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THE STATE OF NEW HAMPSHIRE <sup>GC SC</sup> 703 MAY 6 PM 12:28

GRAFTON, SS.

SUPERIOR COURT

\* \* \* \* \*

FREDERICK J. MURRAY

\*  
\* Docket Nos.  
\* 05-E-383  
\*

V.

SPECIAL INVESTIGATION UNIT OF THE  
DIVISION OF STATE POLICE OF THE  
NEW HAMPSHIRE DEPARTMENT OF  
SAFETY, ET AL.

RECEIVED

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NH SUPREME COURT

TRANSCRIPTION OF AUDIO-RECORDED PROCEEDINGS  
HEARING ON THE MERITS

Before the Honorable Timothy J. Vaughan,  
Presiding Justice, at Grafton County Superior Court,  
North Haverhill, New Hampshire, recorded on Friday,  
April 13, 2007, commencing at 9:15 a.m.

\* \* \* \* \*

APPEARANCES:

For the Petitioner Timothy Ervin,  
Attorney at Law

For the Respondents: Nancy Smith,  
Assistant Attorney General

\* \* \* \* \*

Recording Monitor: Karen F. Bragg

Recordings transcribed by: Brenda K. Hancock

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Todd Landry	9	29		
Jeffrey Strelzin	57	63	73	

E X H I B I T S

<u>Petitioner's</u>	<u>For ID</u>	<u>In Evd</u>
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None

Respondents'

A	Exhibit to Objection to Motion for Preliminary Injunction	3
B	Affidavit of Todd Landry	3
C	Affidavit of Nancy Smith	3
D	Affidavit of Jeffrey Strelzin	3

P R O C E E D I N G S:

(State's Exhibit Nos. 1 through 4  
pre-marked into evidence)

THE BAILIFF: All rise. The Honorable Court.  
Timothy J. Vaughan presiding. Please be seated.

THE COURT: Good morning. MS. SMITH: Good  
morning.

MR. ERVIN: Good morning, your Honor.

THE COURT: The matter of Frederick J. Murray  
versus Special Investigative Unit et al., docket  
number 05-E-383. The matter is scheduled for hearing  
on the merits. Let's start by having counsel identify  
themselves for the record.

MR. ERVIN: Good morning, your Honor.  
Timothy Ervin. I represent the petitioner, Frederick  
Murray.

MS. SMITH: And I am Nancy Smith from the New  
Hampshire Department of Justice, and I represent the  
respondents.

THE COURT: All right. Thank you, Counsel.  
All right. We have pre-marked certain exhibits for  
purposes of this hearing, and as I indicated to  
counsel, the matter will proceed as the Supreme Court

1 indicated, for a new hearing, so we'll essentially  
2 start from scratch in connection with this matter.  
3 Since the State has the burden of proof, I would ask  
4 the State to proceed first in connection with this  
5 matter. Any preliminary matters other than that,  
6 Counsel?

7 MR. ERVIN: None, your Honor.

8 THE COURT: All right. Thank you. Ms.  
9 Smith.

10 MS. SMITH: Your Honor, in the remand from  
11 the Supreme Court, the Supreme Court indicated that  
12 the standard to be applied, essentially that which was  
13 set forth in the Curran case, which they indicated  
14 that when we are dealing with a law enforcement  
15 investigation, that the determine -- the  
16 identification of the records can be a generic one,  
17 and that the categories must be distinct enough to  
18 allow meaningful judicial review, yet not so distinct  
19 as to reveal the nature and scope of the  
20 investigation.

21 With that in mind, on this remand we have  
22 submitted with our supplemental pleading the  
23 affidavits of Detective Todd Landry, myself, as far as

1 what records have been produced, and Attorney Jeff  
2 Strelzin from our office.

3 In Detective Landry's affidavit, and we will  
4 certainly be willing to put him on the stand and go  
5 through this on the record here, he indicated that he  
6 has reviewed all of the documents in the file, and  
7 that it is his opinion, based on his experience with  
8 law enforcement investigations and this case in  
9 particular, he has stated that this is an ongoing  
10 investigation, that there is a reasonable likelihood  
11 that it will result in a criminal case, and provided  
12 further descriptions of the documents falling into the  
13 20 categories that were initially identified in  
14 Exhibit A, which was initially submitted to this  
15 court, and those are in Detective Landry's affidavit  
16 in Categories A through I believe it's T, and as the  
17 Supreme Court said in the remand, there are some of  
18 those generic categories which they felt, with the  
19 appropriate support from affidavits or from testimony,  
20 were likely to be adequate, and those include examples  
21 of interviews with witnesses, and as Detective  
22 Landry's affidavit states, the bulk of the records  
23 are, in fact, investigative reports by the State

1 Police or the law enforcement officer concerning  
2 contacts with various individuals, and in Detective  
3 Landry's affidavit, he identifies the law enforcement  
4 officers who have prepared those reports, the number  
5 of reports, and a general description of what, you  
6 know, what they concern. And, so, we feel that that  
7 has complied with the Supreme Court's direction to  
8 provide further specific detail regarding the  
9 categories under the narrative reports by  
10 investigators, and the list of categories, phone  
11 records are fairly descriptive, and without  
12 identifying the specific individuals involved, which,  
13 again, under the direction from the Supreme Court, is  
14 what we are not required to do, it would be very  
15 difficult to provide any further description in that  
16 category.

17 As far as the subpoenas, we have reviewed those  
18 very carefully. There was one subpoena, which was not  
19 a Grand Jury subpoena, and that has been provided,  
20 and, in fact, this is a copy of what was provided  
21 under the categorization in my affidavit. I would be  
22 happy to provide this to the Court to look at.

23 THE COURT: When you say "was provided," do

1 you mean to Mr. --

2 MS. SMITH: These documents have been  
3 provided to counsel.

4 THE COURT: -- co-counsel? So, that  
5 information is what's reflected in your Attachment I;  
6 is that correct?

7 MS. SMITH: Correct.

8 THE COURT: And that information has been or  
9 will be made available to the petitioners as part of  
10 your disclosure; is that right?

11 MS. SMITH: That is correct.

12 THE COURT: So, you've -- you've segregated  
13 from the material in the police files and the  
14 investigatory files those particular matters that you  
15 feel are not unavailable for review.

16 MS. SMITH: Correct.

17 THE COURT: Okay.

18 MS. SMITH: So, going -- looking, again, at  
19 the specificity that we have provided in the  
20 supplemental memorandum, we have provided the number  
21 of subpoenas that were issued, I believe was  
22 identified, and also the fact that they are, all the  
23 ones that have been withheld are Grand Jury subpoenas.

1           THE COURT: Okay. Let's do this, Ms. Smith,  
2 to maybe put the matter in a little bit of  
3 perspective. I would ask that you do call Detective  
4 Landry for purposes of the background process, the  
5 investigatory process, the nature and extent of the  
6 investigation, the ongoing nature of that  
7 investigation for purposes of my being able to more  
8 fully understand the position of the State with  
9 respect to at least those issues, and then you can  
10 come back and comment on the matters that you feel are  
11 not disclosable, and to the extent I deem it necessary  
12 or appropriate, I will allow *in camera* with respect to  
13 those issues. Mr. Ervin, is that consistent with our  
14 discussion earlier?

15           MR. ERVIN: It is, your Honor.

16           THE COURT: All right. Thank you.

17           MR. ERVIN: And I did -- just state for the  
18 record, that we did receive the Attachment I, the  
19 records from the State, so that isn't an issue in this  
20 hearing.

21           THE COURT: All right. Thank you very much.  
22 Go ahead, Ms. Smith.

23           MS. SMITH: Okay. So, if you would like us



1 to call Detective Landry now, we would be happy to do  
2 that.

3 THE COURT: Yes, I would. Good morning,  
4 Detective Landry.

5 THE WITNESS: Good morning, your Honor.

6 DETECTIVE TODD LANDRY,  
7 a witness being first duly sworn was examined and  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SMITH:

11 Q. Good morning. Can you, please, state  
12 your name.

13 A. My name is Todd Landry.

14 Q. And what is your position?

15 A. I'm currently a sergeant with the New  
16 Hampshire State Police.

17 Q. And where are you assigned?

18 A. I'm assigned to Troop F, in Twin  
19 Mountain.

20 Q. How long have you been with the State  
21 Police?

22 A. Just over 13 years.

23 Q. And as a sergeant, what is your

1 assignment?

2 A. My current assignment is to supervise  
3 the Uniformed Patrol Unit, one shift of that.

4 Q. Have you been involved in the past in  
5 the Maura Murray investigation?

6 A. I have up until recently, when I was  
7 promoted to sergeant. I was assigned to the  
8 Detective Unit at Troop F, I'd been there for six  
9 years, and became involved in this investigation in  
10 February of 2004.

11 Q. So, how long have you been involved in  
12 the Maura Murray investigation?

13 A. Since February 11th, 2004.

14 Q. Until when?

15 A. Still I do things on the case  
16 periodically, even though I'm not in the Detective  
17 Unit anymore.

18 Q. Is the Maura Murray investigation still  
19 open?

20 A. Yes.

21 Q. And what do you mean by being open?

22 A. It's an open investigation. It's being  
23 invest- --investigatory work is being done, and

1 information that does come in followed up upon --  
2 followed upon -- followed up on. Sorry.

