



*2015-2016 Case Problem**

State of Midlands
v.
Avery Bancroft
and
Chase Covington

BY THE AMTA CRIMINAL CASE COMMITTEE

ALEX BLUEBOND • DAVID BEN-MERRE • CINDY JORDANO • MICHAEL NELSON
COLLIN TIERNEY • NEAL SCHUETT • ANNA SMITH

*Until March

SYNOPSIS

On April 19, 2015, officers from the Midlands State Police Department arrested Chase Covington, the chair of the Midlands Gambling Commission, and Avery Bancroft, a local businessperson, on suspicion that Bancroft bribed Covington in an attempt to procure Covington's support for a new casino license. Covington argues that no bribe occurred. Bancroft admits that a transfer of money took place but argues that Bancroft was entrapped by the actions of law enforcement.

AVAILABLE WITNESSES

- "Mickey Keenan" (Undercover Police Officer)
- Corey Hyde (Bancroft's Executive Assistant and Police Informant)
- Chase Covington (Chair of the Midlands Gambling Commission)
- Avery Bancroft (Businessperson)
- Devyn DelSesto (Bellhop)
- Ali Thomas (Dealer at the Black Bear)
- Danny Hoy (Head of Security at the Black Bear)
- Tracey Minetos (Step-Sibling of Chase Covington)
- Pat Sikorsky (Crime Scene Investigator)
- F. Reese Warren (Forensic Linguist)
- J.D. Lorean (Former FBI Agent)

SUSPECTED ERRORS

Please report any typos or other suspected errors to amta.criminalcase@collegemocktrial.org. The committee anticipates releasing a set of changes on or before September 15 to correct any issues identified in the initial release. Participants may wish to defer printing the case packet until after the first set of corrections has been released.

NOTES AND ACKNOWLEDGEMENTS

This case is a work of fiction. Any similarity to real people, companies, physical geographic locations, trade names, service marks, or copyrighted material is purely coincidental. Although the Criminal Case Committee has attempted to make the case problem realistic, we have, for the sake of brevity and competition, oversimplified various matters. Please do not rely on the information contained in the case problem outside of the mock trial context.

The Committee wishes to thank and acknowledge:

- Jan Sikorsky and Julie Sikorsky for scientific and technical assistance with the Report of Pat Sikorsky.
- Justin Bernstein, Tyler Buller, Brandon Harper, Toby Heytens, Grant Keener, Melissa Pavely, and Melissa Schuett for proofreading the case.
- Sarah Sawtelle for assistance with exhibits.
- Thank you to David Eldridge for providing the voice of Chase Covington and Jared Blanton for providing the voice of Avery Bancroft. Additional sound effects were generated through remixes of sounds provided through the creative common license and freesound.org.
- The report of J.D. Lorean relies heavily upon reporting on the accuracy of forensic testimony by Spencer Hsu for *The Washington Post*. The report of F. Reese Warren draws substantially upon the writings of Roger Shuy, Ph.D., particularly his 2005 book, *Creating Language Crimes*. Interested students may refer to these resources to find accessible treatments of the topics discussed in these reports, though only the material included in case packet may be used at trial.



The American Mock Trial Association

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August 15, 2015

Dear Students and Coaches,

Welcome to the 2015-16 collegiate mock trial season!

My name is Justin Bernstein, and I'm honored to serve as president of the American Mock Trial Association. The fact that I'm biased doesn't make it any less true: mock trial is the single most rewarding college activity you can join. Whether you're new to AMTA or a veteran mocker, this letter has useful information for you.

This season's cases

I think you're going to like *State v. A. Bancroft and Covington*. It addresses an important social issue—public corruption—with some fun, unusual witnesses, including a bellhop, a forensic linguist, a casino dealer, and an undercover officer. And the case is unintentionally timely: it's got a casino owner who makes waves when he decides to dabble in politics...

State v. ABC is also revolutionary. For the first time, prosecutors can choose which defendant stands trial. This provides strategic options to veteran teams while making the case accessible to newcomers (because the choose-your-own-adventure aspect severely reduces the number of cross-examinations each attorney must learn).

