

ORIGINAL

THE STATE OF NEW HAMPSHIRE ⁶⁰⁵⁰ MAY 6PM12:28

GRAFTON, SS.

SUPERIOR COURT

* * * * *

FREDERICK J. MURRAY

V.

SPECIAL INVESTIGATION UNIT OF THE
DIVISION OF STATE POLICE OF THE
NEW HAMPSHIRE DEPARTMENT OF
SAFETY, ET AL.*
* Docket Nos.
* 05-E-383
*

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NH SUPREME COURT

TRANSCRIPTION OF AUDIO-RECORDED PROCEEDINGS
HEARING ON THE MERITSBefore 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

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 Evid</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.