

TRANSCRIPT: State "Destroyed" Baldwin Revolver ... Charges Dismissed?

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Welcome everybody. Welcome to today's episode of the Law of self defense. I am, of course, Attorney Andrew Branka for the law of self defense. And then we are here today to talk more, more Alec Baldwin trial news, Alec Baldwin, of course, is the actor who shot and killed cinematographer Helena Hutchins.

On the movie set of low budget Western rust with the single action revolver he held in his hand, he pointed that gun directly at Helena Hutchins. He manipulated the gun certainly cocked the hammer apparently pressed the trigger did not ensure there was no live rounds in the gun. In fact, there was a live round, it discharged, it penetrated Helena Hutchins under her right armpit, traversed her body broke her spine, mortally wounded her. She would die on the floor of that church pew on the movie set. Shortly thereafter, the bullet would pass completely through her body and bury itself in director Joel Souza who would survive the bullet wound. Armorer, Hannah Guterres was tried for involuntary manslaughter for failing to ensure there was no live ammo on the movie set, she was convicted and recently sentenced to 18 months in prison.

The maximum sentence for involuntary manslaughter under New Mexico Law. Next month, it is Alec Baldwin's turn to stand trial. Jury selection is July 9th.

The trial proper starts July 10th and Alec Baldwin, unlike Hannah Guterres has brought on board a very costly prestigious legal defense. Oddly consisting mostly of civil litigation attorneys out of Manhattan law firm, Emmanuel Quinn, one of the top 50 law firms in the world, several partners working on this legal defense, six or seven other, uh, junior partners or associates and one local New Mexico Council, uh, as is required by the rules. So all these other Manhattan attorneys uh can argue before the court and all the legal argument that I've seen to date for the Alec Baldwin defense team has been not by local councils, but by the pro hack Vicci Council brought in from outside of New Mexico and they've been very aggressive filing lots of motions making lots of arguments. Many of them seemingly preposterous on their face, but nevertheless, they're made and the state prosecutor carry Morrissey has to respond. Uh, recently, the defense had argued that the grand jury indictment against their client, Alec Baldwin should be dismissed on a variety of specious grounds, um, including that the grand jury, uh, was not presented with defense evidence by the prosecution that the prosecution had given the grand jury an improper jury instruction on involuntary manslaughter.

This was argued in motions written documents before the judge and argued orally before the judge who then issued her ruling, denying the defense motion to dismissed the grand jury

indictment for an alleged failure to state a criminal charge, but the defense is not giving up. They have another reason why they think the grand jury indictment should be dismissed this time with prejudice. Meaning that if it is dismissed, Alec Baldwin could not again be indicted on this shooting of Elena Hutchins this time. They're saying that the prosecution destroyed evidence, destroyed evidence sounds pretty bad, right? Destroyed evidence. I expect this to be swatted down by the trial judge as well.

But these are the motions being argued. Now before the court yesterday, we covered uh, some arguments being made before the courts, uh on a, a couple of fronts, one of which was the argument that certain, um, defense witnesses that the defense had listed on their witness list and then later withdrew when, during pretrial interviews, those witnesses gave answers responses unfortunate for the defense client, Alec Baldwin. Uh The defense doesn't want them to appear as witnesses at trial after all.

And of course, the state very much does want them to appear. So we have this witness dispute and also the question of whether Hannah Guterres uh ought to be granted, I use immunity so that she can testify at the trial and be subject to cross examination by the state. The defense does not want Anna Guterres to testify under immunity. So yesterday, we covered the state argument for why Guterres should be granted immunity and compelled to testify in the Alec Baldwin trial.

When I did yesterday's show, I had not yet seen a response from the defense arguing why Hannah Guitar should not be given immunity. That response appeared in the record today. Now, it was filed by the defense last Friday, but of course, yesterday was Monday and when I looked at the court website, that response was not up yet. It is up today.

So while I had planned to focus on this destroyed gun evidence issue in the interest of completeness, I think I'll start today's show with the defense objection, counter argument to the Hannah terrorist immunity issue. They do not want hanukah terrorists to be granted immunity. It's a, it's a short motion. It's only about seven pages long. Uh, and then I'll, I'll cross link the first part of today's show with yesterday's show, uh, just for purposes of completeness. All right, folks.

So with that out of the way, let's go ahead and start the former launch of today's show. Here we go. And of course, we must mention our sponsor which is none other than CCW safe, a provider of legal service memberships. What many people mistakenly call self defense insurance in effect CCW safe promises to pay its members legal expenses if the member is involved in the use of force event and they do much else as well. Uh I think the world of these guys. I do quite a bit of partnering with CCW Safe. I personally choose CCW Safe.

I'm a member there myself. My wife Emily is a member. There are other companies offering similar services out there in the marketplace.

Some of them are worth considering. Some of them may be a better fit for you than CCW Safe. All our circumstances are different. Um, certainly CCW Safe is the best fit for me perhaps for you. Um So I would encourage you to check out what's available in the marketplace.

I would caution that some of the offerings in the marketplace are dumpster fires, hot, garbage that I could not in good faith recommend to anybody. So make an informed decision. I've made the decision to be a member of CCW safe and perhaps they're the best fit for you too. You can learn why I trust CCW safe at Law of Self defense.com/trust. I have a little video there where I explain exactly why I feel they're the best fit for me and for my family. Perhaps you'll decide the same as well.

And if you go to that URL Law of Self defense.com/trust, you'll also receive a 10% discount code you can use for your own CCW safe membership law of self defense.com/trust. All right. So as I noted, let's start first with the defense response to the States request motion. A motion is just a request to a court for the court to do something the state had made a motion to the court to grant Hanna Guterres the recently convicted of involuntary manslaughter armor on the set of rest, uh, to grant her use immunity so she can be compelled to testify and be subject to cross examination in the trial of Alec Baldwin. Yesterday. At some length, we covered that motion by the state asking for immunity.

Today, we have this motion filed last Friday but just put up on the court website today from the defense objecting to this request. So what does the defense have to say most of this is pretty rich stuff, uh and not very compelling argument. So, based on that, of course, I expect we'll have oral argument on this as well. Um Based on, I think the oral argument is scheduled for the 21st of this month. So we'll certainly be live streaming that. Um I don't see many compelling arguments here from the perspective of Alec Baldwin, the defendant on why immunity should not be granted.

Now, there, there may well be reasons that Hammer Guterres doesn't want immunity, doesn't want to lose her ability to assert her fifth amendment right, not to testify, but of course, she's not filing this response. So what does the defense have to say? Defendant Alec Baldwin hereby opposes the state's notice for use immunity for Hannah Guterres preliminary statement. The state's late filed motion for use immunity to secure life testimony from Hannah Guterres Reed should be denied. So right away, the defense is focusing on a purported late filing, late notice.

They're trying to suggest they were ambushed by the state's request that Hannah Guterres would be granted immunity and compelled to testify. Um And this is a silly argument for the defense because in fact, the defense has had Hannah Guterres on their own witness list for months. So the defense was well aware that Hannah Guterres could appear as a witness. They chose her as a witness on their witness list and so advised the state. So she's certainly been on their radar. She's not an ambush witness to the defense. So the the late notice hardly applies here does, doesn't really make any sense.

What I'm sure the defense is really objecting to is they only wanted the testimony of Hannah Guitars that was favorable to their client to make it before the Alec Baldwin jury. What they're trying to do is get that half the favorable half of the guitarist testimony in front of the jury and avoid having Hannah Guitarist subject to cross examination, avoid the jury getting all the guitarist testimony. Continuing with this objection. The testimony, the state purports to seek is contained in Guterres prior statements. The state has had for years.

If the state felt it needed a grant of use immunity in this manner, it should have filed this motion when it first learned Guterres intended to assert her fifth amendment privilege. The state did not do so. And all parties continued to prepare for trial on the understanding that Karez would be unavailable at trial. Is that what all the parties thought because the defense had her on their witness list? Do you put someone on your witness list? If you believe she's gonna be unavailable at trial? And when they say unavailable, they don't mean physically unavailable. They mean that if she was called, she would assert her fifth amendment right not to testify. The late edition of Guterres, by the way, they call her guitar Reed. This is guitars.

That's not her name. Her name is Hannah Guterres. She just chose to attach Reed to her name Reed is the name of her nominal father, not her biological father. It turns out her, her mother who was married to Fell Reed, a famous armorer in Hollywood. Her mother apparently stepped out on Fell Reed while he was on a movie set someplace, got knocked up by some other dude, Bor Hannah Hannah Guitar's legal name is Hannah Guterres. She's not biologically related to the Reid and th Reed has known this his whole life uh and raised Hannah as his daughter, but her legal name is Hannah Guterres.

Reed is just an artificial addition to associate her with the really pristine armor or reputation of her nominal father F Reed. The late edition of Guterres Reed to the state's witness list to provide open ended unspecified testimony at this late date is unjustified and prejudicial, the motion should be denied. Well, that's what you would expect the defense to say under because Hannah, as we saw yesterday, Hannah would be expected to testify if questioned by the state on a variety of things harmful to Alec Baldwin. He was inattentive during his safety training. He didn't show up to other safety training that he agreed to show up to and, and so forth that some actors on the set were double checking to make sure their guns weren't loaded something, Alec Baldwin didn't do this. This is all testimony. The defense does not want in front of the jury background under the court's uh February 26th scheduling order, the parties were directed to make their respective discovery disclosure disclosures within the time frame set forth by the rules.

Now, this is the defense saying, well, we, this is, this is an ambush witness. We didn't know there was a possibility that Hannah Guterres could be called as a witness, which is a ridiculous argument because Hannah Guterres was on their own witness list. Now, they're going to argue here that Hannah Guitars was not listed on the state's witness list and somehow that makes her an ambush witness. That's a silly argument too on another level because the state, when it listed its witnesses also had a catch all at the bottom of its own list saying, and we incorporate every witness listed by the defense. So by incorporation, Hannah Guterres was on the state

witness list and has been for months. So this is a, a silly argument. This is smoke and mirrors sleight of hand legal Mumbo jumbo.

But this is the defense argument. The state had filed an initial witness list on February 6th, listing 30 witnesses. It followed this with an amended witness list on April 3rd and April 19th disclosing new witnesses.

The state then filed an addendum to its third amended witness list on April 25th, adding yet another witness and a further addendum on May 6th, the deadline set by the court to add new witnesses, adding another eight witnesses. So this is all normal folks. It's normal that as the state's developing its case, developing its arguments, uh trial is approaching within the window of time permitted by the court, meaning by May 6th, you're free to add witnesses that's completely permissible. Nothing wrong with this. That same day, May 6th, the state filed a motion to exclude defense witnesses disclosed for the first time on May 6th, the deadline for adding witnesses arguing that the state is prejudiced by the defendant's improper tactic aimed at sandbagging the state. So what happened on May 6th the last day to add witnesses is the defense team had added a whole bunch of witnesses and the state obviously on the deadline. So to preserve its the state to preserve its ability to contest these witnesses, um rather than they didn't have time to do like in depth interviews of each one, they were notified on the deadline the last day.

So they filed preemptory, um, exclusions motion to exclude. Um, now they don't necessarily need to exclude those witnesses, but they're saying we're reserving the right to exclude if we decide we have a legal basis for doing so. And the, the sentiment by the state is, hey, the defense knew about these witnesses for weeks or months. They filed them on the last day for a reason to ambush us.

The defense continues. None of the state's timely filed witness list included Hannah Guterres Reed. So this is lying by omission.

As I already explained, Hanna Guitars Reed was not named specifically in the state witness list, but the state witness list said and we include in our own witness list by incorporation. Every defense witness in the defense witness list where Hannah Guterres read, Hannah Guterres was listed. So Hannah Guterres is on the state list by incorporation. She need not be specifically named.

So when the defense says none of the state's witness list included Hannah Guterres. Well, that's true. She wasn't included by name but she was included by incorporation. So this is lying by omission to the court.

The defense continues, of course, the state is known about Guterres since well before its first witness list was filed, Guterres was tried and convicted for the same incident by the same prosecutors in February and March and had a and has a pending appeal. Defendant's first amended witness list filed on April 19th did include Guterres. So the defense is admitting we

had guitars on our witness list. Well, if we look at the state's motion, the state makes this point as well. This is the motion we covered yesterday.

This is the state's request for immunity. They note Gutierrez is listed on defen of Baldwin's witness list and on the state's witness list by proxy by incorporation as the state has reserved the right to call all witnesses named by the defendant. So really a specious argument here by the defense continuing. Uh Well, but let's see, the state requested a pretrial interview for Guterres Reed which was held on May 19th. Well, before that date, the state was advised by counsel for Guterres that she would assert her fifth amendment privilege and the state proceeded to confirm that position in the interview.

They asked Guterres a fa few preliminary questions, things like, what's your name? How are you feeling today about her employment on the set of Rust? And then uh she answered those, but then she asserted her fifth amendment privilege against self incrimination for the remainder of the interview as is her right? For sure, the state did not indicate it would seek use immunity or otherwise attempt to circumvent that assertion of privilege at the time of this interview. Well, they're not required to do that on May 30th. The state provided the defense with more than 350 recordings of calls purportedly mean made by guitarists from prison. These are the calls that got Guterres in trouble with the judge at sentencing. That's why the judge, well, that's probably why the judge, um, t tagged her, classified her as a violent offender that has to serve 85% of her 18 month sentence.

Otherwise, as an, had she not been so flagged, she would only have had to serve 50% of her 18 month sentence. The, the many of the calls from prison uh from jail uh were very derogatory to the court to the judge. Um Guterres clearly assumed no fault at all for what happened. She was simply being persecuted, blah, blah, blah, blah. Uh So the state provided the defense with more than 350 recordings of calls purportedly made by guitarists from prison. Um Actually, I would expect from jail.

The state has provided no further content or explanation of the relevance of those calls. Well, this is just part of discovery. The state intends to use some of those recordings at trial. Obviously, especially if they want to use them to impeach your terrorists if she's testifying. So they're, they're meeting their discovery obligations by providing those recordings to the defense. They don't have to tell the defense what their strategy is for the use of that evidence.

They simply are obliged to make the defense aware of the evidence, provide them with access to the evidence, which is what they did here by providing the recordings. On June 3rd, the state filed a purported third addendum to the state's third amended witness list. Why would that be purported purported is like when someone claims they did something and like, well, there's a purported claim. We don't believe the claim. There's reason to doubt the claim. But why would there be no reason, why would there be reason to doubt that the state filed an amended witness list? I mean, it's in the court filings or it's not? That's weird, but the state filed a purported addendum to their witness list disclosing without providing explanation.