You may have noticed this on the cover: **Until March*. Last year, we released a brand new case for the National Championship Tournament. Students surveyed at Nationals in 2015 told us—by a more than four-to-one margin—that they wanted AMTA to do it again. So we will. On March 20, 2016, AMTA will release a new case for the Championship.

Key rule changes

The AMTA website has the rulebook and list of changes. Here are a few changes you should know:

- Invitational hosts must submit information, such as tournament results, to AMTA. This helps us keep the case balanced. We will announce details in September.
- We've broadened the rules for student eligibility. *See* Rule 3.2.
- Tab summaries will often be provided electronically rather than in print. This is not only good for the environment, but it should get closing ceremonies started sooner. *See* Rule 4.25.
- Invention rules explicitly require ethical conduct. *See* Rule 8.9.
- Alleged rule violations must be raised with tournament representatives at the next break in the trial. *See* Rule 9.1(2).

Our new home

We are excited to announce a three-year partnership with Missouri Southern State University. MSSU will not only offer administrative services—helping you get registered and answering questions throughout the year—but will assist AMTA with larger goals, such as researching the career benefits of mock trial participation. We thank MSSU, program coordinator Tammy Doss, and executive directors JoAnna Derfelt and Dr. Nicholas Nicoletti for their help.

AMTA supports its hosts

Last fall, we instituted a new rule: schools that host Regionals, ORCS or Championship no longer pay \$450 to register. In the spring, we helped find tournament sponsors for some hosts who didn't already have them. **We plan to do even more.** This year, we want to connect more hosts with sponsors. And we are considering other fundraising ideas that will send money straight to hosts. From the small things (you no longer have to print tab summaries) to the big ones (more money), we want to make hosting AMTA tournaments even more rewarding.

I hope your school will consider applying to host an AMTA tournament in 2017.

AMTA supports new teams

Check out our [New Team Handbook](#) on the Getting Started page, with advice on everything from recruitment to fundraising to opening statements. And join our mentoring program to get advice from an experienced coach (amta.mentor@collegemocktrial.org).

AMTA needs your support

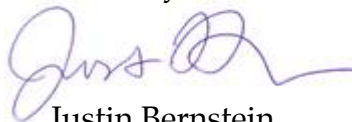
Please like us on Facebook (American Mock Trial Association) and follow us on Twitter (@AMTAMockTrial). This isn't just to stroke our ego. The more likes and followers AMTA has, the easier it is for us to obtain corporate sponsors, which in turn allows us to charge lower registration fees and give more money to hosts.

Connecting

Sometimes the AMTA world can seem small: we prepare with our own teammates and we face at most four schools at Regionals. But as you take the witness stand or deliver your closing, know that in courtrooms all across the country there are thousands of other students doing the same. In fact, it's easy to lose sight of just how many of us do college mock trial: more than 300 colleges, 650 teams, and 5,000 students.

I hope to meet you on the road to South Carolina, where Furman University will host our 32nd Championship Tournament. Until then, speak loudly, speak slowly, and good luck!

Sincerely,



Justin Bernstein
AMTA President

The American Mock Trial Association

c/o Tammy Doss, American Mock Trial Association, Webster Hall, Suite 212, 3950 E. Newman Road, Joplin, MO 64801
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The background of the entire page is a dense, overlapping pile of various keys. The keys are rendered in a monochromatic blue color scheme, with some showing more detail than others. The keys are of different shapes and sizes, including standard house keys, car keys, and some with circular heads.

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10% discount off Kaplan courses exclusive for AMTA members.

For more information, please visit the Benefits of Membership page on the AMTA website.

