

# **Exhibit**

# **4**

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1 Clayton's handwriting, as best you could tell?

2 A. As best I can tell.

3 Q. Tell me about -- to the extent you know,  
4 the photo arrays, how were the E and D or E and F  
5 arranged as far as who was in them and how it was set  
6 up? Is it the same as that you did on the 16th?

7 A. It was, yes. Yes.

8 Q. So there was somebody in those arrays  
9 who she had a name that she had ---

10 A. No. On this one, if I am remembering it  
11 correctly I that Dan Flannery's name had come up, and  
12 they wanted to rule him out as a potential suspect.  
13 And I do not recall right offhand why the other one was  
14 done.

15 Q. Okay. And Investigator Clayton, also,  
16 was he an administrator of the second set of arrays?

17 A. Was he the administrator?

18 Q. Yes.

19 A. Yes.

20 Q. Do you know whether the second set of  
21 arrays included a picture of David Evans?

22 A. Not without looking at them.

23 Q. Did she identify any ---

24 A. I will say, and I apologize, I do know  
25 that in one of the arrays, whether it's A through F,

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1           A.       I don't recall. I know that  
2 Investigator Himan would have spoken to the District  
3 Attorney's office prior to that because the District  
4 Attorney's office is actually who takes out the Non-  
5 Testimonial. The Police Department just gives them the  
6 information. We aren't the ones who would go before  
7 the judge.

8           Q.       Right. Do you know whether or not Mr.  
9 Nifong, as opposed to somebody else in his office, was  
10 involved in the Non-Testimonial Order?

11          A.       Yes.

12          Q.       Somebody else. Do you know whether Mr.  
13 Nifong was involved in that?

14          A.       I believe that was -- I believe -- I  
15 believe Investigator Himan spoke with Tracey Cline the  
16 day before and then David Saacks is the one who  
17 coordinated those efforts.

18          Q.       Do you know whether or not this was the  
19 first opportunity that either you or Investigator Himan  
20 had spoken with Mr. Nifong about this case? Mr. Nifong  
21 directly.

22          A.       I don't know. If you are asking me if I  
23 walked down the hallway and had just a conversation, I  
24 don't know. But official sit-down, I don't believe I  
25 had an official sit-down conversation with him.

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1 Q. Okay. This meeting on March 27th, was  
2 this an opportunity where Mr. Nifong was brought up to  
3 date as to what happened in the investigation up to  
4 that point?

5 A. Yes.

6 Q. Do you recall whether you provided him  
7 with any documentation at that meeting, you or  
8 Investigator Himan?

9 A. I don't recall. Well, I would have had  
10 to because he would have at least seen the e-mail.

11 Q. This is the e-mail involving Ryan  
12 McFayden that you referenced earlier?

13 A. Yes, sir.

14 Q. Do you know whether he would have been  
15 given any other documentation at that meeting about the  
16 investigation?

17 A. I don't recall. I would think -- and  
18 this is only -- I would think not because we were in  
19 training and we didn't have the stuff with us, as far  
20 as I know, so I doubt it.

21 Q. Okay.

22 A. We didn't expect to be doing that on  
23 that day.

24 Q. Do you recall, did you talk to him about  
25 whether or not the players had or had not cooperated at

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1 that meeting?

2 A. I don't know.

3 Q. You don't believe that you -- do you  
4 know if he would have been given copies of the  
5 statements as to the three individuals that we have  
6 already looked at, their statements, do you know if he  
7 would have been given those statements at that meeting?

8 A. I don't know. I doubt it. Like I said,  
9 we were at training when the people from CrimeStoppers  
10 gave us the information from that.

11 Q. Anything else that you recall talking to  
12 him about, besides the e-mail, at that meeting?

13 A. No, sir.

14 Q. Did you talk to him at all about what  
15 the allegations were, what Ms. Mangum's allegations  
16 were?

17 A. Of course.

18 Q. Okay.

19 A. I mean, that's just -- if we are going  
20 to be getting a search warrant, we would have to tell  
21 him what the basis was for the search warrant.

