

EXHIBIT C

In The Matter Of:

Melendres v

Arpaio

Timothy J. Casey

September 16, 2015

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1 THE COURT: I'm going to overrule the
2 objection and direct the witness to answer.

3 THE WITNESS: I could have, but that's not a
4 solid -- that's not -- in my judgment, that's not a practice
5 to make, rewriting an opposing party's discovery request,
6 because that's the -- that's the problem with that.

7 BY MS. WANG:

8 Q. So, in your view, it's -- setting aside not getting
9 into any communications with the client in this case, your
10 general practice as an attorney is to convey the other
11 party's document requests without elaboration?

12 A. Generally that -- that is true. I will -- I will
13 provide -- as a practical matter, I will provide follow-up
14 clarification if needed, but it's -- how I learned, it's very
15 dangerous for one advocate to summarize another advocate's
16 discovery. If it's not clear, it ought to be objected to on
17 the appropriate grounds. Otherwise, that's a problem.

18 Q. And you don't know whether you followed your
19 general practice of not providing further instruction during
20 a pretrial discovery period in this case?

21 A. I don't -- I don't remember that.

22 Q. All right. I'm going to change gears entirely.
23 This will be very brief.

24 Were you present at a meeting on
25 January 2nd, 2014, with John Masterson, Joe Popolizio,

1 Sergeant Travis Anglin, Sheriff Arpaio, a posse member named
2 Mike Zullo, and Tom Liddy concerning a -- an MCSO
3 investigation involving a confidential informant in Seattle?

4 A. I know I was -- I don't know the date, but I know I
5 attended one.

6 Q. And do you recall whether the confidential
7 informant was on the telephone during that meeting?

8 MS. CLARK: Objection. Calls for
9 attorney-client privileged, confidential, and work product.

10 MS. WANG: Well, if the confidential informant
11 were on the phone, it would affect the analysis of whether,
12 in fact, that conversation was privileged. So I think I'm
13 entitled to an answer on that.

14 (An off-the-record conversation was held
15 between the witness and his counsel.)

16 THE WITNESS: My memory of the meeting I
17 attended was there was no CI on the phone. It was a briefing
18 by whoever it was in the MCSO that was telling -- that was
19 telling everyone in the room what their process was, or
20 analysis or whatever.

21 BY MS. WANG:

22 Q. Were you there for the purpose of giving legal
23 advice?

24 A. I -- don't know. My -- my impression is what I can
25 just tell you.

1 Q. What was your impression as to whether you were
2 there to give legal advice?

3 A. My impression was is that the sheriff wanted to
4 know from the lawyers in the room what we thought about the
5 information that was being provided by MCSO personnel about
6 this confidential informant.

7 Q. Was he seeking legal advice as to the
8 investigation, or was he trying to get a sense of whether you
9 believed the informant was reliable?

10 A. I don't know, because it was never really
11 explained.

12 MR. MASTERSON: Foundation.

13 BY MS. WANG:

14 Q. All right. During that meeting -- well, let me ask
15 you this: Do you know whether Mike Zullo is an employee of
16 the MCSO?

17 A. I -- I mean, I heard the name. I've read about
18 him, but I'm not sure I could spot him in a lineup. So I
19 don't know what his role is.

20 Q. All right. Do you recall seeing any documents
21 during that meeting that mentioned Judge Snow's name?

22 A. I do.

23 Q. What do you recall about that?

24 A. I remember seeing some sort of graphic.

25 Q. Okay. I'm going to hand you an exhibit that was

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1 already marked 2524.

2 MS. WANG: I hope you still have this from
3 yesterday, because --

4 MR. MASTERSON: I don't, but that's okay.

5 BY MS. WANG:

6 Q. Mr. Casey, can you -- this is a declaration that I
7 filed with the Court in response to the opposition to
8 Sheriff Arpaio and Chief Deputy Sheridan's motion to
9 disqualify the Court. The document indicates on its face
10 that it is under seal. I will tell you that it is no longer
11 under seal. The motion to seal was -- well, there was a
12 court order either unsealing or denying the motion to seal.

13 Take a look at Exhibit F. There are two
14 documents there. One is in landscape --

15 A. This thing.

16 Q. -- orientation.

17 Correct.

18 So there's a document that contains a -- a
19 sort of a graphical --

20 MS. CLARK: Mine looks like it's different.
21 My F starts with --

22 MS. WANG: Keep -- keep turning.

23 MS. CLARK: Keep going?

24 MS. WANG: Keep going.

25 MS. CLARK: Okay.

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1 THE WITNESS: This is all part of F; right?

2 MS. WANG: Yes.

3 MS. CLARK: Okay.

4 BY MS. WANG:

5 Q. So keep flipping.

6 A. Yeah. Excuse me. I'm sorry. Okay.

7 Q. I think you're flipping the wrong direction.

8 A. No, but I'm -- I'm looking at this.

9 Q. Okay.

10 (An off-the-record conversation was held
11 between the witness and his counsel.)

12 THE WITNESS: Okay.

13 BY MS. WANG:

14 Q. Does -- do the materials that -- Exhibit F on my
15 declaration look like the documents you saw during that
16 January 2nd, 2014, meeting?

17 A. This thing identified as timeline looks familiar.
18 And I remember a color-coded chart of some sort that looked
19 like what you see here, that I'm pointing to at Bates label
20 MELC199934.

21 Q. Was there a discussion of these documents during
22 that meeting?

23 MS. CLARK: Objection. Attorney-client
24 privilege. Work product. Confidentiality.

25 MS. WANG: Your Honor, we discussed this

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1 Exhibit F to my declaration during the deposition of
2 Captain Bailey last week. Mr. Masterson was present. My
3 recollection is that there was not an objection to my
4 questions concerning what was said during that meeting on
5 January 2nd, 2014.

6 THE COURT: I'll say, Ms. Clark, that I
7 haven't heard an objection from Mr. Masterson. But whoever
8 is proponing -- whoever is the proponent of the privilege
9 has to establish that the privilege exists. I have not yet
10 heard anything from Mr. Casey which would implicate the
11 attorney-client privilege. To the extent that he said -- and
12 I'm saying what I understood his testimony to be -- that
13 Sheriff Arpaio had the attorneys there to ask them about what
14 they thought about the reliability of the informant. That
15 does not strike me as solicitation of or the receipt of legal
16 advice.