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SPECIAL INSTRUCTIONS

Witness Availability and Captains' Meeting Procedures

1. **Witness Availability.**
 - a. Keenan, Minetos, Sikorsky, and Warren can only be called by the prosecution.
 - b. Bancroft, Covington, Lorean, and Thomas can only be called by the defense.
 - c. DelSesto and Hoy can be called by either the prosecution or the defense.
 - d. Hyde will testify in every trial but can be called by either party.
2. **Captains' Meeting Procedures.** The Captains' Meeting form must be completed and returned to the AMTA Representative before teams will receive ballots. All announcements and witness selections are final once made. The captains' meeting follows the following order:
 - a. Step 1: Prosecution Selects the Defendant. The prosecution must choose only one defendant to prosecute.
 - i. If the prosecution elects to prosecute Avery Bancroft: Sikorsky and Chase Covington are not available witnesses and the **defense must pursue the affirmative defense of entrapment** and has provided the required notice to the prosecution.
 - ii. If the prosecution elects to prosecute Chase Covington: Warren and Bancroft are not available witnesses. The **defense cannot pursue the affirmative defense of entrapment** and has not provided any notice of an affirmative defense.
 - b. Step 2: Parties Announce Witness Selections
 - i. First, the prosecution announces whether it will call Hyde or Keenan. The prosecution must call one (and only one) of these witnesses.
 1. If the prosecution chooses to call Hyde, it may not call Keenan.
 2. If the prosecution chooses to call Keenan, the defense must call Hyde with one of its selections.
 - ii. After P selects Keenan or Hyde, witness selection continues PDDPD. Nothing in these instructions requires a defense team to actually call the Defendant as a witness during trial.
 - c. Step 3: Parties State the Gender of each Witness and Other Individuals.
 - i. Each team will announce the genders of its witnesses. Then the teams will announce the genders of the available witnesses who will not be testifying. Of those uncalled witnesses, the prosecution team will announce the genders of DelSesto, Hoy, Keenan, Minetos, Sikorsky, and Warren, and the defense will announce the genders of Lorean and Thomas.
 - ii. The defense team will announce the gender of the defendant (Avery Bancroft or Chase Covington, as appropriate for that trial). The gender of the other potential defendant must not be the same gender as the defendant being prosecuted. For example, if Bancroft is male, Covington is female. If Covington is male, Bancroft is female.
 - d. Examples of Steps 1 and 2:
 - i. P elects to prosecute Bancroft. P selects Keenan, meaning D must call Hyde. P selects DelSesto, D selects Thomas and Lorean. P selects Warren. D selects Hyde.

- ii. P elects to prosecute Bancroft. P selects Hyde. P selects Hoy, D selects DelSesto and Bancroft, P selects Warren, and D selects Lorean.
 - iii. P elects to prosecute Covington. P selects Keenan, meaning that D must call Hyde. P selects Minetos. D selects Thomas and Lorean. P selects Sikorsky. D selects Hyde.
- 3. **Party Representatives.** The only witness who may be designated as a party representative under Rule 615 of the MRE for the prosecution is “Mickey Keenan.” A member of the prosecution team’s roster may sit at counsel table as Keenan regardless of whether Keenan will testify. The defense may designate the defendant as its party representative. A member of the defense team’s roster may sit at counsel table as the defendant regardless of whether the defendant will testify.
- 4. **Absence of Second Defendant.** The defendant not being prosecuted in the trial is not present in the courtroom and has exercised his or her 5th Amendment rights. Under no circumstances may either team mention that the unselected defendant has not testified/will not testify in the current trial. Similarly, teams may not reference the other defendant’s trial strategy. For example, attorneys prosecuting Covington cannot rely upon Bancroft’s decision to pursue an entrapment defense as evidence of Covington’s guilt.

Case Materials

- 5. **Bancroft and Covington Materials.** Bancroft and Covington do not have affidavits or reports. Students may build their testimony using the interrogations and other documents in the case. Bancroft and Covington may also invent facts outside of these documents, but can still be cross examined on those inventions and impeached using documents in the case materials. All inventions of fact by defendants must comply with other special instructions in this case. For example, nothing in these rules or the AMTA Rulebook prohibits Chase Covington from testifying that the large deposit on the bank statement bearing Covington's name comes from proceeds from selling a house in Tahiti. However, a student portraying Chase Covington cannot deny that s/he signed Covington's Application for Political Appointment, per Special Instruction 8.
- 6. **Existence of Documents and Exhibits.**
 - a. Only one of Hyde’s affidavits will be deemed to exist for each trial. If the prosecution calls Hyde, Hyde’s defense-side affidavit is not part of the case packet for that round. If the defense calls Hyde, Hyde’s prosecution-side affidavit is not part of the case packet for that round.
 - b. If the defense has announced it will NOT call either Chase Covington or Avery Bancroft, Judge Watt’s order granting the use of the wiretap exists for the purpose of the trial and the wiretap may be used during the trial. If the defense has announced that it will call either Chase Covington or Avery Bancroft, Judge Watt’s order denying the use of the wiretap exists for the purposes of the trial and the wiretap may not be mentioned by either party. See Special Instruction 12 for details about the acceptable usage of the wiretap.
- 7. **Case Documents.** All participants must acknowledge that all case documents are the final and only versions of those documents. AMTA’s case corrections are indicated by dates (e.g. “8-15-2015”) at the top or bottom of corrected documents. For purposes of the trial, such dates do not indicate anything else about the history of the document. For instance, dates do not indicate that a witness

