

TRANSCRIPT: Will Judge DISMISS the Baldwin Manslaughter Indictment?

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Welcome everybody. Welcome to the second show of the day for the law of self-defense. This beautiful Monday, June 24th. The days are getting shorter about a minute a day, folks, about a minute a day.

That's ok. I'm going to enjoy the long days while I can. Looks like everything is streaming where it needs to stream. Let's see. And I have and of course, Attorney Andrew Branca for the law of self defense, come in, make yourselves comfortable.

We are here to talk about this. Uh This is a continuation of one of the motion arguments that took place on last Friday. Uh those motion arguments where several uh this one is whether or not the grand jury indictment against Alec Baldwin for involuntary manslaughter in the shooting death of cinematographer Helena Hutchins. Her death inflicted by the bullet fired from the gun in Alec Baldwin's hand when he pointed it directly at Helena Hutchins without ensuring there was no live ammo in the gun cocked the hammer pressed the trigger and fired the fatal bullet through her body, breaking her spine, mortally, wounding her and taking her life. October 21st 2021.

The defense Alec Baldwin's highly paid team of very costly defense counsel from Quinn Emanuel, a top, a top 50 I believe they're top 50 law firm worldwide is uh raising all kinds of uh objections to this prosecution arguments for why it should not take place, why witnesses should not be compelled to testify and so forth. The one we're discussing today is their motion and of course, a motion is simply a request to a court, a motion to the trial judge here to dismiss the grand jury indictment with prejudice, meaning the whole criminal legal matter goes away. Alec Baldwin could not be re indicted to dismiss the grand jury indictment with prejudice because the state destroyed evidence sounds bad. Right. Well, the destruction of evidence here is in the form of unintentional breakage of some internal parts inside the revolver used by Alec Baldwin to kill Helena Hutchins when that revolver was sent to the FBI laboratory for function testing of particular concern. What motivated sending this revolver to the FBI was the uh the expectation based on Alec Baldwin's statements in the media, particularly his lengthy George Stephanopoulos interview, which we've covered at length elsewhere.

By the way, we're keeping all our Alec Baldwin coverage freely available to the public because of the public interest of this case. You don't need to be a law of self defense member. In fact, we've aggregated all of it all our content. Now, I did my first legal analysis blog post on this October 22nd, 2021 the day after the shooting and I've been covering it on a regular basis ever since all

of my content can be found publicly available at [law of self defense.com/baldwin](http://lawofselfdefense.com/baldwin) including uh a breakdown of his George Stephanopoulos interview. Now, during that interview, he stated repeatedly that he never pressed the trigger, he never pressed the trigger. You may notice in our thumbnail today. This is a photograph uh a screen capture from uh video taken as he was practicing as Alec Baldwin was practicing the presentation of this revolver from the holster in the a pew of the church moments before he would end up shooting and killing Helena Hutchins.

He draws the gun several times from the holster while being filmed. And every time he draws the gun from the holster in these clips. And again, these are preceding the presentation of the revolver that ended up in the discharge of the bullet that killed Elena Hutchins. But every time he's doing it here, his finger is on the trigger.

And if the hammer is cocked, you don't need much pressure on the trigger of these single action revolvers to drop the hammer and discharge the gun. If the hammer falls on a live round, a couple pounds, 2 £2.5 is what the um FBI lab tech who examined this firearm said the trigger pull was with a cock hammer. Of course, if the hammer is not cocked. The trigger does effectively doesn't do anything. So Alec Baldwin had said on the George Stephanopoulos show, uh the, he never pressed the trigger is effectively, the gun just went off, the gun fired itself.

And so the prosecutors decided, you know what, let's, let's make a determination of whether or not that's even theoretically possible by having the revolver function checked at the FBI lab. And one of the first tests the FBI did was to test each of the hammer cocking positions of this single action revolver. E essentially, there's a quarter cock, half cock and full cock position, quarter cock, also known as a safety notch cock or safety cock. You start pulling the hammer back from the rest position on the cylinder and it catches on the quarter cock notch and it can no longer fall onto the chamber. It's always a concern with single action firearms um, of this design that it's possible for the hammer in the fully rested position all the way down to be resting on a live cartridge. If there's a live cartridge in that particular cylinder of the revolver chamber of the cylinder of the revolver, and then if the hammer is struck, it's possible the gun could just discharge.

Now, nobody believes that's what happened here. There was no strike upon the hammer in this particular case. But if you don't want the firing pin resting on a round in the chamber, I mean, one option would be not to load around in that chamber. That's the traditional safety step to avoid this particular problem. Uh If you do have every chamber loaded, you might put the hammer into quarter cock and then the hammer can no longer rest on the, on the chamber on any round in the chamber. Next, as you continue pulling the hammer back, it goes to the half cock position, by the way, in the quarter cock position, uh, depressing the trigger doesn't drop, the hammer doesn't do anything.

You can continue pulling the hammer back to the half cock position. And again, that's a safety rest position. Pulling the trigger doesn't drop the hammer. Uh, but in the half cock position, you can rotate the cylinder freely, rotate the cylinder. So you can open up the loading gate and load or unload, you know, load cartridges, unload, expended brass from the cylinder. And then if you

continue pulling the hammer back, it goes to the full cock position and stays there until the trigger is depressed. Now, if you were to put your thumb on the hammer in the full cock position, put a little back, pressure on it, gently, depress the trigger, gently, let the hammer fall forward, release the trigger as the hammer is coming forward, it would naturally fall into the half cock notch again the safety position.

So there's really no way to release the hammer in a properly functioning revolver from the full cock position without pressing the trigger. And if you release it from the Hancock position, the cylinders aren't actually aligned in, in the normal firing process because cocking the hammer rotates the cylinders. Uh So they rotate from one chamber to the next chamber at the half cock position, they're halfway in between.

So there is no chamber directly under the hammer. So there's no round directly into the hammer to be discharged. So what the FBI did was when they first got this revolver in their lab is they tested all these functions, they cocked the hammer, they tested, tested the quarter notch, the half notch, the full cock notch. Uh They tried the trigger in each of those settings. The gun operated in the perfectly normal way, a normally functioning single action revolver cylinder.

So they know there were no broken parts that affected function at the time they received the gun and therefore presumably at the time, the last person to have the gun to be operating the gun before the FBI lab got. It was Alec Baldwin when he shot and killed Elena Hutchins. After that, there was a chain of custody. The gun was, you know, under someone's control.

It was not, not modified in the interim after the FBI had done this function, testing and determined that the gun functioned in a perfectly normal way. They also did an impact test, a shock test where they, they whack, they cocked the hammer with a um a brass with a primer but no powder or no bullet in the chamber under the hammer. Um, and they, they hit the gun from various positions, top bottom, left, right front, the muzzle and back. They strike the hammer with this rubber mallet to see if they can get the hammer to fall without the trigger being pressed. And when they struck the hammer, they struck it hard enough that they broke the gun.

So there's a inside the gun, there's a connection between the top of the trigger, inside the gun and the, and the hammer, the, the resting position and the full cock position. When you depress, depress the trigger. If my bottom finger is the trigger, you depress it, the top end moves out of the way and the hammer is free to fall. That's how the gun fires. Well, those connections broke, they fragmented when the hammer, uh when the hammer of the gun was hit with the mallet, the Rawhide mallet and there's little pieces there that we can see.

I'm sure they'll show them again. They've shown them many times already. That's what the defense is calling. Destruction of evidence. We already know. Of course, that the gun was functioning just fine prior to that point.

And therefore, presumably when it was in the hands of Alec Baldwin when he shot and killed Helena Hutchins. So, excuse me, folks gonna pour something to drink here. Uh And based on the claim that the state destroyed evidence, exculpatory evidence. The defense is asking this Judge Judge Morrow to uh dismiss the grand jury indictment with prejudice. The prospects that she would do that are infinite. Testim mo infinitesimal. This is not a case where uh it's necessary for example, to have the evidence in order to determine who committed the underlying act, like who was holding the gun, whose fingerprints were on the gun.

We know the gun was in the hands of Alec Baldwin. Uh, the defense in the Hannah Guterres trial, which took place just a few months ago resulting in her conviction for involuntary manslaughter in the death of Helena Hutchins. Uh, her defense attorney, Jason Bowles tried to argue that when the police collected the gun at the scene, they were sloppy about ensuring that they didn't put their own fingerprints on the gun. Well, that could be a relevant issue if, whose fingerprints were on the gun was determinative and who was holding the gun when it fired. But of course, there's no question. It's not in dispute who was holding the gun when it fired and killed Helena Hutchins.

It, um, it was Alec Baldwin when he shot and killed Helena Hutchins. Yes. Yeah. I'm gonna say that phrase a lot because that's what happened. Um The defense cannot contest that Alec Baldwin shot and killed Helena Hutchins. They'll, they'll try to make it an innocent shooting.

A noncriminal shooting, the gun just went off. Uh, it was someone else's responsibility to make sure there was not live ammo on the gun. The state cannot prove that Alec Baldwin subjectively knew for certain, there was a round in the gun. That was another motion. The defense argued last Friday. Unless the state can prove he knew he had a round. There was a round in the gun.

This can't be involuntary manslaughter. The judge rejected, denied that motion for, uh, overturning dismissing the grand jury indictment. That's not what the law of manslaughter requires. Never has been, never will be ok. Uh, so we got about 20 minutes, 0, 16 minutes before the court is scheduled to go in a session.

I always like to start a little early. Oh, I may as well take the opportunity to mention the sponsor of today's show. I forgot last Friday in our part two show, the sponsor of today's content is CCW safe, a provider of legal service memberships. What many people mistakenly call self-defense insurance? In the fact CCW safe promises to pay their members legal expenses of the members involved in the use of force event. They do much more too. They fly in a, an investigative team of experienced homicide detectives to act as your investigators. Otherwise, the only investigators work for the state folks.

That's not good. Uh, they have, uh, their National Trial Council is Attorney Don West World class criminal defense attorney. He'll be consulting on your case, lots of other stuff. Um, now there are other companies that purport to offer similar services out there in the marketplace. Some of them are worth considering they're all different flavors and maybe one of them is the best fit for you.

I found that CCW Safe is the best fit for me. I'm personally a member of CCW Safe. My wife Emily is personally a member of CCW Safe. And some of the offerings out in the marketplace are just hot garbage folks. They're, they're simply not trustworthy, not trustworthy.

I trust CCW Safe. That's why I'm a member there. If you'd like to learn why I trust CCW Safe, why I decided they're the best fit for me for this kind of coverage. Go to [Law of self defense.com/trust](http://Lawofselfdefense.com/trust) and I have a little short video there explaining exactly why I chose CCW Safe and why you might want to as well. In addition at that URL, you can get a 10% discount code for your membership at CCW Safe, 10% off.

Not too bad at [Law of self defense.com/trust](http://Lawofselfdefense.com/trust). So let's see if we have any questions from the members right away. Uh All the usual suspects, pop, pop, pop.

Oh, there's talk about U SPS A U SPS, a Frank Garcia. I remember Frank Garcia from the years when I was uh actively competing. I did a U SPS A. It must have been a regional match down in Florida back in the day.

A long time ago. This would have been like around, I don't know, the late nineties 2000, but just before ID P A started and then once ID P A started, I was, I was full bore ID P A international Defensive Pistol Association. I actually just came across my, uh, my ball cap and my little name badge as a, uh, as a safety officer at the ID P A Columbia invitational match. That was the first ever ID P A match, uh, hosted in Columbia, Missouri, I guess, um by, uh, by Bill Wilson Ken Hackathorn. All those guys, the founders of ID P A. Uh It was great fun.

It was great fun. I really enjoyed those early years of uh ID PA. I haven't shot competitively in quite a few years now, so I'm not sure what's going on with the, all these, all these practical pistol sports tend to get gamified over time.

It wouldn't surprise me. It would be disappointing, but it wouldn't surprise me if that's happened with ID P A as well. Let's see if we have any interesting comments in the, in the youtube Twitter or rumble streams. Yeah, I, nothing would shock me more than if uh this judge dismissed this, uh, this indictment against uh Alec Baldwin. Based on this argument.

I just, I do not believe that is possible that judge, oh, I said Morrow Judge Summer, sorry. Her name is uh three names. Mary Marlowe Summer. It's Judge Summer. Very good. Judge by the way I've really enjoyed her. Very, no nonsense, very resting b face.

So, but her rulings I think have been very sound, not always favorable to the state. Uh For example, the state asked for blanket use immunity uh for Hannah Guterres. So the state could compel Hannah Guterres to answer any questions. They wanted to ask any relevant questions they wanted to ask about this case and the judge denied the request for use immunity.

So, uh I think the door is still open for the state to question Hannah Guterres. Uh But certainly the state didn't get what it wanted, which was blanket use immunity. Uh The state tried to get uh an experienced district attorney from the prosecutor's office to join their legal team. Uh And the judge said no. And the reason the judge said no was the reason we have a special prosecutor here, Kerry Morrissey whose whole career is as a criminal defense attorney, but she was appointed a special prosecutor for this case.

The whole reason Kerri Morrissey is the special prosecutor in this case is because, um, the prosecutor said I don't have the, the resources and staff to handle this. So I need a special prosecutor to be appointed. And the judge said, ok, we'll let you appoint a special prosecutor.

But when Kerry Morrissey, the special prosecutor now says, well, I'd like to bring one of the members of the prosecutor's office on board as a team member. Uh the judge says, well, no, the prosecution told me they, they didn't have the staff for this. That's why I allowed you to get appointed special prosecutor. Now, if I let you just add their staff onto your team, that, that undermines the complete rationale for you even being involved in this case. Special Prosecutor Kerry Morsey. So the, the judge said no, even though Carrie Morrissey said, but your honor, that prosecutor will uh take an extended leave of absence from the DAS office.

They will not be employed by the DAS office while they're working with me on this Alec Baldwin case. Judge said, nat, I'm not buying it. I'm not gonna let you do that.

So not everything has gone gone the prosecutor's way with this judge. Uh But, but I think, uh the judge's legal reasoning, I'm trying to think if she's actually made a decision, I guess one decision I would say that I disagreed on she's pretty strict this judge uh to give you an example. So if you're a non lawyer, you may not know this. But in, in the court system, there's often procedural rules about how things should be done. Uh things should be drafted, what they should look like, whether things should be on certain color paper or whether every line in emotion needs numbers along the side or should, should be double spaced or what font should be used. Lots of rules because otherwise things can just, it's just trying to keep order and efficiency within the system.

And a common rule is that when the parties file a motion and remember we use these fancy legal words, all emotion is really is a request to a court to do something, to allow something to prohibit something to order something. A motion is just a request. Often they're made orally in court. Uh more commonly if it, if it's anything substantive, they're made in writing so that the arguments can be fleshed out. You file a motion for what you want and it's written out and there's uh supporting citation to other law, you have a hopefully a coherent legal argument and then the other side can respond with um a counter motion, essentially a counter argument that's also written out. But often the courts will say something like. And this court has said this, hey, your motions need to be no more than 10 pages.

I'm not reading a 200 page motion. The judge is basically saying, uh our standard rules are make your argument. If it's a motion, make your argument in 10 pages or, or present a case for why you need more time. Uh Other than I would just like more space to write it.

10 pages. That's it. And the defense here, uh the defense team, the, the cliché in the law is if the facts are on your side, you argue the facts and if the law is on your side, you argue the law and if you have neither, how does it go? The facts are on your side, you pound the facts and if the law is on your side, you pound the law and if neither of the facts nor the law are on your side, you pound the table, you just act outraged and you talk a lot and you write a lot, but you don't really have anything substantive to say. This defense has been doing a lot of pounding the table and they submitted a motion that was 30 some pages long along with a motion to allow for them to exceed the 10 page limit, the normal 10 page limit. And the judge just said no.

In fact, that's the most current, that's the most recent order from the court is denying the motion to exceed the page limit. It's 10 pages. My friends, I'm not reading 32 pages of it. Does I see no need for it and you've given no need other than you would like to have additional pages beyond the 10. So, um but in a similar note, uh on Friday, this question of whether the grand jury indictment should be dismissed because the state destroyed evidence, dismissed with prejudice because the state destroyed evidence was scheduled to start Friday at 2:02 p.m. mountain time and go for two hours end at four pm mountain time.

So a two hour hearing on that motion to dismiss the grand jury indictment with prejudice because the state quote unquote destroyed evidence, they actually started an hour early. Uh, and I thought it would be an early day for me, but instead of ending after two hours, they just ran right through to the end of the day. Uh, mostly because the defense is talking about a lot of stuff that has nothing to do really with the motion that I can see. And by 530 or so, everybody was so exhausted.

And I thought the judge was going to say because the defense was saying we're not going to be able to finish today, your honor. We're not gonna be able to rest. We need more time. And I thought the judge was gonna say no, what do you need more time for more witnesses? You, you have to notify us of the witnesses.

There's three, that's all the witnesses we're gonna hear from no more. Witnesses. Trial starts in two weeks, no more witnesses.

We're not changing anything. I thought the judge was gonna say no, we scheduled this for two hours. So today you've had 4.5 hours so far, 3.5, whatever it was, we're, we're ending this today. Instead, the judge said, ok, we'll come back on Monday at, at 230 mountain time, which is what we're waiting for now, for the court to come back into session to complete this argument on this motion to dismiss with prejudice because the state destroyed, quote unquote, destroyed evidence. So I would, I would have held the defense to their deadline.

So I guess I would disagree with the judge but I understand why she's doing it. Um, it's not that big a deal. It's only a couple more hours.

Uh, so by and large, I, I'm having trouble seeing, uh, orders rulings by this judge that I would substantively disagree with, even if I might personally have done it differently. Um So really good. I really like this judge and she was the same judge for the Hannah Guterres case and I thought she did a great job there too, which is always nice. Let's see. What else can we address the running? Joe Biden ads on my stream? How funny. Yeah, that's youtube, right.

I, I have no control over what ads they run folks. Sorry about that. It's OK.

I mean, if they want to, I don't expect there's many of the law, self defense community who are voting for Joe Biden if you are bless your heart. Uh Someone asks, uh Steve asks, can the gun be hammer fired? So hammer fired would be if you just hold the trigger back, keep it, keep it held back and just pull the hammer all the way back and release it. Uh would the gun hammer fire? And I believe it would. Uh But then you are pressing the trigger, right? Oh Let's see. Paleo Con says, take a shot of your favorite adult beverage every time Branca says when he shot and killed Helena Hutchins don't do that.

You'll be, uh, you'll be in the hospital with, uh, alcohol poisoning. How much longer will this case continue for? So, jury selection is scheduled for July 9th, which I believe is a Tuesday. Yes. And that the trial proper one day for jury selection.

July 9th, the trial is supposed to start July 10th. And if I recall correctly, they said yesterday during, uh, at the very end of the day that the, uh, the trial was scheduled to last for eight days, which would bring it to the end of the next week, the Friday the 19th in theory. Now again, this defense has not had much substantive to argue.

Uh, so they've been just saying a lot of words and writing a lot of words and, and dragging things out most of the, uh, the big loud motions they filed. I, I found really specious and ridiculous, uh, as I've, as I've covered them over time and again, you can find all, all the Baldwin coverage we've done, uh, at [law of self defense.com/baldwin](http://lawofselfdefense.com/baldwin), little, little light reading for everybody, including my interview with Adam Baldwin. In fact, I think, I think I'll call Adam and see if he can come on the show again before the trial starts. He's, uh, he, he's not really a relation to Alec Baldwin and Stephen Baldwin and Billy Baldwin. Uh, the Baldwin brothers.

Uh, Adam tells me, Adam, of course, the actor from uh Firefly Full Metal Jacket. You all know Adam Baldwin, I hope, um, the TV, show Chuck, uh the TV, show the last Ship, right. That Alec Baldwin. In fact, so there's no doubt I'll pull up the thumbnail from, uh, the last time Adam was on. So Adam Baldwin, of course, has been in many, many shows, uh TV, shows movies where there's um, gun handling. So he's a decades of experience with all of that.

Uh, where is he? Where did I put your blog post? Oh, here he is that Adam Baldwin? So, uh, I'll see if I can get him on the show. I, I doubt he has anything new to say that he hasn't said before, but it's, it's always fun to have Adam on. He's a great guy.

He is as nice in person as you would imagine. Really, really nice guy. Uh, let's see, just make sure I'm not missing anything in court. All right, of, uh, of course, I don't, I don't know Adam's schedule, so I'll, I'll just have to reach out and see what's possible. Ok, let's see. Art asks, I wonder if the defense attorneys realize how poor their pleadings are. You know, I, I often caution folks, one of the reasons that we teach what we do, um, that we have so many courses that we produce so much content every week on use of force law.

Is because we want you to know what you need to know, to make good decisions in the crisis, in the moment of crisis so that you made good decisions. You're giving your lawyer good facts. Your lawyer is stuck with the facts. You give him none, none of us lawyers have a time machine where we get to go back and change what you did or, or change what you said. We're stuck with what you give us. You give us good facts. We can have a very robust defense.

You give us bad facts and it makes things really tough for us. And Alec Baldwin gave his lawyers a lot of bad facts and the law is very unfavorable to Alec Baldwin. I think I've always thought this was an open and shut case of involuntary manslaughter, always absent some, some bizarre circumstance like a genuine accident like this. A piece of the set collapsed and fell on Alec Baldwin and that's how the shot was fired into Helena Hutchins, but we know that's nothing like that happened. Um, so his lawyers are in a difficult position and iii I sometimes imagine, of course, I've not spoken to his lawyer so I wouldn't know for sure this is speculative on my part if and these are not dummies, by the way. Um, you don't get to be a partner at Quinn Emanuel. Uh, and the, the two lead attorneys on this are both partners there in Manhattan.

Um, unless you're a really smart guy and I'm really good at doing the law. Um, and, and they have a team of, you know, 78 associates. You don't get to be an associate at Emanuel Quinn without being a pretty sharp lawyer. So these are all good lawyers on the defense team, but they're still stuck with the facts and law that are on the table and I wonder if they, they realize that, you know, we really can't win on the merits. I mean, you, you might always get a lucky win, right? I always caution, there's always a greater than zero per chance you get convicted no matter how innocent you are. So don't get into fights, you don't need to be getting into.

But the reverse is true too. I mean, guilty defendants get, get acquitted. So there's a chance Alec Baldwin could get acquitted on that basis.

Just the noise in the system, not really on the legal merits, but, yeah, juries are dangerous and unpredictable creatures and that works both ways. So they may be thinking we can't really win on the legal merits. But what we can do is make enough noise now, so that when our clients inevitably convicted, um, uh, that basically we can say was an unjust conviction. So they're establishing a foundation for reputation, rehabilitation for Alec Baldwin. By, by all these lengthy,

uh, motions, they can say we filed thousands of pages of motions to the court. The court just didn't treat them fairly, that kind of thing.

So, but of course, that's just the speculation on my part. Nobody innocent should have to serve time in prison. And, well, no, but what, what's innocent? I mean, nobody knows who's innocent. We, we don't, we don't have a crystal ball that tells us who's innocent.

That's why we have this criminal justice system. But as I often caution the operative word and criminal justice system, it's not just this, it's system, it's a system. It's like a big machine. A big giant steam error machine that we feed people into. And the second most operative term of the criminal justice system, the phrase is criminal.

It's a system designed for criminals. It's not designed to process noncriminals. Uh So definitely, if you're a normal law abiding person, you, you, we generally don't, people like us generally don't do well when we're fed into the criminal justice system. Uh awakening asks if Alec Baldwin is uh found guilty, will the sentence be the same as hers was? It's entirely up to uh the discretion of um, judge summer. It's a maximum of 18 months, but it could be nothing she could say.

Well, there, there was no time served. He hasn't served any time, but she could say, I don't know, community service, whatever. So anything from zero time, all up to 18 months is the maximum Zach says, can Branca, can you explain why you hate women? So much. I love women. I love women.

I want the best for women. I want them to live their best and happiest life. I just think often they, uh, they're prone to making decisions that don't contribute to a, um, a happy life, a fulfilled and happy life.

Yeah. Women, women in America, modern women are, they got a, they got a, they got a tough, tough realization coming up quick, you know, by the end of this decade, five years from now, half of women, 40 years old and older are gonna be partner less and childless at 40 older. I mean, they're looking at spending the next four decades of their life in desperate loneliness and crushing poverty. I mean, I, you have to laugh because otherwise I, I can't imagine what they're gonna do with themselves.

It sounds terrible and all because I don't know, they, they couldn't, whatever. It's wrong. Different topic. Get me on a different show sometime.

But, uh, I love women. I, I want women to have, uh, the best life possible. All right. So let's see. Back to the members.

Oh, Phil said, uh, law self defense member, Phil, what was it? The defense attorney all in a huff about towards the end after the firearms expert said he didn't recall some meeting with them, right? So this firearms expert that's being interviewed now. So this motion to dismiss the grand jury indictment with prejudice because the state destroyed evidence. This motion is, uh, three

witnesses were called, were noticed and called. And the third of them is Lucian Haig, the firearms expert for the state from the first trial. Um, and he's called, uh, he's, he's the witness testifying. Now, when we, when we paused this argument Friday afternoon, he's an older guy, uh, who's a gun expert, right.

So, those of us of a certain age, if, when I was around guns, when I was shooting guns as a kid, we never wore hearing protection, we never wore eye protection. I mean, we just, we just wasn't a thing and you do that enough and you, you, you start losing hearing, right? I mean, I have no meaningful hearing loss but I have tinnitus from it, you know, or ringing in the ears for sure. So Lucian ha not the best of hearing, this is being streamed over. It's not zoom, it's some competitive product.

I forget what it's called, but it's a zoom like interface, everyone's using laptops and laptop speakers and laptop microphones. No one has a decent microphone set up, no one's using ear buds or headphones. Uh and the lawyer for the defense who was questioning Lucian Haig has a very, I don't know how to characterize it.

She's AAA woman, she's got a very buzzy type of voice and very like an uptick at the end of sentences, vocal fry, maybe it's called um uh but even I, I found it difficult to understand what she was saying sometimes and Lucian Haig had a lot of difficulty. So he kept saying, well, I, I can't hear your question. I can't hear your question.

Well, the defense, you know, Alec Baldwin is a criminal defendant. He has the right to confront his accusers and the witnesses against him. It's, it's part of the confrontation clause. It's a constitutional right. Uh And so to the extent that his defense counsel cannot effectively interrogate, uh the state's witness that could be a confrontation issue.