17 So you're the proponent of the privilege.
18 Unless you can tell me that it -- convince me that it does,
19 I'm going to overrule your objection and instruct the witness
20 to answer.

21 MS. CLARK: Judge, the holder of the privilege
22 is the client represented by Mr. Masterson here today. And
23 as I told you in the prefatory statement, if he doesn't
24 object, I'm assuming there's a waiver. However, I do believe
25 this is covered by client confidentiality under 1.6. It's in

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1 the course of representing the client that he's attending
2 these meetings. It's confidential under ER 1.6. And without
3 an order, I'm instructing the witness not to answer.

4 THE COURT: I'm directing the witness to
5 answer. I'm overruling the client confidentiality objection.

6 THE WITNESS: Again, I -- can you read --
7 reread that question for me?

8 BY MS. WANG:

9 Q. I think it was just was there discussion of these
10 documents at Exhibit F of my declaration during that
11 January 2nd, 2014, meeting?

12 A. I believe so.

13 Q. Can you describe what you recall of that
14 discussion.

15 MS. CLARK: Continuing objection.

16 MR. MASTERSON: Well, you -- has the witness
17 been asked the question to whether he was providing his legal
18 advice, mental impressions, or legal analysis to his client?

19 In other words, if -- if the response to this
20 question is the witness says legal advice, mental
21 impressions, or legal analysis to his clients, if that is the
22 answer to this particular question, I'm going to object based
23 on privilege. I'm not sure that question's been asked of
24 this witness yet.

25 MS. WANG: Well, I did ask Mr. Casey whether

1 he was there at the meeting to provide legal advice. He said
2 it was not clear.

3 Let me ask -- let me withdraw the pending
4 question and ask another question first.

5 BY MS. WANG:

6 Q. During the conversation about these documents at
7 Exhibit F of my declaration dated July 10th, 2015, did you
8 provide any legal advice?

9 A. I, like the other lawyers in the room, including
10 some that are here today, offered our assessments of what we
11 heard. Whether it's legal advice, I don't know to this day.
12 I'm a lawyer. I don't remember being asked for any issue
13 about admissibility or anything. I just remember that we all
14 talked about what we thought about what we heard.

15 Q. Was there any discussion about whether any
16 particular action taken in the course of the investigation
17 was legal or not?

18 A. What -- what was legal?

19 Q. Whether any -- well, you understood that the
20 dis- -- there was discussion during the January 2nd, 2015,
21 meeting about -- sorry -- January 2nd, 2014, meeting, there
22 was discussion about an investigation by MCSO involving a
23 confidential informant; correct?

24 A. Yes. Generally, yeah.

25 Q. During the discussion of that investigation, was

1 your advice sought on whether any actions taken during that
2 investigation were lawful --

3 A. I don't --

4 Q. -- or not lawful?

5 A. I don't believe that was ever asked.

6 Q. Were you asked for your assessments about whether
7 the -- the informant was reliable?

8 A. I believe we were asked that.

9 Q. Did it involve any legal analysis or application of
10 your knowledge of the law?

11 A. My experience as an attorney that tries cases and
12 deals with people, like -- kind of like what you are, but I'm
13 not sure about legal analysis applying law to facts. I'm not
14 sure about that. I don't think so.

15 Q. You were being asked to assess his believability,
16 in other words?

17 A. I will state for clarification, I don't believe the
18 time I was present that there was the CI on the telephone. I
19 believe it was just a report by whoever it was, detectives or
20 whoever. But we were -- I think we were being offered to
21 share our thoughts about the information being relayed.

22 Q. And were you -- was your legal advice being sought?

23 I guess I'm just trying to get at whether --

24 A. I --

25 Q. -- you were bringing to bear any legal analysis to

1 that situation or whether your opinion was being sought as an
2 observer of --

3 (An off-the-record conversation was held
4 between the witness and his counsel.)

5 BY MS. WANG:

6 Q. -- human behavior, whatever.

7 You mentioned yourself assessing witnesses on
8 the stand.

9 A. I -- I cannot tell you. You would have to ask the
10 client what their expectation were for having the lawyers
11 present. I don't -- I -- it's -- to this day, I don't know
12 exactly why.

13 Q. Captain Bailey testified in his deposition that he
14 believed that at least Mr. Popolizio was present, because
15 there was a claim made by the confidential informant that
16 Mr. Popolizio's law firm's e-mails had been hacked.

17 Do you recall that?

18 A. I do.

19 Q. All right. That did not involve -- Mr. Popolizio
20 was not being asked for his legal opinion about anything, was
21 he?

22 A. I -- I don't know what Joe was asked. I know that
23 Joe was present. I believe John was present. And myself.
24 Mr. Liddy. I don't know if James in my office was present.

25 Q. All right. So, Mr. Casey, I'll ask you again at

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1 this point. What was the discussion about the documents at
2 Exhibit F of my declaration?

3 MS. CLARK: I'm going to object based on
4 confidentiality and attorney-client privilege and work
5 product. It's, I -- I think, fair to presume that if a
6 client asks you to attend a meeting as a lawyer, it is to
7 provide your legal analysis.

8 And I understand Mr. Masterson is not
9 objecting, but Mr. Liddy -- excuse me -- Mr. Casey has
10 obligations to his former clients, and I'm going to make that
11 objection and instruct him not to answer absent a Court
12 order.

13 MR. MASTERSON: Well, actually, I am -- I am
14 objecting, because I think the testimony I just heard from
15 the witness is he's giving his impressions. And I -- and I
16 understand you tried to finagle it a little bit and ask him,
17 well, are you giving legal advice? And his answer was, well,
18 I'm giving an analysis possibly of a witness, although he's
19 telling us he doesn't recall the witness being on the phone.

20 But, in any event, he's there in connection
21 with litigation. He's looking at documents. And if he's
22 being asked for comments on documents, that's part of his
23 position as a representative, a legal representative of the
24 client. And his statements, I think, are then privileged as
25 being work product, at least, and probably attorney-client

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1 privilege. They're his impressions of what he has seen.
2 Possibly his legal analysis of what he has seen.

