

1 CIVIL DISTRICT COURT
2 FOR THE PARISH OF ORLEANS
3 STATE OF LOUISIANA
4

5 DOCKET NO. 2017-04660 DIVISION "L" (6)

6 *****

7
8 CHARLES MALDONADO
9 VERSUS
10 LEON A. CANNIZZARO, JR.
11

12
13 *****

14 A TRANSCRIPT OF THE DILATORY EXCEPTION OF
15 UNATHORIZED USE OF AN UNAUTHORIZED USE
16 OF ORDINARY PROCEEDINGS, A MOTION TO
17 COMPEL ANSWERS TO INTERROGGATORIES,
18 PRODUCTION OF DOCUMENTS, EXCEPTION
19 OF NO CAUSE OF ACTION
20 AND MOTION FOR PROTECTIVE ORDER
21 HELD IN THE ABOVE-CAPTIONED MATTER
22 ON MONDAY, OCTOBER 23, 2017,

23
24 BEFORE THE HONORABLE KERN REESE,
25
26 JUDGE PRESIDING
27

28 *****

29
30 REPORTED BY:

31 R.J. BURAS, CSR, RPR
32 Division "G", Civil District Court
Orleans Parish, Louisiana

COPY

1 APPEARANCES:

2 Representing the Plaintiff,
3 Charles Maldonado:

4 Scott L. Sternberg, Esq.
5 Michael Finkelstein, Esq.

6 Representing the Defendant,
7 Leon A. Cannizzaro, Jr.:

8 David M. Fink, Esq.
9 John E. McAuliffe, Esq.
10 Scott Vincent, Esq.

I. N. D. E. X

WITNESSES

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2 EXHIBITS

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5 **PLAINTIFF EXHIBITS:**

6
7 P-1 Article regarding "DA Subpoenas" written by
8 Charles Maldonado published in *The Lens* on
9 April 26, 2017

10
11 P-2 Motion to Quash filed by defendants in *State of*
12 *Louisiana v. Cardell Hayes*, Criminal District
13 Court, Parish of Orleans, Case No. 528-975,
14 Section "H"

15
16 P-3 Request made by Charles Maldonado to the District
17 Attorney's Office requesting copies of all "DA
18 Subpoenas" delivered to witnesses from January
19 2016 through April 27, 2017

20
21 P-4 Correspondence from Donna Andrieu of the District
22 Attorney's Office dated May 2, 2017 denying the
23 April 27, 2017 request for copies of "DA
24 Subpoenas" made by Charles Maldonado

25
26 P-5 Request to the District Attorney's Office dated
27 May 22, 2017, requesting copies of "DA
28 Subpoenas", internal communication, records of
29 returns, etc.

30
31 P-6 Response to Charles Maldonado's May 22, 2017
32 request forwarded to Charles Maldonado via

1 e-mail from his attorney

2
3 P-7 E-mail from Charles Maldonado to Donna Andrieu of
4 the District Attorney's Office dated July 7,
5 2017, requesting a response to his May 22, 2017
6 request

7
8 P-8 Request made by Charles Maldonado to the District
9 Attorney's Office on May 30th, 2017 requesting
10 copies of "DA Subpoenas" in ten specific cases
11

12 P-9 Request made by Charles Maldonado to the District
13 Attorney's Office on May 30, 2017 requesting
14 "DA Subpoenas" maintained or saved and the
15 personal case notes or computer files of the
16 following four Assistant District
17

18
19 Attorneys: Jason Napoli, Laura Rodrigue, Inga
20 Petrovich and Sarah Duncan
21

22
23
24 P-10 Public records denial dated June 7, 2017
25

26 P-11 Public Records Request dated June 7th, 2017 -
27 E-mail by Mr. Charles Maldonado
28

29 P-12 Public Records Request e-mail dated August 24th,
30 2017 by Mr. Charles Maldonado
31
32

I N D E X

EXHIBITS

DEFENSE EXHIBITS:

D-1 E-mails between Maldonado and Andrieu

D-2 Certified Letter by Mr. Andrieu

D-3 Certified Letter by Ms. Andrieu

1 PROCEEDING

2 (MORNING SESSION)

3 MONDAY, OCTOBER 23, 2017

4 THE COURT:

5 Good morning.

6 COUNSELORS AT THE BAR:

7 Good morning, Your Honor.

8 THE COURT:

9 All right. Case No. 2017-04660, *Charles*
10 *Maldonado Versus Leon A. Cannizzaro, Jr.*, in
11 his official capacity as Orleans Parish
12 District Attorney. Counsel, make your
13 appearances for the record.

14 MR. STERNBERG:

15 Good morning, Your Honor. Scott
16 Sternberg and Michael Finkelstein for Charles
17 Maldonado.

18 THE COURT:

19 Okay.

20 MR. FINK:

21 Good morning, Your Honor. David Fink
22 and Ed McAuliffe on behalf of the defendant,
23 Mr. Leon Cannizzaro, Jr., as the District
24 Attorney for Orleans Parish.

25 THE COURT:

26 All right. Mr. Fink has requested an
27 opportunity to make a brief statement to the
28 Court. Mr. Sternberg, since you're the
29 plaintiff, you get first dibs. Do you have
30 anything you wish to put on the record
31 initially?

32 MR. STERNBERG:

1 Your Honor, we'll reserve for closing
2 argument.

3 THE COURT:

4 Okay, that's fine.

5 All right, Mr. Fink?

6 MR. STERNBERG:

7 Oh, I'm sorry, Your Honor. In our brief
8 the agreed stipulation that we provided to
9 your --

10 THE COURT:

11 Yes, yes, we can certainly do that.

12 Let's --

13 MR. STERNBERG:

14 I --

15 THE COURT:

16 -- do that first.

17 MR. STERNBERG:

18 -- apologize.

19 THE COURT:

20 Sure.

21 MR. STERNBERG:

22 Rather than an opening statement, Your
23 Honor, I'll just report to the Court that the
24 plaintiff and defendant have entered into a
25 joint stipulation of facts, a copy of which
26 has been provided to the Court, signed by
27 both parties, which stipulates that the
28 request at issue in this litigation were made
29 on April 2nd, on May 22nd, on May 30th and on
30 June 7th, and spells out the dispute between
31 the parties relating to the responses to
32 those requests.

1 THE COURT:

2 Uh-huh (affirmative response).

3 MR. STERNBERG:

4 And, Your Honor, that's what we're here
5 today to decide.

6 THE COURT:

7 Okay. All right, Mr. Fink?

8 MR. FINK:

9 Thank you, Your Honor.

10 Very briefly, this case boils down to
11 one very simple question. The question is,
12 does a record request which asks for a manual
13 review of approximately 18 months' worth of
14 files overly burdensome? Petitioner
15 obviously doesn't believe that that's overly
16 burdensome. However, it's also interesting
17 to note in the Amended Petition itself, Your
18 Honor, that when the petitioner was afforded
19 an opportunity to review only a handful of
20 files he said that he did not wish to
21 undertake this endeavor which was cited in
22 the Amended Petition, Your Honor. However,
23 apparent from this litigation, that is
24 exactly what the petitioner is asking another
25 entity to do for him.

26 Your Honor, we have spoken about the
27 declaratory relief on here and it's plain and
28 simple. The declaratory relief is compiled
29 in Paragraph 32, which is only to say that
30 these so-called "DA Subpoenas," as referred
31 to by the petitioner are public record and
32 not subject to criminal litigation except as

1 contained within Revised Statute 44:4(C) .
2 Petitioner further avers that this Honorable
3 Court should declare his rights under the
4 Louisiana Constitution and Louisiana Public
5 Record Law have been violated by the
6 defendant's failure to comply with the
7 numerous responses.

8 Your Honor, in our opinion, this matter
9 has already been exactly ruled on point in
10 the in Re: matter under investigation
11 15-S0-3V-972, which the Louisiana Supreme
12 Court stated that everything in the file can
13 be said to pertain to criminal litigation.
14 Thus, if it can be said that criminal
15 litigation is pending and reasonably
16 anticipated in this case then the entire file
17 is covered by the exception and is not
18 required to be disclosed under Public Record
19 Law at this time. A plain reading from
20 Paragraph 32 does not indicate that the
21 validity of the exceptions being challenged
22 only that they're - they're requesting
23 declaratory relief, that those quote,
24 unquote, "DA Subpoenas" as referred to by the
25 petition does not fall under that exception.

26 Next, it's very important to distinguish
27 between the injunctive relief that's being
28 requested here. This is a mandatory
29 injunction with the command of doing of some
30 action. A mandatory injunction has the same
31 effect as a permanent injunction and,
32 therefore, are seeking that mandatory

1 injunction has a higher standard than just
2 putting on a prima facie case showing that
3 the parties will prove the elements of a
4 preliminary injunction. That was cited in
5 Concerned Citizens for Proper Planning, LLC,
6 906 So.2d 660. Instead, the party must show
7 by a preponderance of the evidence that he is
8 entitled to a preliminary injunction.

9 Finally, Your Honor, regarding the
10 written mandamus and the novel citing overly
11 burdensome, this case is in line, very
12 similar if not identical, to *Beckett v.*
13 *Serpas*, which this Honorable Court issued a
14 ruling on. In that case, Your Honor, the
15 plaintiff made a Records Request for all
16 documents generated for the past ten years as
17 a result of investigations by a public
18 integrity bureau into allegations that a city
19 police officer violates the department's
20 others' request. "This Honorable Court found
21 that, that request was overly broad as the
22 files were maintained by an officer named and
23 not a file number, rather by alleged
24 offenses."

25 Your Honor, we will put on evidence
26 today to show that our files are similarly
27 labeled by case number and not by the
28 individual contents therein.

29 Finally, Your Honor, we're going to
30 prove that at no time was the defendant
31 acting arbitrarily or capriciously in his
32 response to this request. In all of our

1 response letters, we've cited not only
2 statutory law as well as juris prudential and
3 case law citing the basis for our denials on
4 it.

5 Thank you, Your Honor.

6 THE COURT:

7 Okay. Mr. Sternberg?

8 MR. STERNBERG:

9 Your Honor, would you like me to put on
10 my case?

11 THE COURT:

12 Yes, that would be nice.

13 MR. STERNBERG:

14 Thank you, Your Honor.

15 Your Honor, the plaintiff calls Charles
16 Maldonado to the stand.

17 THE COURT:

18 Yes, but are there any other motions
19 before we proceed?

20 MR. STERNBERG:

21 None that I'm aware of.

22 MR. FINK:

23 Did Your Honor wish to put onto the
24 record regarding the summary versus ordinary
25 proceedings ruling which we additionally --

26 THE COURT:

27 Yes. We spoke about that in chambers
28 very briefly. Let me state that under the
29 Louisiana Public Records Act, Louisiana
30 Revised Section 44:1, et seq., that -- and it
31 is also in conjunction with this Court's
32 experience in these matters. It has always

1 been the perception of this Court that this
2 matter is indeed a summary proceeding and as
3 such, even though the release, particularly
4 as cited in 44:35(D), that an injunction can
5 be sought. It's not via an ordinary
6 proceeding but rather a similar proceeding
7 and that will be the ruling of the Court.

8 Okay.

9 MR. FINK:

10 Thank you, Your Honor.

11 THE COURT:

12 Sure.

13 Call your first witness.

14 MR. STERNBERG:

15 Charles Maldonado.

16 THE COURT:

17 Please come to the witness stand.

18 (THE WITNESS APPROACHES THE WITNESS STAND)

19 THE COURT:

20 All right. Come around, all the way
21 around.

22 (THE WITNESS COMPLIES)

23 THE COURT REPORTER:

24 Raise your right hand for me, please.

25 (THE WITNESS COMPLIES)

26 THE COURT REPORTER:

27 Do you promise that the testimony that
28 you're about to give will be the truth, the
29 whole truth, and nothing but the truth so
30 help you God?

31 MR. CHARLES MALDONADO:

32 I do.

1 THE COURT REPORTER:

2 Please listen to all of the questions of
3 the attorneys and the Court and answer all
4 questions loudly and clearly.

5 (THE WITNESS IS SEATED)

6 THE COURT:

7 All right, Mr. Sternberg.

8 * * * * *

9 **CHARLES MALDONADO**

10 *was called as a witness and after having*
11 *first been duly sworn, was examined and*
12 *testified on his oath as follows:*

13 **DIRECT EXAMINATION**

14 EXAMINATION BY MR. STERNBERG:

15 Q. Good morning, Mr. Maldonado.

16 A. Good morning.

17 Q. Would you please identify yourself for the
18 Court?

19 A. My name is Charles Maldonado. I am a staff
20 writer at The Lens.

21 Q. How long have you worked at The Lens?

22 A. About 4-1/2 years.

23 Q. And what do you focus on?

24 A. City and parish government, as well as criminal
25 justice.

26 Q. Have you been covering the courts for most of
27 your career?

28 A. I have been covering the courts on and off for
29 a good part of my career, yes.

30 Q. How many times would you say you reviewed
31 Criminal Court files?

32 A. It would be hard to count. Many, many times

1 though.

2 Q. How many hours of criminal court documents have
3 you -- would you say you've reviewed in the last year?

4 A. How many hours have I spent?

5 Q. Yes.

6 A. I would say hundreds of hours.

7 Q. Did you review criminal court files in your
8 attempts to find these so-called ""DA Subpoenas""?

9 A. I did.

10 Q. How many criminal court files did you review in
11 search of the ""DA Subpoenas""?

12 A. Several dozen.

13 Q. When did you first publish an article about the
14 ""DA Subpoenas""?

15 A. April 26, 2017.

16 MR. STERNBERG:

17 Your Honor, may I approach?

18 THE COURT:

19 Sure.

20 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
21 HANDS ITEM TO THE WITNESS)

22 BY MR. STERNBERG:

23 Q. Mr. Maldonado, is this the article that's been
24 previously marked as Exhibit 1, Plaintiff's Exhibit 1?

25 MR. MCAULIFFE:

26 Your Honor, I would object to the
27 introduction.

28 THE COURT:

29 Wait, wait, wait. Let me -- I want to
30 understand. Are you going to be handling
31 Mr. Maldonado?

32 MR. MCAULIFFE:

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I will, Your Honor, yes.

THE COURT:

Okay. I don't do tag-teams in this division.

MR. MCAULIFFE:

Yes, sir.

THE COURT:

All right, what's your objection?

MR. MCAULIFFE:

My objection is to the relevance of what they've labeled as Exhibit A is a story by the -- by Mr. Maldonado. I don't see how it has particularly any relevance to searching for public records in this case.

THE COURT:

Well, let me see. Mr. Sternberg just started to ask Mr. Maldonado about it. If he can properly authenticate it, then I'll make a determination as to whether it's relevant or not. I'll note your objection and I'll rule on it as soon as he gets through making his question.

MR. MCAULIFFE:

Thank you, Your Honor.

THE COURT:

All right, counsel.

(THE WITNESS REVIEWS THE ITEM)

EXAMINATION BY MR. STERNBERG:

Q. Mr. Maldonado, did you write this story?

A. I did.

Q. About how long did it take you to write this story?

1 A. Several weeks.

2 Q. It was published on The Lens' website?

3 A. That's correct.

4 Q. What kind of reaction did you get after
5 publishing this article?

6 A. It was a very large reaction. We got big, big
7 readership on this, and I heard from a lot of people
8 in the community and from across the country.

9 Q. You're a community member in New Orleans
10 yourself, aren't you?

11 A. I am.

12 Q. And did the subject of this article concern you
13 as a community member?

14 A. I think so, yes.

15 Q. We've already stipulated to the fact that you
16 made your request at issue in this litigation, but I
17 wanted to bring this article up because -- was this
18 the first time that anyone had -- that you know of --
19 had you ever used the words "DA Subpoena"?

20 A. No.

21 Q. Okay. When -- when is the first time you heard
22 those words used?

23 A. I heard those words used as I was writing the
24 article when I was interviewing the DA's Office.

25 Q. Okay. And you had searched through criminal
26 court files to try and find the ""DA Subpoenas"" and
27 you found a few of them, right?

28 A. I did.

29 Q. Where did you find them?

30 A. They were contained as exhibits in two motions
31 to quash.

32 Q. The motions to quash were found in the public

1 records?

2 A. They were.

3 MR. STERNBERG:

4 Your Honor, at this time I'd like to
5 offer, file and introduce Exhibit 1, the
6 article that Mr. Maldonado wrote about the
7 ""DA Subpoenas"".

8 MR. MCAULIFFE:

9 Again, I'd object to the relevance. In
10 particular, I'd also note that the testimony
11 to establish the search to authenticate the
12 article be restricted as well. It doesn't
13 have any relevance as to the DA's production
14 of documents in his records. It has no
15 relevance at all.

16 THE COURT:

17 All right. Well, I think based on the
18 fact that first, it's probably authenticated
19 as Mr. Maldonado indicated that he's the
20 author of the story; secondly, his testimony
21 has been that he has employed hundreds of
22 hours were spent reviewing court records and
23 that he encountered some ""DA Subpoenas""
24 attached to motions to quash, I think was his
25 testimony. I think it may have some
26 relevance in that regard as to what his
27 process was in the attempt to secure the
28 information that he is now seeking through
29 these proceedings. So with that, and to keep
30 the record complete, I will allow on that
31 basis. I note your objection for the record.

32 MR. MCAULIFFE:

1 Thank you, Your Honor.

2 THE COURT:

3 It's overruled.

4 MR. STERNBERG:

5 Your Honor, may I approach?

6 THE COURT:

7 By all means.

8 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
9 HANDS ITEM TO THE WITNESS)

10 EXAMINATION BY MR. STERNBERG:

11 Q. Mr. Maldonado, what is this document?

12 A. This is the Motion to Quash an Article 66
13 subpoena in *State V. Cardell Hayes*.

14 Q. And this document kind of started your process
15 of looking for the ""DA Subpoenas"" from the actual
16 District Attorney, did it not?

17 A. That's correct.

18 Q. If you had not found this document in the
19 public records would you have even known that the ""DA
20 Subpoenas"" were at issue?

21 A. I -- I would not have had it confirmed that it
22 was an issue, no.

23 Q. And you're - you're not a lawyer and you don't
24 know what the document says, but you retrieved that
25 document from the public records at Criminal District
26 Court?

27 A. I did.

28 Q. At Tulane and Broad?

29 A. That's correct.

30 Q. And they know you pretty well there, right?

31 A. I think so at this point.

32 Q. So, what did you do after you wrote your story,

1 what did you do next?

2 A. Well, after I wrote the story, the day after we
3 published I submitted a public records request to the
4 DA's Office for about a year-and-a-half's worth of
5 these so-called "'DA Subpoenas"'.

6 Q. Is there a reason that you picked a year-
7 and-a-half time period?

8 A. I thought it would be a -- well, first of all,
9 the "'DA Subpoenas"' that I had seen up to that point
10 were from relatively recent cases and I thought it
11 would be a manageable time period and I would be able
12 to get my records back relatively quickly.

13 MR. STERNBERG:

14 Your Honor, at this time I'd like to
15 offer, file and introduce the pleading that
16 Mr. Maldonado is holding as Plaintiff's
17 Exhibit 2.

18 THE COURT:

19 Mr. McAuliffe?

20 MR. MCAULIFFE:

21 No objection, Your Honor.

22 THE COURT:

23 Okay, it will be admitted.

24 MR. STERNBERG:

25 May I approach, Your Honor?

26 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
27 HANDS AN ITEM TO THE WITNESS)

28 EXAMINATION BY MR. STERNBERG:

29 Q. Now, Mr. Maldonado, we've already stipulated to
30 this exhibit but I want to make sure we get it on the
31 record. Is that the original request that you made on
32 April 27, 2017 to the District Attorney's Office?

1 (THE WITNESS REVIEWS THE ITEM)

2 BY THE WITNESS:

3 A. Yes, it is.

4 EXAMINATION BY MR. STERNBERG:

5 Q. And what does it seek?

6 A. It asks for any and all ""DA Subpoenas""
7 delivered to witnesses beginning January 2016 through
8 the date of the request, which is 4/27.

9 Q. And what kind of response did you get to this
10 request?

11 A. It was denied.

12 Q. Do you recall why it was denied?

13 A. The DA contended that it would be too difficult
14 to locate a year-and-a-half's worth of ""DA
15 Subpoenas"".

16 MR. STERNBERG:

17 Your Honor, I offer, file and introduce
18 Plaintiff's Exhibit 3.

19 THE COURT:

20 Any objection?

21 MR. MCAULIFFE:

22 No, Your Honor.

23 THE COURT:

24 The exhibit will be admitted.

25 MR. STERNBERG:

26 May I approach, Your Honor?

27 THE COURT:

28 Yes.

29 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
30 HANDS ITEM TO THE WITNESS)

31 EXAMINATION BY MR. STERNBERG:

32 Q. Plaintiff's Exhibit 4 previously marked is a

1 May 2, 2017 denial letter from one, Donna Andrieu, is
2 that correct?

3 A. That is.

4 Q. All right. So, this is the letter in which the
5 request was denied?

6 A. Yes.

7 Q. Okay.

8 THE COURT:

9 That's Plaintiff's Exhibit 4?

10 MR. STERNBERG:

11 Yes, Your Honor.

12 THE COURT:

13 And what's the date of that, counselor?

14 MR. STERNBERG:

15 The denial was on May 2nd, Your Honor.

16 THE COURT:

17 Okay.

18 EXAMINATION BY MR. STERNBERG:

19 Q. And so, what was the next thing that you did,
20 Charles?

21 A. Well, shortly -- shortly after that we filed
22 suit against the DA's office.

23 Q. And you filed suit on May 15th, isn't that
24 correct?

25 A. Yes, I believe that's correct.

26 Q. Thank you. Did you authorize your attorney to
27 meet with the District Attorney after you filed a
28 lawsuit?

29 A. I did.

30 Q. And after that meeting what did you do?

31 A. I submitted a series of targeted requests.

32 Q. Let's start with this targeted request.

1 MR. STERNBERG:

2 Your Honor, may I approach?

3 THE COURT:

4 Sure.

5 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
6 HANDS ITEM TO THE WITNESS)

7 EXAMINATION BY MR. STERNBERG:

8 Q. Plaintiff's Exhibit 5 is the Monday, May 22,
9 2017 request to the District Attorney. What does this
10 request seek?