Um Plus the witness was maybe it's because he couldn't hear right? Or, but he's been interviewed before by the state. And so the state looks at his transcript from his prior interview and says, oh, this is a statement he made that we want to attack when we do the, the hearing in court. So now they have him in court and they're saying, um in our interview, didn't you say X? And they want to attack him for having said X and Lucian Haig saying, no, I don't, I don't remember saying that.

So he's denying, he said it. So now they, the defense wants to impeach him for changing his story essentially, um which they're allowed to do. That's part of confronting someone else's witnesses. But I guess they were not anticipating that he would say things inconsistent with his interview. They, they were just trying to trap him and now that he's saying something different, they're, they're suggesting they're getting upset, the traps they set for this witness aren't working. He's wiggling out of them and he's doing it in, in maybe a not appropriate way which would open the door for the defense. Perhaps to call an additional witness to impeach Lucian Haig on his statement.

I, I, I'm not sure what they have in mind but the reason the defense lawyer was getting frustrated loud at the end of the day was he had all these little traps. He thought they had arranged for Lucian Haig and Lucian Haig was just like, yeah, I'm, I'm not gonna step on that one. I'm not gonna step on that other one and that's why he was getting frustrated. Um Yeah, a, a lead detective on this investigation, Alexandra Hooters's Hancock.

Uh She sounded like she was testifying over a laptop while she was submerged in the pool. I mean, that was really terrible. Uh And the judge, by the way told, uh the defense told Kerry Morsey at the end of Friday's proceedings. Uh You gotta fix Lucian Haig's. Uh it because this is, he can't hear what he says, he can't hear what they're saying.

I could understand what they were saying, but it was a little difficult. He's saying he can't hear the questions. They have a right to confront this guy and get answers from him.

Um So you, you have to fix his it. So this works, this virtual hearing works or I will entertain objections from the defense about a violation of confrontation privilege. So that's where we were on that. Patricia from youtube says, uh, you're not wrong. I don't know what she's responding to. Men can marry and father Children into their fifties.

Women are prunes. She's right. Patricia says in every sense by 40 uh, I can tell you I had my, my last kid at 50. Um, not too many women are having kids at 50. That's, that's for sure.

I mean, uh and, and that's not to knock women, that's just, that's just biological reality. You, you think everybody would recognize that, but, you know, people make emotional decisions and they have bad outcomes and then, uh you know, I feel bad, I feel bad for all these women who were lied to all these years by feminism, wasted away their best years on, on some corporate cubicle job that they uh mistakenly they always call it a career. It's not a career, it's just a job. I mean, this is, this is this purple line here is, is, you know, typical fertility for women.

Um good till 30 then after 30 it just, it goes down not for every woman, not for every woman. I know, I know everyone knows the lady who had a baby at 80. Um But this is the average, typical the norm. Uh So uh and women, the average age of women today is like 31 in the US.

So if they're waiting until the, the cliff to even get married, much less have kids. It's, um, and there's no, there's nothing they can do. You can't rewind the clock.

Right. So, they're, they're, they're trapped. It's, they're trapped by their biological reality. It's terrible. It's terrible because they were lied to.

They were told they could have it all, nobody can have it. All, everybody makes choices and that all choices have opportunity cost. You choose this. You're not, you're not getting that. That's just the way it is. And, uh, and of course, at a certain age, uh, most people leave the workforce right by 50 or so, they'd like to leave the workforce. Their, their corporate jobs start shoving people out the doors.

They be, they've become expensive because they've been around a long time and they just, uh, you know, your, your corporation who you in effect married instead of a husband, um, you know, they divorce you too without any of the recourse you have in a marriage divorce. They just say we don't want you around anymore. And then what, then what? And unfortunately although women statistically make less money than men, they, uh, they have more consumer debt than men. More student debt than men.

They, they're more in debt than men are. It's tough. Still, I'm back on this topic because I'm still waiting for court.

Let me refresh that page. Yeah, nothing's happening yet. 230 it was supposed to, uh, start.

Uh, there was a, uh, another set of, um, briefings motions in court. Uh, one of them involves, uh, an expert witness for the state called Kent. What was his name? Kent Jorgenson. Ken Jorgenson is a guy who's an expert on um, various aspects of safety, uh, procedures on movie sets.

He was like a, actually, let me, I'll, I'm not gonna, I don't think we have time to go through the whole motion, but he was like a, he is the chairman of the Ayat Safety Committee. Ayats is the union for the crew on a movie set. He's the chairman of that union safety committee, uh Industrywide Labor Management Safety Committee. He was the chairman for the, the labor slice of that pie. Safety and training representative.

Uh for years, a ac craft advancement program committee, skills and safety training instructor from 1996 to present folks. That's 28 years being a skills and safety training instructor for the entertainment industry. Um So AAA real safety expert, he's been called by the state to be an expert witness for them and the defense doesn't want him to testify. Um And I haven't looked deeply through the defense motion why he shouldn't testify.

It's probably something along the lines of because the defense position is unless Alec Baldwin knew for a fact there was a live round in that gun, he cannot be guilty of manslaughter as a matter of law. That was one of the arguments, uh, made in court on Friday. Uh, and the judge just because they, they asked for the indictment to be dismissed, uh, because, uh, for failure to state a claim that's the civil law version of it. But, um, failure to, uh, lay out a criminal charge. Uh, because there is no evidence that Alec Baldwin knew for a fact there was around in the gun. And the defense is saying, well, unless the state can prove that and they can't even, they don't claim that this can't have been manslaughter. That's not what manslaughter requires.

And the judge ruled that way, that's not what manslaughter requires. I'm not dismissing the indictment on that basis. Um, so I think, but that just happened Friday. So until Friday, the defense was still arguing. Well, the only thing that matters here is whether or not our client knew for a fact there was a bullet in the gun and they may have been, um, arguing that the use of force, use of force that the safety expert, um, the safety expert for the, uh, state, this Kent

Jorgenson should not be allowed to testify because he doesn't know if there was a bullet in the gun.

So how, how could anything he has to say be relevant to the key question of whether or not Alec Baldwin knew there was a live bullet in the gun? We'll have to see. I, I don't imagine Kent Jorgenson will not be allowed to testify that would, I would be shocked by that. Jared \$10 Super Chat says just a shout out for motorcycle awareness. Lost my little brother last month to a careless left turn. I'm sorry to hear that, Jared.

I'm sorry. May his memory be a blessing? Riding motorcycles is an inherently dangerous activity. Folks, I don't recommend it. I don't recommend it. Uh I have people ask me all the time.

Hey, Andrew, you seem to like riding a motorcycle. I've been thinking about taking it up too. What do you think? And I always tell them no, don't do it. I recommend you not do it because it's sufficiently risky that the only possible justification.

And by the way, it's risky if you take all the safety measures, I mean, I wear all the gear when I'm on my bike, I'm wearing a couple \$1000 worth of safety gear. Um, even with all of that, it's an inherently risky activity. And the only way to justify that is if you have a passion for it, the passion makes the risk worthwhile because the risk is death and maiming crippling injury, right? And if someone had a passion for riding a motorcycle, they wouldn't be asking me what I think they would just be out doing it. So if you're asking me what I think, I know you don't have a passion for it and if you don't have a passion for it, you, you shouldn't be on a motorcycle.

Uh, no, the train is going by, I think I'm down to a couple of months left in this office and the train station. Uh, let's see. Did anyone see the gun expert in the Hanna Guterres trial? Yeah, that was Kookie.

What literally was his name? I think it was Ko UK. I, he, he literally, he pointed a gun at the judge on the witness stand. It was, uh it was pretty, it was pretty horrifying. The judge did, did not take it. Well, Cavalier asks, but if you've never done it, how do you know if you have a passion for it? You're driven to do it? No one had to tell me to ride a motorcycle. I saw a motorcycle out there.

I was like, yeah, I, I want a piece of that. Yeah, the government allow anyone to ride a motorcycle. All you need to do to operate a motorcycle in the public roadways is get a learner's permit. You, you don't even have because how else would you learn to ride a motorcycle except to ride it? So you just go get a learner's permit.

You can operate a motorcycle on the roads. I know riders who've been riding on learners' permits forever. I mean, they just, they never take the test to get the license to get the the motorcycle endorsement. Um I will say, I mean, one of the safety measures I take on a motorcycle is I rarely ride, um, around a lot of traffic. Uh, most of my riding here in Colorado is up in the mountains, usually during the week and there's just not a lot of road traffic up there.

Um, II, I don't think I would routinely like commute around the city by motorcycle. That's, I mean, I have, and I can, I just don't, I don't think it's why, I mean, I have a car to drive.

I would need a good reason to do that. And, and riding a motorcycle in traffic is no fun. Anyway, there's a lot of crazy people out there. I had some, uh, I had some lady start following me around the shopping mall. Uh, parking lot just yesterday.

Sunday took the family to the mall for a treat after church got some, got some lunch and then we went window shopping in the mall and this lady just started cutting me off right there in the parking lot telling me I was number one. Lots of head gesticulation. It's, uh, it worked out fine. I just, I just waved and drove away but, uh, there's crazy people out there, you know, part of, part of the thing with motorcycles too is most, most people riding motorcycles don't really know how to ride a motorcycle. Just like most people who own guns don't really know how to run a gun.

They just, they just don't, um, motorcycles are pretty easy to operate if, if nothing goes wrong. Either either with the bike or with the environment or with other vehicles, you just kind of, you know, turn the throttle and toodle along. Um, but, but if you're cut off or the traction gets sketchy or a driver is inattentive or you're an attentive, you're tired, you got a cold, you're sick, you're angry about something.

You're not, if you're not, I mean, I, I can tell you that I've, I've refused to get on the bike when I plan to just because I was upset about something, you know, in life, like we sometimes do get upset about things. I'm like, I'm not, I'm not in the proper frame of mind to be on a motorcycle. And I just, I just don't take it, I will say, I don't know how anybody rides as a passenger on a motorcycle. That would, that would terrify me. I've done it. I did it one time. Uh, and that was, uh, because it was part of a training exercise.

So the, the guy who was, uh, operating the motorcycle was a professional rider. And so he, he took me around the, the track, uh, basically to show me what the motorcycle was actually capable of which, which was about 1000 times more than I'm capable of doing on the motorcycle. But, uh, but it was a, it was a very educational and horrifying experience.

Yeah, maybe the lady in the mall recognized me. She wanted to give me a piece of her mind about feminism and how awesome it was. Zach says Branca, I was two blocks away from you when you were in Fredericksburg. But didn't know it until you streamed that night. Fredericksburg. When was the last time I was in Fredericksburg. Fred Fredericksburg, Virginia.

Oh, no, no. Um, in Texas. Is that what you're talking about last, last, did I stream from Fredericksburg? I was in Fredericksburg last December over the Christmas season. Yeah, it was great. It was very nice. I recommend it.

Fredericksburg in December is lovely. I've actually never been in there. Like now, I wonder what the temperature is right now.

What's the temperature? Uh, let's see. Weather. Oh, it's only 91.

It's almost that hot here in, uh, Castle Rock, Colorado. We've had a few days in the nineties now. That's not too bad.

Still waiting on court, waiting for New Mexico court. The youtube channel says motorcycles are very unforgiving. Steve says, yeah, motorcycles. I mean, they're, you know, they're inherently dangerous instruments like guns, um, like planes, you know, especially personal aircraft. I single engine, Cessnas.

I've got nothing against private planes. My, my dad had one for decades, um, flew it around. My, his brother who's gotta be approaching 80 now, still flies a, a very nice moony around. Um, but they're very unforgiving of mistakes. Um, and the consequences for the mistake can, can be severe.

Yeah. The closest I've ever come to a, a genuine, you know, like a collision with a car on my motorcycle is, uh, within five blocks of my home. That's where people are driving around the neighborhood, looking at their phones or, uh, they're an Uber driver looking at a phone or they're a teenager who's just learning to drive. It's, the hearing is virtual. I mean, the, the, the judge is in her courtroom but the, at least on Friday the hearing was virtual. Uh, for all I know, um, the, uh, you know, the solution to the technology issue could just be, bring, bring everybody in the court.

I don't know what they decided to do about that. Um, oh, the Nimitz Museum. Yeah. Uh, did I take the kids there? I think I did take the girls there.

Yeah. To the, they have a great War of the Pacific uh museum, uh, in Fredericksburg and, and attached, they have a, uh, and limits Admiral limits a separate little museum that you can also go to. They're, they're both excellent. I mean, they're, it's a, it's amazingly good. Um, yeah, I really like Fredericksburg. That whole hill country part of Texas is quite nice to visit at least.

Uh, Bernie Fredericksburg, looking back all of that much of Texas. I have to say sorry, Texans. Much of Texas is nothing to write home about that whole northern part up there.

To me it looks like the surface of the moon. Let's see. Yeah, I had trouble understanding that witness for the state, her, her buzzy little voice.

Um, I, I could understand it but I don't know how old Lucian Haig is. He might be 80 Lucian Haig, firearms expert, forensic science consultants. Well, the page that pops up is Michael Haig.

Michael is Lucian's son who looks like he's taken over the business and it looks like Lucian's not even listed on the website anymore. It's just Michael. Yeah, Lucian is handing over the baton. Well, so far it's just a law of self defense old home Week. Uh Texas John says, I suspect the

frequency range of the defense attorney's voice is in a frequency range that the expert witness has hearing loss. Yeah, that wouldn't surprise me in the least.

Yeah, they could be testing the technology in the courtroom and seeing evolution can hear any better. I, I have to say folks, I just don't understand why, why these people, I mean, these the partners are, I'm sure they're billing \$1000 an hour. I mean, when I consult on the case, I bill \$1000 an hour. Uh So I'm sure they must be and, and their associates have got to be 5, 600 bucks an hour. They're billing out maybe more. Why don't these people, why don't they have a microphone and a decent camera and, and earbuds? II, I just don't understand it.

I mean, this is a high stakes trial. Uh Yeah, I don't expect to be in Denver much longer. Uh We, we, we went to Texas in December because we're, we're, we're leaving Colorado for sure. We just don't know where we're landing yet. So Texas Hill country was one of the places we're looking at. Um, the Orlando area of Florida is another uh maybe uh we, we were thinking about Knoxville, Lexington areas of Kentucky, but I think the leading landing spot right now is uh the Nashville area Franklin around there.

So we, we spent a week there earlier this month and we really liked it in the Franklin area. Very pretty. So that's looking most likely. Now, let's see, John Anderson says, I think in Texas, you can only have a motorcycle learners permit for 100 and 20 days. But then can you just get another one? I think you can, right. Why wouldn't you be able to, yeah, for anyone thinking of moving to Colorado, just keep in mind, Colorado is rapidly becoming California.

We're about an inch away from the political state of California. Um And my, my view of that is if I wanted to live under California rules, I would just live in California and enjoy the weather. Let's see. Yeah, that's a big problem for me. For Florida is, uh, you know, motorcycle riding is only fun if the roads are curvy and the roads are only curvy where you have elevation changes and there is no, I think the biggest elevation change in the entirety of Florida is something like 100 and 60 ft, something like that.

Uh, but, uh, but, you know, if it was in the best interests of my family, that's what I would do. And, uh, I would, I'm actually thinking about leaving my current motorcycle in Colorado, um, and buying another one wherever I move to and then, uh, I'll just leave a garage here with a friend and when I wanna ride the Rocky Mountains once or twice a year, I, I can just fly in and hop on the bike that's already here. I don't have to drive it across, you know, Kansas, um, from east of the Mississippi to get here. So that's a possibility. Ryan Linder says rank is looking for the hawk to a chick in Nashville.

Downtown Nashville has a lot of those chicks in it and I will say that, uh, we would not, I would not be moving my wife and two young daughters to downtown Nashville. They, they have a lot of those, uh, whatever you call them, those, uh, bachelorette party vans going around town with a bunch, you know, full of a bunch of drunk broads screaming at passerbys and singing Taylor Swift songs poorly. It's, uh, it's, it's an interesting city but, uh, yeah, I wouldn't be living there. Uh, we'd live in the suburbs.

Yeah. So we, uh, legal marijuana has done no favors for Colorado at all. And, um, and I'm by, you know, I have a, at least I used to have a libertarian inclination towards drug use. I, I don't really, you know, I don't do drugs.

Uh, but I, I don't care if other people do but man, it's completely unchecked here in Colorado and it's, it's, it's not good. It makes a whole, makes the whole place just more toxic. It's just unpleasant if there was a, you know, some kind of proposition that we could vote on as, uh you know, residents of the state, I would vote no and not legalize it or at least not in public.

Joseph Silo says the defense is not arguing that Baldwin had to know there was a bullet in the gun. They are arguing that he had to believe there was a substantial risk that there was a real bullet in the gun. Well, what's substantial mean because substantial doesn't mean a high degree of risk. That's not what substantial means. But we, we use the word substantial colloquially, that means something like that. Um You know, there was a moderate risk but it wasn't a substantial risk, meaning big, substantial, literally just means there's substance to it, it that it wouldn't be speculative or, or contrary to our understanding. So for example, um if, if Alec Baldwin had been, had believed that he was holding an inert prop gun, not a real gun, but a gun incapable of firing real rounds, there would be no substantial risk there's no substance to any risk that there could be a real bullet in the gun.

But that's not what happened here. He, he knew he was holding a real gun. Uh, Tennessee has good riding in the eastern part of the state.

The Appalachians are nice riding. They're not the rocky mountains. Um, but I, I've ridden the Appalachians quite a bit when I lived in Boston.

I had a, a good money buddy of mine lived down in, uh, uh, well around Quantico, Virginia. And so I used to make that ride all the time and rather than take, you know, I 95 all the way down. I would, I would go through the Appalachians.

Uh, downtown Nashville gets rowdy mu three says, yeah, lots of, uh, lots of, lots of bars, honky Tonks with live music on that 11 stretch of road. I forget what it's called. Um, gets pretty loud and they, uh, most of them, all of them have bodyguards and security to, to check for weapons and stuff when you go in, I can tell you on, uh, good personal authority.

They don't do a very good job often. But, uh, but they're there lots of cops, lots of police presence on that, at least at night on that street. Overland says Kentucky is a great state. I've been here 40 years. No vehicle inspections. DMV is easy.

Their people are nice. Um, the, the, the, the single constraining criteria I have is, uh a top notch private school for girls. So, um, and they're in elementary and just going into middle school now. So we find, we identify the schools first and then we start looking for homes there. Um, and, uh, and my wife is very particular about the school, so I, I'm not sure she's had, we're also very

particular about the school's, uh, kind of social perspective, right? So we show up at a school and the staff has purple hair. We're not staying there. If we look at the school website and they have a big, you know, diversity, inclusion, equity initiative at the school, we're, we're just not sending our kids there.

Um And that takes a lot of schools off the table, even though if you ask people locally, they'll say, oh yeah, that's a great school. Um not by our standards. So there, there's a limited number of schools that we find acceptable.

I'm not sure we've had much luck in Kentucky looking. Let's see. Yeah, I've thought about Wyoming but, you know, I don't need to stay near, near Colorado. I have no need to do that. I, I have no family here. My wife's family is here but um and Wyoming just gets colder and again, the, the schools are an issue. It's a real thing.

Utah is beautiful. Uh My concern about Utah is we're not Mormon and uh I, I suspect that that can be a considerable hindrance uh socially it's on. Oh, it's on.

Thank you. Is there anything happening yet? Are there any questions closed captioning is on? Thank you for the heads up folks. All right, good afternoon. We're um continuing. D 1010 2024 13.

State New Mexico versus Alexander Ray Baldwin. Part of state their name uh Carrie Morrissey and Linda Ocampo Johnson on behalf of the State of New Mexico, on behalf of Mr Baldwin. This is Alex Sparrow.

I'm joined by Luke Nikas John Bash, Sarah Clark and Heather Leblanc. Good afternoon. Good afternoon. All right.

So we are going to do a cross examination and defense wherever you feel that you need to um begin your cross examination, continuance, including at the very beginning. Go ahead. Y yes, your honor. Um And I appreciate um that um given what occurred last time. I'm not gonna make a, a voluminous record at this time. Just reserve my right to make record further and hopefully we can get through this.

Um I, I hopefully don't have much more because of the voice um intonation and the email from the prosecutor. I'm just gonna ask the questions and he hears my, my voice. Ok.

So good. Good afternoon, sir. Can you hear me? Ok. No. Uh Oh, that's not a good start.

All right. So the, the lawyer that we're having trouble with last Friday, um that Lucian Hager was having trouble hearing was a uh a female lawyer who had a very buzzy, uh, voice. Uh, you normally wouldn't change lawyers midstream in a questioning like this. It's normally not permitted. Um, but, uh, I guess the judge is allowing for a switch in lawyers just for the, uh, the auditory purposes.

Luke, can you hear us? Ok. Ok. You talking the other? I, I'm sorry, the, the other, huh, Mr Haig? Can you hear us? Ok. No audio.

Um, that's obviously a problem on his end that we did not. Um I may be able to, he may be able to hear me um without um the, the um headset mister. Hey, can you hear me? I can now? Ok. And is my voice clear for you, sir? Yes, it is. Perfect. Ok. I'm gonna try to go through this as, as quickly as possible with you, sir.

So, uh so let me understand is Miss Clark, we're not, um, where's the echo coming from? So Sarah Clark was the female uh defense attorney with the bu the buzzy voice who is questioning Lucian last Friday. I guess the judge is surprised. I, I would, I would have thought the defense would have cleared ahead of time with the judge that they're switching lawyers. Like I said, this is, it's normally not allowed to do that. So the judge appears to be surprised that um Sarah Clark is not continuing this uh questioning of this witness. I was going to try these at \$370.

They're not working. They worked a while ago and I listened to a file, I don't know what to tell you. Uh I Luke, it's ok, just put him down. Uh If you can hear Mister Spiro, Mister Spiro will be asking the questions. So as long as you can hear him, you don't need the headphones.

Um Yy, your honor. The reason I believe that Miss Clark is not continuing the cross examination is because I explained to the defense over the weekend. And I did also send the email to, to faith uh that because of what Mr Haig has done for a living, uh He suffers from high frequency hearing loss, so he is unable to understand MS Clark because of the high pitch of her voice while he is under uh while he is able to understand others. So the the defense has decided to remedy that by having Mr Spiro ask the questions and I, I certainly have no objection to that.

I welcome that. Thank you. Ok. Any, any anything additional Mr Spira? No, I, I don't need to make a further record at this time. Hopefully, this can proceed and I will have a record to make after the testimony. I don't think we need to jump the gun and I know the court will give me an opportunity to make a record if and when necessary.

Thank you. Thank you. May I proceed? Yes. Uh Mr Hague, just to orient the chord. Um you agree that the testing that the FBI and Mr Ziegler did the destructive accidental testing um was unnecessary in light of the circumstances of this case. Correct. I would view it as unnecessary given the context of the case.

So what they're talking about here is the testing, the impact testing with the Rawhide mallet on the revolver by the FBI that ended up breaking the hammer and Sear engagement. Yeah. So that impact testing with the Rawhide Mallet that ended up breaking the hammer and Sear engagement. That's really testing for a fact scenario in which there was some kind of impact to the gun that arguably caused it to discharge. Uh a piece of the set fell on the gun, the gun was dropped and it struck the ground and that's when it went off and the impact testing is designed to kind of replicate that circumstance and see if that kind of impact is what might have caused

the gun to discharge. There was no such impact here, Adam, uh Alec sorry, Adam, Alec Baldwin simply pointed the gun at Elena Hutchins, cocked the hammer, pressed the trigger and shot her.

There was no impact of the gun. So in that sense, the testing was unnecessary, it just happened to be part of the standard. Uh Well, they, they wanted to investigate the various ways in which the gun might discharge without the trigger being pressed and shock is the theoretically one of those ways.

But when they say the testing was unnecessary, that's what they're talking about. And I'm gonna put up very quickly. Um, the prosecutors exhibit 80 which we looked at before and hopefully that works efficiently. Right? And, ok, great. And, um, as, as you spoke about and just to orient the core, the notch closest to me, um, the full cock notch. This is where at the very bottom of it or the left side of it there is, um, something missing, right? The notch.

Yes. Ok. And that little piece, um, and, and a piece of that was actually missing when you received the, um, hammer after the destruction at the FBI. Correct.

That's also correct. And the testing that you did, sir was to isolate the damage to the hammer there. Yeah. Yes. But the sear, which is what I want to turn to now, um, the sear is another important part of the firearm. Correct? Yes, it is.

And the sear is the, the top of the trigger, right? And the sear is what engaged. So I just want to remind everybody why we're here because the defense spends a lot of time talking about stuff. That is, it seems to me largely irrelevant to why we're here. We're here because the defense has filed a motion to dismiss the grand jury indictment with prejudice, the indictment for manslaughter, the, the foundation for dragging Alec Baldwin into a trial. A criminal trial dismissed that indictment with prejudice because the state destroyed evidence. So all the questions and all the answers we're hearing ought to be addressing that issue ages with these notches in the hammer.

And what sort of catches within those notches there also? Correct. And the sear is about the size, I think you said last time of, of, uh, the tip of a screwdriver, small screwdriver. Um And so the way that the sear interacts with the hammer is, um that it can engage with the notches in, in a very precise way to stop the firing from happening.

That's right. And if you were to change the depth of the sear, the angle of the sear, take a piece of the sear off, it could have an impact there. It might. And, and if I asked you if I gave you a firearm and said to you, you know, take the sear out of the firearm and file it or change it. How would you do that? I'm not sure what my purpose would be. Can you clarify, what would be my intention of doing that? Well, forget your intention for now.

I mean, I, I if you were to, if you were to file it, how would you do that? Or you can't answer that? You're saying to me, you can't possibly answer that question without knowing the purpose

of the alteration. Right? Well, let me ask you this can you, you can and have, when you disassemble, disassemble firearms, taking the Sear piece out. Correct. Yes, many times. Ok.

Now, the testing of this here, we can take this, um, exhibit down the testing. Um, you did where you replace some of the parts in the firearm and isolated the damage to the hammer. Um, you couldn't do that with this year because of the way it broke off. Correct. Yes, that's right.

And you, you viewed any attempt to do so as pointless effectively. Yes. But you did uh observe damage to that piece of the sear. Correct? Yes, it's, well, it's broken that's damaged. And, and you observed the, what you called egregious marks that have an angular component on the actual sear itself true on the working surface that was observed much later. But yes, you're right. Well, you reported it much later but is it fair to say, as I think you testified to last time, um, that in July when you went to do your report and you went to examine the firearms, you and your son, um, ended up taking these uh the firearm under a microscope and you observed it then, right? That was at the end of a lot of other examinations, understood.