has revised his or her affidavit, report, declaration, etc., or when such a revision occurred. Additionally, for the ease of competitors, the e-mails and text messages are labeled. These footers exist solely to assist competitors in locating the correct documents and no objections to their text may be made.

8. **Authenticity.** Witnesses must acknowledge authorship of any document that purports to be authored by them and the authenticity of any signature that purports to be theirs. A witness whose affidavit, report, or interrogation states that the witness is familiar with a particular document must acknowledge, if asked, that the witness is familiar with that document and that the document referenced in the affidavit, report, or interrogation is the same version as the corresponding document in the current case.
9. **AMTA Rules 8.9 (Invention) and 8.17 (Admission).** The reports of Loreau, Sikorsky, and Warren are “affidavits” for the purposes of AMTA rules 8.9 and 8.17. The interrogations of Bancroft and Covington are not “affidavits” under rules 8.9 and 8.17.
10. **Black-and-White Permitted.** Teams may use color or black-and-white copies of any case document. No objection may be raised to an exhibit or demonstrative on the ground that it has been altered by printing a color document in black-and-white.
11. **Jury Instructions.** No changes to the provided jury instructions may be sought or made. For purposes of this trial, the judge will be presumed to have read the Jury Instructions included in the case packet to the jury after both sides have concluded their cases-in-chief and before either side presents its closing argument.
 - a. At any time *before closing arguments* (e.g. in objection arguments), attorneys may reference case law and statutory law but may *not* reference the jury instructions.
 - b. *During closing arguments*, attorneys should reference the law as set forth in the jury instructions, rather than the case law or statutory law in the case packet.
 - c. Either party (or both) may, but is not required to, provide complete, unedited copies of the jury instructions to the judges/jurors. No objection to complete copies of the instructions being given to judges/jurors may be raised.
12. **Audio Exhibit.** An MP3 audio file is available as an exhibit in this case. Assuming availability (see Special Instruction 6(b)), publication of the audio file exhibit at trial is regulated as follows:
 - a. The only audio recording that may be introduced at trial is Exhibit 3(a), the wiretapped conversation, and it may only be introduced in trials where neither Bancroft nor Covington testifies. The audio file may not be edited, mixed, remixed, or truncated. This instruction does not prevent a party from playing the exhibit in part, subject to the provisions of the Midlands Rules of Evidence.
 - b. There are two versions of the audio recording, one for each potential gender of the defendant in the trial. Regardless of the team offering the wiretap, the version of the audio recording used in the trial must match the gender of the defendant.
 - c. Exhibit 3(b) is the transcript of that audio recording. The transcript may be read instead of playing the recording or be provided to judges/jurors to read along with the recording, but a copy of the transcript may not be entered into evidence.