3 Q. Okay. And is that ongoing?

4 A. Yes.

5 Q. What is the most recent activity? How  
6 recently has activity occurred in that matter?

7 A. Just two -- three days ago I was in  
8 contact with the law enforcement out in Ohio in  
9 regards to some human remains that had been found,  
10 and they wanted to obtain dental records that we had  
11 in this case.

12 Q. In a investigation of this nature, can  
13 you be absolutely 100 percent sure that it will  
14 result in criminal charges at some point?

15 A. No.

16 Q. From your experience in investigating  
17 cases where someone has disappeared, do you have an  
18 opinion as to whether this case is more likely than  
19 not to result in criminal charges?

20 A. This may lead to criminal charges. My  
21 experience says it could go either way.

22 Q. Is there specific information, without  
23 identifying what that information is, that leads you

1 to believe that this case may result in criminal  
2 charges?

3 A. Yes.

4 THE COURT: If you could tip that microphone  
5 towards you, if you want.

6 MS. SMITH: Pardon?

7 THE COURT: That was just a microphone issue.  
8 Go ahead.

9 CONTINUING EXAMINATION BY MS. SMITH:

10 Q. Is there activity that the State Police  
11 have planned to pursue in the future regarding the  
12 Maura Murray investigation?

13 A. Yes.

14 Q. And based on your experience with your  
15 invest- -- with investigations, is it your opinion  
16 that revealing the specifics regarding your  
17 investigation would interfere with your ability to  
18 pursue your investigation in the future?

19 A. Yes.

20 Q. And in your affidavit, you have  
21 identified specific ways that you believe your  
22 investigation would be harmed; is that correct?

23 A. Correct, yes.

1           Q.       And let me just ask you, for the  
2 record, prior to this hearing today you have reviewed  
3 the file and looked at the material in it to  
4 determine whether or not you feel that the material  
5 that's been withheld would -- revealing it would harm  
6 your investigation, correct?

7           A.       Yes, it has been reviewed.

8           Q.       And what is your opinion regarding  
9 that?

10          A.       That it should not be released.

11          Q.       In your affidavit, you indicate that  
12 one of the dangers or the harmful effects is that  
13 revealing the material that's been withheld could  
14 alert persons of interest and make it harder to gain  
15 cooperation. Is that your opinion?

16          A.       Yes.

17          Q.       And has that happened to you when  
18 information of that type has been made public through  
19 some source or another in other cases?

20          A.       Yes.

21          Q.       The second fact that you indicate is  
22 that revealing the material that's been withheld  
23 might enable a person of interest to use what other

1 witnesses have said to cover their tracks or to  
2 divert attention or muddy the waters. Is that  
3 something that you have had happen to you in other  
4 cases that you are investigating?

5 A. Yes.

6 Q. You have indicated that revealing the  
7 material that has been withheld could endanger people  
8 that have talked to you, by providing that  
9 information to persons of interest. Is that  
10 something that you have experienced in this or other  
11 cases?

12 A. Yes.

13 THE COURT: Well, differentiate, Counsel,  
14 this case and/or other cases. Has that occurred in  
15 this case, I think was the first question, or  
16 generically? Are you referring to generically?

17 MS. SMITH: Generically.

18 THE COURT: Generically. Thank you. Okay.

19 CONTINUING EXAMINATION BY MS. SMITH:

20 Q. You indicate that you are also  
21 concerned that revealing the withheld information in  
22 this case could result in witnesses being reluctant  
23 to talk to you because what they say would become

1 available to someone that was a focus of your  
2 investigation. Is that a concern?

3 A. Yes.

4 Q. You indicate that you are also  
5 concerned that revealing the withheld information in  
6 this case could result in public speculation,  
7 resulting in false leads. Is that something you have  
8 experienced in this case or other cases in general?

9 A. Yes.

10 Q. You also indicate that you are  
11 concerned that revealing the withheld information  
12 could result in sources that have provided you with  
13 information being pursued by outside non-law  
14 enforcement sources to the point that they are  
15 unwilling to cooperate with you any further. Has  
16 that occurred in this case or in other cases in  
17 general?

18 A. Yes.

19 MR. ERVIN: Again, your Honor, is that this  
20 case or --

21 THE COURT: I think it -- the question,  
22 again, is it generic or specifically this case, the  
23 question I asked before? So, is your inquiry as to

1 whether it is a generic problem or a problem with this  
2 case? I think that's what Counsel's request for  
3 clarification was.

4 MS. SMITH: Correct. It's a generic.

5 CONTINUING EXAMINATION BY MS. SMITH:

6 Q. Generically is that a concern?

7 A. Yes.

8 Q. And you have experienced that in cases  
9 that you have dealt with?

10 A. Yes.

11 Q. And you indicate that you're also  
12 concerned that revealing the withheld information in  
13 this case, to the extent that it concerns warrants or  
14 subpoenas, could indicate the focus of your  
15 investigation. Is that a concern?

16 A. Yes.

17 Q. In this case in particular?

18 A. Yes.

19 Q. And, finally, in regards to revealing  
20 what other witnesses have said, you indicate that you  
21 have a concern that that could taint the credibility  
22 of witnesses; is that correct?

23 A. Yes.



1           Q.        Could you describe a little bit in more  
2 detail what that concern is?

3           A.        With respect to witness information?

4           Q.        With the -- if what one -- if what  
5 witnesses have told the police is generally  
6 available, how can that affect your ability to judge  
7 credibility?

8           A.        If information is known by other people  
9 based on what witnesses tell you, if we talk to other  
10 people that might not -- when we talk to other  
11 people, the information that's not known publicly can  
12 help get -- make them credible, their credibility  
13 issue higher.

14          Q.        Going on in your affidavit, you  
15 indicate that many of those concerns that we've just  
16 gone through apply whether or not there is a person  
17 of interest in your investigation, correct?

18          A.        Correct.

19          Q.        And then in your affidavit, you go  
20 through with increasing specificity the various  
21 categories of documents that are in the file,  
22 correct?

23          A.        Yes.

1 MS. SMITH: And would you like me to inquire  
2 with Officer Landry into the specific categories on  
3 the record?

4 THE COURT: Yes.

5 CONTINUING EXAMINATION BY MS. SMITH:

6 Q. In regards to the phone records, are  
7 you concerned with revealing, providing those phone  
8 records publicly in this case?

9 A. Yes.

10 Q. And are you, in addition to the impact  
11 on your law enforcement concern, is it also a concern  
12 that those are priv- --or there's a privacy interest  
13 in regards to those records?

14 A. Yes.

15 Q. In regards to the subpoenas, including  
16 search warrants, to the extent that those are Grand  
17 Jury subpoenas or -- and in addition that they are  
18 search warrants, are you concerned with revealing  
19 what subpoenas or search warrants have been obtained?

20 A. Yes.

21 Q. And you feel, for the reasons that  
22 we've gone through, that revealing that would harm  
23 your ability to continue your investigation?

1           A.       Correct.

2           Q.       In regards to credit card information,  
3 are you concerned with providing records concerning  
4 whose credit card information you have obtained in  
5 this case?

6           A.       Yes.

7           Q.       And, again, that is for the reasons  
8 that we have just gone through as to the potential  
9 harm to your investigation?

10          A.       Correct.

11           THE COURT: Is there also a privacy issue  
12 with respect to the credit card information?

13           MS. SMITH: Yes.

14          CONTINUING EXAMINATION BY MS. SMITH:

15          Q.       In regards to criminal records checks,  
16 are you concerned with revealing who you have run  
17 criminal records checks on in this investigation?

18          A.       Yes.

19          Q.       And, again, that's for the reasons that  
20 we went through as to the potential harm for your  
21 investigation?

22          A.       Correct.

23          MR. ERVIN: Your Honor, this is one of the

1 categories that we had discussed in chambers, that we  
2 would agree --

3 THE COURT: All right. You can -- yeah, you  
4 can skip any of the categories that relate to privacy  
5 issues that counsel has already indicated they won't  
6 inquire into, and are you familiar with --

7 MS. SMITH: I just want to double check as to  
8 what those categories are.

9 MR. ERVIN: Your Honor, it was --

10 THE COURT: Okay. Why don't you go ahead,  
11 Mr. Ervin, for the record and just indicate which --

12 MR. ERVIN: It was the credit card  
13 information, which was document Category C, criminal  
14 record checks, which is document Category D, polygraph  
15 examinations, Exhibit G, the attorney notes, your  
16 Honor, which were Exhibit M, the tax records, which  
17 was Exhibit Q, employment personnel file, Exhibit R,  
18 medical records, Exhibit S, military records, Exhibit  
19 T.

20 THE COURT: All right. So, confine your  
21 inquiry, Counsel, to the remainder of the records not  
22 directed by Mr. Ervin's comments.