Um And in beyond the other examinations, you also reviewed materials, right? You had many binders from the prosecutors of materials, correct? I have a box full of binders. Yeah. And you can always, as you know, you've been doing this for 50 years, you can always ask for more things.

Right. If I don't see what I need to get an understanding of the issues I would ask for more and the prosecutors can give you more things. Right.

I haven't been refused so far. Uh huh. And so when you, um, did your first report and we went through this, you did one in August and then one in late August that did not include any observation of the marks. Correct.

That's right. There's actually three in August. It turns out right, the first two in August, just to make sure it's clear you do not talk about indicate or notice these marks and in the third report, you do. Correct. Yes. Ok.

But it, it's fair to say you didn't go back to viewing the fi the firearm or the piece between tests two and, uh, reports. Two and three. You hadn't noticed earlier this marking on this year, correct? I had photographed it a lot. Actually, my son had photographed it a lot, but I hadn't given it much thought until the testing resulted in the second report. But after the second report, it obviously was on your mind, sir, I gave it some thought. Yes. And I thought documented like as a final, uh, report showing those marks and we'll put up that final email and report as it was transmitted.

August 31st of 2023 almost a year ago now. Right. Yes.

Ok. And if we could put up the cover email to that report. And as we're doing that, sir, you deemed it necessary to make a third report. Correct. Not really.

I thought it was a, a useful idea mainly for the reason that I figured somebody, another apte member or another competent firearms examiner might see that and wonder why didn't I point it out? I mean, sir, you found it necessary enough. I mean, you, you, you, you did it, you did the work, right? And did the work you charged the State of New Mexico for it, didn't you? I'd have to look in the bills. Well, you have no reason to think that you did this as a, as a pro bono third report. Do you, sir? Uh, I've forgotten your last name but I spent a lot of time on everybody's case. It never ends up being billed. So you can't tell me. Ok, my name is Alex Spyro.

Um, just so you have it if you need how to pronounce the last name, bro, your son who's an expert in his own, right. Agreed that, um, this report should be done and sent. Correct? Yes. You sent it to a prosecutor in an email, correct? Uh, yes, speed. No other prosecutor.

Other than one prosecutor M Morrissey. Correct. I think there's several attorneys involved for the state. She is the person to whom I, um, regularly deal and receive requests and by sending that you, you discharged what was on your mind in terms of the, the um notice that you gave in the modification of, I just, I just noticed I want to point it out. Uh Lucian Hag's email address. The from field here is aol.com, the only other person I know with an AOL account today is my dad. He's 85 of, of what you wanted to document in terms of that modification.

Right. Yes. And the reason for it and the reason for it, OK. The reason for it. Um and the report had um seven pages figures and images, Comparative Photos, right? Um Let's just take a moment to review it. You'll scroll it up.

I, I guess I'm just wondering if just for the record, if there can be an announcement about what exhibits we're looking at? II, I did make an announcement. This is defense three. Oh, I'm sorry. Ok.

Defense three. That includes the email and the report. It does my apologies. Not at all. So, um I, I if we could just scroll to the to the bottom, you see there are different figures, right? Yes. In comparisons, there's, it's seven pages you saw that? I, you've gone rather quickly but uh I see the figures we wanna stop on that.

We'll go, you see the the bottom. It says page seven. Yes.

Yeah, I mean, it was longer than your second report. I haven't down to the pages. I trust you to do that. Um And if we could go back up and and to the signature line. Yy, you signed the report, right? And your son signed the report, right. Yes.

And on the cover it says, um first judicial district State of New Mexico. I mean, you knew this court, this report could be used and presented in court. Correct.

I'm not sure how it might be used. It would inform the person that hired me that I did look at these particular marks later under the microscope and you've already seen felt inappropriate to

in a report of some sort for the reasons I previously stated, you know, it could be used in court potentially at some point. Correct. I'm not sure that that's not my call. Well, I know it's not your call, sir, but you've, you're, you're one of the most experienced experts in firearms in the United States. You, you know, do you not that you are reports can end up being part of court records.

You do know that, sir, I know they can be but not necessarily will be right, but can be. And in this um, report, you indicated um that the off axis or diagonal, diagonal tool marks of an unknown origin, it seems unlikely, although it cannot be excluded that these tool marks are the result of the damage incurred during the FB I's impact testing. Correct. Yes, you read it correctly. Ok. And when you say the word unlikely, right, you, you obviously mean um it's less than a 50% chance fair. I'll, I'll agree to that.

And when you say the word unlikely, you obviously also don't mean a 0% chance. You mean somewhere in between, say 10% and 40% somewhere like that. Is that fair? Uh It's not necessarily fair because I wouldn't give it a numerical value, but I stand by the statement made at the time.

Well, but let me just ask you this um, to the best that you can WW when you say unlikely, can you just tell me what you mean by that? Yes, I have a thorough working knowledge of how this kind of firearm works. I've looked at them many times and I fully expected if the force delivered to the hammer by Mr Ziegler was in a back to front alignment. Those sheer marks, those rough marks that we're now talking about would also be in a front to back.

I didn't know how he did it, done his test. I didn't really know or have a good idea of the history of the gun if it had ever been used somewhere else or worked on at the time. So it was the appropriate statement at the time based on how this gun works. But my lack of information. Yeah, it, it, it, the word unlikely is all I'm focused on. What do you mean when you say the word unlikely? Just so I understand in a report, the likely way such sheer marks would appear would be in a perfectly back to front or front to back but not on a diagonal.

The, there has to be a force that's coming in at something other than straight on if that breakage occurred. If that, if those marks were deposited during Mr Zig's final testing. All right. Now, let me, that's my thought. Yeah. Let me try, let me try AAA third in slightly different way.

Forget the testing and what you learn, what you claim to learn later. I'm just asking when you, when you put words in reports about the likelihood or unlikelihood. Here, there's a phrase, although it cannot be excluded, you have phraseology like that in your reports. I'm just asking about the word unlikely. What do you intend for it to mean it was the appropriate assessment at the time? I wrote this report? Yeah, I, I I'm gonna try one last time, which is, I'm not asking, I'm not questioning whether it was appropriate. Ok. I'm just asking you, what are you intending to convey with the word? Unlikely some experts use, you know, beyond a mathematical certainty.

Highly unlikely. I'm just trying to understand the phrase, the word unlikely. Well, I think you're reading too much into it. I just meant it for what it says simply based on what I knew about how these guns were.

I felt it was unlikely the breakage shearing off of the sear tip of the trigger would cause marks that would have an angler or angular component to them depends on what the meaning of this. You um do agree and you write here that these marks do not appear to be original manufacturing marks. True. Very true. Yes.

OK. There was evidence here of modification or damage there. Yes. Um The seer did not look uh 100% as expected or normal, right? So if it's only viewed in the macroscopic view, and there are three or four photographs that show that one wouldn't notice the marks on the working surface and simply putting the two pieces back together, the dimensions are correct. The uh sear tip, is it still at right angles to the axis of the trigger? So it looks normal until you look at that area under a high powered microscope. And then at that point, it doesn't look as normal or expected. Correct.

You're right. It does not. No one rushed you in preparing this report. No, uh no one prevented you from requesting other information for this report as you formed your opinions.

Not that I recall, you received the list of items that you asked for at the top of your first report and continuing throughout this case when you requested them. True. Yes. And um I'm not gonna keep staying on this report. We we, as you noted, it's an August report.

August 31st of 2023 right? Yes. And that's an easy day to remember the last day of August of last year. Fair. Yes, it is.

Ok. Well, we won't keep the date up, then we can take this down. Uh, earlier this year. You testified in a homicide trial in the very same courtroom for the Armorer, Hannah Gutierrez Reed. Do you recall that? I do? Ok.

And so at that time, many, many months after this report, many, many months after your observation, you were asked. So other than the FBI testing, breaking those components, you didn't see any other evidence of modification or damage. You said I did not, right? I don't recall. But if you're reading a transcript, I don't dispute it. If you gave that testimony at that trial, that would not have been accurate.

Correct. I'm not sure. I guess I'm missing. So I hear you just fine, but I'm missing something in your question. I don't think that you're missing anything. I think sometimes people say things that are inaccurate life. OK.

So I'll read it again if you need me to. But I think you and I both know that it's inaccurate, right? Because you just told me a moment ago that you did observe modification or damage, right? The question I just asked you was the exact same question of what you knew August 31st, 2023.

Now, here we are later in time at Hannah Gutierrez Reed's trial. And you were asked so other than the FBI testing, breaking those components, you didn't see any other evidence of modification or damage and you responded, I did not. That was not accurate, sir. Correct. No, I think it's perfectly accurate.

We're missing you and I, you saw no evidence of any modification or damage on this, um, firearm on this sear outside of the FBI testing, right. Just wrote a report that said earlier and just told me under oath that your report indicates you did see modification or damage that was not likely caused by the FBI, didn't you? I guess you've got me. Well, computers at this point.

I don't see the difference. You don't see the difference between saying on August 31st 2023 I quote unquote, see no evidence of mod. You see evidence of modification and damage, excuse me. That on August 23rd, August 31st 2023 you see evidence of modification or damage that is not attributable to the FBI in your estimation. And then at the trial, you say that mistaken or not, sir. And it's easy to just say you made a mistake.

If you made a mistake, you told the jury just to be clear. August 31st, he's saying it's unlikely not that it's not that you saw no evidence of modification or damage. True.

Yes, if you are and that's a mistake, correct. It's giving it further thought and it just had to be a consequence of the FBI work and the way Bryce Ziegler used his mallet on the hammer, there's no other. No, no, sir, sir. The Ziegler stuff didn't happen until the last week. Ok.

I'm going back in time to the jury trial that happened before her honor. Where way before you ever spoke with Mr Ziegler? Way before? Ok. You did the report, you stood by the report and you testified under oath the opposite way, right? As to this one issue and you made a mistake when you testified in Hannah Gutierrez Reed's trial. Correct? I don't believe so. No. What, how, how explain that to me, sir.

How, how you, you just told this court that you did see evidence of quote modification or damage, not attributable to the FBI. And then you told the jury that you saw zero evidence of modification or damage. That was a mistake, sir, it's ok to have made a mistake. Sounds like you're testifying. It was not a mistake. It was my opinion at the time of trial. And as I recall, I now had information not from talking to him, but from an interview of Mr Ziegler by the prosecutor.

And I then by the time of the trial learned that he used no apparatus to conduct his impact test. He did it by freehand and right away as soon as I knew that there's the opportunity for an angular component to his wrapping of the hammer that would explain it. Mr H, do you remember when you testified before the court on Friday? Just a couple of days ago, you confirmed that the first time you ever spoke to Mr Ziegler was a week ago. No, Spiro is losing it here. Spiro Spiro thought he had a trap, he thought he had a trap.

Alex Spiro thought he had a trap for this guy. He thought the trap was on August 31st. You said there's this weird diagonal marks here on the sear that are unlikely to be, be caused by the FBI testing then. So that's one point in time.

See if I can, I need a bigger screen, I guess. So that's one point in time. Then at the trial, you said, no, I don't see any damage that's not attributable to the FBI testing.

Now, a week ago, just a week ago from today or last Friday was the first time that this guy Lucian Hag talked to the FBI tech and Alex Spiro thought, well, he's trying to say this expert witness is trying to say that he, he now believes at the time of the trial of the Hanne Guitarist trial. By then, his opinion had changed because he had new information that when the mallet test was done, it was just a freehand swing of a hammer. It wasn't like this was done in a machine where the gun was locked in place.

The blow was from a very specific zero degrees and a freehand swing of the hammer could introduce diagonal marks. So he learned that before the Hannah Guterres trial. So by the time of the Hannah Guterres trial, he's thinking, yeah. No, these, these, these diagonal marks could be the result of the FBI testing.

So I didn't see anything that couldn't have been the result of the FBI testing. Alex Barrow was thinking, but he didn't talk to the FBI guy actually talked to him until a week ago now. So he didn't have access to any new information that could have changed his opinion before a between August 31st and the Hannah Guterres trial. Lucian Haig is saying now is no, no, I I learned about the method of testing with the Rawhide Hammer, not by speaking to the FBI guy Ziegler a week ago, but from seeing writings about his testing before the Hannah Guterres trial.

So Spiro thought he had a trap for this guy, but I don't think he does. I think this guy has a reasonable explanation for why his opinion changed in such a way that it's not just an error. So this is the, this is the key point, right? If this is true, then there's no rational explanation for why Lucian Haig's opinion about the possible cause of that. These diagonal marks changed between August 31st and the trial, the Hannah Guterres trial.

It can have been from the personal conversation with Ziegler that Lucian Hank had because that only happened a week ago long after the trial. So for the change in opinion to be rational. Lucian Haig needs to have acquired some new information between August 31st and the Hanna Guitarist trial testimony not a week ago, but Lucian Haig has already said, well, I, I had new information other than speaking to Ziegler a week ago before the trial that he's referring to. Darn it. All right. Mistake, sir. It's ok to admit a mistake.

Sorry, folks, you got to just look at a silent me for a few minutes. The trouble is folks that I see the image and I hear it the whole time, I just forgot I didn't have it on screen. So I rewound it a little bit. Sounds like you're testifying. It was not a mistake. It was my opinion at the time of trial. And as I recall, I now had information, not from talking to him, but from an interview of Mr Ziegler by the prosecutor.

And I then by the time of the trial learned that he used no apparatus to conduct his impact test. He did it by freehand and right away as soon as I knew that there's the opportunity for an angular component to his wrapping of the hammer. That would explain it, Mr H. Do you remember when you testified before the court on Friday? Just a couple of days ago? You confirmed that the first time you ever spoke to Mr Ziegler was a week ago? That's true. 17 or face to face on Zoom. Uh huh. And that was the time where you learned new information that caused you to change your opinion.

Nothing caused you to change your opinion as you testified on Friday until you finally were in the room with Mr Ziegler. Many, many months after Hannah Gutierrez Reed's trial, you just told this court this one business day ago. No, it's true. I did not have a face to face by Zoom with Mr Ziegler until the 17th. But I was now aware by the time of the trial of his methodology, it was not clear in his notes, prosecutor interviewed him or asked some questions and relayed that information to me that left those diagonal marks fully explainable, only explainable by the impact testing.

And if this is the opposite, hang on your honor, I have a request. If we were doing this hearing in person, what would be happening right now is Mr Spiro would be showing me a copy of the transcript that he's referring to because the court would require him to do that. Would, would it be ok if he can he email me the trial transcript that he's referring to? I have no idea what he's referring to and neither does Mr Haig.

Well, ok. So let's let, let me just say this. Ok. If I, I if a prosecutor is listening to testimony that a prosecutor knows is false. A prosecutor has an obligation to correct it.

Ok. That's the first thing I'm gonna say. And the prosecutor in this case knows full well that what Mr Hague, whether it's faulty memory or intentionally is saying is incorrect because he has over the course of the last three weeks confirmed many, many different times that the only time he changed his opinion was a week ago.

So this testimony that he's given stop, stop, stop, stop both of you. I'm just asking you, you're gonna continue, you're not gonna get the transcript. He, I, I, uh, I believe he's testifying from a, from a transcript, but I'm going to assume it's in good faith that he's using the, uh, quoting from the, from the uh court. So we're gonna move on. So, go ahead when you said that it, it, it, its fourth day of the trial at 15 to 18. Uh, when you said that statement at Hannah Gu Guerriere Gutierrez reads trial.

Nobody corrected that statement. Correct. I don't even recall testifying to that.

So I can't answer that. Ok. But you don't recall anybody correcting it either. Do you, why not? Um And you know, um, about that, what your Mike, your, um, son, Mike testified about in front of the grand jury regarding this issue. Do you know that I don't have a recollection of it? I read it at one point in time, but I don't remember any of it.

And when later in time after the Hannah Gutierrez retrial, you testified, um, you, you sat down for a pretrial interview in fairness. Folks. The judge, the judge may see that the defense is dragging this out. This is, I understand what's going on here perfectly. The judge may understand. So the judge may just recognize why would she believe these, this defense counsel is acting in good faith? They've done a lot of stuff that doesn't look like good faith so far in the motions. I've seen pretrial the uh but the judge may be recognizing the defense is just trying to drag this out as long as possible.

They're talking this nonsense. There is a, they're trying to say that this expert witness changed his opinion between August 31st when he wrote his last report and when he testified in the Hanna Guterres trial, and he only had new information after the trial. So that cannot explain his change of expert opinion. This witness has already testified. No, no, I learned new information, not personally from the FBI expert but from in additional knowledge about his testing methodology before the Hannah Guterres trial between my report and the Hanna Guterres trial. So there is a rational basis for his changing of his opinion. The defense lawyer here, Alex Sparrow thought he had this guy trapped, he doesn't have him trapped.

So he's very frustrated. Now, the trap did not work that he believed he had. And so he just keeps hounding and hounding and hounding and saying things that are not consistent with Lucian Haig's explanation. So Kerri Morrissey the special prosecutor objected saying, hey, you, you keep attributing statements to this guy previous, can I see the transcript? And the judge is like, no, no, no, no. We, we don't need the transcript folks. If the judge has already made up her mind about this motion to dismiss the indictment with prejudice and has decided she's not going to dismiss the indictment. She's not gonna let this drag out by having people go retrieve transcripts, put the process on hold, wait half an hour, get the transcript up.

Now, everyone's got to get their own copies of the transcript. Everyone has to get on the same page. The judge may already have made up her mind. She's going to deny this motion.

It's ridiculous and she's just going through the motions now and she wants those motions to be completed before sometime next week. View in the Alec Baldwin case, right? You remember because you said you remembered Miss Clark, you didn't remember anything else but you remembered seeing Miss Clark for the pretrial interview. You remember that I do and you knew it was important to tell the truth, of course.

And Miss Clark even told you, make sure you tell the truth, right? I don't remember that. Ok? Um And at that time, you said that the seer looked as expected and normal, right? I did. OK? And I I don't know, you said you don't remember that pretrial interview. I do.

Excuse me. I like uh I do now because I was sent a copy of it. I didn't have one and I viewed it this morning. Much of it came back to me. Did you know that that's improper, sir, while you're on the witness stand? I'm just trying to help you out here.

I, I, and I appreciate that and if you just answer my questions, honestly, that'll be the best help for both of us. But I'm asking you a different question, which is, do you know whether or not that's improper, what's improper that while you're on cross examination, you are not to receive materials from one party and do anything with them. Do you understand that? No, I don't, I wanted to know since I couldn't remember that interview, what the questions and answers were simple as that. And do you remember? We'll go back to that and we'll put a pin in that.

Um Well, let me ask you this. You, you've been an expert witness for 50 something years. Yes, I have. And, and you don't know that while you're under cross examination, you're not to be speaking to the uh party calling you and getting information from them.

You don't know that rule. So the disconnect here of course, is that all of this hearing was supposed to be done in two hours on Friday. Instead, the defense dragged it out for four hours and still wasn't done. So that's why we're here today. Another 2.5 hour schedule today. So we had a break over the weekend.

I guarantee you that maybe 100% of the time, 99% of the time when Lucian Ha has testified before. As an expert witness, there wasn't a weekend break in his testimony, he was on the stand the entire time. That would be normal. So of course, nothing's happening during his examination under normal circumstances that wouldn't be known to all the parties.

But here he had a whole weekend, he realized his recollection was fuzzy and so on some issues. So he decided to clarify. I don't think anyone told him before they recess on Friday. Don't look at anything. I don't remember that instruction being given.

All the lawyers may just assume that he knows that because they know that. But that doesn't mean he did anything malicious here. I'm not aware of what is the. Ok. Well, do you remember live in front of you at that interview? The defense learned for the first time that there were additional reports involving this case after your initial report in this case.

Do you remember that? I do now? Yeah. And it happened live in front of you because you said something right spontaneously that caused the defense to realize, oh my goodness. There are additional reports. You remember that happening right now? Yes, I do. And you have said in this courtroom that um y your understanding from the prosecutors was and I quote, that the reason we didn't have the additional reports was a quote breakdown in communication. Do you remember that? I don't remember that specific line of questioning. I all I know is it got resolved by the end of that interview.

Actually, it didn't get resolved by the end of that interview. Because don't you know that later after more spontaneous statements by your son, we learned that there was a third report that casted doubt on everything you all had been saying in front of Miss Gutierrez Reed and it is at her trial and in front of the grand jury and at your previous pretrial interview, which is an objection, these are conclusions of, of, of fact and law, there's, there's nothing here that casts doubt on everything he said at every other time and having to do with these proceedings in the

Hannett trial. That's just, that's a, that's estrogenic hysteria. That's what he wants everyone to believe. It's like he's talking in front of a jury. You got back, which is why you got called back.

Ask questions, please stop testifying. Thank you. Did you learn at a later point whether the third report was eventually turned over to the defense? Did you learn that you can handle the truth? Lucian Haig, you can hand we stand on that legal wall. Yes, I did. Got it. And I think you started to say this earlier.

But II I, you, you volunteered that the reason that you wrote. The third report was because of this anticipation of cross examination. Is that, is that your testimony, sir? No, it was anticipation that a colleague, an af a member or maybe a private person, suitably qualified. Would say some of them many, many, there are over 3900 photographs that Mike and I took would see those marks and wonder what did Luke think about those? Did he notice them? Oh, I put it in that report, that 3rd August 31st report, right? And there are certain things that are de minimis that you could be asked about on cross examination or a word you could change in a report this to you and your assessment of what another expert would think was sufficient for you to do a third report there. It was a stimulus for that, whether it was needed or not. I just felt I've been down this trail so many times and I don't know what a person did.

I can't tell necessarily from their worksheets that this case is an example. So photo documentation notes are really important and there are lots of pictures of this reassembled trigger and seer who ultimately include photomicrograph of the working service. The thing we've been talking about now for half an hour and um you presumed your presumed oversight, you thought would let allow this to, to go in an un untoward direction. That that was your phrase, presumed overs oversight.

If you didn't make this report could go in an un unfortunate direction during your cross examination, right? I'll have to reread it. It says that I don't recall. You. Um, can you demonstrate for me prior to Mr Ziegler's beating? Which we're about to turn to that happened a week ago. Can you just demonstrate for me how you understood the hammer test to be sure the revolver was mounted in a fixture? That's great.

So it isn't going anywhere. This guy's going to get my channel cancer hammer at full cost position. And then his free hand swinging a Rawhide mallet. He couldn't remember which one or what the weight of the head was multiple times this discharges. I'm gonna lol of the hammer. He conceded that there was no way he couldn't be sure it was perfectly front to back in this axis and then it finally failed. And when he took it apart, the sere tip was broken off.

And after your meeting with Mr Ziegler, can you explain to me what your understanding was of the mallet test? I didn't have a meeting with him. I saw him on a Zoom uh arrangement and the questions have been asked uh by MS Morrissey and I asked at some point, could I clarify that? And I was allowed to do that? Uh huh. And your understanding after that meeting, how did it change in terms of how he hit the gun with the mount? I never knew exactly how the gun was mounted and how it was struck. It wasn't in his notes. It's not exactly my question.

I'm gonna try again. How did the, what he described? Can you now demonstrate for me what your understanding is now? I just did in an unorganized way. It wasn't in a fixture like a pendulum. I built a device that will do this so it keeps the angle perfectly straight again.

The, the key point here it's becoming so obfuscated. The key point here is Lucian Haig's opinion about these diagonal machine marks changed between August 31st when he issued his last report and his testimony in the guitarist trial earlier this year, Alex Burrow wants to say the only rational explanation for that change would be information. This guy only learned after his testimony, that's to impeach him the but Lucian Haig has been explaining that no, I learned new information before my testimony after my report. But before my testimony, that explained to me how these diagonal marks could have happened. That new information is the gun was not struck and mounted using a rigorous device that accurately uh rigorously controlled the angle of the strike. He just was whacking at it with a mallet from different angles, uncontrolled angles that could result in the diagonals.

I learned that before my testimony. So by the time I testified, there was an explanation consistent with the FBI testing for the diagonal marks. He had that understanding before he testified. So when he spoke with the FBI Tech a week ago via Zoom, well, the FBI TECH just confirmed what he'd already known. So the meeting, the conversation with the FBI Tech did not change his understanding after his testimony at the Hanukah Terres trial, his change in understanding happened before his testimony in the Hanni Guterres trial. But Alex Spiro needs the change in understanding to have happened after his testimony so that there's an unexplained inconsistency between Lucian Haig's last report and his trial testimony and we can know the actual force of impact.

Don't know any of those things concerning his uh rawhide male test. Right? I'm, I'm now getting confused. I had asked you before what your understanding was prior to meeting with Mr Ziegler. Ok. Right.

I'm, I'm not uh pardon. Go ahead. Sorry. I thought you were. I'm now asking what your understanding was after you met with Mr Ziegler. And you don't like the word meet because Alex Spiro needs the change in understanding to be the meeting with Ziegler that happened a week ago for Alex Spiro. That needs to be the point in time at which Lucian Haig's understanding changed.

Lucian Haig has already explained his understanding changed in between his last report and his testimony not a week ago. So there was a change in his understanding. It didn't happen a week ago. So it's not before you met with Ziegler and after we, you met with Ziegler, which is what Alex Spiro needs. This lawyer needs that to be the case. The relevant question is, well, did it happen, you know, before you had this new information prior to your testimony in the trial or afterwards for some reason that you, we saw him on Zoom and spoke to him.

OK. To the form of question he keeps asking like two and three questions in one question. Can we just have a simple question? Not a compound question? If uh if Mister um Haig is confused, he can ask for um clarification. But let's just let's try to limit the compound. Thank you. Do you understand what I'm asking, Mister Hick? I believe so I had an understanding from a previous interview of which I was not a party but heard the written results or noted results from an interview of Mr Ziegler by I believe by Kerry Morrissey.

He was using a broad hide mallet and a free hand motion when we had that zoom meeting on the 17th. That's what I wanted to clarify. There are ways to fix a mallet in a pendulum like fixture. Uh So I'm pretty sure at this point we're talking about a freehand swing of unknown impact at an unknown angler and that was verified in the and that understanding was not changed by the interview because all Ziegler, the FBI lab tech did was confirm that he didn't have a device to do this test. He was just hitting with a handheld mallet. So nothing changed based on the interview, June 17th Zoom meeting.

