, I didn't get to click. The investigator
10 was running the whole machine. I asked him to open the
11 files. He would open the files and I would try to see
12 how much stuff was in there and sort of what it was
13 labeled.

14 Q Okay.

15 A That's it.

16 Q Okay. So the investigator did click it open
17 for you?

18 A When I asked him to, yes, ma'am.

19 Q Perfect. Okay. So they weren't trying to
20 hide it from you, in other words?

21 A The investigator that was there? No.

22 Q Okay. You just didn't have sufficient time to
23 review it at length like you would if you were preparing
24 --

25 A Not that day.

1 Q -- wanting to review.

2 A I'm sorry.

3 Q Yeah. I'm sorry to interrupt you.

4 A Not that day.

5 Q Perfect. And one other clarification. When
6 items are uploaded to Portal by the State, they're time
7 stamped by Portal. We agree on that. Correct?

8 A We agree that there is a timestamp, I don't
9 know if Portal does it or if the person does it, but it
10 appears to be a computer that timestamps it.

11 Q Okay. And that is different from when it's
12 disclosed to you, the defense attorney?

13 A Yes, ma'am.

14 Q Okay. And that date is when you actually are
15 granted access to Portal?

16 A I -- I would -- yes, but I don't know when
17 that date is technically because the -- I don't get any
18 notice, and so all I can see is when I go and pull the
19 disclosure, like if I have one from before and after, I
20 can say it happened in between the time. Does that make
21 sense?

22 Q You're not granted access to Portal until you
23 request it, right?

24 A Is it -- I thought you were asking a different
25 question. I'm sorry.

1 Q That's okay. The date that it's time stamped
2 as being placed in Portal is different to when you
3 actually had it disclosed to you?

4 A It could be.

5 Q And when it is disclosed to you, if it is
6 different, it's disclosed to you when you have been
7 granted access to Portal, correct?

8 A No, I don't think so.

9 THE COURT: I think that's the question.

10 THE WITNESS: Right.

11 THE COURT: And so I'm just going to hone
12 in and ask you a question as counsel.

13 MS. DELANEY: Yes, Your Honor.

14 THE COURT: You're familiar with Portal?

15 MS. DELANEY: Yes.

16 THE COURT: Okay. Is there a way that
17 you can have something in the portal so that only your
18 office can see it until you authorize them to see it?
19 So he's got access to the portal of a case.

20 MS. DELANEY: Uh-huh.

21 THE COURT: And there's stuff in it.
22 There's something else you've already uploaded so it's
23 got that date. It's in there, but it has not been
24 authorized for them to see yet. So you could have
25 something dated January the 1st of '23 in the portal,

1 but they're not allowed to see it, even though they see
2 everything else in that file, until you say yes a year
3 later. Is that possible?

4 MS. DELANEY: If I may, let me explain a
5 little bit about Portal. There are sections in Portal
6 that things can be uploaded to that are only visible to
7 the prosecutor.

8 THE COURT: And you can move them from
9 one section to another?

10 MS. DELANEY: No, Your Honor. Once
11 they're up there, they're there forever. Now, we can
12 copy it and put it over. But the only things that are
13 put on Portal in the area for the prosecutor only to see
14 are not going to be discoverable issues. They're notes,
15 work product material. So anything that's discovery is
16 going to go up and be visible by the defense as soon as
17 they have been granted access.

18 THE COURT: All right.

19 MS. DELANEY: Now, it is true that as
20 things come in, then we upload them to Portal and so his
21 first access is not going to grant him access to
22 something that's not yet been uploaded.

23 THE COURT: I get all that.

24 MS. DELANEY: Okay.

25 THE COURT: The only question, and what I

1 gather the evidence that I'm about to hear is going --
2 they're saying is going to show, is that they've got a
3 screenshot of the portal and item X isn't in it. Two
4 weeks later they get another screenshot, item X is there
5 and the date it shows upload was before the first
6 screenshot.

7 MS. DELANEY: I understand your question.

8 THE COURT: That's why I was asking. So
9 it couldn't have been uploaded on that date.

10 MS. DELANEY: Correct.

11 THE COURT: And not show up in the portal
12 the day they did the screenshot.

13 MS. DELANEY: That -- to me that sounds
14 like a technical issue.

15 THE COURT: Okay.

16 MS. DELANEY: Not a willful trying to
17 hide --

18 THE COURT: I hear you.

19 MS. DELANEY: -- or move things and so
20 forth.

21 THE COURT: All right. So you're not
22 aware of a way that can happen?

23 MS. DELANEY: Correct.

24 THE COURT: Got it. Thank you.

25 MS. DELANEY: Yes, Your Honor. Oh, and I

1 pass the witness.

2 THE COURT: All right.

3 MR. MCDERMOTT: Two short questions.

4 MS. DELANEY: Oh, actually, I'm so sorry.

5 THE COURT: Go ahead. I distracted you,
6 so you can keep going.

7 MS. DELANEY: Thank you, Your Honor.

8 RE-CROSS-EXAMINATION CONTINUED

9 BY MS. DELANEY:

10 Q One last thing. You have received discovery
11 from the State in other ways besides through the portal.
12 For instance, maybe on a disc?

13 A Oh, yeah.

14 Q Maybe a thumb drive?

15 A I mean, I can't remember a thumb drive, but I
16 -- it wouldn't be outside the realm of possibility.

17 Q Okay. Perfect.

18 MS. DELANEY: Thank you.

19 THE COURT: All right. Go ahead and then
20 we need to move on.

21 MR. MCDERMOTT: Two quick questions,
22 Judge.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. MCDERMOTT:

25 Q You heard the Judge's questions to the State.

1 A Yes.

2 Q Is it your testimony that there are dates that
3 show an upload that is prior to -- that there is a lag,
4 that the things do not get uploaded and be made
5 available to us simultaneously?

6 A Yes. And the way that I know that is that I
7 have a screenshot that has the date that it -- the
8 document was created on, and I have a 39.14 disclosure
9 date from, let's say the beginning of October, that
10 doesn't list that document. And then I have a
11 screenshot from seven days ago that does list that
12 document, but the screenshot says --

13 THE COURT: It predates.

14 THE WITNESS: -- like June.

15 THE COURT: The way I described it to
16 her.

17 THE WITNESS: Yes.

18 THE COURT: I got it. I understand what
19 you're saying.

20 THE WITNESS: That has happened. Yes.

21 THE COURT: All right.

22 MR. MCDERMOTT: And Judge, I just want to
23 let Mr. Chambers look at the lab reports that were
24 discussed earlier.

25 BY MR. MCDERMOTT:

1 Q I'd just like to direct you here. Were those,
2 the date on that lab report was what?

3 A September 22nd, 2020.

4 Q And was that -- does that lab report purport
5 to say that it was disclosed to anybody on that date?

6 A That it was re --

7 Q Emailed to anybody?

8 A Report has been issued via email to Brent
9 Mata, DPS, who is the Texas Ranger, Judge. El Paso DA
10 DALabreports@epcounty.com. And Lizette Rodriguez at Ep
11 -- or it's Lirodriguez@epcounty.com.