Three witnesses not included on any of the state's five previous witness lists. Well, were they on the defense witness list list and incorporated by proxy like Hannah Guitarist? One of these witnesses was Guterres the state then for the first time and two days before the pretrial interview deadline presented the request for the court to grant use immunity to guitarists. We just covered that. That was on June 5th. Was that immunity request to the court by the state argument? The state's belated request that the court grant used immunity for Guterres testimony at trial and order her to testify at trial as well as its untimely addition of Guterres to its sixth witness list comes months after Guterres was disclosed on defendant's witness list. Weeks after Guterres entirely non substantive pretrial interview was completed. Well, after the deadline for adding witnesses and just weeks before the trial is set to begin.

Well, some of this just doesn't matter, right. So it doesn't matter that it was after the deadline for adding witnesses because Hannah Guterres was as the defense concedes in his first point here that disclosed on the defendant's witness list, which was incorporated by proxy just because something is happening just weeks before trial is set to begin. Doesn't mean it, it gets excluded from the trial. There can be no good cause for the state's untimely request. The state has known about the terrorists involvement in this case since 2021 has known that she was on the defendant's witness list since mid April has known that she intended to assert her fourth amendment privilege since early May, which is only a month ago. Folks, if the state wished to secure life, an unfettered testimony from Guterres despite her ongoing appeal of her criminal conviction, something the state has known about since March, it should have made this request.

Well, in advance to allow all parties a fair opportunity to explore Guterres read's testimony. Well, we still have a month before the trial. There's still time to question Guterres. Everybody's aware of what she has to say. Like the defense has also known about Guterres Reed and her relevance to Alec Baldwin's legal jeopardy since the event in 2021 they know she was tried, they know she's testified, they know about the prison recordings. They certainly have not been ambushed.

They just would much prefer that Hannah Guterres not be subject to cross examination in Baldwin's trial. The defense continues the state's request is not only untimely is it though, but also prejudicial. Now, keep in mind, folks, everything opposing counsel submits as evidence is presumably prejudicial to your own case. That's why it's being offered by opposing counsel because it helps them and it hurts you. So the mere fact that evidence is prejudicial doesn't mean it's excluded. Everything offered by the other side is prejudicial. Alec Baldwin's own police interview his interrogation.

The day of the shooting is prejudicial to Alec Baldwin. Do you think that's coming into evidence? It sure is the parties have concluded the pretrial interview process and are fully engaged in preparing for trial? Well, isn't all this part of preparing for trial, including preparing for the state's 44 timely disclosed witnesses. This is rich because the the prosecution is really two attorneys, maybe three.

This, the defense has something like eight or 10 or 12 attorneys. So to argue that, oh my gosh, your honor. We're having so much trouble preparing for the state's 44 witnesses. The vast majority of which the defense has known about for years. It comes across as rather species. Moreover, days before it filed this request, the state disclosed hundreds of Guterres reads prior statements for the first time. These are the prison recordings um by the way the defense could have had those at any time they knew that they existed because they were referenced in Guterres sentencing.

So again, this is not ambush evidence for the defense. Uh The defendant understood from Guterres interview process that she would not in fact be available for trial and has been preparing accordingly with no indication that the state had anything else in mind. So they know she exists, they know immunity is a thing allowing the state use immunity at this late juncture to introduce a previously unavailable witness with hundreds of previously undisclosed statements, the prison recordings after the deadline for witness disclosures has passed without time to conduct proper pretrial interviews and just weeks before a complex trial would prejudice defendants due process rights. Uh Let's see indeed.

It is hard to imagine how the state could claim that display the disclosure and request is not prejudicial when it previously asserted that it was prejudiced by the defendant's timely witness disclosures, characterizing those disclosures as a calculated game of sandbagging as less than 30 days remain for conducting pretrial witness interviews and the defense as choosing to lie and wait and ambush the state because the state would not have an adequate opportunity to conduct interviews and investigate the witnesses with an entire month remaining of the pretrial interview period. Well, of course, this is comparing apples and oranges. So what the defense had done was on the last day added a bunch of witnesses to their witness list that had never been previously disclosed to the state that the state had never been aware of were not on the state's radar, could not have been on the state's radar. And the state objected saying, hey, this is, we reserve the right to exclude these witnesses because we may not have time to interview and investigate these people. We never heard of these people before and there's a bunch of them. That's a completely different scenario than the state saying, hey, you know what? We may wanna cross examine Hannah Guterres, who everybody knows about who has tons of prior statements.

Uh Both in police interrogations prior to her own trial. Um The prison recordings, everybody had Hannah Guitars on their radar. These are not similar situations here. A continuance is not required or sought because the state has not made any specific showing as to why Guitarras live testimony trial is necessary. Well, they, they have actually, they, they made clear that Hannah Guterres would testify about baldwin was inattentive during his safety training, failed to show up for other safety training.

Uh could have checked the gun for live ammo. Other actors on the set were doing that. The state offers no explanation as to how it contends that the defendant's opposition to this motion is a clear indicator that the defendant intends that only exculpatory testimony from mista be presented to the jury the parties have anticipated since at least may 19th, that Guterres Reed

would be unavailable to testify. But, but her testimony will be in the trial because it's in recordings.

It's just that the defense believes that the recordings are more favorable to them than harmful. What they don't want is they don't want a live Hannah guitarist to be subject to cross examination by the state. The state has offered no justification for why at this late stage, it is necessary for the court to grant its request for use immunity. Well, that'll be for the court to decide, won't it? Uh, for that reason, the court should deny the state's request for immunity.

So that's it for the Hannah Guterres immunity issue. That's the defense objections. Not very compelling argument. All right. Let's see.

Now we're going to get into the destruction of evidence arguments. Let me see quickly. If there are.

There we go. Oh, I see in the comments that I'm a very different case. Hunter Biden was guilty in all three counts. Interesting.

Interesting. Maybe I'll talk about that in a different show. Hm, probably not. Maybe I'll be a guest on someone else's show. I see Steve goss in the chat.

Steve. If you want to do a show on Hunter B, maybe I'll join you. Um, hey, Steve, if you wanna join for this discussion on the pistol, the destruction of evidence issue, uh, let me know, I'll send you a link.

Steve's insight would be very interesting here. Ok. So that is, yeah, I think everything else in the chat can wait. By the way, we only address questions from um and comments from law self defense members in the member chat.

Uh Not on youtube, not rumble, not on Twitter. So if uh although we, we are currently streaming on all of those platforms, uh when we get to the Q and A period of today's show as is our practice, we will end the youtube X and rumble streams and continue with only the law self defense members and, and do the Q and A portion of the show. The good news is you can be a law self defense member for just 99 cents. Folks get a trial membership, two week, trial membership for 99 cents, get all your questions and comments answered for free as a law self defense member. And if you stay a member after the two weeks and virtually everybody does. It's still dirt cheap.

It's only about 30 cents a day, 30 cents a day, less than \$10 a month to be a law self defense member, but at least try it out for 99 cents at lawselfdefense.com/trial and you'll be immediately emailed instructions for how to join us on the member stream, the member chat and participate in the Q and A for this show. And as long as you stay a member, every show that we do, that's at lawselfdefense.com/trial. All right. So now, just like with the immunity issue

yesterday, I had the state's request for immunity and I did not have the defense objection to immunity, which is what we just covered. Obviously, there's a delay in these things.

The 11 party makes a request to the court, the other party needs time to respond to that request. Today, we're going to cover the defense request uh to dismiss the grand jury indictment on the grounds that the state destroyed evidence destroyed the revolver involved in this event. I don't have the state's response to this, but when the state makes their response, presumably within the next few days, I'll cover that as well in a different show. Let's see. I'll just, uh, you know what, I'll just send Steve a link and if he can join me, he'll join me. And if he can't, I certainly understand, I'll send it to you as a Twitter DM Steve.

There you go. All right. So let's take a look and this. So, uh just as some context because I haven't read this yet. So I'm not sure how the defense will characterize it. Um There's no question that it was the revolver, the single action Western revolver as illustrated here, uh that shot and killed Helena Hutchins and it was in the hand of Alec Baldwin when it discharged. There's no question that Alec Baldwin knew it was a real gun.

He said so during his police interrogation the day of the shooting. Uh, there's no question that it was pointed directly at Helena Hutchins. The bullet directly struck her. Uh, there's no question of course that it discharged and fired the fatal bullet while it was in his hand, it was not dropped. It was not struck by some foreign object.

Uh, there's, uh, evidence to suggest that he cocked the hammer and pressed the trigger. Uh, that's a key part of this because it was tested at the FBI laboratory. And one of the first tests they did was that test, can I get the hammer to drop without depressing the trigger? And the answer was no.

Now, as a further part of the test, an impact test was done uh and sometimes called a mallet test. So there's a soft mallet, often a rawhide mallet uh that's used to strike the revolver from different angles from the sides, the top, the bottom, the front and the back and on the hammer of the gun. Um to see if the gun could be made to fire from a blow without the trigger being depressed.

Now, that's not actually relevant to the facts of this case. No one is claiming that there was a blow to the revolver and that's what might have made it discharged. But it's a common part of a firearms examination after a shooting event because the, the parties wanna be prepared, the state, the prosecution wants to be prepared and the firearms examiner knows this for a possible argument that the gun just went off. So a mallet test is a standard test that's done.

And when the mala test was done on this gun, one of the tests they did was to fully cock the hammer and then strike it with the strike the hammer with the mallet with increasing force to see if the hammer could be made to drop. What happened as a result, ultimately was, the hammer was struck with enough force to break internal parts of the hammer. So the way the

hammer works is we have the exterior part of the hammer that you would cock with your thumb. We can see that here inside the gun.

The other end of the hammer has, you can think of it as kind of a, a stick. Well, it's more of a, a circle, a circle with little notches cut into it and then the trigger and we can see the trigger here, the trigger, the part of the trigger you press with your finger. There's a top half of that trigger. It's kind of like a stick and it fits into the grooves in the circular part of the hammer. The hammer is resting on that stick. When you press the trigger, the stick is removed from the slot and that frees the hammer to fall forward.

What happened here was the hammer was cocked, the top portion of the trigger was in the appropriate slot, the full cock slot of the interior part of the hammer, the hammer was hit hard enough to break that connection to break the point of contact. So the tip of the trigger was broken off and the lip of the hammer notch was deformed as a result. That's the destruction we're talking about. So it's not like this. The revolver was thrown into a furnace and melted down.

The revolver was damaged in the course of testing. Now again, prior to the mallet test, the gun was evaluated to see if the hammer could be dropped, absent the blow and there was no blow in the facts of this case, absent the blow without the trigger being pressed. So the examiner would cock the hammer into different positions and see what happened. And it was impossible for the hammer to drop from a full cock without the trigger being depressed. So we know this already prior to the mallet test. That's a problem for the defense because the defense is trying to argue that it was not anything Alec Baldwin did that made the gun discharge. It was a defect in the gun because the gun had, they allege uh had previously been modified in a manner that made it more dangerous more likely to unintentionally discharge.

Now, how much does this actually help the defense in terms of the theory of recklessness that underlies this criminal charge of involuntary manslaughter? Not very much because there was more than one thing that Alec Baldwin did that constitutes recklessness, recklessness, meaning the creation, the knowing, creation and disregard of a unjustified risk of death to others. Alec Baldwin did more than cock the gun and press the trigger. We have reason to believe he did that, but he did more and the more he did is material to the death of Helena Hutchins. For example, we know that Alec Baldwin pointed the gun directly at Helena Hutchins because that's where the bullet went. We know that the screen actors guild safety guidelines explicitly say, never point a gun at another person. So that alone is recklessness, that alone creates an unjustified risk of death.

And Alec Baldwin knew this risk because he'd been trained for decades in these safety guidelines. Uh Not checking the gun for ammo. I would argue also qualifies as reckless. You think if Alec Baldwin had, if the script had called for him to point the muzzle of that revolver in his own head, do you think he would have made sure there was no live ammo in the gun? I do so. Uh the, the notion that Alec Baldwin didn't touch the trigger, the gun somehow went off by itself, I don't think solves a recklessness problem certainly does not warrant dismissing this

indictment even without prejudice, much less with prejudice. Uh Because there's other facts in the case that would qualify as reckless conduct here. But nevertheless, this is one of the arguments the defense is making.

Let's see. So here we go. Essentially defense motion to dismiss the indictment with prejudice, meaning that if it's dismissed, it can never be, he cannot be re indicted. Um, so he would never be tried based on the state's destruction of evidence.

Now, the state does have a duty to not destroy evidence, right? If they collect a piece of evidence, especially, uh exculpatory to the defense and they literally destroy it, they throw it in a furnace. Well, that would be a denial of due process, right? Is that what happened here? So bah bah bah, let's see, preliminary statement. There is no dispute that the state knowingly destroyed the most important piece of evidence in the case without taking even the most basic steps to document its original condition. Well, that's not really true. So what's the condition in terms of function? This revolver was tested for proper function before the mallet test broke the, broke the trigger and hammer connection. What the, what the defense is trying to suggest is that well, the, the, the state and by the state here, they mean the FBI um firearms examiner did not first completely dismantle the gun and inspect every part of the gun or some kind of damage.

Now, if by the way, if the FBI examiner had done that and then put the gun back together and then tested it, the defense would be arguing. Well, he, he changed it when he dismantled it and and reassembled it. He, he changed it. It was no longer in the same configuration as it was in the hands of Alec Baldwin. And they would be complaining about that a defendant Alec Baldwin, meaning his legal team now has no ability to examine or test the gun in its original state to disprove the government's theory that he pulled the trigger on the day of the accident in trying to explain how that conduct comports with basic notions of due process and fair play.

The state does not dispute almost any of the key facts that defendant Alec Baldwin repeatedly told investigators that he had not pulled the trigger and the gun just went off. That detective Hancock of the Santa Fe Sheriff's office ordered testing for the express purpose of disproving Baldwin's exculpatory statements. Well, that would be normal, right? In other words, she sent the gun to be tested to say, well, is it possible that it could have just went off without the trigger being pulled that the sheriff's office knew ahead of time that the FBI testing would destroy the firearm? Well, I don't think anybody knew that even the FBI tester was like, oops. So there was no intentional destruction. The, the striking with the mallet, of course, was intentional. It wasn't an accidental striking with the mallet, but that the outcome would be the destruction of the, of those mechanical connections, the, the trigger seer to the hammer that was not intentional So that's a silly claim to make that neither prosecutors nor law enforcement agents made any effort to document the firearms internal components before destroying it or even notify Baldwin about their plans. And that whether the firearm could discharge without the pull of a trigger is central to the state's theory of guilt.