And, and that's when you first learned that there no learn that a refinement of his impact testing as to how he did it. And it was after that time that you took back your conclusions in the August 31st report. Correct. No, I think by the time of trial I had enough information that of the impact testing that that was the only logical explanation for the, for the diagonal aspect of the marks on the working surface of the broken sear. You uh when you sat down with virtually Mr Ziegler, Miss Morrissey gave you some dates, right. I'm sorry, Miss Morrissey gave you some dates to choose from, to sit down with him.

Right? To, to ask questions. Yes. Right. And did you get the impression that he even knew he was showing up to that meeting to see you or to see Miss Morrissey? And you speculation, did you have the impression that someone else knew something? It became apparent objection, speculation. He's asking Mr Haig to speculate about what Mr Ziegler thinks. It's a, it's a, it's not correct, but it sounds like Mr Haig is going to answer something about being a parent.

So let's let Mr Haig answer that question. Yes. It was pretty apparent Morrissey. You're too slow, you were too slow. You, you let him start to get an answer out. I could see him, he could see me and he gestured as to how he slung the mallet. The Rawhide mallet struck the hammer.

Ok. So you were, you were there in this meeting? Um, um, and it was about an hour. Is that fair? Probably? Ok. Um, there was no parts of guns at this meeting where you all were looking at parts of guns under microscopes and things like that. Right. Not at his end.

I may have brought mine for a demonstration. I don't know. You don't remember. I don't remember if I produced mine. He certainly didn't. I remember him sitting in an office with a headset on.

Ok. Um There was no additional, let's just leave it at this. There was no additional testing done at this hour long zoom meeting, right? You're right. Um And can you show me how he demonstrated doing it at this meeting? Well, I don't have a mallet here with me and my mallet

is a Rawhide. Well, just approximate you, you don't need to just show me with emotions that you, that you remember him showing you at the meeting. I'll do it again.

Hammer, fully caught gun is mounted. Can't go anywhere. It's in a fixture of some kind similar to a device called a ransom rest. I know I asked him if he had a ransom. It's a brand name, ransom rest. But no, it's a by another company. And then he just showed with his hand swinging the mallet free hand, no particular measurement of the angle or the impact force.

Nothing quantitative about his testing. A totally subjective assessment as to whether he was hitting it straight on or not. And I think he said um after several blows it broke, did he tell you how many he may have? I can see some evidence in the step on the hammer at least twice before it broke. But you, but I'm asking not from what you saw, but did he, did you ask him how many times did you hit it? Probably? But we'd have to go back and listen to it multiple times is all I was interested in and then it broke. Is there a recording of this meeting? I don't have one. Do you know whether one was recorded? I do not, do you know whether anybody took any notes? I don't know. And can you just demonstrate how he showed you his? I take it that the main difference here is that you had an understanding about sort of a perpendicular strike with the mallet but that you come, you come to now say you learn that, that it could have been human error or what have you or what? He shows you more of an angle.

Can you just demonstrate that for me? So I can understand that. Once again, let me hold it up this way, bottom to top. Let's just call that parallel.

If a blow came in from this way, parallel with the long axis of the barrel as opposed to coming in at some slight angle. And he conceded that if there was no fixture, no special apparatus to deliver the hammer blows, the mallet blows, you know, perfectly parallel to the axis of the board uh to the spur of the hammer. And, and that was different from your prior understanding how no, I didn't have in August 31st and before I didn't have an understanding from his notes and I didn't feel it appropriate to call or talk to him since he was a witness in the criminal matter with the Gutierrez Reed. But if you couldn't talk to him before the Hannah Gutierrez retrial, why did you decide that you could talk to him in before the Alec Baldwin trial? If you, if you couldn't talk to him because he was a witness because the defense, your site is making a pointless red herring issue about these marks on the se just take the view that they were there at the time of the incident. The gun worked fine.

End of story. As far as a forensic analysis goes, I really don't care where the diagonal marks came from. They're not polishing marks, they're not the result of the trigger job, they're result of damage. The only damage that happened to this gun was Price Sigler's hammering on the hammer. And if they were there, as I said, at the time of the incident, got a correct trigger pull, the gun repeatedly worked.

So in my view, as a forensic scientist, this is a non-issue. Ouch. Ok. Um that was not the answer that Alex Sparrow wanted.

That is of course the correct answer your 50 year career. Had you ever had a gun destroyed in this manner? They ever had a gun? Do. What have you ever had you ever, you, you, you basically just told this court that this is to you an insignificant matter, I'm asking you, is there another case again? He's conflating. So he specifically was referring Lucian Haig was specifically referring to these diagonal tool marks, they're insignificant. Now, Alex Burrow wants to make it sound like Lucian Haig was saying the destruction of the evidence was insignificant and doesn't matter another ca a homicide case, a case of this importance where the FBI or law enforcement has performed an unnecessary test and destroyed the gun at issue. Has that ever happened before in 50 years? I don't remember such a case.

Ok. And you also don't remember such a case in which, um, you ever saw this type of damage on a Sear before? Correct. That was the first time you had ever seen damage like that on a sear, correct? That is correct. And we've pulled some of your old cases and looked at them, but is there ever a case that you've ever had of this importance where your third report or any report, you gave that cast doubt on your conclusions was not provided to the defense in a homicide trial. Has that ever happened before in your career again? He's, he's testifying to a conclusion here.

His third, this guy's third report, all he said was, listen, I just want to point out that they were these diagonal marks there. I'm not sure what those are about. That's all his report said. It didn't cast doubt on his other analysis. His other analysis was the gun worked just fine. I have no idea. Well, these, when, when, when experts don't provide and I'm not blaming you, sir, I saw your email to Miss Morrissey.

I'm just saying to you when experts don't provide exculpatory reports in homicide cases, um those are oftentimes the kinds of things you might remember if you were the expert involved, don't you think objection to the form of question? No, I leave those issues, Mr Haig. Sorry, uh sorry, judge, I overruled your objection. Go ahead. So just to just to make me make it a little tighter, you can't tell me that you know of a case in which an exculpatory report that you provided was not disclosed to the defense. Again, just a summary conclusion that this third report was somehow exculpatory for their client. They love to use the word exculpatory, but it doesn't mean what they think it means before a homicide trial.

You know, of no case. I know of. No case, I am objecting to the form of question because be because it presents facts not in evidence. He is the, the question presents that the, that the report was exculpatory. This report is not exculpatory and Mr Hay hasn't said he said that it was and I think you can do this on uh redirect. Ok.

Thank you. We're gonna provide um we see this, this would be, I mean, that's the correct objection. Obviously, that's what I just said.

So Kerry Morrissey is just half a step behind me. Uh But uh but it really matters in front of a jury, right? The jury could be misled by this summary statement by the defense that this third report was exculpatory. The judge is not going to be misled an affirmation from Mr B's office that if the

judge just wants to get this hearing done before 2026 if we could just um I know I can't approach the vents, but I'm gonna um ask my colleague to send over to um faith if that's OK. Um An affirmation saying that he never received this report before the Hannah Gutierrez retrial. I'll stipulate that I'll stipulate to that. He, he, he didn't receive it because I didn't send it to anyone because that, that was my error.

I thought I had and I hadn't stipulate. Ok. Mhm.

You've testified previously that sort of two main buckets of information came out of your meeting with Mr Ziegler that changed your conclusion in your August report, correct. It allowed me to have now a certainty as to how those diagonal marks occurred. It left that as the his work, his test as the only explanation, only plausible reasonable explanation. I, I think you gave two reasons for changing your opinion at the most recent PT I. And to tell me if I'm wrong, one was you learned more information about the history of the gun and the other one was Mr Ziegler's description Ziegler's description to you of the manner of hammering. Is that fair? That's fair. Ok.

Um I, in terms of the first um um reason what was new that the prosecutors told you at the one hour meeting with Mr Ziegler, the remote meeting with Mr Ziegler. Um y you testified as I understand it that you learned more of the history of the gun from Mr Pieta forward. I mean, how it sort of came to be with Seth Kenney and then on the set of rust, right? That's a little more than that.

It's also the interview with Seth Kenny, uh Mister Pieta. Um has some information from EMF as I recall. Ok.

And you knew this was a one off gun, it was only one made before it was shipped to America without a firing pin, right? Yes. Ok. And so the, what they're referring to now is kind of the chain of custody all the way from the Pieta factory in Italy uh to Alec Baldwin's hand. Uh, and there's no place in that chain of custody where there's any evidence that there was any modification done to the hammer or sear of this gun. And it, it's actually true that, um, you actually had viewed Mr Pta's testimony in May, um, um, a few months earlier than this. Right.

Yes. Ok. And then the other thing that you did and, and we, we, we did in court too is you watched a bunch of videos on a, of a movie set and somebody firing what you believe to be this weapon repeatedly in different video clips, right? A number of them.

Yes. Right. Right. But you don't know where that gun was just to be clear on, on, you know, October 20th 2021 or the morning of October 2021 2021. You don't know.

Right, sir. That's right. Not in my own personal knowledge. Others will have to account for that from your own personal knowledge or even from what you've now learned through what we call hearsay. Even based on your investigation with the prosecutors, you don't actually know whether somebody had that gun and did something to that gun on that morning.

You don't know that obviously. Right. Right. Ok.

So it really then goes back to what you've said, um, about, um Mr Ziegler and you agree with me, right? That, um, even in April, you, um, testified that, um, you knew that he had struck it with a Rawhide mallet. Correct. Yes. Ok. Um, and you knew that people, human beings when they strike things strike them imperfectly.

Right. Yes. And, and again, just to put a pin in it, you did not, um, ask him to, um, demonstrate that motion or did you, as I recall, he demonstrated freehand without, without the benefit of an actual revolver. And, you know, from his standard operating procedures that there are six planes that he ha that he hammers on. Right. Yes.

Right. Did he? He didn't in this meeting start striking it diagonally repeatedly in some very strange motion. Did he object to the form of question? It, it assumes facts, not in evidence. What, what is strange mean? Did he strike? Did, did he, did you observe him demonstrating for you a striking in a upward right to left downward, diagonal motion? Did he, did he demonstrate that to the extent it involves the hammer, the cock hammer? Yes, I really didn't care about the other five planes other than I, he didn't fall from the folk position. II, I don't know if, if, if you understood my question precisely. I'm just asking about his demonstration. Did he demonstrate a diagonal strike with the hammer? That's my, my, my sole question.

Did he demonstrate that for you? It's a moot point. There was nothing for him to align his gestures with. He had to do it verbally and he conceded it wouldn't necessarily have been perfectly back to front. II I unders I understand like we just talked about human error and humans are imperfect and he didn't, it's just terrible.

This line of questioning is terrible. Did it strike diagonally relative to what? There, there was no gun in this demonstration. They were just on video, they were just waving their hands around. There, there was no reference object to which AAA um illustrative demonstrative strike with an imaginary mallet could have been at a particular angle to anything necessarily strike it back to front. I'm asking a different question. I'm gonna try again and then I'm gonna ask the court's help. I'm just asking a simple question, which is, did he demonstrate striking with his mallet diagonally? Yes or no.

It's a moot point. There's nothing into the line, his hammer swing with your honor. If, if, if I can get an answer to the question, just answer the question of whether he struck that way, whether he did that. I interrupted you your honor. He wants to know whether he demonstrated a striking to you. And you keep saying it's a moot point, just answer the question whether he did that. Yes, he did.

But without the benefit of any prop. OK. So uh why don't you follow up on that question? That's not the answer. You want the benefit of any. That's not the answer.

Alex Spira wanted Alex Spira wanted this guy to say no, he didn't swing in a diagonal way prop. So he did demonstrate to you a diagonal strike. That's your testimony. He conceded that it may have had diagonal aspects to it.

There was no way for him to demonstrate an angular component without a prop. So you want to change, you want to take back the answer a moment ago to the court. He did or did he, he didn't demonstrate, hang on that. First of all, Mr Spiro's testifying.

Um And, and the question that was posed by the court didn't contain the word diagonal. That is Mr Spiro's question. So that's improper, the, the the video of this and the record will speak for itself. I don't think my question is, all right, Mister Mister Mister Hay, you keep answering that you basically, you don't have a point of reference. So he's just asking was, did he strike diagonally? He conceded that it could have been diagonal.

That's the most I can tell you from my recollection of that June 17th interview. OK. Now, there's been a lot of testimony about um um the, so we all, we all understand the problem here, right? So uh say a blow is coming in, say I wanted to illustrate a blow, right? Coming in like this, you might call that diagonally, right? It looks diagonal. But what of the object I'm striking is this then it's not diagonal to the object being struck.

So the the question of the diagonal angle is only meaningful relative to what's being struck. If, if you don't have this object being struck, you don't know this is diagonal to, to what exactly, that's what Lucian Haig is trying to make. But, but this guy simply wants Lucian Haig to say no, he, he didn't swing his arm in this kind of strange diagonal way.

Did he? The timing of this virtual meeting you had the week of the hearing? We're in front of right with Mr Ziegler and the prosecutors, right? And after that meeting with Mr Ziegler, you again, sat down with the defense for a pretrial interview, right? Yes. Ok. And that was just a week or so ago, right? I believe so. A few days after the, uh 17 and you said so again, until recently, I had to keep it as I did in my report back in August, fairly equivocal or neutral in the sense of until I know more that I can rely upon, I have to keep a number of options open.

Right. I think so. Yes.

Ok. And that's when you explained, right? That it was really just this week that you have decided to reject your own conclusions in the August 31st 2023 report. Right. Yes. And so that's, that's the answer Alex Burrough was looking for. It's actually not the correct answer, uh that it was just last week that Lucian Haig changed his opinion about the August 31st report.

He's already explained several times that he changed that opinion based on new information he gained prior to the Hannah Guterres trial. So, not a week ago, but it's a trick, right? It's a rhetorical trick. So you just keep asking if you're not getting the answer you want, you just keep asking the question in a variety of ways to kind of wear down the witness. And eventually one of the variations of how you ask the question, you might get the answer that you want.

I'm just drinking, it's just ice water. Now, that's all I'm drinking. Folks. I'm wearing a tie, no adult beverages while I'm wearing the time.

You know, um that you also explained how you had reviewed your son's testimony 48 hours prior on the same Monday that you were sitting in a virtual room with Mr Ziegler and the prosecutors, your son who worked on this matter with you closely gave testimony that he stood by the third report. Correct? I don't, I can't, all I read it but I don't remember any of it. I always, I didn't see anything.

I took exception with the mics or testimony. Break that down for a second. You did read it. Correct again, I'm sure I did, but I have no recollection of it because there was nothing memorable about it.

And after you read it, you indicated that you took no issue with anything. He said correct. I would agree with that today.

And I probably said it then. Ok. And we will, uh, represent you and I, and we can put it into, we can put it in front of you.

Um, um, if you don't mind, Miss Clark that your son, even as of last week is standing by the third report. Do you understand that? No, I know. I mean, it, it calls for speculation, your honor.

It doesn't because he said that he, he reviewed it and he said that he stood by, it, didn't remember it overruled. Ok. We'll, we'll, we'll, we'll try to refresh your, your memory as to this.

We could go to the, um, so you see the June 16th, right? Just a week ago, right? I'm sorry, hang on. Is, is, is this the transcript of Mike Haig's interview? Yeah, that he reviewed that he testified to that he reviewed, right? Um, I guess I have a concern about your transcript. Mr Haig's interview didn't take place on June 16th. It took place on June 17th. So I'm questioning the validity of your transcript for that reason. Oo OK. Uh um, I'm, I'm sure the court will let me proceed and we can deal with that issue afterwards if he doesn't.

I mean, if I would doubt that the, the court is, is going to give that much mind, but I will wait for the court. Well, I'm trying to verify that this is actually the transcript that they're saying it is and it's got a different date on it. Can you explain that Mister Spiro? I, how would that happen? Not, not, um, that readily, but I know that it's the same transcript. It's the same transcript that he said that. But, um, I can just show him this and ask him if he has any opposition to it and we can deal with the dating of the transcript, the fact that, that there is some discrepancy if it's one day, take a look at it. Have him take a look at it, see if he recognizes it. Yeah.

Is this a grand jury transcript? I know I'm not supposed to ask questions, but I don't know where this transcript come from myself at this point. Ok. Well, for now, I just want to, he doesn't know, he just said he doesn't agree with your, with the conclusion of, of your sons, which was the in

the last week or we'll deal with the date of 16th versus 17th in a minute. I object to the form of question. What conclusion is he talking about? That's correct.

Do you agree with the statement that your son makes here are so many lines. Let's point to what you're asking him to notice so I can go by the first sentence. Do you think there's anything incorrect with what, what? Yes, a moment ago, what you had bracketed. Uh, I, I don't have any disagreement with. Ok.

Um, and then the second sentence is, it doesn't look like it's from a factory, right? In some substance. Ok. You agree with that? Ok. And then it continues, we don't know, could be, we don't know. Could that be a type of marking that was put there because of somebody working on it prior to the shooting couldn't tell you whether it was or wasn't.

And from Mike's perspective, he's talking about at the end of August, neither of us knew. Well, no, this is the trans, this is the wrong witness. I mean, they need the actual witness who produced this content. They need Mike, they need the son here to ask him about it, not asking the father about what his son said in it. This is ridiculous that he gave a week ago. Yes, but he hasn't put in any more time on this whole matter of the marks on this here. Well, I don't know what that means, sir, but, but he, he testified truthfully according to him that as of last week, that was his statement.

So, so hang on, hang on Mr Spiro is now testifying. Mr Spiro is now giving Mr Haig information that, that Mr Haig apparently doesn't have. So I, I'm, I'm a little confused about exactly what we're doing here.

Mr Spiro is asking Mr Haig whether or not he agrees with an opinion. Um but I'm not sure that we actually have the opinion yet. I'm gonna go back to the prior sentence and just ask you if you agree with it? Could that be a type of marking that was put there because of somebody working on it prior to the shooting event? Is, isn't that possible, sir? And I can read Mike's answer and I think that's an appropriate answer for back in August of the past year. Ok. Would, would it have been an appropriate answer last week? I can't answer for him. I'm asking you, do you, as you sit here today, dispute, Luc Lucian Haig, this witness right now is saying his son's answer from last week is based on the last time he looked at the data back in August. So in that context, the sun's answer is true.

Lucian Haig is saying, but I have more information than he had in August. So from my, in my context with the additional information, it's incorrect. That doesn't make this a lie. These are two different people, two different experts with different bases of knowledge coming to different conclusions.

And he's trying to get this guy, Lucian to say his son was a liar. That statement that it is possible that it could have been because of somebody working on it prior to the shooting event. No, I would exclude that as a possibility.

And the first time you excluded it of that as a possibility was after Hannah Gutierrez Reed's trial. After the grand jury. In this case, Lucian Haig has already answered this. He changed his mind about that possibility when he gained new information between the August 31st report 2023 and Hannah Guterres trial, not after the trial is after you gave your first Baldwin pt I and only in the past week. True. No, no, I was ruling out the other possibilities as I learned more and more about Ziegler's testing and that was refined in the interview on the 17th.

And did you memorialize that last statement anywhere? Can you point this court or me to anything anywhere? Well, Haig should say yes. My testimony in the Hannah Guterres trial reflecting my changed position is the memorialization other than your most recent PT I and testimony before this court. Were you in any way? Walk away from that August 31st 2023 report? Judge, I'm gonna object. I don't even understand the question that's being asked if he doesn't understand that he can ask me that he doesn't understand it. I don't understand it.

I don't know what you mean by walk. Sure. I'll, I'll try to clarify. We had talked about maybe 10 minutes ago how you said so again, until recently, I had to keep it as I Here's the terrible part, folks, this is supposed to be like a last ditch opportunity for the defense to make this argument when they were supposed to be done with this 4 p.m. last Friday, 4 p.m.

mountain time, last Friday and they ran all the way to 530 having started an hour early, ran all the way to 530. So instead of a two hour hearing, it was a two o'clock, three o'clock, four o'clock, 5, 4.5 hour and they still weren't done. So they asked the judge for more time and the judge said, all right, I'll give you Monday afternoon.

Now. It's 4 34 30 mountain time here and we're still, the state still has a chance for a rebuttal. How late is this supposed to go?

He did in my report until recently, right? You're now saying that there were these other things happening and I'm asking you, do you have any document or information that you can show me that suggests before the last week, you walked back your August 31st report that you changed your mind. My testimony in the guitar, the history of the gun that's going to have to be shown through other witnesses but came from Mr Pieta.

Ok. Uh Seth Kenney, those people can establish that gun was just a show gun was in a display case, it finally went to EMF went directly to Seth Kenney who correctly turned it around and said it put a firing pin in it. There's no opportunity.

So he's asked, he's answering a different question, right? The lawyer said, can you tell me, can, is there any record something written of when you changed your mind about this? And what he's answering is the reasons he changed his mind, right? He learned more about the chain of custody. He learned more about how the Rawhide Hammer shock test was done. But this is what happens when these things run long. People get tired, they they misunderstand each other, especially when the the questioning is so meandering.

Again, others are gonna have to establish that, but I'm prepared to trust to it. So that's important from my standpoint.

Secondly, I know what trigger jobs look like.

This is not a trigger job, it will take the marks away, not believe gross marks, especially on a diagonal. So we're back to, I thought it was pretty simple exclusionary process that the beating this gun took on the hammer in a semi controlled fashion has to be the explanation. And finally, as I said this too in a way, I don't care. Let's assume those marks are there. When Mr Baldwin is using the gun, they had no effect on his operation.

Anything, anything further you want to add on that answer? I don't think so.

Ok. Well, at your most recent pretrial interview in this case, the same date, which was, um, um, June 19th 21 the court monitor just asked if you can identify what's being put up on the screen. I don't know how the court court reporter handling it.

But, um, first of all, you're, you're not even identifying a number but, uh, you know, um, that transcript was from the grand jury. But, you know, why don't, why don't you make it uh clear? Sure, I'm not used to this Zoom format and I'm terrible at it. So I apologize and I apologize to this guy is the Lucian Haig of Emanuel Quinn court reporter. Um Does he have an AOL? You got an AOL email ADDr address, Alex Burro. Um My, my question well withdrawn.

You gave your PT I on June 19th 2024 2 days before the hearing before this court, right? I believe. So we started one.

Ok. And you were asked, can you tell me other than this most recent meeting? This is very important, sir. So I wanna make sure you understand. Ok.

You were asked other than the meeting with Mr Ziegler at the beginning of the week. Have you had any other meetings with the state about this third report? Answer? No question.

Just the one with Mr Ziegler on the 17th answer. Yes. Do you agree with that? Yes, I figure today I do um your honor. I have that transcript in front of me and Mr Spiro is not reading directly from the transcript.

II, I, you want, he's paraphrasing, he's paraphrasing the transcript. What a asshole move. Good for Carrie for catching that. II, I can submit the transcript but this is just a minute.

He, he is using the opportunity over zoom. When the witness can't see the transcript. He thinks I can't see the transcript.

This one I have to, I happen to have in front of me every time he quotes from it, I can do a word search. I got to exactly where he's talking about and he is not saying all of the words. Um So, so

if we're going to be quoting from transcripts, my request to the court is that we use every word we quote exactly Mr Spyros not doing that clearly on purpose. OK.

I'll do, I'll do, I, I'd love to do this one again. I'll do it again. Let's do it again.

Some of these questions obviously, when I'm asking about your testimony, Mr Hague, you understand I'm asking you generally, did you say something? No, no, no, no, no, no. You're quoting from a transcript. Now he's asking generally understand that right? No, I think of specifics when it comes to an answer.

Not general answers. Oh my God, Alex Spiro is getting his ass handed to him by Lucian Haig. Lucian Haig Nonla.

OK. Page 30. Mr Spiral.

If you're going to read, rather than asking a general question, then you do need to read. I would thank you.

That's, that's fine and, and, and um, hopefully the court will take note of, of what this is the same lawyer who is just castigating Lucian Haig. Because sir, you, you don't know that you're not allowed to refresh your recollection in the middle of cross examination when they had a weekend break because this guy does this, he meanders for hours around pointless arguments.

Now he's saying, oh, your honor. I, I didn't, I didn't know that if I'm, I'm, I'm reading from a transcript, I have to read the actual words. I'm, uh, I'm just, I'm just a, a partner at the, a top 50 worldwide law firm doing civil litigation for a living. And I didn't know I had to read the actual words from the transcript, Jeepers.

Whether or not my representation was the sum and substance of this question because there's an elliptic page 13 line nine, Miss Clark.

Ok. And can you tell me about any other meetings that you've had with the state? You say sorry and she continues about any other meetings you've had with the state? About this third report? Question? Your answer. No question. Just the one with Mr Ziegler on the 17th answer. Yes.

Is that accurate? I believed it to be correct at the time.

Ok. And correct. Pardon? And it may still be correct? Ok. I mean, it was only a couple of days ago, right? That interview was but eight months had passed since the end of August and that pretrial discussion, I did not have a transcript of the previous interview by, by Miss Clark or the, uh, video of it and I really should have ask for it and read it to get up to speed.

So I've been away from the case for, well, about eight months. And if you, if you change your opinion on something, you change your report, right? Well, it's important are critical. Um, it's just a typographical error.

We're not gonna worry about it, right? But if it's something important enough to make a report about like your third report, you make a report, right? You're saying now you're changing your opinion. Do you have any present intention of changing your report? Now, he's not saying he's changing his opinion. This is more testimony from the lawyer objection. I do not.

You would agree with me, sir that you received.

No questions about the third amended report that we're talking about. No questions in Hannah Gutierrez Reed's trial. No questions in, in any grand jury testimony.

You've given compound questions. Ok. I'll go one at a time.

I'll go one at a time. You didn't receive any questions about the third amended report in the Hannah Gutierrez Reed trial. Correct.

I'd have to look at the transcript. You don't remember as you sit here.

Right. That's right. I do not.

You don't remember ever getting a question about the third amended report in any testimony you've given before any grand jury.

Correct your honor. Mr Haig didn't give any testimony before the grand jury and Mr Spiro, he can answer the question. Ok. Let Mr Haig answer that question.

I haven't testified in the grand jury matter in this case. Ok.

And, and you never mentioned you were never questioned about it in any of your previous pretrial interviews.

