

1           THE COURT: I don't know about that. I  
2 thought Exhibit I was a portion of what was in the  
3 file.

4           MS. SMITH: Exhibit I, just to explain, there  
5 are documents that can be explored (inaudible) those  
6 really are all part of the investigative -- those are  
7 the records that have been provided to our office as  
8 the investigative file. There are investigative  
9 reports and documents attached to them. I just, for  
10 completeness, I did ask the policeman, Do you have  
11 anything else.

12          THE COURT: Okay. So, you still want  
13 anything else -- (Attorney and Judge speaking over  
14 each other).

15          MS. SMITH: I had printed 100 pages off of a  
16 website, but they hadn't put that with the Bates  
17 stamp, but those are part of what were produced.

18          MR. ERVIN: Is it part of the 2,938 records,  
19 though, if it doesn't have a Bates stamp number?

20          MS. SMITH: If they didn't have a Bates  
21 stamp, they're not part of the 200 --

22          THE COURT: Is there anything else outside  
23 the Bates stamped documents that would be part of this

1 inquiry? I think that's the second level of the  
2 question.

3 MS. SMITH: Not other -- not all the  
4 correspondence between the Attorney General's Office  
5 and --

6 THE COURT: Well, those are exempt anyway. I  
7 think counsel's agreed.

8 MR. ERVIN: Your Honor, what I wanted is just  
9 -- the representation that's been made that they  
10 produced a stack of documents in this case, and,  
11 again, a lot of it is just generic materials that were  
12 pulled off the internet that anybody would have had  
13 access to.

14 THE COURT: Uh-huh.

15 MR. ERVIN: And, so, I just wanted to confirm  
16 that that 2,938 records which this detective has  
17 listed in his affidavit that comprised the  
18 investigation, file, there's been an extremely limited  
19 number of those records that were produced to us, I  
20 believe less than 50 based upon the Bates stamp  
21 records that were provided to me.

22 THE COURT: Okay.

23 MR. ERVIN: There was a large stack of

1 documents that do not contain the Bates stamps, which  
2 I believe the State is telling us is other information  
3 that was in the file but is not comprised in that  
4 2,938 records, and while I appreciate that the  
5 majority of the records they claim are these narrative  
6 reports, I would still believe, based upon everything  
7 that's been assembled to date, there are several  
8 portions of those records that could be produced to  
9 us.

10 THE COURT: Well, then, it meets a subject to  
11 bring in camera inquiry.

12 MR. ERVIN: Yes, correct.

13 THE COURT: Okay. Let's proceed.

14 (End of bench conference)

15 IN OPEN COURT:

16 CONTINUING EXAMINATION BY MR. ERVIN:

17 Q. I apologize for the delay, Detective.  
18 So the record is clear, you are not currently  
19 assigned specifically to the Maura Murray case?

20 A. No.

21 Q. Okay. Do you know how many detectives  
22 assigned to Troop F are currently actively involved  
23 in or assigned some duties with respect to the Maura

1 Murray case?

2 A. Right now there are three detectives in  
3 the unit, so my answer would be three.

4 Q. Of any of the three, are you aware if  
5 any of the three are specifically assigned with  
6 duties regarding the ongoing investigation into the  
7 Murray case?

8 A. I guess, define "specifically."

9 THE COURT: Somebody had this case on their  
10 roster to handle.

11 THE WITNESS: Yes.

12 CONTINUING EXAMINATION BY MR. ERVIN:

13 Q. How often would a detective that's  
14 working on this file perform work on the file, with  
15 what level of frequency?

16 A. I think what you're looking for is an  
17 answer of, you know, 40 hours a week, 20 hours a  
18 week. I can't give that to you. As information  
19 comes in, it's looked into, investigated to -- as far  
20 as it can be.

21 Q. Well, Detective, at the last hearing  
22 that we were here on, it was represented that this  
23 case was looked at daily. Is it your understanding

1     that this case is looked at on a daily basis by your  
2     department?

3             A.       Yeah, I would say prob -- yeah, on a  
4     daily basis to different levels.

5             Q.       But do you have personal knowledge as  
6     to whether or not this file is looked at on a daily  
7     basis?