11 A. It is records related to or pointing to the
12 existence or use of "DA Subpoenas", including
13 internal communication, records of returns, things of
14 that nature.

15 Q. And what kind of response did you get to this
16 request?

17 A. I did not initially get a response to this
18 request.

19 Q. When did you get a response?

20 A. About a week or two ago through, through you,
21 through my attorney.

22 Q. Okay. So, I forwarded you an e-mail with that
23 response?

24 A. You did.

25 Q. And did you find it odd that you hadn't
26 received a response until last week?

27 A. I did.

28 Q. Has the -- the District Attorney has been
29 pretty -- how would you describe the District
30 Attorney's attempts to respond to your requests by
31 mail?

32 A. We've gotten a lot of mail from the District

1 Attorney's Office.

2 Q. So, you think that maybe -- do you know why --
3 do you have any idea why you never got a response?

4 A. No. I do not.

5 MR. MCAULIFFE:

6 Objection.

7 THE COURT:

8 Yes. That's beyond the capability. He
9 doesn't know. I'll sustain the objection.
10 Ask another question.

11 MR. STERNBERG:

12 Well, Your Honor, I offer, file and
13 introduce the Plaintiff's Exhibit 5.

14 And, Your Honor, if I may approach with
15 Plaintiff's Exhibit 6?

16 THE COURT:

17 Any objection as to Exhibit 5?

18 MR. MCAULIFFE:

19 As to Exhibit 5, no objection.

20 THE COURT:

21 Very well, it's admitted.

22 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
23 HANDS ITEM TO THE WITNESS)

24 EXAMINATION BY MR. STERNBERG:

25 Q. Plaintiff's Exhibit 6. Mr. Maldonado, what is
26 Plaintiff's Exhibit 6?

27 (THE WITNESS REVIEWS THE ITEM)

28 BY THE WITNESS:

29 A. This is the response to my May 22nd request.

30 EXAMINATION BY MR. STERNBERG:

31 Q. And you never received this document, did you?

32 A. I did not.

1 Q. Well, at least until it was sent to you by your
2 attorney?

3 A. That's correct.

4 Q. Is that document signed?

5 A. It is not signed.

6 Q. Did you ask for a response to that May 22nd
7 request?

8 A. I did.

9 Q. Did you do that via e-mail?

10 A. I did.

11 MR. STERNBERG:

12 Your Honor, at this time I'll offer,
13 file and introduce Plaintiff's Exhibit 6, the
14 alleged response to the May 22nd request.

15 THE COURT:

16 Mr. McAuliffe?

17 MR. MCAULIFFE:

18 What's that exhibit?

19 THE COURT:

20 Six (6) --

21 MR. STERNBERG:

22 Plaintiff's Exhibit 6.

23 THE COURT:

24 -- Exhibit 6.

25 MR. STERNBERG:

26 It's one of them on the exhibit list.

27 MR. MCAULIFFE:

28 No. No objection.

29 THE COURT:

30 It's admitted.

31 Well, wait a minute, it's covered in the
32 stipulation.

1 MR. MCAULIFFE:

2 Yes.

3 THE COURT:

4 He mentioned it's covered in the
5 stipulation, then he's giving the exhibit
6 number.

7 MR. STERNBERG:

8 Well, Your Honor, we reserve challenges
9 as to relevance.

10 THE COURT:

11 I see, okay.

12 MR. STERNBERG:

13 So, we intend to give the --

14 THE COURT:

15 Not a problem.

16 MR. STERNBERG:

17 -- defendant the opportunity.

18 THE COURT:

19 I just wanted to understand where we
20 were.

21 MR. STERNBERG:

22 Yes, Your Honor.

23 Your Honor, may I approach?

24 THE COURT:

25 By all means.

26 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
27 HANDS ITEM TO THE WITNESS)

28 EXAMINATION BY MR. STERNBERG:

29 Q. Plaintiff's Exhibit 7 is an e-mail from you on
30 July 14, 2017, is it not?

31 (THE WITNESS REVIEWS THE ITEM)

32 BY THE WITNESS:

1 A. That's right, it is.

2 EXAMINATION BY MR. STERNBERG:

3 Q. And in this e-mail what are you asking for?

4 A. I -- I tell Ms. Andrieu that we don't seem to
5 have gotten a response that she told me was mailed on
6 May 25th, and could she please e-mail me a copy of the
7 response?

8 Q. And you were asking for a response to what?

9 A. My May 22nd request.

10 Q. What are the documents to that May 22nd request
11 are you asking for?

12 A. Any and all records related to the use of
13 so-called "'DA Subpoenas'", things like log entries,
14 records showing service, any files in a computerized
15 or paper filing system, e-mails, meeting notes.

16 Q. And why did you look for those documents as
17 opposed to the "'DA Subpoenas'" that you had
18 originally requested?

19 A. Well, at this point we had been denied our
20 request for the "'DA Subpoenas'" and I wanted not only
21 the "'DA Subpoenas'" but documents describing how and
22 why they were used.

23 Q. Why was that important to you?

24 A. Because I wanted to understand how the "'DA
25 Subpoenas'" were used because I think it would be
26 useful for my reporting.

27 MR. STERNBERG:

28 Your Honor, at this time I would offer,
29 file and introduce Plaintiff's Exhibit 7,
30 Mr. Maldonado's e-mail to Ms. Andrieu
31 requesting a response.

32 MR. MCAULIFFE:

1 No objection.

2 THE COURT:

3 It's admitted.

4 MR. STERNBERG:

5 Your Honor, may I approach with
6 Plaintiff's Exhibit 8?

7 THE COURT:

8 Yes.

9 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
10 HANDS ITEM TO THE WITNESS)

11 EXAMINATION BY MR. STERNBERG:

12 Q. Charles, what is this document?

13 (THE WITNESS REVIEWS THE ITEM)

14 BY THE WITNESS:

15 A. This is a request for "DA Subpoenas" that
16 were contained -- that were used in ten cases.

17 EXAMINATION BY MR. STERNBERG:

18 Q. Why did you pick ten cases?

19 A. I picked these ten cases because they were
20 closed cases and I was trying to accommodate the DA's
21 objections to my initial request.

22 Q. While this request was being made your lawsuit
23 is pending, is it not?

24 A. That's correct.

25 Q. But why was the lawsuit kind of on the side
26 burner while you made this request?

27 A. I, I'm actually not sure. I can't answer that
28 question.

29 Q. Did you receive an estimate of the amount of
30 time reasonably necessary to respond to this request?

31 A. I did not.

32 Q. Have you received all the documents that you

1 requested in this request on May 30th?

2 A. I have not received any of the documents that I
3 requested. I have been able to view some but not all
4 of the case files.

5 Q. Can you elaborate on that?

6 A. Well, the request is for ""DA Subpoenas"". I
7 was allowed to view internal case files kept at the
8 DA's office for I believe six of these cases thus far.

9 Q. And two of them -- I'm sorry. How many of them
10 were in the custody of the Attorney General?

11 A. Uh, as far as I know, of the -- well, I -- I
12 received response -- I've received responses on seven
13 of them. And six of them were in the custody of --
14 one case was in the custody of the Attorney General
15 that I'm aware of.

16 Q. So, to clarify, you viewed six files; one is in
17 the custody of the Attorney General and you have not
18 been able to review three files?

19 A. That's correct.

20 Q. And did you find the ""DA Subpoenas"" in the
21 files you reviewed?

22 A. I did not.

23 Q. How long did that take you?

24 A. Uh, each of those files, depending on the size
25 of the file, it was anywhere from a half hour to maybe
26 an hour-and-a-half.

27 MR. STERNBERG:

28 Your Honor, at this time I would like to
29 offer, file and introduce Plaintiff's Exhibit
30 8.

31 THE COURT:

32 Mr. McAuliffe?

1 MR. MCAULIFFE:

2 No objection, Your Honor.

3 THE COURT:

4 It's admitted.

5 MR. STERNBERG:

6 Thank you, Your Honor.

7 May I approach with Plaintiff's Exhibit
8 9?

9 THE COURT:

10 Yes.

11 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
12 HANDS ITEM TO THE WITNESS)

13 EXAMINATION BY MR. STERNBERG:

14 Q. Mr. Maldonado, what is Plaintiff's Exhibit 9?

15 (THE WITNESS REVIEWS THE ITEM)

16 BY THE WITNESS:

17 A. This is a response to another public records
18 request that I submitted on May 30th.

19 EXAMINATION BY MR. STERNBERG:

20 Q. And what is that May 30th request ask for?

21 A. That was for any and all "DA Subpoenas"
22 maintained or saved and the personal case notes or
23 computer files of four Assistant District Attorneys.

24 Q. And their names, sir?

25 A. Their names are Jason Napoli, Laura Rodrigue,
26 Inga Petrovich and Sarah Duncan.

27 Q. Why did you use those four names?

28 A. These were names of the ADAs that we hadn't
29 either known or suspected may have used "DA Subpoena."

30 Q. And you were again attempting a target request,
31 were you not?

32 A. I was.

1 Q. What kind of response did you to get to that --
2 to that May 30, 2017 request?

3 A. Uh, I would say it's a partial response. I got
4 two unsigned documents marked "instanter" and one
5 template "DA Subpoena" blank.

6 Q. A blank "DA Subpoena"?

7 A. Yes.

8 Q. But not "DA Subpoenas" that had been issued?

9 A. I don't know if they had been issued. There's
10 no indication as to whether they had actually been
11 issued.

12 MR. STERNBERG:

13 Your Honor, at this time I'd offer, file
14 and introduce Plaintiff's 10 -- Exhibit 9,
15 excuse me, Your Honor.

16 MR. MCAULIFFE:

17 No objection.

18 THE COURT:

19 Admitted.

20 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND AND
21 HANDS ITEM TO THE WITNESS)

22 EXAMINATION BY MR. STERNBERG:

23 Q. Plaintiff's Exhibit 10 is the response to a
24 June 2, 2017 Public Records Request that we've already
25 stipulated to. I just want to get you to authenticate
26 that document.

27 (THE WITNESS REVIEWS THE ITEM)

28 BY THE WITNESS:

29 A. Uh-huh (affirmative response).

30 EXAMINATION BY MR. STERNBERG:

31 Q. What is that document, sir?

32 A. This is a request similar to the last request

1 we went over, except I was requesting these documents
2 for all Assistant District Attorneys.

3 Q. Why did you go for all Assistant District
4 Attorneys?

5 A. Well, because I wanted to see as many of these
6 "DA Subpoenas" as the DA has in its possession.

7 Q. What other steps did you take other than these
8 public records requests to find "DA Subpoenas?"

9 A. Well, because we were getting denials or
10 impartial responses on our DA -- on our requests, we
11 -- our only option was to try to take this outside,
12 take this to the community directly. So, we -- other
13 Lens staff members, particularly Steve Meyers and I,
14 made appearances on television, radio, community
15 meetings and we also had a -- we also had several
16 thousand postcards printed of which -- of which we
17 mailed a number of those to communities, or
18 neighborhoods throughout New Orleans.

19 Q. Do you have any idea how much that cost?

20 A. I believe the final tally was about \$2,700.00.

21 Q. And you took those actions because you -- for
22 what reason?

23 A. We took those actions because we weren't -- we
24 weren't getting the responses we needed from the DA's
25 Office.

26 Q. Do you regularly find subpoenas issued to
27 witnesses in internal files?

28 A. You find -- you typically find returns on those
29 subpoenas, so, yes.

30 Q. Are you familiar with the return process for
31 returning subpoenas?

32 A. Yes.

1 Q. Is it your understanding that subpoenas have to
2 have returns in court records?

3 MR. MCAULIFFE:

4 Again, Your Honor, I'm going to object.
5 This is calling for a legal conclusion.

6 THE COURT:

7 It's beyond the capability of the
8 witness.

9 MR. STERNBERG:

10 I'll withdraw the question, Your Honor.

11 THE COURT:

12 Very well.

13 EXAMINATION BY MR. STERNBERG:

14 Q. Why do these subpoenas present such an
15 interesting topic for you?

16 MR. MCAULIFFE:

17 Again, objection, as to relevance at
18 this point, he -- he wants the public
19 records. We've gone a lot into why, but at
20 this time, I think it's going a bit too
21 broad. The question is, whether the DA can
22 produce these records not, again, why
23 Mr. Maldonado --

24 MR. STERNBERG:

25 Your Honor --

26 MR. MCAULIFFE:

27 -- this is irrelevant to the community.

28 THE COURT:

29 That's -- that would -- that's his
30 personal belief as to why he's seeking it.
31 I'll allow it.

32 MR. STERNBERG:

1 Thank you, Your Honor.

2 THE COURT:

3 Answer the question. Overruled.

4 THE WITNESS:

5 I'm sorry, for clarification, are you
6 asking why it's important to the community;
7 or are you asking why --

8 THE COURT:

9 No. Why is it important to you?

10 THE WITNESS:

11 -- why is it important to me?

12 EXAMINATION BY MR. STERNBERG:

13 Q. For your investigative journalism career, for
14 your -- for your job.

15 A. Well, why is it important to me? I mean, I --
16 I think that these are -- I think that this is an
17 important story that goes directly to the public's
18 ability to trust its criminal justice system.

19 Q. Where do you normally find records of subpoenas
20 that have been issued?

21 THE COURT:

22 He's already testified to Criminal Court
23 records. I heard that. He said he would
24 find the returns and that's how he knows they
25 were in the record.

26 MR. STERNBERG:

27 Thank you, Your Honor.

28 THE COURT:

29 Ask another question.

30 EXAMINATION BY MR. STERNBERG:

31 Q. Mr. Maldonado, do "DA Subpoenas" show up in
32 court notified logs?

1 A. Not that I'm --

2 MR. MCAULIFFE:

3 I -- I'm going -- I'd object, Your
4 Honor. I mean, he's not an administrator of
5 court notified or electronic court
6 notification systems maintained by the City
7 of New Orleans and used by the Courts and the
8 Sheriff's Office. I don't think he has any
9 technical, you know, expertise in that system
10 and wouldn't have any firsthand knowledge of
11 its use.

12 THE COURT:

13 Well, he can testify as to what he's
14 familiar with. I'll allow that. Overruled.

15 Why don't you rephrase your question,
16 counselor?

17 MR. STERNBERG:

18 I will, Your Honor.

19 EXAMINATION BY MR. STERNBERG:

20 Q. Charles, you regularly view court notify logs
21 for your job, do you not?

22 A. I do.

23 Q. Have you ever seen a "DA Subpoena" show up in a
24 court notify log that you've personally reviewed?

25 A. Not that I'm aware of.

26 Q. And have you ever seen a "DA Subpoena" in the
27 criminal records of the Criminal Court?

28 A. Yes, but only when they're connected to a
29 motion to quash -- only when a lawyer has objected.

30 MR. STERNBERG:

31 One moment, Your Honor.

32 (COUNSEL STERNBERG CONFERS WITH CO-COUNSEL)

1 MR. STERNBERG:

2 Your Honor, I don't believe I offered,
3 filed and introduced Exhibit 10, Plaintiff's
4 Exhibit 10. It was the June 7, 2017 public
5 records denial.

6 THE COURT:

7 No, you haven't.

8 MR. STERNBERG:

9 May I please offer, file and introduce
10 it, Your Honor?

11 MR. MCAULIFFE:

12 No objection.

13 THE COURT:

14 It's admitted.

15 MR. STERNBERG:

16 Your Honor, I believe that's all the
17 questions I have for this witness.

18 THE COURT:

19 Okay, Mr. McAuliffe, cross?

20 MR. MCAULIFFE:

21 Thank you, Your Honor.

22 Your Honor, before I begin questioning
23 Mr. Maldonado, he has been on our witness
24 list as well. I think most of the questions
25 I planned on asking him were relevant to what
26 Mr. Sternberg has already gone through, but I
27 can go maybe outside the scope just to speed
28 things along, if I could ask --

29 THE COURT:

30 Counsel, this is cross-examination.

31 MR. MCAULIFFE:

32 -- thank you, Your Honor.

1 THE COURT:

2 Let's go.

3 CROSS EXAMINATION

4 EXAMINATION BY MR. McCAULIFFE:

5 Q. Mr. Maldonado, so we've been through that you
6 filed your initial public records request in April of
7 2017, --

8 A. Yes.

9 Q. -- is that correct? And you received a
10 response to that request?

11 A. I did.

12 Q. What about that response? I think you
13 testified - before I asked that the general gist of
14 the response is that it would be too burdensome for
15 the District Attorney to locate the documents which
16 you were requesting, is that correct?

17 A. That's my understanding.

18 Q. And the response to that stated that the DA
19 would have to -- the District Attorney's Office would
20 have to search thousands of files in order to comply
21 with your request, is that correct?

22 A. That's what it said.

23 Q. What particularly about that response did you
24 find lacking? I mean, what about that response?

25 A. I don't think that difficulty in finding
26 documents is something that gets you out of having to
27 respond to a public records request.

28 Q. And the District Attorney's Office, your
29 counsel mentioned a meeting that occurred between your
30 counsel and counsel for the District Attorney's
31 Office. In fact, I believe everyone involved in that
32 meeting is here in the courtroom. The District

1 Attorney's Office did make effort to see if you could
2 narrow the request, did it not?

3 A. I believe so. I did not attend that meeting.

4 Q. On May 22nd you made another request, correct?

5 A. Yes. That's correct.

6 Q. And according to your Amended Petition,
7 particularly Paragraph 13 states that pursuant to the
8 good faith effort to accommodate the defendant,
9 petitioner made a further records request on May 22nd,
10 correct?

11 A. Correct.

12 Q. So, this request was made in furtherance to
13 facilitate that -- to accommodate the District
14 Attorney?

15 A. Yes.

16 Q. I refer you to the substance of that request
17 which I believe is Defense Exhibit 5.

18 MR. STERNBERG:

19 Plaintiff's Exhibit.

20 MR. MCAULIFFE:

21 Plaintiff's Exhibit, I apologize.

22 Plaintiff's Exhibit 5.

23 MR. STERNBERG:

24 That's the May 22nd response, which is
25 Plaintiff's Exhibit 5.

26 MR. MCAULIFFE:

27 Yes.

28 EXAMINATION BY MR. MCAULIFFE:

29 Q. Do you have a copy of that in front of you?

30 A. The request itself?

31 Q. Yes.

32 (THE WITNESS SEARCHES FOR THE ITEM)

1 BY THE WITNESS:

2 A. Yes, I do.

3 EXAMINATION BY MR. MCAULIFFE:

4 Q. All right. Can you please read the substance
5 of that request, of your request?

6 A. I will. "Any and all records related to the
7 use of so-called "DA Subpoenas", including but not
8 limited to log entries, records showing time of
9 service, records of returns, files in computerized or
10 paper filing system, meeting notes with witnesses who
11 received them, any other case notes reflecting their
12 use, written communications with witnesses who
13 received them, written communications with attorneys
14 for those witnesses, written communications with
15 others regarding, quote, "DA Subpoenas," and other
16 records maintained by ADAs, clerks, secretaries or by
17 the DA's Office regarding their use. The timeframe is
18 January 1st through the present."

19 THE COURT:

20 Two thousand sixteen (2016).

21 THE WITNESS:

22 January 1, 2016, yes.

23 EXAMINATION BY MR. MCAULIFFE:

24 Q. And that followed the April 27th request?

25 A. That's correct.

26 Q. Which I believe was Plaintiff's Exhibit 3, if
27 I'm not mistaken. Would you please read the substance
28 of Exhibit 3? Do you have a copy?

29 A. I should. Just give me a moment.

30 Q. Take your time.

31 (THE WITNESS SEARCHES FOR THE ITEM)

32 THE WITNESS:

1 A. Here you go. "Any and all "DA Subpoenas"
2 delivered to witnesses beginning January 1, 2016
3 through the date of this request (4/27/17)."

4 EXAMINATION BY MR. McAULIFFE:

5 Q. Would you agree that the May 22nd request is
6 much longer than the April 27th request?

7 A. I agree that it has more words in it, yes.

8 Q. "It has more words in it." You don't think it
9 asks for more documents than the initial request of
10 April 27th?

11 A. I don't know what documents exist.

12 Q. You don't think that it requires a greater deal
13 of searching to locate the multiplicity of things
14 requested in the May 22nd request as opposed to the
15 April 27th request?

16 A. I don't know, I don't - I -- I don't have
17 personal knowledge of the DA's record keeping system.

18 Q. So, you wouldn't be able to say the burden on
19 the District Attorney in fulfilling any of these
20 requests?

21 A. No.

22 Q. But would you agree that if someone tells you
23 something is too hard and you add more to it that it
24 would be generally be harder for them?

25 MR. STERNBERG:

26 Object to the form of the question, Your
27 Honor.

28 THE COURT:

29 I'm going to sustain that. Again, he's
30 already testified that he doesn't know
31 exactly what the DA clerical systems are and
32 what's maintained and what's not. Ask

1 something else.

2 MR. STERNBERG:

3 Thank you, Judge.

4 THE COURT:

5 Uh-huh (affirmative response).

6 EXAMINATION BY MR. MCAULIFFE:

7 Q. I'm going to move on to the May 30th request,
8 which I believe is Plaintiff's Exhibit 8 for ten files
9 that you requested. You stated that you had only
10 viewed six of these files, is that correct?