- d. The exhibit must be played on a portable stereo (a.k.a. “boombox” or “jambox”) that does not exceed two feet in any dimension (not counting the AC cord) or a portable MP3 player with internal speakers or external speakers attached. This portable stereo or MP3 must run on internal battery power and MAY NOT be plugged into any power outlet before, during, or after a trial, even if the device has an AC power cord. Other types of audiovisual equipment (e.g. computers, media carts, cellular phones, closed-captioning devices) are not permitted.
 - e. Time spent setting up the audio exhibit will be treated the same as any other demonstrative at trial. There are no “timeouts” in the event of difficulty operating the audio equipment.
13. **Physical Exhibits.** Teams may use “real” versions of Exhibits 1 and 2.
- a. Teams may use an actual briefcase and represent it to be the actual briefcase found on Chase Covington’s person on April 19, 2015. The briefcase must be black, have one handle and two latches. It may not exceed 20” x 14” x 6” in size, not including the handle. Competitors may not use physical characteristics (e.g. tears in the fabric) of the briefcase as a basis to invent material facts. The briefcase may be opened during trial, though no competitor may comment on its internal contents or the lack of missing fabric where Sikorsky performed tests.
 - b. The case materials reference a napkin with “Yes = ~~\$150k~~ \$250k” written on it. Teams may use an actual napkin and represent it to be the actual napkin seen by those witnesses who are familiar with the napkin. The napkin must be a white cocktail-sized napkin, not to exceed 4” square. The phrase must be written in black ink. The napkin must not be distorted in any material way, and no physical characteristic other than those noted above may be commented upon.
 - c. If either team wishes to use a “real” version, neither team may use the photograph included in the case materials. If neither team wishes to use a “real” version, either team may use the photograph included in the case materials.
 - d. The “real” exhibit must be shown to the opposing teams during captains’ meetings and failure to do so will create an absolute bar to using it during the trial. If both teams provide “real” exhibits that meet the preceding description, the prosecution team’s will be used. Regardless of which team’s briefcase is used, there are no restrictions regarding which party may use the exhibit first.

Rules Governing Trial Procedures

14. **Closed Universe Problem.** The only legal material that competitors may mention, or judges may rely upon, for any purpose are those set forth in the “Midlands Penal Code” or “Midlands Case Law” from the case packet. All participants must acknowledge such if asked.
15. **Constitutional Issues.** No witness may refuse to answer any question—and no attorney may instruct a witness not to respond—based on the witness’s Fifth Amendment rights.
16. **Best Evidence Rule Limited to Items in the Case Packet.** No attorney may object under Rule 1002 of the Midlands Rules of Evidence if the “original writing, recording, or photograph” in question is not among the documents contained in this case packet.

17. **Time Spent Reading from Exhibits or Stipulations.** Should a team wish to read aloud for the jury any part of any exhibit or stipulation, any such reading must be deducted from a team's total 5 minutes for opening statement, 25 minutes for direct examination, 25 minutes for cross examination, or 9 minutes for closing argument, depending on whether the reading occurs before the conclusion of the second opening statement, after opening statements but before the State has rested, after the State has rested but before the defense has rested, or during the reading team's closing argument. This Special Instruction addresses only issues of timing, not issues of evidence or admissibility.
18. **Characteristics as Material Inventions.** First, while teams may employ distinctive accents/speech characteristics as part of "fleshing out" a character, teams may not use such accents/speech characteristics to invent material facts. This Special Instruction does not prohibit asking a witness questions regarding the witness's certainty of a voice identification or the circumstances in which the witness heard the voice in question. Second, no team may use the penmanship of a student playing a witness to make an argument based upon the handwriting in Exhibits 2 or 7.
19. **Notice and Discovery Requirements.** Other than issues related to MRE 404, 405, 608, and 609, teams must concede that any notice requirements and/or other discovery obligations have been met by the opposing team. Teams may not raise any objections, other than those for character evidence notice, based on a failure to receive notice or discovery prior to trial.

AVAILABLE CASE DOCUMENTS

Legal Documents

1. Indictment
2. Bill of Particulars
3. Pretrial Orders
 - a. Order Denying Motion to Exclude Wiretap Evidence. *See Special Instruction 6(b)*
 - b. Order Granting Motion to Exclude Wiretap Evidence. *See Special Instruction 6(b)*
 - c. Order on Motion in Limine (Undercover Officer)
 - d. Orders on Motion in Limine (Character Evidence)
 - e. Orders on Motion in Limine (Character Evidence and Severability and Interrogations)
 - f. Order on Motion to Strike Expert's Testimony
4. Stipulations
5. Jury Instructions
 - a. Bribery
 - b. Entrapment
6. Statutes
7. Available Case Law

Witness Materials

1. Affidavit of "Mickey Keenan"
2. Affidavit of Corey Hyde *See Special Instruction 6(a)*
 - a. For the prosecution
 - b. For the defense
3. Affidavit of Devyn DelSesto
4. Affidavit of Ali Thomas
5. Affidavit of Danny Hoy
6. Affidavit of Tracey Minetos
7. Report of Pat Sikorsky
8. Report of F. Reese Warren
9. Report of J.D. Lorean