22 Q. Let me take a step back. What was your  
23 understanding about the purpose of the meeting that you  
24 were having with Mr. Nifong on the 27th? Was it an  
25 initial briefing to bring him up to date as to what

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1 happened or was it related more specifically to this  
2 one e-mail and the search warrant?

3 A. The reason we went there was to get  
4 direction on how to proceed with the e-mail and the  
5 search warrant.

6 Q. Okay. Once you got there, was there a  
7 different -- did Mr. Nifong ask questions related more  
8 generally to the investigation as opposed to just this  
9 specific e-mail?

10 A. I don't recall the conversation, *per se*.  
11 It was giving him the information. I am sure we had  
12 general conversation on the case. There is no way I  
13 would make a decision without having general  
14 information.

15 But to sit down and tell you what that  
16 conversation was, no, I couldn't tell you.

17 Q. Did you participate in a meeting with  
18 Mr. Nifong, other than on March 27th, where he was  
19 briefed on the investigation that had happened up to  
20 date?

21 A. I'm sorry. Repeat that.

22 Q. Did you participate in any meetings with  
23 Mr. Nifong where he was brought up to date on the  
24 status and the information in the investigation?

25 A. Yes.

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1 Q. Okay.

2 A. And I apologize. I thought I'd been  
3 saying that.

4 Q. Okay.

5 A. That's where I'm lost.

6 Q. Well, since you don't recall  
7 specifically whether it was the 27th or some other time  
8 period, let's talk about what you would have brought  
9 him up to speed on.

10 A. The allegations.

11 Q. Okay.

12 A. The victim statements, the statements of  
13 the people who were spoken with, to include witnesses  
14 for three team captains, the search warrant, the Non-  
15 Testimonials.

16 Q. Okay.

17 A. I'm just trying to think if there was  
18 anything else prior to that point.

19 Q. All right.

20 Q. What date was that? When we got the  
21 subpoena, March 20th? Well, I know we would have had  
22 -- we actually would have had a meeting with him before  
23 within before 3/20, I would think, because I know we  
24 spoke with him about the case prior to getting the  
25 subpoena.

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1 clarify that if you're asking me for exact dates that  
2 he got these things, I have no idea.

3 Q. Okay. Do you know who within the  
4 Department would be in a better position to answer when  
5 he got these particular documents?

6 A. You can ask Investigator Himan.

7 Q. Do you remember being present at  
8 meetings where those documents were actually given to  
9 him?

10 MR. WITT: Object to the form of  
11 the question as to which documents? It sounds like  
12 there's a multitude of documents.

13 MR. BROCKER: I'll rephrase it.

14 A. (No response.)

15 Q. Do you recall being in a meeting where  
16 Mr. Nifong was provided a copy of Exhibit 11, which is  
17 the report from Duke, a medical report?

18 A. Do I recall that exact one? No.

19 Q. Okay. You said that you discussed with  
20 Mr. Nifong the victim's statements about what she'd  
21 alleged had happened?

22 A. Yes.

23 Q. Other than the interview that you and  
24 Investigator Himan did on the 16th, did you discuss  
25 other reports of allegations that she had made about



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1 We were seeking any information that was out there.

2 Q. Okay. So this would have been part of  
3 the documentation you collected as the investigative  
4 file.

5 A. As part of the case file.

6 Q. All right. And that appears to be from  
7 an Officer Day at the Duke University Police  
8 Department, is that right? I am just trying to read  
9 the form here.

10 A. I'm trying to see where they have that.

11 Q. It's box number 2 at the top.

12 A. Yes. Christopher H. Day.

13 Q. And in that report he notes that Ms.  
14 Mangum claimed that she was raped by approximately 20  
15 white males at 610 North Buchanan?

16 A. That's correct. It's also my  
17 understanding that he never spoke with her.

18 Q. When did you come to that understanding  
19 that he didn't spoke with? Did you speak with Officer  
20 Day directly about it?

21 A. My understanding is that that was a  
22 conversation that was overheard. I don't remember when  
23 that was.

24 Q. Which conversation are you referring to  
25 that was overheard?

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1 or should not be told about the identity of the people  
2 in the photographs when she was shown the presentation?