11 A. Yes. I believe that's correct.

12 Q. Are you positive that it's only six that you
13 viewed?

14 A. I am fairly sure, yes. I'm -- I believe so.

15 Q. So, you have not viewed -- which ones -- can
16 you please tell us which of these items you have not
17 viewed?

18 A. I have not viewed Dwayne Diaz, Jerome Gibson --
19 Jerome Gibson, Darryl Griffin and Philip Gibson was
20 denied.

21 Q. Philip Gibson was denied. Was Philip Gibson
22 the one that was with the Attorney General's Office?

23 A. According to the response I received, yes.

24 Q. And at no time did you ever come into the
25 District Attorney's Office and view the outstanding
26 files?

27 A. Pardon?

28 Q. Those items that you -- were they ever made
29 available to you, the items that you say that have not
30 been -- that you have not viewed, were they ever made
31 available to you?

32 A. There was one case in which I was told that

1 three files were available for me, Nathaniel Payton,
2 Darryl Griffin and Jennifer Gaubert. I went into the
3 DA's Office to view those files but they only had
4 Gaubert and Payton available for me.

5 MR. MCAULIFFE:

6 If I could back up just briefly. My
7 apologies for backing up.

8 EXAMINATION BY MR. MCAULIFFE:

9 Q. The May -- going back to the May 22nd request,
10 you stated that you had never received a response, --

11 A. That's correct.

12 Q. -- is that correct? Did anyone else in your
13 place of employment receive that response?

14 A. If they did, they didn't tell me.

15 Q. Would you say that it was impossible that
16 someone else had received it?

17 A. In a sense, but anything is possible.

18 Q. Okay. The date listed on the Plaintiff's
19 Exhibit 6, which I believe is labeled as a response to
20 that request, the date on that response is May 25th,
21 is it not?

22 A. That is correct.

23 Q. Moving on to Plaintiff's Exhibit 10, the
24 response to your June 7th request. That was in
25 response to a request for any and all "DA Subpoenas"
26 maintained or statements and personal case notes or
27 computer files involved of the District Attorney, is
28 that correct?

29 A. That's correct.

30 Q. First of all, I would like to ask this
31 question. What do you -- when you wrote this request
32 what did you mean by "case notes?"

1 A. Whatever the -- however they maintain notes
2 from cases that they have worked on, files, from cases
3 that they've worked on.

4 Q. So, if notes were just contained in the
5 criminal case file just like any other item, you would
6 want that as well included in this request?

7 A. I suppose.

8 Q. So, when you're potentially asking for in this
9 request, apart from any case that you mentioned,
10 computer files, you requested an extensive search of
11 every computer at the District Attorney's Office?

12 MR. STERNBERG:

13 Objection, Your Honor. How the DA
14 complies with this is how they comply with
15 it. He doesn't know how they'd handle it.

16 THE COURT:

17 Well, I'll allow him to ask what he
18 specifically was requesting. If he can
19 clarify that I think that's certainly
20 relevant. I'll allow that. Overruled.

21 THE WITNESS:

22 I -- I'm sorry. Please repeat the
23 question.

24 EXAMINATION BY MR. MCAULIFFE:

25 Q. I'll rephrase it slightly.

26 A. Sure.

27 Q. If these items that you're requesting would be
28 on the computers of Assistant District Attorneys
29 throughout the office and it entailed a search of
30 every computer and files, you think that, that would
31 comply with your request, that you would think that
32 the District Attorney would have to comply with duly

1 in order to comply with this request?

2 A. If it's required that they search every
3 computer individually, I suppose.

4 Q. Let me ask you, how much time does it take to
5 draft up a public records request?

6 A. A few minutes.

7 Q. A few minutes. How much time do you think it
8 would take to search these thousands of case files?

9 A. I have no idea.

10 Q. No idea. So, if your request entails searching
11 through thousands of case files you think the District
12 Attorney would then have to undertake that task?

13 A. I think that they are -- that they are
14 responsible for complying with public records
15 requests, yes.

16 Q. Yes. And then if tomorrow you wanted say,
17 every response to a motion to quash that the District
18 Attorney had ever drafted and it would require again a
19 search through all the case files, do you think the
20 District Attorney is going to have to undertake
21 another search through all of the case files in order
22 to find that?

23 MR. STERNBERG:

24 Objection, Your Honor. It calls for
25 speculation.

26 THE COURT:

27 Sustained. A terrible statement,
28 counsel. Ask something else.

29 MR. MCAULIFFE:

30 Yes, sir.

31 EXAMINATION BY MR. MCAULIFFE:

32 Q. Specifically, going to your Amended Petition,

1 Paragraph 15 states: In response, Petitioner received
2 the entire - this is in response to I believe the May
3 30th request just for reference the ten cases. In
4 response the Petitioner received the entire case file
5 in *State V. Lambert* and no "DA Subpoenas". Further
6 files are said to be in progress; however, Petitioner
7 does not wish to review the entire files and
8 specifically requests that only the "DA Subpoenas"
9 issued therein. So, you state you don't want to
10 review the entire file on those ten cases?

11 A. I have no problem reviewing the files. I asked
12 for "DA Subpoenas" though. I don't know the "DA
13 Subpoenas" are kept in the files that I'm reviewing.

14 Q. If "DA Subpoenas" are, if they are -- if there
15 are records of them, if they are kept in the file you
16 would have no problem reviewing the files?

17 A. Of course not.

18 Q. Okay. And so if in response to this the DA
19 simply gave you access to files to review before DA's
20 -- what you call a "DA subpoena," you would have no
21 problem going through whichever files the District
22 Attorney handed you to review?

23 A. If I'm confident that that's where they are
24 kept, yes, I would fine with that. However, the
25 response was not what we were asking for.

26 Q. But, if those documents would generally be kept
27 in those files would that not then provide you with --
28 just because you asked for certain files, that does
29 not mean that any subpoenas were issued in those
30 cases, correct? I mean, you had no idea what cases
31 these were issued in, is that right?

32 THE COURT:

1 It's a compound question, counsel.

2 Refine the question.

3 MR. MCAULIFFE:

4 Yes, sir.

5 EXAMINATION BY MR. MCAULIFFE:

6 Q. When you requested these ten files you did not
7 know if any DA - quote, "DA Subpoenas" were located in
8 those records?

9 A. No.

10 Q. Okay. But if the District Attorney produced
11 those files would that not allow you to see whether
12 there were any of these documents in the files?

13 A. Assuming that, that is where the District --
14 the records of the District Attorney subpoenas would
15 be kept, I suppose, yes.

16 MR. MCAULIFFE:

17 I'd like to have a brief indulgence,
18 Your Honor.

19 THE COURT:

20 Sure.

21 (COUNSEL MCAULIFFE CONSULTS WITH CO-COUNSEL)

22 EXAMINATION BY MR. MCAULIFFE:

23 Q. And, Mr. Maldonado, you've mentioned before
24 that you believe this is a matter of general interest
25 to the public, is that correct?

26 A. I think so.

27 Q. And you went through great efforts to try
28 anybody that had -- that's either been given or sent
29 one of these documents?

30 A. Yes, we went through some great effort, I
31 suppose, sure.

32 Q. So, you would be -- you're aware, you know, of

1 other persons that are interested in this matter as
2 well?

3 MR. STERNBERG:

4 Objection, Your Honor, that -- I don't
5 know that that's a question that he can
6 answer. It's vague.

7 MR. MCAULIFFE:

8 Well, I can get more specific.

9 THE COURT:

10 Yes. Why don't you rephrase your
11 question, counsel?

12 EXAMINATION BY MR. MCAULIFFE:

13 Q. Specifically, you mentioned in your Petition
14 under Paragraph 10 when you filed this, the original
15 Petition which was filed on May 15th, that there are
16 two other lawsuits that were filed in this Court on
17 May 12th by the McArthur Justice Foundation, which I
18 believe was actually filed by Emily Washington, of the
19 McArthur Justice Foundation, is that correct?

20 A. Yes.

21 Q. And another filed May 15th, which was yours,
22 correct?

23 A. Yes.

24 Q. By the American Civil Liberties Union, which I
25 believe was actually filed by Marjorie Esmond on
26 behalf of the Civil Liberties Union, is that correct?

27 A. Yes.

28 Q. Had you discussed this matter with either Emily
29 Washington, or Marjorie Esmond, or anyone working for
30 their respective organizations before filing your
31 lawsuit?

32 A. I --

1 MR. STERNBERG:

2 Objection, Your Honor. That might be a
3 privileged conversation. We have a common
4 defense for commenting, an action privilege
5 with the McArthur Justice Foundation or the
6 AC League.

7 MR. MCAULIFFE:

8 These are completely separate suits,
9 Your Honor, while they might be seeking
10 similar information, the fact that there are
11 three suits pending all similarly asking for
12 the same thing, I think it's relevant in
13 terms of what perhaps the plaintiff is
14 actually seeking. At this point we basically
15 have the District Attorney has to defend
16 against three different lawsuits all seeking
17 the same thing. And if they all are talking
18 with one another in cooperation, basically
19 they're going to drain the District
20 Attorney's resources.

21 THE COURT:

22 Well --

23 MR. STERNBERG:

24 And that would be a privileged
25 communication.

26 THE COURT:

27 -- well, let me -- let me say this, if
28 Mr. Maldonado can answer the question if you
29 had conversations with the parties. If any
30 of those conversations took place in the
31 presence of counsel, I think they may well be
32 privileged. So, with that avocation, you can

1 answer the question.

2 MR. STERNBERG:

3 Thank you.

4 THE WITNESS:

5 I was not involved with them in the
6 planning of these lawsuits. I did not speak
7 to Ms. Washington before she filed her
8 lawsuit. I spoke to Ms. Esmond briefly a few
9 days before she filed her lawsuit in the
10 scope of my reporting and she mentioned that
11 they -- that the -- that her organization was
12 filing suit.

13 EXAMINATION BY MR. MCAULIFFE:

14 Q. Is it a coincidence that your suit came on the
15 same date as Ms. Esmond's suit, that they're
16 subsequent -- they're sequential case numbers?

17 MR. STERNBERG:

18 Objection, Your Honor. It calls for
19 speculation --

20 THE COURT:

21 Uh --

22 MR. STERNBERG:

23 -- also relevance.

24 THE COURT:

25 -- the way -- the way you kind of
26 countered a coincidence, anything could be a
27 coincidence. I think I agree. I'll sustain
28 the objection.

29 EXAMINATION BY MR. MCAULIFFE:

30 Q. Was there any planning involved in having them
31 filed on the same day?

32 MR. STERNBERG:

1 The same objection, Your Honor.

2 THE COURT:

3 I'll allow that.

4 THE WITNESS:

5 If there was, I'm not aware of it.

6 EXAMINATION BY MR. MCAULIFFE:

7 Q. Was there any planning involved in having
8 Ms. Washington's suit filed on May 12th, simply three
9 days before your suit was filed?

10 A. If there was I'm not aware of it.

11 Q. Were you aware that Ms. Esmond's suit was based
12 on a public records request that was two years old?

13 MR. STERNBERG:

14 Objection, Your Honor. It's hearsay and
15 also calls for speculation.

16 THE COURT:

17 If he knows he can testify. I'll allow
18 that.

19 THE WITNESS:

20 I'm aware that Ms. Washington's case was
21 based on public records requests that were
22 two years old.

23 MR. MCAULIFFE:

24 I was just informed of that. I may have
25 misspoken; I did mean Ms. Washington, not
26 Ms. Esmond. Thank you very much.

27 EXAMINATION BY MR. MCAULIFFE:

28 Q. What -- have you been in contact with Emily
29 Washington or Marjorie Esmond during the pendency of
30 these separate lawsuits?

31 MR. STERNBERG:

32 The same objection, Your Honor.

1 THE COURT:

2 Again, if you had conversations outside
3 the presence of counsel, you can speak about
4 that. Anything in the presence of an
5 attorney for either side I will disallow that
6 as its privileged.

7 THE WITNESS:

8 Not that I recall.

9 EXAMINATION BY MR. MCAULIFFE:

10 Q. Have you in anyway coordinated these lawsuits
11 with Emily Washington, Marjorie Esmond or their
12 respective organizations?

13 A. I have not.

14 Q. Anyone acting as agent for you or anyone in
15 particular at your employment?

16 MR. STERNBERG:

17 Objection. That calls for privileged
18 communications, Your Honor.

19 MR. MCAULIFFE:

20 But, in his employment, I don't think
21 would be privileged or -- I'm not referring
22 to his attorney obviously when I, I speak of
23 any agent, but anyone in his employment, I
24 don't think that would be privileged, Your
25 Honor, or any other agent other than counsel?

26 MR. STERNBERG:

27 And it would be hearsay, Your Honor.

28 THE COURT:

29 If he -- if he personally, if he has
30 personal knowledge I will allow that.

31 Otherwise, it would be hearsay.

32 THE WITNESS:

1 I have no personal knowledge, no.

2 EXAMINATION BY MR. MCAULIFFE:

3 Q. Do you know of anyone that may have
4 collaborated with them, any personal knowledge?

5 A. No.

6 Q. Nobody at all?

7 A. Not --

8 THE COURT:

9 Mr. McAuliffe, this is starting to sound
10 like a deposition and I don't run depositions
11 in my Court.

12 MR. MCAULIFFE:

13 Yes, Your Honor.

14 EXAMINATION BY MR. MCAULIFFE:

15 Q. Just very briefly, are you being funded by The
16 Lens are through an outside organization?

17 MR. STERNBERG:

18 Objection, Your Honor, relevance?

19 THE COURT:

20 I'll sustain that.

21 MR. STERNBERG:

22 Thank you.

23 MR. MCAULIFFE:

24 If I could just have a moment, Your
25 Honor.

26 THE COURT:

27 Sure.

28 (COUNSEL MCAULIFFE CONSULTS WITH CO-COUNSEL)

29 MR. MCAULIFFE:

30 No further questions at this time, Your
31 Honor.

32 THE COURT:

1 Any redirect?

2 MR. STERNBERG:

3 Briefly, Your Honor.

4 **REDIRECT EXAMINATION**

5 EXAMINATION BY MR. STERNBERG:

6 Q. Mr. Maldonado, do you work for the District
7 Attorney's Office?

8 A. I do not.

9 Q. Do you have any idea how the DA keeps its case
10 files?

11 A. Beyond what I've seen, no.

12 Q. Who originally told you that the DA kept case
13 files by separate case?

14 A. Who -- who told me that?

15 Q. Yes. Who told you that?

16 A. I believe, I mean, the only -- the only time
17 I've seen reference to that is in the responses that
18 I've received from Ms. Andrieu.

19 Q. So, on May 22nd, when you requested documents
20 from each case file was that in response to what the
21 District Attorney had previously told me about how
22 they keep their files?

23 A. Could you, could you please repeat? I'm sorry.

24 Q. On May 22nd, when you requested District
25 Attorney Subpoenas within case files, also legends and
26 other documents related to District Attorney Subpoenas
27 from case files, was that in response to what the
28 District Attorney had told you about how they keep
29 their files?

30 A. Yes. I believe so.

31 Q. Are you aware if the District Attorney has the
32 ability to electronically search these files?

1 A. Uh, the claim has been that it requires a
2 manual search but again, I do not -- I don't have
3 personal knowledge of the DA's internal record keeping
4 system.

5 MR. STERNBERG:

6 No further questions, Your Honor.

7 THE COURT:

8 You may step down, Mr. Maldonado.

9 THE WITNESS:

10 Thank you.

11 (THE WITNESS EXITS THE WITNESS STAND
12 AND IS EXCUSED)

13 THE COURT:

14 Call your next witness, Mr. Sternberg.

15 MR. STERNBERG:

16 Your Honor, I believe we -- we have made
17 our prima facie showing of the requests made
18 and denied. We would tender our case.

19 THE COURT:

20 Okay.

21 MR. STERNBERG:

22 Thank you, Your Honor.

23 THE COURT:

24 State?

25 MR. FINK:

26 Thank you, Your Honor.

27 I would call Ms. Donna Andrieu to the
28 stand.

29 THE COURT:

30 Ms. Andrieu. Please step forward.

31 (THE WITNESS APPROACHES THE WITNESS STAND)

32 THE COURT REPORTER:

1 Raise your right hand for me, please.

2 (THE WITNESS COMPLIES)

3 THE COURT REPORTER:

4 Do you promise the testimony that you're
5 about to give will be the truth, the whole
6 truth and nothing but the truth so help you
7 God?

8 MS. DONNA ANDRIEU:

9 I do.

10 THE COURT:

11 Please have a seat.

12 (THE WITNESS COMPLIES)

13 THE COURT REPORTER:

14 Please listen to all of the questions of
15 the attorneys and the Court and answer all
16 questions loudly and clearly.

17 * * * * *

18 **DONNA ANDRIEU**

19 *was called as a witness and after having*
20 *first been duly sworn, was examined and*
21 *testified on her oath as follows:*

22 **DIRECT EXAMINATION**

23 THE COURT:

24 State?

25 EXAMINATION BY MR. FINK:

26 Q. Good morning. Can you please state your name
27 for the record?

28 A. Yes, Donna Andrieu.

29 Q. Can you please state the name of your employer
30 for the record?

31 A. Orleans Parish District Attorney.

32 Q. Can you please state your title and job

1 position for the record with the Orleans Parish
2 District Attorney's Office?

3 A. I am an Assistant District Attorney. I'm
4 titled Chief of Appeals.

5 Q. Can you very briefly describe for the Court
6 your job responsibilities as being the Chief of
7 Appeals?

8 A. Yes. I supervise a staff of four attorneys and
9 one legal assistant. We handle -- we handle appeals.
10 So, when a defendant is convicted and exercises his
11 right to appeals -- to appeal, we handle the State's
12 original brief and any litigation thereafter to the
13 Louisiana Supreme Court. We handle responses to
14 federal habeas petitions in the Eastern District of
15 Louisiana, you know, in the Fifth Circuit and Supreme
16 Court when those cases move forward. We handle post-
17 conviction litigation in Criminal District Court. We
18 make appearances before the Pardon Board and the
19 Parole Board in Baton Rouge mostly several days a
20 month. And we provide trial assistance whenever
21 needed. For instance, when our evidence is suppressed
22 in a trial the Appeals Division is responsible for
23 seeking a writ or interlocutory --

24 THE COURT:

25 Hold on one second.

26 (BRIEF DELAY IN THE PROCEEDING WHILE

27 THE COURT HANDLES AN UNRELATED MATTER)

28 THE COURT:

29 Okay. Go ahead. I'm sorry.

30 THE WITNESS:

31 We --

32 THE COURT:

1 You provide trial support.

2 THE WITNESS:

3 -- yes. We provide assistance. In that
4 respect we do research for trial assistance.
5 We have the occasion to assist -- to seek
6 supervised writ review with the Fourth
7 Circuit, Supreme Court, for instance in
8 matters which are -- or in rulings which are
9 not final judgments. That just about covers
10 it. I am also -- my division also handles
11 research in the public records area.

12 EXAMINATION BY MR. FINK:

13 Q. Does the District Attorney's Office, and when I
14 say District Attorney's Office, just for the sake I am
15 going to be referring to the Orleans Parish District
16 Attorney's Office just for clarification.

17 A. Yes, sir.

18 Q. Does the District Attorney's Office have a
19 department for closed records?

20 A. Yes.

21 Q. Were you involved with the processing of the
22 Records Request at issue in this litigation? And I
23 can go over each request if you need me to.

24 A. Yes. I was.

25 Q. Why was that?

26 A. Because the public records requests that are at
27 issue here are -- or were extraordinary. They were
28 not typical records request that come in from persons.
29 Normally, when persons make public records requests of
30 our office, the requests are narrower and in fact
31 request a file the way the District Attorney's Office
32 maintains its files. So, these were broader. I -- I

1 think -- I knew, when I looked at them, they were
2 burdensome. They were going to require -- they were
3 going to require some assistance from appeals.

4 Q. What is the typical Records Request that you
5 would view in relation to a records request to the
6 DA's Office?

7 MR. STERNBERG:

8 Your Honor, I would object to relevance.

9 THE COURT:

10 Well, I would like to know what their
11 system was and how they handle them. So,
12 I'll allow the question.

13 MR. FINK:

14 Thank you.

15 THE COURT:

16 Overruled.

17 THE WITNESS:

18 Well, as you can imagine, the District
19 Attorney's Office receives many public
20 records requests -- daily and, you know,
21 throughout the year. And as I said, most
22 persons are interested in -- are asking --
23 are making the request of the DA file. So
24 many of the requests that come in are from
25 the inmates who are exercising a right to
26 post-conviction and so they are asking for
27 their file; or maybe an attorney is asking on
28 their behalf. But generally, we get requests
29 which correspond to the way that the District
30 Attorney maintains its files.

31 EXAMINATION BY MR. FINK:

32 Q. What makes this -- well, what makes the four

1 record requests at subject in this litigation
2 extraordinary?

3 A. Well, they do -- they did not ask -- they did
4 not seek for files the way the DA's Office maintains
5 files. They were very broad, you know. I think there
6 was testimony earlier where they were looking for a
7 year-and-a-half of files, or I guess really they're
8 looking for documents. So, they were -- they were not
9 narrow the way most public record requests are. And
10 in my estimation the way the law required, they --
11 they were very broad. The time, the times -- the
12 files that they were asking spanned over a great
13 period of time.