23 MS. SMITH: All right.

1 CONTINUING EXAMINATION BY MS. SMITH:

2 Q. The next category is the narrative  
3 reports by investigators, correct?

4 A. Yes.

5 Q. And there's a long list of people who  
6 have prepared those reports, correct?

7 A. Yes.

8 Q. And are those all law enforcement  
9 personnel?

10 A. Yes.

11 Q. And these reports, you indicate, relate  
12 to searches and subpoenas, some of those reports  
13 relate to searches and subpoenas?

14 A. Yes.

15 Q. They also relate to approximately 254  
16 contacts with various sources, including follow-up on  
17 those contacts?

18 A. Yes.

19 Q. Including approximately 106 witness  
20 interviews, and that could be just telephone  
21 conversations and other types of discussions with  
22 people?

23 A. Yes.

1 Q. They also concern reports regarding  
2 obtaining other documents?

3 A. Correct.

4 Q. And evidence and examination of  
5 evidence?

6 A. Yes.

7 Q. And is it your opinion that revealing  
8 those investigative reports and the attachments to  
9 them, if they concern documents that were obtained or  
10 things of that nature, would be harmful to your  
11 investigation for the reasons we've previously  
12 discussed?

13 A. Yes.

14 Q. The next category is actual witness  
15 interviews, tapes and transcripts, and you indicate  
16 here that not all of the contacts that are reflected  
17 in the investigative reports were taped or  
18 transcribed, correct?

19 A. Yes.

20 Q. You indicate that there are 19 written  
21 statements, correct?

22 A. Yes.

23 Q. And for the reasons that we previously

1 discussed, is it your opinion that revealing those  
2 records would be harmful to your ability to pursue  
3 this investigation?

4 A. Yes.

5 Q. The next category that we need to  
6 address is H, possessed property, correct?

7 A. Yes.

8 Q. And in regards -- that is physical  
9 evidence that you have collected or that has been  
10 given to you that someone believes may have some  
11 relevance?

12 A. Correct.

13 Q. And there is a -- and do you believe  
14 that revealing what that physical evidence that is in  
15 your possession is would be harmful to your ability  
16 to pursue this investigation for the reasons we've  
17 previously discussed?

18 A. Yes.

19 Q. The next item is lab reports, and that  
20 is reports concerning examinations that have been  
21 done of some of the physical pieces of evidence,  
22 correct?

23 A. Yes.

1           Q.       And are you concerned with revealing  
2 what the exact nature of the tests are and the  
3 particular identity of the items that have been  
4 tested?

5           A.       Yes, I am.

6           Q.       And you're concerned about that for the  
7 reasons we've previously discussed, about its effect  
8 on your ability to pursue this investigation?

9           A.       Yes.

10          Q.       In regarding -- regards to the police  
11 dispatch and call logs, is it your understanding that  
12 some of those have already been produced?

13          A.       That's my understanding, yes.

14          THE COURT:   And those would have been listed  
15 on Attachment I?

16          MS. SMITH:   Correct.

17          THE COURT:   Thank you.

18          CONTINUING EXAMINATION BY MS. SMITH:

19          Q.       To the extent there are any other  
20 reports of responses or police dispatch or call logs,  
21 are you concerned with releasing those records?

22          A.       Yes.

23          Q.       And is that for the reasons that we've



1 previously discussed about the ability to verify  
2 credibility of witnesses and what they say compared  
3 to what you know?

4 A. Yes.

5 Q. And the next category is photographs.  
6 To the extent that there are photographs of -- in  
7 this file, are you concerned with releasing those  
8 photographs for the same reasons that you are  
9 concerned with releasing the police dispatch logs or  
10 the other factors that we discussed?

11 A. Yes.

12 Q. The next category is correspondence,  
13 and you indicate that, other than correspondence to  
14 and from Mr. Murray, which has been produced, the  
15 remainder of the correspondence, the documents in  
16 this category are between the State Police and the  
17 Attorney General's Office?

18 A. Yes.

19 MS. SMITH: So, in addition to any law  
20 enforcement investigative privilege, we would also  
21 claim that those are subject to a work product,  
22 attorney work product privilege with the Attorney  
23 General's Office.

1           MR. ERVIN: Your Honor, if the representation  
2 is that all remaining correspondence is solely between  
3 the detectives and the Attorney General's Office, then  
4 we would agree on that category as well. If there's  
5 additional correspondence that is between the  
6 detectives themselves, they're not necessarily  
7 involving the Attorney General's Office, we would  
8 suggest that that should be within the scope of the  
9 request we've made.

10           THE COURT: Ms. Smith?

11           MS. SMITH: To the extent there's  
12 correspondence with anybody else, it is part of an  
13 investigative report. They may have received some  
14 correspondence from somebody and followed up on that  
15 contact. So, that would be covered --

16           THE COURT: I think we're talking about two  
17 different -- counsel is agreeing that anything  
18 between, for example, Mr. Strelzin's office and the  
19 State Police is, in fact, privileged.

20           MS. SMITH: Okay.

21           THE COURT: What the contention is, that  
22 other non-communication with counsel information is  
23 subject to inquiry. Is that --

1 MR. ERVIN: That is correct, your Honor.

2 THE COURT: Okay.

3 CONTINUING EXAMINATION BY MS. SMITH:

4 Q. The next category that we need to talk  
5 about is the one -- there was a one-party intercept  
6 memorandum.

7 A. Okay.

8 Q. And are you concerned with revealing  
9 any specifics about that document?

10 A. Yes.

11 Q. And that's for the reasons that we've  
12 previously discussed about identifying the focus of  
13 your investigation?

14 A. Yes.

15 Q. In regards to other than the one  
16 topographical map that was produced, are you  
17 concerned with producing any maps or diagrams that  
18 are in your possession?

19 A. Yes.

20 Q. And is that because you are concerned  
21 that those maps or diagrams would also show specifics  
22 of any focus of your investigation?

23 A. Yes.

1 MS. SMITH: In regards to investigative duty  
2 assignment logs, I've indicated that there are none,  
3 other than what is in the investigative reports.

4 THE COURT: So, there's no separate --  
5 there's no separate category for those items?

6 MS. SMITH: There is not.

7 THE COURT: All right. And those would  
8 simply be the personnel assigned during the course of  
9 the process?

10 MS. SMITH: Correct.

11 THE COURT: Okay.

12 CONTINUING EXAMINATION BY MS. SMITH:

13 Q. In regards to tax records that you may  
14 have obtained or kept in your --

15 THE COURT: I think that's -- counsel  
16 indicated he's not inquiring into that.

17 MS. SMITH: Oh, okay. Sorry.

18 THE COURT: Same with employment records, the  
19 same with medical records.

20 MS. SMITH: And I think that is all of the  
21 categories.

22 THE COURT: All right.

23 MS. SMITH: I don't have any further

1 questions for Detective Landry.

2 THE COURT: All right. Mr. Ervin.

3 MR. ERVIN: Your Honor, at this point I  
4 didn't know if his Honor was going to inquire further  
5 of --

6 THE COURT: Well, I'm going to allow you to  
7 inquire first, as I make notes. To the extent I have  
8 additional areas of concern, I'll then make inquiry.  
9 Go ahead.

10 MR. ERVIN: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MR. ERVIN:

13 Q. Good morning, Detective.

14 A. Good morning.

15 Q. Sir, would you characterize the  
16 investigation into the disappearance of Maura Murray  
17 as a criminal investigation?

18 A. Yes.

19 Q. Okay. Are you aware that it's been  
20 represented in this case to the New Hampshire Supreme  
21 Court that this is, in fact, not a criminal  
22 investigation but maybe simply a missing person's  
23 investigation?

1           A.       I think it's a -- a matter of  
2 semantics. I mean --

3           Q.       Well, is there --

4           THE COURT: Yeah. Maybe you could help me a  
5 little bit, since obviously I didn't have the benefit  
6 of the Supreme Court argument. What was said?

7           MR. ERVIN: Okay. That was a specific  
8 question that was directed by one of the Justices to  
9 Ms. Smith about the nature of the investigation based  
10 upon the petitioner's characterization that the State  
11 has not considered this to be a criminal  
12 investigation.

13          THE WITNESS: I think the -- the better  
14 answer to your question would be is it a law  
15 enforcement investigation, and, yes, it is.

16          THE COURT: Law enforcement as opposed to  
17 criminal. Is that a distinct --

18          THE WITNESS: Somewhat. Criminal more  
19 definitive versus a law enforcement, general, that  
20 it's being looked upon. Are they treated more or less  
21 the same? Yes.

22          CONTINUING EXAMINATION BY MR. ERVIN:

23          Q.       But in your affidavit, you state that

1 the information that's contained in the State's files  
2 may lead to a criminal investigation. It doesn't  
3 characterize it as a criminal investigation.

4 A. I think it says "may lead to criminal  
5 charges."

6 Q. But at this point in time, is there  
7 currently a person of interest that the State is  
8 looking at with regard to the Maura Murray case?