3 MS. WANG: Mr. Casey testified that it was not
4 clear to him that he was being -- he was there for the
5 purpose of providing legal advice or analysis, and I don't
6 believe that on the testimony that we've heard the
7 conversation is privileged.

8 MS. CLARK: I believe that's a legal
9 conclusion and for the judge to make.

10 MS. WANG: I'm making my argument and --

11 MS. CLARK: I'm making --

12 MS. WANG: -- now seeking a ruling.

13 MS. CLARK: I'm making mine.

14 THE COURT: All right. Here's how we're going
15 to proceed: We're going to proceed on a
16 statement-by-statement basis, a question-by-question basis,
17 that -- to the extent that the witness is capable of
18 reconstructing the conversation. I believe it is true
19 that -- that the witness is entitled to a general presumption
20 that if he's asked to be there as an attorney, there is a --
21 there is some presumption that there is -- at least you have
22 to be careful about an attorney-client relationship. But the
23 law, as I understand it, and I believe it exists and the
24 Ninth Circuit is quite clear, that does not necessarily mean
25 that the attorney-client privilege exists.

1 With respect to a conversation, the
2 attorney-client only exists -- the attorney-client privilege
3 only exists where legal advice of any kind is sought from a
4 professional legal advisor in his capacity as such. And
5 communications relating to that purpose made in confidence by
6 a client are at the client's instance permanently protected
7 from disclosure.

8 So we are going to go forward to the extent
9 it's possible on a very specific basis. I have not heard --
10 I will say, Mr. Masterson, Ms. Clark, I haven't heard
11 anything yet that necessarily implicates the attorney-client
12 privilege to cover the whole conversation. I have heard
13 reason to proceed with caution.

14 And for that reason, I am going to require
15 you, Ms. Wang, to ask more specific questions about that
16 January 2nd meeting.

17 MS. WANG: Yes, Your Honor.

18 THE COURT: See if we can get to it any
19 better.

20 MS. WANG: Yes, Your Honor.

21 MS. CLARK: Judge, I'm continuing the
22 objection on confidentiality under ER 1.6. Mr. Casey
23 can't --

24 THE COURT: I'm overruling the objection on
25 confidentiality pursuant to ER 1.6.

1 MS. CLARK: Thank you, Judge.

2 BY MS. WANG:

3 Q. Mr. Casey, at any point during the January 2nd,
4 2014, meeting, did you learn that the confidential informant
5 was offering information or making a claim or allegation that
6 there was a conspiracy between Judge Snow, the Attorney
7 General of the United States, or the Department of Justice
8 generally and the law firm of Covington & Burling that would
9 affect the sheriff?

10 MR. MASTERSON: Form.

11 THE WITNESS: Am I instructed to answer, Your
12 Honor?

13 THE COURT: You are.

14 THE WITNESS: Yes.

15 BY MS. WANG:

16 Q. Who provided that information during the
17 January 2nd, 2014, meeting?

18 A. Well, first of all, I have to -- I don't know the
19 date. For some reason, I thought it was earlier than that,
20 like November of '13.

21 Whoever was doing the speaking on the
22 telephone were relaying information -- was relaying
23 information about what the CI, the confidential informant,
24 claimed to have put together.

25 Q. So your impression was that somebody was on the

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1 telephone conveying information on behalf of the confidential
2 informant but that it was not the confidential informant --

3 MR. MASTERSON: Form.

4 BY MS. WANG:

5 Q. -- himself?

6 MR. MASTERSON: Form.

7 THE WITNESS: That's -- that's what I
8 remember. I thought there were two MCSO employees up in
9 Seattle calling in.

10 BY MS. WANG:

11 Q. All right. Do you know who the person on the phone
12 was?

13 A. The names that you mentioned. One of them, the --
14 with the Z.

15 Q. Mike Zullo?

16 A. Yeah. That sounds familiar --

17 Q. All right.

18 A. -- but --

19 Q. What about Brian Mackiewicz? Is that possibly --

20 A. There were --

21 Q. -- someone who was participating by telephone?

22 A. I couldn't tell you, but I know there were two.

23 Q. All right.

24 A. Two employees.

25 Q. What did the person on the telephone convey as far

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1 as you remember about an alleged conspiracy between
2 Judge Snow, the Attorney General of the United States, the
3 Department of Justice, and the law firm of Covington &
4 Burling?

5 A. Would you -- are you asking me for my impression --

6 Q. No.

7 A. -- or are you asking me --

8 Q. I'm asking you --

9 A. -- specifically --

10 Q. -- for fuller information about what was conveyed
11 about that.

12 MR. MASTERSON: Form.

13 THE WITNESS: I will tell you in all sincerity
14 that the details are not clear. The conclusion is abundantly
15 clear.

16 BY MS. WANG:

17 Q. What was the conclusion?

18 MS. CLARK: Again, just the continuing
19 objection, Judge, and the work product as well.

20 THE COURT: Overruled.

21 THE WITNESS: Hogwash.

22 BY MS. WANG:

23 Q. Who said it was hogwash?

24 A. That was my conclusion. And if I'm not mistaken,
25 every lawyer in the room reached that conclusion.

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1 Q. Did anyone in the room not reach that conclusion?

2 MR. WALKER: Foundation.

3 MR. MASTERSON: Join.

4 THE WITNESS: I don't know. I don't know.

5 BY MS. WANG:

6 Q. Who in the room ventured an opinion as to whether
7 or not the information about that conspiracy was reliable?

8 (An off-the-record conversation was held
9 between the witness and his counsel.)

10 BY MS. WANG:

11 Q. You've mentioned already every lawyer in the room.
12 Every lawyer in the room said that it was hogwash.

13 (An off-the-record conversation was held
14 between the witness and his counsel.)

15 MS. CLARK: Judge, we're renewing the
16 objection on all three bases.

17 THE COURT: I'm not sure I understand the
18 question, and I want to be able to be very clear that I
19 understand the question and give everybody a chance to
20 object. I don't understand the question.

21 MS. WANG: Sure. I'm not sure there was a
22 pending question. I apologize.

23 BY MS. WANG:

24 Q. My question was, you mentioned that the -- every
25 lawyer in the room expressed the view that the allegation of

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1 the conspiracy was hogwash; is that right?