14 Q. I'm going --

15 THE COURT REPORTER:

16 Just one second.

17 THE COURT:

18 Okay, R.J.

19 (BRIEF DELAY IN THE PROCEEDINGS)

20 THE COURT:

21 All right, counsel. Just hold on one
22 second. Let them know when you're ready.

23 (BRIEF DELAY IN THE PROCEEDINGS)

24 THE COURT REPORTER:

25 I'm ready.

26 THE COURT:

27 Okay. Let's go.

28 EXAMINATION BY MR. FINK:

29 Q. I would like to direct your attention to what's
30 marked as Plaintiff's Exhibit 3. It should be
31 contained in the documents that are in front of you.

32 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

1 THE WITNESS:

2 A. There are no documents in front of me.

3 MR. FINK:

4 Can I approach, Your Honor?

5 THE COURT:

6 I think -- no -- I just knocked my
7 coffee. I was trying to reach for the
8 documents, so you might want to give her the
9 original Plaintiff's Exhibit 3 because these
10 are going to have some stains on them, such
11 as that is.

12 MR. FINKELSTEIN:

13 You've got them now?

14 THE COURT:

15 Yes.

16 MR. FINK:

17 May I approach the witness, Judge?

18 THE COURT:

19 Yes, by all means.

20 MR. FINK:

21 Okay.

22 THE COURT:

23 Go ahead.

24 (COUNSEL FINK APPROACHES THE WITNESS STAND
25 AND HANDS ITEM TO THE WITNESS)

26 MR. FINKELSTEIN:

27 Sorry, Your Honor, the witness looked at
28 that one (indicating).

29 THE COURT:

30 No. Thank you for that because you
31 don't want to keep it. I'll make some copies
32 afterwards. That's why I usually put my

1 coffee on the side.

2 Let's keep going. All right, let's go.

3 MR. FINK:

4 I'm sorry, Your Honor, I was --

5 THE COURT:

6 Not a problem.

7 EXAMINATION BY MR. FINK:

8 Q. Ms. Andrieu, I point you to Plaintiff's Exhibit
9 3, and that is the records request under the date
10 April 27, 2017.

11 (THE WITNESS REVIEWS THE ITEM)

12 THE WITNESS:

13 A. Yes.

14 EXAMINATION BY MR. FINK:

15 Q. Did the District Attorney issue a response to
16 the petitioner's April 27, 2017 records request?

17 A. Just give me one minute to review it.

18 (THE WITNESS REVIEWS THE DOCUMENT FURTHER)

19 THE WITNESS:

20 A. Yes.

21 EXAMINATION BY MR. FINK:

22 Q. And was that response dated May 2, 2017?

23 A. Yes.

24 Q. Do you recall what day of the week April 27,
25 2017 was?

26 A. I do. It's a Thursday.

27 Q. And do you recall what day May 2, 2017 was?

28 A. It was a Tuesday.

29 Q. So, excluding Saturday and Sunday, would that
30 response be within three days from the day the Records
31 Request was --

32 A. Yes.

1 Q. -- produced?

2 A. Yes.

3 Q. In the response letter to the petitioner were
4 the records request denied?

5 A. Yes, I believe it was denied at this time.

6 Q. Okay, I'm going to direct your attention to
7 Exhibit 4. And you can take a moment to review that
8 record if you need to.

9 (THE WITNESS LOCATES AND REVIEWS THE

10 ITEM)

11 THE WITNESS:

12 A. Yes.

13 EXAMINATION BY MR. FINK:

14 Q. Does that document describe the reasoning or
15 explain the reason why the April 27, 2017 records
16 request was denied?

17 A. I mean, I think so.

18 Q. And what was that for, the reason, please?

19 A. Uh, well, I cited case law for the notion that
20 the request was unduly burdensome, was broad. It
21 required us to do research and make a list. You know,
22 it specifically mentioned *Beckett V. Serpas*, case. I
23 thought in my research which was similar to this. In
24 fact, this in my estimation, this request was much
25 more burdensome than the request that Ms. Beckett had
26 made of NOPD in *Beckett V. Serpas*.

27 Q. So, just to be clear for the record, so in that
28 denial letter you did cite to both statutory and case
29 law?

30 A. Yes.

31 Q. And that statutory case law elaborated on the
32 legal basis for that denial?

1 A. Yes.

2 Q. How was this letter forwarded to Mr. -- to the
3 petitioner?

4 A. Well, this letter was placed in the U.S. Mail.

5 Q. And did the petitioner receive this letter to
6 your knowledge?

7 MR. STERNBERG:

8 Objection, Your Honor. It calls for
9 speculation.

10 THE COURT:

11 Well, if she actually knows she can
12 testify and she can testify that it was
13 placed in the mail. Beyond that she knows
14 anything else she can tell us what she knows.

15 THE WITNESS:

16 A. I mean, I --

17 EXAMINATION BY MR. FINK:

18 Q. I'll rephrase the question --

19 A. -- I -- I actually don't know. I placed it in
20 the U.S. Mail -- I placed it in our outgoing mail.

21 THE COURT:

22 Okay.

23 EXAMINATION BY MR. FINK:

24 Q. To your personal knowledge, did the petitioner
25 ever complain to you that he has not received the May
26 2, 2017 response?

27 A. I don't believe so.

28 Q. Thank you. I'm going to direct your attention
29 to Exhibit 5, which is the May 22nd records request
30 which has been marked as Plaintiff's Exhibit 5.

31 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

32 THE WITNESS:

1 A. Yes.

2 EXAMINATION BY MR. FINK:

3 Q. I apologize. Did the District Attorney's
4 Office issue a response to the May 22, 2016 (sic)
5 records request?

6 A. Yes.

7 Q. And what date was that response set out?

8 A. It was written and placed -- it was written and
9 signed May 25, 2017, and it was placed in the U.S.
10 Mail on the same day.

11 Q. Was the -- was the May 25, 2017 response sent
12 out the same way as the previous response dated May 2,
13 2017?

14 A. Yes.

15 Q. Was that also placed in U.S. Certified Mail?

16 A. Yes.

17 Q. Did you place that in the outgoing mail?

18 A. My assistant did, my legal assistant. And she
19 placed -- actually she places all mail in the outgoing
20 mail as well.

21 Q. Was this response issued within three days of
22 the May 22, 2017 records request?

23 A. Yes.

24 Q. Is there any part of Louisiana law that
25 dictates how these responses must be sent out?

26 A. No.

27 MR. STERNBERG:

28 Objection, Your Honor. It calls for a
29 legal conclusion.

30 MR. FINK:

31 Well --

32 THE COURT:

1 I mean, she's an attorney. I'll allow
2 that if she knows and then I'll decide
3 whether I agree with her or not.

4 MR. STERNBERG:

5 Thank you, Your Honor.

6 THE COURT:

7 Go ahead. You can answer the question.

8 THE WITNESS:

9 No, not to my knowledge.

10 EXAMINATION BY MR. FINK:

11 Q. In the May 25, 2017 denial letter which is
12 marked as Plaintiff's Exhibit 6, was case law and
13 statutory law cited in elaborating reasons for the
14 denial?

15 A. Yes.

16 Q. Moving on to Plaintiff's Exhibit 8, and this is
17 the May 30, 2017 records request.

18 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

19 THE WITNESS:

20 A. Yes.

21 EXAMINATION BY MR. FINK:

22 Q. Did the District Attorney issue the response to
23 the petitioner's May 30, 2017 records request?

24 A. Yes.

25 Q. And was that response issued on --

26 MR. FINK:

27 I'm sorry, Your Honor. May I approach
28 Ms. Andrieu?

29 THE COURT:

30 Sure.

31 (COUNSEL FINK SEARCHES FOR THE ITEM
32 AND APPROACHES THE WITNESS)

1 EXAMINATION BY MR. FINK:

2 Q. Can you please read into the record the Records
3 Request of May 30, 2017?

4 (COUNSEL FINK APPROACHES THE WITNESS STAND
5 AND HANDS ITEM TO THE WITNESS)

6 THE COURT REPORTER:

7 I'm sorry, can you please read into the
8 record --

9 MR. FINK:

10 -- the Records Request from May 30,
11 2017. And I only ask that, Your Honor,
12 because there were multiple requests that
13 were made on that date. So I just want to
14 establish that we're all on the same page.

15 THE COURT:

16 All right, very well.

17 (THE WITNESS REVIEWS THE ITEM)

18 THE WITNESS:

19 A. There were multiple requests on May 30th. And
20 it's -- this is an e-mailed request to
21 emurphy@orleansda.com and dandrieu@orleansda.com.
22 "Good morning: Pursuant to the Louisiana Public
23 Records Act R.S. 44:1 et seq., I request access to and
24 reserve the right to make copies or scan, the
25 following records:"

26 And then, there is a "Please note that La. R.S.
27 44:33 requires you to provide the records immediately
28 if they are not in active use. If in active use, the
29 law requires you to promptly inform me, then schedule
30 a time -- within THREE BUSINESS DAYS of this request
31 -- when the responsive records will be made available.

32 Any and all "DA Subpoenas" issued to witnesses or

1 other parties as part of the following cases: *State*
2 *of Louisiana Versus Dale Lambert*, Case 517-162; *State*
3 *of Louisiana Versus Chevroun Smith*, Case No. 514-924;
4 *State of Louisiana Versus Philip Gibson*, Case No.
5 506-723; *State of Louisiana Versus Karl Peters*, Case
6 No. 491-939; *State of Louisiana Versus Darryl Griffin*,
7 Case No. 479-359; *State of Louisiana Versus Durelle*
8 *Bowens*, Case No. 507-266; *State of Louisiana Versus*
9 *Dwayne Diaz*, Case No. 518-162; *State of Louisiana*
10 *Versus Jennifer Gaubert*, Case No. 517-669; *State of*
11 *Louisiana Versus Nathaniel Payton*, Case No. 486-528;
12 *State of Louisiana Versus Jerome Gibson*, Case No.
13 512-137.

14 Thank you, Charles Maldonado, Staff Writer, *The*
15 *Lens*, www.thelensnola.org, (504) 229-2340."

16 THE COURT:

17 Six (6).

18 THE WITNESS:

19 Six (6), my eyesight is not too good.

20 THE COURT:

21 No worries.

22 MR. FINK:

23 May I approach the witness, Your Honor?

24 THE COURT:

25 Sure.

26 (COUNSEL FINK APPROACHES THE WITNESS STAND
27 AND HANDS ITEM TO THE WITNESS)

28 THE WITNESS:

29 You'll have to give me a minute. What's
30 that?

31 (THE WITNESS REVIEWS THE ITEM)

32 EXAMINATION BY MR. FINK:

1 Q. Okay, Ms. Andrieu, is this the e-mail
2 communication from yourself and the petitioner,
3 Mr. Maldonado?

4 A. It seems to be.

5 Q. And this changes again, being in reverse
6 chronological order, so I'm going to ask you to go to
7 the last page, page 4. Continue, please --

8 THE COURT:

9 Hold on, off the record.

10 (DISCUSS HELD OFF THE RECORD)

11 MR. FINK:

12 Yes. I'll offer and introduce them into
13 evidence, Your Honor.

14 THE COURT:

15 What are you marking them for
16 identification as?

17 MR. FINK:

18 Defendant 1, Your Honor, D-1.

19 THE COURT:

20 Any objection?

21 MR. STERNBERG:

22 We have no objection at this time.

23 THE COURT:

24 Okay. It will be admitted.

25 All right. Counsel, you may proceed.

26 THE WITNESS:

27 So, I'm going to page 4, is that what
28 you're saying?

29 EXAMINATION BY MR. FINK:

30 Q. Yes.

31 A. Okay.

32 Q. That is -- as I say, this is a reverse

1 chronological order, so page 4-1 came first. Can you
2 please read for us the entry of June 16, 2017?

3 MR. STERNBERG:

4 Your Honor, I would object to the
5 question in that it calls for a narrative.
6 The document speaks for itself. We stipulate
7 to its admissibility. I would suggest that
8 the witness just read the pertinent parts of
9 the document as opposed to the entire
10 document.

11 THE COURT:

12 Yes. We don't have to read --

13 MR. FINK:

14 That's fine, Your Honor.

15 THE COURT:

16 -- the entire thing.

17 MR. STERNBERG:

18 Thank you, Your Honor.

19 EXAMINATION BY MR. FINK:

20 Q. I want to direct you to page two, Ms. Andrieu?

21 A. Page 2?

22 Q. Yes, page 2 of 4.

23 (THE WITNESS LOCATES THE SPECIFIED

24 PART OF THE ITEM AND REVIEWS THE SAME)

25 THE WITNESS:

26 A. Yes.

27 EXAMINATION BY MR. FINK:

28 Q. And on that did Mr. -- did the petitioner issue
29 a response to your inquiry on -- regarding the
30 availability of files that he made on May 30th?

31 A. Well, first of all, I fail to see it in front
32 of me, but maybe it's here, maybe it's been

1 introduced. But originally, when I received this
2 particular request of May 30th, I sent a letter where
3 I explained that -- as I said, I don't have it in
4 front of me, I'll just have to summarize what I
5 typically do -- that -- in other words, I'd have to
6 investigate. I would have to do what the DA's Office
7 does in response to -- this is a more typical request,
8 so this falls in line with the kinds of requests that
9 the DA gets because it, as I said, you know, it tracks
10 the way we maintain our files. So, he received a
11 response which alerted him that I was in receipt of it
12 and basically that I was working on it. So, working
13 on it meant that I was going to have to locate, with
14 the assistance of John Moore, our crew's Records
15 Supervisor, we'd have to locate these files and I was
16 going to have to make certain determinations. For
17 instance, whether there's pending criminal litigation,
18 or whether there's a reasonable anticipation of
19 criminal litigation. I was then going to have to
20 review the files to remove any privileged information
21 from them. So, that process takes a while and as I
22 said, you know, I have a staff of four people and with
23 budget cuts I've had people leave and they haven't
24 been replaced.

25 Q. Well, I want to direct --

26 A. Okay, so, the initial letter that went out told
27 him it would take a little bit of time. I think what
28 you're showing me -- and that went out by mail, by
29 U.S. Mail. In fact, I believe that went out by
30 certified mail. But, what you're showing me here is
31 on June 11th I sent Mr. -- because I had not heard
32 from him, I had let him know that certain files were

1 available and I had not heard back. He had not
2 availed himself of the ability to view the files that
3 I had made available. So, I sent him a counter
4 tickler on May 30th --

5 THE COURT REPORTER:

6 You sent him what?

7 THE WITNESS:

8 I sent him a counter tickler just
9 reminding him - "Mr. Maldonado, on May 30,
10 2017 you requested to view several files. The
11 Lambert file was one of those files. On June
12 25th, 2017, I e-mailed you to advise that the
13 Lambert file had been retrieved from
14 off-site storage and prepared for public
15 view. Please advise if you're still
16 interested in viewing this record."

17 And so, I suppose you want the history.
18 He did respond on July 11th, on the same day,
19 where he says: "I am, my apologies. I was
20 out-of-town for several weeks. What is a
21 good time tomorrow morning?" And I suppose
22 what I see above that is my response: "Any
23 time before 10:00 a.m."

24 EXAMINATION BY MR. FINK:

25 Q. And, so, let me direct your attention to the
26 response that's dated July 20 -- July 11th of 2017.
27 It should be in the middle of page 2.

28 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

29 THE WITNESS:

30 A. Yes, uh-huh (affirmative response).

31 EXAMINATION BY MR. FINK:

32 Q. From Mr. -- from the petitioner to you. Can

1 you please just state that and put it on the entire
2 record --

3 A. Yes.

4 Q. -- to be referencing?

5 A. Where he says: "I am. My apologies. I was
6 out-of-town for several weeks. What is a good time
7 tomorrow morning?"

8 Q. So, in that reference was at any time -- was
9 the petitioner consistently coming in to review these
10 records when they were made available?

11 A. Uh, well, I think it's exhibited here. There
12 was often a gap between the time the record was made
13 available and the time -- and when he actually came in
14 to view it.

15 Q. So --

16 A. Uh-huh (affirmative response).

17 Q. -- are there any times on that e-mail chain
18 where -- was there any time where he, the petitioner
19 was confused over what records he had reviewed?

20 A. Oh, yes.

21 Q. And can you please elaborate -- elaborate that
22 for the Court?

23 A. There was one particular case, *State of*
24 *Louisiana Versus Alexander Perkins*. We had another
25 request -- he sent another request for that particular
26 case file. Again, more in conformity with -- the
27 request was more in conformity with public records
28 law. I, with the assistance of Mr. Moore, retrieved
29 -- located that file and made it available for public
30 viewing. I let Mr. Maldonado know that the records
31 were available for public view. At some point after
32 that he came in and viewed it, and then shortly

1 thereafter made another public request for the same
2 file.

3 When I responded by e-mail that he had
4 already made a request for that file, he had viewed
5 it, he sent me an e-mail where he asked, did you mean
6 to direct this to me? And I explained, yes, now
7 you've made -- and then that followed up with an
8 e-mail where he said, I still have an outstanding
9 public records request for Alexander Perkins. I sent
10 yet another e-mail saying: "Mr. Maldonado, you've
11 requested this, you've viewed it. You requested it
12 again. You were confused about the second request and
13 now you're telling me that you haven't seen it when
14 you have seen it."

15 MR. FINK:

16 May I approach the witness, Your Honor?

17 THE COURT:

18 Yes.

19 (COUNSEL FINK APPROACHES THE WITNESS

20 STAND AND HANDS ITEM TO THE WITNESS)

21 EXAMINATION BY MR. FINK:

22 Q. Can you please identify that document?

23 (THE WITNESS REVIEWS THE ITEM)

24 THE WITNESS:

25 A. Yes. This is a Public Records Request response
26 dated May 31, 2017 to Mr. Maldonado for the request --

27 THE COURT:

28 Hold on one second, Ms. Andrieu.

29 MR. FINK:

30 I would offer, file and introduce this
31 document marked as document D-2.

32 THE COURT:

1 Any objection?

2 MR. STERNBERG:

3 No objection.

4 THE COURT:

5 All right. You may proceed, counsel.

6 THE WITNESS:

7 A. So, this is the response to the request for the
8 seven files that was sent out May 31st.

9 EXAMINATION BY MR. FINK:

10 Q. And was that within three days of receiving the
11 May 31st Records Request?

12 A. Yes.

13 Q. Are there some other documents that are
14 attached behind that letter?

15 A. Yes.

16 Q Can you please elaborate -- do those appear to
17 be certified, return receipt?

18 A. Yes. And --

19 Q. Can you please state for the Court why those
20 are attached to this document?

21 A. -- I believe these are the -- yes, certified
22 mail receipt.

23 After I received an e-mail from Mr. Maldonado
24 saying that he had not received my letter of May 25th,
25 I instructed my assistant to, despite any cost to the
26 DA's Office, to respond to all of his public requests
27 by certified mail, in other words, not just placing it
28 in U.S. Mail. But because -- but because he had
29 disputed the fact that I had responded and placed the
30 response in U.S. Mail on May 25th, I decided to send
31 all of my correspondence to him via certified mail.

32 In fact you can see, although he didn't sign

1 it or print his name as instructed, I actually assign
2 it to addressee so that he himself received it and
3 nobody else in his office. Although, in preparing
4 this and just looking over these this morning, I
5 noticed that he in fact, although it says addressee,
6 it's typically not the person who signs.

7 Q. And just to move along, regarding the June 7th
8 Records Request, I'm just going to simply ask, was a
9 response issued to the June 7th request, records
10 request?

11 A. I'm sorry, the June 7th - is there a label?

12 MR. FINK:

13 May I approach the witness, Your Honor?

14 THE COURT:

15 Yes.

16 (COUNSEL FINK APPROACHES THE WITNESS STAND
17 TO HELP WITNESS LOCATE THE ITEM)

18 THE WITNESS:

19 A. Yes.

20 MR. STERNBERG:

21 Your Honor, I believe this is already in the record as
22 Exhibit, Plaintiff's 10.

23 MR. FINK:

24 Oh, I'm sorry.

25 MR. STERNBERG:

26 Yes, Plaintiff's 10.

27 THE COURT:

28 Okay. That's okay. It can be a joint
29 exhibit. He can just label it for his side
30 of the case.

31 MR. FINK:

32 I apologize, Your Honor, --

1 THE COURT:

2 That's fine. It can still be
3 Defendant's 3, but it's already admitted.

4 You may proceed.

5 EXAMINATION BY MR. FINK:

6 Q. Ms. Andrieu, was this the DA's response to the
7 June 7, 2017 Records Request by the petitioner?

8 A. Yes.

9 Q. And was this response within three days of the
10 petitioner's issuance of his Records Request?

11 A. Yes.

12 Q. Was this document sent via certified mail?

13 A. It was, again, because it was after May 25th.
14 It was sent for -- and I -- P-10 does not have - just
15 do that you know, Mr. Fink, does not have the
16 certified document exhibits. I think the documents
17 that you're going to mark as D-3 does.

18 And, again, yes, it was sent out certified
19 mail, again, to Mr. Maldonado to be signed only, or to
20 be received and signed only by the addressee, but
21 there's a signature of someone else in his office, I'm
22 sure, or someone else.

23 Q. Well, my question in this matter is what the
24 term DA subpoena is? That term has been included in
25 the Amended Petition. I want to ask you, is there a
26 document that would define a "DA Subpoena" to your
27 knowledge?

28 A. I have never seen a document with the heading
29 "DA Subpoena."

30 Q. So, on these record requests would you agree
31 with me that they're asking for ""DA Subpoenas"?"

32 A. Yes.

1 Q. So, since there is no template for a "DA
2 Subpoena" would it not -- would it require the
3 petitioner to come in to review the entire list of
4 exact files he was looking for --

5 MR. STERNBERG:

6 Objection --

7 EXAMINATION BY MR. FINK:

8 Q. -- and not check with his --

9 THE COURT:

10 Hold on. What's your objection?

11 MR. STERNBERG:

12 --counsel is testifying as to what
13 constitutes a "DA Subpoena."