12 THE COURT: And what date?

13 THE WITNESS: That is the -- on -- the
14 day on that is September 22nd, 2020.

15 THE COURT: All right.

16 MR. MCDERMOTT: Thank you. Pass the
17 witness, Your Honor, on this issue.

18 THE COURT: Any follow up?

19 MS. DELANEY: No, but I would like to
20 inform the Court that Lizette Rodriguez was not employed
21 with our office at that time, which is interesting. But
22 that case had -- was only indicted in May of '22, so a
23 year and a half after that. So we wouldn't have had
24 access to that lab report until indictment.

25 THE COURT: Until May of '22.

1 MS. DELANEY: Yes.

2 THE COURT: Right. And they're saying it
3 was disclosed November 1st of '24. That's his
4 testimony.

5 MS. DELANEY: Right. That it was
6 uploaded to Portal is what I understand.

7 THE COURT: Yes. That's -- I don't think
8 that's what he's saying. He's saying that's the day it
9 was made available to them on the portal. Right?

10 MS. DELANEY: Yes.

11 THE COURT: Because of that technical
12 issue.

13 MS. DELANEY: That issue. Yes.

14 THE COURT: Right.

15 MS. DELANEY: Yes, Your Honor.

16 THE COURT: That I'm hoping I can get to
17 the bottom of through the evidence.

18 MS. DELANEY: Yes, sir.

19 THE COURT: All right. Anything further
20 for this witness?

21 MR. MCDERMOTT: Not on this issue, Judge.

22 THE COURT: All right. Are you calling
23 any other witnesses for the first section?

24 MR. MCDERMOTT: No, Judge.

25 THE COURT: All right. Are we ready to

1 proceed with case by case on the specific cases? Yes,
2 everyone?

3 MR. MCDERMOTT: Defense is ready, Judge.

4 MS. DELANEY: Yes, Your Honor.

5 THE COURT: All right. Go ahead, sir.

6 MR. MCDERMOTT: Judge, I am going to do
7 these in order that goes a little bit from more
8 complicated to less complicated.

9 THE COURT: Okay.

10 MR. MCDERMOTT: I will call out the name
11 and the cause number so that everybody can keep track
12 and I'll make a break at each for each one for cross-
13 examination.

14 THE COURT: Fine.

15 MR. MCDERMOTT: The first one we're going
16 to review, Judge, is Eric Guillory, G-U-I-L-L-O-R-Y.
17 That is Cause Number 2087.

18 THE COURT: I have it.

19 MR. MCDERMOTT: I have exhibits to mark
20 and tender to the State. And I'm marking Defense
21 Exhibits 6, 7, and 8. May I approach Opposing Counsel?

22 THE COURT: You may.

23 //

24 //

25 PAUL CHAMBERS

1 called as a witness on behalf of the Defendants,
2 Petitioner, having been previously duly sworn, did
3 testify upon his oath as follows on:

4 DIRECT EXAMINATION (2087/Guillory)

5 BY MR. MCDERMOTT:

6 Q Just as a predicate, Mr. Chambers, I'm showing
7 you what's been marked as Defense Exhibit Number 8. Do
8 you -- these are purported screenshots from the Case
9 Portal. Do you know about when you took those
10 screenshots, approximately?

11 A In the last seven, eight days.

12 THE COURT: This is 2087 screenshots?

13 MR. MCDERMOTT: This is 2087 screenshots.
14 Yes, Judge.

15 THE COURT: All right.

16 MR. MCDERMOTT: So I'm offering Defense
17 Exhibits 6, 7, and 8.

18 Defense Exhibit 6 is 39.14 disclosure
19 printed on October 8th of 2024.

20 Defense 7 is 11/7 of 2024.

21 And Defense 8 is the screenshots from
22 Case Portal.

23 THE COURT: Any objection to Defendants'
24 6, 7, and 8?

25 MS. DELANEY: No, Your Honor.

1 THE COURT: Those are admitted.

2 (Defendants' Exhibits 6 through 8 admitted)

3 MR. MCDERMOTT: Judge, I'm going to limit
4 my examination here to the issue specific to this case.

5 THE COURT: Thank you.

6 BY MR. MCDERMOTT:

7 Q Mr. Chambers, do you have your notes available
8 for your review of this case?

9 A I do.

10 Q All right. Do you know when this -- when Mr.
11 Guillory was arrested?

12 A June 8th, 2023.

13 Q And when were we appointed?

14 A October 20th, 2023.

15 Q So you're -- and do you know when this case
16 was indicted?

17 A March 22nd, 2024.

18 Q And when was it set for arraignment?

19 A August 14th, 2024.

20 Q Okay. So in your experience, would we have
21 known about the indictment in a significant time period
22 before August 14th of 2024?

23 A We would've known about the indictment when we
24 got the docket for arraignment.

25 Q And in this Court about when before court

1 before docket do we get a copy of the docket?

2 A Fluctuates, but two weeks.

3 Q Understood.

4 A Sometimes it's a little more, sometimes it's a
5 little less.

6 Q And you've testified earlier that it's our
7 habit to file a waiver of arraignment if we can and
8 28.01 motions, discovery requests around the same time;
9 is that correct?

10 A That's correct.

11 Q Was that done in this case?

12 A It was.

13 Q When were the -- when was the request for
14 discovery filed?

15 A August 16th, 2024.

16 Q Understood. Now, we did have a 28.01
17 deadline; is that correct?

18 A We did.

19 Q When was that?

20 A September 11th, 2024.

21 Q So let's talk about the discovery in this case
22 then. What discovery did we have before October 8th of
23 2024?

24 A We had two lab reports. One of them was
25 uploaded in February, on February 1st. One of them was

1 uploaded on February 22nd.

2 Q Understood.

3 A We had something labeled as a complete report.
4 I'm not sure whether or not it said it was one page or
5 not, but it actually had 36 pages in it. One of those
6 pages was an indictment. Two of those were lab reports
7 from DPS, which were disclosed separately. One of them
8 was a ticket, one of them was a cover sheet. There was
9 an affidavit and complaint, a magistration form, a lab
10 submission form. Those were both one pages. There were
11 a two page warrant and return, a one page table of
12 contents, and a 20 page DPS report, and five
13 photographs.

14 Q Do you know what kind of case this was? Was
15 this a POCS?

16 A No. I don't know what kind of case it was,
17 but if it was a POCS, that makes sense that we would
18 have labs that early.

19 Q Understood. Now, you've been able to re --
20 you have in front of you Defense Exhibit 6 and 7; is
21 that right?

22 A I do.

23 Q With 8. Do you believe that there was any
24 discovery revealed to us or disclosed to us after we
25 filed our motion to dismiss?