2 A. That -- that was my description for my conclusion,
3 and I believe that was shared by the other lawyers in the
4 room.

5 Q. All right. So my question is, did any nonlawyer in
6 the room express a view as to whether the alleged
7 information -- the information about the alleged conspiracy
8 was accurate?

9 A. Yes or no?

10 Q. Yes, yes or no.

11 A. Yes.

12 Q. Who was that?

13 A. My client. Joe Arpaio.

14 Q. And what was the view that he expressed?

15 MS. CLARK: Objection, Judge. Attorney-client
16 privilege. Confidentiality as well.

17 THE COURT: Well, I'm going to overrule the
18 confidentiality objection. The privilege belongs to
19 Mr. Masterson. I don't hear an objection, so I'll direct him
20 to answer.

21 MR. MASTERSON: Can we just wait a second
22 here. Can --

23 (Stenographic record reviewed by
24 Mr. Masterson.)

25 MR. MASTERSON: I'm going -- I'm going to

1 raise the objection. I think the question calls for a
2 statement made by my clients, two lawyers, and I think the
3 assumption is that he is making this statement in order to
4 seek his attorney's counsel or advice regarding how to
5 proceed in a legal matter.

6 THE COURT: Do you know, I think that this
7 is -- I think this requires some careful consideration on my
8 part and a little bit more research than I've done. So this
9 is what I would propose. And it's going to dislocate,
10 perhaps, Mr. Casey and everybody else, but I think it's an
11 important enough question that I may not want to just fire
12 from the hip here.

13 It seems to me that there are several
14 different reasons why this conversation may not be privileged
15 at all. It depends on who was on the phone. And the second
16 thing is, I'm not sure that a statement made by
17 Sheriff Arpaio is privileged, but I think that Mr. Masterson
18 raises a good point. There are attorneys in a meeting. He
19 expresses an opinion.

20 I would like to look into that and in terms of
21 whether or not it's covered by the attorney-client privilege.
22 So what I intend to do, and what I'll invite the parties to
23 do, we're meeting Friday morning. If you have any
24 submissions or legal authority you want to put forward on
25 that question, I'll take a look at it and make the ruling.

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1 But for now, I think in order to protect the privilege, I'm
2 going to tentatively sustain the objection, direct the
3 witness -- or sustain the objection. And so the witness
4 won't answer it, but that he is going to be determinative on
5 who else -- I mean, if we can make a determination as to who
6 else was on the call. And I'm not sure who else was actually
7 present physically, if there's anybody there that might
8 destroy the privilege and/or I want to look into just
9 statements made by counsel -- or I'm sorry -- statements made
10 by a client and whether or not it's up to the Court to
11 determine whether or not in the context that is seeking legal
12 advice.

13 MS. WANG: All right, Your Honor.

14 May I ask the witness just -- I now realize I
15 told the witness who I understood to be at the meeting based
16 on prior deposition testimony by other witnesses. I'd like
17 to ask him what his recollection is as to who was present.

18 THE COURT: You may do so.

19 BY MS. WANG:

20 Q. Who else was present, Mr. Casey, that you recall?

21 A. I'm going to start off with the lawyers. Joe
22 Popolizio and John Masterson from Jones Skelton. Myself.
23 Tom Liddy. I don't remember if James Williams in my office
24 was present or not. As to the lawyers, I don't know if
25 Chris -- I -- Christine Stutz was there. I don't remember

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1 that.

2 Jerry Sheridan was there. Sheriff Arpaio was
3 there. I believe Jack Mac- -- Jack MacIntyre was there.
4 There were other people that were there. Perhaps -- but I
5 can't say with certainty, like Mr. Bailey, Steve Bailey. I
6 don't know if the PIO person, Lisa Allen, was there.

7 But, I mean, it seemed to me that it was a
8 very full conference room. And I -- the meeting I'm thinking
9 about occurred in a conference room in his old building.

10 Q. At the Wells Fargo building?

11 A. Yes. It was a long conference room at one end of a
12 hallway.

13 Q. Did you know everyone present? Were there people
14 unfamiliar to you there?

15 THE COURT: Well --

16 THE WITNESS: There may -- there may have
17 been.

18 BY MS. WANG:

19 Q. Can you give me an estimate of the number of people
20 that you believe were present?

21 A. As many as that are in this room.

22 Q. And can you tell me how many people do you think
23 are in the room currently?

24 A. Oh, 16.

25 MS. WANG: All right. Yes, Mr. Masterson's

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1 requesting we take a break as Mr. Popolizio's come to fill
2 in.

3 THE COURT: We can, and we're off the record
4 for the deposition.

5 (Discussion off the record.)

6 THE COURT: I would appreciate counsel doing
7 an evaluation of their own ethical obligations under the
8 Title 3s to make sure that they are not going to end up
9 either as witnesses or that they don't have duties relating
10 to candor to the tribunal on my previous testimony or other
11 matters that they need to investigate and consider, because
12 I -- I do not want to go down the road and be in the middle
13 of this hearing and have you tell me for some reason -- and
14 I'm not trying to suggest that I think there's any
15 determination here. I'm just raising this issue. I don't
16 want you to have to tell me for some reason that you believe
17 that your ethical obligations require you to withdraw.

18 And is that clear?

19 MR. STEIN: Your Honor, I'm sorry. It's not
20 clear to me. And I don't mean to be difficult, but -- I
21 understand what you're saying, but I'm not sure what you mean
22 by it. And so if -- if you could be more specific, I would
23 greatly appreciate it.

24 THE COURT: I'm not going to be more specific.

25 MR. STEIN: Okay.

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1 THE COURT: I think that -- well, I guess I
2 don't mind being more specific. The reason I say I'm not
3 going to be more specific is because I don't want to suggest
4 that I made any determination, but as I'm sitting here -- let
5 me see if I've got -- I don't have the rules.

6 MS. CLARK: Oh, I have them, Judge. Oh, you
7 have -- okay.

8 Got 'em.

9 THE COURT: Nah. I have the federal rules. I
10 don't have the state rules.

11 MS. CLARK: Oh, I got them right here, Judge.
12 They're open to the 3s.

13 THE COURT: We have candor toward the
14 tribunal. "A lawyer shall not knowingly offer evidence that
15 the lawyer knows to be false. If a lawyer" -- "the lawyer's
16 client or a witness called by the lawyer has offered material
17 evidence and the lawyer comes to know of its falsity, the
18 lawyer shall take reasonable remedial" -- "remedial measures
19 including, if necessary, disclosure to the tribunal."