14 THE COURT:

15 I'll remind you, Mr. Fink, this is your
16 witness so direct questions only.

17 Let's go. Rephrase your question.

18 MR. FINK:

19 I'm sorry, Your Honor. That's all the
20 questions I have.

21 THE COURT:

22 Okay. Cross?

23 MR. STERNBERG:

24 Yes, Your Honor.

25 COURT REPORTER:

26 May we --

27 THE COURT:

28 Hold on.

29 COURT REPORTER:

30 -- take a brief recess?

31 THE COURT:

32 Yes. Let's take a brief recess. We'll

1 take about five minutes.

2 MR. STERNBERG:

3 Thank you, Your Honor.

4 THE COURT:

5 Okay.

6 (THE WITNESS EXITS THE WITNESS STAND)

7 (COURT TAKES A BRIEF RECESS)

8 THE COURT:

9 Are you ready for cross?

10 MR. STERNBERG:

11 Yes, Your Honor.

12 THE COURT:

13 Okay. Ma'am, go back to the witness
14 stand, please. Be seated, please.

15 (THE WITNESS RETURNS TO THE WITNESS STAND)

16 THE COURT:

17 Continue, please.

18 All right, cross?

19 MR. STERNBERG:

20 Thank you, Your Honor.

21 CROSS EXAMINATION

22 EXAMINATION BY MR. STERNBERG:

23 Q. Ms. Andrieu, earlier I heard you testify about
24 identifying a "DA Subpoena." Do you remember that
25 line of questioning from your counsel?

26 A. Not really.

27 Q. I can summarize it for you.

28 THE COURT:

29 Just ask the question, counselor.

30 THE WITNESS:

31 Yes. Okay. But --

32 THE COURT:

1 Wait for a question.

2 EXAMINATION BY MR. STERNBERG:

3 Q. How about this? Do you remember your counsel
4 -- do you remember your counsel asking you a question
5 about what a "DA Subpoena" entailed -- what it was?

6 A. I don't. I don't recall the -- you can refresh
7 me.

8 Q. Okay. Unfortunately, I --

9 A. I recall saying I have never seen a document
10 labeled a "DA Subpoena," but I will also say Public
11 Records Law doesn't require me to go into a file to
12 find a particular document.

13 Q. Well, that's certainly --

14 A. And that is the response that I, you know, that
15 your client has --

16 Q. You believe --

17 A. -- received from me.

18 Q. -- I'm sorry. You believe that Public Records
19 Law protocol doesn't require you to segregate records?

20 A. Segregate -- what "segregate" means under
21 Public Records Law, if you look at the law,
22 "segregate" means pulling a file. So, we keep a file
23 record, so I'll call it a record, and when Public
24 Records Law uses the term "segregate," they mean you
25 pull that record from all other records. So, of
26 course, we have to segregate our records the way we
27 maintain our records.

28 Q. Sure.

29 MR. STERNBERG:

30 Can you look at Plaintiff's Exhibit 9?

31 I think you have the exhibits.

32 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

1 THE WITNESS:

2 I need to put my glasses on. I'm sorry.

3 EXAMINATION BY MR. STERNBERG:

4 Q. Plaintiff's Exhibit 9 is a letter from you to
5 Mr. Maldonado, is it not?

6 A. Yes.

7 Q. And in this, in this letter you identify that
8 his request was for, and I quote, "Any and all "DA
9 Subpoenas" maintained or saved in the personal case
10 notes or computer files," is that correct?

11 A. Yes.

12 Q. And attached to this letter you attached three
13 blank documents. What are these documents?

14 A. Yes. I'm happy to -- if you're asking me for
15 the process, I received -- so I received his -- I
16 received his --

17 Q. I'm sorry. I wasn't -- I wasn't -- sorry, I
18 wasn't asking about the process. I was asking what
19 these documents are.

20 A. They're documents that were, and I think I can
21 explain what the documents are if I can explain the
22 process.

23 Q. Go ahead.

24 THE COURT:

25 Well, hold on. Why don't you answer the
26 question and then you can explain.

27 THE WITNESS:

28 A. These are three documents. So, in compliance
29 with the Public Records Request, I asked the four
30 attorneys to -- I showed them the request and I said,
31 go into your files and scrub your files. I don't know
32 what this man means, because I can't read his mind,

1 but go into your computer files and find anything
2 which might satisfy this request, and this is what I
3 got.

4 EXAMINATION BY MR. STERNBERG:

5 Q. So, you asked them to pull documents out of
6 their files?

7 A. Computer files.

8 Q. Right.

9 A. Out of a computer file.

10 Q. You asked them to pull documents out of their
11 computer files?

12 A. I did.

13 Q. Okay. That would not be segregation in your
14 mind?

15 A. I --

16 Q. I have to listen --

17 A. -- no, it wouldn't be.

18 THE COURT:

19 Hold on. Hold on --

20 THE WITNESS:

21 -- uh-huh (affirmative response).

22 MR. STERNBERG:

23 Your Honor, I'll withdraw the question.

24 THE COURT:

25 Yes --

26 THE WITNESS:

27 I mean --

28 THE COURT:

29 -- I don't need to reiterate that kind
30 of conversations that I don't need to hear.
31 Move on to something else.

32 MR. STERNBERG:

1 Yes, Your Honor.

2 EXAMINATION BY MR. STERNBERG:

3 Q. Let's start with the April 27th public records
4 request that was previously identified as Plaintiff's
5 Exhibit 3.

6 (THE WITNESS SEARCHES FOR AND THE ITEM)

7 EXAMINATION BY MR. STERNBERG:

8 Q. When you reviewed this request with your
9 counsel --

10 A. Can you just hold so I can --

11 Q. Yes, ma'am.

12 A. -- thank you.

13 (THE WITNESS REVIEWS THE ITEM)

14 THE WITNESS:

15 A. I'm sorry, what was your question?

16 EXAMINATION BY MR. STERNBERG:

17 Q. Are you holding in your hand Plaintiff's
18 Exhibit 3?

19 A. I am.

20 Q. Okay. Well, you said when you reviewed this
21 record -- this Records Request that you knew it would
22 be burdensome. Do you recall testifying to that?

23 A. Yes. Uh-huh (affirmative response).

24 Q. Did you do any research or how did you make
25 that conclusion?

26 A. Sir, I responded and I included several -- I
27 included case law and statutory law in my response and
28 my response is based on the research that I did.

29 Q. And in your response on May 2nd, which is
30 attached as Plaintiff's Exhibit 4 --

31 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

32 THE WITNESS:

1 A. Okay.

2 EXAMINATION BY MR. STERNBERG:

3 Q. Give me a second to get that document.

4 A. Yes.

5 (COUNSEL STERNBERG LOCATES THE ITEM)

6 EXAMINATION BY MR. STERNBERG:

7 Q. Let me know when you have it up.

8 A. I have it, thank you.

9 Q. You say in the first paragraph, "the Orleans
10 Parish District Attorney's Office does not maintain a
11 copy of "DA Subpoenas" delivered to witnesses," isn't
12 that correct?

13 A. It -- well, you didn't finish the sentence.

14 Q. Okay --

15 A. "In a particular file or location" --

16 Q. -- okay --

17 A. So, what I am saying there is, the District
18 Attorney maintains its files in a specific way, but it
19 does not maintain files -- we don't have a file
20 cabinet full of "DA Subpoena," or any other document.
21 We maintain our files the way every DA does around
22 this state and every Orleans Parish District Attorney
23 has done historically, and that is because we
24 prosecute cases, we maintain our files according to
25 cases -- defendants' names and defendants' numbers.

26 Q. Yes --

27 A. -- and that's the way we produce our files --

28 Q. -- and in that same paragraph --

29 A. -- and -- I'm just making sure you understand
30 that. And we reiterated that by the way, when we
31 invited -- and you were there, we invited
32 Mr. Maldonado's counsel -- I believe you were there.

1 And we explained -- we attempted to explain all of
2 that to you.

3 Q. -- in that same paragraph you say that the
4 District Attorney's Office does not maintain a list of
5 cases in which a "DA Subpoena" was issued, isn't that
6 correct?

7 A. Yes.

8 Q. So, you know what a "DA Subpoena" is, don't
9 you?

10 A. No, I don't. I have it quoted at all times
11 because I don't know.

12 Q. You have a general idea, don't you?

13 A. I actually don't. I don't believe I've -- I'm
14 not sure I've ever seen one. I have had an occasion
15 to issue subpoenas and I've --

16 Q. You never --

17 A. -- dealt with a lot of closed records, but I've
18 never seen -- I don't really know when you all say,
19 "DA Subpoena" -- and it may be as there was testimony
20 about earlier, a term that was used by someone in my
21 -- I personally, as a person, do not know what a "DA
22 Subpoena" --

23 Q. -- there --

24 A. -- what you mean when you're asking for a "DA
25 Subpoena." And that is why with the four ADAs I said,
26 look at this, anything that could be construed --

27 Q. Doesn't the April 27, 2017 ask for a list?

28 A. Oh, wait, let me go back.

29 Q. It's in your response --

30 A. Which, which number is that?

31 Q. Plaintiff's Exhibit 3.

32 A. Okay.

1 Q. Does that request ask for a list of cases in
2 which a "DA Subpoena" was issued?

3 A. No.

4 Q. Thank you. Per the May 30, 2017 request, which
5 is Plaintiff's Exhibit 8 -- let me know when you have
6 it up.

7 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

8 THE WITNESS:

9 A. I have it. Thank you.

10 EXAMINATION BY MR. STERNBERG:

11 Q. Thank you. Can you read the third paragraph,
12 first line of Mr. Maldonado's request to Ms. Murphy
13 and to you?

14 A. Any and all "DA Subpoenas" issued to witnesses,
15 or other parties as part of the following cases" --

16 Q. Okay, you can stop there. Do you know why
17 Mr. Maldonado asked for these cases? Isn't it because
18 you suggested ten cases -- you personally?

19 A. Would you like me to answer?

20 Q. Yes.

21 A. First of all, under Public Records Law we are
22 not allowed to ask why a person is requesting a
23 certain file, so I never ask and so I don't know. We
24 did meet in our office and you asked for some
25 suggestions as to how you could find these documents
26 that you were looking for and we said, because we only
27 maintain our files according to defendant name and
28 case number, you're going to have to bring us a
29 defendant and case number or, you know, we will work
30 with you or several. So, if you're asking why he
31 asked me -- why he asked the DA for specific cases, I
32 mean, I can't ask him - I -- I can't ask him. I was

1 to see it, I'm sure.

2 Q. And when you responded to this request --

3 A. Uh-huh (affirmative response).

4 Q. -- over the next month or so, they came and as
5 your --

6 A. Wait, wait, wait.

7 Q. -- and your --

8 A. I didn't --

9 Q. -- refusal --

10 THE COURT:

11 Wait, wait --

12 THE WITNESS:

13 -- I didn't respond over the next month.

14 I sent him an immediate response.

15 THE COURT:

16 -- ask your next question.

17 EXAMINATION BY MR. STERNBERG:

18 Q. As you began producing the documents --

19 A. Yes.

20 Q. -- over the next month or two, --

21 A. Uh-huh (affirmative response).

22 Q. -- excuse me. That was a bad question. Did you
23 have to review each one of these case files before you
24 provide them to Mr. Maldonado?

25 A. Absolutely. It's a -- that's the custodian's
26 duty --

27 Q. Okay --

28 A. -- because there may be privileged material in
29 there.

30 Q. -- did you remove and segregate any "DA
31 Subpoenas" from those files?

32 A. No.

1 Q. Even though the request for "DA Subpoenas?"
2 A. Okay. Again, it asks for "DA Subpoenas."
3 Again, I don't go into files and pull documents out,
4 although you may have -- I understand your point of
5 earlier. But, when I see a case number, I produce a
6 file and that's what I saw here. I believe that there
7 were some redactions. He didn't ask -- Mr. Maldonado
8 didn't ask for a privilege list, so if any document --
9 particular document was removed, I don't believe we
10 produced a privilege list. But, no, no "DA Subpoenas"
11 -- nothing was -- no "DA Subpoenas" were removed.

12 Q. You pulled out privileged notes from those
13 documents, did you not?

14 A. I don't know. I don't recall with each. I
15 don't recall. And I will say, I did not work on
16 these, on these -- you have not asked me, but I will
17 volunteer to you, I did not do this sort of grunt work
18 myself. I actually had some volunteer law clerks and
19 they performed the work.

20 Q. Great. Can we talk about --

21 A. So, I can say I actually never looked in any
22 of, in any of these files personally.

23 Q. Let's talk briefly about Plaintiff's Exhibit 5,
24 the May 22, 2017 request in which there is a dispute
25 as to whether or not the response was received.

26 (THE WITNESS LOCATES AND REVIEWS THE ITEM)
27 EXAMINATION BY MR. STERNBERG:

28 Q. Do you remember that request?

29 A. Well, there is no dispute that the response was
30 sent, that's all. It was sent. I don't know if it
31 was received.

32 Q. That's right. So, you don't know if it was

1 received, so there is some dispute as to whether it
2 was received, would you agree with that?

3 A. Yes.

4 Q. Do you recall receiving an e-mail from Charles
5 Maldonado on July 14, 2014 that's labeled as
6 Plaintiff's Exhibit 7?

7 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

8 THE WITNESS:

9 A. Okay. I have it. Uh-huh (affirmative
10 response).

11 EXAMINATION BY MR. STERNBERG:

12 Q. Do you recall receiving this e-mail?

13 A. Uh, I don't actually recall receiving it, but
14 it's addressed to me. Uh-huh (affirmative response).

15 Q. That is your e-mail address at the top,
16 correct?

17 A. Yes.

18 Q. And you don't know if you ever responded with
19 the response that you had earlier claimed was put into
20 the mail on Thursday, May 25th?

21 A. Uh, okay. I see on May 30th I told him the
22 response was placed in U.S. Mail on May 25th.

23 Q. That's correct. And then he responded saying
24 that he never got it and asked you for a copy; isn't
25 that right?

26 A. Yes.

27 Q. Did you respond with a copy?

28 A. I don't believe I gave it to him directly
29 because there was litigation, you know, there was
30 litigation. In fact, I think that anything that's
31 been requested recently has gone to Mr. Maldonado's
32 attorney. I may have provided that to in-house

1 counsel.

2 Q. Do you know -- does the Public Records Law
3 require that a request be made in a certain manner?

4 MR. FINK:
5 Your Honor, I'm going to --

6 THE WITNESS:
7 Could you be more specific, --

8 MR. FINK:
9 -- object. It asks --

10 THE WITNESS:
11 -- it's very broad?

12 THE COURT:
13 Hold, hold, please -- hold on.

14 MR. FINK:
15 Your Honor, objection. It asks for a
16 legal conclusion.

17 MR. STERNBERG:
18 Your Honor, earlier she testified to
19 having a numerical --

20 THE COURT:
21 She -- she's an attorney. She responds
22 to requests. I'll allow her to give me her
23 interpretation of what she thinks she has to
24 do.

25 THE WITNESS:
26 -- but the question is broad to me. If
27 you could --

28 EXAMINATION BY MR. STERNBERG:
29 Q. Sure.
30 A. Uh-huh (affirmative response).
31 Q. Do requests have to be made in a certain manner
32 -- in a certain medium? Do they have to be written or

1 can they be oral? Do you know?

2 A. No. Although I believe that the custodian can
3 establish how it receives -- how it receives the
4 public record.

5 Q. There's nothing in the law that actually
6 requires --

7 A. Correct.

8 Q. -- a quote, unquote, "narrow" request, isn't
9 that correct?

10 A. I'm sorry?

11 Q. There's nothing in the law that requires a
12 narrow request to be made, isn't that correct?

13 A. That's absolutely not correct.

14 Q. And where in the law is that in the law,
15 Ms. Andrieu?

16 A. It is -- it's in the cases that I've cited.
17 It's, you know, *Beckett v. Serpas*, and I don't know,
18 I'd have to have the case in front of me, but -- but
19 *Beckett* --

20 Q. Well, can --

21 A. -- *v. Serpas* talks about overbroad, unduly
22 burdensome. And so when I use the term, "narrow," I
23 guess what I'm saying is, if your request is not
24 narrow it's because it's --

25 Q. And how would you define --

26 A. -- unduly --

27 Q. -- narrow, Ms. Andrieu? How would you define
28 that?

29 A. Well, it depends on the -- it depends on -- can
30 you -- if you can maybe --

31 Q. In *Beckett v. Serpas* they ask for ten years' of
32 documents, isn't that correct?

1 A. They ask for ten years of documents. If I may
2 say, --

3 Q. And there --

4 A. -- ten (10) years of the DA's documents --

5 THE COURT:

6 Hold on.

7 THE WITNESS:

8 -- are tens, if not hundreds of
9 thousands of files.

10 EXAMINATION BY MR. STERNBERG:

11 Q. Right.

12 A. So, *Beckett v. Serpas* is a little apples and
13 oranges with us in this respect. Ten (10) years of
14 PIB files are a fraction, you know. It's not ten
15 years of the DA files. And I think probably somebody
16 else can testify better to the number of files that
17 our office -- our office produces, or the number of
18 defendants that institutes prosecution for.

19 But, I will say, if ten years -- in my
20 estimation, if ten years of PIB files is overly
21 burdensome in terms of the numbers, a year-and-a-half
22 of DA files -- and I know what it takes for a year-
23 and-a-half of DA --

24 MR. STERNBERG:

25 Your Honor --

26 THE WITNESS:

27 -- files to be pulled and -

28 MR. STERNBERG:

29 --- may I approach?

30 THE COURT:

31 Sure.

32 (COUNSEL STERNBERG APPROACHES THE WITNESS STAND

1 AND HANDS ITEM TO THE WITNESS)

2 EXAMINATION BY MR. STERNBERG:

3 Q. I'm going to show you what's been previously
4 marked as Plaintiff's Exhibit 11. Here they are
5 (indicating).

6 (THE WITNESS REVIEWS THE ITEM)

7 MR. STERNBERG:

8 Your Honor, this is a copy of the
9 request that was made on June 7, 2017 by
10 Mr. Maldonado to Ms. Andrieu for any and all
11 "DA Subpoenas" contained within the personal
12 notes and case files.

13 EXAMINATION BY MR. STERNBERG:

14 Q. Do you remember receiving this request,
15 Ms. Andrieu?

16 A. Yes.

17 MR. STERNBERG:

18 Your Honor, at this time I'd like to
19 offer, file and introduce this request in the
20 record and those have been stipulated to.

21 THE COURT:

22 Any objection, Mr. Fink?

23 MR. FINK:

24 No objection, Your Honor.

25 THE COURT:

26 Let them be admitted.

27 EXAMINATION BY MR. STERNBERG:

28 Q. Ms. Andrieu, you have -- you actually respond
29 to this request on the very same day, didn't you?

30 A. Yes.

31 Q. Okay.

32 A. Uh-huh (affirmative response).

1 Q. You responded denying the request as unduly
2 burdensome on the very same day?
3 A. Yes.
4 Q. Did you send an e-mail to the District Attorney
5 asking for "DA Subpoenas" that they had issued --
6 A. I'm sorry --
7 Q. -- when you responded?
8 A. Could you -- could you just maybe talk a little
9 bit more slowly --
10 Q. Sorry --
11 A. -- so that I can understand you a little bit
12 better?
13 Q. -- you did not send an e-mail to Assistant
14 District Attorneys in your office asking if they had
15 issued a "DA Subpoena" within the last year, did you?
16 A. Did I do that?
17 Q. Did you, "yes" or "no?"
18 A. No.
19 Q. Did you review any ledgers or investigator
20 files before denying the request?
21 A. I didn't review anything.
22 Q. You just denied it?
23 A. I -- I'm not -- yes. I think the request kind
24 of stands for itself.
25 Q. Earlier there was some talk about the e-mail
26 traffic between you and Charles Maldonado about him
27 being out-of-town. Do you recall talking --
28 A. Yes --
29 Q. -- to your counsel about that?
30 A. -- Yes, for the Dale Lambert file.
31 Q. Previously marked as Plaintiff's 12 --
32 obviously e-mail traffic is a -- is a finicky thing.

1 It's kind of lost in the translation. If you'd look
2 at this document, do you recall receiving that e-mail?

3 A. I don't.

4 Q. You don't?

5 A. Uh-huh (negative response).

6 Q. Okay. Why don't you -- can you take a look at
7 it for me and --

8 (THE WITNESS REVIEWS THE ITEM)

9 EXAMINATION BY MR. STERNBERG:

10 Q. -- does this e-mail reflect that there was some
11 confusion on, on the DA's part, on your office's part
12 as to what documents had actually been reviewed by
13 Mr. Maldonado?

14 A. No. It doesn't --

15 Q. Okay --

16 A. -- and I'll tell you why. Mr. Maldonado came
17 in and I had several files ready. When he came --
18 when he -- when he arrived on the day to see the
19 Jennifer Gaubert file, I had several files prepared to
20 him -- for him. So, I had not e-mailed him because
21 the law clerks that I had were working -- were working
22 on the request. Shall I finish?

23 Q. Sorry.

24 THE COURT:

25 Go ahead, go ahead --

26 THE WITNESS:

27 Okay.

28 MR. STERNBERG:

29 Sorry.

30 THE COURT:

31 -- and finish.

