

1 MS. TIMMINS: Your Honor, we're  
2 prepared to go today.

3 THE COURT: All right. That will  
4 be denied.

5 Go ahead, Mr. Parrish.

6 MR. PARRISH: I'd like to call Ms.  
7 Schaefer to the stand, please.

8 LISA SCHAEFER,  
9 called as a witness by the Defendant,  
10 being first duly sworn by the Court, was  
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. PARRISH:

14 Q. State your name, spell your first  
15 and last name for the record, please.

16 A. Lisa Schaefer, L-i-s-a, S-c-h-a-e-  
17 f-e-r.

18 MR. PARRISH: And, Judge, I want to  
19 point out clearly that since you have  
20 indicated that I cannot bring up any issue  
21 related to ineffective assistance of  
22 counsel with regard to this matter, I want  
23 to specifically point out that I will not  
24 ask any questions on ineffective  
25 assistance of counsel, but I will make my

1 record since you've now indicated that I  
2 can make an oral record myself--

3 THE COURT: There you go.

4 MR. PARRISH: --with regard to  
5 that, and I will do that. But this issue,  
6 so that the Court will be on the same  
7 page, will go to the prosecutorial delay  
8 in getting material to the defense.

9 THE COURT: Go ahead.

10 MR. PARRISH: Thank you.

11 Q. (By Mr. Parrish) How long have you  
12 been practicing law?

13 A. I graduated from law school in  
14 2001. I clerked for a year with the  
15 Seventh Judicial District and began  
16 formally practicing law in the summer of  
17 2002.

18 Q. And prior to your testimony here  
19 today, did you talk with anyone about a  
20 subpoena that had been issued to you?

21 A. I do believe I asked Ms. Timmins  
22 just what was being said. I was no longer  
23 on the EDMS service list, so I didn't know  
24 what the hearing was.

25 Q. When did you call Ms. Timmins?

1           A. I think it was right after I got  
2 the subpoena to say, what hearing has been  
3 set?

4           Q. What did she tell you?

5           A. That there was a Motion for New  
6 Trial. And then she directed me to EDMS  
7 to get the information.

8           Q. Did you talk to anyone else before  
9 your testimony today? Did you call the  
10 Court up?

11          A. Did I call who?

12          Q. The Court.

13          A. No.

14          Q. You did not?

15          A. No.

16          Q. All right. Have you talked to  
17 anyone else about your case or your  
18 testimony here today?

19          A. No. I wasn't exactly sure what I  
20 would be testifying to.

21          Q. All right. As a matter of fact,  
22 you had a hearing initially that  
23 conflicted with this, did you not?

24          A. It was--today was supposed to be  
25 the second day of a divorce trial that

1 ultimately settled.

2 Q. And your office told me you had  
3 gotten that worked out; is that correct?

4 A. Yes.

5 Q. All right. And I subpoenaed from  
6 you what were your billing records; is  
7 that correct?

8 A. Yes.

9 Q. And you brought your billing  
10 records with you?

11 A. Yes.

12 Q. All right. And your billing  
13 records--you had filed a motion with the  
14 Court to bring in what--well, you had  
15 filed an application with the Court to pay  
16 for what's known as a hard drive; is that  
17 correct?

18 A. Yes.

19 Q. And this hard drive, who had  
20 possession of it?

21 A. At what time?

22 Q. At any point in time before you got  
23 involved in the case?

24 A. Before I got involved in the case?

25 Q. Yes.

1           A. The copy that I had?

2           Q. No. The copy that you requested  
3 the Court--that you needed to prepare for  
4 your defense?

5           A. Before I got in the case, I  
6 couldn't tell you. We purchased it  
7 afterwards.

8           Q. But the hard drive you wanted to  
9 copy information onto it?

10          A. From one that Ms. Timmins had, yes.

11          Q. Right, exactly. I was trying to  
12 cut to the chase. I thought we were on  
13 the same page.

14          A. I'm sorry. I was just confused.

15          Q. That's all right. So when did you  
16 get the material that was on the hard  
17 drive?

18          A. From Ms. Timmins?

19          Q. Yes.

20          A. It was when depositions began. I  
21 know it was after the holidays. I believe  
22 it was--the first would have been the 28th  
23 that she delivered it to me, because we  
24 were doing depositions down there.

25          Q. The 28th of what?

1 A. November.

2 Q. And what date was your trial going  
3 to start?

4 A. December 12th, I believe.

5 Q. So you got the hard drive with the  
6 discovery on it on the 28th of November  
7 with your trial starting in December; is  
8 that correct?

9 A. Yes.

10 Q. Tell the Court how much information  
11 that hard drive had on it?

12 A. I believe it was over 5 terabytes  
13 of information.

14 Q. And how many rooms of paper would  
15 that terabyte--1 terabyte fill up?

16 A. That I could not tell you. My  
17 understanding was a U-Haul truckload of  
18 paper.

19 Q. And between November 28th and  
20 December 11th, were you able to go through  
21 that material?

22 A. Small pieces of it. It was  
23 voluminous. It covered all the students  
24 for the most part. So I attempted to. A  
25 lot of time was just spent trying to find

1 who I was looking for specifically.

2 Q. When Ms. Timmins sent you that  
3 material on November 28th, would you tell  
4 the Court whether or not she gave an index  
5 or a searchable guide to it?

6 A. No. I was just given the hard  
7 drive.

8 Q. Did you request a searchable guide  
9 from the State of Iowa with regard to 5  
10 terabytes of information?

11 A. I did not.

12 Q. Did you tell the Court when you  
13 went in for the hearing--

14 MR. PARRISH: And, Judge, again let  
15 me caution, I don't want to go into  
16 ineffective assistance of counsel  
17 information, so I won't be violating the  
18 Court's order on this.

19 THE COURT: Well, just ask and they  
20 can object.

21 MR. PARRISH: Sure.

22 THE COURT: So if it gets close,  
23 they can object.

24 MR. PARRISH: Thank you.

25 Q. (By Mr. Parrish) Did you tell the

1 Court when the first day of trial started  
2 that you had just received 5 terabytes of  
3 information from the State of Iowa on the  
4 28th of November?

5 A. I don't know if I specifically told  
6 the Court that.

7 Q. Is it on the record anywhere that  
8 you told the Court that?

9 A. It may be. I just don't recall.

10 Q. Did you tell the Court that the  
11 State had provided you 5 terabytes of  
12 information which could, in your opinion--  
13 I think it's larger than that--but would  
14 be a U-Haul full of documents?

15 A. I don't recall specifically telling  
16 the Court how much information. I do  
17 remember using the word "voluminous."

18 Q. And did you tell the Court that  
19 they did not provide you a searchable  
20 format for this information?

21 A. I did not.

22 Q. Did you tell the Court that you did  
23 not request a searchable format for this  
24 information?

25 A. I did not.



1 Q. Now, who scheduled the depositions  
2 in this case, you or Ms. Timmins?

3 A. It was a mutual scheduling. We  
4 both were busy with other issues, so it  
5 was just a mutual decision to do them when  
6 we did.

7 Q. When were they scheduled? When did  
8 they start?

9 A. They started--

10 MS. TIMMINS: Your Honor, at this  
11 point I'm going to object. I don't  
12 understand the relevance of when our  
13 depositions were had. That's going into  
14 the ineffective issue.

15 THE COURT: I don't know where it's  
16 going from here, but go ahead. Overruled.

17 Q. (By Mr. Parrish) When did the  
18 depositions start? You have it in your  
19 time records, don't you?

20 A. I'm just-- I need my reading  
21 glasses. I want to say it was November  
22 27th or 28th. It was that Monday or  
23 Tuesday after Thanksgiving.

24 Q. The same date you got the hard  
25 drive of 5 terabytes of information; is

1 that correct?

2 A. Yes.

3 THE COURT: I'm sorry. What date  
4 was that again?

5 THE WITNESS: Pardon?

6 THE COURT: What date was that  
7 again?

8 THE WITNESS: It appears from my  
9 billing records that the depositions began  
10 on the 28th of November.

11 THE COURT: Thank you. I'm sorry.  
12 Go ahead.

13 MR. PARRISH: Thank you, Judge.

14 Q. (By Mr. Parrish) The same day that  
15 you got the hard drive; is that correct?

16 A. Yes.

17 Q. Did you copy the hard drive that  
18 same day, or was it copied for you?

19 A. It was copied for me.

20 Q. And when you opened the hard drive  
21 on the copied one that you saw, when you  
22 opened it up did it have an index that  
23 showed you how to find various witnesses?  
24 Yes or no?

25 A. Yes. Well, sort of.

1 Q. Well, it either did or it didn't.

2 A. It provided some indexes but I  
3 don't--it provided-- Truly, I don't  
4 remember. I just don't remember. I  
5 remember there being an index or two, but  
6 they still were not necessarily helpful in  
7 getting me to the information I was  
8 looking for.

9 Q. Prior to receiving this 5 terabytes  
10 of hard drive, had you ever defended a sex  
11 abuse case in the past?

12 A. Defended? No.

13 Q. Your first one?

14 A. Yes.

15 Q. Ms. Timmins, in fact, knew prior to  
16 the time that this trial started that you  
17 had never defended a sex abuse case prior  
18 to this; isn't that correct?

19 A. I don't know what she knew.

20 Q. Well, she knew you?

21 A. This was the first time Ms. Timmins  
22 and I had ever worked together.

23 Q. Well, I thought you were a-- Were  
24 you a prosecutor for twelve years before  
25 this?

1 A. Yes.

2 Q. At Burlington?

3 A. Yes, Des Moines County.

4 Q. And she was with the AG's office  
5 that kind of circulates around the State;  
6 right, the area prosecutors?

7 A. I don't understand your question.

8 Q. She was with the area prosecutors--

9 A. Yes.

10 Q. --for a number of years; right?

11 A. Yes. I just had never had the  
12 opportunity to work with her before.

13 Q. So you don't know whether she had a  
14 habit of doing this, waiting to the last  
15 minute to deliver discovery?

16 A. I don't know what her practices or  
17 habits were. I had never worked with her  
18 before.

19 Q. So my question is, when you  
20 received 5 terabytes of information, did  
21 you make an inquiry and ask: Why would a  
22 prosecutor with experience deliver 5  
23 terabytes of information to me twelve days  
24 before trial?

25 A. No, I did not ask her that.

1 Q. Did you call her supervisor and ask  
2 her supervisor, why would she do something  
3 like that in a case like this?