Exhibits

1. Briefcase or Briefcase Photo *See Special Instruction 13*
2. Napkin or Napkin Photo *See Special Instruction 13*
3. Wiretapped Conversation. *See Special Instruction 6(b) and 12*
 - a. Recording
 - b. Transcript
4. Diagram of VIP Room at the Black Bear Casino
5. Diagram of Room 312 at the Black Bear Casino Hotel
6. Receipt for Room Service April 13, 2015
7. "Thank You" note
8. Transcript of March 31, 2015 Conversation
9. Receipt from tobyssupplies.com
10. Midlands Gambling Commission Memorandum
11. Bank Statement (with Declaration)
12. Application for Political Appointment
13. Financial Disclosure Form (with Certification)
14. Biographical Appendix for Casino Bid
15. Contribution Disclosure Form (with Certification)
16. E-mails: Kimball-"Keenan" 6/18/13
17. E-mail: Hyde-Bancroft, 3/30
18. E-mails: Keenan-Hyde 3/31 (Meeting)
19. E-mails: Covington-Keenan, 4/1
20. E-mail: Bancroft-Hoy, 4/12
21. E-mails: Hyde-Bancroft, 4/13
22. E-mail: Covington-Keenan, 4/13
23. E-mails: Bancroft-Covington-Hyde, 4/14-4/15 (Update)
24. E-mails: Hyde-Bancroft, 4/15 (Update)
25. E-mails: Hyde-Bancroft, 4/5-4/9
26. E-mails: Bancroft-Covington, 4/15
27. Text Messages: Keenan-Covington
28. Text Messages: Bancroft-Covington
29. Text Messages: Hyde-Bancroft
30. Interrogation of Avery Bancroft
31. Interrogation of Chase Covington

Captains' Meeting Form

Before receiving ballots, teams must turn in one completed copy of this form to the AMTA Representative running the captains' meeting. Participants may not view (or attempt to view) the form for any trial in which their team does not compete.

Room Number: _____

Round: _____

1. **Prosecution:** Which defendant will you prosecute? (Circle One)

Avery Bancroft
[D Argues Entrapment]

Chase Covington
[D May Not Argue Entrapment]

2. **Prosecution:** Will you call Mickey Keenan or Corey Hyde? (Circle One)

Mickey Keenan
[D must call Corey Hyde]

Corey Hyde
[P cannot call Mickey Keenan]

3. **Both Sides:** Witness selection continues PDDPD, so long as teams have selections remaining. Fill in the gender of the witness and the order in which the witnesses will testify.

Prosecution Witness Selections			Defense Witness Selections		
Witness Name	Gender	Call #	Witness Name	Gender	Call #

4. **Both Sides:** Determine the genders of the non-testifying witnesses and individuals in the case. See Special Instruction 2(c).

Prosecution	(M/F)	Defense	(M/F)	Other	(M/F)
M. Keenan		A. Bancroft		D. DelSesto	
T. Minetos		C. Covington		C. Hyde	
P. Sikorsky		J.D. Lorean		D. Hoy	
F.R. Warren		A. Thomas			

5. **Wiretap Availability:** If the defense has elected to call *neither* Chase Covington *nor* Avery Bancroft, the wiretap is available. If the defense has elected to call *either* Chase Covington *or* Avery Bancroft, the wiretap is ***not*** available. Is the wiretap available?

Yes

No

**IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS**

STATE OF MIDLANDS

v.

AVERY BANCROFT

CHASE COVINGTON

Defendants.

*

*

Case No. CR2015-05-0803

*

CR2015-05-0804

*

*

NOTICE OF INTENT TO OFFER CHARACTER EVIDENCE

The parties give notice of their intention to offer character evidence as follows:

1. ____ The Defendant will offer evidence under Rule 404(A)(2)(a) of the following traits of his/her own character: _____ and understands that, in lieu of rebuttal witnesses, the prosecution may offer rebuttal evidence of those same traits of character during its case in chief.

2. ____ The Prosecution will offer evidence of prior crimes, wrongs, or acts under Rule 404(B)(2).