Well, I don't know what central means. It's not required, there's other evidence of recklessness independent of the trigger pull. As I already discussed. At the same time, the government selectively omits critical but equally indisputable facts. New revelations by the state's expert, the state's brief, their, their arguments on this issue ignores a stunning concession. The defense loves this histrionic language.

Everything is stunning and shocking, ignores a stunning concession by its own expert, a concession that the defense learned about only recently during the experts interview as Baldwin's opening brief explains the firearm shows telltale signs of pre-existing modifications such as smoothing and tool marks on the hammer and sear. Although the state has implausibly attributed those alterations to the FBI testing without any support. The state's own expert has now rejected that claim as the defense learned for the first time in the May 21st interview of one of the state's firearms experts, Michael Haig. Last year, the state performed a supplemental examination of the trigger in cr critical components of the firearm designed to prevent it from misfiring. The purpose of that supplemental examination was to identify the origin of certain unexplained tool marks present on the working surface and sides of the evidence trigger slash sear.

A previously undisclosed August 23 report which the state did not disclose to defense counsel until Hague revealed its existence. In the interview concludes that the source of those diagonal tool marks of an unknown origin remain just that unknown critically. The report admits that it is unlikely that these tool marks are the result of the damage incurred during the FB I's impact testing and that they do not appear to, to be, I guess original manufacturing marks or use and abuse tool marks based on their irregular orientation.

So here's the problem with the defense argument here, it may sound compelling, right? It may sound compelling. Oh my God. There, it looks like there's indications that the gun was previously modified in a way that cannot be explained away innocently.

But here's the problem, this is simply a factual dispute, right? The defense is presenting its view of the evidence, its view of the interview, its view of these marks, but the state will have a very different view and where there's a dispute and factual evidence. That's the role of the finder of fact, that's the role of the jury. So the appropriate way to address these issues. It's not to summarily dismissed the grand jury indictment with prejudice.

It's for this witness to be called by one party or the other and subject to cross examination and each side will get its view of these facts in front of the jury and the jury gets to decide which version of the facts it decides is the more credible it decides is the actual, not merely evidence but proof in this case. What establishes guilt beyond a reasonable doubt or fails to establish guilt beyond a reasonable doubt. All of this stuff is stuff that is appropriately argued in front of the jury which means it goes to trial and gets admitted as evidence. This is the state's expert. Well, the state's expert gets subject to cross examination and his statements in this interview, pretrial interview would be part of that can be used to impeach him if he says things different during cross examination than he did in this interview. Uh The defense continues these

admissions leave the state with no colorable argument that it's knowing destruction of the firearm, satisfied due process.

Again, there was no, there was no knowing destruction of the firearm. The state did not tell the FBI, the FBI firearms examiner did not say, you know what, I'm gonna destroy this hammer and seal with this mallet test. That's not what happened.

It is clear. So they say knowing rather than intentional, you see the sleight of hand there, it is clear that the internal components of the firearm designed to prevent accidental discharges had likely been modified before the accident. I think the state would dispute that right.

But because of the state's needless destruction of the firearm. The defense can never examine and test the gun to determine whether the those modifications corroborate Baldwin's statements that he did not pull the trigger. That sentence there is what would be argued to the jury by the defense. Next section, experts, admissions about the testing, the state's own experts have admitted that the FBI testing basically hitting the gun with a mallet. Not, basically, that's exactly what it was, was inappropriate, unnecessary and untethered to the circumstances of the case. Well, that's true.

Uh There was no evidence in this case that the gun was struck by some object or dropped, which is what the mala test is really testing for. But it's, the mental test is just part of a laundry list of tests that the firearms examiner does was that particular one unnecessary in the facts of this case? Yeah, but the FBI examiner probably didn't know the facts of this case. He's given a gun and he's told, all right, do do test sequence beta. And the mala test was part of that. The FBI failed to conduct tests. That would have made sense here such as the pushoff test.

I actually don't know what that is. Indeed. Detective Hancock and the sheriff's office did not provide the FBI with details about the facts and circumstances of the case that might have informed the FBI S testing decisions. So in theory, the sheriff's office could have said, listen, you don't need to do the mala test because there's no fact evidence of a strike, a blow to the gun here.

Ok. So, nor is it clear that the FBI preserved every piece of the broken gun in its testing? Lucian Haag, that's the father of Michael Haig. So Lucian Haig was the state's firearms expert in the first trial in the Hannah Guterres trial.

His son Michael is, I guess, has been brought into his firearms expert consulting practice. And Michael is expected to be the firearms expert witness in the Alec Baldwin trial. I don't know if that's for reasons of Lucian's age or he simply wants to give his son an opportunity to get this kind of exposure. Whatever Lucian Haig, the father noted that it appeared a piece of the hammer had been shaved off, but no fragment of that critical component had been included when the FBI returned the firearm.

It is impossible to know whether that loss is attributable to the FBI or the sheriff's office. What is certain? However, is that the firearm was returned in an incomplete state on top of having been destroyed in unnecessary testing. Well, again, it, it wasn't destroyed in the sense we normally think of as destroyed, right? Normally we think of destroyed as complete destruction as if the gun had been thrown in a furnace and melted down. That's not what happened. A part was broken during testing. Next section, experts lack of knowledge, the state's arguments obscure that neither its own experts nor the FBI examiner knows the condition of the firearm on October 21st, 2021 when the shooting occurred. And they have each admitted as much and presumably they would on the witness stand.

Right? They took no pictures of the internal components and failed to video record the FBI's testing because prosecutors and state investigators never asked for those basic steps to preserve this critical evidence. In short, the state's actions have ensured that no witness can testify about the firearms original condition. No, but the jury can make reasonable inferences, right? If the gun is taken from the scene, put in an evidence box and it's not removed from that box until it gets to the FBI lab, we can make a reasonable inference that the gun is in the same condition.

Detective Hancock's knowledge of Baldwin's statements. Detective Alexandra Alexandria Hooters Hancock, the lead investigator in the case knew that Baldwin had claimed that the firearm went off and that he did not pull the trigger. Yeah, that's why she sent it for testing to see if that was possible.

Um The state cannot truthfully maintain that investigators never knew Baldwin was claiming the firearm had malfunctioned. I don't think the state's claiming that. Moreover, Detective Hancock also knew that other people on the movie set had told investigators in the immediate aftermath of the accident that the gun just went off. So this is rich. So what the defense is referring to here is, well, there were other witnesses, right? There was other people in the pew or outside the church where the shooting happened who could hear a gun and they said, oh my God, the gun just went off as, as if that is an indication of some mechanical mechanical malfunction of the gun. The gun just went off in their perception because they were not anticipating a gunshot. That doesn't mean Alec Baldwin didn't cock the hammer and press the trigger more sleight of hand, more smoke and mirrors from this defense timeline and purpose of testing.

The state also ignores that the FBI conducted the testing six months after the accident and that Detective Hancock requested the testing to disprove Baldwin's statement that he had not pulled the trigger. Well, Baldwin makes the statement, he did not pull the trigger. It's natural to want to evaluate the gun to see if that happens. The six month doesn't matter.

This was years ago now, well, before this trial, the exculpatory value of the firearm was not only obvious, it was acknowledged by the state's key witness who set out to investigate it. Investigator Hancock, which she did, she investigated it by sending it to the FBI lab just to see, hey, is it possible for this hammer to fall and discharge around without the trigger being pressed? No notice. The state fails to address that. Detective Hancock once informed that the

proposed testing she sought could destroy the firearm, not would but could authorize the testing without providing any notice to Baldwin or others identified at the time as persons of interest. So this, they make this notification that the evidence could be destroyed as if this is unusual. Hey, normally this wouldn't be an issue. But in this particular case, we have an unusual risk that the evidence could be destroyed.

This is just a normal waiver that everybody who sends evidence to the FBI lab would have to sign because the FBI lab doesn't want to be a, lots of testing is effectively destructive testing or things could go wrong. What if the barrel of the gun had been defective and it blew up when a round was fired through it. The FBI doesn't want to be held responsible for that. So they say, listen, we just want you to know it's possible when we test this, that damage could occur and look who we have here.

Polo shirt and everything. So casual, Steve, I tell you life is good. So, are you, are you, you're out of the public defender's office and you're waiting to start at the prosecutor's office? Is that right? Well, the, the 20th is officially my last day but I have so much vacation to burn because they only reimbursed me for 100 and 20 hours. So I'm burning a lot of my vacation time. Officially, my last day at the public defenders is June 20th. My first day at the State Attorney's office in Miami is the 26th.

All right. So for those who don't know, Steve is moving on to the next wonderful stage of his life. Transitioning from the public defender's office in Florida to the Miami Dade. Is, is that what they call Miami? Dade county prosecutors? Miami Dade, State Attorney's office? Correct? State Attorney's office? All right.

Yeah, that'll, that'll be great. I'm very pleased for Steve. I think this is gonna be a great deal of fun for him. And thank you. You, you gave me, we had a nice little talk when I was making my decision and, and you gave me uh good guidance and good wisdom, cold calculating, logical thoughts.

And uh but that's what you need. You know, you need a sober analysis of what you're doing and you provided that base board and that's hard to find in this world. So thank you for the, for the good guidance.

Well, you're very kind, Steve. So before I proceed your thoughts on this so far, well, you know, it's interesting because we covered this issue on something called uh spoliation in our American law courses, criminal law class and criminal procedure class. So the issue here theoretically theoretically at least is um spoliation.

So you have a um spoil, it's not spoil, but people think and remember it that way because it's like you spoiled the evidence. So you were the concept of course, is that some evidence that's in the custody and complete control of the state is then destroyed, damaged or made so that the, the defense cannot recheck it. And it's a legitimate issue in a lot of, a lot of cases. Right? Um, sometimes if you have such minute amounts of drugs, for example, and then they, and then

they test it and it destroys the drugs and there's nothing left and then they say, well, we did find cocaine, but then the defense can't double check it.

So it's there is, there are due process issues here. Um However, as we do and of course, testing is often destructive, right? So when you test a drug, whatever portion of it, you're testing is effectively destroyed. When you test a sample for DNA, whatever portion of the sample you're testing is destroyed in that process. Um So it's, it's not unusual for the, the testing method to end up with the destruction of the, the piece that you're testing right now.

A lot of this has to do with um intent of the state. Um What the, what the cause was for the, let's just, let's just use this example as a gun that is then destroyed in the process. Well, is it recorded, what is the purpose of the test? Was there, was there a legitimate purpose for the test? Was the defense notified? Um Was it record fully recorded in all ways so that it can be second checked by a defense expert, um, were the pieces retained or were they destroyed? You know, there's a big notice issue. So all of those things. And then of course, assume that, assume that there is a, that's my fire station. Can you hear the sirens? I thought it was a trade.

I was like, ok. Um, so, yeah, if you assume that the, let's assume that the, the state had, um, intentionally done this maliciously in order to destroy evidence to conceal it from the defense. Ok.

That's the worst case scenario. And that's what all defense attorneys fear and project immediately into what happens. Um, the remedy isn't necessarily dropping the case. There can be other remedies that stand short of that. And in our American law courses we went through, there could be jury instructions, there could be Presumptions, there can be exclusion of evidence.

There's a lot of things and, and I don't necessarily think that the gun is even necessary for this prosecution as a piece of evidence. So let's assume they exclude the actual gun as evidence. It just isn't there. But I mean, it's all on video, right? And there's admissions and there's what is the, you know, what is the defense? So I'm, I'm just, I'm just thinking it out hypothetically for your loss. Yeah, I mean, the shooting is not caught on video, but of course, we, we, I mean, Alec Baldwin describing what happened is on video during his interrogation was no no, they were not, the cameras were not rolling when the shot was discharged. They have video of him rehearsing his draw from the holster moments before the shot was fired.

Um, but not during the, and, and those, by the way, his finger on the trigger clearly on the trigger trigger, but the shooting itself was not, was not recorded. But what, what was recorded was Alec Baldwin's police interrogation and he describes what happens. I mean, the guns in his hand, he says he never pulled the trigger. Uh When the guns sent to the FBI, the first thing they do is test that right? They, they fully cock the hammer and then they release the hammer without pressing the trigger to see if the hammer will drop and fire around and it, it does not drop. So as a functional testing of the gun was done well before the gun was, you know, the defense is knowingly but unintentionally destroyed, broken uh with this mallet test. Why were

they ma that's the question I have, I'm sorry, I just got done with lunch. So why were they mallet this gun? I, I, I'm not sure I've heard of uh a specific explanation, but my expectation would be that the, the FBI has a protocol for testing guns that go in and a mallet test is a common protocol because the common defense for shootings is well, it wasn't intentional, the gun just went off.

Uh And so it's, it's a very common test to do this mallet test where you, you cock the gun and then you strike it with a mallet from different angles, especially in cases where someone might claim. Well, you know, I was, I was, the gun was knocked from my hand and hit the ground and that's when it went off. Or you can imagine the scenario here where on a movie set, you know, um, uh, a big bracket with a light on it fell over and struck the gun in Baldwin's hand, right? Something unforeseeable by Baldwin.

Then we could argue that the shooting was actually an accident, right? But as it happens on the facts of this case, there was no blow to the gun, it was not dropped. I don't think the firearms examiner knew that. I don't think he knew the facts of the case. I think he was just sent the revolver and told, hey, do testing protocol Alpha beta 236 or whatever the standard is. And part of that process, that protocol just happens to include the mallet test. Now, this is the FBI testing lab, right. Correct.

So there's some insulation between the State Attorney's office and the state and the Federal crime lab. So that will provide some protection to the, to the state. Now, I will say that this is smart of the defense to raise this issue because you may gain some trial advantage through an instruction, you know, they'll be able to make inferences to say, well, gee, the defense would love to have test that, you know, we have this theory, um, but we don't have the gun. And why is that because of the state? And you might be able to get some kind of instruction or saying, so that this is a smart move by the defense. I doubt that the case will be dismissed over this.

But, um, it is with prejudice. Yeah. Well, you've asked for that, of course, from a defense standpoint, you're really looking for some sort of presumption to, to give you an advantage when you present your defense to a jury.