1 A Yes.

2 Q When was our motion to dismiss filed?

3 A Our motion to dismiss was filed on October
4 24th.

5 Q Okay. What discovery do you believe that we
6 received after October 24th?

7 A We received a body cam .mp4, a confession
8 .mp4, and a dash cam .mp4, that appears to have been
9 uploaded on March 26th of 2024.

10 Q Where do you draw the conclusion that that was
11 uploaded on March 26th of 2024?

12 A From the screenshots from the portal.

13 Q And that would be Defense Exhibit Number 8?

14 A Defense Exhibit Number 8 lists the date
15 created for the body cam, confession, and dash cam, at
16 3/26/2024 at 4:37 p.m.

17 Q So is it your belief that these three videos
18 were uploaded to their system on March 26th of 2024, but
19 not disclosed to us until after we filed our motion to
20 dismiss?

21 A Right. Yes. Because the 39.14 disclosure
22 form that was printed on 10/8/2024 at 2:57 p.m. does not
23 indicate any videos of any kind.

24 Q And on the November disclosure form, are those
25 indicated?

1 A Yes.

2 Q So based on that documentary evidence, you
3 believe that the body cams were put in the portal in
4 March, but not disclosed to us until after we filed a
5 motion to dismiss?

6 A Unless they can change the dates and they were
7 uploaded in November and they changed it back for some
8 reason, but that doesn't make any sense to me.

9 Q Understood. What other discovery did we
10 receive after our motion?

11 A We also received one, two, three, four, five,
12 six; six other -- well, five .mp4s and one .mp5 that
13 appear to be videos from Sal Santos that was actually
14 partially responsive to my motion.

15 Q So you listed in your motion that you thought
16 these videos might exist?

17 A Yes.

18 Q And in fact, about 10 days later, they were
19 able to produce those?

20 A Yeah, nine days I think. I don't know how
21 many days are in October; 31?

22 Q Yes.

23 A So 10 days.

24 Q Do you know the volume of information in those
25 videos?

1 A No, not off the -- no, I haven't looked at
2 those videos.

3 Q Do you believe --

4 A I can tell you what the vid -- like, actually,
5 the body cam is 1.76 gigabytes that was disclosed. The
6 confession was 117 megabytes. The dash cam was 582
7 megabytes.

8 Q And for clarification of the record, you're
9 just -- when you say body camera confession or dash cam,
10 you're just repeating what is listed as the label on the
11 --

12 A Yes.

13 Q Not your evaluation of what that --

14 A Not -- right. I am not. I am only reading
15 what is listed in the 39.14 disclosure.

16 Q Understood.

17 A There is the one .mp4 that's eight -- well,
18 two .mp4s that are both eight -- 582.47 megabytes.
19 There's one .mp4 with 1.76 gigabytes. There's another
20 .mp4 with 1.76 gigabytes and there are two other .mp4s
21 with 1. -- well, 117 megabytes and 121 megabytes.

22 Q So let me just clarify for the record and for
23 everybody here, there were three videos that were
24 produced after the motion, but were uploaded in March,
25 and then there was a set of videos that were uploaded

1 after the motion that you suspected existed and put in
2 your motion that you suspected existed and asked for
3 discovery on?

4 A Yes.

5 Q Is there any discovery in this case that you
6 believe is still missing based on your review and your
7 experience?

8 A Yes.

9 Q What do you believe is still missing?

10 A There should be call records from the call
11 regarding the hit and run that was alleged in this case.
12 There's a statement from a witness --

13 Q I'm sorry, for call records, what do you mean?
14 911 calls?

15 A Like 911 call records or dispatch logs that
16 911 would get.

17 Q And those would be in the custody of a state
18 agency; is that correct?

19 A That's correct.

20 Q All right.

21 A There -- a statement from Angela Herrera which
22 was mentioned in a report that wasn't in the report that
23 was given to us.

24 Q So a person reviewing the report, a lawyer
25 reviewing the report, would notice that it said that

1 there was a statement made by Angela Herrera and would
2 go look for it?

3 A Yes.

4 Q And that's what you did?

5 A Yes.

6 Q And that does not exist.

7 A It has not been uploaded to the portal.

8 Q Correct. All right. Go on.

9 A Offense reports, photographs, video recordings
10 from Culberson County Sheriff Oscar Carrillo, Deputies
11 Jack Baker, Joshua Tavarez, and Jose Aleman.

12 Q Why do you believe that those should exist?

13 A Law enforcement write reports when they are
14 involved in things.

15 Q And in your --

16 A And whether or not one of those deputies did
17 or didn't, I'm -- I mean, it's likely that one of them
18 did. Maybe not all of them, but somebody.

19 Q You have seen written offense reports from
20 Oscar Carrillo in your experience?

21 A No.

22 Q Have you seen offense reports written by Jack
23 Baker in your experience?

24 A Yes.

25 Q By Joshua Tavarez?

1 A I think I remember that last name.

2 Q And Jose Aleman?

3 A I think I remember that last name, but
4 definitely Deputy Baker.

5 Q Is there a plea --

6 A He's been here for a while.

7 Q Understood. Has there been a plea offer
8 extended in this case?

9 A Yes.

10 Q When is the plea offer deadline?

11 A Sunday, December 1st.

12 Q When was the plea deadline set by the Court?

13 A October 9th, 2024.

14 MR. MCDERMOTT: Pass the witness on Cause
15 Number 2087, Your Honor.

16 THE COURT: All right. Counsel, your
17 witness.

18 CROSS-EXAMINATION

19 BY MS. DELANEY:

20 Q So you have received three, or did you say
21 four additional videos, since your motion?

22 A No ma'am. I've received three plus one, two,
23 three, four, five, six, so nine.

24 Q Nine videos?

25 A Yes, ma'am.

1 Q Since your motion?

2 A Yes, ma'am.

3 Q Okay. And then you're still missing a few
4 other things that you believe exist?

5 A Yes, ma'am.

6 Q Okay. And there is a trial setting in this
7 case.

8 A I'm not -- I don't have that on my notes.

9 Q Okay. And if there is one, if your notes
10 reflected there was one, are you able to request a
11 continuance in order to -- for delayed disc -- for
12 additional discovery or for time to review discovery
13 that's been provided to you?

14 A So the reason we -- I think we got crosswise
15 the first time is because I can request it, but it
16 doesn't mean the Judge is going to grant it.

17 Q Of course.

18 A Okay.

19 Q But you can request it?

20 A Yes, ma'am.

21 MS. DELANEY: All right. Pass the
22 witness, Your Honor.

23 MR. MCDERMOTT: No further questions on
24 2087, Your Honor.

25 THE COURT: All right. Thank you. Let's

1 move on to the next case.