4 A. No, I did not.

5 Q. You indicated that the depositions  
6 were set according to a mutual agreement.  
7 Who subpoenaed the witnesses? Did you  
8 subpoena the witnesses or did Ms. Timmins  
9 subpoena the witnesses for the  
10 depositions?

11 A. Ms. Timmins, I believe, subpoenaed  
12 the State's witnesses, and the defense  
13 witnesses, I actually had most of them  
14 come in voluntarily.

15 Q. I'm talking about the depositions.

16 A. We deposed both State and defense  
17 witnesses over that two-week period.

18 Q. So Ms. Timmins arranged for all of  
19 the State's witnesses to appear for the  
20 depositions; is that correct?

21 A. Yes.

22 Q. So it was Ms. Timmins' idea to call  
23 K.T. (sic) the same day that the jury  
24 selection was going to start?

25 A. I would assume it was her decision

1 when to call her witnesses.

2 Q. And if she knew that K.T. (sic) was  
3 going to called, which was the main  
4 witness in the case--

5 THE COURT: Could counsel approach  
6 once?

7 (A side-bar conference was held off  
8 the record.)

9 MR. PARRISH: I think I was one  
10 letter off. It should be K. [REDACTED]

11 Q. (By Mr. Parrish) So it was Ms.  
12 Timmins' idea to subpoena K. [REDACTED] on the day  
13 the trial started and not you; is that  
14 correct?

15 A. Yes, she would have.

16 Q. And she knew, did she not, that  
17 with regard to K. [REDACTED] that if you had to  
18 file a motion with regard to Rule 5.412,  
19 you would have to file it on the same day  
20 or the day after her deposition was taken;  
21 isn't that true?

22 A. I don't know what she knew.

23 Q. Well, she's the one who came in and  
24 made the record to the Court that you were  
25 late. That was her motion--that was her

1 resistance to your Motion to Judge Kruse,  
2 that it was late; isn't that true?

3 A. Yes. She did argue that the Motion  
4 was untimely.

5 Q. She's the one who set the  
6 depositions, isn't she?

7 A. Yes.

8 Q. Did you know she had a habit of  
9 setting depositions of the key witnesses  
10 within a period of time that would not  
11 allow defense lawyers to file a 5.412  
12 motion? Did you know that?

13 A. No, I did not.

14 Q. Did you check to find out if she  
15 had done that before?

16 A. No, I did not.

17 Q. Did she in your presence off the  
18 record have a conversation with Judge  
19 Kruse to say--to tell the Judge that she  
20 set the deposition schedule?

21 A. I don't recall the specifics of the  
22 off-record conversations.

23 Q. Did you hear the Judge ask her:  
24 Well, how did this debacle happen?

25 A. I know there was discussion about

1 it. I don't remember exactly who said  
2 what.

3 Q. Well, was the discussion on the  
4 record or was it off the record?

5 A. Both.

6 Q. So you had a discussion with Judge  
7 Kruse off the record and with Denise  
8 Timmins off the record about why K. [REDACTED]'s  
9 deposition was not taken until right  
10 before jury selection started?

11 A. I remember there being a general  
12 conversation of why this was being--I  
13 think Judge Kruse's question was: Why are  
14 we doing this now?

15 Q. Well, that's a pretty legitimate--

16 A. I don't remember any specifics  
17 other than Judge Kruse's statement.

18 Q. That's a pretty legitimate question  
19 coming from the Judge, isn't it? He's  
20 thinking to himself: Why in the world are  
21 we having the main witness here with her  
22 deposition being taken right before the  
23 trial starts?

24 Isn't that a legitimate question  
25 coming from the Judge?



1           A. I believe any question that comes  
2 from the Judge is legitimate.

3           Q. Well, okay.

4                   (Laughter)

5           THE COURT: Sometimes it is;  
6 sometimes it isn't.

7           MR. PARRISH: I would defer to the  
8 Judge's last answer on that.

9           Q. (By Mr. Parrish) So my question is,  
10 if the Judge had some concerns, why didn't  
11 you tell him what Denise Timmins had done?

12          A. We discussed in general when they  
13 were scheduled.

14          Q. No. Why didn't you tell the Judge  
15 at that point: Look, Judge, Denise  
16 Timmins didn't even give me the discovery  
17 until the 28th. She scheduled the  
18 deposition. She didn't even schedule K.   
19 until the trial started.

20          A. I believe there were discussions  
21 about what had occurred as far as the  
22 timing of everything but, no, I didn't  
23 specifically say she was the one  
24 responsible, no.

25          Q. It's not in the record. It's not

1 in the transcripts.

2 A. I don't remember having that  
3 specific discussion, other than a general  
4 discussion of, why are we dealing with  
5 this right now. But I don't remember,  
6 other than Judge Kruse's question, what  
7 was specifically said.

8 Q. So why didn't go on the record  
9 knowing what you know now--or what you  
10 knew then, why didn't you go on the record  
11 and explain to the Judge what the Attorney  
12 General--Assistant Attorney General had  
13 done to your client?

14 A. I believe there was some discussion  
15 about the depositions that were scheduled  
16 right before trial. I don't think we  
17 discussed anything about specifically who  
18 scheduled them.

19 Q. Well, isn't Ms. Timmins the one who  
20 actually filed the motion that indicated  
21 it was untimely?

22 A. She filed the Resistance to my  
23 Motion, yes.

24 Q. And the main reason of the Court's  
25 ruling was that the Judge said he won't

1 waive speedy. He also said in his ruling,  
2 he is--that the Motion is untimely, didn't  
3 he?

4 A. He did.

5 Q. Didn't you tell the Judge it was  
6 not untimely because you had, in fact,  
7 been slow-played by the State of Iowa in  
8 the discovery?

9 A. I think what I explained to him was  
10 that the deposition of K. [REDACTED] had been taken  
11 the day before her testimony, and I had  
12 filed it at the earliest possible moment  
13 that I could file it.

14 Q. And that good cause existed  
15 because, in fact, it was delayed and you  
16 were getting the discovery, 5 terabytes of  
17 it. You had found this information. You  
18 had made the call. You had found that  
19 this information could come in as an  
20 exception to Rule 412 exclusion, and you  
21 then didn't make a record, did you not,  
22 nor did Ms. Timmins make the record, that  
23 she participated in this type of process?  
24 She never made a record. Did you see her  
25 do that?

1           A. I don't recall.

2           Q. Now, you were in the trial--

3           MR. PARRISH: And again, Judge, I'm  
4 going to make clear that I am not making  
5 a record with regard to ineffective  
6 assistance because I've been excluded from  
7 doing that with this witness. But I will  
8 make the record on the offer of proof.

9           She was subpoenaed for the purposes  
10 of making an extensive record with regard  
11 to her work on this case, but I will abide  
12 by the Court's ruling. But I want to go  
13 into a separate area that I think does not  
14 go to ineffective assistance of counsel in  
15 full respect, but it does deal with a  
16 separate issue on this case that we have  
17 filed in our Motion. And if you look on  
18 the EDMS we supplemented it last night  
19 with our last Motion.

20           THE COURT: It's the same thing,  
21 just go ahead. If there's some reason to  
22 believe--the State believes it violates  
23 that, they can go ahead and object.

24           I just want to make one other point  
25 on the ineffective assistance of counsel--

1 and I was looking at *State v. Clark*, which  
2 is a 2013 unpublished opinion by the Court  
3 of Appeals, but it cites a number of other  
4 cases, that the ineffective assistance of  
5 counsel--the next to the last paragraph  
6 goes into various discussions regarding  
7 that, including that post-conviction  
8 hearings in ineffective assistance of  
9 counsel allow an adequate record claimed  
10 to be developed, and that the attorney  
11 charged with providing ineffective  
12 assistance may have an opportunity to  
13 respond to such claims.

14           Again, Ms. Schaefer is here not  
15 even knowing why she is here, the purpose  
16 of the hearing, or anything else, and is  
17 at a huge disadvantage.

18           So go ahead on that.

19           MR. PARRISH: All right. And I  
20 think also, Judge, in response to those  
21 issues, I would refer the Court back--and  
22 you indicated you read the *Tjernagel* case  
23 which was just decided in 2018. But also  
24 we would say, Judge, that if the record  
25 under the Iowa Constitution and the United

1 States Constitution is supported and it  
2 can be reviewed *de novo* by the appellate  
3 court, they can decide on direct appeal  
4 that that issue is there.

5 And I would agree that perhaps if  
6 there are other issues that need further  
7 explanation, the appellate court can, in  
8 fact, look at it. And I don't dispute the  
9 Court's analysis on that point.

10 THE COURT: Well, I'm just saying  
11 that Ms. Schaefer has already had a hard  
12 time remembering what was said. She  
13 didn't have access to the file and  
14 probably not the transcript. So I assume  
15 she's going off memory totally.

16 MR. PARRISH: She has her billing  
17 records, Judge, that she can refer to.

18 THE COURT: Okay. Go ahead. I'm  
19 sorry.

20 MR. PARRISH: Thank you, Judge.

21 Q. (By Mr. Parrish) During the course  
22 of the trial, you would agree that two  
23 things came up with regard to an expert  
24 that was produced by Ms. Timmins.

25 Do you recall her experts being

1 called? And I'm not going to ask you did  
2 you order any experts or anything like  
3 that. We'll have your billing, and I'll  
4 make my offer of proof later. But do you  
5 recall testimony coming up with regard to  
6 Larry Nassar, who was the doctor who was  
7 treating the young ladies from the  
8 gymnastics program?

9 A. I don't specifically recall that.

10 Q. Do you recall an expert from  
11 Harvard testifying about an issue  
12 regarding the bombings taking place in the  
13 Boston Marathon?

14 A. Which expert?

15 Q. Being brought up by her sex abuse  
16 expert.

17 A. Dr. Salter?

18 Q. Yes.

19 A. Vaguely I remember when she was  
20 explaining something with regard to trauma  
21 and offering that as an example.

22 Q. All right. When the information  
23 came up with regard to the Boston  
24 Marathon, and the information came up with  
25 regard to--you don't recall regarding

1 Larry Nassar, but it's in the transcript  
2 about the Michigan State issue and the  
3 treatment of gymnastics. Do you know,  
4 based upon your recollection of what was  
5 taking place in the courtroom, had Ms.  
6 Timmins told you that she was going to  
7 present that information in advance?