Either the one in Hannah Gutierrez Reed's case, if there was one or in the one in the Alec Baldwin case until the most recent interview, correct? No, I think this came up back in April the 29th. That's the one I don't have a copy of and haven't reviewed or the more recent one by Miss Clark. Oh, ok. But, but I think that you heard Miss Morrissey and I'm sure she would stipulate again. We didn't know about the report, right? We, we didn't receive the report in April of 2023 right? The transcript on this weekend that became apparent, I frankly forgotten about it, but it was resolved by the end of that interview in April the 29th.

Ok. It's, it's, it's not resolved, but at this time, um I have no further questions. Oh my God, thank goodness any redirect.

Uh Mister Haig. Just a few questions. All right, Carrie, let's see if you can. Uh Oh my God.

It's, it's just when someone's shoveling this much crap onto the table, it's really hard to find those, those hors d'oeuvres under that pile of crap. Um, I thought this guy was never gonna stop. This is what I'm worried about in the trial. By the way, folks, there was no good reason for this cross examination of this witness to take hours and hours and multiple days.

This trial is scheduled for eight days. There's a lot of witnesses on the witness list. There's already far more witnesses on the witness list that could possibly be covered in eight days of trial.

But if the defense is going to do this, this is not even a personal knowledge witness. This is a, an expert witness. If the defense is gonna do this with every witness, this is not an eight day trial. This is like an 80 day trial and I got stuff to do. Pardon me? Hang on just a second, Mr Haig, based on everything that you've reviewed, is there any reason to believe the gun was not functioning properly prior to October 21st? No, no reason to believe it was not working as designed and intended by the manufacturer? Any reason to believe that the gun wasn't working properly on October 21st? No, in fact, haven't you actually watched videos of Mr Baldwin manipulating the gun on October 21st? That's my objection leading every question.

Two of the videos, tell him and they call it just a minute.

I, I'll concede to that. I'll, I'll, I'll change the form of my question. I apologize.

Thank you.

I'll strike that answer until you rephrase. Ok. Um Did you review a video on October 21st of Mr Baldwin in the church with the gun? A video that was presented as such, I don't remember saying it and you can just say yes or no so we can get through it. Um Do you recall? Did Mister Baldwin uh cock the gun yes.

Did the gun appear to be working properly? Objection? These are all still leading questions, your honor. That is not a leading question to ask if the gun was working properly.

Ask how he thinks the gun was working. Give him an option.

How was the gun working in the normal fashion? The hammer stayed back and we can see it's the evidence gun by the silver nickel plated hammer in that one church scene. I'll call it. So uh Mister Haig, you reviewed all of the documents for? Well, did you review anything from the FBI? Yes. What did you review two reports, one from the explosive section which probably, no, no, just just firearms, just not not ammunition, just just this gun.

And of course the report, final type written report concerning the operational condition of the gun and all the notes and attachments and pictures taken by folks. I understand it's, it feels objectionable to object to leading questions. We all want to get through this hearing and leading questions are the most efficient way to get through. And if this, these were just administrative questions, maybe you'd be allowed to get away with it.

Um And of course, Alex Spiro was asking nothing but leading questions, but he's on cross examination of this witness. In cross examination, you can ask leading questions. Carrie Morrissey, this is her witness.

So she did direct then Alex Burrow did cross. Now she's on redirect when you're on direct or redirect, you're not supposed to ask leading questions.

Certainly not about anything substantive Byler based on your review of the FBI documents. What's your opinion about whether or not the gun was functioning properly when it got to the FBI that it was functioning properly? What um Mr Spiro has, has uh asked you today. He, well, I think, I think he's characterized the gun as being destroyed.

Um Mr Haig was the gun destroyed by the accidental discharge testing at the FBI. No, just two parts, actually three parts, but two important parts and a and those three parts um were they retained so that they can be uh viewed by any defense expert? Yes, sir. In terms of the functionality of the firearm, can you again give the court your opinion with regard to the markings on the Sear, how they affect the markings on the working surface of the Sear, how they affect the functionality of the firearm? If they were there at the time this gun was being used on the set, it had no effect on the gun. And we know that because see numerous videos of it being caught the hammer holding some of the some of the scenes for 1010 minutes or so while the gun is being pointed in various directions. But most of all, when it gets to the FBI laboratory, those marks were there on the sear, he got a normal trigger pull and I inspect with all the other guns.

Um never had a hammer slip, uh fired 12 rounds successfully took pictures of the hammer at fo and his own initial description, uh it functioned properly and then he goes through all those tests, some of which I just described.

Do you have an opinion about how the juxtapose this questioning by Carrie Morrissey? Very specific atomic single issue questions getting very specific responses with the meandering miasma. That was the hours of Alex Spiro cross examination. Uh full cock notch of the hammer was shaved off or keened off I think is a AAA verb that you've used.

Yes. Uh It's a nice sharp right angle ledge, a little step in its original form and all the hammers that we've looked at and photographed, but it got pinged a couple of times.

There's several pictures that have many that the Mike has. I think I'm looking at just a number. I think one of them is 9781 where you can see little chatter or impact marks. And then finally, the edge, the right, the once upon a time right angle edge is rounded off.

And so because of that, the hammer as it exists today, at the conclusion of the impact of testing will not hold a perfectly pristine new trigger in position. It'll slip and fall.

But the good news there is it'll slip and fall to the half cock position, which on this evidence, hammer is still intact, still working. And that's what the, I think the second report deals with in the videos. Do you know whether or not uh the accidental discharge testing performed at the FBI was done pursuant to their procedures? Yes, it's part of their conclusion in the SOP standard operating procedure where there's a claim of an accidental discharge. Sir, I in your experience as an expert, not just in this case, but, but in other cases, do you have any information about whether or not the FBI considers the circumstances of the event that, that they are asked to do testing on a firearm? Does that make sense? Yes, I understand what you're doing there.

Of the philosophy is a number of crime labs that they don't want to be contaminated by contextual bias. That's the term it's circulating among forensic science. So basically they, they tend to operate in a vacuum.

They've got a protocol, a standard operating procedure that they go through. Um, and these tests would be done in, in that order in the final test if there's an allegation of an accident such as there was from the very day this incident happened. Now, uh Mister Haig, I wanna ask you uh a question, uh You were asked by MS Clark on Friday and you were asked again by Mister Spiro today about a statement that you made during your April 29th interview, um where you indicated uh that um you could look at the working surface of the sear and that it looked as expected and normal. Do you recall Mister Spiro and MS Clark asking you about that? Yes, I do.

And during your interview, um, were you being questioned about the Sear after you put it under the microscope? I viewed that answer as before it ever got to the microscope. That's how I answered it in that form. So, unless I misunderstood your question, the markings didn't become of interest until we put it under the uh high powered microscope.

Um When MS Clark, uh, was questioning you on April 29th during the interview at the time that you made that statement.

Uh Do you recall, sir, what the circumstances were of, uh uh of, uh, of you making that statement? Where were you in the PT I can you give it context? What were you talking about? Yes. Well, she had just shown me a picture of one of Mike's pictures. The FSC is this camera code? I think it's uh 9680. I think she identified it as that, that was a starting point that went into that, uh, those questions and answers. And if you go back and find that picture, the sear tip is not in it, just the damaged hammer and some other parts, but the actual tip that's missing is not there.

The trigger is there. So I said something about the hammer, I think it's a quote. The hammer is the most important part.

So I was thinking about the hammer then I don't know if she gave me page numbers, but she went on to some other pictures.

Um It showed these markings under the microscope and a comparison. Those happen, some of those pictures were taken at a later time. So sir, just to be clear when you made that statement to Miss Clark, were you talking about what you could see under the microscope or not under the microscope? The objection leading um question suggests the answer in the context in which she's posing it. Give a response.

II, I judge II, I disagree that it's leading. Um All right, go ahead and answer it.

Thank you over. It was made in the context of just like I'm gesturing now, putting the pieces back together, looking at it edgewise and seeing the fracture match.

I could see that the working surface was still flat, it had right angles to it. I turned it toward us and there's a picture doing that or again, we put the two pieces back together.

Once again, you can see that the working surface is squared off.

So that was my answer. And those views just with the human eye, other than being broken, of course, it looked normal. It was only until we put it under a high powered microscope and it's called a bleak lighting lighting in from the side that it reveals those very rough diagonal marks on the working surface of the evidence sere Um Mr Haig, have you ever had an opportunity uh in your career to examine a gun that was damaged by accidental discharge testing by another examiner? I can't presently think of one but that's not to, to exclude them.

I I tend to move on after a case. I remember certain things like the gun and what it looked like and maybe if someone got shot but details like that.

Uh I still have a pretty active case though. I just don't remember anything in the last year or so. I worked several 1000 cases in the last 50 years.

Mister Haig. Are you aware um of a a are you aware of how Mr Baldwin has explained? Uh the fact that the gun went off on October 21st 2021. The only recollection I presently have is of the quote in several of his interviews that I didn't pull the trigger.

Now, understanding that as our landscape, have you do, do you have any, have you seen anything in the FBI report in the videos and the forensic testing that you did.

Have you seen anything that would support that statement? No, I have not. Mhm. The gun didn't just shoot itself now in the, the the previous statements that you gave um in the

Gutierrez trial, your pretrial interview in Gutierrez. Um and I believe even your April 29th interview with MS Clark, did you have the benefit of the statements of Mr Pieta? No. Did you have the benefit of the statement of anyone from EMF the I the, the import company? I don't believe so.

I'm not sure on that.

So I just don't believe so. Did you have the benefit of, of Mr Kenney's statement with regard to what happened to the gun when it was in his possession? At some point, I had his interview and notes I had taken from it. I just don't remember when and if I had looked at them uh before the 29th April interview or before the trial, I have them somewhere, but this file is something like 23 gigabytes at this point. Um I heard you mention on uh cross examination.

Uh You, you gave an answer and you and you used a phrase called trigger job. What's a trigger job? Yes. The tool marks, the fine tool marks that are present on both of these working services. The Folco notch and the Sear are a normal consequence of, of fine machining.

There's a type of stone, um finishing stone, it looks like a gray abrasive, finely um fine powdered material. A trigger job would be.

And I'm gonna just to, to work that stone and you have to be very careful to keep the angle the same. So you don't change the angle of this here, but to get rid of those marks. So you wanna make the two services like a mirror. So now they don't grate and that's an exaggeration but that they don't grate over each other.

That's called creep shooters do not like that creepy feeling in the trigger. And if you polish it not, not ruin it, if you polish it, you can get it down to mirror smoothness without changing the angles.

That's a, that's a fine trigger job and now it will not have a grayness or a creep to it.

What's the purpose of a trigger job? Why would someone do that? It was shooting enthusiasts that are mainly a handgun if we're talking about handguns, uh target shooters, uh having creep in there introduces some fine vibration and that's gonna affect accuracy. If you're trying to put six bullets in the same bullet hole, you don't need a creepy trigger that you're struggling with, you can smooth it out. So, uh basically the, the word is the gun is when it goes off, it's a surprise, you didn't realize it would reach the edge of the sear and the, the uh full top notch and it's your testimony, that what you've seen in this gun is not consistent with the trigger job, that's for sure. Yes. It's the antithesis of a trigger job. I don't have anything further your honor.

Thank you.

Um, I know the court is, is, seems to be, even though I have not had the pleasure of appearing before you live yet your honor soon. Hopefully, um, does not often welcome Recross, there's

something going on here in this testimony that I am asking for just one minute to, to, to correct something. And I think that given the seriousness of this hearing and the seriousness of this case, I ought to be given one minute. I'm watching the minute.

Go ahead.

This testimony. You recall that when you were with Miss Clark last week, you didn't remember anything about the April 29th interview um, that occurred in this case, right? That's true. I didn't. And since then you have reviewed, um, that interview and spoken to the prosecutor, correct? I asked for a copy of it so I could refresh my memory and spoke to the prosecutor.

Correct? I don't know if it was verbal or an email, but please send me a copy of my, um, January 29th testimony and the video and, and Miss Morsey played for you some of the PT I videos so that you could see if you could hear Miss Clark. Do you remember that? No, I don't, you don't, you don't remember her doing that. I don't remember her doing that.

And do you remember having substantive com com any communications with the prosecutors since we left court on Friday? Oh, yes, of course to say, please send me this, uh, transcript in the video and then about the time, that's about it. No other communi no other communications about, about what questions you might be asked or things to clarify on your examinations, sir? No.

And did you ever inform your son of your reversal of conclusions after the meeting with objection? He's never, it's not in evidence that he reversed his conclusions after his meeting with Ziegler. That's not in evidence. He reversed his conclusion months prior to that.

And um, all right. Thank you.

Thank you.

All right. So, um, everyone rests. So let's go with the argument, your, your honor.

Just, just for a moment. First of all, can the witness be excused? Yes, he's gonna say I, I can't help you with that, sir. Ok.

All right. So M Morrissey, just go ahead.

Well, your honor. I need to make a record after the witness leaves. Ok. Go ahead.

So, and II, I understand the court's time is precious.

But II, I, you know, I have to make records. Ok? The, the, the, the court should know that we have filed a series of Brady Motions and a supplement to the trimet motion. I don't know if the court has seen it, but they are, they are hitting or on the docket.

The court also needs to be aware that we've made discovery demands, many, many discovery demands for many, many emails and other things.

And when he got them and when he learned them, they have not been provided to the defense today. Um III I was going to move to preclude his testimony um entirely. Um And we have a very serious issue of him being provided information on cross examination that in that issue is not waived.

In addition, the defense would seek to call briefly Mike Ha who will stand by the August report.

So the defense is not resting without that evidence before this court and at this hearing, well, I'm not going to, I am not going to entertain Mr Hague. You can certainly bring those up in your uh motions that you've made before the court. This is a motion to dismiss the indictment based upon uh your claim of the destruction of evidence. I wanna hear argument on that I understood. So we, we will just preserve the ability hopefully post arguments to submit what we need to submit for Mr Haig. If the court does not accept the transcript that I showed just a last point just to clarify, I'm not clear on what you're saying.

Well, well, I mean, I'll take them in, in less significant to more significant order.

The transcript that I said 16th versus 17th, that debate that occurred at the beginning, the, the person giving the examination said 16th when it was really the 17th, they just misspoke. So then throughout it, it says 16th, it is. I don't want, I don't want you to submit that again.

I will, I will, uh, use that exhibit that we used here. I don't know what number it is, but it's the transcript of the grand jury.

January 16th, grand jury. I, it's the pretrial interview from August 7th, I mean, uh June 17th of this year. Oh, I apologize. Pretrial interview of Mr Hague on June 17th.

Ok. Correct.

Thank you, Robert. All right, your honor.

This is bash. I'm gonna be only one person that gets to argue this from this law firm. Yeah, the judge is pissed. I, I told you all at the beginning, we started on Friday. Sarah Clark was during the cross examination of Lucian Hag and then we show up today to finish it off, schedule the judge at the schedule additional time.

She was not happy about that.

And this guy, Alex Spiro takes over for the cross examination of Lucian Haig explaining it was because Lucian Haig had trouble hearing Sarah Clark's voice. And now this guy Peter Bash, another lawyer is want, wants to do the argument on this motion.

11 lawyer per motion just like there's one lawyer per witness when you're doing direct and cross. You don't get to this. This is not a uh a professional wrestling match where you get to tag people in and out. What are you gonna be doing the argument? Yes, your honor.

And I was just wondering if we would go first since it's our motion. Well, go ahead.

Uh That's not how the evidence played out, but, um, any objection M Morrissey. Um I don't have any uh objection. I will say MS Johnson will be arguing on behalf of the state. If Mr Bash wants to argue, God, let's just, let's just get moving.

All right. OK. Fine.

Go ahead.

Thank you your honor. And with the courts leave, MS Clark is going to put up a powerpoint. Uh as I talk it, it just shows how the evidence over the last two days marries up with the legal standards in this case.

Oh, a power.

We go to the next slide. So your honor, we're here on a motion to dismiss the charges or in the alternative to fashion lesser remedies such as suppression and an instruction to the jury for the state's intentional destruction of evidence in this case. Now, there's three legal standards as the court knows that govern.

Here. One is the federal trumpet, a standard that was an opinion by justice stood Marshall for the court. The second is the young blood standard also from the US Supreme Court.

And the third is New Mexico Law, which has its own set of standards about this issue and which in some respects is more favorable to defendants as new Mexico law often is Sarah, you know, b so I'll just say your honor. Uh by way of introduction, uh I've reviewed a lot of the case law in this area since we've had this issue, federal state. This is among the most egregious constellation of facts I have ever seen.

I was at the US Department of Justice for seven years.

I never saw anything like this and, and just to give an overview of the facts in play here, one, everybody agrees the gun is central to the government's theory of guilt. They believe Mr Baldwin pulled the trigger. They believe contrary to our argument the other day that that

establishes his guilt. The gun is central. They're relying on scientific or technical analysis of the gun to establish his guilt.

It's central. I don't think they're going to dispute that.

Second, another thing they are not going to dispute. The state knew that Mr Baldwin had said he did not pull the trigger at the time.

They ordered the destructive testing. Corporal Hancock admitted she was aware of his interview on national television stating that he did not pull the trigger months before they ordered destructive testing.

I believe Mr Ziegler testified that he didn't know much about the case. But the one thing he did know is that Mr Baldwin had said he did not pull the trigger.

The state knew that before they destroyed the evidence. Third, the other witnesses had said the gun just went off and we'll talk about that. Imagine if this is a drinking game. All right, everybody take a shot every time they say destroyed the evidence.

But we've submitted that as evidence in this case.

I believe it's exhibit k to this motion. Um So multiple other witnesses said the gun went off. The state knew that the FBI testing would destroy the gun. Again, there's not going to be a dispute about this. factually, there is an email in which Corporal Hancock's on it. FBI special agent Cortez is on it and Mr Ziegler is on it and it says we're tracking that this will alter the firearm, the key evidence in the case. And no one look at look how he's conflating, alter the firearm would destroy the firearm reached out to the defense and no one said maybe we should photograph the parts so that's available to the defense as they try to make their case.

Um The state has given no reason in their briefing or in any of what you heard over the last two days, why they did not seek at least to have those internal components photographed before they took a mallet to the key evidence and broke it.

That testing was pointless. You heard today, their own expert, Mr Haig say there was no point. It was totally unnecessary. It makes no sense given the facts of this case because no one alleges a blunt force object, hit the gun. It had nothing to do with anything and worse. Still your honor.

They failed to do the test. That actually might have made sense.

The pushoff test where you take your thumb and you apply pressure in different ways to the spur of the hammer. And now we can never do that.

We can never do it because they broke the hammer and, and then the stuff we've heard a lot of today that they had a report that said there was pre-existing modifications. They didn't disclose

it for nine months. They never even disclosed it to MS Gutierrez Reed, they had their expert testify that he saw no other evidence of modifications when he had written a report and submitted it to the prosecution saying he did see other evidence of modifications.

This is some of the most egregious conduct with respect to the destruction of evidence you will find in a reported decision.

Sarah, can we go to the next a a and just by way of overview and then I'll get into the legal standards and the evidence, the state's arguments, your honor in many respects. Totally missed the point here. This hearing was not about whether Mr Hague has a persuasive opinion. It's not about what whether Mr Ziegler has a persuasive opinion. It's whether the state was justified in depriving the defense of the opportunity to examine the firearm with its own experts in the original state and we can never do that. Now, they've broken the hammer off where we, we, the, the full notch of the hammer off, we're never gonna know what that looks like.

So here's just one example, the state says Per Mr Haig that, well, the FBI ta testing broke off the full cock notch. That's why there's no notch.

Ok. Let's assume that's true. But we, we will never be able to assess what the full clock notch looked like in its original state. Did it have those un? These are all arguments that you're, you're free to make to the jury as to why they should discount the value or weight or credibility of the state's expert witness and the state's argument in this case, this is not a basis to get an indictment dismissed with prejudice plane markings on it.

Was it smooth a little bit in a way that it might not catch every single time on this year. We have no idea. And in fact, you just heard Mr Haig say, well, we have all the parts we don't, we don't have all the parts we don't have the full cock notch. If you look, I think it's exhibit L maybe Sarah or o there's a picture of the box that has all the pieces that were broken, including little parts that were broken off like little Sear.

There is no full cock notch in there.

The part of that that was broken off is nowhere to be found. Maybe it was disintegrated. I don't know with the state's testing, disintegrate effort, be able to analyze that all disintegrated.

That we need more than a shot for disintegrated.

We need a, uh, I want a full depth charge. I wanna, I wanna pint a beer drop that shot right into it and chug it, it was disintegrated.

Where's Captain Kirk when you need him? But that is the idea of criminal prosecution is in a sense, the cards are stacked against the state. They have to prove beyond a reasonable doubt, but now they've stacked it against the defendant. I mean, they got to do all their own analysis of the gun and we never got to do it and we'll never get to do it. And, and, and this is just a really

important point in light of what we just heard. By the way, folks, there's lots of forensics testing that is destructive, right? So if, if you take AAA sample of blood from a crime scene and you test it for DNA, you destroy that sample that you've tested for DNA.

The defense never gets to test that same sample. They would have to take a different sample of the blood and have it tested.

Mr Haig has no idea what that full cock knotch looked like in the original state. He doesn't, he can make an opinion that it was fully broken off or sheared off because of the mallet. He has no idea what it looked like.

And he can't. No one knows because no one bothered to check and no one cared about the rights of the defendant to have an opportunity to make a case. That likely syrup.

Well, he's making a case and we can make reasonable inferences about the internal parts of the gun based on its external function. Another way the state's argument misses the point. Uh, your honor.

Uh, the almost their lead argument in the presentation the other day was, well, the gun was working fine in the sense that it fired, you know, on the days leading up. But we all know that when machines uh don't work correctly, they're not, not working correctly every single time.

I mean, I had a, a key that one at every 10 times it wouldn't turn my lock and the other nine times it worked fine. I mean, sometimes these things happen randomly, it at a certain angle, it's used at a certain angle. I mean, that proves nothing and the idea that they can just destroy the evidence and say, well, it was working fine before. So it must be OK. That is not what due process requires next time for due process.

So, and this was this really stuck in my craw your honor.

And Mr Ziegler seems like a good, good guy, but I mean, he did not receive the right training in the law if this is what he thinks, he, he said repeatedly. Uh I had no reason to disassemble it. I had no reason. He means he had no reason for what he wanted to do, but he did have a reason to do that.

The reason is to preserve evidence for a criminal defendant. And that is an absolute obligation. If he had disassembled the gun, they'd say he destroyed the gun by disassembling it under Brady and Trombetta and Youngblood, the def, the, the government is supposed to preserve evidence so the defendant can take a crack at it.

And so the idea that yeah, none of these people, the prosecutors, uh there's a typo there, but it's supposed to be sfso or the FBI, none of them cared about their obligations to criminal defendant didn't even cross their mind, didn't cross the Hancock's mind. It didn't cross the

prosecutor's mind and it didn't cross Mr Zigo's mind that, hey, wait a minute, it's more than our investigation group.

We might charge someone an attempt to imprison them and they need a fair opportunity to look at this evidence. Let's go, sir. Ok. So there's three standards here. We'll, we'll zoom through this part pretty quickly your honor because I know you know this.

So the trumpet of standard, that was that Thurgood Marshall opinion. Um The evidence needs to be apparently exculpatory and there has to be no other comparative evidence.

So it's, it's in a sense like materiality and prejudice. It, it, the evidence mattered and you can't get it another way. Let's go to the next one, then there's this young blood standard that comes along and what, what the Supreme Court said in young blood is, even if you can't show it's apparently exculpatory. And in a lot of cases, you're not gonna be able to, because that's the whole problem, they destroyed it before you could look at it.

Even if you can't show that it's apparently exculpatory.

If you just show it's potentially useful and the government acted in bad faith, you're also entitled to relief. And what the Supreme Court said in young blood is that potentially useful. Your honor just means indeterminate. They could have run tests on it and maybe it would have showed something.

That's all that means. That's a low bar. Uh, and a lot of the cases that have granted relief.

It's been under this test.

Let's go to the next slide. And so this last one is New Mexico Law, your honor. And as I said, I, I read it as a little more protective of defendants' rights. And my understanding is that's pretty common across areas of criminal procedure in this state.

And so the way we understand the test is that it requires either bad faith or materiality and prejudice.

And the reason we read it that way, the font is a little small here. But there's this quote from the, the leading Supreme court case on this choy.

No, I hope I'm saying it right where the state shows it did not act in bad faith. The defendant must show materiality and prejudice. So we read that as an either or, but even if the court didn't read it that way, I think it's indisputable that at least a showing of bad faith would reduce the showing you need to make on the other factors. So, let's go to the next one. Ok. So, so this is, this is really important.

Um, we think that bad faith is one of the keys here because if you agree on bad faith here, this is pretty straightforward.

As I said, we read New Mexico Law, I mean, a as if you have bad faith and as long as the gun is determinative of guilt, which I, I don't think can be disputed in so far as the state's legal theory, depends on whether he pulled the trigger, then we're entitled to relief. That's how we read Joy. And again, even if it's a sliding scale, it's gonna be pretty likely we're entitled to relief. We establish bad faith. The second, it's actually not necessary that he pulled the trigger for the state to be successful on its legal theory.

All the state has to show is reckless conduct pointing what you know, to be a real gun at another human being without ensuring there's no live ammo in it and cocking the hammer is reckless conduct.

Thing is under young blood. Again, you only need potentially useful, which just means indeterminate and bad faith. So again, if we show bad faith, I think we're, we're almost certainly entitled to relief at that point. So, let's talk about bad faith. Yeah.

Let's so really important. Your honor, bad faith does not mean maliciousness in this context.

It does not mean MS Morsy and company were out to imprison an innocent person or anything like that. It doesn't mean an ethical violation. What it does mean is that the, and this is right from Young Blood Us Supreme Court, the police themselves by their conduct indicated that the evidence could form a basis for exonerating the defendant before they destroyed it. Looking at, well, did police think of this as potentially exculpatory evidence and then just went ahead and destroyed it? And th this is the other quote from Youngblood and it's cited in a lot of the cases in this area, the presence or absence of bad faith by the police for purposes of the due process clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed. So no one's accusing anybody of ethical misconduct on this one, that's at least not necessary uh for the legal test.

What it means is that they had an awareness, this was potentially exculpatory and instead of stopping and saying, well, what do we need to do here? Do we need to document this? Do we need to preserve this? They just went ahead and destroyed it.