32 THE WITNESS:

1 -- so they were working on the request
2 and they had finished reviewing or preparing
3 certain files, the remaining files actually,
4 for public view. So at the time -- so I did
5 not e-mail him that morning that I had other
6 files ready for him. He arrived and I told
7 him, I have some good news. We have several
8 files for you to review. I was not sure if
9 he saw the Payton file because the Payton
10 file was in two boxes and only one box had
11 been put out for him. In fact, even now, I'm
12 not sure --

13 EXAMINATION BY MR. STERNBERG:

14 Q. And you said --

15 A. -- he's seen the entire file.

16 Q. -- you're not sure, right? So, there was some
17 confusion, would you agree with that?

18 A. I think that he did not grab the second file.
19 So, I put -- I placed files for him to view and I do
20 not think that he -- in other words, I don't think
21 that he saw or that he -- and I don't know why, he
22 just leaves. You know, I put them on a table, he
23 stays for a while, looks at files and he leaves. So,
24 I noticed that when he left it appeared to me he had
25 not looked at all of the files, all of the Payton
26 files.

27 Q. And again, he didn't request the entire file,
28 did he? He requested the "DA Subpoenas" in the file,
29 isn't that correct?

30 A. That's what I, I think you know what my answer
31 will be to that, --

32 Q. So it's --

1 A. -- that we produced files and that we don't do
2 his investigative research for him, or for any other
3 person who makes a public records request. We produce
4 a file.

5 Q. -- so it's not -- it's your contention that you
6 don't produce the actual documents, you just have to
7 produce the file it's in, that's your contention?

8 A. In a case -- in a document that would be
9 typically, that would be typically located in a DA
10 file, no, we do not have to look to do this research
11 -- that the person requesting the file can come in and
12 people do it every day, review the file and find what
13 they need --

14 Q. Okay --

15 A. -- but we don't perform the research --

16 Q. -- Thank you --

17 A. -- or the investigation for him.

18 MR. STERNBERG:

19 -- thank you, Ms. Andrieu, --

20 THE WITNESS:

21 Uh-huh (affirmative response).

22 MR. STERNBERG:

23 -- I appreciate your time.

24 THE COURT:

25 Redirect?

26 **REDIRECT EXAMINATION**

27 EXAMINATION BY MR. FINK:

28 Q. Just real quick, does the Louisiana Public
29 Records Act allow for a custodian to claim that a
30 request is overly broad?

31 A. Yes.

32 Q. I'm going to direct your attention to Exhibit,

1 Plaintiff's Exhibit 9.

2 (THE WITNESS LOCATES THE ITEM)

3 THE WITNESS:

4 A. Yes.

5 EXAMINATION BY MR. FINK:

6 Q. And that's regarding the May 2, 2017 request.
7 Please tell me when you're ready.

8 (THE WITNESS REVIEWS THE ITEM)

9 THE WITNESS:

10 A. I'm looking at Plaintiff's Exhibit 9.

11 EXAMINATION BY MR. FINK:

12 Q. Yes, ma'am.

13 A. Yes.

14 Q. Was this request responded to by the District
15 Attorney by producing documents?

16 A. Yes.

17 Q. What made this request different from the other
18 requests from the fact that the District Attorney's
19 Office was able to produce documents in relation to
20 this request?

21 A. It was not overly broad.

22 Q. Why wasn't it overly broad?

23 A. Because it named four specific Assistant
24 District Attorneys.

25 MR. FINK:

26 That's all the questions I have, Your
27 Honor.

28 THE COURT:

29 Ms. Andrieu, I have a couple of
30 questions for you.

31 THE WITNESS:

32 Yes, Your Honor.

1 THE COURT:

2 How did you progress through the DA's
3 Office from your initial hire -- what
4 positions did you hold?

5 THE WITNESS:

6 I -- Your Honor, I was actually hired
7 into the Appeals Division. I had some
8 research and writing experience before coming
9 to the DA's Office, so most of my time in the
10 DA's Office has been in appeals. I did --
11 and I'll say basically to, you know, to help
12 me --

13 THE COURT:

14 Uh-hah (affirmative) --

15 THE WITNESS:

16 -- with handling appeals, I did what
17 would be called a rotation in trials.

18 THE COURT:

19 -- okay. I want to ask you some
20 questions specifically about --

21 THE WITNESS:

22 Uh-huh (affirmative response).

23 THE COURT:

24 -- Plaintiff's Exhibit 9, the letter of
25 June 7th, --

26 THE WITNESS:

27 Yes.

28 THE COURT:

29 -- 2017 and the attachments. More
30 particularly, the last page --

31 THE WITNESS:

32 Yes.

1 THE COURT:

2 -- which has the subpoena embossed at
3 the top.

4 THE WITNESS:

5 Yes.

6 THE COURT:

7 And it appears to have on the right side
8 of the page indications for return on
9 personal service.

10 THE WITNESS:

11 Uh-huh (affirmative response).

12 THE COURT:

13 And there's a certification by the
14 server of process.

15 THE WITNESS:

16 Yes.

17 THE COURT:

18 Who at the office would serve this
19 process?

20 THE WITNESS:

21 Your Honor, I actually cannot tell you
22 that. But -- so it might not be totally
23 responsive to what you're asking, but this is
24 what was provided me off a computer, you know
25 --

26 THE COURT:

27 No. I understand --

28 THE WITNESS:

29 -- off somebody's computer.

30 THE COURT:

31 -- what you're saying. I understand and
32 that's why I asked you what your rotation

1 through the office was --

2 THE WITNESS:

3 Yes. I don't know who -- it's my
4 understanding -- there's some article I
5 believe, and I can't cite it off the top of
6 my head, but it's an article in the Code of
7 Criminal Procedure I believe, that allows
8 NOPD that's post-certified and a assigned to
9 our office to serve subpoenas, but I can't
10 tell you the article right off the top of my
11 head --

12 THE COURT:

13 Okay --

14 THE WITNESS:

15 -- but I believe that there are some
16 individuals in the office that under the law
17 can do that.

18 THE COURT:

19 -- and if there's law of their return on
20 the services --

21 THE WITNESS:

22 The returns would not -- the returns are
23 made into Court, if that's what you're asking
24 me --

25 THE COURT:

26 -- so --

27 THE WITNESS:

28 -- the returns are made into Court on a
29 subpoena.

30 THE COURT:

31 -- if the subpoena was issued, the
32 return on it you're telling me would be made

1 to the court record of the Clerk of Criminal
2 Court?

3 THE WITNESS:

4 I -- I mean, I may be speculating a bit
5 because it's -- our office is, you know, our
6 jobs are kind of bifurcated, but I believe
7 that would be true.

8 MR. FINK:

9 Your Honor --

10 THE COURT:

11 That's all the questions I have.

12 Any questions pursuant to my questions?

13 MR. FINK:

14 -- just very quick because I still have
15 to --

16 THE COURT:

17 -- and, Mr. Fink, I'll state that I
18 allow everybody to do that. When I ask -- I
19 wait until everybody asks all of their
20 questions, if they don't ask the questions I
21 want to ask, I ask my own questions. Nobody
22 asked that question. That's why I asked it.
23 And that once I asked it, I allow everybody
24 to have an opportunity to ask questions
25 pursuant to my questions.

26 So, Mr. Fink, do you have any questions

27 --

28 MR. FINK:

29 Just very --

30 THE COURT:

31 -- pursuant to my questions?

32 MR. FINK:

1 -- very brief, Your Honor.

2 EXAMINATION BY MR. FINK:

3 Q. Ms. Andrieu, when the Judge just now on his
4 line of questioning was referring to subpoena, --

5 A. Uh-huh (affirmative response).

6 Q. -- were you referring to when a return is made,
7 is that to a subpoena, or is that to a DA -- or to a
8 subpoena like this one (indicating), or what we have
9 referred to as DA notification?

10 A. And -- I am not --

11 THE COURT:

12 And for me to be clear, Ms. Andrieu --

13 THE WITNESS:

14 -- uh-huh (affirmative response).

15 THE COURT:

16 -- I was referring to the caption of
17 the subpoena on this exhibit, more particular
18 the last page.

19 THE WITNESS:

20 Oh, okay. So, yes, I haven't -- I did
21 not really look at this. I mean, I really
22 didn't look at it when I --

23 THE COURT:

24 Make sure you understand what my
25 question was.

26 THE WITNESS:

27 Okay, I think I do now.

28 So, a couple of things, I really didn't
29 look at the documents when I attached them.
30 I, you know, the four individuals and they
31 stayed late. They worked, you know, they
32 worked -- we'll just say it was onerous on

1 them to go through their computers and
2 produce these. I took what they gave me and
3 sent them to Mr. Maldonado, but, I mean, I
4 can say I did -- I do not know. I was, I
5 guess I was --

6 THE COURT:

7 And --

8 THE WITNESS:

9 -- thinking of a subpoena that's issued
10 by a court, it's returnable to a court. I do
11 not know. I would not be a person qualified
12 in my office to answer at all.

13 MR. FINK:

14 That's all the questions I have, Your
15 Honor.

16 THE COURT:

17 Mr. Sternberg?

18 MR. STERNBERG:

19 Give me a moment, Your Honor.

20 THE COURT:

21 Sure.

22 MR. STERNBERG:

23 Your Honor, I don't have any questions
24 -- further questions, nothing more than what
25 the opposing counsel had asked.

26 THE COURT:

27 All right. You may step down,
28 Ms. Andrieu. Thank you.

29 THE WITNESS:

30 Your Honor, there are documents that I
31 think have been introduced that are still
32 without a label.

1 THE COURT:

2 Ms. Andrieu, let me explain something to
3 you --

4 THE WITNESS:

5 Yes.

6 THE COURT:

7 -- you're given a break right now. You
8 might want to step down.

9 THE WITNESS:

10 I'm just going to leave the mess up here
11 then.

12 (THE WITNESS EXITS THE WITNESS STAND
13 AND IS EXCUSED)

14 THE COURT:

15 Do you have any more witnesses,
16 Mr. Fink?

17 MR. FINK:

18 Yes, Your Honor, Mr. David Pipes.

19 THE COURT:

20 All right.

21 THE COURT REPORTER:

22 Raise your right hand for me, please.

23 (THE WITNESS COMPLIES)

24 THE COURT REPORTER:

25 Do you promise the testimony that you're
26 about to give will be the truth, the whole
27 truth and nothing but the truth so help you
28 God?

29 MR. PIPES:

30 I do.

31 THE COURT:

32 Have a seat.

1
2 (THE WITNESS IS SEATED)

3 * * * * *

4 **DAVID PIPES**

5 *Was called as a witness and after having*
6 *first been duly sworn, was examined and*
7 *testified on his oath as follows:*

8 **DIRECT EXAMINATION**

9 EXAMINATION BY MR. FINK:

10 Q. Please state your name for the record.

11 A. David Steven Pipes.

12 Q. Can you please state the name of your employer
13 for the record?

14 A. I'm employed with the Orleans Parish District
15 Attorney's Office.

16 Q. And can you please state your current position
17 and job title with the District Attorney's Office?

18 A. I'm an Assistant District Attorney currently
19 employed as the Chief of Trials with the Orleans
20 Parish District Attorney Office.

21 Q. Can you briefly describe for the Court what the
22 responsibilities of your job with the District
23 Attorney's Office are?

24 A. As Chief of Trials I oversee the prosecution
25 and the lawyers and staff assigned to Criminal
26 District Court, which consists of twelve Felony
27 Sections and the Magistrate Court. I oversee day-to-
28 day operations, day-to-day prosecutions and a staff
29 currently twelve senior attorneys, five junior
30 attorneys, six major offense attorneys and a very
31 small data entry team, six parاداتas.

32 Q. Were you involved in the processing of the four

1 Public Records Request in question in this litigation?

2 A. I was involved in the sense that I saw them and
3 took part in discussions as it led up to the
4 litigation. The actual handling of the requests was
5 done by Ms. Andrieu and Mr. Moore (assumed spelling).

6 Q. Is it typical for you to be involved in the
7 record progress such as this, the one -- the
8 litigation here?

9 A. No. That's not typical.

10 Q. Why, why then are you involved in this
11 particular request?

12 A. Due to the nature of the requests, specifically
13 the large number of files that were going to need to
14 be reviewed, as well as the nature of what exactly was
15 being requested, i.e. a particular document rather
16 than the file itself, I was brought in.

17 Q. Do the Orleans Parish District Attorneys
18 practice in any other court besides the Orleans
19 Parish Criminal District Court?

20 A. Yes. We practice, in addition to Orleans
21 Parish Criminal District Court, the Fourth Circuit and
22 Supreme Court we are also involved in litigation in
23 Juvenile Court, in Civil District Court, in Federal
24 Court in the Eastern District of Louisiana, the U.S.
25 Fifth Circuit and the U.S. Supreme Court.

26 Q. Does the City of New Orleans contribute to the
27 District Attorney's Office budget?

28 A. Yes, they do.

29 Q. For the fiscal year 2017 did the City of New
30 Orleans decrease the budget for the Orleans Parish
31 Criminal District Court?

32 MR. FINKELSTEIN:

1 Objection --
2 THE WITNESS:
3 They did --
4 MR. FINKELSTEIN:
5 -- Your Honor.
6 THE COURT:
7 The Court will overlap -- overturn it.
8 MR. FINKELSTEIN:
9 Objection, Your Honor, that there is no
10 foundation for this testimony.
11 THE COURT:
12 Uh --
13 MR. FINKELSTEIN:
14 -- and on the relevance, Your Honor.
15 THE COURT:
16 --as to his knowledge --
17 MR. FINK:
18 To his knowledge, Your Honor --
19 THE COURT:
20 Yes. Okay.
21 THE COURT REPORTER:
22 Can I have your name for the record,
23 please?
24 THE COURT:
25 Mike --
26 MR. FINKELSTEIN:
27 Michael Finkelstein.
28 THE COURT:
29 Yes.
30 MR. FINKELSTEIN:
31 I just want to say that it will go to
32 the relevancy to the overly burdensome.

1 THE COURT:

2 I'll allow you to ask a few questions.

3 Let's see where this goes. I'll allow it.

4 EXAMINATION BY MR. FINK:

5 Q. I want to just -- how much was the District
6 Attorney's budget decreased for the fiscal year 2013?

7 A. From what I understand \$600,000.00.

8 Q. Did that decrease have an effect on the overall
9 manpower of the District Attorney's Office?

10 A. Absolutely. The attorney role of our office
11 shrank by I believe six or eight attorneys. There's
12 also freezes on payroll and other matters.

13 Q. Did that -- does that budget decrease also
14 effect support staff --

15 A. Yes.

16 Q. -- with the District Attorney's Office? In
17 your estimation, from your personal knowledge I should
18 say, excuse me, do you know how many files the
19 District Attorney's Office accepts?

20 A. Yes. In a given year our office would accept in
21 Criminal District Court, which is really where my
22 personal experience would lie, somewhere between 6,000
23 and 8,000 cases in a given year. We would refuse
24 probably about 1,500.

25 Q. Are you familiar with the filing and tracking
26 system of the District Attorney's Office?

27 A. Yes.

28 Q. How are the open files in the District
29 Attorney's Office labeled?

30 A. The files are labeled by defendant name and
31 case number and then depending on where the file is,
32 the case number would be related to the court that,

1 that case is pending in.

2 Q. How are refused files labeled with the District
3 Attorney's Office?

4 A. They're labeled -- they are tracked and labeled
5 by the defendant's name and the date of refusal.

6 Q. And from your understanding of the record
7 requests, that litigation here, would this necessitate
8 to need to review both the open and closed case files?

9 A. Yes, it would. It's my understanding that the
10 plaintiff in the suit is seeking DA notices or what's
11 he's captioning "DA Subpoenas." By their nature this
12 would be something that would need to be reviewed in
13 both open cases and closed cases.

14 Q. In each file how are the documents organized?

15 A. There is no standard organization structure.
16 The way a file comes to be is a -- usually a law
17 enforcement agency would present to our office some
18 sort of criminal issue, either a complaint, an
19 investigation, an arrest. From that point until the
20 file is closed everything related to that file, all
21 notes, all reports, all documents would be contained
22 in a single physical file. Our office does not really
23 use any sort of any sort of electronic filing storage
24 or electronic file software. Essentially, were using
25 cutting edge Nineteenth Century technology. It's a
26 physical object that contains everything that is
27 related to that file.

28 Q. Does each file have an index which details
29 internal organization?

30 A. No. It does not. Criminal litigation
31 especially as practiced at Tulane and Broad is a very
32 haphazard and sort of random process. There is no

1 guaranty what's in one file will be in another. So,
2 as a result, each file contains what it contains, but
3 there's no guaranty of any particular file containing
4 any particular document.

5 Q. And just to your knowledge, are you aware of
6 any standard that imposes a specific way of internal
7 organization among of attorneys' files?

8 A. I am not.

9 Q. Are the contents of each file eventually stored
10 and converted -- actually, let me strike that. Are
11 the open files or the contents of each file digitally
12 stored or converted?

13 A. No. They are not.

14 Q. So, if a file is open and currently pending it
15 would just be, would it be correct to say that there's
16 only the physical file itself?

17 A. The physical file would contain everything
18 related to that file. An individual attorney's
19 computer might contain drafts of Word documents or
20 partial bits of pleadings, but everything that is a
21 document related to a file or anything that I would
22 put to a file would be in the file.

23 Q. What if the file is closed, are the contents of
24 that file digitally converted?

25 A. In some instances. A portion of our files are
26 scanned, for lack of a better word. Essentially, what
27 they do is they take the entire file and scan it into
28 one single PDF, which they store on a central server
29 to be reprinted in the event the record is requested
30 by someone.

31 Q. And with those closed files would it just be
32 Word documents that are produced, or would it also be

1 individual handwritten case notes?

2 A. They would literally take the entire file and
3 essentially put it on a scanner and hit scan. It
4 would have individual notes; it might have
5 photographs, handwritten documents, handwritten
6 pleadings, typewritten pleadings, basically the entire
7 contents of the file -- of those files that are
8 scanned. And I should point out not all files are
9 scanned. Oversized are kept -- oversized, basically
10 things that are too bulky to scan are not scanned.

11 Q. To your knowledge, does the software that the
12 District Attorney's Office utilizes allow for a search
13 to be done within that larger PDF file?

14 A. No. It's my understanding that it's a single,
15 large, essentially graphic file. Our office does not
16 have any sort of OCR software that we would use. And
17 even if we did, I'll be honest with you, the quality
18 of the scan are such that I would shocked if it could
19 be done.

20 Q. Can -- earlier it's been suggested that several
21 e-mail verifications to the ADA's in the office
22 requesting these documents could resolve this
23 situation; is that a feasible resolution to this
24 matter?

25 A. No. It's not. You need to keep in mind that
26 each ADA has open on their docket in the trial
27 divisions somewhere between 150 and 300 files. Over
28 the course of a year they may handle as many as 1,000
29 to 2,000 files. To expect them to remember these
30 things would be ridiculous and it's not as though --
31 you wouldn't serve one of these documents by e-mail so
32 there wouldn't be an e-mail search that would develop

1 it. At best, the only way you're going to find it
2 would be to physically eyeball the files.

3 Q. So, if mass communication -- it looks like
4 that's how the ADAs have been suggested to review for
5 these documents. Would the District Attorney's Office
6 be able to say with any certainty that this would be a
7 true search for the said documents?

8 A. No. The best you would get would be a search
9 of the computer looking for certain search terms. And
10 what you would get would probably be, based on what I
11 was hearing, what was turned over, a blank template
12 that might have been used by an individual attorney
13 but not an actual DA notice or subpoena.

14 Q. Would one specific ADA follow a case through
15 from the beginning to the end?

16 A. Absolutely not. Cases usually come in through
17 our screening division. A screener would be
18 responsible for receiving the information from the
19 police, making contact with victims and witnesses,
20 making a charge and decision. The case would then be
21 transferred through investigations and data entry to
22 the trial attorneys. Assuming a trial attorney stayed
23 in the section from beginning to end you might have
24 one attorney at that point. But more likely than not
25 a case would get either transferred to another
26 section, in which case another ADA would take over, an
27 ADA might leave the office or be reassigned, in which
28 another ADA might take over. And then once there's a
29 resolution it would go to the Appeals Division, which
30 would be an entirely separate set of attorneys.

31 Q. Is there any way from your testimony regarding
32 the internal workings of the District Attorney's

1 Office to satisfy the record requests in question here
2 today without the manual review of the files?

3 A. No. That's the only way you're going to be able
4 to see which records have these subpoenas and which do
5 not.

6 Q. I'm going to ask you to walk us through the
7 steps that would be required in order -- responding to
8 just one file request on here. What would be the
9 first step that you would have to undertake in order
10 to respond to the Records Request here in question?

11 A. The first step would be to find the file
12 honestly. You would need to determine if it is an
13 open case, in which the case the file is with the
14 prosecuting attorney of the section or it's a closed
15 file, which would mean it would likely be with the
16 closed file record room or in the process of getting
17 put in the closed file record room. Once we have that
18 information, we would need to see if it is a file in
19 which further litigation would be pending. Depending
20 on how the file resolved, if it was still open,
21 obviously there would be further litigation. If it
22 was a case that resulted in a trial, there might be an
23 appeal. If it was a case that ended in a dismissal,
24 it may be a case that's going to be reinstated. If
25 it's a case that ended in a guilty plea, it might have
26 co-defendants or there may have been some sort of
27 memorialization of a -- basically a memorandum of
28 understanding where the file may still be involved if
29 that person becomes a witness. So, that's really the
30 first step.

31 Q. Is there any other steps that are related to
32 the review of what's in these files?

1 A. I know that you would need to go through and
2 look for privileged information. I'm not a hundred
3 percent familiar with all of the various privileged
4 and public records law, but in the case of these DA
5 notices, I know that privileged information includes
6 witness' names, phone numbers and addresses, which
7 would typically be the information you'd see on these
8 documents. So, even if we had them, those would
9 likely need to be redacted. But you would also need
10 to redact, as I understand it, attorney work product,
11 personal information, things of that nature.