8 A. With specific regard to Dr. Nassar  
9 and the Boston bombing?

10 Q. Right.

11 A. No.

12 Q. Now, are you able to recall what  
13 was going on with regard to Dr. Nassar at  
14 that point with regard to the  
15 investigation into the gymnastics?

16 A. No.

17 Q. You don't remember even--

18 A. I don't even know that I knew his  
19 name at the time.

20 Q. So that just caught you totally off  
21 guard?

22 A. It did not register to me. It was  
23 not something that I followed.

24 Q. And the expert didn't tell you in  
25 advance that she was going to testify



1 about that, did she?

2 A. No. I don't remember ever hearing  
3 that name prior.

4 Q. Nor did the expert tell you-- And  
5 you had taken her deposition; is that  
6 correct?

7 A. I had.

8 Q. All right. And in her deposition,  
9 she didn't tell you she was going to talk  
10 about the Boston Marathon bombing, did  
11 she?

12 A. No. My understanding of her  
13 testimony was that she would be presented  
14 hypotheticals and that would be what she  
15 would testify to, her opinion based on  
16 those hypotheticals.

17 Q. And you at that point were  
18 comfortable with the fact that she would  
19 only testify about hypotheticals, and you  
20 would agree that Ms. Timmins didn't give  
21 the Judge any notice that she was going to  
22 bring Larry Nassar into it, and didn't  
23 give you any notice she was going to bring  
24 the Boston bombing into the trial?

25 A. No. I did not know that.

1 Q. Now, with regard to--when you saw  
2 the list of witnesses with regard to the  
3 State, did you get information that A.●  
4 was going to testify at the trial?

5 A. If I remember correctly, Ms.  
6 Timmins had indicated it was going to be  
7 tenuous whether he would be able to. She  
8 was still hopeful all the way up to trial,  
9 but she had made it clear she wasn't sure.

10 Q. So did she tell you categorically--  
11 did Ms. Timmins tell you categorically  
12 that A.● was not going to testify at  
13 trial?

14 A. I don't think she was definitive  
15 either way. I think she was still  
16 hopeful.

17 THE COURT: Would counsel approach  
18 again.

19 (A side-bar conference was held off  
20 the record.)

21 Q. (By Mr. Parrish) Now, as I  
22 understand it, you and Ms. Timmins had  
23 some type of understanding with regard to  
24 witnesses for trial; is that correct?

25 A. What do you mean by an

1 understanding?

2 Q. Well, did she indicate she was  
3 going to bring the State's witnesses?

4 A. Yes.

5 Q. And you were going to bring the  
6 defense witnesses?

7 A. Yes.

8 Q. All right. So you had an  
9 understanding; is that correct?

10 A. I don't know that it was something  
11 we specifically discussed. I just think  
12 it was something that we mutually--or  
13 individually understood that's how you do  
14 things.

15 Q. And I take it you didn't have it in  
16 writing, and you never told the Court that  
17 was the rule?

18 A. No. That was just for both of us,  
19 I think, standard operating procedure.

20 Q. Did the Court make an inquiry and  
21 say, well, look, we have this trial coming  
22 up, big trial, and who is going to be  
23 responsible for getting the witnesses  
24 here?

25 A. I don't recall such an inquiry

1 being made.

2 Q. All right. And so A. [REDACTED], up until  
3 the day that the trial started and you  
4 started selecting the jury, Ms. Timmins  
5 had indicated to you that A. [REDACTED] would be  
6 present?

7 A. She had indicated to me more likely  
8 than not he would not be present, but she  
9 wasn't sure.

10 Q. Do you have that in writing  
11 anywhere?

12 A. It was a conversation that the two  
13 of us had.

14 Q. Do you have it in an e-mail  
15 anywhere?

16 A. I think it was a conversation we  
17 had after one of the days of depositions,  
18 because I'd asked specifically about a  
19 couple of people. We were deciding who  
20 was going to come in when. I asked about  
21 A. [REDACTED] That one I remember because she had  
22 said on numerous occasions she didn't know  
23 if he would be able, psychologically it  
24 was my understanding, to handle the trial.  
25 She was still hopeful. And that if he

1 did, we would depose him as soon as we  
2 could prior to his testimony.

3 Q. And did you depose him?

4 A. No.

5 Q. As a matter of fact, Ms. Timmins  
6 had explained to you that she actually  
7 knew the rules, that if a person is not  
8 going to testify and they're going to  
9 refer to that person, that there are  
10 certain rules she had to follow to be able  
11 to talk about that person; right?

12 A. I don't understand the question.

13 Q. Well, did Ms. Timmins tell you she  
14 knew the rules how to get that evidence in  
15 without the person testifying in court?

16 A. I don't recall such a discussion.

17 Q. She never told you that?

18 A. I don't recall such a discussion,  
19 no.

20 Q. Okay. Do you recall her filing any  
21 particular motion to get A. [REDACTED]'s testimony  
22 in by any source under the Iowa Rules of  
23 Criminal Procedure?

24 A. Without looking at the case file, I  
25 couldn't tell you.

1 Q. Well, off the top of your head?

2 A. I don't recall off the top of my  
3 head. But there are, I'm sure, a lot of  
4 things about the case that I wouldn't  
5 recall right off the top of my head.

6 Q. Well, did she, to your best  
7 recollection, file any motion that you  
8 resisted to bring A. [REDACTED]'s testimony into  
9 the courtroom in front of the jury?

10 A. I do not recall such a motion.

11 Q. All right. And had such a motion  
12 been filed, you would agree that you would  
13 have resisted it?

14 A. Yes.

15 Q. But yet would you agree that she  
16 presented testimony from A. [REDACTED] during the  
17 course of the trial?

18 A. He wasn't here. How did she  
19 present his testimony?

20 Q. Through other people.

21 A. I know his mother testified.

22 Q. Right. And some medical records  
23 came in from him; is that correct?

24 A. I don't specifically recall.

25 Q. But you know evidence came in

1 sufficient for Mr. Trane to be convicted,  
2 even though Ms. Timmins never filed a  
3 prior motion to let the Court know or let  
4 you know that this evidence was coming in;  
5 you would agree?

6 MS. TIMMINS: Your Honor, at this  
7 point I'm going to object. There's  
8 absolutely no requirement in the rules  
9 that I would have to file anything like  
10 that.

11 THE COURT: Is there a rule you can  
12 cite, Mr. Parrish?

13 MR. PARRISH: I was asking her a  
14 question, Judge.

15 THE COURT: I'm sorry. Go ahead.

16 THE WITNESS: I'm sorry. I don't  
17 recall the question.

18 Q. (By Mr. Parrish) Would you agree  
19 that Ms. Timmins did not file any motion  
20 in advance of time indicating that A. [REDACTED]'s  
21 testimony was going to come in without  
22 A. [REDACTED] being present?

23 A. And I believe I told you I don't  
24 recall any such motion being filed.

25 Q. You would agree that the State

1 filed a draft motion for instructions; is  
2 that correct, for jury instructions?

3 A. I do believe so, yes.

4 Q. You did not?

5 A. I did not.

6 Q. And I looked pretty vociferously  
7 through the transcript to try to find the  
8 conferences, et cetera on the jury  
9 instructions. Did you participate in  
10 those at all?

11 A. Yes.

12 Q. And did you make any objections?

13 A. I don't specifically recall whether  
14 I--I know there was a lot of conversation  
15 about various instructions.

16 Q. Would the record speak for itself?

17 A. Yes.

18 Q. And so whatever the record would  
19 reflect, you would agree that that would  
20 be what your entire discussions would have  
21 been on this matter; is that correct?

22 A. With regard to the jury  
23 instructions?

24 Q. With regard to the jury  
25 instructions.



1           A. I know there was also some off-the-  
2 record conversations.

3           Q. But I mean as far as the record is  
4 concerned that was--

5           A. As far as the record is concerned,  
6 the transcript is what it is.

7           Q. Now, with regard to the jury  
8 instructions, did you get a copy of Ms.  
9 Timmins draft jury instructions?

10          A. I believe so. They were filed on  
11 EDMS.

12          Q. And did you review them?

13          A. I did a cursory review.

14          Q. Do you know whether her jury  
15 instructions that she drafted and prepared  
16 to the Court and gave to the Court were  
17 erroneous?

18          A. In what way?

19          Q. Well, erroneous in designating who  
20 the alleged victims were; designating  
21 which one the jury could convict on? Did  
22 you have a chance to review that to make  
23 that determination?

24                 MS. TIMMINS: Your Honor, at this  
25 point I'm going to object. In the

1 Defendant's brief, this all goes towards  
2 the ineffective assistance of counsel  
3 argument.

4 MR. PARRISH: Judge, this goes to  
5 Ms. Timmins'-- I told the Court in  
6 chambers part of this hearing is directed  
7 to Ms. Timmins and part of the reason--and  
8 she asked for the conference. I came out  
9 and asked the Clerk, does the Judge prefer  
10 a conference or not? Some judges prefer a  
11 conference; some judges don't.

12 Ms. Timmins came in and indicated  
13 with regard to meeting with the Court. It  
14 was not my request, Judge, contrary to  
15 what the Court indicated. And when we  
16 went back in there, I specifically told  
17 the Court that it was my position that we  
18 should be able to cover these issues  
19 because these issues go to Ms. Timmins'  
20 conduct as a prosecutor in this case and  
21 what she did with regard to matters. And  
22 that's why she did not want a hearing on  
23 an offer of proof.

24 THE COURT: Well, this isn't the  
25 offer of proof. I thought you were on

1 other issues other than ineffective  
2 assistance of counsel right now.

3 MR. PARRISH: You're absolutely  
4 right.

5 THE COURT: And she's saying that  
6 goes to ineffective assistance of counsel.  
7 Just address that.

8 MR. PARRISH: This issue goes to  
9 the instructions that were prepared. They  
10 were prepared erroneously. If she made  
11 the draft instructions and this Court  
12 relied on that--and we're not getting into  
13 the issue of what she did because that  
14 goes to ineffective assistance of counsel.  
15 But if Ms. Timmins prepared instructions  
16 that were deliberately misleading or  
17 erroneously or accidentally misleading or  
18 reckless, then she needs to know who else  
19 participated. If she participated in it,  
20 that's one thing. If only Ms. Timmins  
21 participated in it, it goes to how she was  
22 able to present that to the Court and  
23 whether or not the Court adopted those  
24 instructions so she's aware as to what  
25 happened on that issue. And if there were

1 other conferences, we don't know.