2 MR. MCDERMOTT: Judge, the next case is
3 going to be Brandon Hagan, 1944.

4 THE COURT: All right.

5 MR. MCDERMOTT: I'll let the State have a
6 chance to --

7 MS. DELANEY: I don't have anything.

8 PAUL CHAMBERS

9 called as a witness on behalf of the Defendants,
10 Petitioner, having been previously duly sworn, did
11 testify upon his oath as follows on:

12 DIRECT EXAMINATION (1944/Hagan)

13 BY MR. MCDERMOTT:

14 Q Mr. Chambers, this is an old case; is that
15 correct?

16 A Yes, ma'am -- yes, sir. Sorry.

17 Q When was our client, Mr. Hagan, arrested?

18 A August 10th, 2021.

19 Q And when were we appointed?

20 A September 17th, 2021.

21 Q And the indictment came?

22 A December 9th, 2021.

23 THE COURT: You're going to have to slow
24 down a little bit more with those.

25 MR. MCDERMOTT: Understood.

1 THE COURT: Arrest was August 10th.
2 Appointment was?

3 THE WITNESS: September 17th, Your Honor.

4 THE COURT: Of same year?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay.

7 THE WITNESS: Indictment was December 9th
8 of 2021 as well. I apologize.

9 THE COURT: All right. Go ahead, sir.

10 BY MR. MCDERMOTT:

11 Q Do you know when the arraignment was on this
12 case?

13 A No, sir.

14 Q Were you able to review the court file to see
15 if you could determine when that was?

16 A I was able to review the court file and I
17 couldn't make a determination.

18 Q When did we file our request for discovery?

19 A Our first request for discovery was filed
20 October 11th. Well, I guess request, our only request
21 was October 11th.

22 Q Of what year?

23 A 2022.

24 Q Understood. Okay. Was discovery in this case
25 produced in a seamless manner or were there problems?

1 A I think that there were discovery issues.

2 Q Do you know what those discovery issues were?

3 A Well, we filed a supplemental discovery motion
4 on August 17th, 2023. I think that it particularly
5 asked for CPS records.

6 Q And did that motion also review procedures for
7 reviewing the CAC videos?

8 A It may have. I wasn't a part of that hearing.
9 That was a hearing that Mr. -- you, Mr. McDermott, did.

10 Q All right. Was there a hearing on those
11 discovery issues?

12 A I remember a hearing was held; I don't know
13 who argued for the State, but you were the one that
14 argued for the Defense.

15 Q Do you know when the Court issued an order
16 around those?

17 A The Court order for CPS records in this case
18 was ordered on April 4th, 2024.

19 Q Understood. And has this case had any
20 movement since April 4th of 2024 in the Court?

21 A By the Court?

22 Q By the Court.

23 A Not that I'm aware of.

24 Q Understood. All right. So let's review.

25 A Well, this hearing was set.

1 Q Sure. Let's review again. I'm just for the
2 record purposes, the motion to dismiss in this case was
3 filed when?

4 A October 24th, 2024.

5 Q So that is approximately two years after our
6 first request for discovery?

7 A Yes.

8 Q Okay. Let's review the discovery we received.

9 A Okay.

10 Q When was the first disclosure of discovery
11 made?

12 A I don't know that I would call it disclosure.
13 Again, this was one of the early ones and so my notes
14 say disclosure, but that was before I figured out the
15 difference between uploaded and disclosure.

16 Q Okay.

17 A The upload date was May 2nd, 2022. That was a
18 complete report. It was 45 pages in total.

19 MR. MCDERMOTT: And Judge, if I may have
20 a second to mark these exhibits?

21 THE COURT: You may. And that is the
22 date of the arraignment, May the 2nd of '22. I'll take
23 judicial notice from the Court's file of the date. The
24 arraignment in this case was May the 3rd of '22.

25 BY MR. MCDERMOTT:

1 Q So, is it possible that we were a little
2 delayed in our filing for request for discovery?

3 A Yes. In fact, it's true because we filed our
4 request for discovery in October of 2022.

5 MR. MCDERMOTT: May I approach the State,
6 Your Honor?

7 THE COURT: You may.

8 MR. MCDERMOTT: I'm showing them what
9 I've marked as Defense Exhibits 9 through 13. Judge,
10 I've marked them out of order, but I'm not going to
11 change that so we can keep them --

12 THE COURT: What are you tendering at
13 this time?

14 MR. MCDERMOTT: These are four 39.14
15 disclosures.

16 THE COURT: The D numbers.

17 MR. MCDERMOTT: I'm sorry, 9 through 13.

18 THE COURT: Okay. And what are they?
19 What is 9?

20 MR. MCDERMOTT: Nine is 39.14 disclosure
21 dated November 7th of 2024.

22 THE COURT: November 7th?

23 MR. MCDERMOTT: Yes.

24 THE COURT: All right.

25 MR. MCDERMOTT: 10 is a 39.14 disclosure

1 of October 4th, 2022.

2 11 is October 11th of 2022 (sic).

3 THE COURT: And that's also a 39.14?

4 MR. MCDERMOTT: It is.

5 THE COURT: All right.

6 MR. MCDERMOTT: 12 is another 39.14 dated
7 10/24 of 2024. I'm sorry for there not being a time
8 order.

9 THE COURT: And 11 was 2022, is that what
10 you said?

11 MR. MCDERMOTT: 11 is 2024.

12 THE COURT: Ah, okay.

13 MR. MCDERMOTT: The only one that is 2022
14 is Exhibit 10.

15 THE COURT: All right. And 13?

16 MR. MCDERMOTT: 13 is the -- where is
17 that page? It is the screenshots from the Case Portal.

18 THE COURT: Screenshots?

19 MR. MCDERMOTT: Screenshots.

20 THE COURT: I'm sorry, did you offer --
21 you have not offered those, you just identified.

22 MR. MCDERMOTT: I do need to ask a
23 predicate question at the State's request.

24 BY MR. MCDERMOTT:

25 Q Defense Exhibit Number 13, can you identify

1 that?

2 MS. DELANEY: The State has no objection.

3 THE COURT: No objection? All right.

4 Those are all admitted without objection.

5 MR. MCDERMOTT: Thank you.

6 (Defendants' Exhibits 9 through 13 admitted)

7 BY MR. MCDERMOTT:

8 Q All right. Before the hearing, were you able
9 to review all these 39.14 disclosures and screenshots?

10 A Yes, sir.

11 Q From the portal?

12 A Yes, sir.

13 Q And so I understood that you were trying to
14 tell me that there is some confusion in your notes about
15 the distinction between whether something was uploaded
16 and something was made available to us?

17 A Yes.

18 Q Is that true in this case?

19 A Yes.

20 Q All right. So let's go through disclosure
21 dates as they were listed on the portal.

22 A Okay.

23 Q For the first and second and third
24 disclosures.

25 A The disclosure dates as they were listed in

1 the portal, which are actually what I think are upload
2 dates, Judge.