8             A.       I can tell you from my --

9             Q.       My question is, do you specifically  
10    have personal knowledge that this case is looked at  
11    on a daily basis?

12            A.       Yeah, it was.

13            Q.       I'm not asking if it was. I'm asking  
14    you today, do you know whether or not this case is  
15    specifically looked at on a daily basis by your  
16    department?

17            A.       Daily, meaning 7 days a week?

18            Q.       Correct.

19            A.       To certain -- again, I go back to the  
20    when information comes in, it's looked into. Now,  
21    whether it has to take -- other cases come in and  
22    those have to be looked at too, you know. Today it  
23    might be 5 minutes, tomorrow it might be 8 hours.

1           THE COURT: I think what counsel's inquiring  
2 is, does somebody sit down at 9:00 every morning, for  
3 example, during the work week and look at this case as  
4 a regular part of their routine? I suspect the answer  
5 to that is no --

6           THE WITNESS: No.

7           THE COURT: -- based on your testimony, that  
8 a case is -- the file is pulled up and looked at as  
9 information is matched to the file and drawn to the  
10 attention of a fellow detective who then would be  
11 working on that piece of information in connection  
12 with the file.

13          THE WITNESS: Correct.

14          THE COURT: Okay.

15 CONTINUING EXAMINATION BY MR. ERVIN:

16           Q. I think you testified earlier that  
17 there are periods of inactivity on this case.

18           A. Yes, and I explained why that would  
19 occur.

20           Q. Detective, you were asked on direct  
21 examination whether or not you could be certain that  
22 this case is going to end up in a criminal  
23 enforcement proceeding, and I believe your testimony

1       was is that you can't state whether or not; is that  
2       correct?

3               A.       Yes.

4               Q.       So, the information that's been  
5       assembled to date could lead to the conclusion that  
6       this -- there was no criminal activity involving  
7       Maura's disappearance?

8               A.       It could. I mean, it's unknown at this  
9       point.

10              Q.       So, you can't be certain that this --  
11       that there will ever be an enforcement proceeding  
12       involving this case?

13              A.       I can't be certain.

14              MR. ERVIN: Your Honor, subject to my  
15       reservations made at side bar about the level of  
16       inquiry into the records, I have no further questions  
17       for this --

18              THE COURT: All right. Thank you, Counsel.  
19       Ms. Smith, anything further of Detective Landry?

20              MS. SMITH: We also have Attorney Jeffrey  
21       Strelzin here.

22              THE COURT: Are we done with Detective --

23              MS. SMITH: Yes.

1 THE COURT: Okay. You can step down,  
2 Detective. Thank you.

3 (Witness stepped down)

4 THE COURT: Ms. Smith.

5 MS. SMITH: We also have Attorney Jeffrey  
6 Strelzin, who is the prosecutor, who has been involved  
7 with the State Police here, and we would offer to put  
8 him on the stand and have him testify as well.

9 THE COURT: You may do so.

10 JEFFREY STRELZIN, ESQ.

11 a witness being first duly sworn, was examined and  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. SMITH:

15 Q. Could you, please, state your name for  
16 the record and explain to us what your position is in  
17 the Attorney General's Office.

18 A. Sure. My first name is Jeffrey, which  
19 is J-E-F-F-R-E-Y, and my last name is Strelzin,  
20 which is S-T-R-E-L-Z-I-N. I'm currently a Senior  
21 Assistant Attorney General at the New Hampshire  
22 Attorney General's Office. I also work as the Chief  
23 of the Homicide Unit and, essentially, I supervise



1 the Homicide Unit.

2 Q. And have you been involved with the  
3 State Police in regards to the Maura Murray  
4 investigation?

5 A. I have. There have actually been other  
6 prosecutors involved as well, sometimes with an  
7 overlap. There have actually been, I think, three of  
8 us involved in the case.