9 THE COURT: I'll see counsel on that  
10 question.

11 AT THE BENCH:

12 THE COURT: I think that's a little too  
13 close, counsel. If he says there's a specific person,  
14 I think that kind of defeats the purpose of the kind  
15 of cloak that they're attempting to -- I think you  
16 might -- you'll be able to ask him if the  
17 investigation is ongoing, are they generally  
18 containing it to a foc- -- review subjects or  
19 something like that, but I don't think you can ask him  
20 is there one particular person they're --

21 MR. ERVIN: Your Honor, I'm not asking for  
22 them to identify who that party may be.

23 THE COURT: Okay.

1           MR. ERVIN: But my understanding and reading  
2 of the case law is that it's incumbent upon them to  
3 show, and they've taken the position that revealing  
4 this information would give people of interest --

5           THE COURT: Rather than asking if there's one  
6 person, are there people, I think that might -- are  
7 there people that the investigation, A, has focused  
8 on, and, B, continues to focus on. I think that's  
9 fair game. Ms. Smith?

10          MS. SMITH: I'm concerned about that,  
11 because, again, this is, to the extent this is a small  
12 community, the people know --

13          THE COURT: I think we can take judicial  
14 notice of the fact it's a small community.

15          MS. SMITH: The people -- the identity of  
16 those people is fairly well-known.

17          THE COURT: Well, the question doesn't go to  
18 identity -- I'm going to allow the question as I  
19 generally outlined the structure. You're not  
20 permitted to ask if there is a particular individual  
21 that the police are targeting.

22          MR. ERVIN: Wasn't focused on specific.

23          THE COURT: You may inquire if there is a



1 focus on individuals and is it an ongoing focus.

2 MR. ERVIN: Okay.

3 THE COURT: Subject to exception.

4 (End of bench conference)

5 IN OPEN COURT:

6 CONTINUING EXAMINATION BY MR. ERVIN:

7 Q. Detective, has the investigation into  
8 the Maura Murray case focused on specific  
9 individuals?

10 MS. SMITH: Again, I object.

11 THE COURT: "General" was the word, counsel.

12 MR. ERVIN: Oh, apol --

13 CONTINUING EXAMINATION BY MR. ERVIN:

14 Q. Has it generally focused on  
15 individuals?

16 A. Individuals?

17 Q. Correct.

18 A. Yes.

19 Q. Is the investigation currently ongoing  
20 as to those individuals?

21 A. I'm sorry. Can you say that again?

22 THE COURT: I had the microphone off. My  
23 apologies, Counsel.

1 MR. ERVIN: I apologize.

2 CONTINUING EXAMINATION BY MR. ERVIN:

3 Q. Is the investigation into those  
4 individuals currently ongoing?

5 A. Yes.

6 Q. When was the last time any  
7 investigation into -- generally into individuals has  
8 been undertaken by the State?

9 A. It's ongoing.

10 Q. You characterize it as "ongoing." What  
11 I'm trying to get at is when is the last time that  
12 the investigation is focused on a -- individuals in  
13 regard to the disappearance of Maura Murray?

14 MS. SMITH: I'm going to object, because it's  
15 getting into specific --

16 THE COURT: Let me see counsel again, please.

17 AT THE BENCH:

18 THE COURT: I don't want to impede your  
19 inquiry, but I do have an obligation to be sure that,  
20 at least at this juncture before I make a decision, as  
21 I said in the order and the cat's not out of the bag  
22 ahead of time, I think the witness has testified that,  
23 A, there are subjects of interest, which they have

1 focused on, B, and they continue to focus on them.

2 I will allow you to inquire, Generally, does  
3 that mean, Detective Landry, that the investigation  
4 continues, rather than move it down to specific  
5 individuals.

6 MR. ERVIN: I can move that, your Honor.

7 THE COURT: Ms. Smith?

8 MS. SMITH: And like I said, I'm concerned  
9 about dates and --

10 THE COURT: Well, yeah. I don't want to go  
11 into specifics, just he's identified that the State  
12 Police are continuing to investigate, he's identified  
13 that they have had or continue to have subjects of  
14 interest, and I think he just said that they continue  
15 to review the subjects of interest. So, I'm not sure  
16 where else you want to go with it.

17 MR. ERVIN: I think I can address it, your  
18 Honor.

19 THE COURT: Okay.

20 (End of bench conference)

21 IN OPEN COURT:

22 CONTINUING EXAMINATION BY MR. ERVIN:

23 Q. Detective, how many -- how many law

1 enforcement personnel are currently assigned to the  
2 ongoing investigation into the Maura Murray case?

3 A. The members of the Troop F Detective  
4 Unit work on it.

5 Q. Okay. But with what level of  
6 frequency?

7 A. Ongoing.

8 Q. When you say "ongoing," can you give us  
9 an estimation of what constitutes "ongoing"?

10 A. I'd ask for an in camera review to  
11 answer that question further.

12 THE COURT: Let me -- rephrase it again,  
13 Counsel.

14 MS. SMITH: I think what Officer -- the  
15 officer is indicating that he can't identify what  
16 "ongoing" is without going into the specifics of the  
17 activity.

18 THE COURT: Well, to the extent that he's  
19 testified there's an ongoing investigation, I'll  
20 accept that. What Counsel, I think, is inquiring is,  
21 essentially, the personnel assigned and those sorts of  
22 things.

23 Perhaps, is there an individual, Detective, who

1 is assigned to oversee this case currently?

2 THE WITNESS: Yes.

3 THE COURT: And who is that -- is it someone  
4 within Troop F?

5 THE WITNESS: Yes.

6 THE COURT: All right. And is it one of the  
7 detectives in Troop F?

8 THE WITNESS: Yes.

9 THE COURT: And do they have a continuous  
10 responsibility to this case?

11 THE WITNESS: Yes.

12 THE COURT: And is that the reporting,  
13 basically, the reporting individual locally?

14 THE WITNESS: Yes.

15 THE COURT: And does that individual then  
16 report to the Homicide Unit at the State -- at the  
17 Attorney General's Office?

18 THE WITNESS: Yes.

19 THE COURT: Does that help you in terms of  
20 inquiring, Counsel?

21 MR. ERVIN: It does, your Honor. I'm just  
22 trying to get with what frequency. They characterize  
23 this as "ongoing," and we're just trying to establish

1 what constitutes "ongoing," and that's a defined term.

2 THE COURT: Well, and there was testimony at  
3 the prior hearing about the level of consistent  
4 activity on this file, so I think it's a fair line of  
5 inquiry for this hearing also. So, if you phrase the  
6 question, and perhaps -- Detective, how frequently is  
7 this case, if you know, how frequently is this case  
8 actively reviewed at Troop F?

9 THE WITNESS: It's -- to say "actively  
10 reviewed," I mean, it's ongoing, stuff gets looked at,  
11 then it gets re-looked at another time. I mean, I  
12 guess I don't know what you're looking for for an  
13 answer.

14 THE COURT: Well, is there material that's  
15 continually being generated in connection with this  
16 file through the investigative process at Troop F?

17 THE WITNESS: Yes.

18 THE COURT: Counsel.

19 CONTINUING EXAMINATION BY MR. ERVIN:

20 Q. Are you currently involved with the  
21 Maura Murray investigation?

22 A. Right now not as much as I used to be  
23 when I was in the Detective Unit, I've got other

1 responsibilities now, but as I just said earlier, I  
2 mean, just the other day I was communicating with  
3 Ohio in regards to this.

4 Q. All right. Did another officer take  
5 over what your responsibilities were with regard to  
6 that?

7 A. Yes.

8 Q. Okay. And my question is, are there  
9 currently detectives assigned specifically to work on  
10 the Maura Murray case?

11 A. Define "specifically."

12 Q. That part of their assigned duties  
13 would be to perpetuate the investigation into the  
14 disappearance of Maura Murray.

15 A. Yes.

16 Q. Following up leads --

17 A. Yes.

18 Q. -- examining evidence, okay. And how  
19 frequently does that occur? Are there periods of  
20 time, for instance, where weeks would go by before  
21 something was followed up on or done on this case  
22 specific?

23 A. When information comes in, it's

1 followed up on as soon as it can be, taking into  
2 account that there are other investigations that have  
3 to go on that might go to the front of the list.

4 Q. So, there would be periods of time of  
5 inactivity on the case?

6 A. Yes.

7 Q. Is there, as we stand here today, is  
8 there a reasonably anticipated enforcement proceeding  
9 about to take place in the Maura Murray case?

10 A. Say that again.

11 Q. Can you say today is it reasonably  
12 anticipated that there's going to be an enforcement  
13 proceeding that's going to take place in the Maura  
14 Murray case?

15 A. Without getting into any further  
16 detail, I would ask for an *in camera* review.

17 THE COURT: I'll accept that answer. At this  
18 point, the witness has indicated, under the  
19 affidavits, he's basically saying under the affidavits  
20 that he's submitted there may be issues which he  
21 doesn't feel are appropriate, and Counsel's already  
22 pointed those out. Perhaps -- let me see counsel.