Let's go to the next one. Destroyed it. Drink. So we're just trying to give you some of the quotes from the hearing.

Um Just because that's what this was all about. Um It's clear your honor, the entire purpose of the testing here was to either verify or dispel Mr Baldwin's exculpatory statement. That was why they did it.

There's no dispute about this.

Uh I mean, they listed this on the direct Mi MS Morrissey asked and what was the reason that you proceeded with the testing anyway? Um And this is at the trial, I should say of MS Gutierrez reading, we proceeded with testing because Mr Baldwin had made statements that he didn't pull the trigger and I'm gonna throw in some ellipses with the statements there for everybody. So we needed to figure out how to disprove that theory or that statement.

I mean, could there be a more textbook case of the young blood standard? They were doing this in order to disprove an exculpatory statement? That was the whole purpose of this. They clearly knew that the exculpatory nature that, that, that the firearm had potential exculpatory value. They clearly knew that and then they were told and we're gonna destroy it and they didn't say go make a picture of it, go photograph it.

So, so it's, it's there for the defense and then Miss Hancock, um just Friday or excuse me, Corporal Hancock, MS Fri uh just Friday testified to the same thing. She said we were testing the theory due to the statement he made that he did not pull the trigger. So clearly they understood the exculpatory value.

They were trying to disprove it.

That's why they did this. Let's go to the next slide. So again, here and I won't belabor it too much.

Oh my God. The judge should ask, how many of these do they have? Which Corporal Hancock said on Friday.

Uh I think this was Mr Spyer asking or yeah, you were not certain at the time of the destructive testing that he had pulled the trigger. That is correct. It was quite possible in your mind that the gun had just gone off and that he hadn't pulled the trigger.

That was the theory we were testing. They understood that this was potentially exculpatory evidence and they destroyed it anyway, destroyed it. OK? Th this is an easy one.

The firearm is clearly central to the government's theory of guilt. If you read virtually any brief, they file in this case, they say he even what they're quoting doesn't say the same thing is an important piece of evidence. It's not the same thing as a central piece of evidence, pulled the trigger.

And of course, Corporal Hancock accurately said yes, when asked, you knew that the gun was an important piece of evidence. So unquestionably central to the case. OK. Did they have knowledge that Mr Baldwin had said he didn't pull the trigger. Well, we just saw it.

That's why they were testing it.

Um, numerous legal decisions have pointed to the defendant's exculpatory statements. So I'll just give one and, you know, if I'd urge the court to closely look, look at any decision cited in the, by the briefs, it's actually this Edny district court decision by Judge Deary who's, who's as, I'm sure, you know, one of the most respected federal judges in the country and it's a Soriano case. And in that case, a woman who was, it's a eastern district in New York. Hey, my dude, you're in New Mexico down with drugs in her bag at the airport.

Look at us. The ninth circuit, the ninth circuit is like California, uh is the 10th New Mexico. It is at least the 10th is New Mexico.

They got 1/10 circuit case there in New Mexico. Uh oh Lord claim she was just a food courier but the state, the government had destroyed all of the food items and you know, food related stuff in the bags and had I believe hadn't photographed them. And Judge Deary said, well, you just destroyed the evidence that could have allowed her to raise her exculpatory theory. You can't do that and you knew that she was telling you her theory in her interview. She said I'm just a lowly food courier.

I didn't know anything about the drugs.

You, you were on notice. Of her theory and you destroyed it and you didn't take pictures and you should have at least taken pictures because then defense counsel could have showed that to the jury and said, see her, her excuse makes sense. She had a bunch of food stuff in there and just a little bit of drugs. Um And at the hearing on Friday, uh Corporal Hancock again, why did you approve the test? Well, during the interview, I think she's referring to the George Stephanopoulos interview.

He had made a statement that he didn't pull the trigger on that firearm, which is why we proceed with the test. She knew about the statements.

That was not only she knew about them, that was the reason they were testing them because he made exculpatory statements.

Let's go to the next one. OK. And you know, put aside Mr Baldwin for a moment.

They also had knowledge that other witnesses had said the firearm went off.

Ross said uh in the commotion of making the movie, the gun went off. The court has all these, I believe they're in exhibit K or it looks like exhibit N the court has all of these. Multiple witnesses said it went off.

I think I heard Corporal Hancock testify on Friday. Um The, the there was some kind of common phrase like went off. I don't know if they're gonna get up and say, well, went off could mean pull the trigger or not, but you think if you were confronted with him, what, what they would assert or ambiguous statements, you would say, wait a minute, let's go talk to people and see if there's

some legs to this idea that it went off before they know so that the defense can never prove up that theory.

They didn't do that as far as we know.

Um And then here, here's just a little bit of the colloquy with Mr Spiro and Corporal Hancock on Friday, Hannah Gutierrez. Reed told you that if you touch the trigger, it will just send the hammer down. She told you that.

Right. Yes, she had also told you that she had trouble loading a firearm on the day of the incident. Right.

Yes, she did. State that the state had plenty, they had red lights going off saying this gun might have been defective. This gun might have some issue where it goes off without the pull of the trigger.

They, they knew that because that's why they ordered the testing, but they didn't preserve it for the defense next slide, please. So this really cannot be disputed either.

The state knew if this is an eight day trial. I'm gonna have to eat this microphone. I just don't believe it. The testing would permanently alter the firearm.

There's an email they can't get around the email. The email is from the FBI special agent in, in New Mexico. They can't get around the email, your honor.

They can't get around it to Mr Ziegler CC Corporal Hancock. We're tracking that this will alter the firearm and it is alter a different word than destroy. Let's do, let's take a minute.

Do a quick alter, quick definition check to make different in some particular, to modify. Destroy definition. Put an end to the existence of something. I think altar and destroy are two different words that mean two different things, your honor.

It will not, not longer, I think it means no longer be in the same physical condition that it was seized in.

Now, at the hearing on Friday, they tried to get into will or may if this guy, this guy, this lawyer right here drinks a cup of coffee. Has he altered his physiology or did he destroy his physiology? I don't think that really matters legally. I mean, if there's a non-trivial chance it's going to destroy it. I don't think that would make any difference in the legal test, but at any rate they said will I heard Corporal Hancock get into something on altar versus destroy versus damage? I, I don't think any of that has any legal consequence. This is not the evidence in the case is not accessible to the defense when they're trying to establish innocence or so reasonable doubt.

Next please.

Sarah. OK, this to me is key your honor. There's been a lot of briefing. You've now sat through a lot of testimony on this.

They have never given a single reason why they did not disassemble the firearm and take pictures of the internal components knowing the risk that they would be destroyed. They haven't come up with anything. Uh, we'll talk a little bit about their argument about standard operating protocol because that's a complete red herring.

But there is no substantive reason why they didn't do that. If you look at the pretrial interview of Michael Hay, it's quoted there on the left. Although our font is starting to get really small here. Um They say they always disassemble the firearm first. So, I mean, they know what they're doing and they always disassemble it first.

That's them. Not the FBI.

You look on the right. This is uh from Friday with Corporal Hancock.

You did not ask the fire FBI to disassemble the firearm to take pictures of it. Do you? I think it probably mean, did you, I don't, I don't know their process or how they run their testing. So I don't believe it was specifically requested from us and she didn't ask to videotape it either. It's not about the FB I's process.

It's about an investigation by New Mexico law enforcement and New Mexico prosecutors that is there to both find the truth and to protect the rights of the defendant and they didn't do that. They didn't think about it. They knew it would be destroyed and they did nothing to preserve the evidence for the defendant. Um two more quotes on this again, Ziegler.

This is from Mr Ziegler.

This is from his testimony on Fri Friday. He didn't disassemble it. That's correct.

I did not do that. Ok. He didn't do it. And, and this is really key your honor.

I think Mr Spiro asked him and you don't know if the gun had any internal damage before he did the test, correct. He's, he's honest, he's honest. I can't verify that. I can just tell you that it had no effect on the function.

That's his claim.

Well, do, do, do we have any test results to support that claim? And you don't know if the gun had been modified before you ran that test. Correct. That's true.

I do not.

And the reason is he didn't bother to disassemble it and document what it looked like. He didn't.

He has no idea if that full cock notch had modifications, smoothing scratchings, whatever it could have caused it one out of 10 times or one out of 20 times not to touch on the Sear and release that hammer. He has no idea next, please. Oh my God.

OK. And this is really egregious, your honor, their own experts. The hagues have admitted that the test they ran was totally pointless. You heard it again today? I think it was maybe Mr Spiro's first question this morning or this afternoon.

Uh You have the quotes there from Corporal Hancock. Mr Spiro asked her, did you do any research on this testing? Uh Well, I was aware that it damaged the firearm. Did you look into other options? No. Did you confer with any experts? No, he reads this as saying, I was aware that it would damage the firearm.

What, what did she actually say it could damage the firearm? Not would, is there anything else that we haven't talked about that you did to help answer the question of whether or not to do the test? No, they didn't take any time to say, is this a, does this test make sense? And I know they're gonna come back and say, well, the FBI said it was the right test. But as you know, from hearing Mr Ziegler, he had no clue what the circumstances of the incident was. He didn't know it wasn't hit with a blunt force object.

He didn't know it wasn't dropped. Only thing he knew was that Mr Baldwin said he didn't pull the trigger, he didn't know anything else so they can't blame it on the FBI.

They didn't tell them the facts next, please, sir. Ok. And this is again from Corporal Hancock's testimony on Friday.

And I'm asking you at that point, did you explain in any way, shape or form the circumstances surrounding either the pulling of the, I think you meant trigger and what happens or any of the circumstances that led to the incident? And I'm, I'm skipping over a few words there you can read it, there was actually very limited information given to them and Mr Ziegler confirmed that. So this isn't standard operating procedure.

This isn't just what happens. They didn't tell Mr Ziegler anything about the facts. So he had no idea whether he should be doing the mallet test.

That is standard operating procedure. The FBI doesn't want a lot of context because that could bias their test results. And the hagues have now repeatedly confirmed that the test was pointless. So, I mean, I, I cannot imagine when I used to run a prosecutor's office right across the border.

My A U SAS came. This guy loves talking about how he used to be a prosecutor. He loves it. He did his five or six or seven years in the prosecutor's office and we're gonna hear about that for the rest of his life to me and said we have an accidental discharge claim.

We destroyed the gun.

Ok. Did you, did you document it? No, destroy drink. What was the point of the test? It was actually pointless.

Did you do the test? You should have done? No, I mean, it's outrageous and so here's just more on the pointless mallet test.

Um, this is from Ziegler. You had no reason to believe that the prop gun of the movie set had been hit with a hammer. No, sir. And you also didn't believe that the gun had been dropped and fired. I had no background knowledge.

The reason is not because Mr Ziegler did anything wrong necessarily.

It's because the prosecutors and the sheriff's office in this case did not tell him the context before he broke the gun. And then here's just what I was saying, Mr Haig, this is back. Um Actually, this is some of his testimony from Friday.

You would agree that the testing that Mr Ziegler did was unnecessary. Yes, I would and I do so. And, and I just note uh right at the beginning today, Mr Haig again agreed with this, the testing was unnecessary. Next, please, sir.

And this is what I was just referring to. There was actually a test that might have made sense and Mr Haig has said that it would have made sense but they didn't run it. Um They didn't do the pushoff test that's putting your thumb behind the hammer that might have simulated, ok.

You know, if Mr Baldwin's thumb was on the hammer and something happened, they put pressure on it a certain way, could this gun have gone off? They didn't do it and we can never do it now because they destroyed the full clock notch. And so you can never do that test, the defense can never do it. We can never try to establish reasonable doubt by doing an appropriate test one that I think Mr Pegg called useful because they ran a test that Mr Page admits was pointless.

Next, please.

And then this is this last thing. And this, I mean, this is a aspect of this case, your honor that, I mean, I haven't actually seen this in the case law. It's so egregious. I mean, it, it's essentially a brady type spin on the trumpet problem.

So this, we've been over this a lot, so I'm not gonna recap everything. But the Hagues wrote a third report in August 31st.

They said in that third report, there are unexplained modifications on this firearm on the Sear. We have no idea who did this. It likely was not the FBI.

They said that they submitted to prosecutors like they were supposed to do, they were being careful. We didn't get this report for nine or 10 months. I don't know if it was intentional or not.

As Morrison said it was an oversight. We didn't get this report until it came out in a pretrial interview that had existed.

MS Gutierrez Reed never got the report.

Her lawyer never got that report. The state stipulated to that earlier today. And then here's what we were, uh, let's go back, sir. Here's what we were talking about earlier. People wanted the transcript site.

This is from MS Gutierrez Reed's trial.

Mr Bowles, who as you know, was her lawyer. Ok, sir. So other than the FBI testing, breaking those components, you didn't see any other evidence of modification or damage. I did not your honor at that time.

Way before these recent meetings with Ziegler where they changed or at least where uh Luke Haag changed his conclusions.

He had submitted a report to the prosecution saying there are unexplained modifications that were likely not caused by the FBI. And then he testified in open court, there are no unexplained modifications. I mean, it does not get starker than that. Let's go to the next slide. What, what the defense is obfuscating here is that he did an August 31st 2023 report. He said, I don't know what these marks are from.

Then he learned where the marks were almost certainly from the FBI the manner of the FBI unintentional discharge test.

And then he testified in trial having acquired that new information that allowed him to attribute the marks to the FBI test, sir. Now I, I listened today, we kind of worked up this slide really quickly as we were listening today and I didn't hear any plausible explanation for the discrepancy between this third report back in August of 2023 and that categorical denial and MS Gutierrez read, I just gave you the explanation and I learned it from Lucian Haag today in his testimony, his trial. Um I think I heard him agree at one point that it was only recently that he rejected the No, that wasn't his testimony conclusions in that report.

I believe that was in connection with that recent meeting or Zoom call with Mr Ziegler. No. And he said that, I think I heard him say that he had no other meetings with the state about the report beyond that recent meeting.

This is, I mean, if, if, if you needed any more evidence of bad faith, not only did they not allow, they're making all this up. This is, this is all just a lie. I was to test the gun in the original state when their own experts found out that wait, there were other modifications here.

They didn't disclose it to us. They didn't disclose it to MS Gutierrez Reed. They weren't gonna disclose it until we found out about it.

And then they got their experts to meet and come up with some kind of an explanation that is extraordinary, bad faith. We go to the next slide, please. I won't go over this whole whole timeline because we've laid it out in the briefing. But this just shows we can go back for a second, but this just shows the egregiousness of what happened.

I mean, this report was drafted in, in August of 23.

We did all the normal normal requests for discovery. We didn't even find out about the second report until an interview. And then we find out about the third report on May 21st, a month ago when this trial is set for July.

It is just extremely unfair that the state could use this technical analysis in a prosecution given this record of what happened here next, please. Ok. So I'll go over the state's excuses here.

And by the way, although I'm putting this all under the auspices of bad faith, a lot of this factual material is relevant to the other factors. And that's why I'm gonna zip through those when we get to those because a lot of it's the same stuff.

So, I think their number one response, your honor is gonna be. Well, this was just the FB I's standard operating procedure. You heard that elicited a lot and it's true.

Some of the cases say not absolutely, but there's kind of a presumption of good faith that they're just doing standard operating procedures. That's totally inapplicable here.

One that exception. And there's this 10th circuit case in bold that the parties talk about that exception. Your honor is about like disposal policies. So for example, the government doesn't want to have a huge building filled with cocaine from every case ever. So they have disposal policies about cocaine and usually it's not reasonably disputed that the subject the substance was cocaine.

Once there's been a test by a reputable machine.

I have never heard of a policy that says we destroy the gun in an accidental discharge case. I mean that there is no policy like that and there is drink, they destroyed the gun drink. There's no way that the government can circumvent Trump Beta and New Mexico Law and Young Blood by saying, you know what that's just our policy, we just destroy the evidence. That's our policy document, we just destroy it. Drink.

That is not what the Supreme Court has meant by disposal policy by uh standard operating procedure. They mean things that really evince that nobody was thinking about the exculpatory value.

It's just we we can't store mountains of cocaine in the storage facility. So we have to have some way to dispose it. Second. And this is maybe the key here, bold itself, which is again, the key 10th circuit case says, provided there's adequate documentation.

So you gotta adequately document the thing you're destroying.

And so when it's cocaine, you, you document all your tests, how you did it, maybe even take pictures of it. So you can't, you know, it looks like cocaine, the defendant will have access to all of that. Um It, there was no additive documentation here.

That's the whole problem.

They didn't take it apart, they didn't take pictures of it. And then finally, they keep trying to blame this on the FBI. The FBI had no clue what the circumstances of this were. Nothing.

All the information by the FB I's own policies and standard operating procedure question Mr Ziegler got was from TV. And all he knew is Mr Baldwin said he didn't pull the trigger, they didn't tell them anything. It's the FBI does not have a standard operating procedure that says in an accidental discharge case like this, we always run the mallet test that they didn't, he, he's just saying there is a way to run the mallet test that we do. He's not saying the mallet test is appropriate in every case and it, yeah, their own expert has now conceded it was not appropriate.

And if you just see his testimony, um Friday, um he said you wouldn't have we asked him, you wouldn't have recommended the test if you, I think we were saying if you knew what you knew.

Now, he said that was not my decision. So blaming it on the FBI is not correct. They were not given the context of what happened here. Uh Next, please. Ok. I, I don't know if the state's going to say this was just negligence.

Um Because that's an exception, you know, that's not enough in the case law. I haven't really heard them illicitly but, um you know, it wasn't negligence.

This was knowingly destroying the f it was kind of ironic in a case concededly about an accident. Um The state could somehow get away with intentionally destroying the key evidence and the defense of that evidence. Next, please, sir. Ok.

And so this is something that's come out in the testimony, your honor and it just, it's, it really cannot be credited.

The safe keeps saying we were not on notice that he, he did not that, that he was, that there was a defect in the gun or that he was claiming there was a defect in the gun, but he's an actor. There's no question he was saying he did not pull the trigger and the gun went off. Clearly, any common sense understanding of that is that there was a defect in the gun that caused it to go off. Something went wrong.

I mean, I, you know, I'm not a car expert.

If I tell the mechanic I push down on the brake and it did not break. I don't have to tell the mechanic. And I think that's because there's some problem with the brake fluid. I mean, it, you're obviously conveying that there is a defect when you say the gun went off without me pulling the trigger. So I mean, it's almost hard to believe they keep relying on.

Well, he didn't tell us there was a defect if he told us that we would have done something different. He said the gun didn't go off.

Uh He said the gun went off without him pulling the trigger. Obviously, he was conveying to any common sense person that there was some problem with the gun. Next, please. Actually, no, because he's just an actor, right? He doesn't know anything about guns.

Maybe guns do that, maybe guns just go off by themselves.

Ok? And then the last thing I heard them say, I think they asked a question like, well did, did defense counsel ever notify you? They don't want us to destroy the gun. Your honor defense counsel had no clue. The state was thinking of destroying the key evidence in the case. There's nothing that would lead them to understand that a case all about a gun, the state would destroy the gun not documented, run a pointless test without notifying defense counsel. The reality is the state didn't care about the defendant's rights, didn't care about MS Gutierrez Reed's rights either and didn't bother to notify any defense counsel of what they were about to do. And the proof of that is that they then went on not to notify defense counsel about the Hague's report saying they were pre-existing unexplained modifications.

This is a pattern.

This isn't something that just happened once a mistake, this is a pattern they did. By the way, the Hague report never said there were modifications like someone deliberately modified the gun. The Hague report just said we saw these diagonal lines, we don't know what they're from.

Not want the defense to be able to make a case from the physical evidence of the gun and in multiple respects, they denied the defense that opportunity next, please. Ok. So that's bad faith. And as I said, I'm not gonna go extensively on these other factors because it's a lot of the same facts go to all these issues.

But there's really overwhelming evidence your honor that the firearm was apparently exculpatory, meaning there was reason to believe it was exculpatory at the time it was destroyed.

Um As I said it's central to the case. Both Mr Baldwin and other, look at their definition of how it's exculpatory. Look at that third bullet point. Witnesses said the gun would go off if you touch the trigger.

No kidding.

No kidding. Is that how guns go off when you touch the trigger? But I thought your client said he never touched the trigger. Witnesses told investigators that it just went off.

Um, uh, witnesses, I think we mean there, MS Gutierrez Reed said it could go off if you just touched the trigger.

Mr ZR by the way, said Friday that the full cock notch was flatter than the other two notches. So there was a visual reason to think there might be something going on here next, please. Ok. So this is all this all comes from today, your honor. Um So we've already talked about the third Hague report said there were unexplained modifications and as you heard, MS Morrissey elicit on redirect their explanation for that is well, ok, even if there were unexplained modifications and even if the FBI didn't do it as they originally thought, and as I think Mike Haig still thinks those modifications couldn't have caused the firearm to go off two points on that.

Your honor one.

We can never test that because we don't have the full cock notch. And again, this hearing is about why do we never get to make our own case and test this evidence? It's not about which expert is the most persuasive two. Mr Haig misunderstands. He's a very smart guy in the technical stuff, but he misunderstands the potential relevance of those modifications. It's not just your honor that maybe the modifications could have caused the firearm to go off without the pull of the trigger.

It's also that they indicate someone else was monkeying around with this firearm and remember we don't have the full cock notch. We have no idea if the same person who put those modifications into the Seer also did.

This is entirely speculative. It's something on the full cock notch. The relevance of those modifications is not just what they could have been able to have happen. It's what they indicate about the fact that someone else we don't know was they, they don't indicate anything else monkeying around with the internal workings of this firearm before it got to the before October 21st. And that's a fact question, right? So they're saying, well, there were these marks.

So that tells us other stuff was modified too.

No, it doesn't. No, it doesn't. Especially when there's an innocent exclamation for these marks.

And that is the FBI's destructive testing and destructive drink or got to the FBI.

They missed the relevance of that. And his explanation doesn't account for that. Um He admitted, I thought this was very telling that he's never seen damage like that on the sear of another gun.

And this is like the most experienced guy you can have in 57 years, he's never seen damage like that. Um, and then this is, you know, very telling, um, m Morrissey dismissed the charges and I guess she can account for exactly why she did this.

But my understanding is that she dismissed the charges originally in the first indictment because she felt there was a need to investigate the condition. She dismissed the charges in the first of the indictment as a courtesy to defense counsel who asked her to do that until the results from the FBI testing were back. Kerri Morrissey, a career criminal defense attorney, only working as a prosecutor because she's appointed, been appointed as a special prosecutor in this case.

When approached by other defense counsel asked them, asked her for a favor as defense counsel said, all right. So it's not hanging.

So the indictments not hanging over your client's head, I'll dismiss the first indictment without prejudice so I can bring it back pending the results of the FBI examination. She did them a favor and this is how they respond if it seems like Kerry Morsey doesn't like these lawyers very much. This is one of the reasons why and the possible modification of the firearm. So again, the standard here is not, is just clearly exculpatory.

It's whether it was apparently exculpatory and the prosecutors obviously thought at the time they dismissed the first indictment that there was an issue there. They thought it by their, they showed that by their own actions next surface.

Um And, and this is just a legal argument. The state makes it's totally wrong. They say apparently exculpatory means actually exculpatory. There's this one part of their brief, your honor where they're quoting a bunch of stuff and then they get to the last sentence of that paragraph. I wish I had the page site on me, but I don't, it's not a quote anymore.

It's just like their words and they say actually exculpatory and they cite bold that 10th circuit decision.

Well, I mean, I looked at the page, it does not say actually exculpatory and that makes no sense at all. I mean, essentially what they're saying is that you have to have objective evidence, proving the destroyed evidence was exculpatory. Well, that test would be met in literally zero cases and the reason it would be met in zero cases. Your honor is remember the second requirement under Trumpet, you can't have comparative evidence that you can use.

Well, guess what if you had objective evidence that the destroyed thing was exculpatory. That means you would have comparative evidence and you could just use that. So literally, you could never win the test if it was, you have to have some kind of objective evidence establishing that it's actually exculpatory.

What you need is evidence showing it was apparently exculpatory at the time they destroyed it. And we have that in space.

Now, this is obfuscation here. So whether or not evidence is exculpatory has to do with whether or not it goes to the a material fact in the case. So they could say the defense could say, well, Alec Baldwin was wearing a red shirt at the time he shot and killed Helena Hutchins. And that's exculpatory is it does, does his wearing a red shirt have anything to do with the criminal charge or any legal defense? No, therefore, it cannot be exculpatory because, and it, it doesn't address a material fact of the charge or defense simply because they're saying it's exculpatory doesn't mean it can be.

All the defense is saying is even if what they're saying is true, it's still not exculpatory. There's still a legal argument for guilt f next, next uh Sarah Place.

OK. Real br briefly on this because I don't really hear the state to contest this vigorously. Um We easily meet the second from benefactor, which is that we, we don't have any substitute evidence we can use.

Um And the simple reason is that the typical substitute evidence you have is you can get someone on the stand that knows the thing, you know, knows what it looked like before it was destroyed, knows the key fact and ask them about it. We can't do that because nobody in the state and nobody in the FBI bothered to disassemble the firearm and look at it. They certainly didn't take pictures but they didn't even, you heard Mr Ziegler say he didn't bother, he didn't think he needed to. So we have literally nobody we can ask about.

What did those parts look like was the full cock notch? And the way it interacted with the seer, was that a problem? What did the seer look like? Uh What did other internal parts that were broken look like? So we have nobody we can ask about that.

So there is no comparative evidence in this case. And it's a lot like this Ninth Circuit Zero Goza case there. A woman claimed she had been forced across the border under duress and she said, just look at the video of me crossing, you'll see. I'm under ninth circuit. Uh sorry.

10th Circuit Federal court decision. Sorry, he's citing 1/9 circuit federal court decision.

First of all, they're in the 10th circuit. Second of all, this is a state case duress and they destroyed the video and the government said, well, you can just call some border agent to say what she was doing, but there were no border agents who had seen her. Well, it's the same thing here.

There's nobody that disassembled this firearm and closely examined the internal parts. And so there is we have evidence of the function. The function is what matters if there was no functional impact from any modification. The modification doesn't matter.

It's like if someone had taken a sharpie to the side of the hammer and drawn. I don't know, a phallus on the side of the hammer. Is that a modification to the gun? Sure.

Did it affect the functioning? No, therefore, it's irrelevant. There's nobody to call next, please. So that's from that. Uh uh just quickly on the alternative, don't establish bad faith. Or if you think we need bad faith.