20 There's a number of state ethical opinions
21 that'll give guidance on that.

22 "A lawyer may refuse to offer evidence, other
23 than the testimony of a defendant in a criminal matter, that
24 the lawyer reasonably believes is false."

25 That's one that seems to me -- I don't

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1 remember exactly what previous testimony was, but I do
2 remember previous testimony regarding aspects of whether or
3 not this Court was ever the subject of an investigation by
4 the MCSO or if the MCSO ever knew of an investigation of
5 which this Court was the subject. And I received answers, I
6 think, from Sheriff Arpaio, from Chief Deputy Sheridan, and
7 then there was a statement made under penalty of perjury by
8 Chief Arpaio.

9 It seems to me that counsel need to evaluate
10 that testimony in light of their own participation or what
11 they may have subsequently come to know to determine whether
12 or not they have a duty of candor toward the tribunal that
13 they have to fulfill. I'm not saying you do. It's up to you
14 to make that determination. But I'm just raising it now,
15 because I don't want you to be wrong.

16 MR. STEIN: May I respond to that, or would
17 you rather me not?

18 THE COURT: I'm just -- you can respond to it
19 if you wish. I'm just asking you to take it into account.

20 MR. STEIN: Right. I guess what my concern
21 is, we're sitting in a deposition, and that -- and, you know,
22 deputy -- and information gets presented through the course
23 of a deposition, but the Court hasn't sat through all the
24 depositions and --

25 THE COURT: No, that's true.

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1 MR. STEIN: -- this is the first witness, for
2 example, who has said that Chief Deputy Sheridan was at that
3 January 2nd meeting. No other witness has said so.

4 THE COURT: That's true.

5 MR. STEIN: And so --

6 THE COURT: That's why I raise that now,
7 because the hearing is going to start next week.

8 MR. STEIN: Right. So the basis for the
9 Court's concern about revising previous testimony is based in
10 part on the testimony that he was at that -- that -- I'm
11 concerned that the Court is forming impressions --

12 THE COURT: Well --

13 MR. STEIN: -- based upon hearing deposition.

14 THE COURT: I'm not forming impressions, and
15 I'm perfectly capable of listening and will listen to all the
16 witnesses. I'm raising things that I want you to consider
17 if, in fact, you feel like you have an obligation to
18 withdraw, because I want to know that now.

19 So I didn't know -- for example, I have no
20 basis to know or any basis to believe, Mr. Stein, that you
21 knew about this prior to my finding out about it. That's why
22 I've raised it.

23 There's also -- and it has to do with -- with
24 lawyers as witnesses. There's several others that are in the
25 3 point area. Maybe that's not applicable either, and I'm

1 not saying it is. I'm not saying I made a determination that
2 it is. But I think that you need to make such -- well, I
3 don't have any basis to believe that. That was my reply to
4 you. But we've just had the witness say that Mr. Popolizio
5 was in the meeting, that Mr. Masterson was in the meeting,
6 that Mr. -- did you say Casey? I think he said Mr. Casey --
7 or Mr. Liddy was in the meeting.

8 So we've got some -- I guess Liddy was wrong.
9 We've got some lawyers here in the present action, and
10 there's now been a suggestion that they may be a witness to
11 something. And they may not be a witness. No party may want
12 to call them. I'm not saying that's true. But because we've
13 got this hearing scheduled to start next week, I'm just
14 asking you, as lawyers, to consider that and to consider if
15 you feel like you have any obligation.

16 If you do, I want to know about it so that we
17 can take appropriate steps and see if we have to postpone
18 this thing. I don't want to postpone it, but I also don't
19 want to oblige any of you to violate what you think may be
20 your ethical obligations.

21 Since this is the first time I've heard this,
22 I thought I would raise it. That's all, Mr. Stein.

23 MR. STEIN: Fair enough. I appreciate the
24 clarification.

25 THE COURT: Mr. Woods?

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1 MR. WOODS: Thank you, Your Honor. On a
2 different topic, it's occurred to me today that Friday's
3 deposition of Christine Stutz and Monday's deposition of Tom
4 Liddy are going to be missing you. And because they're going
5 to be missing you, when they believe that they have an
6 obligation to keep information confidential under 1.6, there
7 won't be a judge there to tell them that they have to abandon
8 that obligation. And until there's a judge here to tell them
9 that, I think they're under the obligation to keep
10 information confidential under 1.6.

11 And I hate to think that we have to have
12 supervised depositions, but I note in the Liddy deposition it
13 will come up often, and the Stutz probably less often. But
14 in the Liddy deposition, it's going to come up as many times
15 as it did today with Mr. Casey. And I -- I just needed to
16 put it out there so we can decide how we're going to deal
17 with it.

18 THE COURT: Well, when is -- Friday we have a
19 status conference. I'm available for part of Friday, but I
20 would appreciate it if I wouldn't have to -- have to have it
21 here or if you could call me on the phone. I'm aware of the
22 issues.

23 Monday I'm completely unavailable. Depending
24 upon how I rule on the pending motion that relates to whether
25 or not privileges have been waived regarding advice or

1 directions given concerning not disclosing the 1459 IDs,
2 there may be more depositions we have to notice up for
3 Tuesday. So maybe we can take it up in that light. But I am
4 going to be ruling on this.

5 And I -- and I haven't changed my direction,
6 Mr. Stein, to you or to anybody else that if you want to
7 provide me authority that would be of assistance to me in
8 deciding this question, then tell me. But I will make a
9 ruling Friday morning. And we may have to have Mr. Casey
10 back to answer these questions related to this meeting. As
11 it is now, I've directed him not to answer, although I'm
12 still going to allow you to follow up when you come.

13 I may determine that based on who was at the
14 meeting there is no attorney-client privilege anyway.
15 Mr. Masterson may withdraw his -- his feeling about that. I
16 don't know. But we're just going to go step by step,
17 assuming I'm still going to hold that the meeting -- that I
18 still want to consider the question. I'm inviting you or
19 anybody else to put forward whatever information you can for
20 me by Friday morning, and I'll take a look at it.