All right. So, um, I'm very pleased to have your insight, Steve in full disclosure. This is, as you can see at the top here, this is a 25 page motion and we're on page eight. So I don't know how much free time you have. You, you're welcome to stay as long as you like. So this is a, I love this issue.

It's a very, I've worked on it from a civil context and a criminal context on both sides of the, of the state and the defense. So it's, it's always interesting to see spoliation issues because it's, it's rather uncommon and most defense lawyers are not even aware of it, nor state attorneys, nor judges. They don't. It's an issue that requires, you know, it's one of those articles I want to write and I've, I've done a lot of motion practice as a support role in the public defender's office on these type of issues. So I'm always interested.

So I'll hang out if you don't mind. No, no, of course, you're more than welcome. By the way, it's worth mentioning that I don't recall this issue coming up at all during the Hannah Guterres trial. Right. So her lawyer didn't follow up on this.

This is one of the benefits you get when you have 10 or 12, uh, defense lawyers working in your team and plenty of, plenty of time and resources to investigate every potential defense argument you might possibly want to make. Um, which is helpful when there's only, there's only two prosecutors on the other side of the table. Right? And there becomes, it's interesting, usually the state out funds and out matches because they have unlimited resources, but there becomes a point at which that those tables turn and the state is outmatched. And so you, it's, it's interesting to see it when the shoe is on the other foot.

So let's see what they've come up with. This is smart, this is a smart defense. I don't blame them. And I, I think it's, it's a wise tactic. They won't, I doubt, doubt, doubt they will get any kind of dismissal with prejudice.

But we shall see it's possible possible. Yeah. And it's, it's worth noting here that when this defense team, when they make an argument even when it, to my ear, it might sound legally specious like much of this does.

Um If, if the state half asses their response, the defense immediately comes back and says, well, they didn't make a very robust argument. They failed to address this issue. That means they waive that issue when we win. So the state is being compelled to expend resources to respond even to these specious arguments and they're not all species but no notice. And this is what I just talked about that, that you should have told us that you were going to do this destructive thing. And like I said, the state probably wasn't even aware of it and that's where they're gonna come and they're gonna be like, oh, we are so busy and we don't know what's going on.

But, but it's, you, you're, the state is also trying to put somebody away for a long time. So why weren't you aware? Why weren't you careful? Right? I mean, whose fault is that? It's not the defense fault, it's the state's fault. So there's a good argument here. And I, I, and so I think the argument would be, well, we, it was not intentionally destroyed.

We didn't know the gun would be broken. This is the standard part of testing it rarely if ever results in the breakage of parts on the gun just happened this time. Uh unintentionally knowingly in the sense that we knowingly struck it with a mallet but unintentionally in the sense that we were not trying to break anything on the gun. Um And uh I was gonna make another point too, but of course, now I've forgotten what it was. Oh, and of course, uh Hancock, so Hancock, the detective probably doesn't even know what the testing protocol is. I mean, we saw her at trial, you know, not, not the very best amongst us, perhaps intellectually wise. Uh but she may not have even known that a mallet test was going to be done.

And the FBI guy, when he's doing the mallet test, it's not his intent to break anything. Now, do they, do they notify whoever's sending them evidence that, hey, you know, just as a general

disclaimer, it's possible this evidence could be consumed or destroyed or damaged in the course of testing. So in that sense, I'm sure Detective Hancock was quote unquote notified on a, you know, three page release form of fine print that she didn't even read. But that doesn't mean the destruction was the intended outcome of the test or even the anticipated outcome of the testing. So continuing here. So no notice uh in short of this case, oh, by the way, all of this, of course, can be argued to the jury, right? So the the resolution as Steve has pointed out, doesn't need to be dismissal of the indictment. There can be special instructions given to the jury, special Presumptions created and even without the special Presumptions, let's just, you know, let's assume it all gets denied.

You're still gonna want to argue this. You're gonna say, you know, as a defense attorney, you're gonna say, here's what, here's my scenario that fits the facts, right? The state has the burden of proof beyond the exclusion of every reasonable doubt. And they had control of this gun. And our, our theory, we would love to show you that our theory is it is possible but the state destroyed the weapon. Why did they do that? It's not our fault. They've got the burden and yet this theory of innocence exists.

So, um and so therefore, you must find our client not guilty and that's a good argument. Yeah, I, I think it's perfectly appropriate at trial. I'm not sure it justifies dismissing the indictment with prejudice. Like I said, doubtful, doubtful, doubtful, but you ask for that and then it goes, I see the, the remedies are listed in descending order of what we want.

OK. So in short, if this case does not meet the standard of a due process violation for the destruction of evidence, then no case will. The defense loves their histrionic language. I have to say, uh the state knowingly ordered destructive testing on the most critical piece of evidence in the case without making any effort to document its internal condition so that the defense would have access to that information.

The testing method was not relevant to the circumstances of this case and the state failed to conduct more appropriate tests that can now never be performed. The indictment should therefore be dismissed with prejudice at minimum. The court should instruct the jury that Baldwin did not pull the trigger and prohibit the state from introducing evidence or argument suggesting that he did to the extent the court believes any factual disputes are relevant to resolving this issue. It should hold an evidentiary hearing. Now, on what basis would the court instruct the jury that, hey, I'm the judge and I'm telling you, jury, Baldwin did not pull the trigger.

The judge doesn't know that well, but that's, but that is a factual presumption. Now again, they're asking for it. That's an aggressive ask. I, I think, you know, there, there's other instructions that could be done, but, you know, it doesn't hurt to ask.

You don't know until you ask. Right. All right. Argument here.

The state's intentional destruction of the firearm without documenting its original condition violated Baldwin's federal due process rights for two distinct reasons. So this is the clever

verbiage. This defense likes what is, what's the subject of the word intentional here? Because I don't believe they intentionally destroyed the gun. I think intentional is supposed to be describing, well, the destruction happened without them documenting its original condition. Is that true though? Is I, I'm, I'd be surprised if that's true if it was sent to the crime lab and they did not document its original condition. No, no, they, they did but not in the way the defense wants.

So what the defense wanted was the defense wanted the gun to be completely dismantled prior to any other testing and every component to be carefully examined under a microscope and documented. And then I guess you could reassemble the gun and do the, the normal testing you would do. Of course, if the FBI would be modifying the evidence because of course, convention defense would be arguing. Well, when they, when they disassembled it and reassembled it, they changed it. That's not the same gun anymore.

Uh And that's not part of the normal FBI. Now, when, again, if this is in a trial before the jury, this, this issue could be raised and then the medical examiner would say, well, the reason we, like the state could ask their own expert, uh, the medical examiner, uh, the firearms examiner. Sorry. Uh, well, why didn't you first dismantle the gun and document every small part? And he'd say, well, if we do that, we're changing the gun from its original condition. Um, so I, I don't think there's anything wrong with the, with the defense making this argument, but I think it's exactly the kind of argument that should be subject to factual contestation in front of a jury.

Well, or, or, you know, have a, a factual hearing and find out if, if there were procedures in place? Were they followed? Was it documented? What was done? Is this the way that things are normally handled? I mean, there's the, was there notice to the defense? I mean, the all these things are, are questions. But so I don't think an evidentiary hearing in the, with the remedy, of course, I, I don't know, I think that the judge, this is probably if I was, it depends on your judge, but I would guess that this would probably be denied and, but the judge would say, but you're free to argue all this to the jury, right? Yeah. And if you, I I'm reading down, I'm sorry, I read fast. Uh So first, the government violated, violates due process if it destroys evidence that possesses an exculpatory value, that was apparent value is this of exculpatory value though? See, that's, that's the threshold question, right? And I, you always have to be careful with these little quotes, right? Because necessarily they are absent context, right? It's, they're not citing the complete decision they're citing here. They're just citing the portion that they feel is favorable to them. That's why this is all an adversarial process, folks.

Uh Second, the government violates due process. If it in bad faith destroys evidence, that is potentially useful, even if we have bad faith, do we have bad faith? And that's a very hard thing for a defense attorney to prove. How does the defense attorney prove that the state had bad faith. That is almost impossible. Now, with enough investigative resources and trying to do that, you know, you depose who the, the cops, the, the, you know, the, the state attorney. That's, it's, it's kind of a ridiculous standard as a defense attorney.

I always hated that kind of burden because you can't prove bad faith on the, oh, we, we were in good faith. We meant no harm. Right. Yeah.

absent a confession. I think the most you could hope for was to demonstrate that there's no, there there was no good faith explanation for this, right? So the exculpatory evidence is a videotape and they take the videotape and throw it in a fire. Well, what's a good faith explanation for doing that? There can't be one here. Of course, there is a good faith explanation. Well, it's part of our normal protocol of testing of firearms.

Uh The state's intentional destruction in the firearm also violates New Mexico law because either the original state of the firearm was material and its destruction caused prejudice or because the state acted intentionally or in breach of legal duty for each of these separate reasons. This prosecution should be dismissed with prejudice. Right? State fails to show that this prosecution comports with due process.

They make this, this general statement a lot. The defense uh the state violated the trumpet, a standard trumpet, presumably a New Mexico Supreme Court decision. This court need not probe the government's intent and bad faith to resolve the due process question presented here under the objective trumpet standard, the government's destruction of the firearm without first documenting its internal condition violated due process. The firearm was apparently exculpatory. The whole point of the FBI testing was to try to dispel its exculpatory value.

And the state's failure to document its internal condition leaves the defense with no comparable evidence to rebut the state's theory that Baldwin must have pulled the trigger. So lots of stuff subject to contestation here, right? So first of all, the gun was, it's in its condition was documented, right? The lab got the gun, they're looking at the gun, they're writing in their report in their notes, what it looks like what the caliber is, then they do physical manipulation of the gun, they cocked the hammer, they tested the quarter cock, notch, the half cock, notch, the full cock notch, they cocked the hammer all the way they release the hammer. They see if this is all documenting its condition and the function, the ex of the external facets of the hammer and the trigger reflect the internal condition of the parts. If it works properly, the internal parts are working properly. So it's not, they didn't just disassemble the gun and put the pieces under a microscope, but you can make a reasonable inference is that the internal half of the hammer and the internal half of the trigger were functioning properly if the external half of them was functioning. It's like a pair of scissors. If the handles are swiveling, it's reasonable to infer the blades are swiveling even if you can't see the blades.

So lots of slight of hand here, someone informed me in the comments that I was perform, uh, pronouncing the word slight in incorrectly. The state's narrow understanding of the apparently exculpatory standard would mean that a defendant could never prevail as Baldwin's motion explains, the firearm has exculpatory value that was readily apparent to law enforcement agents before they destroyed it. The centerpiece of the state's allegation is that Baldwin pulled the trigger and the state knew that Baldwin had repeatedly denied they, that he had done. So

saying that the gun just went off again. I think folks that there's a lot of factual support for a finding of recklessness, even absent the pulling of the trigger. For example, we know that Baldwin pointed what he knew to be a real gun without ensuring it was unloaded at Helena Hutchins that we know that because the bullet that the gun fired, struck her, it did not ricochet off another surface, it did not magically curve and strike her.

Um And pointing a real gun at another person, absent justification is reckless conduct. So even absent the pulling of the trigger, I would argue that even if the, if the gun had some kind of malfunction that made a discharge, you know, the sad guidelines say you never point the gun at another person. Uh, the, the, the actors I personally know like Adam Baldwin, tell me he's handled guns in most of the movies he's done. He's never pointed a real gun at another person. You always point a few inches to the side of the person. The camera can't notice the audience can't notice. But that way, even if the gun discharges horrifically, the bullet misses and it doesn't strike anybody and kill them.

Yeah. And I would say that the defense theory that says disprove Baldwin's statement that he did not pull the trigger. I, I think that that is an unreasonable theory.

So I, you know, just, just looking at it from a jury question that he was holding a gun and it magically went off without pulling the trigger, I think is rather absurd. Now, have you ever heard of such a thing like a gun sitting in the corner and it just firing randomly without a trigger pull and, and like you say, and then the, the surrounding circumstances in order for that, you know, there's a lot of steps that have to occur before the non trigger, trigger pull event that results in causation of, of uh death occurs. So, II, I just think you're, you're, it's a rather ridiculous thing to have to disprove. You can say that's an unreasonable theory of defense. And what is your thought on that? I mean, it theoretically, it would say the gun was handed to Alec Baldwin with the sear of the trigger broken off already. So it, it can't engage the hammer. So every time you cock the hammer, it just falls forward, uh That could be possible.

So he may have believed, hey, when I'm cocking the hammer, the sear is gonna catch the hammer, the gun won't discharge because I'll be sure not to touch the trigger. Right. That, that could be what he's thinking except we know that's not the case here because we know he was cocking the hammer and pulling the trigger immediately prior to the shooting, the gun never left his hand. So we know the gun was functioning properly then and we know the gun was functioning properly when it got to the FBI lab because they did the same test. Uh So that factually that cannot have been the case here.

Would that be a hypothetical explanation in a different case where he's handed the gun? He cocks the hammer. He believes the Sear is gonna catch the hammer. But the unknown to him, the Sear is broken and the hammer drops. I think he's still on the hook for recklessness because he's still pointing the gun at another human being. Yeah. And this is an argument that's targeting non Gunn users.

So if I was the state, I would look for a jury that has gun knowledge. Well, I'm not sure they can control that, but they'll bring in their own gun experts. Yeah. Well, but you could, you can, you can scream, I mean, that's, that's what am I looking for in my jury if you remember your interview with Rosemary Peoples, is that she was looking for people on that jury that were gun owners or gun owner adjacent. And, uh, that, that I think, you know, you focus in on what do you think is the critical because anybody who knows firearms is going to know that these are problems. If, if you have no knowledge of firearms or the way they work or anything, you can, you could be the fall for it.

It's like, oh yeah, that thing, you know, point a gun, it just goes off, it's just killing everybody. I mean, that's true. If you, if you look at people who live in, particularly gun control states like New York or New Jersey or Maryland. So they're not routinely exposed to firearms. They see a gun that looks like a rattlesnake to them. They believe they believe the phrase gun violence, for example, like guns are committing acts of violence that they just spontaneously uh self animate and go out and shoot people. Uh Let's see whether the firearm was capable of discharge without a pull of the trigger was therefore the, the critical exculpatory question.

In this case, I would argue not and indeed the state does not dispute that its entire purpose of testing the firearm was to figure out how to disprove Baldwin's statement that he did not pull the trigger. I don't know what the problem with that is supposed to be. It's also clear that the state had strong and obvious reasons to believe the firearm might be defective.