23 AT THE BENCH:



1           THE COURT: I feel like we're walking on egg  
2 shells.

3           MR. ERVIN: This goes to the very heart of  
4 the (inaudible).

5           THE COURT: Yeah.

6           MR. ERVIN: The case law, *Beavis versus*  
7 *State, National Labor Relations versus Robbins*, made  
8 it very clear that if there is not a reasonably  
9 anticipated enforcement proceeding implication of the  
10 investigatory exception is not appropriate, and *Curran*  
11 speaks specifically to that, where it says simply  
12 because a document has wended its way into an  
13 investigation file doesn't allow the State to withhold  
14 it simply because it's in an investigation --

15           THE COURT: Well, the State's position would  
16 be they've wended out those inadvertently wended-in  
17 documents. What they're saying is the overall context  
18 of this case represents an ongoing investigation. The  
19 question goes, and what was occurring to me, the  
20 question that you would want to ask but I wouldn't  
21 permit you to ask is, Are you about to indict anybody?  
22 And that's how you bring the thing to an end.

23           MR. ERVIN: What I'm saying, your Honor, is

1 are we talking 5 years, 10 years? The case law is  
2 clear; it's not simply that there's an ongoing  
3 investigation.

4 THE COURT: I understand.

5 MR. ERVIN: The burden is upon the State to  
6 show that the release of this information would impact  
7 or interfere with an enforcement proceeding, and if  
8 there is not a reasonably anticipated enforcement  
9 proceeding, how could the release of information be an  
10 impact.

11 THE COURT: Well, I think there are two  
12 things, Counsel, two things. One is investigation  
13 versus enforcement. Investigation can lead to  
14 enforcement, and the representations by the State to  
15 date are that certain of the material that they've  
16 withheld is a part of their ongoing investigation.

17 What I'm interested in, and you're focusing on  
18 it a little bit, that you're focusing on it quite  
19 well, quite frankly, is the nature and extent of the  
20 investigation. Obviously, Detective Landry is no  
21 longer -- he's now a troop commander, and I think he's  
22 probably running things at Troop F under Lieutenant  
23 Scarenzo (ph), but there are other detectives who are

1 assigned to this case, and perhaps Detective Landry is  
2 not the one to say who that person is. He may not --  
3 just by way of command, he may not be in a position to  
4 know that.

5 I'm not asking for a representation, Ms. Smith,  
6 but that's the kind of information that would help me,  
7 is there a detective currently assigned to this case.  
8 The last hearing, the testimony was very clear by  
9 offer of proof that Attorney Strelzin would testify  
10 that the file was looked at almost daily for review  
11 purposes. I distinctly remember that testimony.

12 MR. ERVIN: That's the testimony that --  
13 (Attorney and Judge speaking over each other)

14 THE COURT: That's the kind of testimony --  
15 well, that's the kind of testimony that's helpful to  
16 me in making these kind of determinations. At this  
17 point, I'll let you inquire into that area. In other  
18 words, if he knows, how often do leads come in, how  
19 often does paperwork show up, when it shows up, what  
20 happens to it, that kind of thing, but the issue of  
21 the enforcement versus investigation, I think there is  
22 a distinction there, and I think there is a  
23 difference. An investigation can lead to enforcement,

1 and the testimony so far is that investigation is  
2 ongoing. For me to determine whether that represents  
3 sufficient under the statute, I'm not so sure I have  
4 to decide whether immediately that investigation is,  
5 in fact, going to -- tomorrow, for example, there's no  
6 indictments. I think that's the issue.

7 MR. ERVIN: Your Honor, I would refer back to  
8 the Supreme Court's decision.

9 THE COURT: I've got it right here.

10 MR. ERVIN: It specifically says in there,  
11 "assume without deciding that an enforcement  
12 proceeding is reasonably anticipated." Then you get  
13 into the issue as to whether or not the  
14 characterization of the documents has been  
15 appropriate. The Court did not determine it, because  
16 that wasn't the issue in front of them, and I think  
17 has put it squarely in front of the trial court to  
18 say, and, again, based upon my reading of Curran, my  
19 reading of National Labor Relations, it cannot -- and  
20 Chicago versus ATF case --

21 THE COURT: Right.

22 MR. ERVIN: -- it cannot be speculative, and  
23 what I'm seeing in the affidavit and what I'm seeing

1 here is there's speculation that the information at  
2 some point may lead but that has not currently, based  
3 upon what they have assembled.

4 THE COURT: I don't disagree with your anal-  
5 -- I'll let you get in here, Ms. Smith, in a second  
6 -- I don't disagree with your analysis, Counsel. The  
7 dilemma is obviously in this case it's being treated  
8 as a missing person, slash, criminal conduct activity.  
9 The State Police at the moment are attempting to  
10 continue to identify which of those two areas it's in.  
11 Your argument goes to at what point does that stop,  
12 that's really what you're saying, and when does the  
13 bell ring.

14 MR. ERVIN: What I'm saying, your Honor, is,  
15 is that the information that they have assembled to  
16 date has not led them to the belief that this is a  
17 criminal investigation.

18 THE COURT: Well, I'm not sure that's what  
19 the state of the testimony is, but I understand your  
20 position. Ms. Smith.

21 MS. SMITH: Just, I think that  
22 mischaracterizes his testimony. I think he said that  
23 he thinks it's more likely than not that it will lead

1 to criminal charges. So, although they can't say with  
2 100 percent certainty that there's been a homicide,  
3 that they think, based on what they know that it is  
4 more likely than not that this is a criminal  
5 investigation.

6 THE COURT: Yeah.

7 MS. SMITH: Secondly, in this type of a case,  
8 as Jeff Strelzin will tell you, they've just  
9 successfully prosecuted a couple of 20 -- over  
10 20-year-old murders. The fact that they don't -- may  
11 not have activity every day doesn't mean this isn't an  
12 ongoing investigation, and that it isn't still  
13 important to preserve the authority to bring to  
14 justice somebody that they eventually are able to  
15 determine committed a murder.

16 THE COURT: I understand that, but that's a  
17 little broader issue than what counsel and I are  
18 chatting about here.

19 MR. ERVIN: Without being able to  
20 specifically get into his opinions as to why, your  
21 Honor, it impedes my ability to test the veracity that  
22 his opinion is based upon, documentation to indicate  
23 that this will truly --

1 THE COURT: Well, he's already said that in  
2 the preliminary presentation by Ms. Smith. Each of  
3 the categories was prefaced by his opinion with  
4 respect to why those -- why the information in those  
5 categories would a problem. So, that part is done.

6 MR. ERVIN: But I would assume, then, if I  
7 were to try to get into him, to the specifics of all  
8 of the records based upon the categories, he's already  
9 gone through the general descriptions.

10 THE COURT: Right.

11 MR. ERVIN: If I am to inquire in those, I  
12 think I'm going to be getting into areas that --

13 THE COURT: You are.

14 MR. ERVIN: -- his Honor may have  
15 difficulty --

16 THE COURT: You are.

17 MR. ERVIN: -- because I can't get into the  
18 specifics to test the veracity of the statements.

19 THE COURT: Right. I would agree with you.

20 MR. ERVIN: Is that something that you can  
21 handle in camera?

22 THE COURT: I am going to handle it in  
23 camera.

1           MR. ERVIN: Then, I would preserve for the  
2 record that that level of inquiry into each of the  
3 categories --

4           THE COURT: Just so the record's clear, you'd  
5 like to make that level of inquiry here in court; is  
6 that what you're saying?

7           MR. ERVIN: My understanding of it is that  
8 his Honor has to be satisfied that the categorizations  
9 of the documents are specific enough --

10          THE COURT: Yes.

11          MR. ERVIN: And he's satisfied that the  
12 claims --

13          THE COURT: I am satisfied with the  
14 categorization, based on the testimony of Detective  
15 Landry with respect to those issues that have been  
16 represented by Ms. Smith. The next level of inquiry  
17 by me is in camera with respect to more specificity  
18 with respect to those, and I intend to do that.

19          MR. ERVIN: Okay. And then I will not  
20 inquire. I would preserve for the record that I  
21 believe that level of scrutiny needs to be done so  
22 that his Honor is satisfied, and if that needs to be  
23 done in camera, we will --



1           THE COURT: Well, if there's any ambiguity  
2 about that, I'm going to do it.

3           MR. ERVIN: So I don't (inaudible) step, your  
4 Honor, and inquire into areas that you're going to  
5 handle in camera to give the impression on the record  
6 that that is not an area of concern --

7           THE COURT: Understood. I want to be sure  
8 that you make your record clearly.

9           MR. ERVIN: So, I mean, it would be that we  
10 would test the sufficiency of each one of the  
11 categories that we have not objected to, specifically  
12 with Detective Landry so that we could understand the  
13 formation of his broad opinions in the affidavit are,  
14 in fact, supported by an actual look at the records  
15 that are involved here to determine, and, again, the  
16 majority of the records in this case have still not  
17 been produced. Of the 2,938 records that the State  
18 claims are exempt, I believe we've been given less  
19 than 50. The other records that were produced to us,  
20 the volume of documents that were produced to us did  
21 not have Bates stamp numbers on there, and, therefore,  
22 I believe are not part of that 2,938 records that they  
23 claim comprises the file.

1           THE COURT: I don't know about that. I  
2 thought Exhibit I was a portion of what was in the  
3 file.

4           MS. SMITH: Exhibit I, just to explain, there  
5 are documents that can be explored (inaudible) those  
6 really are all part of the investigative -- those are  
7 the records that have been provided to our office as  
8 the investigative file. There are investigative  
9 reports and documents attached to them. I just, for  
10 completeness, I did ask the policeman, Do you have  
11 anything else.