21 I'm really not available much of tomorrow. If
22 you can get it to me by tomorrow night, I will read it
23 overnight and try and have some -- some ruling on it by the
24 morning.

25 Any other question, Mr. Stein?

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1 MR. STEIN: No, thank you.

2 MS. WANG: Your Honor, we -- we all have a lot
3 on our plates between now and Friday morning. May we submit
4 a list of authorities?

5 THE COURT: Yes, you may. Just -- and I would
6 prefer that.

7 MS. WANG: Thank you.

8 THE COURT: I will read the list of
9 authorities. And, you know, develop whatever you want now
10 that you think might throw light on the privilege without me
11 requiring Mr. Casey to ask -- answer that last question.

12 MS. WANG: All right. Thank you, Your Honor.

13 BY MS. WANG:

14 Q. Mr. Casey --

15 MR. MASTERSON: Wait. We were going to take a
16 little short break.

17 MS. WANG: Oh, I'm sorry. Okay.

18 (Recess from 4:31 p.m. to 4:47 p.m.)

19 BY MS. WANG:

20 Q. All right. Mr. Casey, let me continue asking you
21 some questions. We'll see if we can get anywhere further on
22 this and tee it up for the judge's ruling.

23 The documents that we just looked at,
24 Exhibit F of my declaration, were those -- were copies of
25 those handed around at this meeting?

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1 A. I don't remember that, if there was one copy
2 circulated or if there were multiple copies. I don't
3 remember.

4 Q. Did you leave that meeting with a copy?

5 A. I did not.

6 Q. You've already testified that Sheriff Arpaio did
7 speak during that meeting; is that correct?

8 A. Yes.

9 Q. Without telling me what he said, was it your
10 understanding that he was seeking the legal advice of any of
11 the attorneys in the room when he spoke on the subject of the
12 confidential informant's allegation about a conspiracy?

13 MR. POPOLIZIO: Foundation.

14 THE WITNESS: I don't know. And I believe he
15 spoke towards the end, but I don't know.

16 BY MS. WANG:

17 Q. Did he speak after the attorneys in the room had
18 spoken?

19 A. I don't remember that.

20 Q. Did anyone other than Sheriff Arpaio and the
21 attorneys in the room speak on the subject of the allegation
22 concerning this conspiracy?

23 MR. POPOLIZIO: Form.

24 MS. CLARK: Continuing objection on
25 confidentiality under ER 1.6.

1 THE COURT: Confidentiality obligation is
2 overridden.

3 THE WITNESS: I don't -- I'm sorry. I don't
4 remember.

5 BY MS. WANG:

6 Q. You mentioned that there was one person on the
7 telephone; is that right?

8 A. No. I had the -- my memory of the meeting -- and I
9 thought it was earlier than January 14th, but my memory is
10 there were two people. And my impression was they were
11 calling from out of state, and they were --

12 Q. Okay.

13 A. -- employees of MCSO.

14 Q. Were they on a speakerphone in the room?

15 A. They were.

16 Q. And your impression was they were both employees of
17 MCSO?

18 A. Yes.

19 Q. Was your impression that those two people were
20 together in the same place or calling in from different
21 locations?

22 A. My impression was they were in the same place.

23 Q. Was that in Seattle?

24 A. That's my impression, yeah.

25 Q. All right.

1 A. I believe that's where they were calling from.

2 Q. Okay. Do you recall whether Sergeant Travis Anglin
3 was present?

4 A. You know, the name -- I -- I'm familiar with the
5 name, but I don't -- I'm -- I'm sure I've met that person,
6 but I'm embarrassed to say if that person walked in, I
7 probably -- I might recognize the person but not match the
8 name.

9 Q. All right. You mentioned that you believe
10 Captain Bailey was present; is that right?

11 A. I'm going off of my best memory, even though it was
12 what, a little over a year ago? He -- I believe he was.

13 Q. Do you recall whether Captain Bailey spoke on the
14 subject of an alleged conspiracy involving the Court and the
15 Department of Justice?

16 A. I don't remember that.

17 Q. Okay. You mentioned that your recollection is that
18 Lisa Allen may have been there; is that right?

19 A. She may have been there. Yes.

20 Q. You testified earlier today that Lisa Allen is the
21 head of MCSO's Public Information Office; is that right?

22 A. That's my understanding, yes.

23 Q. Is her job essentially to -- to do publicity for
24 the sheriff's office?

25 A. Yes.

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1 Q. Do you recall whether she spoke on the subject of
2 an alleged conspiracy involving the Court, the Department of
3 Justice, and the Covington & Burling law firm?

4 A. I do not remember that. I -- I have a general
5 memory that most of the MCSO people were quiet except for the
6 people talking on the phone.

7 Q. Did you do anything in relation to the Seattle
8 investigation?

9 Do you understand what I mean when I say --

10 A. No.

11 Q. Okay. Let me -- let me withdraw that.

12 Did you do anything relating to the alleged
13 conspiracy involving the Court, the Department of Justice,
14 and Covington & Burling after this meeting?

15 MS. CLARK: Objection. Attorney-client
16 privilege. Confidential. Work product.

17 BY MS. WANG:

18 Q. Tell me to the extent you can answer that without
19 revealing any attorney-client communications.

20 MS. CLARK: I still have the objection based
21 on confidentiality and work product.

22 THE COURT: Those are overruled.

23 THE WITNESS: Yes.

24 BY MS. WANG:

25 Q. To the extent you can tell me without revealing

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1 attorney-client communications, what did you do to follow up?

2 MS. CLARK: Just a continuing objection,
3 Judge.

4 THE COURT: On what basis?

5 MS. CLARK: All three bases.

6 THE COURT: They're all overruled.

7 THE WITNESS: I remember lawyers talking
8 amongst ourselves. I can remember talking to, you know -- I
9 thought Jack MacIntyre was there. I thought Jerry Sheridan
10 was there, but my memory is not perfect. This thing was --
11 this thing was so ridiculous on its face in everything that I
12 heard, and I remember sharing with whoever I talked to that
13 the timeline, I could hire my son, that that information was
14 publicly available -- I believe was publicly available
15 information, and it had some sex appeal because supposedly
16 someone was monitoring Jones, Skelton & Hochuli's -- I think
17 Joe's telephone line.