Several witnesses said that it just went off and the gun had telltale signs of modifications or defects. Well, I don't believe that's true or, or was known to the state but this notion that witnesses, like, you know, just within hearing of the gunshot, that they describe the gun as just going off as if they have knowledge of how the gun was being manipulated is ridiculous. They were not, of course, anticipating a an actual gunshot on a movie set. That's why they're describing it as it went off. In fact, the state knew. But uh by the time it authorized testing that other accidental discharges had occurred on set and that some witnesses had reported that the firearms had hair triggers.

Well, whatever a hair trigger is, certainly this gun would have a light trigger, but you still have to press the trigger, hair trigger, doesn't mean it goes off by itself. And the other accidental discharges on set doesn't mean those people were not pressing the trigger. Indeed they were.

But as the state's experts themselves have admitted the FB I's testing was inappropriate, unnecessary and untethered to the circumstances of the case. Well, that's true. The mallet test was unnecessary here. Uh What that changes materially for the criminal charge. I don't see the state has failed to provide a justification for the type of aggressive destructive testing performed. Given the firearms obvious exculpatory value because there isn't one in response, the state argues that the pre destruction state of the firearm is indeterminate and because Baldwin cannot produce objective evidence regarding the actual signs of modic medication and alteration on the day of the accident. He has no due process claim.

This makes no sense. The reason Baldwin cannot establish the pretesting state of the firearm is because the state destroyed it. The state's argument is thus a blueprint for the government to destroy critical evidence with impunity.

Under the state's view, the only defendants who could succeed on the legal standard. Apparently, exculpatory evidence would be those who have objective evidence of the exculpatory value of the object that the government destroyed. But those defendants would then always fail the second prong of the legal standard because they would have comparable evidence. Well, I don't fully understand what's happening here folks because I concede, I have not read from beta. That is not the law. The legal rule is that where a defendant or others inform the government, that evidence is exculpatory. The government is on notice of its exculpatory value and must take steps to preserve it at a minimum through documentation before destruction.

So I think when the FBI fire examiner is on the stand under direct by the state the state would say, well, did you document, uh, this weapon? And he's gonna say, yeah, here's my report. I documented all kinds of stuff about it. He just didn't do it the way the defense is saying they would have preferred here, both Baldwin and other witnesses said the gun just went off and Baldwin was adamant that he had not pulled the trigger. It was the self serving statement. And they don't have, like you said, they don't have any knowledge of that. If it's a surprise, he didn't intend to, he's not like I'm gonna kill you instead, he was surprised by the discharge, which is consistent with state theory.

That's, there's no problem there and that if you're a bystander, you're not expecting the shot either. So it's all not a problem there. Yeah, someone in the comments makes a good point imagine that they ship the gun to the FBI for testing and it never arrived. It gets lost in shipment. So the guns physically unavailable even at the trial. Does, does that mean you can't prove Alec Baldwin guilty of involuntary manslaughter? We, we still have sufficient evidence for that, uh, that clearly alerted the state that it needed to preserve the evidence, at least by documenting the firearms internal condition before running destructive tests. The state cannot escape that obligation by saying that as a result of the very testing in question, Baldwin cannot prove with certainty the original state of the firearm.

I don't think Baldwin needs to prove with certainty. Anything. I, I'm not sure why the defense, you know, a lot of this defense team, most of it are civil litigators and a lot of times I feel like they're, they're falling into the civil litigation mold like they have a burden. Yeah, that's a big problem in defense attorneys. You see that a defense attorneys, you know, because they get really wrapped up in their defense arguments like this is, this is a good argument I will say for the defense, but sometimes they take a good argument a little too far and then, and they get so wrapped up in believing what they're saying and seeing the end because, you know, you project into the state, all these ulterior motives in bad and, you know, obviously there's a lot of bad prosecutors out there.

So it's not unjustified but when, but it sometimes comes out like you're sticking your neck out and you, you, you gotta, you know, the burden of proof is the best thing a defense attorney has and you need to hold on to that for all else. Uh, continuing. The state also makes the strange argument that it was free to destroy the firearm because Baldwin did not explicitly tell law enforcement that the internal components of the gun were modified or altered. Well, I can imagine the state saying, hey, we had no reason to look for modification because there was no indication of modification? No one, no one told us there might have been a modification.

We were not unnoticed. Is the gun, is it just in pieces now? Is that the thing now, or is it still like here's a collection of parts or was it just like something's dislodged or is it just like, did they break it and then just throw it to trash? You know, I don't know. They, they, they displayed a gun during the Hannah Guterres trial. But um iii I think at least some of what I saw displayed was a, was a copy of the gun, not the actual gun used. And I have seen photos of the internal components, you know, photographed, uh showing the damage, the breakage. So at some point, it was certainly disassembled. I don't know if it was then reassembled.

In fact, I think it was reassembled at one point with working part with undamaged parts, replacement parts and shown to function normally. Uh But I don't know what the current state of the gun is. Um, but Baldwin is not a firearms expert. He said he was, he's an actor and he said the gun went off without his having pulled the trigger that unmistakably conveyed that the gun was defective.

Well, you can just take his word for it. He's an actor. I believe all actors uh equally strange is the state's contention that the, the defense cannot show the file marks or smooth parts would serve as direct evidence that Baldwin did not pull the trigger. Of course, a defect in the trigger mechanism of the firearm is not direct evidence like eyewitness testimony, but it is powerful evidence of innocence. Well, which you can present to the jury, the parts of the gun that show signs of modification, the hammer and the sear are precisely the parts that prevent the gun from going off without the trigger being pulled.

If those defects existed at the moment of the accident, the accident. So folks, you have to keep in mind the defense loves using the word accident, but accidents, a legal term of art. So, uh if something is genuine accidents, a legal defense like self defense is a legal defense. If something was genuinely an accident, there is no legal liability. Um Of course, there, there's the colloquial use of accident, meaning merely something that was unintentional, but there's lots of unintentional things that are crimes.

If they were reckless like this, uh if those defects existed at the moment of the accident, they would powerfully co corroborate the assertion that Baldwin did not pull the trigger seriously undermining the state's theory of the case. That's all trial argument to my ear. Notably, the state has acknowledged that it previously dismissed all criminal charges against Baldwin because it believed it was possible that the gun was modified and therefore that Baldwin did not pull the trigger. That's why they sent it to the FBI by the way, they did that as a courtesy to the defense, the defense said, listen, can we, can we, for, for a variety of reasons including many missteps by

the first prosecution team? The defense asked Carrie Morrissey, uh, Morrison. Uh, listen, the, the first prosecution team, you know, they've resigned.

You're in charge now, uh, we haven't even tested the gun for the possibility of an unintentional discharge while we do that. Would you agree without prejudice, uh, without, um, without prejudice to drop the first indictment, you're free to re, if it turns out the gun was operating fine, you can, you're free to re indict him. But so it's not hanging over our client's head. It's bad press for him and carry Morris. He said you're as a professional courtesy. I'll do that for you and now they're using it against her.

It's, it's great. I will say that's nothing that really pisses off prosecutors but, you know, you gotta zealously advocate for your client. I think this, this motion is well written by the way. I think Carrie Morse did it because she is a defense attorney. And so her whole career was as a defense attorney. She's only a prosecutor for this one case as a special prosecutor. So I think she got a request from opposing defense counsel and was thinking, well, what would I do? You know, I mean, if I were a defense, I'd make that request too.

So sure I'll go ahead and do that. I think a more hard bitten, uh prosecutor career prosecutor might have said, nah, I think we'll just leave it the way it is. This is great. Uh That alone demonstrates how critical this issue is to this prosecution and how severely Baldwin has been prejudiced by the state's destruction of the firearm. Put that in context, the state by its conduct of dismissing the case.

Conceded that it would not bring this prosecution if Baldwin could prove the gun was modified. Yet, the state's intentional and inexplicable actions have ensured that we can never know whether those defects were present on October 21st 2021. By the way, I think if you ask the state, they would say no, that's not what we were saying at all. When we agreed to dismiss the first indictment, there are lots of reasons to dismiss the first indictment. Um We did it to clean the slate and start with AAA fresh Slate notice.

I noticed how the uh there's no citation to that sentence, right? So that means we're just, I'm making it up. What I'm saying. It happens.

There's, we're doing some mind reading here. Yeah. Yeah. It's just like no cite, it's just rhetoric. Uh That is also why the states claim that defendant failed to present any evidence that the smooth parts and file marks actually caused a revolver to discharge without a pull of the trigger is so cynical, the defense cannot marshal evidence that the defects actually caused the gun to fire because the state prevented the defense from examining or testing the firearm in its original state. But if the parts that prevent the gun from accidentally discharging were seriously defective at the time of the accident, that would almost certainly establish reasonable doubt of guilt, reasonable doubts of guilt and that is sufficient to meet the apparently exculpatory standard. So one thing I suspect that's happening here when this goes to trial, I, I think we'll see this.

So the, the parts of the hammer that matter for this purpose, whether the gun could be discharged without pulling the trigger is, is limited to the notch on the curved interior of the hammer where the sear engages, that's it. Now, the hammer is shaped like a, the interior part is shape, it's a curve, it's a circular so it has sides. And I could imagine that these, these tool marks are on the sides of the hammer that would have nothing to do with whether or not the gun could discharge without the trigger being pressed. And, and I feel like the defense is obfuscating that because I think if the tool marks were at the Sear hammer engagement point, they'd be making that claim here and they're not doing that well.

And, and can I just point out that I, I follow what you're saying and I know something about firearms, but you're talking very technically. And very firearm technically. And when I hear these arguments being made, like you're saying, there's no way this could happen.

It kind of goes over if I'm just an average girl that doesn't have firearms on, that's just gonna go right over my head. It's gonna hear like blah, blah, blah, blah. And so then the defense can put their nose under the tent and say, oh, you have doubts, don't you? Because the people have ignorance. So, um I understand what they're doing here.

And I this, this is interesting, the apparently exculpatory standard. Do they have a circumstantial evidence rule type standard in New Mexico? And is this a purely circumstantial case that would meet that rule? Um I'm wondering what they're getting at with that? Well, it's, it's, yeah, it's not purely circumstantial. I mean, we have eyewitness evidence test.

It's a negligence theory, right? It's a, it's a culpable theory. So if it's a culpable negligence theory, how do you prove culpable negligence? And is it by circumstance? I don't know. I would, I would argue that you don't even need the trigger pole.

I would argue that the, there's more than one basis for recklessness, one of which is that the gun was pointed at a human being, what he knew to be a real gun was pointed at a human being and that's incontestable because that's where I agree with all of that. But I'm I'm thinking from a defense standpoint, you're trying to hook. You're trying to look for what is your best defense here. You can't argue identity, you can't argue the person's not dead. You know, you, you can say that those, those steps are not sufficient to meet a culpable negligence standard and, and these are circuit and maybe you're looking for AJ OA a judgment of acquittal at the close of all evidence. You can argue that it's a circumstantial case to prove culpable negligence.

And therefore, because that the state destroyed the thing that would, that would, I'm just thinking about AJ O A argument that what they're setting up here. Yep. Yeah, I agree.

I mean, to me it's, it's almost analogous to, uh, I mean, the classic reckless killing case is, uh, a drunk driving case, right? Someone gets drunk at a bar, gets behind the wheel to drive home. They're not intending to cause injury to anyone. They're just trying to get home, but they know when they get behind the wheel drunk, that they are engaged in reckless conduct, that they're creating an unjustified risk of death or serious bodily injury to other parties.

And then if they run over granny in the crosswalk while driving drunk, that's reckless homicide. That's reckless manslaughter. Now, if the police then take that car and say, you know what, we're going to test the brakes to make sure the brakes were not defective and somehow they end up damaging the car, that doesn't mean you lose the case, that just means that becomes a set of facts that that's gonna argue a good analogy because you could say inherently driving that car, driving any car in a state of inebriation in which that your reasonable fact, your faculties were reasonably affected, right? That is inherently dangerous. That is inherently culpably negligent and criminally negligent. So you could say the same thing here doesn't matter if the firearm is defective or not taking the actions that he did pointing a firearm that he doesn't at, at a person that is inherently negligent, such as driving a car, even if like you, you're driving drunk, but nobody got hit and nobody got killed, but it's still negligent because of the possibility. And here he's taking action such as getting in a car drunk. He is instead pointing a gun at somebody regardless of the defectiveness of the gun.

So I, that's interesting. Yeah. And I expect that again because the, this modification of the parts does get technical. I expect that uh Kerry Morrissey Morrison Morsy, I forget now, uh would, um, she might end up in closing and say, listen, you heard all this evidence about the, you know, maybe modification of the gun? I don't think that explains anything but maybe you do. That's fine. You're the jury, you get to decide it doesn't matter because he was still reckless the moment he pointed that muzzle at her. That's enough.

Let's see, the state's other points are irrelevant. The defense says, of course, for example, the state says that Baldwin admitted that the gun worked without issue on the days before October 21st and properly test fired in later testing. But a defective gun does not constantly misfire. Otherwise, all defects would be identified immediately. The government also asserts that at least one witness observed his finger on the trigger during the accident without identifying the witness. But this, that is exactly the point the government plans to present a case that relies on the claim that Baldwin pulled the trigger.

But it intentionally deprived the defense of the evidence that could refute that allegation. In fact, the states already argued that there's multiple grounds for recklessness here. It has done so without any explanation whatsoever for why investigators did not at least document the internal condition of the firearm before destroying it. This is not a case of mere speculation or conjecture and the cases cited by the state on that point, all involve facts and circumstances far a field from those before this court. So they're just distinguishing the ca the state citations here.

I'll skip over that because none of us have read these cases here. The potential exculpatory value was not only obvious from the statements by Baldwin and others, it was overtly acknowledged by the state as the very reason to conduct further testing. But but see that, that contradicts their intentional. Like why did they do that? They had no they, this is the bad faith, good faith argument because the state can say we are absolutely operating in good faith because of this very statement, because we're trying to rebut your theory of guilt, right? Or your theory of why we of uh innocence.

So that is a good faith reason for the testing. The additional testing and that value continues to be apparent today, the state's experts remain unable to explain file marks indicative of potential modification on the trigger but have concluded that the FBI testing likely did not cause it. Uh a finding they made in August of 2023.

But that was only disclosed to the defense in the last weeks. The firearms exculpatory value was therefore apparent before the state destroyed it without documenting its internal condition. Uh Two comparable evidence is not reasonably available. The defense does not have any evidence available that is comparable to the original unaltered firearm.