9 Q. And do you know how long the Attorney  
10 General's Office has been involved in the  
11 investigation?

12 A. I believe our first activity was  
13 approximately 10 days after Maura's reported  
14 disappearance, so I know it was in February of 2004.  
15 I think the exact date is February 19th, but it could  
16 have been a little earlier than that.

17 Q. How long have you personally been  
18 involved in the investigation?

19 A. I believe I got involved late in 2004,  
20 after the case transitioned from another attorney in  
21 our office who left, and then actually there were two  
22 of us involved in the case, and that attorney has  
23 since left as well, so now it is me alone.

1           Q.       And you are still involved with the  
2 State Police in regards to this investigation?

3           A.       I am.

4           Q.       And are you familiar with what has been  
5 withheld and what has been produced in this case?

6           A.       I am.

7           Q.       And how long -- and you've been doing  
8 criminal prosecutions for how long?

9           A.       I've been a prosecutor, I believe,  
10 about 10 years, and I have other law enforcement  
11 experience prior to that, but I've been a prosecutor  
12 about 10 years.

13          Q.       Based on your involvement with this  
14 investigation and your knowledge of the file, do you  
15 have an opinion as to whether or not it is more  
16 likely than not that this investigation may lead to  
17 criminal charges?

18          A.       I do.

19          Q.       What is your opinion?

20          A.       I would have to say it's more likely.

21          Q.       That it will lead to criminal charges?

22          A.       Yes.

23          Q.       Do you know whether there is activity

1     that is planned on being pursued in this  
2     investigation in the future?

3             A.       There is further investigative activity  
4     that's planned.

5             Q.       Can you set a time frame on how long it  
6     may take to determine whether or not you are going to  
7     be able to bring criminal charges in this case?

8             A.       I can't. I mean, we have within the  
9     last few years -- we have prosecuted two 20-year-old  
10    murder cases. I'm working on a variety of cases that  
11    are older cases. We're actively pursuing a  
12    35-year-old murder case in our office. So, there are  
13    murder cases that are solved within hours, days,  
14    weeks, months, years and sometimes decades. Every  
15    case is different, that's why there's no statute of  
16    limitations on murder, and, again, that assumes that  
17    this case ends up as a criminal investigation.

18            Q.       Is it important, while you are pursuing  
19    the possibility of criminal charges, that the  
20    material that has been withheld not be revealed?

21            A.       It is critically important.

22            Q.       And why is that?

23            A.       There are a variety of reasons, but, I

1 mean, if I can use an analogy, your Honor, it's akin  
2 to giving someone a test and giving them the answers  
3 beforehand. If we were to reveal our investigatory  
4 file, it will tell potential witnesses what we know,  
5 and when we go to speak to those witnesses we want to  
6 know what they know firsthand as opposed to what they  
7 may have learned through the public or the press or  
8 other witnesses.

9           It's a truth-telling device that we use  
10 often in cases. We want to know information and only  
11 keep it amongst ourselves so we can tell if someone  
12 is truly involved in a case or if they simply want to  
13 be involved. Unfortunately, we have cases where  
14 individuals claim to have involvement in criminal  
15 activity, sometimes claim to be the perpetrator, but  
16 we're able to determine, based on information we've  
17 kept secret, that that individual is not the  
18 perpetrator, at the same time, individuals who claim  
19 to have knowledge about a case and we're able to use  
20 the information, information that is only known to us  
21 in order to tell whether or not they're being  
22 truthful or not. So, it's a very important device  
23 for us, not only to advance the investigation down

1 the road but just to be able to tell who truly knows  
2 things and who's a liar.

3 Q. Can you know at this stage what piece  
4 of evidence or statement by a witness is going to be  
5 important?

6 A. I can't, and that's where I think my  
7 role as a prosecutor is distinguishable from what the  
8 investigators do, and it's part of the reason that we  
9 work together on potential homicide cases. I don't  
10 know that this case will end up as a criminal case,  
11 which means I don't know what a perpetrator or  
12 perpetrator will claim as a defense, which means I  
13 don't know how important every piece of evidence will  
14 be, or what piece of evidence will prove to be  
15 critical, or what may factor into a defense or an  
16 alibi, and because I can't anticipate those things,  
17 that means that potentially every piece of evidence  
18 is important in the future, and because some of our  
19 cases take so long to solve, I can't predict what  
20 will happen with that piece of information and how it  
21 may prove to be critical later on, and it happens  
22 frequently in cases that are of an historical or  
23 older nature. I don't know what will happen, I don't

1 know what a potential defendant will do. So, I can't  
2 represent to the Court that one piece of information  
3 is necessarily more important than another. It could  
4 all prove important or some categories could prove to  
5 be less important.