12           THE COURT: Okay. So, you still want  
13 anything else -- (Attorney and Judge speaking over  
14 each other).

15           MS. SMITH: I had printed 100 pages off of a  
16 website, but they hadn't put that with the Bates  
17 stamp, but those are part of what were produced.

18           MR. ERVIN: Is it part of the 2,938 records,  
19 though, if it doesn't have a Bates stamp number?

20           MS. SMITH: If they didn't have a Bates  
21 stamp, they're not part of the 200 --

22           THE COURT: Is there anything else outside  
23 the Bates stamped documents that would be part of this

1 inquiry? I think that's the second level of the  
2 question.

3 MS. SMITH: Not other -- not all the  
4 correspondence between the Attorney General's Office  
5 and --

6 THE COURT: Well, those are exempt anyway. I  
7 think counsel's agreed.

8 MR. ERVIN: Your Honor, what I wanted is just  
9 -- the representation that's been made that they  
10 produced a stack of documents in this case, and,  
11 again, a lot of it is just generic materials that were  
12 pulled off the internet that anybody would have had  
13 access to.

14 THE COURT: Uh-huh.

15 MR. ERVIN: And, so, I just wanted to confirm  
16 that that 2,938 records which this detective has  
17 listed in his affidavit that comprised the  
18 investigation, file, there's been an extremely limited  
19 number of those records that were produced to us, I  
20 believe less than 50 based upon the Bates stamp  
21 records that were provided to me.

22 THE COURT: Okay.

23 MR. ERVIN: There was a large stack of

1 documents that do not contain the Bates stamps, which  
2 I believe the State is telling us is other information  
3 that was in the file but is not comprised in that  
4 2,938 records, and while I appreciate that the  
5 majority of the records they claim are these narrative  
6 reports, I would still believe, based upon everything  
7 that's been assembled to date, there are several  
8 portions of those records that could be produced to  
9 us.

10 THE COURT: Well, then, it meets a subject to  
11 bring in camera inquiry.

12 MR. ERVIN: Yes, correct.

13 THE COURT: Okay. Let's proceed.

14 (End of bench conference)

15 IN OPEN COURT:

16 CONTINUING EXAMINATION BY MR. ERVIN:

17 Q. I apologize for the delay, Detective.  
18 So the record is clear, you are not currently  
19 assigned specifically to the Maura Murray case?

20 A. No.

21 Q. Okay. Do you know how many detectives  
22 assigned to Troop F are currently actively involved  
23 in or assigned some duties with respect to the Maura

1 Murray case?

2 A. Right now there are three detectives in  
3 the unit, so my answer would be three.

4 Q. Of any of the three, are you aware if  
5 any of the three are specifically assigned with  
6 duties regarding the ongoing investigation into the  
7 Murray case?

8 A. I guess, define "specifically."

9 THE COURT: Somebody had this case on their  
10 roster to handle.

11 THE WITNESS: Yes.

12 CONTINUING EXAMINATION BY MR. ERVIN:

13 Q. How often would a detective that's  
14 working on this file perform work on the file, with  
15 what level of frequency?

16 A. I think what you're looking for is an  
17 answer of, you know, 40 hours a week, 20 hours a  
18 week. I can't give that to you. As information  
19 comes in, it's looked into, investigated to -- as far  
20 as it can be.

21 Q. Well, Detective, at the last hearing  
22 that we were here on, it was represented that this  
23 case was looked at daily. Is it your understanding

1 that this case is looked at on a daily basis by your  
2 department?

3 A. Yeah, I would say prob -- yeah, on a  
4 daily basis to different levels.

5 Q. But do you have personal knowledge as  
6 to whether or not this file is looked at on a daily  
7 basis?

8 A. I can tell you from my --

9 Q. My question is, do you specifically  
10 have personal knowledge that this case is looked at  
11 on a daily basis?

12 A. Yeah, it was.

13 Q. I'm not asking if it was. I'm asking  
14 you today, do you know whether or not this case is  
15 specifically looked at on a daily basis by your  
16 department?

17 A. Daily, meaning 7 days a week?

18 Q. Correct.

19 A. To certain -- again, I go back to the  
20 when information comes in, it's looked into. Now,  
21 whether it has to take -- other cases come in and  
22 those have to be looked at too, you know. Today it  
23 might be 5 minutes, tomorrow it might be 8 hours.

1           THE COURT: I think what counsel's inquiring  
2 is, does somebody sit down at 9:00 every morning, for  
3 example, during the work week and look at this case as  
4 a regular part of their routine? I suspect the answer  
5 to that is no --

6           THE WITNESS: No.

7           THE COURT: -- based on your testimony, that  
8 a case is -- the file is pulled up and looked at as  
9 information is matched to the file and drawn to the  
10 attention of a fellow detective who then would be  
11 working on that piece of information in connection  
12 with the file.

13          THE WITNESS: Correct.

14          THE COURT: Okay.

15          CONTINUING EXAMINATION BY MR. ERVIN:

16           Q. I think you testified earlier that  
17 there are periods of inactivity on this case.

18           A. Yes, and I explained why that would  
19 occur.

20           Q. Detective, you were asked on direct  
21 examination whether or not you could be certain that  
22 this case is going to end up in a criminal  
23 enforcement proceeding, and I believe your testimony

1 was is that you can't state whether or not; is that  
2 correct?

3 A. Yes.

4 Q. So, the information that's been  
5 assembled to date could lead to the conclusion that  
6 this -- there was no criminal activity involving  
7 Maura's disappearance?

8 A. It could. I mean, it's unknown at this  
9 point.

10 Q. So, you can't be certain that this --  
11 that there will ever be an enforcement proceeding  
12 involving this case?

13 A. I can't be certain.

14 MR. ERVIN: Your Honor, subject to my  
15 reservations made at side bar about the level of  
16 inquiry into the records, I have no further questions  
17 for this --

18 THE COURT: All right. Thank you, Counsel.  
19 Ms. Smith, anything further of Detective Landry?

20 MS. SMITH: We also have Attorney Jeffrey  
21 Strelzin here.

22 THE COURT: Are we done with Detective --

23 MS. SMITH: Yes.



1           THE COURT: Okay. You can step down,  
2 Detective. Thank you.

3                         (Witness stepped down)

4           THE COURT: Ms. Smith.

5           MS. SMITH: We also have Attorney Jeffrey  
6 Strelzin, who is the prosecutor, who has been involved  
7 with the State Police here, and we would offer to put  
8 him on the stand and have him testify as well.

9           THE COURT: You may do so.

10                        JEFFREY STRELZIN, ESQ.

11 a witness being first duly sworn, was examined and  
12 testified as follows:

13                        DIRECT EXAMINATION

14 BY MS. SMITH:

15           Q.        Could you, please, state your name for  
16 the record and explain to us what your position is in  
17 the Attorney General's Office.

18           A.        Sure. My first name is Jeffrey, which  
19 is J-E-F-F-F-R-E-Y, and my last name is Strelzin,  
20 which is S-T-R-E-L-Z-I-N. I'm currently a Senior  
21 Assistant Attorney General at the New Hampshire  
22 Attorney General's Office. I also work as the Chief  
23 of the Homicide Unit and, essentially, I supervise

1 the Homicide Unit.

2 Q. And have you been involved with the  
3 State Police in regards to the Maura Murray  
4 investigation?

5 A. I have. There have actually been other  
6 prosecutors involved as well, sometimes with an  
7 overlap. There have actually been, I think, three of  
8 us involved in the case.

9 Q. And do you know how long the Attorney  
10 General's Office has been involved in the  
11 investigation?

12 A. I believe our first activity was  
13 approximately 10 days after Maura's reported  
14 disappearance, so I know it was in February of 2004.  
15 I think the exact date is February 19th, but it could  
16 have been a little earlier than that.

17 Q. How long have you personally been  
18 involved in the investigation?

19 A. I believe I got involved late in 2004,  
20 after the case transitioned from another attorney in  
21 our office who left, and then actually there were two  
22 of us involved in the case, and that attorney has  
23 since left as well, so now it is me alone.

1           Q.       And you are still involved with the  
2 State Police in regards to this investigation?

3           A.       I am.

4           Q.       And are you familiar with what has been  
5 withheld and what has been produced in this case?

6           A.       I am.

7           Q.       And how long -- and you've been doing  
8 criminal prosecutions for how long?

9           A.       I've been a prosecutor, I believe,  
10 about 10 years, and I have other law enforcement  
11 experience prior to that, but I've been a prosecutor  
12 about 10 years.

13          Q.       Based on your involvement with this  
14 investigation and your knowledge of the file, do you  
15 have an opinion as to whether or not it is more  
16 likely than not that this investigation may lead to  
17 criminal charges?

18          A.       I do.

19          Q.       What is your opinion?

20          A.       I would have to say it's more likely.

21          Q.       That it will lead to criminal charges?

22          A.       Yes.

23          Q.       Do you know whether there is activity

1 that is planned on being pursued in this  
2 investigation in the future?