Plus, um, all the reasons we said this was material and prejudicial.

There's reason to believe further testing would have showed that this firearm was capable of discharging without what we were denied that opportunity. The state repeatedly took steps to deny us that opportunity and the gun is central to their theory of guilt and essential to their theory of guilt. Next, please. Um And just real quick here, Ziegler's Mr Ziegler's testimony from Friday shows how material it is. Mr Speer was asking him about certain scenarios if it could accidentally discharge.

And one of the things he asked him was, what about if the notches were worn? That is a possibility. Remember, we don't have the full cock notch, they destroyed it, we can never get it back.

Um And then he, he noted that the full cock notch in his quick view looked flatter. Um But of course, he didn't closely examine it as far as we know.

Um Next, please. And so this is our last slide, your honor. Um They're including an image of Thurgood Marshall here. Why? Why? Because they know that the judge went to law school in a certain era and would have studied Thurgood Thurgood Marshall's decisions.

Um although uh ii I wanna make one point on the merits before I get to the remedy that I just overlooked in our presentation.

One of the things Mr Haig has said is that, well, we know from our testing that the FBI testing must have destroyed the full cock notch. And the reason he says that is because obviously at the beginning of the FBI testing, it was staying in the full cock position and by the time it got to the Hagues it wasn't. And so he's drawing the inference. Well, it must have been the testing that destroyed it. Here's what's important to understand about that.

Your honor.

He cannot say that that means the full cock notch was non defective before the FBI tested. He can say that the FBI testing like fully broke it. And so it would never catch, but he has no idea whether there was some minute defects in that some issue in the way it interacted with the seer that could cause it to malfunction one out of 20 times. This is a factual argument for the finder of fact, make this argument to the jury, see if that's sufficient to raise reasonable doubt one out of 10 times, he has no idea.

He's, he was never given the opportunity to do that.

So he cannot validly represent that he knows that all damage was done by the FBI testing because he just, it's, it's impossible for him to know that. Um So lastly remedy your honor in Trumpet Justice Thurgood Marshall who was writing for the Supreme Court said the remedy is dismissal or suppression. We have the site there. In this case, we think the remedy should be dismissal because Mr Baldwin really can't put on an affirmative case for acquittal um to the full extent that a criminal defendant is entitled to do without his own ability to test the gun. It's an accidental discharge case.

This is not a case where the gun is tangential, the gun is core and the prosecution denied the criminal defendant the opportunity to see it to test it.

It's just, it's outrageous and it again, the accidental discharge notion, the claim that his finger wasn't on the trigger that doesn't get him acquitted because he committed other reckless acts. Like for example, pointing the muzzle directly at Helena Hutchins in violation of the S A safety guidelines, the fundamental rules of gun safety knowing that was a real gun, he pointed that gun directly at Helena Hutchins that's sufficient for recklessness all by itself wires dismissal. In this case, in the alternative, your honor, we think an imperfect but certainly better than nothing remedy would be to suppress all evidence and arguments by the state that Mr Baldwin pulled the trigger and then give a corresponding instruction that he did not.

Now, it's not perfect because there still may be jurors sitting there thinking, I wonder if he pulled the trigger, why didn't they put on any evidence that he didn't? But it's certainly better than nothing.

And it would at least somewhat level the playing field when, you know, the, the, the huge burden is supposed to be on the prosecution. But they've flipped that they've made it. So we have no ability to test the gun. And, uh, that would go some ways towards fixing that imbalance.

But at a bare minimum, your honor, we would ask this, of course, we think dismissal or the or that other remedy is better. But at a bare minimum, we would ask that all of the, I guess I'll call it scientific technical analysis of the gun that the state performed that Ziegler, the hagues and so forth, be suppressed. Um, and so under that scenario, the state would still be able to say, well, we think he was mishandling the gun in some earlier day.

And so it must be that he pulled the trigger or whatever their other eyewitness evidence, they think they have under that scenario, they could still present all of that, but all of this technical evidence would have to be suppressed. So that's our sort of third option, imperfect, not as good as the first two. But we'd ask the court to consider that if the court thinks the first two options are not warranted.

Um So in short, your honor, I'll get up on, on rebuttal if it's worth rebutting. But this is an outrageous series of events.

I don't think you will find a reported case with such an intentional destruction of a key evidence in the case without any effort to preserve it, even though it would have been the easiest thing in the world to disassemble the firearm and carefully photograph and measure the parts. They didn't do that. This is a classic from Beta Youngblood Choy Nard Violation. And we would ask the court for relief. Thank you.

First of all, um um, my assistant wants to get on and tell you all what she needs on these exhibits.

So, go ahead. Mhm. So whatever, uh just come over here.

I just want to remind everybody this entire hearing on this motion was scheduled for two hours on Friday. They started at one o'clock an hour earlier than scheduled.

They weren't done by three, they weren't done by four. They weren't done by 5530. This is still going on and the judge had to schedule this additional time this afternoon and we're still going on that, that closing, that argument right there by the defense took an hour by itself just over here. Can you guys hear me? They're all muted. I don't know why they're all. Ok.

Go ahead.

Uh My name is David. I'm the court monitor. And even though you guys have a court reporter, I'm in charge of every single exhibit.

So what I need is for both sides to send me a list of everything that was admitted. Um, if that's in your email, then that's fine. I, I have all of your exhibits in the email and then from here on out, I there's not much I can do with an exhibit if it's not admitted or labeled by you or if it's just like shown and published, I have no way of knowing.

All right, let me clarify what you admitted was what you um showed on screen. OK.

Nothing else was admitted because you didn't move for the admission, you just put it up on screen. So that's what's going to, that's what you need to identify is admitted. OK? The one exception for that because I didn't know if the court wanted me to put it on screen was simply the email that I said, the affirmation that I said I was sending to that. Correct.

Correct. Correct.

I just wanted to make sure the court knew that I intentionally didn't put that on screen and sent it to Miss Marcy. I, I don't know that, I don't know that the defense went through and discussed and admitted exhibits A through Y is, I mean, is, is that the issue that you're just like when you moved on from your, from your bullet exhibits and you didn't admit like 14 of them? OK? It's only what was shown up on screen. All right. So, so I just want to be clear the exhibits that the defense did not put up on the screen are not admitted.

That's correct. Yeah, I mean, yeah, I just to clarify at the beginning of the hearing, that's why I said that because I was trying to allow this to move smoothly that, you know, will the court deem the filings and the attached exhibits admitted for the purposes of this hearing? And, or, or, or Linda Johnson said that's fine with the prosecution. And so that's why I wasn't going through the procedure.

Oh, ok. You know that, that sounds fine. Does that sound fine to you, MS Morris? Yeah. And that was, we, we, we expected the same of our exhibit.

We wanted that to go both ways. Ok.

So we'll do the, the ones on the pleadings. Ok. What I'm telling her? Ok, all the exhibits in the pleadings now, um way past what I had anticipated.

Um um You may have seven minute reply, Mister Bash and I will time you on that and I will cut you off. Ok. Go ahead.

Uh MS Johnson. Thank you, your honor.

May it please the court? Your honor pursuant to Trumpet versus uh California, it is the defendant's burden to demonstrate that number one, the unavailable evidence possessed exculpatory value that was apparent before the evidence was destroyed. And number two, that

the evidence is of such a nature that the defendant cannot obtain comparable evidence by other reasonable available needs.

It is their burden and what you heard, the defense argue is everything the state did and didn't do. But they didn't demonstrate by objective and independent evidence that the police or the uh law enforcement officers in this case knew or this perceived exculpatory value of this evidence was apparent to law enforcement. So the defendants believed exculpatory value of the internal components of this firearm were not apparent to law enforcement. Your honor.

You heard testimony from Officer Hancock or excuse me, Corporal Hancock, who said this gun appeared perfectly fine. There seemed to be nothing wrong with it.

You heard from Mr Ziegler when he received it at the FBI, the gun fired 12 times just as designed. There was nothing apparently wrong with this gun. So the defense now comes and argues that this accidental discharge testing that led to the damage of some of these components uh deprived the defendant of this exculpatory evidence. Well, that's not the way the test works.

The mere possibility that this destroyed evidence could have been tested could have exculpated the defendant is not sufficient to satisfy the first prong of trumpet.

And that was clarified in Arizona versus Youngblood 488 US 51 a page 56 where the Supreme Court clarified the Trump beta test that the defense bears the burden of demonstrating that this unavailable evidence possessed exculpatory value but not just possessed exculpatory value, but that it was apparent to law enforcement that it possessed exculpatory value. And so I know the defense takes issue with. So her point here is that the, the state had no reason to suspect there was anything wrong with the internal parts of the gun, the gun was operating normally.

So they, the state, this is how the defense likes to conflate things, right? So the, the, uh, the defense likes to conflate altered, modify with destroyed, right? And they use those words interchangeably, of course, they use destroy to mean alter or modified. The, the state was aware that the gun could have exculpatory value. If the functioning of the gun could lead to an accidental discharge, that's what they were testing the functioning of the gun. They had no reason to believe that there might be anything wrong with the internal components of the gun because it was functioning normally.

Oops the state's argument that they have to show through independent and objective evidence.

And I'll tell you exactly where that is United States versus Bull and United States versus Martinez in United States versus Bull, which is 25 F 3rd 904 at page 911, the 10th Circuit US 10th Circuit Court of Appeals noted and in that case, just to give the court a little background, I'm sure you probably already read it your honor. Uh The defendants were charged with, um, where they were tasked with building these radio tower legs and these radio towers, the legs had to conform to certain chemical specifications. During the building of these legs, they received uh

FAA quality reliability officer certificates. It said they conform. But then unfortunately, um subsequently to their construction of these radio towers, the one of them basically did not malfunctioned and it's essentially broke.

And so Mr Bull and his business partner get charged um in federal court and they basically tell the government through their council, please preserve these tower legs. We have this certificate from the FAA quality reliability officers who certified that these tower legs conformed to chemical specifications.

The government on the other hand, had testing that they had initially sent off to the University of Maine um or the part of the tower leg, they sent off to the University of Maine to have it tested, that test showed that they did not conform to the chemical specifications. So in this particular test, uh uh in this particular case, the US 10th Circuit Court of Appeals found and actually held that the defense didn't meet from better, they didn't meet.

And the analysis in that case was under Arizona versus Youngblood despite the fact that the defense had independent objective evidence. And the reason the state brings that to the court's attention is because at page 911 of that opinion says Second Bell and Bowles's assertion and I'm quoting directly from the opinion. Second Bell and B's assertion that the tower legs possess potentially exculpatory value was not merely conclusory, but instead was backed up with objective independent evidence. Giving the government reason to believe that further tests on the leg might lead to exculpatory evidence.

We don't have that in this case, your honor. And that was also noted.

Um, that kind of language was noted in the US 10th Circuit Court of Appeals opinion in United States versus Martinez 744 F 2nd 76. And in that case, the defendant was charged with possession and making explosives. Law enforcement seized the package.

They essentially uh removed the blasting cap from the device. They opened the wrapper uh and then they took the material, they burned it and they buried it.

They also transported other materials such as a manila envelope that contained a, a mailing label.

But unfortunately, well, they actually processed that for fingerprints and they photographed it, but then they subsequently destroyed it. Mr Martinez filed a motion to dismiss under Trumpet the 10th Circuit Court of Appeals um affirmed the district court's denial of the Trumpet motion and noted that the defense was merely arguing. So what the defense was arguing was, the manila envelope could have been exculpatory.

The mailing label could have obtained, could have been processed for DNA for saliva. Um on that uh mail being labeled to determine it was not Mr Martinez. And in fact, they argued that there was no evidence that these items that were destroyed were even explosive device,

explosive devices. The 10th circuit noted that other than conjecture and speculation, not independent objective evidence, the defense had not demonstrated that these items before they were destroyed were apparently exculpatory to law enforcement again what we have here. But then you also have to look at the second prong of the Trombetta test.

And that is, does the defense have other available comparable evidence um that they could use uh in this issue that is addressed by United States versus Ludwig, which is 641 F 3rd, 1243 also 11/10 Circuit Court of Appeals decision.

And in Ludwig, the um law enforcement officer conducted a traffic stop, they lost or destroyed the video that documented this traffic stop. And the defense filed a motion to dismiss under Trombetta. The 10th circuit noted that Ludwig did have other um comparable evidence that could be obtained by other reasonable means. And that page 1212 54 of that opinion, the 10th Circuit notes, we rejected defendants from beta claim reasoning that the defendant could have called witnesses to the event to adduce what the missing videotape evidence showed.

They have that in this case, you have the officers who seized this gun. You have Mr Ziegler who conducted the accidental discharge test. You have uh Mr Haig, uh Luke Haigh Mike Haig who can testify about their analysis and examination, the parts are still available.

The fact that this gun was unfortunately damaged during the accidental discharge testing does not deprive the defense of the evidence that they could use effectively in cross examining. And we saw that defense counsel effectively used this information in cross examining just in this motion hearing alone. We it looked like he was doing it for a trial but that right there demonstrated that they have other reasonable available means to get to making their point. So they fail under Trumpet.

So then we go into Arizona versus Youngblood under Arizona versus Youngblood. The US Supreme Court added a third test that in order for the defense to death demonstrate a due process violation, they have to show that the evidence, excuse me, that the law enforcement acted in bad faith. And at page 57 from the young blood decision for 88 US, page 57 it says that basically when you deal with uh failure to preserve and I quote evidentiary material of which no more can be said, then it could have been subjected to test the results of which might have exonerated the defendant.

The court has to look at the third to uh prong and that is that there was bad faith on the part of law enforcement and that bad faith element actually dovetail with Trumpet's first element, which talks about what essentially law enforcement was aware of.

So you have to look at what was law enforcement aware of in this case and your honor, a dispassionate review of the evidence in this case leads one to conclude that the exculpatory value of this firearm in the condition it was in on October 21st, 2021 is extremely low. First, Mr Baldwin himself told OSHA investigators that the gun had no mechanical defects. In fact, he was asked specifically, Corporal Hancock testified to that.

He was asked, was there anything mechanically wrong with the gun? He said, no, there was nothing wrong. I've been using it for days.

The only problem was that it was there was a live bullet in the gun. Those were his words. That could not be. That's, these are awesome. This is Baldwin, Alec Baldwin talking to detective Alexander Hooters Hancock in his interrogation the day of the shooting.

Oh no, this is him talking to OSHA. Sorry afterwards.

Um This is what the, this is why I caution folks, your lawyers are stuck with the facts.

You give them, these are facts from their client's own mouth that these defense lawyers have to deal with. Put law enforcement on notice that this gun had. If you believe their theory, some potential mechanical defects. When he was interviewed by law enforcement on October 21st 2021 he never said I didn't pull the trigger to the officers. He said the gun went off. Well, saying the gun went off is not the equivalent of saying there was something wrong with this gun.

People say the gun went off because nobody was expecting that a live bullet would be in there.

It's unknown. But what we know is that when somebody says the gun went off does not equate to, there's something wrong with this gun. So there's no way for law enforcement to be put. Right.

He could have been surprised the gun went off because he thought there wasn't supposed to be a bullet in it. Right.

But I notice that there could be anything wrong with this firearm. And the United States versus Bold decision.

Your honor was actually uh a good decision for this court to look at because in that case, what you had and and the court did find a due process violation under Youngblood.

They didn't find it under Trump beta because they, as I mentioned earlier, um the defense did not demonstrate that it was immediately apparent at the time, but under young blood, they did find bad faith and the reason they found bad faith in bowl is because number one, the defendants had this certificate from the FAA Quality Assurance officers that indicated these tower legs conform to chemical specifications. And then they asked the government when the government seized the tower legs to please preserve the legs. They beg the government to allow them to conduct testing on these legs. And despite getting these numerous requests, the government destroyed the tower legs. The court in bold did find that that is bad faith because they knew not only that they had had the FAA certificate. They also were put on notice by the defendants.

Hey, these tower legs conform to specifications.

Nevertheless, the government destroyed them. That's not what we have here. What we have here is a gun that to everybody who handles this gun was in perfect working order from the man who manufactured, manufactured this gun, Mr Pieta to the person who received it after him, to the person who bought it from EMF to law enforcement to Mr Ziegler and all the way down to the Higgs. I wanna briefly just address this red herring that the defense raised about Mr Haig's August 31st 2023 report. First of all, your honor, there is no intentional wrongdoing here, MS Morrissey has accepted, she was an oversight.

She forgot to email it.

But anyway, that's, I'm sure the subject of yet another motion that's been filed before the court. But what's important there is that Mr Haig in that report did not say there were modifications to this gun. What he said there were irregular off axis diagonal tool marks of an unknown origin. It seems unlikely although it cannot be excluded that these tool marks were made by the FBI's testing.

So he doesn't say the FBI testing didn't create these.

He clarifies that after he has an opportunity to speak and, and, and interview Mr Ziegler about how he conducted that test that does not equate your honor to bad faith at all whatsoever. I I is, that's a red herring that the uh defense is bringing before this court. The bottom line missed opportunity here. She should be pointing out that uh Lucian Haig acquired new information after he wrote that report. And before he testified in the Hannot Guterres trial about the FBI's testing methods that led him to believe the testing methods were what created those mysterious marks.

And his interview with Ziegler last week only confirmed that information he acquired before he testified in the Guterres court missed missed opportunity there for the state fine.

Is that under young blood, under trumpet, they fail under young blood, they fail, they cannot demonstrate bad faith because what is really important here is what did law enforcement know law enforcement knew that they received no request from Mr Baldwin from his attorneys. Hey, can we look at this gun? There may have been something mechanically wrong with this gun.

This, there was modification to this gun was a fortuitous defense that the defense developed after the gun was damaged or not the gun. But the internal components of those of the gun were damaged by the FBI testing. You have a witness who in a pretrial interview stated that he saw Mr Baldwin pull the trigger. That's that Zack Sneezy, Mr B, uh Mr Baldwin's own statements that the gun was working fine and what's also important to the court's analysis, your honor. And I know they try to discredit what the bold decision said, but it is nevertheless, in the bold decision at page 912 and 913. And I quote, moreover, 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 when there is adequate documentation of the destroyed evidence.

And so the defense says, well, that's just about when they destroy the evidence.

When they're trying to get rid of it. I would respectfully submit that. That's a narrow reading of what bowles says, what B says and I will get to what shenna says about that too in a minute.

But what B is basically saying is they f they followed standard operating procedure here. You heard testimony from Mr Ziegler that he conducted this test pursuant to standard operating procedures by the FBI.

And so therefore your honor, there is no bad faith.

What is different about B is that the government had no innocent explanation? And that's all over that 10th Circuit opinion. The government could not provide the court with an innocent explanation of why they destroyed these tower legs after they knew all this other information about how potentially exculpatory they could be. There was no doubt I would respectfully submit your honor that there was no seven minute time limit on this, on this argument in this responding argument, the seven minute time limit is on the defense rebuttal. The, the uh the, the defense spent over an hour in presenting its argument. This is the state's response under the due process clause of the 14th amendment.

The defense has mailed uh failed to meet their requisite um their requirements to prove that both Trumpet and Youngblood and I would respectfully request that under that standard that the court denied the motion. Now with regard to the state law under state versus Sherard, your honor.

As the court is, I'm sure intimately familiar with that case. There are three requirements that the state either breach some duty or intentionally deprive the defendant of evidence. Number two, the improperly suppressed evidence must have been material. And number three, that the suppression of this evidence prejudiced the defendant.

I want to read a passage from Sherard because I think that the defense loses at the first prong. What's important here is that these parts were damaged during a test during a test that was done pursuant to standard procedure at um the site to Sherard is um 1981 New Mexico, the Supreme Court decision in 96.

At paragraph 16. The court notes that if this uh if I can just find my, where material is destroyed before its significance as evidence is realized the defendant's inability to inspect your test that does not deny him due process. But right above that, they say thus, if the substance in the present case had been used up during testing, the state would not have breached any duty and there would have been no due process violation.

So, what's that telling us what that is telling us is that if a test is used up or damaged during standard testing, there is no due process violation because the state hasn't deprived the defendant of this evidence.

That's what happened here. This was one, right? So the point she's making here and I mentioned earlier that there's lots of forensics testing that's destructive in nature, right? So there's a puddle of blood and you take a swab of the blood and you test the swab for DNA, you destroy that sample that's on the swab, the puddle still remaining, but you destroyed the sample that you tested.

The defense doesn't get to test that specific sample two. It's consumed in the process of the testing. Now, if all there is, is a swab's worth the minimum amount you need for the testing and that's consumed and there's nothing else available. That's not the state denying the defense evidence.

The equivalent would be if, if there's a puddle of blood, the state tests, one swab of it and then they destroy the rest. But if there's only one unit to test and it's consumed in standard testing, that's not denying the defense anything. That's what happened here.

That's the analogy on of many tests that the FBI had available, they conducted this test pursuant to standard operating procedures. And if you look at the reasoning in Sherard and the logic of Sherard, that basically, it's saying if the test is, I if the evidence is consumed during testing or damaged in this case, during testing, the state has not breached a duty.

And so the defense fails under the first prong and the court's analysis should end there. But even if the court goes to the 2nd and 3rd prongs, the second prong is materiality. So as to this element, the defense has to show that the damage evidence.

Basically, the court looks at the damage evidence and how it's affected by the weight of other evidence. Well, you have witness testimony who saw Mr Baldwin pull the trigger. You have the numerous videos that M Morrissey was playing for the court on Friday where that gun worked perfectly fine. You have an expert who saw who actually watched every single one of those videos and said that gun appeared to be working perfectly fine.

You have expert after expert who said, even if you assume that those diagonal lines were there, that gun, those were not, would not have affected the functionality of that firearm.

So the second uh factor or element that um that the court looks at in determining whether it's material is the opportunity to cross examine. That's right from Sheard. They have ample opportunity to cross examine the defense. You have capable council representing Mr Baldwin they will absolutely take advantage. And we saw in the last couple of days, a couple of days that they have taken advantage of these issues and can ably and vigorously cross examine the witnesses about these, uh, tests that were done on this gun. And number three, the defendant's

use of the loss in presenting his defense again, that goes with number two, they can make a very effective use of this testing and what happened during the testing and the parts are still available.

Your honor. In fact, they had um, somebody go look at this evidence.

He's a retired a TF agent.

Go look at this, these pieces, these items from this revolver back in uh end of April, I believe, but we didn't hear from that expert and it's their burden and finally your honor with regard to the last prong. And that is prejudice in State versus Bartlett 109, New Mexico 679. The court noted that prejudice has two components.

One, the importance of the missing evidence to the defendant. And number two, the strength of the other evidence of the defendant's guilt. There is ample evidence of the defendant's guilt in this case as it relates to his conduct, his reckless conduct and this plane self serving claim that came months after this unfortunate tragic event of October 21st 2021 does not mean that this gun had been modified or this gun discharged on its own there's evidence to show quite the opposite.

So there is other strong evidence of the defendant's guilt. In this case, your honor, they have failed to meet their uh burden as it relates to the US Constitution and the state constitution. And we would respectfully request your honor that the court deny this motion uh in its entirety. And thank you, Miss Johnson.

I do not have questions. Thank you very much. All right.

Reply, seven minutes, seven, your honor. And I'll try to beat that. Um One quick house keep clarification point. Uh When I said our narrowest remedy would be just suppression of the technical evidence and they could bring it in in other ways. I of course, did not mean to forfeit independent objections to whatever other evidence they might bring in.

I just want to make sure that's clear.

Uh MS Johnson said we had the burden, we satisfy that burden under trumpet and Youngblood, I would just note from the court that uh Choy Art and I'm sure I'm mispronouncing that said, when the state shows that it acted in good faith, then you go to materiality and prejudice. So as we read that statement, it does not put the defendant on the burden, the burden on good faith. Um We heard very little about young blood and bad faith in that submission. MS Johnson spent a lot of time on trumpet, as we've noted today that the easiest resolution of this case is under the bad faith prong of young blood and New Mexico Law. Uh Young blood requires only that the evidence be potentially exculpatory.

Meaning that tests might have indicated that what is exculpatory? We clearly satisfy that on bad faith. I mean, I it's hard to see how the state can contend that. There's no evidence of bad faith here.

They knew months before they were testing that they knew would destroy the gun that he was claiming and that other witnesses had claimed it just went off. They have provided no reasons why they didn't disassemble or photograph it. None. You didn't hear any answer in that presentation on why they didn't at least preserve the evidence through photographs.

Um You've heard no defense of the mallet test their own.

They can't because their own expert, Mr Haig says it was pointless. You've heard no defense of why they didn't run the pushoff test when it was still possible to do that. And they've hid the exculpatory report for months. And again, that report is exculpatory because it provides evidence that someone other than the FBI had modified this gun.

So what does all that mean? Two things.

One, we can never use our own expert to examine the original state of that firearm. It's not fair that a criminal defendant doesn't get that opportunity and the state did through Mr Ziegler, that's not fair. That's not how criminal prosecution is supposed to.

Second because of this late.

You get disclosure. We can't even really scrutinize the scrutinize the hagues analysis with our own expert because they disclosed it a few weeks before trial. I mean, it's just outrageous. This is not how criminal prosecution is supposed to work.

It's not in keeping with the duties of the prosecutor as expected. MS Johnson said, well, this was just standard operating procedure.

It's not, they have no explanation for the fact that it was the sheriff's office that requested this testing and did not tell Mr Ziegler the circumstances did not tell him that no blunt force object had impacted this gun. There is no FBI manual that says in these circumstances, he should hit the gun with a mallet many times until it breaks. There is no standard operating procedure. And if you listen to the quote she quoted from Bole, which is their case on this, it said that that's about disposal one and that is only an exception when there's adequate documentation.

That was in the quote she read none of that said, um finally your honor.

Uh she said under Trumpet or under New Mexico Law, you know, there's comparative evidence because we can cross examine something. But I heard no response to the problem with that. There's no one to cross examine because nobody took the time to open the gun up, look at its parts, take measurements before they destroyed it.

It's like the Zaragoza case. There's no one to cross examine. And uh I'll, I'll just end with this.

And then a quick sum up, I heard again that the parts are still available. They are not still available. There's a picture in the record, I believe it was exhibit I the full cock notch was sheared off and it is not available because they destroyed it and they rendered it unavailable for the chance that is just not accurate, it is not available.

Um So that your honor again, this is an egregious constellation of facts. There's clear bad faith. The evidence was clearly apparently exculpatory because that's the entire reason they did this test to try to disprove Mr Baldwin's exculpatory statement for that.