That means both that the defense cannot conduct its own test on the firearm and that the defense cannot adequately respond to the state's claim that the FBI testing caused the modifications to the hammer and the sear. And again, I think that the defense here is really conflating different things because sometimes they talk about uh machine marks and file marks. Where was that here? They, they talk about file marks indicative of a potential. But what the FBI is saying they broke is not file marks. They, they broke a a metal component of the, of the hammer and the sear that's not a file mark, that's a, a fracture of the metal. So the, the, the, the FBI is saying, yeah, no, we, we broke the tip of the year off the trigger for sure.

When we did the mala test, that's got nothing to do with any file marks anywhere on the gun. Uh That satisfies the second factor under trumpet through the state's own actions, both its destruction of the gun and the failure to first document its internal condition. The state has prevented the defense from accessing this critical evidence. The state asserts that the FB I's testing and the state's experts testimony provide an adequate substitute for the original firearm.

But that is non responsive to the problem that the state's actions created. The defense should not be required to blindly trust the state's paid experts who in any event did not examine the internal components of the firearm in its original state. By the way, the defense very frequently uh relies only on the state's expert. I mean, most criminal defendants are not hiring their own experts, they don't have any money to hire experts to do these kinds of evaluations. Um When, when the, when the state does drug testing or DNA testing, it's not that common for the defense to replicate that with its own drug testing and its own DNA testing in failure.

Because uh I mean, in fairness because the defense knows that they test the drugs, it will probably come back positive. Um, and there's no evidence to substantiate the state's implausible claim that striking the gun with a mallet somehow smoothed out the hammer and the sear. Well, that's, that's just a factual dispute that could be argued at trial by the experts. In fact, the FB I's testing did not make any effort to replicate the circumstances under which the revolver fired because state investigators did not inform the FBI about those circumstances.

Well, that's not first of all how the circumstances under which the revolver fired is in dispute, right? The state is saying it fired because the trigger was pressed and the defense is saying it

was fired without the trigger being pressed. The FBI did both those things. They tried to get the hammer to drop without pressing the trigger and they dropped the hammer pressing the trigger. So I don't know what they didn't replicate no communications regarding the circumstances of the firing, the gun were ever included on any log. Nor could any witness interviewed recall such communications.

While the state's experts have described a different test that would have been appropriate and would not have resulted in damage, the pushoff test. That is not the test, the state elected to carry out do, do you know what the pushoff test is, Steve? I did not, you know this is, I'm, I'm, I'm, I am a little, I, I will say that giving the defense some due this, this testing that destroys the gun is an odd thing. I, I've never really seen a gun destroyed in testing. I, this hammer test. Now it's possible. I, maybe I'm a little out of date.

Um, and that's very possible because I've been doing appeals and this is more of a trial type issue. But, um, that, to me bothers me. It does bother me and I, I get where the defense is coming from. I think they're, they're taking it way too far and they're assuming a lot of stuff, there's a lot of unsighted things. I think they could trim this motion down quite a bit and maybe have some effect.

Otherwise they're just rehearsing their jury arguments. So I just did a quick search. It looks like the pushoff test is simply where you cock the hammer and then you try to press the hammer forward with your thumb. Yeah. Well, I really, you know, in jumping ahead a little bit, there needs to be an evidentiary hearing here and a lot of these questions, you know, what is the state of the firearm? Now, um, what was done? What was documented, what procedures were followed by the FBI? Had the FBI come in and testify in an evidentiary hearing.

And, uh, and let's get these cause there's a lot of allegations flying back and forth and uh questions that need to be resolved. But, you know, looking through the tea leaves here. It looks to me like a practice run at a jury argument. And of course, a lot of these questions were addressed. I mean, what was the testing that was done was that was testified to by the FBI um examiner who did the testing in the, in the Hannah Guterres trial, which was presided over by this same judge. So she's heard that explanation.

Uh but yeah, I hope they do have an evidentiary hearing that will be fun to cover. It would be fun to actually, uh moreover, recent untimely disclosures from the state have revealed that the hammer and the seer do have unexplained modification or damage, not apparently attributable to original manufacturer or the FB I's testing here, here's an example of, of editing as a defense attorney. This comes across to me like whining because it, it was disclosed weeks ago. Do you have a motion for sanctions? Do you have? This was the, was there material prejudice it was disclosed? Ok.

Now, maybe it wasn't another time, but this is just whining recent untimely disclosures from the state. It's, it's very vague and just, it's just whining you could delete that you don't need. But

what are you trying to prove by that? You're just whining. Yeah. And there's a lot of that in these defense motions, a lot of um uh castigation of the state.

A lot of they're bad people, they're acting in bad faith, they're doing bad things and of course, you know, if you're the defense, the state is trying to put your client in prison for as long as they possibly can. Um, but there's so much histrionic language, so much emotionally driven. It's, and especially if, you know, this judge, I mean, this judge is almost in a coma sometimes. I mean, she's very, uh you know, unemotional uh in everything she does, she's very low key. She's not like a judge, you know, Schroeder, for example, who's much more emotive or at least was much more emotive.

The problem is is that if you do have a real disclosure issue, you've muddied the waters by complaining so much about stuff that doesn't get you anything. This wine doesn't get you anywhere, it doesn't make a difference. So leave it out and save your, keep your powder dry for a time when it might make a difference. Uh Let's see, uh the report was not known to Baldwin or disclosed by the state until Mr Haig's son, Michael Haig alluded to it during a pretrial interview conducted. May 21st special prosecutor Morrissey's only explanation for why the state did not disclose the report sooner is that she intended to forward it for disclosure the day was received, but for some unexplained reason, but for some unexplained reason.

But that yeah, editing here that she can see from her email that she did not, notwithstanding the report's exculpatory conclusions. The state's experts maintain that it is impossible to determine today whether and to what extent that damage contributed to the malfunction of the firearm. On October 21st, put simply because of the state's deliberate decision to conduct destructive testing on the firearm without documenting its internal condition. There's not a single witness who can offer comparable evidence or any evidence at all as to the condition of the firearms internal components on the date of the accident.

So again, go back to my drunk driving analogy, right? So the person gets drunk to get behind the wheel, they run over granny in the crosswalk and immediately afterwards, they drive the car off a cliff and miraculously survived to be prosecuted, but the car is utterly destroyed in the crash off the cliff. Does that mean you can't prosecute them for the vehicular homicide? I would think not unsurprisingly, courts have not allowed the prosecution to escape the requirements of trumpet when investigators had an opportunity to document the evidence before destroying it but failed to do so. I'm gonna skip over this because uh I think they're gonna, I think these will be distinguishable cases where it's not a matter of, for example, disassembling a gun and looking at all the internal components before you otherwise do testing, you have a footnote of more a whining footnote.

Let's see, the August 31st Hague report is not the only exculpatory evidence relevant to this motion that the state failed to disclose in a timely manner for example, on May 6th, the state disclosed email communications between the state and Brian Carpenter that was the state's expert armorer witness in the Hanna Guterres trial. And he'll be called for that purpose in this trial too. Who although not qualified as a firearms expert does have a military background in

which special prosecutor Morse noted the stark difference between the hammer notches on the gun Baldwin was given on the set of rust and the notches that appear on a brand new hammer from the exact same gun. Well, this shouldn't surprise anyone because a brand new gun would not be subject to a mallet test and have the Sear broken off, which is what happened after the shooting with the Baldwin test. In response, Carpenter stated that he cannot see any reason that's functionally necessary or does not compromise the safety integrity and, or I don't even in response to that, he cannot see any reason that's functionally necessary or does not compromise the safety integrity and, or operation of the gun. That's, that's just an incomplete sentence, isn't it? It's just a, this is just more whining to me.

They footnoted some whining, you know, you, you really gotta focus discipline, discipline, lawyers. Yeah. Ok.

So let's see, grasping at straws, the state argues that Baldwin can question one of the state's paid experts who tested the gun using replacement parts in particular, a new sear. Yeah, this is my recollection from the Guterres trial. In other words, to determine whether the gun's defective parts cause an accidental discharge, the state replaced one of those parts. Obviously, this says nothing about whether the firearm could have gone off with the original parts, except when the gun was examined prior to the mallet test with the original parts, it functioned in the same manner as it did with the replacement parts and external. This is a very simple mechanism, folks external function reflects the state of the internal components.

Although the state's expert used the original hammer, it is the interaction of the hammer with the sear that prevents a properly functioning firearm from discharging without using the original sear. That testing showed nothing moreover, the expert admitted that it was not possible to test the firearm with the original parts and in particular with the original trigger, the same part that bears unidentified modifications because the damage done to the trigger was such that it would not be possible to replicate the functioning of the firearm. Yeah. Well, the tip was broken off. So the the original trigger is no good.

Uh The young blood standard is met. The distinct alternative young blood, young blood standard is also satisfied because the record contains overwhelming evidence of the government's bad faith. See this is this is a real stretch because they admit in other parts of the motion that the the state was having this testing done to rebut defense allegations that he didn't pull the trigger. So that is a good faith argument on the part of the government.

So, um, but they even say that's why the original indictment was dismissed by the prosecution. They were willing to wait for these test results. But let's see what they have to say about the young blood standard. So one, the original state of the firearm was at minimum potentially useful as set forth above of the firearm was not apparently exculpatory and it was, it was certainly potentially useful, which requires no more than a possibility that the evidence would have exonerated the defendant.

Other than a single conclusory assertion, the state makes no argument that the firearm in its original state was not at least potentially useful to the defense. Two, the evidence of the state's bad faith is overwhelming, I guess it's histrionic language. It is hard. It sounds like Trump wrote this sometimes, right? It's like the most fantastic, the most, the most amazing bad faith you've ever seen the strangest, bad faith. It is hard to find a more striking precedent of governmental bad faith leading to the destruction of potentially exploit. This is not, this is not even on the charts.

Both prosecutors and law enforcement agents knew months before testing that Baldwin claimed he did not pull the trigger and that other witnesses had said the gun just went off. They knew the testing would destroy the gun. I don't believe they knew that. And as the state's own experts have confirmed the testing that the sheriff's office ordered was not tailored to determining whether the firearm could have discharged without the pull of the trigger. Yet, the state failed to document the original condition of the firearms internal components through photographs or video. Even though it would have been simple to do so before they destroyed the gun, the state also failed to alert Baldwin or his attorney about what they were about to do.

The state. Thus took no reasonable steps to preserve potentially indeed, apparently exculpatory evidence for the defense because prosecutors and agents were convinced Baldwin was guilty and gave no consideration to Baldwin's right to put on a defense that bad faith is palpable. Yeah, that's histrionic. This is, that's, that's just dramatic writing. Who's the audience here? Who's the audience for this motion? Yeah, I can't believe it.

Well, so one theory I have Steve is that the real purpose of the defense here is not an acquittal which of course they'll take if they can get. Uh, but what they're doing is establishing a foundation for uh reputation, rehabilitation after the conviction. Uh So they wanted to be able to show sure, you know, five years from now. Um Yeah, Alec Baldwin, he was convicted, but that, that was a Kangaroo court. I mean, we made tons of arguments to that judge that she just disregarded. Um And that's what led to this unjust conviction.

This was a travesty of justice. Look, at all these motions we filed. Look at all these arguments we made and the judge just disregarded them. If they don't, don't do any of this, they don't have that to point at. Right. Uh Tellingly, the state's brief does not even address FBI special agent Cortez's statement that he and Detective Hancock were tracking that the requested testing will alter the firearm and will no longer be in the same physical condition that it was seized in. Nor does the state offer any explanation whatsoever for why these law enforcement agents and others who were aware of the imminent destruction did not first disassemble the firearm and document its internal components for the defense.

The state's silence speaks volumes. It has no legitimate justification for its staggering disregard of Baldwin's rights. I don't even know what this means.

We're tracking that the request of testing will alter the firearm and will no longer be in the same physical condition that it was season. Well, the moment you fire a round down the gun, you've

altered the firearm. It's, it's not the same as it was before you fired that round. That doesn't mean they knew they were destroying the gun. The state argues that there was no bad faith because the FBI supposedly followed standard operating procedures when carrying out the testing. The state cites the 10th circuit's decision in bold for the proposition that courts have held that the government does not necessarily engage in bad faith conduct.

When the destruction of evidence results from a standard procedure employed by the government department or agency. Regarding the disposal of like evidence, at least then there is adequate documentation of the destroyed evidence. But this passage from Bole addresses the disposal of like evidence and presumed adequate documentation of the destroyed evidence here. However, the state did not create adequate documentation. Well adequate is doing a lot of heavy lifting here. Folks adequate documentation of the destroyed evidence such as by photographing the internal components of the firearm. That is the problem.

Moreover, unlike in bold, the firearm was not destroyed as part of a disposal process, the damage it suffered was an anticipated consequence of testing that should never have been performed. But in any rate, regardless of the applicability of bold to the FBI's testing, that is not where the bad faith lies in this case. So why do we talk about it rather as each and every FBI witness in this case has confirmed under the FBI laboratory procedures. What testing to conduct is a decision that rests with the contributor here leads uh Santa Fe sheriff's office, Detective Alexandria Hancock, it was Detective Hancock, not the FBI who set out to disprove Baldwin's statement. I don't understand why they keep talking about that.

The state is allowed to do that. It was Detective Hancock, not the FBI who failed to provide information about the relevant circumstances of the incident and who requested testing that she knew would likely destroy the firearm. Likely it was Detective Hancock, not the FBI who decided not to request photos, videos or other information about the internal condition of the firearm before its destruction. And it was Detective Hancock who declined to inform the targets of the investigation that she was planning to destroy a piece of evidence at the center of this case. I don't believe she was ever planning to destroy anything.

Were it not for each of these deliberate decisions? The firearm or documentation of its internal components would have been available to the defense? Today, the state's efforts to hide behind the FBI standard procedures should be rejected. The state also discusses five factors that the 10th Circuit has employed to conduct the bad faith inquiry, but those factors weigh heavily in favor of bad faith here. First, Detective Hancock was clearly on notice of the firearms evidentiary value. As she said, the testing was done to disprove Baldwin's statement that the firearm went off. There can be no doubt that the state was unnoticed that the defense viewed the firearm as exculpatory. The state's argument that Baldwin didn't specifically say the gun malfunctioned is not serious.