2 THE COURT: I don't even remember  
3 the last question. Ask it again and we'll  
4 go from there.

5 Q. (By Mr. Parrish) Did you  
6 participate in any way with giving Judge  
7 Kruse copies of the instructions?

8 A. No.

9 Q. So he relied on Ms. Timmins'  
10 instructions in order to prepare the final  
11 set of instructions to give to the jury;  
12 is that correct?

13 A. You would have to ask Judge Kruse  
14 whose instructions he used. It's common  
15 practice in Des Moines County, and having  
16 worked with Judge Kruse, that the Judge  
17 prepares their own instructions.

18 Q. Well, judges want lawyers--in every  
19 case I've ever been involved in, wants  
20 lawyers to assist them, too, right, to do  
21 their job; would you agree? That's the  
22 way I practice.

23 A. That may be. I know the common  
24 practice in Des Moines County where I have  
25 worked with Judge Kruse before and all the

1 other judges is those judges prepare their  
2 own jury instructions. If you have  
3 something specific or unique, you can  
4 offer that to the Court. But the general  
5 instructions themselves are prepared by  
6 the Court.

7 Q. I've done a lot of practice down  
8 here over the years. As a matter of fact,  
9 my practice used to be busier down here  
10 than it was in Des Moines.

11 So my question--and I'm pretty  
12 familiar with how the judges do it. Are  
13 you telling me judges don't accept  
14 proposed jury instructions down here?

15 A. It has been my experience in my  
16 eleven-plus to twelve years as a  
17 prosecutor the judge--in a criminal case  
18 the judge is the one who prepares the jury  
19 instructions.

20 Q. So that is why you didn't prepare  
21 any jury instructions?

22 A. Yes.

23 Q. Then why did Ms. Timmins prepare  
24 jury instructions if that was the rule  
25 down here in Keokuk County? Why would she

1 send a draft to the Judge?

2 A. You would have to ask--

3 THE COURT: This is Lee County.

4 MR. PARRISH: What county am I in?

5 (Laughter)

6 THE COURT: City of Keokuk, Lee  
7 County.

8 MR. PARRISH: South Lee County to  
9 be exact.

10 THE COURT: Yes.

11 MR. PARRISH: I'm in South Lee  
12 County, all right.

13 Q. (By Mr. Parrish) But anyway, let me  
14 just tell you, so are telling me-- Well,  
15 you explained the reason why you didn't  
16 prepare your draft, and we can't get into  
17 that issue right now. But Denise Timmins  
18 is the only one who prepared a draft to  
19 the Court for the Court to rely on with  
20 regard to the various counts; would you  
21 agree?

22 A. Yes.

23 Q. All right. And did you review her  
24 counts?

25 A. I said I gave her draft a cursory

1 review.

2 Q. Right. And if you looked at her  
3 draft, would her draft with regard to the  
4 counts mirror Judge Kruse's?

5 A. I didn't do a page-by-page  
6 comparison.

7 Q. Did you ever take a look to see--  
8 Well, we're only bringing up 31 and 33,  
9 Instructions 31 and 33.

10 The question is, in looking at  
11 Instructions 31 and 33, did that mirror  
12 Judge Kruse's instructions? Or have you  
13 gone back to check?

14 A. I didn't check then, and I haven't  
15 checked since.

16 Q. But what you can tell us, quite  
17 frankly, is that you never presented any.  
18 The only instructions that you're aware of  
19 came from Denise Timmins, and you would  
20 agree that you didn't check to see whether  
21 or not any error in her instructions were  
22 encompassed in the Judge's instructions;  
23 would that be fair?

24 A. That would be fair.

25 Q. Did they ever have any instruction

1 conference where you didn't participate,  
2 to your best knowledge?

3 A. Not that I'm aware of.

4 Q. So every one that the Judge had, he  
5 invited you in to talk, as a judge would  
6 do, invited you to make comment, invited  
7 you to make any corrections; you would  
8 agree?

9 A. Yes.

10 MR. PARRISH: Judge, we have filed,  
11 as the Court can tell, we filed  
12 Defendant's Exhibit A, which should be on  
13 EDMS at this point. It may take a while  
14 for it to pop up, Judge.

15 And Exhibit A, Judge, will be the  
16 billing records of Ms. Schaefer. And  
17 while Ms. Schaefer is on the stand, Judge,  
18 I will ask if the State wants to ask  
19 questions beforehand and-- Go ahead.

20 THE COURT: Let me just interrupt.  
21 Regarding Exhibit A, the practice in the  
22 Eighth is that, by rule of the Chief  
23 Judge, is that those be paper exhibits.  
24 So if you filed one electronically, it  
25 will probably get rejected. So if you



1 have that record and you wish to admit it,  
2 you'll have to do it in paper. That's  
3 just to put you on notice, because it  
4 probably won't pop up here. It's not  
5 there now.

6 MR. PARRISH: We'll have a paper  
7 one, Judge. She brought one in with her  
8 today. I think we have it marked as  
9 Exhibit A.

10 Q. (By Mr. Parrish) I'm going to have  
11 you take a look at what has been marked as  
12 Exhibit A, Ms. Schaefer. I issued a  
13 subpoena duces tecum to you, did I not?

14 A. You did.

15 Q. And I asked you to bring your  
16 billing records to the Court with you?

17 A. Yes.

18 MR. PARRISH: And I would at this  
19 time, Judge, offer Defendant's Exhibit A,  
20 understanding I'm not allowed to ask any  
21 questions on it, but I will make an offer  
22 of proof at the appropriate time since the  
23 Court now has-- I do need, Judge, time to  
24 call my office and let them know that you  
25 did indicate I could make an offer of

1 proof orally, as opposed to through a  
2 witness, so they can correct that  
3 interlocutory appeal.

4 (Defendant's Exhibit  
5 A was offered in  
6 evidence.)

7 THE COURT: All right. Ms.  
8 Timmins, do you have any objection to  
9 Defendant's A?

10 MS. TIMMINS: No.

11 THE COURT: Defendant's A will be  
12 admitted without objection.

13 (Defendant's Exhibit  
14 A was received in  
15 evidence.)

16 MR. PARRISH: Thank you, Judge.

17 Judge, at this time those are all  
18 the questions I would have. I would ask  
19 the Court to reconsider its motion--its  
20 ruling on the issue of if I'm allowed to  
21 go into ineffective assistance of counsel  
22 at this time, based upon the record that  
23 has been made, Your Honor. We believe  
24 it's denial of the Constitution of the  
25 United States for us to not be able to

1 explore these issues at this point. We  
2 believe it's a denial of the rights of Mr.  
3 Trane with regard to his Iowa  
4 constitutional rights to pursue his claim  
5 at this point.

6 We would also point out two  
7 additional matters, Judge.

8 THE COURT: Well, can we maybe just  
9 let them question, and then make that same  
10 motion, and then we'll go back to that,  
11 okay?

12 MR. PARRISH: All right. That's  
13 okay.

14 THE COURT: That way it keeps--

15 MR. PARRISH: That's fine.

16 THE COURT: It's easier to keep it  
17 straight.

18 MR. PARRISH: Sure.

19 THE COURT: Ms. Timmins, regarding  
20 those issues, do you have any questions of  
21 Ms. Schaefer?

22 MS. TIMMINS: Just a few.

23 (Continued on the next page.)  
24  
25

## CROSS-EXAMINATION

1  
2 BY MS. TIMMINS:

3 Q. Ms. Schaefer, your client in this  
4 case demanded a speedy trial; correct?

5 A. He did.

6 Q. What was the process of getting the  
7 hard drive?

8 A. Grueling. I think our initial  
9 conversation was as early as the bond  
10 review hearing in early October. And you  
11 had indicated there was a hard drive, but  
12 I think you had told me that your  
13 understanding was it was all financial  
14 stuff, that it had nothing to do with the  
15 charges against Mr. Trane. And I believe  
16 I had told you if that's all it is, then  
17 it doesn't have any bearing on what I'm  
18 doing and it wouldn't need to be copied.

19 MR. PARRISH: May I give her this,  
20 Judge, in case she needs to refresh her  
21 recollection.

22 THE WITNESS: That's all right.  
23 I've got my own copy.

24 MR. PARRISH: Oh, okay. Thanks.

25 A. Then you had contacted me, and I

1 don't remember if it was just a  
2 conversation we had in the courthouse or  
3 if it was via e-mail or by phone. I don't  
4 remember specifically. But you did  
5 indicate to me that it had come to your  
6 attention there was other information on  
7 that hard drive, and that I would probably  
8 want to see it.

9           Then we had a several-week period  
10 of time where we were trying to figure out  
11 how to do it efficiently. I think at  
12 first Mr. Trane had actually provided me a  
13 2 terabyte hard drive, if I remember  
14 correctly, that he just happened to have,  
15 and I provided that to you at one of our  
16 hearings, or I might have even provided it  
17 to Agent Lestina. I don't remember.

18           And then you contacted me within a  
19 few days to say that there were two  
20 problems: No. 1, it wasn't big enough;  
21 and, No. 2, that the DCI would not hook up  
22 a hard drive to their system that was not  
23 brand new manufacturer sealed.

24           So we knew at that point we had to  
25 figure out something else. I think at

1 first it was just not big enough, and Mr.  
2 Trane had indicated to me that he had some  
3 others, if we could put it on, like,  
4 separate hard drives. And then you  
5 advised me that aside from that, it had to  
6 be manufacturer sealed.

7           So we were trying to figure out how  
8 to get that done. I did the order to the  
9 Court. You had indicated that the State  
10 was not going to pay for that through your  
11 office. The DCI wasn't going to do it. I  
12 think we even tried to maybe see if we  
13 could avoid having to copy the whole  
14 thing, if we could part and parcel out  
15 what was relevant to this case versus what  
16 wasn't. I believe you indicated that that  
17 just--it couldn't be done in an efficient  
18 manner.

19           So once we decided that we needed  
20 to just get a brand new hard drive that  
21 was when I petitioned to the Court for an  
22 extraordinary expense for the Public  
23 Defender to reimburse. Then I had my  
24 secretary order a hard drive.

25           I think it came in two or three

1 days later. Then I provided that to you  
2 and from there it was copied. My  
3 understanding was it took several days to  
4 copy as well.

5 Q. Will you take a look at your  
6 billing statement, which I believe is  
7 Defendant's Exhibit A?

8 A. Okay.

9 Q. On there, on the first or second  
10 page, when was the first time that you  
11 received discovery from the State?