I'll put it in the court. Thank you. 04 minutes.

Not bad. All right.

Thank you. The court is going to um put this in a written order and it will be uh the court's decision and it will be uh filed sometime uh Friday. I will tell you this. I will not take any supplemental briefing on this.

You will be discarded. We're done arguing this case.

Do not give me a supplemental briefing whatsoever on this uh motion to dismiss the indictment based on destruction of evidence. Um I'm going to move on. I am done. I am done with you people.

I am done. I am not hearing about this nonsense anymore.

Anybody have any doubts about how she's gonna rule on this motion to dismiss the indictment with prejudice because of the state's purported destruction of evidence.

I will hear no supplemental briefing on this argument. It will be discarded, discarded, it will be disintegrated on to the, um, scheduling order because today is the retro conference and docket call. It was also the deadline for the plea. So the docket call is, uh, is only to determine whether you're going to trial. And, um, obviously you other, you would have told me you had a plea today and the deadline is today. So, um, we're going to continue on with our, um, jury selection on Tuesday the ninth and then we're going to carry on with the trial.

10th, 11th, 12th, 15th, 16th, 17th, 18th, 19th of, uh, July.

Ok. Yes, your honor. Um, we have a, uh, um, a hearing on the, um, motions in lemon a, um, on the day before jury selection as I understand it. And I, right, and I understand that that will be my understanding is that, that will be in person.

Um, which of course we would prefer if that's what the courts understand. Obviously, it's the court's decision, but that's what we were hoping.

That's fine. I prefer in person, Miss Morris. Absolutely.

Yeah. And then one other thing that's in the scheduling order that I think I should bring to the court's attention, which is, um, yes, that is the schedule.

But you, you told us that if there's anything that causes an issue to bring it immediately to the court's attention the state has disclosed 44 witnesses including 13 expert witnesses. Um And I don't know um what to say to the court other than I don't know how we could get through 1/5 of that. And so I don't know whether that is just an attempt to um make this process unfair or whether they intend to call 44 witnesses and 13 experts. But they have disclosed that um for an eight day trial and it doesn't make, this is rich coming from. Uh, so he, he's complaining about how many witnesses the state has put on their witness list.

Anyone not on their list, they're not going to be allowed to call as a witness, right? But he's complaining your honor.

The state has all these witnesses. This is the same, the defense team that has like 10 or 12 defense lawyers going against two prosecutors. That's not a problem, I guess. And it's not a problem. They're allowed to do that.

But they're complaining now about how many witnesses the state has put on its list, make any sense to me. And so I wanted to alert the court to that your honor.

I, I have always had some concerns that we did not have enough time to try the case. I will also say that uh, the defense has filed extensive witness lists and I think their witness list total 25 or 30 witnesses. Uh So I again, I, I don't know whether they're intending to call those witnesses or whether that was just gamesmanship.

Uh But, but if at the end of the day, this is a 50 witness trial, we will not have enough time if we have to stop on the 19th.

So I, I would ask the court, um, I, I, if the trial goes beyond uh the 19th, I mean, do, does the court have time to take us all the way to, let's say the 26th of July? Your honor? The, would you stop? We're doing the 19th. You all said the 19th, both sides said the 19th, I can play back the log notes. Both of you said this should be fine. OK. I, but I will, I will split up that time frame.

We can certainly put you on a clock. But, you know, um, we can talk about how much time you, you're, you're gonna craft here, you know, your honor.

One of the, one of the reasons that we filed a motion for an exhibit list, uh, is so, so the truth is for folks, it's important to understand most intentional murder cases are like two days, 1 to 3

days, two days is pretty typical for an intentional murder cases. A lot of murder cases. You have jury selection in the morning. You hear the argument during the day and there's a verdict by the end of the day, one day for murder conviction. Here we have an involuntary manslaughter case.

And they have eight days schedule for trial, eight days. There's no reason on the facts of this case that this should take eight days.

No reason I have every reason to believe the defense would drag this out to 80 days if they thought they could get away with it. So that we don't have to spend all of our time in trial, having the jury out of the room while the parties argue the exhibits.

And of course, I can't get the defense to agree to just file an exhibit list because they feel like they're turning their hand. And quite frankly, even if you ordered an exhibit list, my guess is they're gonna have every single he video on it and every single uh rust movie set video on it. And that's just gonna be AAA Sham.

So I'm trying to come up with some kind of a way to try to get the defense attorneys to, to behave in a manner uh that, that would enable us to at least to a minimal degree work together on procedural issues.

I've never been able to quite make that happen yet. In this case, if we are objecting to exhibits every time one of the lawyers tries to enter an exhibit into evidence. Uh This case, not only is it not gonna be done on the 19th, it's not gonna be done on the 26th. And, and, and, and I, I will, I will tell you, judge that, that while I, I appreciate the court's position uh with regard to the timing going up to the 19th, um based on the cross examinations that we have seen, uh in particular from Mr Spiro, uh the there's no way this case will be done by the 19th and, and then, then we're going to find ourselves in a situation where if the court tries to, tries to shut Mr Spiro down who's, by the way famous for this kind of conduct. Uh, the, then I, if you do that, then he's gonna start complaining that, that, that, that the defendant hasn't had an opportunity and you're violating his rights and so on and so forth. So I'm trying to nip this in the bud right now.

I'm not getting very far.

We're not gonna be done on the 19th. I mean, the, the, the state certainly, uh, would, would be done on the 19th. But the defense has, they, they've got, they've got all the top brass from, from the Sheriff's department on their witness list. I don't know why they're calling him, but they're on their witness list.

So I'm, I'm not sure what to do about it.

With the current situation. We will not be done on the 19th. I'm not sure we'd be done on the 26th. May I respond your honor? Yes, we haven't filed our witness list.

They filed their witness list. Their witness list is 44 witnesses.

Their list has 13 experts. Our list in our case will take, I would think approximately a day, maybe two maximum.

What did you say your case will take a day? Yeah, correct. Our case is not going to be a lengthy case. It's my prediction.

I'm of course a defense lawyer they have to go for first, they have to prove their case. OK. Second of all, I will tell the court that um what I did in this proceeding with objections and how hard I fought the admission of exhibits is actually a pretty good reflection of my career, which apparently M Morrissey knows so well. I haven't had any problems um to date.

Um And the reality is I don't intend to object very much and I have a feeling I'm not gonna have that many objections to that many, that many exhibits as long as they comply with the rules of evidence.

I don't, I don't really do very much other than ask questions. And if witnesses tell the truth, the examinations are shorter and when I have something like what happened with Mr Hague, of course, that took longer and as well, it should have in a matter of this importance. So, III I think you have a good sense for how we're going to conduct um, our defense.

Um But a lot of those statements are just inaccurate. The judge just made a note of that.

Did you see that when he said your honor? I think our case will be a day, maybe two. She was like, oh yeah, oh yeah, that's the representation you're making to this court, right? We haven't even filed a witness list.

It's her witness list that has been filed. It's 44 witnesses and 13 experts. And I would urge the court to, to consider that and ask yourself, is that not gamesmanship? It's not on me to design my case first. It's on the prosecution and prosecutors have a duty that has been totally lost in this case and totally lost in this case from the grand jury on through and we keep watching it and we keep seeing it and, and, and at a certain point, you can almost play back in your mind, the kinds of things, the game.

So, so that's, that's the record I want to make.

All right. So I heard you say one or two days for your, for your defense, for the defense's case. All right.

So with eight days of trial, I'm going to give MS Morrissey five and I'm going to give you three the possibility of you being limited to two and Miss Morrissey being given six just on how things are going with the cross examination and things like that. Ok? I, I don't know, I don't know if I totally understand the court but to, to the ultimate outcome of what the court is saying is fine in

so far as obviously to the degree I'm, I'm I'm Miss Morris, whatever she wants to tell me, I am going to want to cross examine the witnesses.

I'm sure your honor is gonna want to know the truth, want the truth to come out in that courtroom also. And so as long as I have an opportunity to cross examine the witnesses and the court does not allow cumulative witnesses and testimony, then I don't think that the schedule was a problem and, and just, yeah, and I'm the one alerting the court. I'm not the one who disclosed 44 witnesses and 13 experts.

Ok. All right.

In my experience, they don't use all those witnesses. I'm sure that's your experience as well too, both of you. Ok.

So what I'm trying to make clear is this is that I'm going to give, I'm really relying on your 1 to 2 days.

Ok. So, but I don't also wanna be in a situation, Mister Spiro where you say, well, we, you know, now we really need, you know, to really go into our witnesses and things like that based upon based on the state's case. So at this point, it's going to be five and three.

However, depending on how long these cross examinations are taking and how, how fluid we're going with the state. This is the price I like this judge, this is the price the defense is paying for what they just did Friday.

And today cross examining Lucian Haig, the judge is now exacting her price. She's saying. All right, you're telling me you only need one or two days. Tell you what, tell you what I'll give you three days. I'll give you 50% more time than you just told me you needed.

But I reserve the right, I'll give you three days and this and the that would give the state 55 to 3.

But I reserve the right to reduce your days to two and give the state six if I see you wasting the state days on this kind of cross examination. That's what she's saying between the lines, this guy just stepped hard on his own D I C K hard and the judge is letting him know bad move Alex Spiro case, then it's gonna be six and two. OK. I'm just, I'm letting you know that they're going to get, get that many and you're on notice of that and I'm not going to move this into the 26. You know, I have plenty of other obligations to other defendants and the prosecution.

I understand that your honor. And so just to answer one question, the court rhetorically posed to me is no in, in an eight day trial. I am not other than if a prosecutor is, is playing games and trying to get an improper strategic advantage over defendant.

No, I have not seen 44 witnesses and 13 experts disclosed in an eight day case and it is nothing of than the tax that these prosecutors take. And I don't why issues with other prosecutors like

this. And because of my career being somewhat public, you would know and Miss Morsy would know and it's never happened.

It's only happened in this case.

And so this is the same defense that files all these ridiculous motions begging the judge to go over page limits. The reality is what we're gonna ask for is the the court to have Miss Morrissey give in realistic fair witness list and expert list to the defense so that I can then quickly tell you all what my witnesses are going to be in response to those witnesses and the exhibits. They go first. That's witnesses anyway, we, we, we do your honor. But how, but, but this doesn't accomplish with the, the, the spirit of the court's order and the spirit of the way this is supposed to work is the prosecutor tells us what their case is gonna be.

That's why they go first. That's why they have the burden of proof.

That's how this works.

And then the defense does their case in response. Obviously, I can't tell until the state rests exactly what we're going to do. And so it's unfair to the defense and the court should not have this kind of gamesmanship to allow them to, to disclose 44 witnesses, which is not a realistic assessment of their case.

It's literally done to high the ball. The court knows that I know that the 13 experts are, are obviously duplicative and absurd.

The court knows that I know that. And so I urge the court to not allow them to do that and to them and then that doesn't, that's not the spirit of this order. And, and as I talk to local, OK, MS Mcy, I, I'm not modifying my witness list and this is why, um, if during trial I decide I'm not gonna call this person instead, I'm gonna call this person. If I remove one of those people.

Now, these people are gonna go up in arms and say judge, that person wasn't on her final witness list. It, it leaves me absolutely no flexibility and I can tell you with these lawyers, that's something that I need most Mr Spiro can complain all day.

But the truth of the matter is, is that we have in good faith, gone to the defense and said, hey, there's a terabyte of discovery. Will you guys agree to, just to, just to uh a deadline to, to file exhibit lists so that we know what you're gonna be using and you know what we're gonna be using? No way.

Uh That tells you where these people are coming from. They are not going to cooper, they're not gonna do it today and they're not gonna do it two weeks from now.

Ok? Listen, I don't know where, you know, you say this is really surprising to you Mister Spiro. This is not surprising in New Mexico. If you look at the witness list, this is another, this is

another swipe by the judge here and Alex Biro and the Baldwin defense because they're all from Manhattan, New York City.

Remember those old uh what was it? A salsa or chili something commercial New York City? She's saying, listen, Alex Burro, Mr partner Emmanuel Quinn \$1000 billable rate. I don't know how you do things there in that big city, but here in New Mexico, this is fine.

Sit down of the prosecution. This is normal. So I'm not going to make her reduce them. I have seen even in the Hannah Gutierrez trial that they immediately disperse the witnesses say I'm not gonna call these five, et cetera, et cetera.

That may not be your best scenario, but that's how it's going to go. I'm not going to make them to everybody. You too.

I'm not gonna make them eliminate that. Your witness list is due. Understood your honor.

Um The, and I understand the court's um directive.

I would only ask that we be given 48 hours notice on, on witness order. That's all I'm asking for with that many witnesses in eight days, 24 hours on witness at the end of the day, we're gonna do what we did before at the end of the day. They're going to tell you who they expect to call the next day. Yes.

And I will do my best, but I cannot guarantee the order of witnesses if I've got people flying in and planes get delayed and I, I have it, it'll be reasonable. So that's not even 24 hours. The judge is saying at the end of each day, the defense will learn what the witnesses will be the next day.

And the state has flexibility if there's uncontrollable, you know, travel issues here, here's the other issue that could create delay. I believe the court is intending to have wir last for one day. It is my guess with this group of defense attorneys that's not gonna happen. So maybe we want to address that because if wir goes into two days, 2.5 days, we got problems, I've never not picked a jury in one day.

I can't imagine that this would be the first time. By the way, I don't know, we went into, we went into um private board de I don't know if, uh uh, you know, it's gonna require both of you to want to do that and the court, it depends on how things are going with the jury and whether anybody is going to likely take the jury and we need to go private.

But the other thing is we're calling 39 at a time and so there's not gonna be 79 waiting, there's gonna be 39 and we're gonna get the next 39. And that way you are going to be able to formulate on each panel. You know, what do we need to the next panel? That makes sense and understood your honor.

Final issue for me is um authentication. Um We, we have proposed and this is another thing that I would urge the state and the court to simply agree to the authentication of police records. Police lapels 911 calls those things that the state produced official police records, state has not agreed to that.

Um And if it and the any caveat that I give on how long my case or my crosses take depends upon that. I don't want to be. And I've never, no prosecutor has ever made me require somebody to then sit there and watch it and say yes, this really is and the jury goes out of the room and this and that all I'm asking for is an authentication ST for police records, police recordings and, and official documents of the State of New Mexico.

All they need to do. We would have agreed to this weeks ago. All they need to do is tell us which exhibits they want us to stipulate to. Instead of doing that, they sent an email that said, will you agree to stipulate to every single lapel video? My response is no. And this is what prompted our motion for an exhibit list because what they wanna do is they wanna say, will you stipulate to the rest videos will you stipulate to the lapel videos? I'm happy to engage in stipulation.

Tell me what you want me to stipulate to. I will do the same and then things will go smoothly.

If these people will not tell me what they want me to stipulate to Carrie. We wanna get this video in and we wanna go from this minute to this minute. Do you have any objection? Should there be any reactions? Let's do it.

They won't do it. All right. Listen, I'm ordering you all to go through and see what you can stipulate too.

And I want to, I want that stipulation before me on the Motion limited day which is July um eight.

And how many um with respect to exhibits? Let me hear why you would not want to stipulate to exhibits or um or at least have them known ahead of time. Well, I'm perfectly happy. I think the word stipulated in the word authenticator being merged here. What we asked for was an authentication stipulation just as authentication, authentication stipulation.

That's, that's due in the motion limiting. The second thing is, well, we have their witness list and their exhibit list. I'm happy to, as I do in all of my cases, provide a list back to them. I'm happy to do that.

So I'm not, I'm not, I'm not opposing um providing um exhibits prior to motion limited day, not, I'm not objecting to that at all. M Morrissey, they filed a response in opposition to our motion for an exhibit list. What I got it.

I'm relying on Mr Spiro. Ok. So when can you get, when can you exchange exhibits? As, as soon as I have the state's exhibit list, we can respond within 48 hours.

Why can't they be simultaneous? They tell us they're in. No, no, no, no, no. You, you know what, I'm not going to um, referee everything.

Ok? You all are going to do things professionally and in good faith. So get your, get your exhibit list out, MS Morrissey. And then in 24 hours, he will get his exhibit list out.

Ok.

Let me, let me give a deadline then for my exhibit list, I'm not gonna, I'm gonna summarize this. Ok. So, uh stipulation on authentication of exhibits that the defense wants in. What about? And I don't think the state and I, I will agree to those things if they tell me specifically the pieces of evidence that they want me to have to MS Morsy because they're going to have to file it on July eight. No, we, we, we need, we need to know their exhibits way before July 8th and, and they need to know ours. Ju Ju July 8th will leave everybody hamstrung.

We'll still be arguing during trial. Well, what I, what I would, ok.

So let me just divide this into two things that I think perhaps the court will think this is a reasonable um, July 8th is the Motion of Lemonade Day. Is that ok? So, so the first thing which is completely separate from everything is just authentication. I'm gonna ask for an authentication step.

If, if the prosecution will not authenticate their own police documents, I will email the court and explain that. Ok.

And I've never seen that before. Second thing is on the exhibit list if they give us their exhibit list on Friday. OK. July. Uh I've, I've messed up my um on June 28th.

OK. We will provide our exhibit list on July 1st.

Why don't Mr Sparrow right here? Listen, listen up, the authentication, stipulation is due Friday. OK. So that means that means that there's going to be a stipulated order that I'm going to sign on authentication.

So, the uh M Morrissey needs to see that no later than um get that to MS Morrissey on the 26th and then Miss Morrissey. Um I want you to look at it and um uh you know, I if you can't stipulate to it, then we'll have to address it later, but I'm not gonna have a hearing on it.

Ok.

All right. So that needs to get in. So show it to MS Morrissey on the 26th, the proposed order or the, the uh items you want stipulated, authenticated to then for the exhibits. Why don't you give them to him, July 1? And you give, you give him your exhibits, Miss Morrissey on July 1 and he will give you his exhibits on July 2nd. Ok. That works.

All right.

All right. And then, yeah, I, I'm, I'm not worried about being able to pick a jury in one day. I think we're gonna pick a jury even before the d, you know, by the afternoon. But, ok.

Yes. Did I miss anything? I'm aware of these, I'm aware of these motions. Um, II, I haven't decided what to do with them yet.

So understanding that the court has said exhibit list, deadlines, we withdraw our motion for an exhibit list based upon the court's ruling today.

Uh, the state will submit an order to the court indicating that the deadlines are the 1st and 2nd. Perfect. Ok.

What else? This isn't gonna get continued and even though I'm, uh, gonna get that order by Friday, do not think that that means stop working for trial.

Hello? You seem frozen. Uh huh. Did you hear that? Did you hear that? So, of course, this whole argument Friday afternoon and today was on this defense motion to dismiss the indictment with prejudice because the state destroyed evidence. And the judge heard all this argument and she said at the end.

All right, I'm gonna give you my opinion. Give you my ruling on Friday and now she just says, listen, I'm gonna give it to you by Friday, but I'm telling you right now, don't stop prepping for trial. Yeah.

Oh my gosh. Uh, that means she's going to deny the motion to dismiss the indictment.

If she was prepared to dismiss the indictment. We wouldn't, she wouldn't need to caution them to continue preparing for trial. I'm, I'm not, II, I, I'm not, I'm not frozen your honor.

Um, you know, the only thing else that I would say and II, I once asked to approach your honor, um, um, in this forum and your honor said, I don't know that that's possible. But any guidance, I mean, one thing that can reduce the court's time and maybe simplify this.

If any guidance that the court were to have on any of these issues, um you were able to on a teleconference or otherwise give us all a heads up. So for example, and I don't want to pick on the state, but if you were to say there aren't gonna be 13 experts, OK? Or you were gonna tell

me that certain parts of this case, we're not gonna have a civil negligence case about uh how, how, how movies worked in on westerns in the 19 fifties.

I mean, that would help and you would have less motions and lemonades and it would force the parties to. So, and that would be an ask from the defense and I think it would end up being a blessing for the entire um proceeding and for the court's time. Well, what I'm hearing is you want her to uh uh you want, want the court to tell her her to liberate her witness list? No, no, no, I don't mean that one.

I, I just mean on any issue, frankly not that, I mean, we talked about that issue.

I just mean if the court had guidance, say at some point in a 10 minute teleconference saying, listen, I've looked at this, I'm not deciding the motions eliminate, I'm not deciding things, but this is how I see this going. I think it would do a world of good and pushing the parties to simplifying this matter so that we can have a fair trial in front of a jury. So what, so what I hear you say is can we, can we without this public forum? Uh you go first, you go second, you go 345.

But if, if the court's inclined to do this is uh it's by email. Well, the court can do it however, yeah, or teleconference or, or, or whenever the court wants, the court can give guidance right now in front of whoever.

I don't know if anybody's listening, but if anybody's listening, I feel sorry for them that they're missing dinner. Yeah. Um So they, you can do it now. I'll take guidance. I always take guidance from the court. But if the court would want to have a more informal proceeding, I think I don't, I do not want to have that because I do not want um because everything is appealable and it's got to be on the record and it's got to be, uh, iii, I just want to put this on the record.

The state has the burden.

So I'm gonna need to call as many witnesses as I need to call in order to try to meet that burden. I can't just cut my witness list in half. Nobody's asking you, nobody's asking you to, I'm giving you 5 to 6 days and that's 20.

Ok. All right. Thank you. Not anybody's first rodeo.

Ok. All right. Um, have a good evening and, um, please, you know, the press is gonna hound, where's, where's this order? Where's this order? Please don't participate in that. Every order will be at least by Friday on these um, pretrial motions.

Ok. Thank you.

All right. Thank you for your presentations. We're in recess. Thank you, honor. Thank you. Honor.

All right.

I don't know who that is before I dive into questions and comments. Just remind everybody almost 1400 people watching. Thank you so much. Thank you so much for joining me here in the law of self defense show. I am, of course, Attorney Andrew Brinker for the law of self defense.

Um, our sponsor of today's content makes this all possible is CCW safe or provider of legal service memberships.

Well, many people mistakenly call self defense insurance in effect CCW safe promises to pay their members legal expenses if the members involved in the use of force event and they do much more. They fly in a team of experienced homicide investigators to be your detectives on the scene. Otherwise, the only detectives are working for the prosecution folks. Uh, attorney Don West is their national trial counsel.

One of George Zimmerman's defense attorneys, world class criminal defense attorney. He will be effectively consulting in your case.

I think the world of CCW safe. I'm personally a member. My wife Emily is personally a member of CCW Safe. They're the best fit for me out of everybody who's out there.

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I have a little video at [Law of self defense.com/trust](http://Lawofselfdefense.com/trust) explains exactly why I chose CCW Safe at that same URL. You get a 10% discount code for your own membership at CCW Safe. All that at [Law of Self defense.com/trust](http://Lawofselfdefense.com/trust). All right.

So let's take a look at the law of self defense member chat.

By the way, we only really take questions and comments from the law of self defense membership. You can become a member of law of self defense, put your comments and questions into the member chat for just 99 cents to be a law self defense member, a law of self defense dot com slash trial for a two week trial membership. And oh, there is a Super Chat or you can do a youtube Super Chat \$10 minimum and we do have a, uh, euro, €20. Thank you very much. That's, that's well over \$10.

I used to get paid in Euros when I lived in the Netherlands, worked there for two years. Uh, I'll, I'll address that. That's from Hilt Fred Hildred.

I'll, I'll address your Super Chat in just a moment for those who'd like to get your questions answered without having to pay \$10 a question. You can become a loyal self defense member for 99 cents at [law of self defense.com/trial](http://lawofselfdefense.com/trial) for two week trial membership. 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 of self defense member, but try it out at least for 99 cents.

Come on for two weeks, two weeks will, uh, yeah, I mean, come on for two weeks and one month's actual membership you get all the way through this trial. That'll be great and you can cancel anytime you want. But we very rarely have members cancel.

We have a very sticky and loyal membership and I think you'll see why if you only try it out. All right, let me go to the member chat.

Let's see what we have here. But the pop pop pop. Let's see. Uh I'm, I'm just gonna address the because there's a lot of them, the questions and comments.

There's a lot of chatter among the members. They, they, they talk to each other. We're a community.

Um, so that's all fine. I encourage that, but I'll try to focus my attention here because of we're, we're over five hours in, into this live stream folks on just the, uh, questions and comments that are directly related to the substance of what we heard today and the trial. Uh, let's see.

Oh, my God.

When he said 1 to 2 days. That was amazing. Mhm. And that's exactly, yeah, the judge is, the judge is holding them accountable to their own thing. Oh, my God. I can't believe you said that.

All right.

Well, oh, here Paul thinks, what do you think of Wilson combat pistols? Well, I own a Wilson combat pistol. I bought it a long time ago, 1996. So, 28 years ago I bought my Wilson Combat 1911, 45 caliber. Um, and, uh, I put maybe 100,000 rounds to that gun.

It was my competition gun. I carried it my daily carry for 25 years. Um, and, uh, and I ran great that whole time. I just actually got it back from Wilson.

I finally sent it in after 100,000 rounds. Uh, I sent it in to be completely refurbished. It was the fourth time it's been refinished.

Uh, but I had him do basically a rebuild on it.

And, uh, it's like brand new now. It's, I, I think it's amazing. No gun has ever shot as Well, for me in my hand as a 1911 pistol, that particular 1911 pistol, there's a lot of crappy 19 elevens out there.

So you do need to be careful.

But Wilson Combat, based on that experience, that's the only one of their guns I own. Uh, it's a great product. Uh, all right. Well, I think, I think we got through that pretty quickly actually. Um, ok.

Well, I like this judge. I still like this judge. Um, I think she's been great.

This ending was, was fire.

Oh, you say 1 to 2 days? All right, you get two days, tell you what, I'll give you three days of the eight, the state gets five, but I, I may increase the state to six and limit you to two. Be careful.

That was awesome. All right, folks. Uh I'm gonna go ahead and wrap up, get home to dinner myself. 7:10 p.m. here.

Mountain time. Thank you all for joining me, staying with me so long.

I really appreciate it. I'll just remind all of you that if you carry a gun.

So your hard to kill. That's why I carry again. That's why I carry pepper spray.

That's why I carry a knife. That's why several times a week I roll on the mat doing jiu jitsu. So I'm hard to kill.

So my family is hard to kill if you do any or all of that. So you're hard to kill. So your 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 I remain Attorney Andrew Branca for the law of self defense.

Stay safe.