3 A. There is further investigative activity  
4 that's planned.

5 Q. Can you set a time frame on how long it  
6 may take to determine whether or not you are going to  
7 be able to bring criminal charges in this case?

8 A. I can't. I mean, we have within the  
9 last few years -- we have prosecuted two 20-year-old  
10 murder cases. I'm working on a variety of cases that  
11 are older cases. We're actively pursuing a  
12 35-year-old murder case in our office. So, there are  
13 murder cases that are solved within hours, days,  
14 weeks, months, years and sometimes decades. Every  
15 case is different, that's why there's no statute of  
16 limitations on murder, and, again, that assumes that  
17 this case ends up as a criminal investigation.

18 Q. Is it important, while you are pursuing  
19 the possibility of criminal charges, that the  
20 material that has been withheld not be revealed?

21 A. It is critically important.

22 Q. And why is that?

23 A. There are a variety of reasons, but, I

1 mean, if I can use an analogy, your Honor, it's akin  
2 to giving someone a test and giving them the answers  
3 beforehand. If we were to reveal our investigatory  
4 file, it will tell potential witnesses what we know,  
5 and when we go to speak to those witnesses we want to  
6 know what they know firsthand as opposed to what they  
7 may have learned through the public or the press or  
8 other witnesses.

9           It's a truth-telling device that we use  
10 often in cases. We want to know information and only  
11 keep it amongst ourselves so we can tell if someone  
12 is truly involved in a case or if they simply want to  
13 be involved. Unfortunately, we have cases where  
14 individuals claim to have involvement in criminal  
15 activity, sometimes claim to be the perpetrator, but  
16 we're able to determine, based on information we've  
17 kept secret, that that individual is not the  
18 perpetrator, at the same time, individuals who claim  
19 to have knowledge about a case and we're able to use  
20 the information, information that is only known to us  
21 in order to tell whether or not they're being  
22 truthful or not. So, it's a very important device  
23 for us, not only to advance the investigation down

1 the road but just to be able to tell who truly knows  
2 things and who's a liar.

3 Q. Can you know at this stage what piece  
4 of evidence or statement by a witness is going to be  
5 important?

6 A. I can't, and that's where I think my  
7 role as a prosecutor is distinguishable from what the  
8 investigators do, and it's part of the reason that we  
9 work together on potential homicide cases. I don't  
10 know that this case will end up as a criminal case,  
11 which means I don't know what a perpetrator or  
12 perpetrator will claim as a defense, which means I  
13 don't know how important every piece of evidence will  
14 be, or what piece of evidence will prove to be  
15 critical, or what may factor into a defense or an  
16 alibi, and because I can't anticipate those things,  
17 that means that potentially every piece of evidence  
18 is important in the future, and because some of our  
19 cases take so long to solve, I can't predict what  
20 will happen with that piece of information and how it  
21 may prove to be critical later on, and it happens  
22 frequently in cases that are of an historical or  
23 older nature. I don't know what will happen, I don't

1 know what a potential defendant will do. So, I can't  
2 represent to the Court that one piece of information  
3 is necessarily more important than another. It could  
4 all prove important or some categories could prove to  
5 be less important.

6 Q. Do you think that revealing the  
7 withheld information in this case would adversely  
8 affect your ability to prosecute someone?

9 A. If there's a prosecution, yes, it has  
10 that potential, and, again, there may be categories  
11 that would be more devastating to reveal than others.  
12 It's impossible for me to give that kind of specific  
13 without knowing whether or not a homicide actually  
14 occurred and what those circumstances were, but I  
15 acknowledge that possibility, and I know in cases  
16 what can happen if information is revealed before  
17 we're able to make an arrest and prosecute the case.

18 MS. SMITH: I don't have any further  
19 questions for --

20 THE COURT: Counsel.

21 MR. ERVIN: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. ERVIN:

1           Q.       Mr. Strelzin, how often does your  
2 office review this matter?

3           A.       I would say it probably averages about  
4 once a month, and it's more frequent if things arise,  
5 for instance, if a piece of information comes in or  
6 if there's an inquiry from a detective at Troop F  
7 about something in particular, or if we're meeting to  
8 discuss plans in the future. So, it depends on  
9 what's going on.

10          Q.       Is there anybody at your office other  
11 than yourself that's working on this file?

12          A.       Just me right now. If I need  
13 additional assistance, I can ask for it, but right  
14 now it's just me.

15          Q.       Okay. When was the last time you had  
16 an opportunity to review the file on this case, other  
17 than coming to court today?

18          A.       Last night.

19          Q.       Was that as a result of what you  
20 characterize as an ongoing investigation into the  
21 case?

22          A.       I reviewed it last night to prepare for  
23 today.



1           Q.       For today. Well, prior to that time,  
2 when was the last time you had looked at this file as  
3 part of the ongoing investigation into the --

4           A.       Within the last month.

5           Q.       When was the last time you had an  
6 opportunity to communicate with any of the detectives  
7 involved with the investigation prior to coming to  
8 court today?

9           A.       Nothing to do with this court hearing.  
10 Probably a couple of weeks ago.

11          Q.       And who initiated that contact?

12          A.       I think we talked about it, because we  
13 were meeting about another case and there are other  
14 detectives in the Major Crime Unit that I talk to  
15 besides the ones in Troop F who are working on other  
16 murder cases who were involved in this case, and, so  
17 we discussed it at the same time.

18          Q.       Do you have a set frequency with which  
19 you meet with the detectives to discuss this case?

20          A.       No.

21          Q.       Have there been periods of time that  
22 have gone by longer than a month where you have had  
23 no communication with the detectives involving this

1 case?

2 A. There may have been.

3 Q. Do you know how long a period of time  
4 may have passed between some of the communications  
5 between your office and the detectives?

6 A. The longest period of time, I would say  
7 maybe six weeks.

8 Q. And the information that's been  
9 assembled to date has not led to the conclusion that  
10 this is definitively going to end in a criminal  
11 prosecution?

12 A. That's correct.

13 Q. So, you can't state with certainty that  
14 an enforcement proceeding is likely to occur in this  
15 matter?

16 A. I could give the judge a percentage  
17 based on my experience, generally, in criminal  
18 investigations, a prosecution on this case, I could  
19 give a percentage of what I think that likelihood is,  
20 but I acknowledge that there's also a likelihood that  
21 this could simply be a missing person's case that  
22 doesn't have criminal overtones. There are cases I'm  
23 involved with where people go missing, and,

1 fortunately, we find them and it turns out there's  
2 not criminal activity, and there are other cases,  
3 unfortunately, that end up as being the result of  
4 criminal activity.

5 Q. So, and I think you testified before,  
6 so this could be a situation where it could be 1  
7 year, 5 years, 10 years, even 20 years before you  
8 know whether or not an enforcement proceeding would  
9 likely occur?

10 A. Or potentially never. I mean, I think  
11 the -- I'll tell you, Counsel, the oldest unsolved  
12 case we're working on is 35 years old right now.

13 Q. So, would it be speculative, then, to  
14 suggest that the release of records could implicate  
15 or impede an enforcement proceeding when there's no  
16 likelihood that an enforcement proceeding is likely  
17 to occur or ever occur?

18 A. I mean, I would disagree with that  
19 term, because I think "speculation" sounds like guess  
20 work, and what we do is not guess work, it's based on  
21 our common experience, it's based on our knowledge of  
22 this case and what's happened in other cases.

23 You know, if every time an individual

1     went missing I turned over our file, and then that  
2     person ended up dead, we would never be able to  
3     prosecute that killer.  So, you know, I know there's  
4     been some discussion here about how do we  
5     characterize this case.  Well, it truly is a missing  
6     person case, Maura Murray is missing, but it's an  
7     investigation that law enforcement is conducting into  
8     her disappearance.  It certainly has criminal  
9     overtones to it, that's why our office is involved  
10    and that's why the State Police are doing this.

11                    But you're right, I can't sit here and  
12    tell you today with 100 percent certainty that we're  
13    going to prosecute someone for the disappearance of  
14    Maura Murray because I know it's a homicide.  I can't  
15    tell you that.

16            Q.        But if information is released, that  
17    wouldn't prevent the State from being able to  
18    prosecute someone, should it turn out to be a  
19    criminal case; is that correct?

20            A.        I disagree with you.  I disagree with  
21    you.

22            Q.        So, if there was a release of any  
23    information, that would prevent the State from being

1 able to meaningfully conduct a criminal prosecution?

2 A. No. Actually, I think the information  
3 that has been agreed to as far as being released will  
4 not damage the investigation. I think there are  
5 certainly categories of information that could be  
6 harmful, and I believe that's why we've asked that it  
7 be withheld, but, no, there are certainly some  
8 categories that can be released, I think, without  
9 harming the investigation.

10 Q. And other than the records that have  
11 been produced to us, every other record that's of the  
12 2,938 records that are contained within this  
13 investigation file you're satisfied that none of --  
14 that all of them fall within the investigatory  
15 exception or the privacy exception to the -- to FOIA?

16 A. I am. And, again, obviously some of  
17 what I have to do is based on conjecture about what  
18 could happen in the future, but, you know, looking at  
19 records and looking at the status of this case, yes,  
20 I believe that releasing those documents could harm  
21 us in the future.