Explaining that the gun discharged without the trigger being pulled is the same thing as stating that it malfunctioned. And of course, Baldwin, an actor, not a gun expert had no idea whether the gun had been altered and was malfunctioning prior to the day of the shooting. All he knew

was that it went off without his pulling the trigger. He says, and he repeatedly told investigators that months before the destructive testing.

So they should just take the defendant's word for it. Second, it is clear from the third and untimely disclosed haig report that the firearm does have markings indicating modifications not attributable to the FBI's testing. The state claims that Baldwin does not present any objective evidence to substantiate his bold claims that the gun was altered and modified prior to the accident. But the state's own evidence makes that clear. Third, this government had, has had control of the firearm from October 21st the day of the shooting through today and was in possession of it when Baldwin disclaimed pulling the trigger and it was the sheriff's office, not the FBI that ordered the testing.

Ok. Why would the FBI be involved? But for that request, fourth, the centrality of the firearm to this case could not be more obvious. It was clear when Detective Hancock set out to disprove Baldwin's statements by requesting the destructive testing. It was clear when the state dismissed the case last year based on its belief that the firearm may have been modified and it remains clear today, given that the state's witness list includes two firearms experts, the manufacturer of the firearm and the importer of the firearm, all of whom are expected to testify about the firearm, though none of whom observed the firearm as it was on October 21st fifth. The state has not offered any explanation for Detective Hancock's decision to authorize destructive testing, untethered to the circumstances of the case with no notice to the targets, including the target whose statements she had set out to disprove.

Finally, the state misstates the legal standard. The state says for example, that the FBI testing was not conducted to destroy exculpatory or potentially exculpatory evidence And that Baldwin cannot show that officers damaged the firearm for the sole purpose of depriving defendant of exculpatory evidence. But young blood does not require that the sole purpose of the testing was to destroy the evidence.

Rather bad faith turns on whether the government knew the evidence was potentially exculpatory and then destroyed it without reasonable steps to document or preserve a record of the evidence. Again, reasonable steps is doing a lot of heavy lifting here, folks. Uh The state cited legal authority is equally unavailing. Uh I'm well, they mentioned, yeah, I'm gonna skip over much of this because we didn't read those cases. It bears noting the state's efforts to deprive Baldwin of relevant and exculpatory evidence related to the firearm has continued. The state's brief ignores what Hague revealed to the defense that even after taking into account the FBI's testing, the state's own experts can explain markings and indicia of modification of the trigger.

That is the kind of confirmatory evidence the state pretends does not exist the state's unjustifiable decision to destroy the firearm without documenting its internal components, means that the defense cannot definitively establish how the internal components interacted in their original state and whether they caused the accidental discharge. Three, the prosecution also violates New Mexico law. The prosecution also violates New Mexico Law as recognized by

State V. Shard and New Mexico Supreme Court decision. Um The New Mexico's Constitution guarantee of due process provides even more robust protections than its federal counterpart for defendants in criminal cases where exculpatory evidence has been destroyed for all the above reasons.

The firearms original condition is material. The state's theory of guilt would be refuted if the firearm could discharge without a pull of the trigger. That's not true. There's other grounds for recklessness here and the, for example, my drunk driving scenario, imagine if the drunk driver had not only consumed alcohol but also hallucinogenics, they were having that kind of a weekend, both of which caused them to be impaired while driving and they run over that old lady in the, in the crosswalk and kill her. They're charged with vehicular manslaughter and it turns out that the claim that she'd consumed alcohol was demonstrably untrue, the alcohol goes away. Does that loss of that one theory of impairment mean it's not vehicular homicide, not if there's another theory of impairment. So the state has other theories of guilt besides the pull of the trigger, simply pointing the muzzle at Helena Hutchins and the destruction of the firearm prejudiced Baldwin because the defense can no longer contest or examine the firearm in that original state.

What is the, uh, what are the, there's the rules, what are the, um, four rules of gun safety or rules of gun safety? All guns are presumed loaded and until you confirm otherwise, never point a gun at anything you're not willing to destroy, never press the trigger unless you want to hear a loud noise, know your target and what is behind your target. So three of the four were violated. So the only question is one of those four elements. So if there's culpable negligence by violating three of the four rules, assuming he didn't pull the trigger, which is a stretch, right? And he's not being prosecuted for uh like reckless endangerment or a battery on Joel Souza, I guess battery wouldn't apply because no one believes he intentionally fired the gun but reckless endangerment. I mean, the bullet hit Joel Souza, that would be an example of not knowing what was behind your target, I guess, right? In addition, the state acted in bad faith by intentionally destroying the firearm without documenting its original condition and by violating its evidence, preservation obligations under Brady. Brady is the US Supreme court uh case that has to do with preservation and discovery of evidence in criminal cases.

And New Mexico Law, an argument the state fails to address the state's characterization of the destruction is accidental, is inaccurate. Investigators knew the testing would destroy the gun and acknowledge that fact in writing, I don't believe that's a true statement. I believe the state was aware or had been noticed that testing could destroy the gun. And in any event, the accidental destruction of material evidence can lead to severe remedies under New Mexico law. Well, that may be true, but that doesn't mean the remedy must include dismissal of the indictment when prejudice I see, here's look at this, this is interesting, the state's other responses. This, this is what I was asking because see, yeah, go ahead and read that. That's, that's interesting.

The state's other responses also obscure the record. The state says, for example, that quote, law enforcement, carefully documented and recorded the revolver's condition pre-test by photographing it, examining it and test firing it. Close quote. No, they did not.

They failed to disassemble the weapon and photograph its internal parts steps that would have determined whether the gun was defective or altered on the day of the accident. You see this, this is um, see, that's interesting because because they're making large broad categorical statements throughout this motion, they did no testing at all. They just threw it away.

They just say, you know, they're making these big things, but now it appears that there was quite a bit of documentation. They just didn't do it to the precision or the way that the defense wanted it, which was to disassemble and look at every part and put it through an X ray machine when they, when they say no, they did not really. The only the only operative word they're targeting with that phrase is the word carefully because if the state said, well, we documented and recorded the revolver's condition that's indisputable. Now, whether or not they know, I mean, to me, you could still is photographing, examining and test firing it. That could be carefully documenting that. That's my point, right? The state, the state believes that's careful. All the defense is saying is it wasn't careful.

Well, they're saying they should have done more, which is always an argument. But this, this contradicts all of the earlier broad statements which they were criticizing the state for, they would make these broad sweeping characters. They, they, they did nothing to document there. It's been completely destroyed and we have no way of all these big broad statements when in fact, it looks to me like, and I, this is why I was surprised because I'm reading it.

And I'm like, really, they didn't photograph it, they didn't test fire it, they didn't, they didn't do any of these things. They didn't do trigger pull measurements. They probably did all of those things that they didn't do is they didn't disassemble every little piece in an exploded fashion.

And then, you know, but then like you said, if they had done that, then it's like, well, now you altered the weapon and it still wouldn't be enough because then they'd say, well, you didn't send each component to Lawrence Livermore Lab for Atomic Mi Microscopy examination. Right? There's always something you don't do. Um, so this is it, that was just, you know, here it is on page 18 and it's buried.

But, I mean, that's why I, I was surprised because I'm like the state didn't do that really. And now, now of course they did and now it's just a matter of extent. Yeah, the state also says that Baldwin has not presented any objective evidence to show the gun was modified or altered prior to October 21st wrong again, the state's own expert. W why do you need wrong again? Right.

That's just being trite. Yeah, they could just have gone with the next sentence. The state's own expert has now confirmed that the visible alterations in the hammer are not attributable and seer are not attributable to the FBI testing to be sure Baldwin will never be able to establish that

all of the defects and modifications of the parts is an incomplete. Well, here's another thing about this, these modifications and defects. That's a general broad statement.

So it's a claim, but it's like, well, what are we talking about? Are we talking about maybe a polishing of the hammer? You know, sometimes you might have a spur or you might have something to make it smooth. So you get somebody with a dremel tool that polishes it. Now that's a defect and a motivated, it's just a general, it was altered, un you know, inexplicably tainted, right? But it's like, well, what are we talking about? We're talking about a dremel tool, polishing a side of the slide to make it slide better, you know, make the revolver work better. That, that is, you know, to say there was a defect, it's unobjective that that's what happened. And then to extrapolate that that is somehow some kind of nefarious defect. Those are, there's there's hiding behind vague language. Uh Let's see and the state cannot seriously, let's see.

Um to be sure Baldwin will never be able to establish that all of the defects and modifications through the parts preexisted the FBI's testing. But that is because the state destroyed the gun without first documenting its internal condition. And the state cannot seriously dispute that whether the gun was functioning properly is central to the issues in this case.

That is why after all, the state sought to test the testing in the first place. Well, first of all, not everything that's tested is central to the issues in the case. Finally, the state says that none of its conduct amounts to a legal violation because Baldwin can cross examine the FBI examiner, the state's firearms expert and Detective Hancock, as explained above these examinations have no chance of revealing the original state of the firearm because none of those witnesses examined the internal components of the firearm before destroying it. The state has no answer to that problem. Well, I don't know about that either, but I, let's see, we'll keep going.

Well, we can make reasonable inferences. I mean, no, in no shooting that I've ever seen was the gun carefully examined prior to the shooting. No one disassembled the gun examined all the parts for defects, put it back together and then committed the shooting. That's not a thing that happens. I like Kyle Kyle says, he says, like I wrote to will, it's what Schrodinger's gun. That's good.

Right. Right. Right. Either you're taking it apart, you don't take it apart. It's always the wrong answer. Right.

Right. It's like, oh, was behind that mystery box, something happened and whatever, when you look at it all of a sudden that determines right, whichever way it is. Uh, so for the foregoing reasons, Baldwin requests the court to dismiss this action with prejudice or preclude evidence or argument from the prosecution regarding whether Baldwin pulled the trigger and instruct the jury that he did not do. So, the judge is supposed to instruct a jury. I'm telling you as a matter of fact. And law that Alec Baldwin did not press the trigger. This guy and III I think that kind of overreach is harmful.

I think if I were the judge and I read that I'm like, I'd be thinking, you know what I'm pretty sure I'm the judge. Yeah. And they're the jury, like, like I said, when I read this, this reads to me, like, it has an audience of somebody other than the judge. I, I think there's a lot of fat in here. I would trim a lot of this fat off this motion if I were them. But I'm not really involved in their defense and I, I don't see why they're being the way they are. I think there's a lot of unnecessary language.

It's almost like they know they're going to lose this. But I don't know, see, I, I think there's a legitimate complaint here on the part, they could really, they could maybe get a favorable instruction, they could get, I think they might be able to get something out of this because the destruction of the gun or the destruction of hammering it with a hammer does seem to me to be problematic from a defense standpoint. And if you kept it real tight and narrow and not as boisterous, you might actually get some kind of remedy. But I this, this kind of boisterous language loses credibility on the good points. Uh That would be my, but, but I don't know who their audience is. You know, they, they may be arguing for their client, their client might want this or I think their audience is actually, again, I think this is all about building a foundation for reputation rehabilitation. So like journalists will have language, they can cherry pick from these emotions afterwards, right? Court documents even said that blah, blah, blah blah blah, right? These are court documents.

That's right. Yeah, that's, that's you know, the media could be their audience, but this is gonna be a new new Mexico jury and I'd worry about the criminal case in New Mexico and the sentencing before I would worry about media image. So I'm not gonna go over this folks. This is like an addendum. Uh This is all different combined exhibits, 36 pages of exhibits.

It's expert reports. It's other stuff that the defense wants the judge to consider. If you're a loyal self defense member, I will include this PDF in the replay version of today's show, the blog version, the blog post version of today's show. So you'll have access. Oh, there's the, there's the, there's the revolver, the hammer at various positions. So it looks pretty well. I wonder if they have photos here of the hammer.

I bet they do. Let me just scroll through real quick. I think it was up top there. That was that exhibit. But it's so you'll post this entire entire document. I think it was on that, that first photograph that she skipped through there.

Keep going there. Yeah. There it is. Yeah.

So that's the very tip of, that's the, that's the end of the hammer of the trigger rather that we can't see. So we see the trigger we press with our, with our finger, there's a pivot right there at the top of what we see. And then inside the gun is the sear, it looks like a reverse of the trigger almost. It's got a tip and the tip engages with a notch in the hammer. That's how the gun operates. And we can see from afterwards after the, the mallet testing, this little lip appears to have been broken off.

Um I'm not sure what we're looking at there where it's broken off. It looks pretty well documented to me. Well, this is after it broke though, right? So the, the, the defense wants to be able to argue that for all we know, this is what it looked like before it broke. I would suggest we know it didn't look like this before it broke because when it looks like this, the hammer can't be held back with unless you physically do so, but it, it can't be held back by the trigger. But prior to the mallet test, the gun was tested and the hammer was being held back by the trigger.

So I, I think the only reasonable inference is that the sear was intact when the gun was received by the FBI and initially tested. It was only the mala test that broke the tip off the, the threshold defense attorney objection. I don't like this hammer test thing, whatever they're doing with it.

It annoys me. But uh, what do I know. All right. So Steve, you got anything coming up? You got any, any new books I do. I've got my new book, uh called Death Penalty Designs Maximum Due Process, which I'm probably gonna have on, on, on, it's gonna be released on June 21st. So if people have know my other books, Death Penalty desires death penalty debates.

This is the third book in that series. So the way it is is that the fictional novel kind of gives you a framework for understanding how it, how in a crime occurs in investigation, uh a trial and then the aftermath in a death penalty case, death penalty debates is the public policy arguments on both sides surrounding the death penalty. This is a resolution of my, well, since I'm leaving the public defender's office, this is all the work that I've done training myself to be a capital appellate lawyer. So it starts with an overview of the death penalty in history. It then then goes into an overview of federal case law having to do with the death penalty organized by topic. Then it is an analysis, then it is a presentation of Florida's death penalty statute and how the death penalty statute works. And then, and then the fifth part is a, an overall, basically a step by step, all the constitutional problems with Florida's death penalty as in from an appellate standpoint.

So all the taking and applying those federal cases to the Florida Statute. So it's a, it's a kind of an advanced book, like ideas and Answers of Law which um Mr Branca here happy did the uh the intro. It is a um it is that it's a heavy law book and so it's going to be priced high. But um this is kind of my end master work that I can put the death penalty behind me and I can move on to the State Attorney's Office, which I have said that I am not doing death penalty cases for the state and nor will I assist in that based on religious objections. Um And they've agreed to that. And so that was very made me happy.