12 A. November 1st.

13 Q. And that was the Division of  
14 Criminal Investigation disk; correct?

15 A. Plural, but yes.

16 Q. So there were several?

17 A. There were several.

18 Q. And the DCI disk is what contained  
19 the main information regarding this case;  
20 correct?

21 A. It contained all of the  
22 investigative reports from, I think, local  
23 law enforcement, the DCI, the FBI. I  
24 think there were some videos on there.  
25 They kind of were supplemented

1 consistently throughout. But yes, that  
2 was the main crux of the written  
3 information, yes.

4 Q. This hard drive that we've been  
5 talking about, that contained information  
6 of documents that had been seized from the  
7 school; correct?

8 A. Other than the Cellebrite report--  
9 for those that don't know is the forensic  
10 analysis of, I believe, his phone and some  
11 other things. Other than that, I think  
12 the rest of it had to do with just basic  
13 school records.

14 Q. Of all children who went to Midwest  
15 Academy?

16 A. Of all of the children that went to  
17 Midwest Academy.

18 Q. And within that disk there was some  
19 categories where you could pick which  
20 areas to look into; correct?

21 A. Correct.

22 Q. And I think all of the children's  
23 materials were grouped together by their  
24 name; correct?

25 A. I truly don't remember at this



1 point.

2 Q. But there was some organization to  
3 the disk?

4 A. There was. It was just the  
5 information--there was just so much  
6 information.

7 Q. Now, in regards to depositions,  
8 when was it that you were made aware that  
9 we were actually going to speedy trial?

10 A. That would have been, I believe,  
11 November 17. I believe it was at the  
12 pretrial conference. Prior to that time,  
13 there had been discussion about waiving  
14 speedy trial. But I think it was at that  
15 time that the Defendant had persisted in  
16 his demand.

17 Q. So it was at that point that plans  
18 started to be made for depositions and  
19 getting ready for trial and things like  
20 that; correct?

21 A. Correct.

22 Q. In regards to obtaining the  
23 presence of an out-of-state witness, how  
24 do you do that?

25 A. You have to petition the local

1 court to issue an order saying that the  
2 witness's testimony is necessary. That  
3 then has to go to whichever state the  
4 witness is in. And then a separate order  
5 has to be issued in that state because  
6 that state has jurisdiction over that  
7 actual witness. And so then they have to  
8 actually issue the subpoena. It takes a  
9 few weeks to get that done.

10 Q. It's a long process; correct?

11 A. Yes.

12 Q. And, in fact, the State agreed to  
13 get you all of the out-of-state witnesses  
14 here, but the agreement was that we have  
15 to do it during trial or before trial so  
16 no one was paying for extra plane tickets;  
17 correct?

18 A. There was discussion about that,  
19 yes.

20 Q. And was there any witness that you  
21 were not provided access to that testified  
22 at trial?

23 A. That testified at trial? No.

24 Q. How many sex abuses cases have you  
25 prosecuted?

1 A. Have I prosecuted?

2 Q. Yes.

3 A. Oh, heavens, a lot. I couldn't  
4 tell you a number.

5 Q. You're not unfamiliar with sex  
6 abuse cases?

7 A. No. When I was with the County  
8 Attorney's Office in Des Moines County,  
9 that was my principal caseload.

10 MS. TIMMINS: I don't have any  
11 further questions. Thank you.

12 THE COURT: Mr. Parrish.

13 MR. PARRISH: Thank you, Your  
14 Honor.

15 I believe, Judge, the State has  
16 opened the door, and I should be allowed  
17 now to ask those questions, and I'll tell  
18 you specifically. But I think the State  
19 opened the door with regard to this  
20 matter.

21 She questioned her about the  
22 process of getting the hard drive, what  
23 steps she made with regard to the getting  
24 the hard drive. She indicated that she  
25 relied on Ms. Timmins' professional

1 representation with regard to whether or  
2 not she should get it in a timely fashion  
3 and review that material. She's only  
4 relying on what Ms. Timmins said. So I'm  
5 allowed to go into that area with regard  
6 to it.

7 She talked about the provisions  
8 provided in the 2 terabytes of information  
9 that was provided to her. I think that  
10 opens the door to the inquiry as to  
11 whether or not I'm allowed to ask her the  
12 questions about what she did as a result  
13 of that.

14 Also, she asked the question about  
15 the investigative reports. I would like  
16 and make an inquiry with regard to those  
17 matters.

18 She made mention of the Cellebrite  
19 reports. I think that's significant  
20 because it goes to the issue that I've  
21 raised in my pretrial motion on this  
22 matter.

23 She opened the door with regard--

24 THE COURT: I don't--

25 MR. PARRISH: --to witnesses-- I'm

1 sorry. Go ahead.

2 THE COURT: I don't know what your  
3 questions are. So if you ask those, and  
4 maybe they can object and then we'll do it  
5 in that fashion.

6 MR. PARRISH: Thank you, Judge.

7 REDIRECT EXAMINATION

8 BY MR. PARRISH:

9 Q. In your experience of trying,  
10 prosecuting sex abuse cases, could you  
11 tell us whether or not you had utilized  
12 the services of an expert in prosecuting  
13 those cases?

14 A. In a sex abuse case? I don't  
15 believe in any of my sex abuse cases.

16 Q. And you said you couldn't remember  
17 how many. Could you give the Court some  
18 idea as to how you many you've tried--  
19 you've prosecuted?

20 A. Prosecuted?

21 Q. Yes.

22 A. I couldn't even begin to count.

23 Q. 100?

24 A. At least.

25 Q. 150?

1           A. Possibly. Of course, those didn't  
2 all go to trial.

3           Q. Well, how many went to trial?

4           A. Maybe a dozen or so.

5           Q. Okay. And out of those dozen or  
6 so, did you use a single expert?

7           A. No.

8           Q. Now, as a defense lawyer you said  
9 you only tried one in your opening part of  
10 the statement?

11          A. Yes.

12          Q. Now, my question is, you knew the  
13 State was getting an expert; is that  
14 correct? Dr. Salter?

15          A. She was listed in the Minutes of  
16 Testimony.

17          Q. Did you consult an expert?

18          A. Did I consult an expert? I wasn't  
19 sure what Ms. Salter was going to be  
20 testifying to specifically.

21          Q. You took her deposition?

22          A. Just a week or two before the  
23 trial.

24          Q. Did you consult an expert?

25          A. I was looking to see if there would

1 be one who would be able to offer evidence  
2 that would contradict Ms. Salter's  
3 testimony.

4 Q. Did you consult an expert?

5 A. I did not consult one, no.

6 Q. Did you make a request to the Court  
7 to get an expert?

8 A. No.

9 Q. Did you consult an expert in  
10 questioning Ms. Salter about--to help you  
11 prepare your questions for Ms. Salter?

12 A. Did I consult an expert?

13 Q. Yes.

14 A. No.

15 Q. So then would you agree with me  
16 that in your career as a prosecutor and in  
17 your career also as a defense lawyer,  
18 you've never once consulted an expert in a  
19 sex abuse case, nor did you consult one in  
20 this case; is that true?

21 A. Have I ever consulted an expert in  
22 a sex abuse case? Yes. I've never  
23 actually utilized one at trial.

24 Q. Now, you indicated Ms. Timmins made  
25 a representation to you about what was on

1 the data--on the 5 terabytes of data; is  
2 that correct?

3 A. Early on, yes.

4 Q. When did she make that  
5 representation to you?

6 A. I believe it was one of our very  
7 initial discussions. I want to say it was  
8 the bond review hearing, I believe. But I  
9 can't be certain.

10 Q. Did she also tell you that you  
11 could not share that information with Mr.  
12 Trane?

13 A. Not at that time, no.

14 Q. Well, when did she tell you that  
15 you couldn't share it with Mr. Trane?

16 A. We had some discussions about--and  
17 I don't remember if it was specifically  
18 about the hard drive information, but  
19 there was some concern that he was, for  
20 lack of a better word, sharing some of the  
21 information that he had already received  
22 that would have only come out through  
23 discovery with members of the public, and  
24 she was very concerned about that.

25 Q. Did you understand my question?



1 When did she tell you? I didn't ask you  
2 about the background.

3 A. I don't recall specifically when  
4 she told me.

5 Q. Did you tell Mr. Trane that he  
6 could not look at the material on the hard  
7 drive?

8 A. Prior to the case--or prior to  
9 trial or after trial?

10 Q. Before you went to trial, did you  
11 tell Mr. Trane he could not look at the  
12 material on the hard drive?

13 A. I told him I could not provide him  
14 a copy--provide him the hard drive, that's  
15 correct.

16 Q. You told him that; right?

17 A. Yes.

18 Q. And you told him that because  
19 Denise Timmins had told you that you  
20 couldn't; is that correct?

21 A. I remember her voicing concerns. I  
22 don't recall exactly what her verbiage  
23 was.

24 Q. Did you ever tell Judge Kruse that  
25 the State told you that they made

1 representations about what was on the hard  
2 drive, and your client couldn't even look  
3 at it?

4 A. I don't think she said he couldn't  
5 look at it. She didn't want him to have a  
6 copy of it.

7 Q. Well, did you make arrangements a  
8 single time throughout the trial for him  
9 to come in and look at the hard drive?

10 A. Throughout the trial? There was  
11 not time.

12 Q. All right. So you would agree as  
13 you sit here today that Mr. Trane never  
14 once looked at the hard drive; is that  
15 correct?

16 A. That's correct.

17 Q. Did you ever tell the Court that  
18 when you came in and you did your 412  
19 hearing?

20 A. No.

21 Q. Did you think that was important  
22 for the Judge to know?

23 A. I didn't even know what was on the  
24 hard drive. I hadn't had the opportunity  
25 to review it all.

1 Q. Well, let me ask you this. If they  
2 told you that they are charging Mr. Trane  
3 with misconduct with regard to the  
4 students, and they gave you a 5 terabyte  
5 hard drive that contained information  
6 about the students, wouldn't you think  
7 that the first thing you would look at is  
8 see what information was on the hard drive  
9 with regard to the students?

10 MS. TIMMINS: Objection. Your  
11 Honor, I think at this point he has gone  
12 into the ineffective assistance.

13 THE COURT: Well, she already  
14 answered it before, but I'll sustain the  
15 objection. Go ahead.

16 MR. PARRISH: Judge, she opened the  
17 door to it when she talked about the  
18 terabytes and the hard drive when she  
19 asked the specific question about when she  
20 got it and what was on it. I'm only  
21 asking to cross-examine her on that point.