6 Q. Do you think that revealing the  
7 withheld information in this case would adversely  
8 affect your ability to prosecute someone?

9 A. If there's a prosecution, yes, it has  
10 that potential, and, again, there may be categories  
11 that would be more devastating to reveal than others.  
12 It's impossible for me to give that kind of specific  
13 without knowing whether or not a homicide actually  
14 occurred and what those circumstances were, but I  
15 acknowledge that possibility, and I know in cases  
16 what can happen if information is revealed before  
17 we're able to make an arrest and prosecute the case.

18 MS. SMITH: I don't have any further  
19 questions for --

20 THE COURT: Counsel.

21 MR. ERVIN: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. ERVIN:

1           Q.       Mr. Strelzin, how often does your  
2 office review this matter?

3           A.       I would say it probably averages about  
4 once a month, and it's more frequent if things arise,  
5 for instance, if a piece of information comes in or  
6 if there's an inquiry from a detective at Troop F  
7 about something in particular, or if we're meeting to  
8 discuss plans in the future. So, it depends on  
9 what's going on.

10          Q.       Is there anybody at your office other  
11 than yourself that's working on this file?

12          A.       Just me right now. If I need  
13 additional assistance, I can ask for it, but right  
14 now it's just me.

15          Q.       Okay. When was the last time you had  
16 an opportunity to review the file on this case, other  
17 than coming to court today?

18          A.       Last night.

19          Q.       Was that as a result of what you  
20 characterize as an ongoing investigation into the  
21 case?

22          A.       I reviewed it last night to prepare for  
23 today.

1           Q.       For today. Well, prior to that time,  
2 when was the last time you had looked at this file as  
3 part of the ongoing investigation into the --

4           A.       Within the last month.

5           Q.       When was the last time you had an  
6 opportunity to communicate with any of the detectives  
7 involved with the investigation prior to coming to  
8 court today?

9           A.       Nothing to do with this court hearing.  
10 Probably a couple of weeks ago.

11          Q.       And who initiated that contact?

12          A.       I think we talked about it, because we  
13 were meeting about another case and there are other  
14 detectives in the Major Crime Unit that I talk to  
15 besides the ones in Troop F who are working on other  
16 murder cases who were involved in this case, and, so  
17 we discussed it at the same time.

18          Q.       Do you have a set frequency with which  
19 you meet with the detectives to discuss this case?

20          A.       No.

21          Q.       Have there been periods of time that  
22 have gone by longer than a month where you have had  
23 no communication with the detectives involving this



1 case?

2 A. There may have been.

3 Q. Do you know how long a period of time  
4 may have passed between some of the communications  
5 between your office and the detectives?

6 A. The longest period of time, I would say  
7 maybe six weeks.

8 Q. And the information that's been  
9 assembled to date has not led to the conclusion that  
10 this is definitively going to end in a criminal  
11 prosecution?

12 A. That's correct.

13 Q. So, you can't state with certainty that  
14 an enforcement proceeding is likely to occur in this  
15 matter?

16 A. I could give the judge a percentage  
17 based on my experience, generally, in criminal  
18 investigations, a prosecution on this case, I could  
19 give a percentage of what I think that likelihood is,  
20 but I acknowledge that there's also a likelihood that  
21 this could simply be a missing person's case that  
22 doesn't have criminal overtones. There are cases I'm  
23 involved with where people go missing, and,

1     fortunately, we find them and it turns out there's  
2     not criminal activity, and there are other cases,  
3     unfortunately, that end up as being the result of  
4     criminal activity.