3 A. Just that these were people who we would  
4 have reason to believe attended the party and tell us  
5 if you recognize them and tell us if you don't  
6 recognize them and be truthful. That's all. And as to  
7 what they were or were not doing.

8 Q. Any discussions in that meeting with Mr.  
9 Nifong as to who would actually show the photographic  
10 presentation?

11 A. No.

12 Q. Did you discuss during that meeting any  
13 additional evidence or information relating to this  
14 case, other than how to conduct this photographic  
15 presentation?

16 A. I don't recall that.

17 Q. Do you know whether there was any  
18 discussion about evidence or information that had been  
19 received from the SBI lab about the testing of the  
20 items that had been seized from the house and from Ms.  
21 Mangum during that meeting?

22 A. During that meeting, I don't recall.

23 Q. I am going to mark this as Deposition  
24 Exhibit Number 7, a document, and ask you to take a  
25 look at it and see if you recognize it? Do you

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1           A.       But didn't sit through the meeting. I  
2 don't remember. Just kind of in and out.

3           Q.       And approximately how long did that  
4 meeting last?

5           A.       About the same amount of time.

6           Q.       What was discussed during that meeting?

7           A.       They had a potential match for DNA  
8 underneath a fingernail, it was a mixture, and more  
9 testing needed to be done.

10          Q.       On what?

11          A.       On the DNA.

12          Q.       On the fingernail DNA or on all the DNA?

13          A.       No. The fingernail DNA.

14          Q.       Okay.

15          A.       But normally, as far as what was  
16 discussed, Dr. Meehan would talk about stuff, going on  
17 and on and on about what has been done, again, in  
18 scientific terms that when you sit there long enough  
19 and you're just lost, you're just -- Okay.

20          Q.       Did he do the same thing as he did in  
21 the prior meetings, go through the documentation and  
22 the printouts?

23          A.       I believe so.

24          Q.       And at that meeting did he discuss the  
25 absence of any DNA matching any of the lacrosse players

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1 on any of the rape kit items?

2 A. I believe so because -- well, let me  
3 back that up. The only thing I know he said was a  
4 potential match was the fingernail.

5 Q. Did he discuss results other than the  
6 fingernail during the meeting?

7 A. He talked about everything he did.

8 Q. All the things that had been done up to  
9 that point?

10 A. Yes.

11 Q. And do you recall whether he discussed  
12 other DNA that was found on the rape kit items at that  
13 meeting?

14 A. I can't remember if we talked about the  
15 boyfriend and if the boyfriend had been -- it was found  
16 to be the boyfriend at that point or not, which would  
17 have been in the rape kit. Because you have to  
18 remember that the fingernails and the other stuff were  
19 aside from the rape kit.

20 Q. I understand. So you don't recall  
21 whether that was discussed?

22 A. I don't recall.

23 Q. Was there any discussion about the  
24 presence or absence ---

25 A. Is there any chance I could take a two-

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1 minute break?

2 MR. BROCKER: Sure.

3 (Recess - 1:54 PM to 2:01 PM.)

4 Q. (BY MR. BROCKER) Let me take a step  
5 back, Sergeant Gottlieb, I want to finish off the  
6 discussion of the meeting with Dr. Meehan on the 20th  
7 or the 21st of April.

8 Was there any discussion during that  
9 meeting about what Dr. Meehan would put in the written  
10 report that would be provided?

11 A. Just the facts, no, just the facts of  
12 what he did.

13 Q. You don't recall any other -- do you  
14 recall a discussion about what would be in the report  
15 at that meeting?

16 A. No.

17 Q. Do you recall any discussion about  
18 concerns about any privacy issues about information  
19 that would show up in the report?

20 A. No.

21 Q. Do you recall in any of those  
22 discussions occurring at the initial meeting on April  
23 10th about what would be in the report or any privacy  
24 concerns?

25 A. Say that again.

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1 Q. Do you recall in the initial meeting,  
2 going back to the first meeting on April 10th ---

3 A. Okay.

4 Q. --- do you recall any discussions about  
5 what would be in the report?

6 A. No.

7 Q. And do you recall any discussions about  
8 privacy issues and concerns relating to what would  
9 appear in the report?