But this will give you if people are hard law, kind of people like law geeks like a lot of your law self defense community. Um It will be available at least through June 26. It's kind of I wanted to put it out because it's so much work that I put into this. It was designed to be a training manual for capital appellate lawyers, but it's just not going to get completely finished exactly what I wanted. But I, before I walked away from it, I wanted to put it out and make it available to Capitol Practitioners. So that's, that's what's going on.

So I might have a release party on Thursday or, or some there thereabouts and uh it is available for preorder. So if you're a real honor, which, you know, you got, you've got like, you've got a lot of them. I mean, we've done the American laws. Um, we've even talked a little bit about maybe following up with this type of information. But anyways, hey, Steve, can you spend a few more minutes with us for the Q and A portion that, that'll just be for the law of self defense members. So, just to remind everybody, remind everybody when we do the Q and A and comment portions here. It's only for law of self defense members.

If you're watching this on, on youtube or on um rumble or on X. Uh The show is ending for you in the next few minutes. If you're a law self-defense member watching this in the live stream, don't go anywhere. We're going to be back in just uh 20 seconds.

Um As I shut down the other streams and we'll address all the questions and comments in the live chat. The good news is, it's dirt cheap to be a law self-defense member. You can try it out for two weeks for just 99 cents for a two week trial at Lawofselfdefense.com/trial. And after the two weeks, it's still dirt cheap. It's only about 30 cents a day, less than \$10 a month to be a law self defense member.

Lots of benefits. You get transcripts of every show. Uh so you can document your specialized knowledge if you heaven forbid ever have to defend your use of force in court and you get to participate in the Q and A comment section as well.

So check it out at lawofselfdefense.com/trial. If it's not for you, you can always cancel folks. No questions asked. We'll refund your money. All right.

So with uh Twitter and I guess I should say X youtube and Rumble, the show is ending for you. Now, I'll just remind all of you in the general audience if you carry a gun. So you're hard to kill. That's why I carry a gun. So I'm hard to kill. So my family is hard to kill.

Then you also owe it to yourself and your family to make sure you know the law. So you're hard to convict as well. Again, members don't go anywhere. We'll be back in 20 seconds. Everybody else.

I'll see you at the next law self defense show probably tomorrow. All right. And now we're back.

Just us. Law of self-defense members and Steve Gosney also a law of self-defense member. All right.

Platinum membership, platinum member. Uh, let me take a look at what we have for quite, we got a lot of comments. Unfortunately, the member chat only saves the last 100 for me. So I, I might have missed some early ones.

Um, let's see, lots of talk about people getting a 1911 with a, with a trigger tune by a competent Pistols Smith I just got my Wilson Combat pistol back from, uh, being refurbished by Wilson

Combat Steve. It looks, it looks much nicer now than last time you saw it. Yours was, it was well worn, but I respect a well worn firearm. Now.

It looks, it looks and feels brand new. They tightened it up. They put all new springs and everything and they refinished, it looks like a new pistol now. And it's, you know, now that you're on the law and self defense private website, you can actually show firearms here and not get in trouble.

Right. Oh, I could, I don't have it here at the office. Yeah, I should have too bad.

Yeah, that would have been, that would have been, that's a good, like, show and tell Day, you know. Uh, let's see. I like 1911. It's a great deal. Folks. I carried that night that exact 1911 pistol. I carried it for 25 years.

It was my everyday carry pistol. It was also my competition pistol. I have over 100,000 rounds to that gun, which is why it was so well worn. This is the fourth time I've had it refinished. Um, and I bought it in, uh, when did I buy it? 1996 is when I bought that gun? So, it's 28 years ago, I guess. Right. Is that about right? It's a testament to its design that it's that durable and that it functions wonderfully that whole time.

At one time in all those rounds, the uh the ejector snapped off the frame, uh it's pinned into the frame on the 1911. 1 of the pins broke and Wilson fixed it for free. So, uh let's see. Yeah, the pushoff method apparently is when you cock the hammer and push it forward with your thumb and see if it'll drop that way. The, the mallet test used here was a, a more energetic version of the push off test. Uh Yeah.

And one reason I would never buy a used 1911 is because too many people take a dremel tool to the Sear hammer engagement of their 19 elevens and you can make a 1911 go full auto if you sufficiently grind away the Sear or the discon connector. Uh oh, someone added a PDF, Texas John added a PDF to the FBI handbook of forensic services. Oh, cool. I'll include that. I haven't read that, but I'll include that in the uh today's blog post as well. Thank you very much Texas John.

Interesting. Uh Steve Clay asks, are you going to be able to still do youtube after you start your prosecution job that, you know, I'm not certain what I'm going to be able to do and not. I mean, you know, American law courses, book sales and streaming are three things that I've actually today submitted a form to get approval from the State Attorney's office to continue with so they could very well say no to all those things.

I, I don't expect that because they hired me knowing what I bring to the table and what I'm doing. But it's possible. So, uh you know, that's kind of why I wanted to get this book out as soon as, I mean, the, the part five is about 85% where I want it to be. But I, you know, I wanted to get this done and out and at least available for like six days so that it's in the public milieu because I might get cut off from selling books. I mean, I don't know, I hope not.

But uh we shall see they, they'll, I don't expect that, but all of this is possible. So um there's a letter going out to all of my people book buyers to, to buy this and if they get the pre this is an expensive book, this is 100 and 25. But if you buy it on the preorder, I will include a free copy of prepare in addition to that. Um And the reason is because the content, there's nothing like this out there. And the people that really should buy the book are capital appellate lawyers.

And uh there's only a few of them and they need to pay me for this anyways. We'll talk, we'll talk. But thank you for the questions. I, I don't know my life is up in the air.

See all my stuff in boxes over here. This is my whole house. Mm.

Uh, lets see what is law self defense slash trust. That's where people can go to learn why I trust CCW Safe. Ok.

Or legal service memberships at law Self defense.com/. They're the sponsor of today's show. Excellent. Ok.

I was wondering what that was. So that's, that's the one that provides, like if you get in a self defense incident, they will actually, it's like insurance so that they'll hire a lawyer for you. Right. That's excellent. And that works really good with your, your expert witness um offer through the platinum membership.

It does. It's a very complimentary. Uh, let's see, Will Parker if the state had. Hey Will. So I just did a, uh a motorcycle trip with Will around Colorado. You guys, I was kind of, I'm not a motorcycle guy, but I was jealous of that trip.

That looked like a great trip. It was, uh, will had three days. So I picked out the best three days worth of Colorado routes that I know of and I think I know them all. I've, I've been riding around these mountains for eight years now and uh I know I had a great time. I hope Will did too. Uh, he has the exact same motorcycle I do even the same color.

Was that intentional or the R 1250 Gs adventure? No, he, we just both have excellent taste, uh, will says if the state had disassembled the firearm and reassembled it, it would not have been in the same condition when it went off. Yeah, absolutely. Uh, let's see. Yeah, Phil says in a recent suit that I brought my attorney constantly pointed out the need to be short and snappy in briefs brought to the court. Baldwin's attorneys clearly don't ascribe to this view. But I think, I think Steve makes an excellent point.

It depends on what the actual audience is. If the audience is the court, that's all true. Uh If the audience is to provide content for reputation, rehabilitation after a conviction, you want it to be worthy and outraged and histrionic because that's all, uh grist for journalists to make hot copy out of it. But, you know, I, I will say that I, I don't like them using this motion because I do think there's a legitimate issue that they might be able to milk for some advantage in the defense trial

in the criminal defense trial. But by, by doing that, I think they really lose credibility and, you know, why not try to, you know, the criminal defense trial has got to take precedence. But what do I know? So, here's a good question for you, Steve. Uh, does the defense and the state have the same discovery rules? No, they, they couldn't.

I mean, if you think you have to disclose all the statements of your client to the state, the state has to disclose all the statements of your client to you that they intend to use. So, there's, it's an unfair trial. It's an, and arguably the defense has to disclose what it intends to use at trial. They tend to bring an expert or something along those lines. Yes, that's true.

There are, there are a lot of disclosure and, but, but then again, there's some things that you can hold back like possible impeachment of state witnesses that, that you know about because you don't know it until they show it and then you can blast them. Right? So there's a lot of advantages being on the defense side as there should be. Yeah.

Uh Let's see, I think that's, uh, will Parker says I had so much fun on the motorcycle trip. I'm hoping to return in September for a seven day ride. All right. Well, how many miles I hope I can make that? I'll just have gotten back from like a, a three week ride through Canada myself. I'm not sure I might have to make up some stuff at home. Will, so send me dates when you have them. Uh There's, uh, even I Andrew Branca has to limit exactly how many days a year I'm able to spend on the motorcycle.

Uh, when I take my, uh, Canada trip, by the way, folks, I do plan on doing shows most every day during the Canada trip. So my itinerary is scheduled to allow the shows will probably be earlier in the morning before I have to check out of my hotel in the mornings. But uh it will not be an extended period of no content. At least that's not my intent. There will be vagaries of, you know, internet bandwidth and all that kind of stuff, but I'm gonna do my best to get content out. All right, I think that's about it, Steve. Hey, thank you, man so much for joining me.

Uh Your, your insight is in uh uh invaluable. And Steve and I are talking about doing a capital punishment class as part of American law courses for the fall. I expect we will go forward with that, but we have some logistics. I have to clear through Emily on our end here and I need to work on it on my end too because of timing and getting comfortable with the job. And we've got to work out exactly how late the decision needs to be made.

But what we are this could I spoil a little bit what we're envisioning is a Capstone class because there's one more class that we kind of, that's out there, right? And doing a Capstone that would be called cap or death penalty master class Capstone. So, and, and the, the textbooks would be the three books, the death penalty designs, desires and debates and like this would be the third book in that series. And then we would just go through it very methodically and talk about the tri a trial, a sample trial, the public policy debate and then the, the get really in the weeds and it would be very high level advanced class that would challenge even the best, even you will partner. But, but we're, I don't know if it's going to work because of my, what I'm doing and

what, and Andrew's got it. So, but that's what we're talking about. I don't know. And for those who may not have heard, I did mention it at the start of the show.

But, uh, Steve, after, how many years were you in the public defender office? 14 years? 14. And before that you were a prosecutor, six years as a prosecutor and six years in private practice before that. But I was, I did civil litigation, real estate, probate litigation, not criminal. So I did 66, 14 and now I've got 13 more years to, to finish out everything so I could do 13 years in Miami. Yeah.

So, and, and that, and that's where Steve's going in a couple of weeks. He'll be starting his new position at the Miami Dade State Attorney's office, uh, where I plan to visit him. I like Miami. It's beautiful and uh, everyone's looking forward to that. Great, great, great, really happy for you, Steve. I think this is going to be enormous, enormous fun. It's a, it's a big upheaval.

There's it's really against my nature to it. But it's like the way that the winds are blowing and it's so right. They offered me this position and they said we want you specifically the offers open indefinitely come down when you can. And I mean, it was like, we just had to say, and I went in there saying I'm not doing death penalty and I, all these unethical prosecutors just drive me nuts. And I went, and I said, I want the highest ethical standards and that's what I'm going to be doing. I'm gonna be training young prosecutors to be the best ethical prosecutors. They can be.

And then also I'm gonna assist with the, uh, the team in prosecutorial, um, ethical compliance, Brady compliance and be part of the legal team that advises the State Attorney's office in their ethical obligations. So that's a, that's really perfect for me. I mean, it's custom built for me. So I really, and it's great.

And II, I often think, you know, when I see prosecutors doing things quote unquote wrong in ways that I find objectionable. Sometimes it's deliberate, they know they're doing something objectionable, they're doing it anyway. Uh, sometimes they're just poorly informed. I mean, you know, not, not every lawyer had the benefit of the highest degree of uh education and training and sometimes you just kind of make it up as you go along and, uh knowing where the, the ethical and legal guidelines actually are and ought to be, I think can, can pro because most of the prosecutors I know are well intentioned civil servants just trying to do a good job. They're not all, uh, like, you know, Prosecutor Binger in the Kyle Rittenhouse trial, for example.

Um, and those people could use effective guidance on how to do that job. Right. Well, and also it becomes that those are both possibilities. I'd say I'd suggest a third one and that is that they are not given guidance. They are basically putting a lot of pressures because they have school debts. They're given a lot of power. They're young and they, they learn bad habits as young lawyers and those bad habits continue on forward as old prosecutors, as judges, as private practice.

So the, the habits that are established in those first few years of practice have a ripple effect going forward. So that's why I really like this position because I can make a big impact. They hire

80 new lawyers every year, 500 plus attorney office. So it's, it's a big, it's the biggest office in Florida and I can have a big impact on these young attorneys to do it. Right. And that, and I've got support of the state attorney and the top leadership team that, that's what they want.

So thumbs up to Miami and I'm looking forward to it and an influence not only within the office, but that's a 20% turnover every year. Right. Prosecutors come in, they work a couple of years and then they, they get out.

Right. They go, Miami is such a lucrative market that they're getting bribed to go out. I mean, by big money it's like there's all these jobs that hire them away. So they just, they take their training with them. Right. And they, they experience good or bad. Yeah.

All right, man. I give my, give my best to uh the wife and son and I look forward to talking to you again soon. Take care of Steve. Oh, check out his book, all his books, Steve gosney.com Will Parker said in the comments.

He just pre-ordered the death penalty book. So that's one, it's, it's I I, and then my email tomorrow that's going out, it says, um, do not buy this book because it's very advanced. It's, it's a very select, I want the people to get it. It's high price because I it's only for a select few. And Will Parker. You're one of them because you've been in my classes and you are a target audience.

So you're getting the leg up on me. I see. But thank you. All right, Steve have a great week.

Good luck with everything. I'll talk to you soon. See you later. Bye bye.

All right, folks. So that's it for the members only portion of today's show. Um I'll remind all of you if you carry a gun. So you're hard to kill.

That's why I carry a gun. So I'm hard to kill. My family is hard to kill.

Then you also owe it to yourself and your family to make sure, you know, the law. So you're hard to convict as well. Until next time. By the way, tomorrow's show should be interesting. It'll be a case out of, uh, where is that case? It, it's, um, I think it's New Mexico, actually, a New Mexico Supreme Court just, uh, affirmed the conviction of a defendant who was not allowed to argue self defense at trial and appealed after he was convicted because the judge refused to give the jury a self defense jury instruction.

And the New Mexico Supreme Court said that's just fine with them. So that'll be interesting to explore, uh, literally a defendant who failed to meet his burden of production on the question of self defense doesn't happen that often, but it happened in this case. We'll be covering that tomorrow until then stay safe.