5             Q.       So, and I think you testified before,  
6     so this could be a situation where it could be 1  
7     year, 5 years, 10 years, even 20 years before you  
8     know whether or not an enforcement proceeding would  
9     likely occur?

10            A.       Or potentially never. I mean, I think  
11    the -- I'll tell you, Counsel, the oldest unsolved  
12    case we're working on is 35 years old right now.

13            Q.       So, would it be speculative, then, to  
14    suggest that the release of records could implicate  
15    or impede an enforcement proceeding when there's no  
16    likelihood that an enforcement proceeding is likely  
17    to occur or ever occur?

18            A.       I mean, I would disagree with that  
19    term, because I think "speculation" sounds like guess  
20    work, and what we do is not guess work, it's based on  
21    our common experience, it's based on our knowledge of  
22    this case and what's happened in other cases.

23                    You know, if every time an individual

1     went missing I turned over our file, and then that  
2     person ended up dead, we would never be able to  
3     prosecute that killer. So, you know, I know there's  
4     been some discussion here about how do we  
5     characterize this case. Well, it truly is a missing  
6     person case, Maura Murray is missing, but it's an  
7     investigation that law enforcement is conducting into  
8     her disappearance. It certainly has criminal  
9     overtones to it, that's why our office is involved  
10    and that's why the State Police are doing this.

11                 But you're right, I can't sit here and  
12    tell you today with 100 percent certainty that we're  
13    going to prosecute someone for the disappearance of  
14    Maura Murray because I know it's a homicide. I can't  
15    tell you that.

16                 Q.     But if information is released, that  
17    wouldn't prevent the State from being able to  
18    prosecute someone, should it turn out to be a  
19    criminal case; is that correct?

20                 A.     I disagree with you. I disagree with  
21    you.

22                 Q.     So, if there was a release of any  
23    information, that would prevent the State from being

1     able to meaningfully conduct a criminal prosecution?

2           A.       No.   Actually, I think the information  
3     that has been agreed to as far as being released will  
4     not damage the investigation.  I think there are  
5     certainly categories of information that could be  
6     harmful, and I believe that's why we've asked that it  
7     be withheld, but, no, there are certainly some  
8     categories that can be released, I think, without  
9     harming the investigation.

10          Q.       And other than the records that have  
11     been produced to us, every other record that's of the  
12     2,938 records that are contained within this  
13     investigation file you're satisfied that none of --  
14     that all of them fall within the investigatory  
15     exception or the privacy exception to the -- to FOIA?

16          A.       I am.  And, again, obviously some of  
17     what I have to do is based on conjecture about what  
18     could happen in the future, but, you know, looking at  
19     records and looking at the status of this case, yes,  
20     I believe that releasing those documents could harm  
21     us in the future.

22                    Again, I don't know what happened to  
23     Maura Murray.  I'm hopeful that it's not a homicide

1 investigation, but if it is, I can't tell you which  
2 one of those pieces of information could prove to be  
3 the critical piece, and I certainly wouldn't want her  
4 killer or killers to be able to go free because we  
5 released those documents.

6 Q. Is it typical that your office would  
7 become involved in a missing person's investigation,  
8 similar to what's going on in Maura's case?

9 A. That's a good question. It's not  
10 typical, it does happen. We obviously get involved  
11 in obvious homicides, we get involved in suspicious  
12 deaths, and we do get involved in missing person's  
13 cases, and I will tell you that the longer the case  
14 goes on, meaning, the longer the individual is  
15 missing, obviously, the higher the level of concern,  
16 because you would hope that if an individual just  
17 decided for whatever reason to take off for a period  
18 of time because of issues in their life, that sooner  
19 or later they would contact family members.

20 And a recent example is a young lady in  
21 Goffstown who went missing. We did get involved in  
22 that case, and luckily it turned out that she was in  
23 Florida and she had had some family difficulties and

1 she turned up, but there are other missing person's  
2 cases that I've been involved with where people have  
3 been missing for decades, and certainly the longer it  
4 goes on, I think the more concerned we all become  
5 that that individual is the victim of foul play.