3 THE COURT: That's what I have.

4 THE WITNESS: Yes, sir. Are May 2nd of
5 2022, November 16th of 2022, and January 25th of 2023.

6 BY MR. MCDERMOTT:

7 Q All right. May 2nd, 2022, what did we
8 receive?

9 A It was a 45 page complete report, in quotes.
10 That's what it's labeled on their system. It had a
11 Texas Ranger report that had 21 pages, an affidavit and
12 complaint for arrest and detention that was two pages.
13 For each count, so it was eight pages total. I'm sorry,
14 my note was a little weird there. Affidavit for arrest
15 was three pages. Warrant of arrest was one page, five
16 pages. One page sheriff's incident report, two pages of
17 handwritten notes, and a five page indictment.

18 THE COURT: And what are you reading
19 from?

20 THE WITNESS: My notes, Judge, but that
21 is all -- that's what was contained in the complete
22 report. That was -- what actually was disclosed that we
23 have.

24 BY MR. MCDERMOTT:

25 Q So let me clarify for the record based on the

1 Judge's question. For the May 2nd, 2022 disclosure,
2 whether that was uploaded or made available to us, the
3 things you just listed were in that disclosure?

4 A Yes, sir. And we had those before I filed my
5 motion.

6 Q Understood. And you were able to review that
7 compared to the 39.14 disclosures and the screenshots;
8 is that correct?

9 A Yes.

10 Q And our own records? And our own records that
11 you were able to review the discovery?

12 A Yes.

13 Q All right. On November 16th of 2022, what was
14 that disclosure?

15 A Eighteen pages of affidavit and search
16 warrants. Affidavit for a search warrant.

17 Q And on January 25th of 2023?

18 A It was a Texas Ranger interview with the
19 Defendant.

20 Q I'm assuming that would be a video?

21 A It was listed as media.

22 Q Understood.

23 A I can tell you that it was media and video
24 listed on their portal.

25 Q Was that all the discovery that we received

1 before we filed the motion to dismiss?

2 A I think so.

3 Q All right. Did we review -- did we re -- when
4 did we file the motion to dismiss?

5 A October 24th, 2024.

6 Q So after October 24th of 2024, did we receive
7 any additional discovery?

8 A Yes.

9 Q What did we receive?

10 A There was a Culberson County Sheriff's report
11 that appeared to me to be the report that I requested in
12 the motion. Then there were law enforcement --

13 Q Can I interrupt you there? That would be a
14 different report than the Texas Ranger report that we've
15 previously been -- that we've previously received,
16 right?

17 A Yes.

18 Q And you identified that you thought a
19 Culberson County Sheriff's Office report should exist in
20 your motion to dismiss; is that correct?

21 A Yes. And --

22 Q And that appears to be responsive to the
23 motion to dismiss?

24 A Yes.

25 Q All right. Please continue.

1 A On October 31st, there was a law enforcement
2 supplemental reports that were given to us.

3 Q How many?

4 A Twelve.

5 THE COURT: What date? I'm sorry, what
6 date was that?

7 THE WITNESS: October 31st, 2024.

8 THE COURT: I didn't get the date of the
9 CCSO report.

10 THE WITNESS: I'm sorry, Judge. October
11 30th, 2024.

12 THE COURT: Okay. And what was it on the
13 31st?

14 THE WITNESS: Twelve law enforcement
15 supplemental reports. They appear to all be from the
16 Texas Ranger.

17 THE COURT: Are there dates on those
18 reports?

19 THE WITNESS: There would be dates in the
20 discovery on those reports, Judge, but I don't have that
21 discovery. I mean, Mr. McDermott does.

22 BY MR. MCDERMOTT:

23 Q That review of Texas Ranger reports was given
24 to you about seven days after you filed the motion to
25 dismiss; is that correct?

1 A Yes, sir.

2 Q In your experience as a criminal defense
3 attorney, do you have experience with Texas Rangers and
4 their work product?

5 A Yes, I do.

6 Q And do you have an opinion about their
7 timeliness in producing their work product?

8 A Yes, I do.

9 Q What is your opinion?

10 A It's timely.

11 Q And so you believe that if the -- what does
12 that mean, that if you believe the Texas Ranger produced
13 a report, do you believe -- what effect does that mean
14 on when you think it was revealed to the State? To the
15 DA's Office?

16 A He produced it when he ended the
17 investigation, unless the investigation continued for
18 some reason, it happens. They don't mess around with
19 that kind of stuff.

20 Q All right. Some of those things that were
21 revealed on October 31st were search warrants of cell
22 phones and Facebook?

23 A Yes.

24 Q Are you aware that those are things that we've
25 been asking for for two years?

1 A I was not aware at the time that we were
2 requesting. I am aware now.

3 Q And that those have been subject to some
4 supplemental discovery motions.

5 Are you aware of that?

6 A Yes.

7 Q And that have been discussed in court on
8 dockets?

9 A I am aware that they have been discussed, that
10 along with lots of other stuff, yes.

11 THE COURT: Do you have the dates of the
12 returns on those search warrants?

13 MR. MCDERMOTT: We're looking at them
14 now, Judge. Judge, I believe that's August 2nd of 2021.

15 THE COURT: The return on the warrant,
16 the search warrant itself, was what date?

17 MR. MCDERMOTT: Oh no, I'm sorry. This
18 is when it was issued.

19 THE COURT: What was the date?

20 MR. MCDERMOTT: August 2nd of 2021.
21 Return, Judge, was received by Brett Mata on August 12th
22 of 2021. And the return was signed by Judge Dominguez
23 on November 7th of 2022.

24 BY MR. MCDERMOTT:

25 Q Do you believe, Mr. Chambers, based on your

1 review, that even after the documents that were all
2 provided a week after you filed your motion to dismiss,
3 that other discovery is still outstanding in this case?

4 A Yes.

5 Q What discovery do you believe is still
6 outstanding in this case?

7 A Well, there's -- I saw -- this is one of the
8 cases where I was there and I saw things and wrote them
9 down. Supplements three and eight.

10 Q So you believe there's things that were in the
11 State's possession when you were in El Paso on October
12 7th?

13 A Yes.

14 Q That were labeled supplements three and eight?

15 A Yes.

16 Q And they've not been disclosed to us?

17 A That's correct.

18 Q Was there anything else?

19 A Yes.

20 Q What else?

21 A This -- I believe this is the one that Mr.
22 Vigil with the DA's Office said that he would get the
23 other half of the interview with. I think this is also
24 the one where that video interview indicated that there
25 was another interview that was done.

1 Q All right. So let me clarify what you're
2 talking about.

3 A Yes.

4 Q On October 7th, as was testified earlier, you
5 were reviewing a CAC video and this was one of the CAC
6 videos you reviewed?