18 But it -- it had nothing to it. It was -- it
19 was out -- it was whacked is the best way I could describe it
20 to you to use kids' terms. It was -- but that's what I
21 remember sharing.

22 BY MS. WANG:

23 Q. At the time of this meeting, were you -- you were
24 co-counsel with Tom Liddy; correct?

25 A. I was.

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1 Q. Were you co-counsel with Mr. Masterson and
2 Mr. Popolizio?

3 A. No, but they had the DOJ case that had very
4 overlapping.

5 Q. Did you have a joint defense agreement?

6 A. In principle, we certainly did.

7 Q. It was the same client?

8 A. Same client; same interests.

9 Q. Well, did they -- in that case, at that time, the
10 defendants in this case were the sheriff -- well, withdrawn.

11 Did you receive any information during the
12 meeting -- let's call it the January 2nd meeting, even if
13 it -- you -- you don't recall the exact date. But just for
14 convenience, will you agree that we're talking about this
15 meeting?

16 A. I know I went to some meeting in which this
17 material was discussed.

18 Q. Okay. I just -- want -- I just want to shorthand
19 it as the January 2nd meeting.

20 During the January 2nd meeting, did you see
21 any information suggesting that the confidential informant
22 had accessed telephone records of -- telephone records or any
23 electronic communications of the Jones Hochuli -- Jones
24 Skelton Hochuli firm?

25 MR. POPOLIZIO: Form.

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1 THE WITNESS: I didn't see anything. I heard
2 that there was representations that there was a duplication
3 of some sort of NSA/CIA data dump that this person had access
4 to, and that's where supposedly he got this information.
5 That's my memory.

6 BY MS. WANG:

7 Q. Did you see any information or hear any information
8 during this meeting suggesting that telephone records or
9 other electronic communications of anyone at the law firm of
10 Covington & Burling had been accessed?

11 And feel free to refer to the document if that
12 helps you.

13 A. I do remember there was something about the effect
14 of phone calls between -- you know, it wasn't Stan Young. It
15 wasn't any of the lawyers that I had met, but, like, people
16 out of your DC office supposedly talking with Eric Holder or
17 Lanny Breuer. There was something about a clerk that either
18 worked for or used to work for Judge Snow supposedly
19 communicating with somebody. And I don't remember the
20 details, but that's -- that's what I remember.

21 Q. Did you see any information that electronic
22 communications of any of those people you just described had
23 been somehow accessed, although they were private?

24 A. I didn't see anything.

25 Q. Did you hear that?

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1 A. It -- I was left with the impression that somehow,
2 somewhere there was some data that connected phone calls
3 between people that supposedly did this. I'm looking at your
4 Exhibit 2524 at Exhibit F, this -- this chart, this flowchart
5 that emanates from the DOJ. That somehow there was -- there
6 was some telephonic connection, but we didn't see that. But
7 we -- that's what was represented as supposedly -- supposedly
8 potentially available.

9 Q. Did you hear any represent -- representation that
10 the confidential informant had access to the content of
11 electronic communications between any of the people you just
12 mentioned: Judge Snow's law clerk; somebody at Covington &
13 Burling's DC office?

14 A. I don't --

15 MR. POPOLIZIO: Form.

16 THE WITNESS: I don't remember that, and I
17 don't believe that got down to that nitty-gritty. It was
18 mostly that -- just to confirm that a call was placed from
19 this number and went to this number and lasted whatever
20 period of time.

21 BY MS. WANG:

22 Q. And just to be clear, your understanding, based on
23 what you heard at that meeting, was that the information had
24 been obtained somehow from the CIA or the NSA?

25 A. That was my -- that's my memory, which raised

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1 questions about how did this CI obtain this information from
2 what I understood was a former employer?

3 Q. Did you raise any concerns about that during this
4 meeting?

5 A. I don't know if I did at the meeting.

6 Q. Did there come a time when you did?

7 MS. CLARK: Continuing objection, Judge.
8 Attorney-client privilege. Confidentiality. Work product.

9 THE COURT: Sustained. At least for now.

10 BY MS. WANG:

11 Q. I just want to circle back and make sure that I got
12 a full answer to my question whether -- to the extent you can
13 answer this question without revealing attorney-client
14 communications, what did you do after this meeting that
15 related to the alleged conspiracy?

16 MS. CLARK: Objection on work product.
17 Confidentiality. And I believe it would be for Mr. Popolizio
18 to raise privilege.

19 MR. POPOLIZIO: Can I hear the question again,
20 Ms. Court Reporter.

21 (The requested record was read.)

22 MR. POPOLIZIO: Well, the question
23 specifically is whether he can answer, so it would be yes or
24 no that -- without revealing any privileged communications.

25 So I'm going to wait, Your Honor.

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1 MS. CLARK: I'm objecting --

2 THE COURT: Okay.

3 MS. CLARK: -- on work product.

4 THE COURT: I'm going to overrule the
5 objection. It doesn't deal with his impressions. It deals
6 with what he did. So I'm going to overrule the objection and
7 allow him to answer the specific question asked.

8 THE WITNESS: What was the question again?

9 (The requested record was read.)

10 THE WITNESS: That's more than a yes or no.

11 MR. POPOLIZIO: Yeah.

12 MS. WANG: It is.

13 THE COURT: It is.

14 THE WITNESS: And am I --

15 MR. POPOLIZIO: Therefore, on that basis, Your
16 Honor, I'll assert the -- I will assert -- I will object and
17 assert the attorney-client privilege work product and to the
18 extent that it asks for any mental impressions or legal
19 analysis.

20 THE COURT: I will overrule the objection to
21 the extent it is based on the work product privilege, 1.6,
22 and anything Mr. Casey did that did not involve
23 communications with his client. To the extent it would
24 involve client communications, you should not answer the
25 question, Mr. Casey.

1 THE WITNESS: I'm unable then to answer the
2 question, because my communications were to my client.

3 BY MS. WANG:

4 Q. Did you do anything other than communicate with
5 your client after the meeting in relation to this alleged
6 conspiracy?