6               So, in this case, obviously, it's gone  
7 on for what I'd call a substantial period of time.  
8 That raises our level of concern. So, we do get  
9 involved the longer it goes, that's one factor, and  
10 then the other factor is what level of assistance is  
11 needed. Is there legal work that needs to be done,  
12 are there subpoenas, is there potentially Grand Jury  
13 work, is there a request for one-party or body wire  
14 intercepts? Those types of things will bring us into  
15 the case.

16           Q.       And my understanding from your  
17 testimony is, is that your office became involved in  
18 this very shortly after her disappearance?

19           A.       From looking back at the records, I  
20 mean, the first hard indication I have is, I believe  
21 it's February 19th of 2004.

22           Q.       So I understand you correctly, it was a  
23 lengthy answer, it is sort of atypical that your

1 office is involved in this case as a missing person's  
2 case?

3 A. It's atypical that we get involved in  
4 missing person's cases, but I would say it's typical  
5 in a case like this because of, number one, the  
6 length of time that the individual has been missing  
7 and, number two, because of the type of requests that  
8 have been made for assistance. So, we don't  
9 typically do missing person's cases unless it looks  
10 like it's an obvious homicide, or it has those  
11 overtones.

12 Q. So, the involvement of your office was  
13 not to have the records that have been assimilated to  
14 date somehow be withheld from the petitioners simply  
15 because the Attorney General's Office has become  
16 involved in the investigation?

17 A. No, and I don't mean to be sarcastic  
18 when I say this, but we have plenty of other work to  
19 do, and I've never received what we call a specious  
20 request from the State Police or any law enforcement  
21 agency just to get us involved for no reason. I  
22 mean, we would never do that. We got involved  
23 initially from looking at the file because there was

1 some investigative techniques that wanted to be  
2 exploited, and we could be of assistance in that, and  
3 that's, I think, how we initially got involved.

4 MR. ERVIN: Your Honor, can we approach?

5 THE COURT: Yes.

6 AT THE BENCH:

7 THE COURT: Mr. Ervin.

8 MR. ERVIN: I just wanted to preserve for the  
9 record that -- is this witness going to be subject to  
10 the in camera --

11 THE COURT: Yes.

12 MR. ERVIN: -- as well? Then, I will not  
13 inquire into the specific documents.

14 THE COURT: Fine.

15 (End of bench conference)

16 IN OPEN COURT:

17 MR. ERVIN: I have no further questions.

18 Thank you, your Honor.

19 THE COURT: Ms. Smith.

20 MS. SMITH: I just had one thing to follow up  
21 on.

22 REDIRECT EXAMINATION

23 BY MS. SMITH:



1           Q.       You indicated in responding to Attorney  
2 Ervin that you could give him a percentage that you  
3 have in your mind of likelihood. What is that  
4 percentage regarding whether the likelihood of this  
5 results in a criminal case?

6           A.       I mean, I'd say it's probably 75  
7 percent.

8           Q.       Pardon?

9           A.       I'd say it's probably 75 percent.

10          Q.       Thank you.

11          THE COURT: Thank you. You may step down.

12          THE WITNESS: Thank you, your Honor.

13                   (Witness stepped down)

14          THE COURT: Anything further from the State?

15          MR. ERVIN: I do not have anything further on  
16 our presentation. The State is willing and able to  
17 have the witnesses that have given public testimony  
18 present further in camera testimony to the Court for  
19 the reasons stated in our motion for in camera, and in  
20 our motion for reconsideration we do think it is very  
21 important that that be to the Court alone.

22          THE COURT: Understood. Mr. Ervin.

23          MR. ERVIN: Your Honor, reserving the

1 objections that we had put on the record concerning in  
2 camera testimony, we believe that that level of  
3 inquiry is necessary in this case to test the  
4 sufficiency of the categorization of the documents for  
5 the Court to make its determination whether or not the  
6 exemptions in their description of documents is  
7 sufficient to satisfy His Honor that the investigatory  
8 exception has been appropriately invoked in this case,  
9 and we would submit that that is -- that level of  
10 inquiry is necessary to be conducted by the Court in  
11 camera.