22 THE COURT: As to that question,  
23 the objection is sustained. Go on.

24 MR. PARRISH: Could we make an  
25 offer of proof, Judge? Could I make an

1 oral one?

2 THE COURT: Go ahead.

3 MR. PARRISH: Thank you, Judge.

4 The offer of proof that we would  
5 make in response to the question is that  
6 the witness did not review the hard drive.  
7 Ms. Timmins made a representation to her  
8 as to what was on the hard drive. She  
9 relied on that representation with regard  
10 to the hard drive.

11 We believe that information was  
12 critical to his defense. And the reason  
13 it was critical to his defense, Your  
14 Honor, is because they were making  
15 allegations of conduct that occurred  
16 within the school. They were making  
17 allegations of conduct that was occurring  
18 within the school, and it was imperative  
19 that an individual who had knowledge of it  
20 could go through all of the records with  
21 regard to where the students were, where  
22 they were placed, to records that were  
23 kept with regards to each student to see  
24 whether or not that was consistent with  
25 the information that had been provided to

1 the State of Iowa to see whether or not  
2 their representations that had been made  
3 to this Court with regard to discovery  
4 that had been complied with, not only  
5 under the rules, but when the Court made  
6 the ruling on--I believe the Court  
7 indicated that a court made a ruling that  
8 no further motions can be made--and I  
9 think the Court said that off the record  
10 this morning. I did not include that in  
11 my record.

12 THE COURT: That was at the  
13 pretrial conference.

14 MR. PARRISH: Right.

15 THE COURT: And I believe Judge  
16 Linn was there.

17 MR. PARRISH: Judge Linn, right.

18 THE COURT: He said--he was going  
19 over typical pretrial stuff, and then he  
20 said, "the court will not entertain  
21 motions the morning of trial." That's a  
22 quote.

23 MR. PARRISH: Right. Thank you,  
24 Judge.

25 And Judge Kruse, off the record,

1 made the record that Judge Linn had made  
2 the record that no further record could be  
3 made or motions could be made with regard  
4 to this matter, that the pretrial  
5 discovery is significant because  
6 representations had been made to the Court  
7 with regard to this matter that were  
8 inaccurate.

9           That's my offer of proof, Judge.

10           THE COURT: Thank you. Just one  
11 other thing. When I quote anything from  
12 the pretrial conference, this is not a  
13 certified document. The court reporter  
14 prepared it very quickly yesterday, so  
15 it's not certified. There might be  
16 changes in it. So I just want to make the  
17 parties aware of that.

18           MR. PARRISH: I appreciate that,  
19 Judge, thank you.

20           THE COURT: It's initially what she  
21 believes was said.

22           MR. PARRISH: Thank you, Judge.

23           THE COURT: All right. Go ahead.

24           (Continued on the next page.)

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REDIRECT EXAMINATION (Resumed)

BY MR. PARRISH:

Q. I was unclear as to what your answer to Ms. Timmins was with regard to when she was leading you on the issue of the DCI information as opposed to the terabytes of information? What was she trying to get you to say?

A. I think she was trying to get me to differentiate between the information that was provided in the initial discovery versus what was actually on the terabyte-- or the external hard drive.

Q. So you would agree that your actions at that time were based upon what Ms. Timmins told you when she was making a professional representation to you?

A. At what time?

Q. When she told you what was on the 5 terabytes?

A. I guess I don't understand the timeline of your question.

Q. Well, let's go back step by step then. At one point you received 2

1 terabytes of information; is that correct?

2 A. No.

3 Q. You never did?

4 A. No.

5 Q. All right. You only received one  
6 hard drive with 5 terabytes of  
7 information?

8 A. Correct.

9 Q. And that's the one I talked to you  
10 about on the 28th?

11 A. Yes.

12 Q. So what is Ms. Timmins talking  
13 about with the 2 terabytes of information?

14 A. I don't think I ever heard Ms.  
15 Timmins refer to 2 terabytes of  
16 information. That would have been me,  
17 because originally I think we thought that  
18 2 terabytes would be enough, and Mr. Trane  
19 had a 2 terabyte hard drive that we  
20 thought we would use without having to go  
21 through the whole process of getting  
22 court-ordered funding.

23 Q. I think that--

24 A. That's where the 2 terabytes came  
25 in.



1 Q. That clears it up. So to go back  
2 then to the 2 terabytes, the 2 terabytes  
3 was a request for a hard drive that  
4 perhaps you had made to see if that would  
5 completely get all the discovery that she  
6 was trying to give you?

7 A. I think everyone--or I think Ms.  
8 Timmins--again, I'm just speaking to what  
9 I believe was her thought process--was  
10 that there were only a couple of terabytes  
11 of information and that a 2 terabyte hard  
12 drive would be sufficient to copy that.

13 When I was discussing that issue  
14 with Mr. Trane, he said: I have several  
15 of them; I will bring you one. You can  
16 provide that to them; they can copy it.

17 She provided it to the DCI, and  
18 then it was a few days later where she  
19 indicated to me initially, that's not big  
20 enough; there's significantly more  
21 information on there; we will need a  
22 bigger hard drive.

23 Q. Gotcha. So Mr. Trane never  
24 provided you with any discovery that  
25 contained records or what you would call

1 inculpatory or exculpatory information on  
2 a hard drive at any point in time?

3 A. Mr. Trane?

4 Q. Yes.

5 A. No.

6 Q. All right. So the only information  
7 you got was the information back on the  
8 28th that we referred to in my initial  
9 questions?

10 A. Yes.

11 Q. All right. And at some point you  
12 indicated that you made an agreement with  
13 her not to share it, if I recall, to share  
14 it with Mr. Trane, but I believe you  
15 indicated--and correct me if I'm wrong--  
16 you said you didn't share it in your  
17 office; is that correct?

18 A. She didn't indicate that he  
19 couldn't see it. She did not want him to  
20 have his own independent copy of it.

21 Q. And my question is, did you make an  
22 arrangement for him to come in to your  
23 office since he couldn't take it with him  
24 to review it?

25 A. Unfortunately, we were limited on

1 time. We didn't receive the hard drive  
2 until the first day of depositions. And  
3 as you can tell from my billing records,  
4 most of those days were pretty full, in  
5 addition to the hour and a half drive I  
6 have between South Lee and my office.  
7 There simply was not a time for him to be  
8 able to.

9 Q. So the answer is no?

10 A. No.

11 Q. And you would agree that contained  
12 in that information, as you know now,  
13 because you've actually given me the hard  
14 drive, it contains student records that  
15 possibly could have assisted him in  
16 preparing for trial?

17 A. Yes.

18 Q. All right. Did you ever relate  
19 that to the Court during the process?

20 A. No.

21 Q. Is there a reason why you didn't  
22 tell the Court: Well, Judge Kruse, I got  
23 5 terabytes of information. The State has  
24 2 to 3 students here that they're going to  
25 make allegations out of 1,900 that have

1 been into my system. Now, Judge Kruse,  
2 I've got a problem here. I need to look  
3 at this material.

4 Did you bring it up to Judge Kruse  
5 or Judge Linn or Judge Schilling?

6 A. No. But I did bring it up with Mr.  
7 Trane several times that I needed  
8 additional time.

9 Q. But you didn't bring it up with the  
10 judges?

11 A. No.

12 Q. Did you ever bring it up in writing  
13 to Mr. Trane?

14 A. In writing?

15 Q. Yes.

16 A. Usually it was at our meetings, or  
17 we would meet after depositions for a few  
18 minutes to go over things. And I would--  
19 especially once I saw just how much  
20 information was on the hard drive, we had  
21 a meeting in my office where I was asking  
22 him to waive speedy trial to give me more  
23 time.

24 Q. Well, my question was, did you ever  
25 bring it up in writing? That was my

1 simple question.

2 A. No, not in writing.

3 Q. Did you outline to him what issues  
4 he would be facing, such as a late 412  
5 motion, a motion to suppress, motion in  
6 limine? Did you bring that up to him in  
7 writing at any point in time?

8 A. No. I think most of our  
9 conversations were verbal.

10 Q. Did you ever make a record with the  
11 Court where you told the Court on the  
12 record with regard to Mr. Trane and the  
13 interactions with Ms. Timmins being  
14 present, or someone from her office being  
15 present, the issues you were having with  
16 going through discovery?

17 A. I think I made a general reference  
18 to it at the pretrial conference. I can't  
19 be sure exactly what I said. But I think  
20 I did make a general reference that I had  
21 advised him that it was probably in his  
22 best interest to waive speedy trial to  
23 give us time, but he has chosen not to do  
24 that. It was very similar to the  
25 conversations I had with Mr. Trane.

1 Q. So is it your testimony that you  
2 brought this up in front of a judge on the  
3 record?

4 A. I think it was very much an in-  
5 passing--it wasn't specifically discovery.  
6 I just had made it clear that I had made a  
7 recommendation that he might want to  
8 waive.

9 Q. Could you go to the date of the  
10 pretrial conference, please, in your time  
11 slips?

12 THE COURT: Counsel, I've got a  
13 rough transcript of that--again, it's not  
14 certified--if you want to look at it.

15 MR. PARRISH: Oh. Thank you,  
16 Judge.

17 THE COURT: Ms. Timmins, you can  
18 approach.

19 (A side-bar conference was held off  
20 the record.)

21 Q. (By Mr. Parrish) Ms. Schaefer, I'm  
22 going to show you what is an incomplete--  
23 and you heard Judge Kruse's comments on  
24 this matter from the bench, where he  
25 indicates this is not a full and complete

1 record with regard to the pretrial  
2 conference.

3           First of all, let's go back and get  
4 the date of it from your billing records,  
5 please.

6           A. The pretrial conference was on  
7 November 27th.

8           Q. All right. And we know now the  
9 next day you get the hard drive?

10          A. Yes.

11          Q. But see if--read through this and  
12 see if this refreshes your recollection.  
13 As the Judge as indicated, this is not a  
14 full record, and I think we all appreciate  
15 that, and it might be just portions of it.  
16 Read through it and see if it refreshes  
17 your recollection, and then I'll ask you  
18 my question.

19          A. It does.

20          Q. All right. Thank you. Now, my  
21 question is--and it might not be on there,  
22 as the Court has pointed out--but do you  
23 tell the court that you hadn't even gotten  
24 the discovery yet?