12 Q. Would an attorney be required to be present to
13 oversee that review in order to interpret those
14 exceptions that you were just listing?

15 A. I don't know that they would need to be present
16 but they would absolutely need to be involved. Our
17 office employs essentially one non-attorney individual
18 to oversee the management of these closed records.
19 And as public record requests come in he then
20 basically farms that work out to various attorneys as
21 a case-by-case basis to determine is this pending
22 litigation, is there some other exception that needs
23 to apply?

24 Q. Can you describe to me the type of man power
25 that would be required in order to properly respond to
26 get these files for the record requests in question
27 today?

28 A. Sure. The cases or the date range that I've
29 seen on these requests comes out to approximately
30 about 8,000 to 9,000 files. Mr. Maldonado said that
31 it took him an hour to go through one looking for it,
32 so just starting with -- we have all the files

1 assembled, you're looking at about 9,000 man hours
2 just to look through the files and see if there is in
3 fact a DA notice in the file. At some point, either
4 before that or after that, you would need to go
5 through each of the exceptions to determine is it
6 something that is subject to disclosure, either is
7 there pending litigation or some other exception.

8 Now, prior to even getting to that is the
9 process of identifying the files that are responsive
10 to the requests and actually assembling them. That
11 itself would take a substantial amount of work because
12 the file has basically set a timeline of about 18 --
13 14 months and you would need to get all files that
14 were open in that time period -- not just all files
15 that were opened or closed.

16 Q. Would the District Attorney's Office be forced
17 to pull ADAs from their duties in Criminal District
18 Court in order to comply with this Records Request --

19 MR. FINKELSTEIN:

20 Objection, calls for speculation, Your
21 Honor.

22 THE COURT:

23 Well, if he's done that he can testify
24 to what he's done. I'll allow that.

25 MR. FINKELSTEIN:

26 I'd also object to counsel testifying.

27 THE COURT:

28 Well, again, I'll remind you, Mr. Fink

29 --

30 MR. FINK:

31 -- I apologize.

32 THE COURT:

1 -- this is your witness.

2 EXAMINATION BY MR. FINK:

3 Q. What would the District Attorney Office have to
4 undertake in order to respond to these record requests
5 in question?

6 A. Well, as I stated, the number of man hours
7 involved just reviewing the records, you're looking at
8 the better part of a year, a man-year of work. So
9 depending upon how quickly you'd want these records,
10 you would need to pull a number of attorneys and
11 dedicate them essentially full-time to this task.

12 Now, with the current staffing levels of our
13 office, there is no division of our office that is
14 currently staffed at spec where it is supposed to be.
15 So, we would need to pull additional attorneys from
16 somewhere. I'm not really sure what division would be
17 able to do that since every division is running short
18 staffed right now.

19 Q. To your knowledge can you describe the daily
20 activities of an ADA for Criminal District Court?

21 A. My trial attorneys usually arrive at the office
22 somewhere between 7:00 and 8:00 a.m. They're in court
23 for 9:00. Now, Criminal District Court sits five days
24 a week, every week. So the ADAs assigned to a section
25 are in court for about 8:30 until about 3:00 in the
26 afternoon, every day, Monday through Friday. When
27 they get out of court each day, they then have to
28 prepare the cases that are set on the next day's
29 docket. That usually takes them well into the
30 evening. The last ADAs probably don't leave the
31 office until 9:00 or 10:00 at night.

32 Q. Does each ADA have a support staff?

1 A. No ADAs have really a support staff. As I
2 noted, the Trials Division, with the exception of six
3 ladies who literally are responsible for putting the
4 next date into our case tracking system so we know
5 what case is set next, there is no administrative
6 support. There is no secretarial work. We
7 occasionally get law students who will come in either
8 under Rule 20, or as interns who assist us in copying,
9 or literally carrying the files to court. Other
10 divisions have slightly better support. The Appeals
11 Division has a single legal assistant for the six
12 attorneys that are there. The Screening Division has
13 a small group that are responsible primarily for
14 typing of bills of information and putting the fiscal
15 files together. But as far as any sort of support
16 staff or administrative staff it's virtually not
17 existent.

18 Q. Thank you, Mr. Pipes.

19 MR. FINK:

20 Those are all the questions I have, Your
21 Honor.

22 THE COURT:

23 Cross?

24 MR. FINKELSTEIN:

25 Yes, Your Honor.

26 **CROSS EXAMINATION**

27 EXAMINATION BY MR. FINKELSTEIN:

28 Q. Good morning, Mr. Pipes.

29 A. Good morning.

30 Q. I should say, good afternoon. Mr. Pipes, you
31 testified previously regarding the District Attorney's
32 budget, you reduced some \$600,000.00. Are you aware

1 that the budget has increased significantly from 2010
2 to 2016?

3 A. I'm not aware of that.

4 Q. Are you aware that the budget has increased
5 every year from 2014, 2015, 2016?

6 A. Only from what you're telling me and
7 anecdotally.

8 Q. As the Chief of Trials for the Orleans Parish
9 District Attorney's Office you oversee work performed
10 by other Assistant District Attorneys, is that right?

11 A. I'm sorry. Would you repeat that?

12 Q. Yes. As the Chief of Trials of the District
13 Attorney's Office's office you oversee work performed
14 by other Assistant District Attorneys, is that right?

15 A. That's true.

16 Q. And as an ADA yourself, you also perform some
17 tasks related to criminal prosecution yourself?

18 A. I do have a small docket of cases that I'm
19 personally prosecuting, yes.

20 Q. Before becoming the Chief of Trials have you
21 worked in the District Attorney's Office for some time
22 before that --

23 A. Yes --

24 Q. -- in different positions?

25 A. I was hired in 2003. I believe it was September
26 of 2003 into the Screening Division. I was there, for
27 approximately year, before moving to the Magistrate
28 Division, then to the Trials Division. I was
29 transferred to the Appeals Division sometime after
30 Katrina; I want to say maybe 2006. I was in Appeals
31 until shortly after Mr. Cannizzaro won the office. I
32 was transferred back into Trials. At that point, from

1 there I was moved to the Screening Division again
2 handling homicide screening. From there I was placed
3 into a supervisory capacity in what was called at the
4 time a Trial Supervisor, which is essentially more
5 into Chief of Trials.

6 Q. Would it be fair to say that you've had
7 significant criminal prosecution experience?

8 A. Yes.

9 Q. Would it be fair to say you've had -- you've
10 handled hundreds if not thousands of criminal trials?

11 A. I don't know if I would say thousands of
12 criminal trials, but I would say of thousands of
13 criminal cases.

14 Q. Sure. Would it be fair to say that you've
15 handled a significant number of criminal appeals for
16 the District Attorney's Office?

17 A. Yes.

18 Q. And you currently also at some time handle
19 cases as an Assistant District Attorney yourself?

20 A. Yes.

21 Q. The DA's Office trains Assistant District
22 Attorneys on how to maintain case files, correct?

23 A. I don't know if I would agree with that
24 necessarily. Attorneys are taught mainly through
25 experience and I use term osmosis, but by watching
26 what's done by the attorneys ahead of you about what
27 things need to be kept, but there isn't a training
28 where we say you must keep these things in this order.
29 The nature of practice just doesn't allow for that.

30 Q. So on-the-job training, would that be fair to
31 classify that?

32 A. Significantly, yes.

1 Q. The DA's Office -- the DA's Office has a policy
2 regarding how to maintain case files, would that be
3 accurate?

4 A. Yes.

5 Q. And it would be important then for the DA's
6 Office to keep case materials accurately?

7 A. Yes.

8 Q. And would it be important for the DA's Office
9 to keep case files in an organized manner?

10 A. Yes.

11 Q. And you testified earlier that -- strike that.
12 Is there any kind of written policy regarding expected
13 practices on how to maintain case files?

14 A. I'm not sure it would be called how to maintain
15 the case file. I mean, there are policies that the
16 Trials Division uses. I don't know that any of them
17 specifically relate to how you take care of your file.
18 There are policies regarding where you get your file
19 from and where you file goes to and what things are
20 supposed to be documented.

21 Q. Are those policies written?

22 A. Yes.

23 Q. And who is the custodian of that written
24 policy?

25 A. I would assume, Leon Cannizzaro.

26 Q. Where can that policy be found in your office?

27 MR. FINK:

28 Your Honor, objection, relevancy. We're

29 --

30 THE COURT:

31 I'll overrule on relevance. I think
32 that's --

1 THE WITNESS:

2 I would assume that a public records
3 request for policy manuals would get you a
4 copy of them.

5 EXAMINATION BY MR. FINKELSTEIN:

6 Q. Were you yourself given a copy of that policy
7 when you started as an Assistant District Attorney?

8 A. Actually, when I started as an Assistant
9 District Attorney I was given a policy manual relating
10 to the Eddie Jordan administration.

11 Q. Oh.

12 A. That policy manual is defunct.

13 Q. When a new ADA is hired currently are they
14 given a copy of the policy and procedure manual?

15 A. To -- my understanding is when a new ADA is
16 hired they're given several documents, various cases,
17 Brady, Kyles, Giulio (assumed spelling) for review, a
18 policy manual, probably some information regarding
19 payroll -- I honestly wouldn't know.

20 Q. Does the DA's Office keep an organized list of
21 open or active cases?

22 A. We have a list of open cases. We have, we have
23 a list of cases and from that list we have -- the
24 computer system can tell us if a case is open in our
25 system or closed. Though I would point out that, that
26 is not necessary congruent with what would be open or
27 closed under Louisiana law.

28 Q. So that, that list then would be organized in a
29 -- in a computer database of some sort?

30 A. The computer list would have the name, case
31 number, charges and status of defendants, yes.

32 Q. And who maintains that computer list or

1 database?

2 A. Our office employs a computer system known as
3 Primes. We have, as I said earlier, a team of six
4 paradas, who essentially get the files when they
5 come back from court, enter into that system today's
6 date, the current disposition, and then returns them
7 to the trial attorneys.

8 Q. If a case went from being opened to closed,
9 would that system reflect the closure of a case?

10 A. It would. But, again, whether it's considered
11 for purposes of the Trial Division's tracking software
12 is not necessarily closed under Louisiana law. For
13 our purposes a case is closed at sentencing.

14 Q. Now, in your office there's -- District
15 Attorney's and other members of the Orleans Parish
16 DA's Office, they're given e-mail addresses ending
17 @orleansda.com, is that right?

18 A. That's correct.

19 Q. And there's the ability to e-mail to all
20 attorneys in the DA's Office?

21 A. I am told there is. I'll be honest with you, I
22 have never been able to figure out how they do an all
23 ADA e-mail. I usually do individually list each
24 attorney I'm looking for.

25 Q. Do you have the ability to request that an
26 e-mail be sent to all ADAs?

27 A. I would assume that I could. I have seen other
28 people do it. I have never been able to.

29 Q. And you've -- you've seen e-mails come across
30 your e-mail that are directed to the entire District
31 Attorney's Office?

32 A. Yes.

1 Q. Now, let's talk a little bit about Article 66.
2 You're familiar with this based on your work as an
3 Assistant District Attorney, right?

4 A. I am.

5 Q. And you're familiar with the requirements of an
6 Article 66 subpoena?

7 A. Yes.

8 Q. Have you yourself ever requested Article 66
9 subpoena be issued?

10 MR. FINK:

11 Your Honor, objection, relevancy. We're
12 here today to discuss a Records Request, not
13 whether the witness has issued Article 66's.

14 MR. FINKELSTEIN:

15 May I respond, Your Honor?

16 THE COURT:

17 Yes.

18 MR. FINKELSTEIN:

19 Your Honor, in showing the requirements
20 for an Article 66 subpoena and the return
21 that would be issued thereon and filed into
22 the Court's record, we would like to -- we
23 would like to show that the absence of the
24 record in -- as it relates to the DA
25 subpoenas led to no other alternative for
26 Mr. Maldonado to issue records request.

27 THE COURT:

28 Well, let's see what Mr. Pipes knows
29 about Article 66. But we don't need to do
30 this ad nauseum.

31 THE WITNESS:

32 I'll be honest with you; I don't believe

1 I've ever issued an Article 66 subpoena as
2 such. They're extraordinarily rare and I
3 only really can think of one off the top of
4 my head that we've done recently.

5 EXAMINATION BY MR. FINKELSTEIN:

6 Q. Based on your familiarity with Article 66
7 subpoenas you understand that under Article 66 a copy
8 of the return would be placed into the record of the
9 Court?

10 A. Correct.

11 Q. Now, as the Chief of Trials have you ever
12 supervised Assistant District Attorneys in sending DA
13 subpoenas to a witness?

14 A. I have. Though I would ask exactly -- a DA
15 subpoena has different meanings to different people --

16 Q. Sure --

17 A. -- and I think we should clarify that because
18 some people refer to an Article 66 subpoena as a DA
19 subpoena. Some people refer to a Grand Jury subpoena
20 as a DA subpoena. Some people refer to the DA notices
21 that I think were attached to some of the exhibits as
22 a DA subpoena. I'm sure there are other things -- I
23 know, I've got police officers who believe who believe
24 a letter saying, please come to a charge conference is
25 a DA subpoena.

26 Q. Let me clarify something then for you. I'd
27 like to turn your attention to what's been previously
28 admitted into evidence as Plaintiff's Exhibit 9. And
29 I'd like to specifically direct your attention to the
30 fourth page of that document.

31 A. Give me one second because unfortunately, I
32 have a little bit of a mess up here.

1 (THE WITNESS SEARCHES FOR
2 AND REVIEWS THE ITEM)

3 THE WITNESS:

4 Yes.

5 EXAMINATION BY MR. FINKELSTEIN:

6 Q. Now, does that document say in big, bold
7 letters, subpoena. Did I read that correctly?

8 A. It does.

9 Q. And to the -- on the left side of that
10 document, there's an official seal that seems to be
11 the seal of the District Attorney, Leon Cannizzaro, is
12 that also correct?

13 A. That's correct.

14 Q. In referencing the term, "DA Subpoenas," would
15 you understand what I was -- that I was referring to
16 this document?

17 A. Okay.

18 Q. Yes?

19 A. I mean, you say that this is what you're
20 referring to, so, yes.

21 Q. And have you seen this document that I'll call
22 or refer to as a "DA Subpoena," have you seen this
23 document issued in connection with cases --

24 A. I have.

25 Q. -- handled by the District Attorney's Office?

26 A. I have, or at least documents that are
27 substantially similar to this.

28 Q. And this document is served in the same format,
29 in the same manner that a subpoena under Article 66
30 would be served, is that right?

31 A. I don't think I would agree with that. I will
32 note that it has spots on here for return of service

1 as a normal court issued subpoena would. But from
2 personal experience, I would not say these are always
3 served in the same manner as a court subpoena.

4 Q. Well, in -- in -- you said earlier that you
5 supervise attorneys who have issued these subpoenas,
6 is that right?

7 A. I have.

8 Q. Now, these subpoenas -- where are they -- are
9 they kept in your office in paper copy?

10 A. Usually they are kept like this (indicating)
11 and printed out and filled in by hand.

12 Q. So, is that -- it would be fair to say that
13 there's a blank stack of them sitting in blank
14 somewhere in the office?

15 A. I wouldn't agree with that. It would be my
16 understanding that they'd be printed out from a
17 computer template as needed.

18 Q. Is there also the opportunity to draft this
19 document directly from a computer system?

20 A. I would assume so.

21 Q. After this document is filled out by hand would
22 a -- would a copy be kept by your office?

23 A. Not necessarily --

24 Q. Uh --

25 A. -- again, there's multiple uses for this
26 document. For instance, typically the most common use
27 for this document would be when we're asking a police
28 officer to come to our office for a charge conference
29 and they need some sort of proof for their supervisor,
30 we would give them one. Similarly, if a victim or a
31 witness needed a note for school, a note for work, we
32 would give them one. If we were sending them out to

1 witnesses we either couldn't locate or we couldn't
2 make contact with, a copy might be kept, but not
3 necessarily. Most of the time, these were handed out
4 to people who needed either some proof or some contact
5 with our office.

6 Q. Would it be fair to say that these documents
7 are issued regularly?

8 A. No. I would say that's absolutely untrue.

9 Q. Would it be a rare occurrence for one of these
10 to be issued?

11 A. Yes. As Chief of Trials, one of my duties is
12 to close out records. In the first six months of the
13 year, I didn't have anyone assisting me with that so I
14 was essentially solely responsible for closing out
15 files, which means once they come through our data
16 entry system I need to make sure what matches that
17 entries is what matches the file and matches what
18 happens in court. I then sign off and it then goes to
19 the closed record room. In that six month period I
20 probably closed out about 6,000 files that spanned the
21 end of 2015 to the beginning of 2016. And in doing
22 that and in thumbing through the files I saw maybe
23 seven cases that had what looked like one of these in
24 it. So I would say in about one-tenth (1/10) of one
25 (1) percent of files.

26 Q. Those seven cases that was particularly notable
27 that you observed the subpoena had been sent?

28 A. I just saw that it was in there. I didn't note
29 at the time. I had no reason to note their existence.
30 I was thumbing through the files looking for the
31 pre-authorization sheet and to make sure that whatever
32 plea agreement was reached in the file had authority.

1 Is it possible there were more? Probably, since I
2 wasn't looking through every page of the file, but I
3 wouldn't expect it to be substantially more.

4 Q. When one of these -- if one of these DA
5 subpoenas had been served on a witness would a copy of
6 the return be brought back to the DA's Office?

7 A. If it was actually served on a witness, yes.

8 Q. And would that copy be kept in the record of
9 the case?

10 A. It would.

11 Q. Would that copy also be -- or would the
12 original be filed into the record at Court?

13 A. It would depend.

14 Q. What would it depend on?

15 A. Uh, for what purpose it was being filed.
16 You've got to keep in mind these are not actual court
17 issued subpoenas. A court record requires a return on
18 a subpoena if I'm going to be seeking an action on the
19 subpoena. If I wanted the Court to arrest someone for
20 failure to appear, like issue an attachment, have a
21 contempt of court citation, I would need a return on
22 the subpoena in the record. If I'm using this as a
23 step in a chain to build a case for an uncooperative
24 witness, I might file it into the record, but I
25 wouldn't otherwise.

26 Q. So, in summarizing -- in summarizing that, this
27 return subpoena -- a return on this subpoena would not
28 always be found in the court's record?

29 A. In the record of Criminal District Court, no.

30 Q. And if it was returned to your office would it
31 be scanned into, into your court -- to the -- into
32 your office's computer system?

1 A. If that file was one of those that was scanned
2 it would be part of the one PDF for that file, yes.

3 Q. Sure. And let me specifically clarify them --
4 why not open cases and not closed cases?

5 A. Oh, it wouldn't -- nothing would be scanned in
6 an open case. Cases don't get scanned until after
7 they're closed out, until they're done and they've
8 been shipped to the closed file room.

9 Q. Copies of cases aren't kept electronically in
10 terms of a complete records base as --

11 A. Not while they're open, no. The file is
12 literally a physical object.

13 Q. -- sure. Moving along to the specific request
14 at issue here, were you ever advised of
15 Mr. Maldonado's records request?

16 A. At some point, yes.

17 Q. Well, following Mr. Maldonado's Records Request
18 on April 7th, you didn't receive any kind of e-mail
19 for a copy of Mr. Maldonado's Records Request, did
20 you?

21 A. I have no idea which one the April 7th request
22 is.

23 Q. Excuse me, April 27th.

24 (THE WITNESS SEARCHES FOR THE ITEM)

25 THE WITNESS:

26 A. Is there a particular exhibit number? I'm
27 sorry, I'm --

28 Q. I believe its Plaintiff's Exhibit 3.

29 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

30 EXAMINATION BY MR. FINK:

31 Q. Did you receive an e-mail forwarding a copy of
32 Mr. Maldonado's Records Request of April 27, 2017?

1 A. I don't believe so.

2 Q. Were you ever asked about Mr. Maldonado's
3 Records Request of April 27, 2017?

4 (THE WITNESS REVIEWS THE ITEM FURTHER)

5 THE WITNESS:

6 A. I honestly don't know, as it relates to a
7 specific request.

8 EXAMINATION BY MR. FINKELSTEIN:

9 Q. Sure. Well, in that -- not regarding the
10 substance of the request. Were you ever asked in
11 general about Mr. Maldonado's Records Request of April
12 27, 2017?

13 A. I'm sure as -- yes, I'm sure at some point I
14 was.

15 Q. Were you ever asked about producing DA
16 subpoenas in response to that request?

17 A. Yes.

18 Q. And what became of that discussion?

19 A. The discussion generally revolved around what
20 would be necessary in order to comply with a request.
21 And I opined then what I believed now, the only way to
22 do that would be to physically pull all of the files
23 and then eyeball them.

24 Q. You didn't attempt to produce any kind of
25 record that would be responsive to that request, did
26 you?

27 A. I remember Ms. Andrieu contacting several of my
28 attorneys about checking their personal computers -- I
29 say their personal computers, their officer computers
30 about electronic subpoenas, about whether there was
31 anything in their personal case -- trial -- their
32 personal case record, which I assume would just be the

1 files on their computer, but other than that, no.

2 Q. And you didn't report that to any other
3 individual with your office?

4 A. Report what?

5 Q. Uh, I'll, I'll strike that question. Now, the
6 seven "DA Subpoenas" that you said you saw, did you
7 ever produce those to Ms. Andrieu or to anyone else
8 regarding the record requests?