12 THE COURT: Motion for in camera is granted.  
13 I will take in camera testimony. The State has filed  
14 a motion to reconsider a small portion of my order  
15 with respect to the in camera testimony.

16 Counsel, any position on the State's Motion to  
17 Reconsider?

18 MR. ERVIN: Your Honor, we are going to heed  
19 His Honor's advice and are comfortable that in camera  
20 review of the testimony can be handled by His Honor  
21 without the counsel for the petitioner present.

22 THE COURT: All right. Motion to Reconsider  
23 to that small portion of the order is granted.

1           This hearing is adjourned, and it will resume  
2   in chambers, in camera, and it will take a couple of  
3   minutes to get set up.

4           Anything further for the record, Counsel?

5           MR. ERVIN: Your Honor, did you want us to  
6   make presentations? I mean, I had submitted a brief  
7   in this case specifically on the remand. Just for the  
8   record, to preserve that in the Supreme Court's  
9   decision remanding this matter down, they specifically  
10   stated on page 4 of that decision that they were  
11   assuming without deciding that an enforcement  
12   proceeding could reasonably be anticipated, and,  
13   therefore, they would then determine whether or not  
14   the sufficiency of the invoked categories would be  
15   appropriate, and I would suggest that the inquiry that  
16   His Honor is conducting here is first to determine  
17   whether or not the State has met the threshold  
18   requirements to invoke the investigatory exception,  
19   that being that this is an ongoing investigation that  
20   could ultimately lead to a criminal prosecution, and  
21   the case law is very clear. The Curran case, as the  
22   Supreme Court articulated in its decision, the Beavis  
23   versus State case, the Chicago versus ATF case, that

1     it has to be a reasonably anticipated enforcement  
2     proceeding, cannot be speculative, and I do not  
3     believe that the State has met that burden with the  
4     majority of the records other than the records that we  
5     have, based upon the privacy exception, agreed fall  
6     outside of the purview of the public records statute,  
7     that the majority of the records, the investigative  
8     reports and the like, based upon the presentation of  
9     testimony and the grounds for the invocation, that the  
10    exemption has not been met, and that if the State's  
11    position is adopted, I think that the exception,  
12    therefore, is swallowing the rule, which is the  
13    concern that the State has said and the Supreme Court  
14    said in the National Labor Relations versus Robbins  
15    Tire, that you cannot endlessly protect information  
16    simply because it's an investigatory file. The State  
17    has to show how that's going to impact or reasonably  
18    impact an anticipated enforcement proceeding, and I  
19    don't believe that there's been any competent  
20    testimony that that is a likelihood in this case.

21           THE COURT: All right. Thank you, Counsel.  
22    All right. We'll adjourn the hearing at this point.  
23    Once I finish the in camera testimony, the matter will

1 be taken under advisement. Any additional memoranda  
2 that you'd like to submit, Counsel?

3 MR. ERVIN: If your Honor would like us to  
4 submit further memoranda, I'm comfortable with the  
5 brief that we had submitted.

6 THE COURT: I'm satisfied -- yeah. I'm  
7 satisfied what's here, but you have an opportunity, if  
8 you'd like to. If not, I'll accept what's here and  
9 issue a written decision once I've had an opportunity  
10 to review all of the material.

11 MR. ERVIN: Okay. I would rest on my papers,  
12 your Honor. Do you need me to stay around? Are there  
13 going to be any questions?

14 THE COURT: You do not have to stay.

15 MR. ERVIN: Thank you.

16 THE COURT: All right. Thank you.

17 THE BAILIFF: All rise.

18 (Hearing suspended at 10:29 a.m.)

19 (In camera hearing held on the record - audio  
20 recording and transcript placed under seal per order  
21 of Supreme Court)  
22  
23

TRANSCRIBER'S CERTIFICATE

I, Brenda K. Hancock, a New Hampshire Court-approved transcriptionist, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional ability, skill, knowledge and belief.

Date

10/12/07  
Brenda K. Hancock