25          A. No.

1 Q. All right.

2 A. I believe I had mentioned it was a  
3 passing reference to waiving speedy trial.

4 Q. But you talked about a change of  
5 venue, too; right?

6 A. Yes.

7 Q. And is there any reason why you  
8 didn't tell the Court that the State of  
9 Iowa hadn't even complied with the  
10 production requirements at that point when  
11 you're talking about waiving speedy trial?

12 A. Did I do that?

13 Q. Yes.

14 A. No.

15 Q. But you knew at that time there was  
16 going to be more than 2 terabytes of  
17 information, didn't you?

18 A. At that time, yes.

19 Q. All right. Why didn't you mention  
20 that to the Court?

21 A. I thought I made it clear that by  
22 encouraging him to waive speedy trial, I  
23 was going to need additional time. I had  
24 the discovery, so it wasn't a question of  
25 Ms. Timmins not providing it. I just had



1 not had the opportunity to go through it  
2 yet.

3 Q. I thought you told me you didn't  
4 get the discovery until the 28th?

5 A. I had the initial discovery. So I  
6 had already gone through all of that. I  
7 was not anticipating the difficulty in  
8 going through one student's whole set of  
9 records. That in and of itself took a  
10 tremendous amount of time. And I wasn't  
11 able to get through it for all of them.

12 Q. All right. I'm a little confused.

13 A. I might not have explained myself  
14 well.

15 Q. Right. Let's try it again. Either  
16 you had the discovery before the 27th when  
17 you had the pretrial conference, or you  
18 didn't have all the discovery on the 27th  
19 before you had the pretrial conference.

20 A. I had the original DCI disks.

21 Q. All right.

22 A. I did not receive the 5 terabyte  
23 hard drive until the next day.

24 Q. Yes. Which you already testified  
25 to contained the student information that

1 you said you needed?

2 A. Student records, yes.

3 Q. Right. And my question is simply  
4 this: Is there a reason why you didn't  
5 tell the Judge that when you were talking  
6 about this speedy trial issue?

7 A. I think we were dealing with so  
8 many issues that day it just--there was a  
9 lot going on in that pretrial conference.

10 Q. You represented to the Court that--  
11 at least in answer to Ms. Timmins'  
12 question--that you knew the process of  
13 getting out-of-state witnesses, and you  
14 and the State made an agreement as to how  
15 the witnesses would be brought into the  
16 courtroom and who would be responsible.  
17 You made that agreement; right?

18 A. Yes.

19 Q. And Ms. Timmins kind of led you and  
20 said, look, I agree to get the State's  
21 witnesses in so we can cut down the cost;  
22 right? Isn't that what she said when she  
23 was asking these questions?

24 A. I think that was her concern, yes.

25 Q. She was concerned about the cost to

1 you?

2 A. I don't know.

3 Q. Well, that would be your concern  
4 because your budget doesn't come from the  
5 same place as her budget, does it?

6 A. That is true.

7 Q. All right. So you have a  
8 responsibility as a defense lawyer that is  
9 actually inconsistent with what her  
10 concerns are with regard to the budget,  
11 don't you?

12 A. I suppose.

13 Q. And so let me ask about these  
14 witnesses. At some point did she release  
15 witnesses?

16 A. I know there were witnesses that  
17 were here that were not called. I know  
18 that.

19 Q. Yes. And tell the Judge who those  
20 witnesses were.

21 A. I couldn't tell you specifically at  
22 this time.

23 Q. Do you recall a Mxxxx Bxxxxx Gxxxx?

24 A. Yes.

25 Q. Do you recall a Kxxxx Mxxxxxxx

1 Mxxxx?

2 A. Yes.

3 Q. You heard Ms. Timmins tell you in  
4 her leading question that she would get  
5 the witnesses who she indicated she would  
6 call and have them available. That was  
7 her leading question to you, and you all  
8 said you had an agreement to that effect;  
9 isn't that true?

10 A. Yes. She would secure them both  
11 for depositions as well as trial.

12 Q. Did she have Mxxxx Bxxxxx Gxxxx  
13 here for trial?

14 A. I do recall seeing her in the  
15 hallway at some point, but I don't  
16 remember when exactly.

17 Q. Did she have Kxxxx Mxxxxxxx Mxxxx  
18 here for trial?

19 A. I don't recall seeing Ms. Mxxxx.

20 Q. But she told you she would be here?

21 A. That was my understanding.

22 Q. All right. And with those two  
23 people here, she released them without  
24 letting you know, didn't she?

25 A. I don't remember a specific

1 conversation. I don't know what she did.  
2 I just know they weren't here, and they  
3 did not testify.

4 Q. Right. I read the transcript, and  
5 I didn't see either one of them in the  
6 transcript.

7 A. I did not see either one of them in  
8 this seat so--

9 Q. Right. And you didn't cross-  
10 examine them?

11 A. No.

12 Q. Did she talk to you before she  
13 released these two witnesses?

14 A. I don't recall any specific  
15 conversations about it, no. I guess I  
16 only saw Ms.--I think it was the Bxxxxx  
17 girl just in passing. I just happened to  
18 recognize her. I think I was in to talk  
19 to Mr. Trane or going up to the ladies  
20 room.

21 Q. And you had actually--

22 A. I don't know what conversations Ms.  
23 Timmins had with them.

24 Q. Had you taken her deposition?

25 A. Yes, a day or two before.

1 Q. A day or two before?

2 A. Yes.

3 Q. And in taking her deposition, you  
4 determined that she was going to be  
5 helpful; isn't that correct?

6 A. Yes.

7 Q. You knew that Bxxxxx Gxxxx was  
8 going to be helpful; is that correct?

9 A. Yes.

10 Q. And you knew that Kxxxx Mxxxxxxx  
11 Mxxxx was going to be helpful; isn't that  
12 correct?

13 A. I felt her testimony would be more  
14 helpful than harmful, yes.

15 Q. Now, when Ms. Timmins just told you  
16 in her direct examination questions that  
17 she would have these witnesses available,  
18 by her leading question and her  
19 professional way of asking this question  
20 to you, did you ever bring it up to the  
21 Court that Ms. Timmins had released these  
22 witnesses without talking to you and you  
23 knew that these witnesses were favorable  
24 to you?

25 A. No.

1 Q. Well, when Ms. Timmins just asked  
2 you that question at this hearing on her  
3 own without me asking this question  
4 earlier, why did you then continue to  
5 agree with her that all the witnesses who  
6 she said would be available would be here  
7 if you knew two of them had been released  
8 without talking with you? Why did you  
9 answer the question, yes, that's right,  
10 Ms. Timmins? Why did you just tell the  
11 Judge that?

12 A. I think my answer to Ms. Timmins  
13 was that it was the understanding that she  
14 would have them here and available.

15 Q. Well, if they were gone you would  
16 agree they were no longer available; is  
17 that correct?

18 A. I didn't know they were gone until  
19 they were gone.

20 Q. Well, that's the only time anybody  
21 knows people are gone; right? When  
22 they're gone? They don't know any  
23 earlier, until they disappear; right?

24 A. Yes.

25 Q. All right. So you knew they were

1 gone. My question is, why didn't you go  
2 tell Judge Kruse that Ms. Timmins had  
3 violated the agreement that she made? Do  
4 you think he would have gotten upset with  
5 you?

6 A. I guess my practice as a prosecutor  
7 was you can choose to not call whoever you  
8 choose to.

9 Q. Well, but you knew they were  
10 favorable?

11 A. I did.

12 Q. And you had taken their deposition.  
13 We have a copy of the depositions right  
14 here, don't we?

15 A. Yes.

16 Q. And you knew she told you she would  
17 keep them there; isn't that true?

18 A. I don't think we had any specific  
19 discussions about keeping them here. The  
20 assumption was made that they would be  
21 here because I did see Ms. Bxxxxx Gxxxx,  
22 or whatever her name was.

23 Q. Well, you knew Mr. Trane wanted to  
24 call them, didn't you?

25 A. I knew what?



1 Q. Mr. Trane wanted to call them?

2 A. Yes.

3 Q. And you've already acknowledged you  
4 knew they were favorable. But my question  
5 at this point is that Ms. Timmins just  
6 asked the question on her cross-  
7 examination: Didn't I agree to have all  
8 these witnesses here? Why didn't you  
9 respond; well, you said you would have  
10 them all there, but you then, in fact,  
11 released two witnesses that Mr. Trane  
12 wanted to call and their information was  
13 favorable, and you didn't tell me they  
14 were going to be gone, Ms. Timmins?

15 Why didn't you tell Judge Kruse  
16 that?

17 A. In the heat of the battle, I just  
18 was too-- I didn't think about it. And by  
19 the time I knew they were gone, they were  
20 both--if I remember correctly, they were  
21 both out of state, and there was little to  
22 be done.

23 Q. Well, that's how she prefaced her  
24 question here today. Because she said, do  
25 you know how to get out-of-state witnesses

1 in? Didn't she say that?

2 A. Yes.

3 MS. TIMMINS: Your Honor, at this  
4 point I'm going to object. My questions  
5 related to depositions. This has been  
6 twisted around into something that it is  
7 not. He's arguing about things that he  
8 hasn't even filed in his Motion for New  
9 Trial, and there's no relevance to this.

10 THE COURT: Response?

11 MR. PARRISH: Thank you, Judge.

12 First of all, Ms. Timmins in her  
13 questions, in an effort to show that she  
14 did not participate in some  
15 representations to the Court, this is what  
16 she asked, Your Honor. She asked her  
17 about out-of-state witnesses. She said  
18 they made an agreement they would bring  
19 out-of-state witnesses in because of the  
20 difficulty in getting the witnesses in.  
21 She said the State would agree, in her  
22 response to the questions, to get out-of-  
23 state witnesses available. And they also  
24 talked about the economy of it. And these  
25 witnesses would be available for

1 depositions, and she agreed also to have  
2 them available for trial.

3           The follow-up to this question,  
4 Judge--and, first of all, it is in our  
5 Motion, but it doesn't have to be in there  
6 to have a Motion for New Trial.

7           THE COURT: Where is it, though? I  
8 know in your brief, you have six things  
9 here. It's none of those.

10           MR. PARRISH: If you look at  
11 paragraph 12 of our Motion, I think it's  
12 included in that. If you go to paragraph  
13 19, it's directly included in that.