10 A. No.

11 Q. Do you have any knowledge about  
12 discussions on those issues that occurred outside of  
13 the meetings on April 10th and April 20th or 21st?

14 A. No.

15 Q. After the April 20th or 21st meeting,  
16 you traveled back in the car with Investigator Himan  
17 and Mr. Nifong?

18 A. Yes.

19 Q. Was there discussion about what had been  
20 discussed or results that had been provided at that  
21 meeting?

22 A. I'm sure there was, that's kind of  
23 natural. I have no idea -- it definitely was not the  
24 big thing. I was just driving. I just ---

25 Q. You don't recall any specific

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1 discussions about it?

2 A. No.

3 Q. Same question with respect to the car  
4 ride, all three of you were riding in the car together.

5 A. Right.

6 Q. Coming back from Dr. Meehan's office on  
7 April 10th?

8 A. I think the big discussion on that one  
9 was I was telling Ben or asking Ben, you know, if all  
10 the evidence was supposed to be sent over and he  
11 thought that. And I told him he just needed to get up  
12 with ID and make sure it all got delivered.

13 I didn't think it was any big deal when  
14 you think about, you know, half the evidence hasn't  
15 been looked at, half the evidence hasn't been looked  
16 at.

17 Q. Was it your understanding at that April  
18 10th meeting that all the rape kit items had been  
19 produced and analyzed at that point?

20 A. Yeah. Yes, sir.

21 Q. And was there any discussion among the  
22 three of you on the way back about the fact that, after  
23 analyzing that, they hadn't been able to find any DNA  
24 that matched any of the lacrosse players?

25 A. Not that I recall. My big thing was

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1 would like to have a person, you know, someone say he's  
2 there, other than the victim. And we didn't have that.

3 I don't know if -- let me rephrase that.  
4 I don't recall, because you know that photo  
5 presentation I was talking to you about ---

6 Q. Uh-huh (yes).

7 A. --- we did the exact same thing with  
8 Kim, not asking for a suspect, "Do you remember these  
9 people?" Showed it to her. I don't call if she said  
10 he was there or not.

11 Q. When did you do that photographic  
12 presentation for Ms. Pittman?

13 A. Investigator Himan did that.

14 Q. And would that be in his -- presumably,  
15 that would be in his notes?

16 A. Absolutely, yes.

17 Q. Did Investigator Himan, when he came to  
18 you on the 14th of April, was there any discussion  
19 about the fact that Ms. Mangum had previously been  
20 shown a different picture of Mr. Seligmann on one of  
21 those prior photographic arrays and had not identified  
22 him as an attacker?

23 A. Not that she did not identify him as an  
24 attacker, but she identified him -- not identified him.  
25 She recognized him. So twice. One time she recognized



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1 Q. Was that discussed in the meeting with  
2 Investigator Himan that there are no forensic DNA to  
3 tie him in as well?

4 A. At that point, yes.

5 Q. That's all you would know, obviously, at  
6 that point?

7 A. Right.

8 Q. And which of your supervisors did you  
9 relay on Investigator Himan's concerns?

10 A. Both.

11 Q. Who?

12 A. Lieutenant Ripberger and Captain Lamb.

13 Q. And then you personally participated in  
14 the -- was it a phone call with Mr. Nifong?

15 A. Yes.

16 Q. Who else was present?

17 A. Lieutenant Ripberger and Captain Lamb.

18 Q. Investigator Himan was not involved in  
19 that phone call with Mr. Nifong?

20 A. He did not speak. He might have been in  
21 the room, I just don't recall that. But I know that I  
22 made sure that my command staff was in the room. I  
23 don't remember if Ben was there or not.

24 Q. And did you rely on the concerns that  
25 Investigator Himan had?

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1           A.       School was about to end.

2           Q.       You don't recall whether Mr. Nifong  
3 had ---

4           A.       I don't recall if it was that meeting or  
5 another meeting.

6           Q.       But at some meeting Mr. Nifong -- was it  
7 Mr. Nifong who expressed a concern that it needed to be  
8 done because school was getting ready to end?