7 A Yes.

8 Q And in your testimony just now, was it in that
9 -- that interview was in two parts and you were only
10 able to review one of them?

11 A No.

12 Q Okay.

13 A The interview that we were able to watch
14 indicated in the first part of it that there was a
15 second interview, that had happened previously, and it
16 was an interview with the alleged victim.

17 THE COURT: It was stated --

18 THE WITNESS: Yes.

19 THE COURT: -- in the video you saw that
20 there was a previous interview that had been recorded,
21 correct?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right.

24 BY MR. MCDERMOTT:

25 Q So let me ask you about that.

1 A Hold on one second. Halfway through that
2 video, it just stopped and the interview was not over.
3 I don't know if the file was corrupted or what, but I
4 believe that's the one that Mr. Vigil said he would fix.

5 Q So you, bel -- do you believe that -- what do
6 you believe a competent attorney would do if they
7 watched a CAC video and in the CAC video they talk about
8 there being a different interview that was recorded?

9 A I would look for the other interview.

10 Q So you believe that any competent attorney
11 would do that?

12 A Yes.

13 Q Do you believe that --

14 A Defense attorney.

15 Q Do you think a prosecutor would?

16 A They should.

17 Q Do you believe there's anything else still
18 missing in this case?

19 A The CPS records that were ordered by the State
20 -- or by the Court.

21 Q All right. So you believe there were CPS
22 records ordered by the Court to be disclosed or
23 reviewed; is that correct?

24 A Yes, sir.

25 Q And in fact, I believe the State filed a

1 motion for a protective order?

2 A I think so. I don't know when they did.

3 Q Let's --

4 A It was a couple, four months after the order
5 from the Court.

6 Q And this -- we had given a protective order,
7 those have still not been disclosed?

8 A I don't know if the Judge signed the
9 protective order.

10 Q You know that under 39.14, we have a duty not
11 to give copies of materials to Defendants or third
12 parties; is that correct?

13 A That's correct.

14 Q And we also have a duty to redact sensitive
15 information that is in reports if we are going to share
16 it with somebody outside of our office; is that correct?

17 A Yes, sir.

18 Q Do you believe that we need a protective order
19 in order to keep ourselves from revealing sensitive
20 information outside of our office?

21 A No, sir. And even -- I mean, if there was a
22 protective order, we would follow it, too. So it
23 doesn't matter either way, but we don't need it.

24 Q Do you remember -- so, did we receive some
25 Facebook information or records and cell phone records

1 in this case?

2 A It appears that we received search warrant
3 cell phone records. Again, this was such a large file
4 that I didn't go in individually, even after the
5 disclosure, to find out what was in those reports.

6 Q Understood. So if we received them --

7 A Uh-huh, yes.

8 Q -- which of these -- in which of these
9 disclosure dates would they be?

10 A October 31st, 2024.

11 Q Did you review the State's motions around
12 discovery that they filed in this case?

13 A For this hearing?

14 Q Yes. Have you reviewed for Brandon Hagan's
15 case?

16 A No. For this hearing today?

17 Q Yes.

18 A Or for the previous hearing?

19 A For any hearing.

20 Q Yes.

21 Q Well, on November 9th of 2023, did the State
22 file a notice that it had Facebook records and cell
23 phone records and would provide them as soon as
24 possible?

25 A I don't remember that in that. I would have

1 to see the motion from the State in order to be able to
2 say that.

3 Q Is there anything else relevant about this
4 case?

5 A Just that the Judge already ordered the CPS
6 records turned over and we still don't have them six
7 months later.

8 MR. MCDERMOTT: Pass the witness for
9 Brandon Hagan, Case Number 1944.

10 THE COURT: Counsel, your witness.

11 MS. DELANEY: Thank you, Your Honor.

12 THE COURT: And let me save you any
13 confusion. In Cause Number 1944, I'll take judicial
14 notice that a protective order regarding CPS records was
15 signed by the Court on March 22nd of 2024, which was
16 following the hearing in which I ordered production of
17 those records. So I did sign the protective order March
18 22nd of '24. All right.

19 CROSS-EXAMINATION

20 BY MS. DELANEY:

21 Q And is it your testimony that those records
22 have not yet been delivered to you?

23 A No, ma'am.

24 Q Okay.

25 A They have not.

1 Q And the State tried to deliver those to you
2 prior to this hearing?

3 A I don't know that. I don't know what cases
4 the State tried to deliver records to me on. I didn't
5 look.

6 Q Were there records that were attempted to be
7 delivered to you, but you --

8 A Yes, ma'am.

9 Q -- refused to take delivery?

10 A I'm sorry. Yes, ma'am.

11 THE COURT: You're an officer of the
12 Court. Are you telling me that's what it was?

13 MS. DELANEY: Yes, Your Honor.

14 THE COURT: Thank you.

15 BY MS. DELANEY:

16 Q And the cell phone records that you have
17 received, you did receive them, I believe on October 30
18 or 31st based on what you just testified to, I think the
19 31st. Do you know when the State received those
20 records?

21 A So I want to be particular about what I
22 testified to.

23 Q Okay.

24 A I know that they were -- I think that they
25 were uploaded to the portal on October 31st. I know

1 that they have been disclosed to us by November 7th. I
2 don't know whether that was disclosed immediately or
3 not.

4 Q Were you able to check the portal on October
5 31st to see if you had access to those records?

6 A No, ma'am. I didn't.

7 Q Okay. So you maybe didn't check again until
8 November or --

9 A That's correct.

10 Q Okay. All right. But if they were placed up
11 on the portal on October 31st, do you know when the
12 State actually received them?

13 A No, ma'am.

14 Q Okay. If the State had received them on
15 September 29th of 2024, would you say that that's --
16 that disclosure was relatively timely, by having it up
17 on Portal by October 31st, 2024, one month later?

18 THE COURT: Can I ask you a clarifying
19 question?

20 MS. DELANEY: Yes, Your Honor.

21 THE COURT: You're using the word State?

22 MS. DELANEY: The State.

23 THE COURT: And now we kind of tie into
24 the CCAs recent decision. When you say the State, do
25 you mean the prosecution?

1 MS. DELANEY: The prosecution.

2 THE COURT: All right.

3 MS. DELANEY: Yes.

4 THE COURT: Okay.

5 MS. DELANEY: Would you like me to call
6 as the prosecution rather than the State?

7 THE COURT: Well, I suspect, based on the
8 argument I heard earlier, that that's going to be an
9 issue. Am I wrong on that, Mr. McDermott?

10 MR. MCDERMOTT: No, Judge. According to
11 Heath, the State includes the prosecutor and all state
12 agencies and the State has due diligence.

13 THE COURT: That's what I saw coming, was
14 that argument. So I think it would be helpful to
15 clarify when you are drawing a distinction between, for
16 example, another -- yes. If you would do that for me,
17 that would be helpful for my notes.