14           So I don't know where Ms. Timmins  
15 is getting the representation that it's  
16 not in there.

17           THE COURT: Well, I don't know if  
18 everything is in there, but I'm looking at  
19 the brief, too, which kind of focuses it,  
20 and that's definitely not there.

21           MR. PARRISH: Well, if you look at  
22 paragraph 19, Judge, if you go down. "The  
23 state failed to timely notify the  
24 defendant that they were not calling the  
25 witnesses and failed to disclose to the

1 defendant or the court that the reason the  
2 witnesses were not going to be called is  
3 because--

4 THE COURT: I see it now. Go  
5 ahead.

6 MR. PARRISH: I don't know how  
7 anything could be clearer, Judge.

8 THE COURT: Go ahead.

9 Q. (By Mr. Parrish) Let's go back to  
10 my question, Ms. Schaefer. I know you  
11 said in the heat of battle during the  
12 trial you forgot to bring this up to the  
13 Court. My question is, Ms. Timmins just  
14 led you through something trying to  
15 explain her position and acknowledge--and  
16 you acknowledge that that was your  
17 agreement.

18 My question is, when you answered  
19 the question here just a few minutes ago,  
20 why didn't you tell Ms. Timmins that, you  
21 know, Ms. Timmins, you let those witnesses  
22 go and you didn't tell me, and in the heat  
23 of battle I forgot to tell the Judge?

24 A. What was the-- Are you--

25 Q. Why didn't you answer the question

1 that way?

2 A. Why did I not do it?

3 Q. Yes.

4 A. I don't recall.

5 Q. Okay. Now, in your experience as a  
6 prosecutor, have you ever done that to a  
7 defense lawyer before? Made an agreement  
8 that you were going to have witnesses here  
9 from out of state, and then you would let  
10 the witnesses go without telling opposing  
11 counsel, or tell the judge that you were  
12 going to do this?

13 A. When I was a prosecutor?

14 Q. Yes.

15 A. My practice was if there was  
16 someone I was not going to call, I would  
17 let them know to give them the opportunity  
18 to subpoena them if they wanted to.

19 Q. Well, when Ms. Timmins did this to  
20 you, how did you feel?

21 A. How did I feel?

22 Q. Right. Defense lawyers--

23 A. I don't remember feeling anything  
24 specifically, other than there was another  
25 witness that we had to examine by the time

1 I realized they were gone.

2 Q. Did you know that at that point, if  
3 that witness was unavailable and as she  
4 indicated they were out of state, that you  
5 perhaps could have made a motion to  
6 include that favorable evidence into court  
7 with regard to offering her deposition  
8 because she was unavailable?

9 A. I didn't know that she was  
10 unavailable. I didn't know where she was.  
11 I just knew she wasn't here.

12 Q. Well, you could have just gone to  
13 the Court and said: Hey, Judge, I've got  
14 these two witnesses. Ms. Timmins let them  
15 go. I think she violated our agreement.  
16 And I want to put their depositions into  
17 evidence.

18 Why didn't you do that if Mr. Trane  
19 wanted to put the witnesses in there?

20 A. I don't know.

21 Q. Did you just forget?

22 A. I think I was busy trying to deal  
23 with the other 20-some-odd witnesses and  
24 just didn't deal with those two  
25 particularly. There were a tremendous

1 amount of witnesses.

2 MR. PARRISH: Your Honor, we will  
3 get those depositions for the Court. But  
4 we would like to offer the deposition of  
5 those witnesses for the Court to review.  
6 And I will have those available, Judge. I  
7 have copies of them.

8 Q. (By Mr. Parrish) You indicated in  
9 response to a question asked by Ms.  
10 Timmins that one of the disks contained  
11 what was called Cellebrite reports; is  
12 that correct?

13 A. Yes.

14 Q. All right. Did you review the  
15 Cellebrite reports? Ms. Timmins asked you  
16 this question.

17 A. If I remember correctly, the  
18 Cellebrite report, it was about 1,500  
19 pages.

20 Q. I just--

21 A. So yes, I reviewed it. And when I  
22 say I reviewed it, it was a very cursory  
23 review because it was, I believe, 1,500  
24 pages long.

25 Q. Did you review the Cellebrite of

1 K. [REDACTED]'s phone, the Cellebrite report?

2 A. The 1,500 pages that I reviewed  
3 were of his phone, Mr. Trane's.

4 Q. Did you review a Cellebrite report  
5 of K. [REDACTED]'s phone?

6 A. I don't recall ever seeing one. I  
7 don't recall.

8 Q. Did you ask for it?

9 A. No, I did not.

10 Q. Did you think that was significant?

11 A. I wasn't aware there was one of  
12 Ms. -- K. [REDACTED]'s phone.

13 Q. You didn't even ask?

14 A. I didn't remember seeing anything  
15 in a report. And again, this is  
16 recollections from several months ago. I  
17 don't remember seeing anything that she  
18 had a phone that was seized or that there  
19 was one. The only Cellebrite report I saw  
20 was the one from Mr. Trane's phone that  
21 was 1,500 pages long.

22 Q. You've heard the Court referring,  
23 and you've heard my record with regard to  
24 the speedy trial issue, and you brought  
25 that up to this court at the pretrial



1 conference, and you heard Judge Kruse  
2 refer to Judge Linn's ruling; is that  
3 correct, about no motions--

4 A. I heard him talking but I couldn't  
5 really hear him very well.

6 Q. From that partial transcript he was  
7 reading, no motions can be filed after the  
8 start of the trial?

9 A. Correct.

10 Q. All right. Did you challenge Judge  
11 Kruse on that issue and tell him that he  
12 ought to reconsider Judge Linn's ruling  
13 because you didn't get the information  
14 until the 28th of November, and that Ms.  
15 Timmins did not get you the material in a  
16 timely fashion, and that the depositions  
17 were not taken until the night before, and  
18 it was her agreement to furnish those  
19 witnesses for you?

20 Did you make any representations to  
21 the Court with regard to those issues  
22 after the Court indicated that no new  
23 motions can be filed?

24 A. Did I make an argument to the Court  
25 regarding which motions? You have a whole

1 lot going on in that question.

2 Q. The 412 Motion mainly, but also any  
3 motions. I think it can cover any motions  
4 that would be available to you after you  
5 received the 5 terabytes of information.

6 A. Did I ask Judge Kruse?

7 Q. Yes.

8 A. No, I did not.

9 Q. What was your reason for not doing  
10 that? Did you think the Judge would get  
11 upset with you for protecting your  
12 client's interest?

13 A. No.

14 Q. Well, why wouldn't you bring that  
15 to the Court's attention? If he's new on  
16 the case, he just shows up to try the  
17 case, and he's not that familiar with it,  
18 why didn't you educate the Judge about  
19 what was going on in this case?

20 A. The Judge, I think, was aware of  
21 the voluminous-- I mean, we'd had  
22 discussions during the 412 Motion hearing  
23 about the information.

24 Q. Well, I looked at the transcript.  
25 I didn't see any point where anyone tried

1 to educate the Judge as to the background  
2 of the discovery problems that existed in  
3 this case. So did you do it off the  
4 record?

5 A. Yes, probably.

6 Q. Why?

7 A. I can't explain that. I don't  
8 know.

9 Q. Well, if you went off the record  
10 and you had this discussion with the  
11 Judge, and you're protecting your client's  
12 interest, and you know you've got issues  
13 with Ms. Timmins on her discovery and  
14 you've got an issue with your client  
15 saying these folks ought to be here, why  
16 didn't you put that on the record so an  
17 appellate court could take a look at it to  
18 see were you adequately protecting your  
19 client's interest?

20 A. You're talking about two  
21 situations. I think that's where I'm  
22 getting confused.

23 Q. Okay.

24 A. With the 412 Motion, the Judge  
25 entertained it. I think his-- If I

1 remember the ruling correctly, it was  
2 untimeliness based on the rule, not  
3 anything from Judge Linn. It was a civil  
4 procedure rule that was his--if I remember  
5 the ruling correctly.

6 Q. Well, the appellate court says  
7 don't rely on the civil rules; right?  
8 They say you've got to go to the criminal  
9 rules when you balance these things out,  
10 don't you? Doesn't almost every Supreme  
11 Court decision and Court of Appeals  
12 decision tell the judges don't do that?

13 A. I don't pay attention usually to  
14 what they tell the judges to do. I would  
15 always pay attention to what they told the  
16 lawyers to do.

17 Q. Right.

18 A. But I did make the Motion. And my  
19 recollection on the ruling--and again, I  
20 don't have--I gave the case file all to  
21 you, so I don't remember the ruling  
22 specifically. But the untimeliness issue  
23 on the 412 was that it was not within the  
24 fourteen days of trial where that 412  
25 requires it be filed fourteen days

1 beforehand.

2 Q. Well, it was actually Denise who  
3 brought that--Denise Timmins who brought  
4 that up; right?

5 A. Yes.

6 Q. Now, my question is, what about all  
7 the other motions? Did you try to educate  
8 the Judge and say, look, Judge we may have  
9 problems throughout this case because we  
10 agreed--she agreed to have the witness  
11 here; I'm relying on her; these are the  
12 rules we've agreed to; this is what's  
13 going to happen.

14 Did you think about educating the  
15 Judge on that issue and bringing him up to  
16 date?

17 A. Probably not in a formal exchange.  
18 My concern at that time had been primarily  
19 Mr. Trane had made it clear he wanted this  
20 done as quickly as possible, and so I was  
21 trying not to slow up the process, because  
22 he had made it clear he was going to be  
23 home by Christmas

24 Q. Did you file a trial brief in this  
25 case?

1 A. No.

2 Q. The answer is no?

3 A. That was the answer. No.

4 MR. PARRISH: Nothing further at  
5 this time with regard to the questions  
6 that Ms. Timmins opened the door to,  
7 Judge.

8 THE COURT: Ms. Timmins?

9 MS. TIMMINS: No questions.

10 THE COURT: You may step down.

11 Thank you.

12 THE WITNESS: Am I excused?

13 THE COURT: You are excused, yes.

14 Mr. Parrish.

15 MR. PARRISH: Thank you, Judge.

16 Would you like me to make my offer  
17 of proof at this time, Your Honor?

18 THE COURT: Well, let's take a  
19 brief ten-minute recess, and we'll try and  
20 get this in before we break for noon.

21 MR. PARRISH: Thank you, Judge.

22 (A recess was taken at 11:45 a.m.)

23 (In open court, in the presence of  
24 the Court, the Defendant, and counsel at  
25 11:55 a.m.)