9           A.       Right. People were going to be going  
10 across the country.

11          Q.       The call with Mr. Nifong that you were  
12 describing, did that occur on the same day, the Friday,  
13 April 14th?

14          A.       As in my conversation with them?

15          Q.       Yes.

16          A.       With Investigator Himan?

17          Q.       Yes.

18          A.       Yes. Right after that, right after I  
19 briefed my command staff.

20          Q.       Was there any discussion during that  
21 conversation about letting the Department have some  
22 more time to develop additional facts before going  
23 forward with the indictment?

24          A.       Well, I told him our concerns and  
25 basically he made the decision. I don't remember the

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1 not in the written report, any of the testing that had  
2 been done that did not appear in the report, any  
3 discussion at that meeting about whether or not this  
4 was the final report?

5 A. Yes, it was my impression that what we  
6 got was the final report.

7 Q. Do you recall any discussion at any of  
8 these meetings where Mr. Nifong indicated that he  
9 needed a written report for some upcoming event, either  
10 a Grand Jury or a hearing or anything of that nature?

11 A. No, because he gave us a report.

12 Q. Okay. Did Mr. Nifong ask any questions  
13 during any of these meetings with Dr. Meehan about the  
14 results?

15 A. Not that I recall. It is always  
16 possible, but I just don't recall.

17 Q. Did Mr. Nifong take notes of any of the  
18 meetings or during any of the meetings with Dr. Meehan?

19 A. I don't know. I'm sorry, I don't know.

20 Q. And in your other meetings, not the ones  
21 with Dr. Meehan, but the other meetings that you would  
22 have with Mr. Nifong, would it be his practice to take  
23 notes if you were sitting down and having conversation  
24 with him?

25 A. Just very casual. No, not that I

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1 recall.

2 Q. I take it from your previous answer that  
3 you didn't take any handwritten notes of the meetings  
4 that you had with Dr. Meehan?

5 A. Oh, no, not with Dr. Meehan.

6 Q. And did you ---

7 A. I really didn't take notes like that. I  
8 would get information and put it in later.

9 Q. And did Investigator Himan, do you  
10 recall if he took notes at the meetings?

11 A. I don't recall. Investigator Himan was  
12 very -- I was very impressed with him. He was very  
13 meticulous in what he did, and that's all I can  
14 remember.

15 Q. There's a few other things I wanted to  
16 ask you about, Sergeant Gottlieb. You were involved in  
17 a meeting that took place between Ms. Mangum and Mr.  
18 Nifong on April 11, 2006?

19 A. Yes, sir.

20 Q. Tell me what you recall about that  
21 meeting.

22 A. Investigator Himan was supposed to meet  
23 with Coach Pressler, so he asked me if I would pick her  
24 up from basically a safe house location where she was  
25 staying. So I went out to Colonial Apartments. It's

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1 actually changed names now, I don't remember what the  
2 name of the apartments are. I picked her up and  
3 brought her to the courthouse. Lieutenant Ripberger  
4 met me there. Investigator Himan showed up shortly  
5 there after, he was only going to be able to stay for a  
6 portion of the meeting.

7                   Mr. Nifong introduced himself. Ms.  
8 Mangum was what I would consider very reserved and very  
9 cautious around him. He explained basically how the  
10 procedures went for a court case. He explained to her  
11 that at some point he and Tracey Cline would meet with  
12 her and get more information and basically asked if she  
13 had any questions that he could, you know, tell her  
14 about.

15                   But he basically explained the  
16 procedures of what would happen throughout a court case  
17 if a court case came up.

18                   Q.       Okay. Do you know who would have  
19 initiated the meeting between Mr. Nifong and Ms.  
20 Mangum?

21                   A.       I can only assume it was Mr. Nifong. It  
22 wasn't me, and I don't believe it was Investigator  
23 Himan. You would have to ask him.

24                   Q.       If you would look at Exhibit 204, your  
25 notes, Page 27?

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1 Security on April 10th?