22 Again, I don't know what happened to  
23 Maura Murray. I'm hopeful that it's not a homicide

1 investigation, but if it is, I can't tell you which  
2 one of those pieces of information could prove to be  
3 the critical piece, and I certainly wouldn't want her  
4 killer or killers to be able to go free because we  
5 released those documents.

6 Q. Is it typical that your office would  
7 become involved in a missing person's investigation,  
8 similar to what's going on in Maura's case?

9 A. That's a good question. It's not  
10 typical, it does happen. We obviously get involved  
11 in obvious homicides, we get involved in suspicious  
12 deaths, and we do get involved in missing person's  
13 cases, and I will tell you that the longer the case  
14 goes on, meaning, the longer the individual is  
15 missing, obviously, the higher the level of concern,  
16 because you would hope that if an individual just  
17 decided for whatever reason to take off for a period  
18 of time because of issues in their life, that sooner  
19 or later they would contact family members.

20 And a recent example is a young lady in  
21 Goffstown who went missing. We did get involved in  
22 that case, and luckily it turned out that she was in  
23 Florida and she had had some family difficulties and

1 she turned up, but there are other missing person's  
2 cases that I've been involved with where people have  
3 been missing for decades, and certainly the longer it  
4 goes on, I think the more concerned we all become  
5 that that individual is the victim of foul play.

6           So, in this case, obviously, it's gone  
7 on for what I'd call a substantial period of time.  
8 That raises our level of concern. So, we do get  
9 involved the longer it goes, that's one factor, and  
10 then the other factor is what level of assistance is  
11 needed. Is there legal work that needs to be done,  
12 are there subpoenas, is there potentially Grand Jury  
13 work, is there a request for one-party or body wire  
14 intercepts? Those types of things will bring us into  
15 the case.

16           Q.       And my understanding from your  
17 testimony is, is that your office became involved in  
18 this very shortly after her disappearance?

19           A.       From looking back at the records, I  
20 mean, the first hard indication I have is, I believe  
21 it's February 19th of 2004.

22           Q.       So I understand you correctly, it was a  
23 lengthy answer, it is sort of atypical that your

1 office is involved in this case as a missing person's  
2 case?

3 A. It's atypical that we get involved in  
4 missing person's cases, but I would say it's typical  
5 in a case like this because of, number one, the  
6 length of time that the individual has been missing  
7 and, number two, because of the type of requests that  
8 have been made for assistance. So, we don't  
9 typically do missing person's cases unless it looks  
10 like it's an obvious homicide, or it has those  
11 overtones.

12 Q. So, the involvement of your office was  
13 not to have the records that have been assimilated to  
14 date somehow be withheld from the petitioners simply  
15 because the Attorney General's Office has become  
16 involved in the investigation?

17 A. No, and I don't mean to be sarcastic  
18 when I say this, but we have plenty of other work to  
19 do, and I've never received what we call a specious  
20 request from the State Police or any law enforcement  
21 agency just to get us involved for no reason. I  
22 mean, we would never do that. We got involved  
23 initially from looking at the file because there was



1 some investigative techniques that wanted to be  
2 exploited, and we could be of assistance in that, and  
3 that's, I think, how we initially got involved.

4 MR. ERVIN: Your Honor, can we approach?

5 THE COURT: Yes.

6 AT THE BENCH:

7 THE COURT: Mr. Ervin.

8 MR. ERVIN: I just wanted to preserve for the  
9 record that -- is this witness going to be subject to  
10 the in camera --

11 THE COURT: Yes.

12 MR. ERVIN: -- as well? Then, I will not  
13 inquire into the specific documents.

14 THE COURT: Fine.

15 (End of bench conference)

16 IN OPEN COURT:

17 MR. ERVIN: I have no further questions.

18 Thank you, your Honor.

19 THE COURT: Ms. Smith.

20 MS. SMITH: I just had one thing to follow up  
21 on.

22 REDIRECT EXAMINATION

23 BY MS. SMITH:

1           Q.       You indicated in responding to Attorney  
2 Ervin that you could give him a percentage that you  
3 have in your mind of likelihood. What is that  
4 percentage regarding whether the likelihood of this  
5 results in a criminal case?

6           A.       I mean, I'd say it's probably 75  
7 percent.

8           Q.       Pardon?

9           A.       I'd say it's probably 75 percent.

10          Q.       Thank you.

11          THE COURT: Thank you. You may step down.

12          THE WITNESS: Thank you, your Honor.

13                   (Witness stepped down)

14          THE COURT: Anything further from the State?

15          MR. ERVIN: I do not have anything further on  
16 our presentation. The State is willing and able to  
17 have the witnesses that have given public testimony  
18 present further in camera testimony to the Court for  
19 the reasons stated in our motion for in camera, and in  
20 our motion for reconsideration we do think it is very  
21 important that that be to the Court alone.

22          THE COURT: Understood. Mr. Ervin.

23          MR. ERVIN: Your Honor, reserving the

1 objections that we had put on the record concerning in  
2 camera testimony, we believe that that level of  
3 inquiry is necessary in this case to test the  
4 sufficiency of the categorization of the documents for  
5 the Court to make its determination whether or not the  
6 exemptions in their description of documents is  
7 sufficient to satisfy His Honor that the investigatory  
8 exception has been appropriately invoked in this case,  
9 and we would submit that that is -- that level of  
10 inquiry is necessary to be conducted by the Court in  
11 camera.

12 THE COURT: Motion for in camera is granted.  
13 I will take in camera testimony. The State has filed  
14 a motion to reconsider a small portion of my order  
15 with respect to the in camera testimony.

16 Counsel, any position on the State's Motion to  
17 Reconsider?

18 MR. ERVIN: Your Honor, we are going to heed  
19 His Honor's advice and are comfortable that in camera  
20 review of the testimony can be handled by His Honor  
21 without the counsel for the petitioner present.

22 THE COURT: All right. Motion to Reconsider  
23 to that small portion of the order is granted.

1           This hearing is adjourned, and it will resume  
2 in chambers, in camera, and it will take a couple of  
3 minutes to get set up.

4           Anything further for the record, Counsel?

5           MR. ERVIN: Your Honor, did you want us to  
6 make presentations? I mean, I had submitted a brief  
7 in this case specifically on the remand. Just for the  
8 record, to preserve that in the Supreme Court's  
9 decision remanding this matter down, they specifically  
10 stated on page 4 of that decision that they were  
11 assuming without deciding that an enforcement  
12 proceeding could reasonably be anticipated, and,  
13 therefore, they would then determine whether or not  
14 the sufficiency of the invoked categories would be  
15 appropriate, and I would suggest that the inquiry that  
16 His Honor is conducting here is first to determine  
17 whether or not the State has met the threshold  
18 requirements to invoke the investigatory exception,  
19 that being that this is an ongoing investigation that  
20 could ultimately lead to a criminal prosecution, and  
21 the case law is very clear. The Curran case, as the  
22 Supreme Court articulated in its decision, the Beavis  
23 versus State case, the Chicago versus ATF case, that

1 it has to be a reasonably anticipated enforcement  
2 proceeding, cannot be speculative, and I do not  
3 believe that the State has met that burden with the  
4 majority of the records other than the records that we  
5 have, based upon the privacy exception, agreed fall  
6 outside of the purview of the public records statute,  
7 that the majority of the records, the investigative  
8 reports and the like, based upon the presentation of  
9 testimony and the grounds for the invocation, that the  
10 exemption has not been met, and that if the State's  
11 position is adopted, I think that the exception,  
12 therefore, is swallowing the rule, which is the  
13 concern that the State has said and the Supreme Court  
14 said in the National Labor Relations versus Robbins  
15 Tire, that you cannot endlessly protect information  
16 simply because it's an investigatory file. The State  
17 has to show how that's going to impact or reasonably  
18 impact an anticipated enforcement proceeding, and I  
19 don't believe that there's been any competent  
20 testimony that that is a likelihood in this case.

21 THE COURT: All right. Thank you, Counsel.  
22 All right. We'll adjourn the hearing at this point.  
23 Once I finish the in camera testimony, the matter will

1 be taken under advisement. Any additional memoranda  
2 that you'd like to submit, Counsel?

3 MR. ERVIN: If your Honor would like us to  
4 submit further memoranda, I'm comfortable with the  
5 brief that we had submitted.

6 THE COURT: I'm satisfied -- yeah. I'm  
7 satisfied what's here, but you have an opportunity, if  
8 you'd like to. If not, I'll accept what's here and  
9 issue a written decision once I've had an opportunity  
10 to review all of the material.

11 MR. ERVIN: Okay. I would rest on my papers,  
12 your Honor. Do you need me to stay around? Are there  
13 going to be any questions?

14 THE COURT: You do not have to stay.

15 MR. ERVIN: Thank you.

16 THE COURT: All right. Thank you.

17 THE BAILIFF: All rise.

18 (Hearing suspended at 10:29 a.m.)

19 (In camera hearing held on the record - audio  
20 recording and transcript placed under seal per order  
21 of Supreme Court)

22

23