18 MS. DELANEY: Yes, Your Honor.

19 THE COURT: Thank you.

20 THE WITNESS: I'm sorry, can you repeat
21 the question?

22 BY MS. DELANEY:

23 Q If you were to know that the prosecution
24 received the requested cell phone warrant return on
25 September 29th, 2024, and then put it up on Portal a

1 month later, would you consider that timely disclosure
2 to the Defense?

3 A No.

4 Q Okay. And you have received the supplemental
5 -- 12 supplemental law enforcement reports?

6 A I have received supplemental reports. I'm
7 saying that there are 12 of them, but they're not
8 labeled like one through 12.

9 Q Okay.

10 A I want to be clear about that.

11 Q But you have received them?

12 A I've received 12 supplemental reports, yes,
13 ma'am.

14 Q And a CCSO report?

15 A Yes, ma'am.

16 Q And a Facebook preservation request letter?

17 A I don't have that in my notes, so I can't say.

18 THE COURT: Counsel, can I interrupt you
19 again?

20 MS. DELANEY: Yes, Your Honor.

21 THE COURT: I'm trying to streamline
22 this.

23 MS. DELANEY: Yes.

24 THE COURT: What's the date on the CCSO
25 report? The date of the report, not the date it was put

1 up in the portal?

2 MS. DELANEY: October 31st.

3 THE COURT: Of?

4 MS. DELANEY: 2024.

5 THE COURT: Thank you.

6 MR. MCDERMOTT: I'm sorry, Judge, I
7 didn't understand the question.

8 THE COURT: Okay. A CCSO report was put
9 into the portal apparently on October the 30th of 2024.
10 I was asking for the date, the report's date itself.

11 THE WITNESS: That's what I was asking --
12 that's what I thought you were asking. I didn't think
13 that was the --

14 THE COURT: Yeah.

15 MS. DELANEY: Oh. I'm sorry.

16 THE COURT: The report's date, the date
17 on the report.

18 MS. DELANEY: I don't have that. I'm
19 sorry.

20 THE COURT: It's not on the report?

21 THE WITNESS: I don't have it printed out
22 that I've got in front of me, but the State has the
23 portal up and I think they can find it.

24 MS. DELANEY: Soon as we find it, I'll
25 let you know.

1 THE COURT: All right. Thanks. Go
2 ahead.

3 MS. DELANEY: And if the Court approves,
4 I can just read all what we have disclosed. Rather than
5 question and answer to save time.

6 THE COURT: You're telling me that these
7 are the things that were disclosed. If you'll tell me
8 when they were put into the portal --

9 MS. DELANEY: Yes.

10 THE COURT: -- that will be helpful.

11 MS. DELANEY: Okay. October 31st,
12 affidavits and warrants, consent to search cell phone,
13 inventory of seized property, Kimberly Brown's
14 statement, search warrant of cell phones, voluntary
15 statement of Brandon Hagan. And we also have an
16 interview of Hagan that was also uploaded on January
17 25th, 2023.

18 THE COURT: Okay. Hang on. Let me get
19 that one in there. Yes, I've got that. The Ranger
20 interview video. And the search warrants you're talking
21 about and the return and all of that is what he was
22 talking about dated August of 2021?

23 MS. DELANEY: Yes. And the return signed
24 by Judge Dominguez on August 7th, 2022 and delivered to
25 the prosecution on September 29th, 2024.

1 THE COURT: Who did Dominguez deliver it
2 to when he signed it?

3 MS. DELANEY: I don't know, Your Honor.
4 Maybe back to the agency.

5 THE COURT: All right. What was the date
6 you said you -- that the prosecution received it?

7 MS. DELANEY: September 29th, 2024.

8 THE COURT: Same date as the other that
9 you received, the CPS records?

10 MR. MCDERMOTT: Judge --

11 MS. DELANEY: Well, I think we're --
12 we've crossed our wires, Your Honor.

13 THE COURT: Okay.

14 MS. DELANEY: CPS records I don't know.
15 When did -- they -- we did not receive those that day.
16 That was only for the warrant return.

17 THE COURT: So when you said if you all
18 got it, was it timely, you were just talking about the
19 warrant return, not the CPS records we were just --
20 okay.

21 MS. DELANEY: I'm sorry.

22 THE COURT: I got it. Thank you.

23 MS. DELANEY: Sorry to confuse you.

24 THE COURT: This is why it's so
25 complicated. There's so many moving parts, so thank you

1 for clarifying. Yes.

2 MS. DELANEY: Same for us. Yes.

3 MR. MCDERMOTT: For issues that are
4 independently verifiable, I don't have a problem with
5 the State informing the Court with dates.

6 THE COURT: I'm letting both of you do
7 that.

8 MR. MCDERMOTT: I understand that. For
9 issues that are within -- that are not independently
10 verifiable and are only within the State's knowledge --

11 THE COURT: You want testimony.

12 MR. MCDERMOTT: -- and they're not
13 subject to cross-examination. So for example, a date
14 that is on a document, that's fine. And a date that's
15 on the portal, that's fine. But a date that they say
16 that they received it from an agency, I believe that
17 should be subject to cross-examination.

18 THE COURT: Understood. Understood.

19 CROSS-EXAMINATION CONTINUED

20 BY MS. DELANEY:

21 Q And you agree with me that there's no trial
22 set yet in this case?

23 A No, there does not appear to be.

24 Q And if there is a trial date set and you're
25 not yet ready because you feel like A, there is

1 discovery still outstanding, or B, you need more time to
2 review the discovery you do have, you could request a
3 continuance of trial.

4 A I'm going to say the same thing I did before.
5 I can request it, it doesn't mean the Judge is going to
6 grant it.

7 Q Thank you.

8 MS. DELANEY: Pass the witness, Your
9 Honor.

10 THE COURT: Anything else on that one?
11 And you all are still looking for the data on the CCSO
12 report in the portal?

13 MS. DELANEY: The -- yes, we are.

14 THE WITNESS: If you want me to pull up
15 the portal, I can get it right now.

16 THE COURT: Well, I mean they're looking
17 right now.

18 THE WITNESS: Okay.

19 THE COURT: You've got two people over
20 there, one of them could be doing it, not you on the
21 stand.

22 REDIRECT EXAMINATION

23 BY MR. MCDERMOTT:

24 Q Mr. Chambers, based on the cases that we've
25 reviewed so far, have you been -- do you believe that

1 there's any kind of pattern related to discovery issues
2 with the DA's Office?

3 A Yes.

4 Q What is the pattern?

5 A They don't disclose things until I ask
6 particularly for them.

7 Q So if you file a general discovery request,
8 you get some responsiveness?

9 A Some.

10 Q And then if -- and then when do you get
11 further responses?

12 A If I file a motion to suppress or dismiss, I
13 filed motions to suppress in county court for missing
14 discovery and there's been no response on those as far
15 as I can remember.