9 A. No. At the time I saw them I wasn't aware of
10 any requests for them and it's just something I noted
11 as I flipped through the files. When you're going
12 through the files some things catch your eye, maybe
13 it's a crime scene photo, maybe it was -- like I said
14 -- and I remember about seven instances where I saw
15 those types of documents. There may have been more
16 but I'd say it was about seven but at the time it
17 wasn't particularly memorable.

18 Q. Following Mr. Maldonado's Records Request on
19 April 27, 2017, there was an office meeting to discuss
20 the Records Request, is that correct?

21 A. There were meetings. I wouldn't say it was an
22 office meeting. I mean, we met at the office so I
23 guess you could call it that. I met with Mr. Fink,
24 Mr. McCollough, the First Assistant -- I'm sure there
25 was a couple -- Mr. Vincent was there, Donna was
26 there, and there may have been a couple of other
27 people.

28 MR. FINK:

29 Your Honor, I just object to this
30 question to the extent that it calls for an
31 attorney/client information.

32 THE COURT:

1 I will, I will certainly sustain that.
2 You're just asking who met, he's not -- he
3 didn't ask for the substance of the
4 conversation so please note that for
5 Mr. Finkelstein.

6 MR. FINKELSTEIN:

7 Yes, Your Honor.

8 THE COURT:

9 All right. Go ahead.

10 EXAMINATION BY MR. FINKELSTEIN:

11 Q. Mr. Pipes, were you ever -- would it be fair to
12 say that you were never directly forwarded any copies
13 of any of Mr. Maldonado's record requests?

14 A. I was never -- I was never directly forwarded
15 them prior to the onset of this litigation. I have
16 seen copies of them since.

17 Q. And you never yourself attempted to answer any
18 of the requests from Mr. Maldonado?

19 A. Other than to try and devise a method by which
20 they could be complied with, no.

21 MR. FINKELSTEIN:

22 May I have one moment, Your Honor?

23 THE COURT:

24 Sure.

25 (COUNSEL FINKELSTEIN CONSULTS

26 WITH CO-COUNSEL)

27 MR. FINKELSTEIN:

28 Nothing further.

29 THE COURT:

30 Redirect?

31 MR. FINK:

32 Very briefly, Your Honor.

1 THE COURT:

2 Sure.

3 REDIRECT EXAMINATION

4 EXAMINATION BY MR. FINK:

5 Q. Regarding the Records Request question today,
6 questions have been asked about the ability to send
7 out an e-mail requesting these subpoenas or DA
8 notifications; however, you may want to refer to them.
9 My question would be, would you feel comfortable
10 affirming that, that would -- that, that e-mail to
11 request all ADAs if they sent those notifications
12 would constitute a full response --

13 A. I wouldn't --

14 Q. -- a full response?

15 A. -- No. I wouldn't. First, the ADA's are --
16 some of those ADA's are no longer at our office. And
17 even they were -- even if I had an e-mail address for
18 them and I would ask them, have you ever done a DA
19 notice to someone? Even if they said yes, I would be
20 shocked if they could tell me what file, what case,
21 how many times, to whom. Quite simply, the volume of
22 work that they deal with -- even if they are trying
23 their hardest to remember to everyone, I wouldn't
24 trust that they'd be able to. It really would take an
25 eyeballing of each file to know for sure.

26 Q. And my last question, are the files at the
27 District Attorney's Office organized in a way that
28 makes sense for a prosecutor?

29 A. Absolutely. I'm looking for a particular case.
30 I'm looking for a particular defendant. We have them
31 indexed by case and defendant. Our computer system
32 will allow us to check a couple of the other indexing

1 numbers, the Magistrate number or the item number.
2 That's not always accurate. But it's kept in the name
3 and by the case number of the Court that we're
4 prosecuting in.

5 MR. FINK:

6 Thank you.

7 THE COURT:

8 All right. I have a couple of questions.

9 THE WITNESS:

10 Yes, sir.

11 THE COURT:

12 Where do these, and I'm -- if you refer
13 to Exhibit 9 and the attached subpoena and
14 the forms attached thereto. And I'm speaking
15 of the things issued in these forms but
16 something similar about the District
17 Attorney's Office.

18 (THE WITNESS LOCATES AND REVIEWS THE ITEM)

19 THE COURT:

20 Who would be responsible for serving
21 those papers for your office?

22 THE WITNESS:

23 Typically, it would be an investigator
24 in our office. But, I know that I've had
25 instances where ADA's have handed these
26 documents to individuals themselves,
27 especially if it's a police officer who
28 needed some proof for work that he was at the
29 office. But typically, it would be --

30 THE COURT:

31 If they were -- particularly if they
32 were serving this form as a witness?

1 THE WITNESS:

2 It would usually be an investigator
3 employed by our office.

4 THE COURT:

5 Right. Now, when they make that service
6 who do they have to account for that service
7 to?

8 THE WITNESS:

9 They usually would refer it to the trial
10 attorney who they're working for.

11 THE COURT:

12 Would they fill out the return on the
13 subpoena for the trial attorney handling
14 that?

15 THE WITNESS:

16 Usually only if they were actually able
17 to accomplish service. In the vast majority
18 of cases we would try and find people. We
19 would put these somewhere. But unless I
20 actually handed it to a witness I wouldn't
21 expect the return to be filled out. Our
22 investigator would usually just come back and
23 say we couldn't find them.

24 THE COURT:

25 Okay.

26 Now, the Screening Division --

27 THE WITNESS:

28 Yes, sir --

29 THE COURT:

30 -- who is responsible for the closed
31 files in screening?

32 THE WITNESS:

1 -- once the cases are closed and have
2 been signed off on as a refusal by the Chief
3 of our Case Management and Specialized
4 Screening Services they would then be sent to
5 John Royer, our Records Custodian.

6 THE COURT:

7 Okay, but I mean, who's responsible for
8 the closing -- like you indicated you're
9 responsible for closing out the files in --

10 THE WITNESS:

11 Oh, well, I'm sorry. The way it would
12 work is, once the screener makes a screening
13 determination they submit it for review. The
14 Chief of Screening and Case Management, I
15 think it's Paige Klein, would sign that and
16 then they would then go to Data Entry and
17 then on to Jean Royer. So she would be the
18 person signing that.

19 THE COURT:

20 Yes. If I heard your testimony
21 correctly, you were in screening initially
22 when you were hired in 2003 and then you
23 served in screening homicide cases after
24 Mr. Cannizzaro was elected, is that correct?

25 THE WITNESS:

26 That is correct, Judge.

27 THE COURT:

28 In the Screening Division were any of
29 these subpoenas ever issued?

30 THE WITNESS:

31 Not when I was in the Screening
32 Division, but it's my understanding, yes,

1 that they would be issued by screeners who
2 were attempting to locate witnesses or have
3 witness come into Court. And it would be
4 screeners typically who would issue them to
5 police officers as a notice for a meeting.

6 THE COURT:

7 Okay. I don't have any further
8 questions. Anybody have any questions
9 pursuant to my questions? Mr. Fink?

10 MR. FINK:

11 No, sir.

12 THE COURT:

13 Mr. Finkelstein?

14 MR. FINKELSTEIN:

15 No, Your Honor.

16 THE COURT:

17 Okay. You may step down.

18 THE WITNESS:

19 Okay, thank you, Judge.

20 (THE WITNESS EXITS THE WITNESS STAND
21 AND IS EXCUSED)

22 THE COURT:

23 Mr. Fink, do you have any other
24 witnesses?

25 MR. FINK:

26 No, Your Honor.

27 THE COURT:

28 Any redirect, I mean, any rebuttal?

29 MR. STERNBERG:

30 Uh --

31 THE COURT:

32 Rebuttal witnesses is what I mean.

1 MR. STERNBERG:

2 No, Your Honor.

3 As far as I know, Your Honor, we do not
4 have any rebuttal witnesses.

5 THE COURT:

6 That's all I'm asking at this point.

7 MR. STERNBERG:

8 Yes, Your Honor.

9 THE COURT:

10 Do you want to make any kind of final
11 comment?

12 MR. STERNBERG:

13 Briefly, Your Honor.

14 THE COURT:

15 Surely.

16 MR. STERNBERG:

17 The story that we've heard today from
18 opposing counsel, these witnesses, and also
19 from Mr. Maldonado, is one that an innocuous
20 request for a document that people are very
21 interested in and one of -- an obvious
22 failure to comply with the provisions of the
23 law. The - the request can actually boil
24 down to two questions: Should the DA have to
25 produce the DA subpoenas in its possession;
26 and does the -- did the DA do enough to
27 comply with the request? Your Honor, we've
28 heard time and time again that there were no
29 e-mails, not even a cursory request for
30 documents that could have been responsive.

31 Your Honor, there obviously is a rare
32 occurrence. That is what we have heard from

1 the DA many times and we've heard on the
2 stand today. It's a memorable thing. If
3 they had asked their District Attorneys, have
4 you sent one of these in the last year? Any
5 responsive documents would have been a better
6 effort than the unduly burdensome letter that
7 we got on the very same day that we requested
8 the documents in the final instance, Your
9 Honor.

10 Your Honor, the Louisiana Code of Public
11 Record is broad. It's to be interpreted
12 liberally in favor of access. And in this
13 case, Your Honor, if the DA was following
14 Article 66, Article 736 and Article 734 of
15 the Louisiana Code of Criminal Procedure
16 which allows for witness subpoenas, there
17 would be a return in the record. And they're
18 using the criminal litigation exception as a
19 shield for their violation of the law. And
20 for that reason, Your Honor, we believe that
21 it is not contained within the criminal
22 investigation. It is in fact a record of the
23 Court that they are -- that the District
24 Attorney is just not filing in the Court.

25 For that reason, Your Honor, we believe
26 that you should rule that the District
27 Attorney should make an effort and turn over
28 those District Attorney subpoenas that are
29 written and is its purview.

30 THE COURT:

31 Okay. Mr. Fink, or Mr. McAuliffe?

32 MR. MCAULIFFE:

1 Yes, Your Honor.

2 Just fairly briefly. To address the
3 issues with the declaratory judgment
4 regarding open records. That is a blanket
5 exception under Public Records Law, under the
6 Public Records Laws. There is no exception
7 for that and the Louisiana Supreme Court has
8 ruled as such. Therefore, any open case or
9 any case in which there is reasonable
10 anticipated pending litigation you simply
11 cannot turn those over under law.

12 Apart from that, regarding any other
13 cases, any cases that are in fact closed,
14 which are in fact final -- and, again, you
15 know, I'd reiterate that our definition of
16 closed for news purposes is different than
17 the law. Legally the case has to be closed
18 and final in order for the -- in order for
19 use to be able to turn over the documents.

20 The requests in this matter are very
21 broad. Your Honor heard the testimony
22 presented by the District Attorney today of
23 what would be required in order to fully
24 comply, particularly with the first request,
25 which is any and all of these documents.
26 There is no way to comply with that absent
27 going through every file.

28 Mr. Sternberg just stated, you know,
29 that production of anything would have been
30 better than the production of nothing.
31 That's one of the reasons we met with them.
32 Narrow your request. Make a more narrower

1 request and give us something that we can
2 comply with and that you would be happy with.
3 And we did comply when possible. In fact,
4 you saw those -- the blank document, subpoena
5 or notice that were filed into the record
6 today. When they made a request that was
7 narrower that we could comply with, the
8 District Attorney did that. But a blanket
9 compliant with the initial request or any
10 subsequent request that would require going
11 through all of the District Attorney's files,
12 all of the District Attorney's computers.
13 It's simply too broad and we cannot comply
14 with that.

15 This very Court made the same ruling in
16 *Beckett v. Serpas* with reviewing NOPD, Public
17 Integrity Bureau reports or requests for
18 violation files. Again, the files in that
19 case were maintained by main -- by the
20 officer's name and this very Court stated
21 that it, that it's too broad, they would have
22 to flip through every file, and it was overly
23 burdensome. There is no difference here.
24 And there are many more criminal prosecutions
25 in Orleans Parish than there are -- I mean,
26 that -- we know that beyond a doubt. There
27 are more crimes than officers on the -- on
28 the force.

29 Apart from noting that case, *Beckett*
30 *Versus Serpas*, I would also note *State Versus*
31 -- or *Hatcher Versus Greon*, 211 So.3d, p.
32 431. In that case the -- a criminal

1 defendant had requested coroner's reports
2 from Mr. Rouse, the coroner -- from
3 Dr. Rouse. And he requested it via NOPD item
4 number, which is not how the coroner, again,
5 requests -- logs his files. It's by the
6 deceased's name.

7 And the -- the coroner was correct in
8 his rule to have told him that the request
9 was denied at that time. And the Fourth
10 Circuit specifically stated in that case, the
11 Custodian of Public Record cannot be expected
12 to produce records that it cannot identify.
13 To the contrary, the custodian's statutory
14 duty is to provide immediate access to
15 records that are --

16 THE COURT:

17 Slow down. Slow down. You're killing
18 the reporter.

19 MR. MCAULIFFE:

20 I apologize.

21 To the contrary, the custodian's
22 statutory duty is to provide immediate access
23 to the records that are available.

24 Again, we have not been able to identify
25 a particular file because particular files
26 were not requested. They requested a
27 particular document over a great span of many
28 thousands of files. Even to respond to this
29 you would have to figure out which files we
30 are talking about, which, again, takes us
31 full circle to the declaratory relief that
32 they request in asking that all of these

1 documents be accepted under Public Records
2 Law.

3 We can't even tell at this point which
4 records are closed, which records are open,
5 which files -- which files would fall under
6 the exception, which won't. The declaratory
7 relief is clearly putting the cart before the
8 horse. And overall, the burden on the
9 District Attorney's Office in this case to
10 require this for such a small number of
11 documents, to go through is really searching
12 for a needle in a vast, huge hay stack. It
13 would put so much burden on the District
14 Attorney that he would not be able to
15 otherwise perform his mandated duties under
16 the law.

17 And, therefore, we would ask that the
18 defendant's petition -- the plaintiff's
19 position, I'm sorry, be denied.

20 THE COURT:

21 Mr. Sternberg, any rebuttal -- brief
22 rebuttal?

23 MR. STERNBERG:

24 Yes, Your Honor, briefly, yes.

25 As to the cases that were cited, Your
26 Honor, I could -- I could site cite 20 cases
27 that say that we should have liberal
28 construction of the Public Records Law, but I
29 won't do that because I know Your Honor is
30 well aware of those cases.

31 Your Honor, it is not Mr. Maldonado's
32 fault that the District Attorney keeps his

1 files in the way that he does. He bent over
2 backwards for four months to try and get the
3 "DA Subpoenas" from them so that we would not
4 be here before you today.

5 Your Honor, the fact that these
6 documents are being claimed under the
7 criminal litigation exception is only a
8 portion of our petition. We actually filed
9 for an injunctive relief under 44:35, as Your
10 Honor is well aware of that law. Your Honor,
11 we believe that the equities of this case and
12 the law in this case should move this Court
13 to order production of the DA subpoenas that
14 are -- that can be found in the open file of
15 the current District Attorney -- of every
16 Assistant District Attorney as we've
17 requested. They each have 150 files. If
18 there were seven in 7,000, surely its rare
19 enough to ware an Assistant District Attorney
20 would know if they had sent one previously.

21 And so, Your Honor, we would -- we would
22 simply ask Your Honor to make that rule
23 today.

24 THE COURT:

25 This matter has languished for a long
26 time. This case was filed on May 15th of
27 2015, and we are just about at the end of
28 October, so I think I need to rule
29 expeditiously. I've listen the evidence; I've
30 read through the submittals in the case and I
31 think I need to make the following ruling.

32 Coming from this Court to balance the

1 interest here to make sure that the law is
2 adhered to, but at the same time to make sure
3 that an onerous burden is not placed upon the
4 agency, that is, being made -- that the way
5 the request is being made. This particular
6 Court has served in the position of Chief
7 Judge of this Court for two years. I've been
8 on the Executive Committee of the Court, this
9 is my sixth year, as well as a member of the
10 en banc since I've arrived. And since I've
11 arrived, we've had a number of public record
12 requests submitted to the Court. I
13 understand the burdens involved. I
14 understand the labor considerations involved.
15 I understand that some time it's very
16 intricate detail that can be painstaking in
17 its execution. Nonetheless, the Office of
18 the District Attorney is a public agency and
19 it is certainly covered by the law.

20 Now, a great deal of time and effort has
21 been put into putting forth the argument that
22 it is a burden upon the office and unduly
23 burdensome. Yes, that very well may be the
24 case. But the other side of the equation, as
25 a public agency it has the responsibility to
26 be accountable for the way it executes its
27 duties. So, there's an old maxim that says,
28 you eat your elephant one bite at a time and
29 that's what I prescribe that needs to happen
30 here.

31 I listened intently to the testimony
32 given today and drawing upon my own

1 experiences as a practitioner having been
2 over at Criminal Court practicing in almost
3 17 years. But what I know of the office, I
4 think that the time period requested from
5 January 1st of 2016 to April 27th of 2017 is
6 not a substantial period of time. If these
7 subpoenas were issued in a limited capacity,
8 I would suggest a bare minimal starting with
9 the screened cases to see if any cases were
10 -- they were utilized in those cases and to
11 provide a return of those to Mr. Maldonado as
12 requested.

13 As to the open cases, I have a little
14 apprehension about that regarding the open
15 case pending litigation exception. And I am
16 very, very receptive to that. If it's still
17 an ongoing case and under investigation,
18 that's something that might fall under the
19 exemption, so I'm not concerned with open cases
20 at this point. Closed cases during that time,
21 and I don't want to kill Mr. Pipes, because I
22 know he has other things to do, but the other
23 side of equation is if they were limited in
24 number then the DA's who are currently
25 working in the office, at bare minimum, need
26 to search their records and see what
27 subpoenas were issued and they need to be
28 turned over.

29 Now, time-wise, I think that within the
30 span of 30 days. Let's see, today is October
31 23rd, say, by the end of November. Get
32 through the screening cases and try to get

1 through the screening cases and see which
2 subpoenas may lie in the closed screening
3 cases during that period. I hate to burden
4 somebody, but somebody's going to have to do
5 it. I understand the budgetary
6 considerations as well because I also work
7 for a public agency in Orleans Parish. If
8 you've ridden in our elevators you'll know
9 that I -- and then after that, move on to the
10 Trial Division.

11 But I think that the request that the
12 plaintiff seeks is certainly within the
13 purview of the law. So I'm granting the
14 request, granting the objection, and
15 declaring that, that responsibility has to be
16 met. You might want to have some discussions
17 as to how it can be executed in a less
18 burdensome fashion as possible, but it still
19 has to be executed.

20 I'll be looking to hear from you folks
21 in maybe 60 days, right before -- well, I'll
22 say mid-December to see how the process is
23 going forward.

24 And, Mr. Sternberg, I think you're
25 entitled to some attorney's fees and you need
26 to put a bill together. And if we need to
27 have a reasonableness hearing to determine if
28 it's fair and equitable, we'll do that.

29 MR. STERNBERG:

30 I'll do that, Your Honor.

31 On the arbitrary and capricious failure,
32 are you denying that or --

1 THE COURT:

2 I'm not going to declare it to be
3 arbitrary and capricious because I think that
4 it has a substantial burden and I also
5 understand the cutting edge Nineteenth
6 Century filing system the District Attorney
7 has.

8 MR. STERNBERG:

9 Yes.

10 THE COURT:

11 Which, you know, it's a frightening
12 consideration in and of itself.

13 MR. STERNBERG:

14 I can tell that from your rulings for
15 us. I just wanted to make sure that we had
16 the judgment correct.

17 THE COURT:

18 Yes, but, no, I don't consider it to be
19 arbitrary and capricious. I think it will be
20 a substantial undertaking. I'm not envious
21 of the responsibility, but I think it's a
22 responsibility that has to be met. So, with
23 that, prepare a judgment to that effect.

24 MR. STERNBERG:

25 Yes, Your Honor.

26 THE COURT:

27 All right, then, obviously publish it to
28 counsel.

29 MR. STERNBERG:

30 Thank you, Your Honor.

31 * * * * *

32 (END OF PROCEEDING)

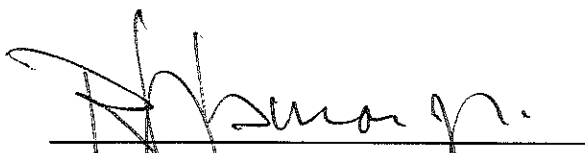
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2 CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
3 STATE OF LOUISIANA
4

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6

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11 That due to the spontaneous discourse of
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13 (--) have been used to indicate pauses,
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20 That any words and/or names which could
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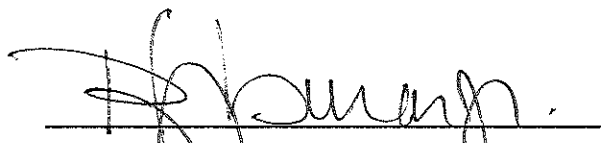
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27 R.J. BURAS, JR., CSR, RPR
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1
2 CIVIL DISTRICT COURT PARISH OF ORLEANS
3 STATE OF LOUISIANA
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5 * * * * *

6 REPORTER'S CERTIFICATE
7

8 I, *R.J. Buras, Jr.*, Official Court
9 Reporter in and for the State of Louisiana,
10 employed as an official court reporter by the
11 Civil District Court, Parish of Orleans, for
12 the State of Louisiana, as the officer before
13 whom this testimony was taken, do hereby
14 certify that this testimony was reported by
15 me in the stenotype reporting method, was
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19 and understanding; that the transcript has
20 been prepared in compliance with transcript
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22 rules of the board or by the Supreme Court of
23 Louisiana, and that I am not related to
24 counsel or to the parties nor am I otherwise
25 interested in the outcome of this matter.
26

27 
28 _____
29 R J. Buras, Jr., CSR, RPR
30
31
32

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