2 A. I don't recall that.

3 Q. Any discussion about her identification  
4 of the individuals from the April 4th photos ---

5 A. He didn't talk about the case. He  
6 strictly went over how the court procedures would work.

7 Q. All right. Besides that meeting, are  
8 you aware of any other meetings that Mr. Nifong had  
9 with Ms. Mangum directly?

10 A. Not directly, no. I believe there were  
11 some. I was actually out of work for quite awhile at  
12 one point.

13 Q. How did you come to an understanding  
14 that they had had other meetings?

15 A. I don't know if they did. I'm assuming  
16 that at some point they had talked about something. I  
17 know that Investigator -- this is way later on.

18 I believe Investigator Himan transported  
19 her to the District Attorney's office at one point and  
20 there was one meeting. Beyond that, I don't know.

21 Q. All right. You mentioned a couple of  
22 places towards the end of your notes that there was,  
23 and I think you had referenced in the handwritten notes  
24 here, that you are pursuing possible hair analysis for  
25 Ms. Mangum?

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1 did not want anyone else charged.

2 So the possibility of offering immunity  
3 was there, but at that point the investigation warrant  
4 any charges. But that was kind of the only leverage  
5 that we would have if no one wanted to give us  
6 information to help or to support the accusations,

7 Q. Who were those other players?

8 A. Ryan McFayden. And the only reason I  
9 remember him as he is a unique individual. And I  
10 forget the name of the other guy. Investigator Himan  
11 can tell you.

12 Q. In October, in that meeting that you had  
13 in October of 2006, did Investigator Himan express any  
14 concerns about the lack of evidence or what evidence  
15 that you had with respect to the people who had been  
16 indicted?

17 A. No.

18 Q. Any other conversations or  
19 communications that you recall having about Duke  
20 lacrosse cases with Mr. Nifong after that?

21 A. No. I had too many things going on  
22 right there that -- I mean, like I said, I came back in  
23 October, and I left at the very end of October, and the  
24 three weeks that I was there, roughly, there was three  
25 months' work checking reports, doing all this stuff

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1 Police Department, City Manager and Police Legal  
2 Adviser. And what I'm trying to find out is, was Mr.  
3 Nifong involved in those or were the meetings that  
4 those individuals had, were having, separate and apart  
5 from Mr. Nifong, if you remember?

6 A. I know Mr. Nifong came to one, I'm  
7 positive of that. I don't know, I don't recall about  
8 the others.

9 Q. Did anybody ever tell you why those  
10 people felt it was important to have those meetings  
11 related to this case?

12 A. Why they felt it was important.

13 MR. HILL: The question was did  
14 anybody tell you why it was important?

15 A. No, no one told me.

16 Q. Okay. And was there more than one of  
17 those meetings that you would have attended with, you  
18 know, some influential people in the community, and you  
19 used some term like that in your deposition?

20 A. Police Command Staff. I don't remember  
21 how many meetings Duke Police came to. City Manager,  
22 legal advisers, yes, there were several.

23 Q. Okay. And some of your notes have  
24 references that you were being requested to provide  
25 certain information to the County Manager to be



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1 so that they can be provided to the City Manager to  
2 review and be provided to City Council?

3 MR. HILL: Objection. You can  
4 answer.

5 A. I am trying to think of one big case I  
6 had and did that. I don't recall, but I don't believe  
7 so.

8 MR. WITT: Okay. I don't have any  
9 further questions.

10 MR. HILL: I've got just two.

11 CROSS-EXAMINATION BY MR. HILL:

12 Q. You were asked by Mr. Brocker with  
13 respect to the requirements to a Non-Testimonial Order.  
14 Remember that?

15 A. Yes.

16 Q. Okay. Clarify for me how one obtains  
17 such an Order?

18 A. The only thing the Police Department  
19 does is provides an affidavit to the District  
20 Attorney's office and the District Attorney's office  
21 decides whether or not they want to take it before a  
22 judge, and then the District Attorney's office applies  
23 for a non-testimonial before a judge.

24 Q. And does a judge sign that Order?

25 A. Yes.