16 Q So a motion to suppress does not elicit a
17 response?

18 A Not in the last six or eight months.

19 Q An email or docket statement to Mr. Marcantel
20 does not elicit a response?

21 A It hasn't in the last six months.

22 Q The only thing that's elicited any kind of
23 response is a motion to dismiss with particularized
24 identification of missing discovery?

25 A Yes. But I will say that they're disclosing

1 things sometimes that I didn't list.

2 Q Understood.

3 A It was a document dump.

4 Q Understood.

5 MR. MCDERMOTT: Pass the witness.

6 THE COURT: Any follow up on this case?
7 Just on Hagan?

8 MS. DELANEY: No, Your Honor.

9 THE COURT: All right.

10 MR. MCDERMOTT: Judge, if I can clarify
11 just based on records for the documents and I can
12 approach the State and show them what I'm looking at.

13 (Pause)

14 MR. MCDERMOTT: Judge, if I may, with the
15 State's permission, there are two returns for search
16 warrants. One is the Facebook and the Facebook return
17 was signed as received by Brent Mata on August 12th of
18 2021, and signed by Judge Dominguez on November 7th of
19 2022.

20 THE COURT: Okay.

21 MR. MCDERMOTT: The -- so --

22 MS. DELANEY: I believe it was August,
23 what is --

24 MR. MCDERMOTT: No, he was November.

25 MS. DELANEY: Oh, I'm sorry.

1 MR. MCDERMOTT: Judge Dominguez was
2 November 7th of 2022.

3 THE COURT: '22?

4 MR. MCDERMOTT: Yes.

5 THE COURT: Okay. It's different from
6 when I --

7 MR. MCDERMOTT: It's -- there's a year
8 delay difference on that one, Judge.

9 And then the cell phone return was
10 received by Brent Mata on 10/6/2022, and signed by Judge
11 Dominguez a month later on November 7th of 2022. So it
12 looks like he signed both of these returns on the same
13 day.

14 THE COURT: All right. That's the return
15 when you say signed by?

16 MR. MCDERMOTT: This is the return. Yes,
17 Judge. And I have no further questions on Mr. Hagan's
18 case.

19 THE COURT: All right. Just one moment.

20 MR. MCDERMOTT: May I ask one more
21 question about Mr. Hagan's case, Judge?

22 (Pause)

23 THE COURT: All right. We're going to
24 take a short recess. We'll come back in about 10
25 minutes.

1 (Off record)

2 THE COURT: We're back on the record. We
3 were discussing 1944. Mr. Hagan, I understand you have
4 one additional question on direct for the witness?

5 REDIRECT EXAMINATION CONTINUED

6 BY MR. MCDERMOTT:

7 Q Mr. Chambers, you've heard questions from the
8 State about cases not -- the case we've reviewed so far
9 not being set for trial; is that right?

10 A Yes.

11 Q Are those cases not set for trial in large
12 part because of discovery problems from the State? Is
13 the delay attributable to the discovery problems from
14 the State?

15 A In Mr. Hagan's case I think so, yes.

16 MR. MCDERMOTT: No further questions,
17 Your Honor.

18 THE COURT: All right. Any follow up?

19 MS. DELANEY: No, Your Honor.

20 THE COURT: All right. You can stand
21 down. Have a seat next to your co-counsel. Usually say
22 your lawyer, but he's your co-counsel.

23 All right. It is 5:20, thank you for
24 your patience everyone. We've had some discussions in
25 chambers. I understand that we need to put some of that

1 on the record.

2 The first thing is we are going to recess
3 our hearing and we are going to resume at 9:00 a.m. on
4 November the 25th. You wanted to address an issue about
5 your clients. Go ahead.

6 MR. MCDERMOTT: Judge, there was a
7 request on the part of the Defense for waiving the
8 personal appearance for our clients for the purposes of
9 the hearings related to this motion only. The State had
10 filed an opposition to that request and I believe we're
11 reurging that request, and I believe the State has
12 changed its position.

13 MS. DELANEY: We've withdrawn our
14 objection, Your Honor.

15 THE COURT: All right. So for those of
16 you in the room, if you are one of the 15 Defendants on
17 the cases subject to these motions to dismiss, I thank
18 you for your appearance here today. You've satisfied
19 your requirement to appear for this hearing, which means
20 you do not have to come back on the 25th for the second
21 half of our hearing. So when you're excused today, you
22 don't have to come back. You'll hear from your lawyers
23 as to the outcome of the hearing.

24 MR. MCDERMOTT: Judge, and just for
25 clarity for my clients, that does not excuse their

1 appearance from other hearings.

2 THE COURT: Correct, just for November
3 the 25th. You'll still have to listen to your lawyers
4 and follow the law in every other setting we have.

5 Was there any other matter you wanted to
6 address on the record?

7 MR. MCDERMOTT: Yes. Just for record
8 purposes, Your Honor, nothing has been decided at this
9 point. There was some discussion off the record in
10 chambers about the status of some subpoenas that the
11 Defense had issued and had served. I believe there's
12 some room for discussion. I don't -- not guaranteeing
13 any particular outcome of that. The State had filed
14 motion to quash on both subpoenas. I believe there's
15 some room for discussion. We will continue, the Counsel
16 who's been appearing for the State in this hearing, I'll
17 make sure that I've got her contact information before
18 we leave today and we will further those discussions.

19 I believe the Court was willing to
20 entertain perhaps a Zoom hearing on those issues between
21 now and November 25th. I'm hoping we can have some
22 answer at least to tell the Court in a timely manner so
23 that the Court knows what to schedule or what might not
24 need to schedule.

25 THE COURT: Is that agreeable?

1 MS. DELANEY: That is, Your Honor.

2 THE COURT: All right. That's agreeable
3 with me as well. So if we have to have a separate
4 hearing as to the motions to quash the Defense's
5 subpoenas, we'll do that between now and the 25th by
6 Zoom. And then we'll have a ruling well enough in
7 advance that the witnesses will know how to schedule.
8 All right.

9 Anything else for the Defense at this
10 time?

11 MR. MCDERMOTT: No, sir.

12 THE COURT: Anything for the State?

13 MS. DELANEY: Nothing from the State,
14 Your Honor.

15 THE COURT: All right. We stand in
16 recess until November the 25th at 9:00 a.m. Thank you.

17 THE BAILIFF: All rise.

18 (Proceedings concluded at 5:23 p.m.)
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C E R T I F I C A T E

I, Kimberly C. McCright, CER/CET, certified court recorder and transcriber for 394th Judicial District, do hereby certify that the foregoing pages 1 through 193, constitute a full, true, and accurate transcript from the electronic recording of the proceedings had in the foregoing matter, pursuant to Tex. R. App. P. 13.2.

DATED this 17th day of December, 2024.

/s/ Kimberly C. McCright

Kimberly C. McCright, CER/CET
CER-2033/CET-2032