7 MR. POPOLIZIO: Form.

8 THE WITNESS: Yeah. I remember the lawyers
9 talking, and I remember talking to my co-counsel. And it was
10 a dead issue in my book. It was worthless. It was
11 vindictive, and we would have no part of it.

12 BY MS. WANG:

13 Q. When you say "we," who do you mean?

14 A. I said for the defense team, but I was talking
15 about myself and my law firm. And my memory is, is that I
16 was joined in that by my co-counsel. There were going to be
17 no use of this in any circumstances under any way. Whatever
18 it is, we want nothing to do with it.

19 Q. How did you find out about the meeting?

20 A. I -- I don't remember. We probably -- I don't
21 remember. It was called. It was summoned. We showed up and
22 all gathered into a big room.

23 Q. Did you -- were there -- did you attend any other
24 meetings at which this alleged conspiracy was discussed?

25 A. I only remember one. And nothing -- that one

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1 meeting was the first, and that was the last.

2 MS. WANG: All right. I think that is all I
3 have for you. Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: Who wants to question the witness?
6 Mr. Walker?

7 MR. WALKER: I have -- I have a few questions.
8 Thank you, Your Honor.

9 MS. WANG: Let me move.

10 THE COURT: You know, before you start,
11 Mr. Walker, I just guess -- I think I need to give a little
12 more guidance on the Friday morning thing.

13 Although I will be interested if you have
14 authority that suggests that statements made by clients
15 during a meeting are possibly not subject to the privilege, I
16 think I'm inclined to give Sheriff Arpaio the benefit of the
17 doubt since he has so many attorneys here. The real issue
18 then is going to be given -- is going to be whether given the
19 identity and the number of persons that were present at the
20 meeting, whether the attorney-client privilege applies.

21 Everybody understand that? Okay.

22 MR. YOUNG: Your Honor, if I can interpose a
23 question or an issue. There may be differences in the
24 memories of various witnesses about who was at the meeting --

25 THE COURT: Uh-huh.

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1 MR. YOUNG: -- and those differences may,
2 depending on how we -- those differences may point to
3 different results on the issue --

4 THE COURT: I see what you're saying.

5 MR. YOUNG: -- whether the meeting is
6 privileged.

7 THE COURT: I see what you're saying. Maybe
8 we'll have to -- maybe I can't make the decision Friday
9 morning. Maybe we'll just have to apply all of the testimony
10 that we have, and I'll consider it in its totality prior to
11 the beginning of the hearing. And if we need to do that,
12 we're obviously going to have to do some scheduling on
13 Friday. I will try to make it -- if you will let me know
14 which witnesses that you may be calling that were in that
15 meeting. And I don't know whether waiver's an issue. I
16 mean --

17 MR. YOUNG: Well, it's not just witnesses, but
18 actually counsel for the sheriff have taken different
19 positions in different depositions with respect to that
20 meeting, or at least parts of that meeting, which is why we
21 have testimony about the content of the meeting from some
22 witnesses but not from Mr. Casey so far.

23 THE COURT: We already have testimony about
24 this meeting from other witnesses?

25 MS. WANG: Yes, Your Honor.

1 THE COURT: Who has testified?

2 MS. WANG: As far as I recall, Chief Deputy
3 Sheridan had some testimony on it. He did not recall the
4 meeting. Did not recall being at any such meeting.

5 And Sergeant Anglin also testified.

6 And Mr. Young is right. I think -- I was not
7 present at the Anglin deposition, but I do believe there have
8 been different positions taken by defense counsel as to the
9 privilege issues.

10 MR. YOUNG: Well, and then specifically
11 whether Mr. Montgomery was part of the conversation or not.
12 And I think for those witnesses who have -- or recall that
13 Mr. Montgomery was part of the conversation, there's been no
14 assertion of privilege to bar testimony about what was said
15 while he was in the conversation.

16 THE COURT: Well, then does that amount to
17 waiver? I guess I'd invite that question.

18 MS. WANG: I think there may be waiver issues
19 as well, yes, but we would need to take a look at the
20 deposition transcripts.

21 THE COURT: Well, it sounds to me like maybe I
22 better look at the totality of the circumstances before I
23 make any rulings.

24 MR. YOUNG: Yeah. The issue with Mr. Casey
25 may be because Mr. Montgomery was on the phone and -- and

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1 Mr. Casey had never met or --

2 THE COURT: Well, I mean, I don't -- you
3 know --

4 MR. YOUNG: Yeah.

5 THE COURT: -- I understand, but we're not
6 going to characterize that now.

7 Let me see what the sworn testimony is, and
8 then you can try and characterize the sworn testimony. But
9 we'll realize really what the whole totality of the issue is,
10 or if I can get actual descriptions of what the various
11 witnesses have said about it.

12 MR. POPOLIZIO: Your Honor, in terms of -- of
13 defining who the various witnesses who have testified on this
14 issue in deposition, I heard Chief Sheridan and Travis
15 Anglin. Were there any others?

16 THE COURT: Those are the two I heard.

17 MS. WANG: I think Captain Bailey also may
18 have testified on this. I took that deposition and confess
19 that I do not have a clear memory, but I -- I do believe I
20 asked him about the meeting.

21 THE COURT: All right.

22 MR. POPOLIZIO: Thank you.

23 THE COURT: Any -- any further issues on that?
24 All right. Mr. Walker.

25 MR. WALKER: Thank you, Your Honor.

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E X A M I N A T I O N

BY MR. WALKER:

Q. Mr. Casey, you were lead counsel for the defense in this case in the fall of 2009; correct?

MS. CLARK: Again, I'm going to just go back and refer to my prefatory statement, and the final portion of which stated that if counsel for any of the defendants questioned Mr. Casey, that I'm -- he -- I've instructed him to presume that that counsel has conferred with their respective client and that they are waiving the attorney-client privilege that might be invoked otherwise for the information that responds to that question which Mr. Casey's being asked.

I hope that was clear as mud. I'm sorry. It's getting late, and I'm getting tired. But my prefatory statement was he's going to presume there's been a waiver of the privilege if he's questioned by defense counsel.

THE WITNESS: Yes.

MR. WALKER: In response to Ms. Clark's comments, that -- I will represent to you that in this proceeding, I represent Maricopa County. I do not represent the sheriff.

BY MR. WALKER:

Q. Do you understand that?

A. I hear what you're saying.