3. ____ The Defendant will offer opinion and/or reputation evidence of a prosecution witness's character for truthfulness/untruthfulness under Rule 608(a) and understand that, in lieu of rebuttal witnesses, the prosecution may rebut this evidence during its case in chief. The Defendant intends to offer evidence under this rule about the following witnesses:_____.

Signed:

_____, Attorney for DEFENDANT

_____, Attorney for PROSECUTION

NOTE TO JUDGES: Parties may offer evidence of the character of a person during their case in chief, consistent with the Midlands Rules of Evidence.

**IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS**

STATE OF MIDLANDS

v.

AVERY BANCROFT

CHASE COVINGTON

Defendants.

*

*

Case No. CR2015-05-0803

*

CR2015-05-0804

*

*

INDICTMENT

**STATE OF MIDLANDS,
COUNTY OF POLK, SS:
In the Year 2015**

THE JURORS OF THE GRAND JURY OF THE STATE OF MIDLANDS,
within and for the body for the County aforesaid, on their oaths, in the name and by
the authority of the State of Midlands, do find and present that:

COUNT ONE

BRIBERY

On or about April 16, 2015, in Polk County, Midlands, Avery Bancroft gave, directly or indirectly, to any person who is a public officer or employee any benefit, reward, or consideration to which the person is not legally entitled with intent thereby to influence the person's performance of the powers or duties as such officer or employee, which constitutes the offense of BRIBERY, a First Degree Felony, in violation of M.P.C. §609.42(a)(1), and against the peace and dignity of the State of Midlands.

COUNT TWO

BRIBERY

On or about April 16, 2015, in Polk County, Midlands, Chase Covington being a public officer or employee, received, directly or indirectly, any benefit, reward, or consideration with the intent that it will have an influence on the performance of said public officer or employee's public office, which constitutes the offense of BRIBERY, a First Degree Felony, in violation of M.P.C. §609.42(a)(2), and against the peace and dignity of the State of Midlands.

J. F. Glinka

J. F. GLINKA (009930)
PROSECUTING ATTORNEY

A TRUE BILL

R. Fisher

FOREPERSON, GRAND JURY

**IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS**

STATE OF MIDLANDS

v.

AVERY BANCROFT

CHASE COVINGTON

Defendants.

*

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Case No. CR2015-05-0803

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CR2015-05-0804

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Bill of Particulars

Now comes the State of Midlands, by and through the undersigned, and in response to the defendants' request for a Bill of Particulars states as follows:

**COUNT ONE
BRIBERY**

On or about April 16, 2015, in Polk County, Midlands, Avery Bancroft gave, directly or indirectly, to any person who is a public officer or employee any benefit, reward, or consideration to which the person is not legally entitled with intent thereby to influence the person's performance of the powers or duties as such officer or employee, which constitutes the offense of BRIBERY, a First Degree Felony, in violation of M.P.C. §609.42(a)(1), and against the peace and dignity of the State of Midlands. To wit: A. Bancroft gave C. Covington money to influence Covington's vote to award Bancroft a casino license.

**COUNT TWO
BRIBERY**

On or about April 16, 2015, in Polk County, Midlands, Chase Covington being a public officer or employee, received, directly or indirectly, any such benefit, reward, or consideration with the intent that it will have an influence on the performance of said public officer or employee's public office, which constitutes the offense of BRIBERY, a First Degree Felony, in violation of M.P.C. §609.42(a)(2), and against the peace and dignity of the State of Midlands. To wit: C. Covington received money to sway a Midlands Gambling Commission vote to award A. Bancroft a new casino.

**IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS**

STATE OF MIDLANDS

v.

AVERY BANCROFT

CHASE COVINGTON

Defendants.

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Case No. CR2015-05-0803

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CR2015-05-0804

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ORDER DENYING MOTION TO EXCLUDE WIRETAP EVIDENCE

This matter came to be heard on the 15th day of August 2015, upon pretrial motion by the defendants to exclude the admission of wiretap evidence at trial. After an evidentiary hearing, this Court finds defendants' arguments that allowing the State to use the wiretap evidence violates their constitutional due process rights to a fair trial to be meritless. This Court finds the defendants' arguments under Mid. R. Evid. 401, 403, 404, Article VIII, Article IX, and the Fourth and Fifth Amendments to be not well taken. Either party may play the recording of the wiretap or read from the wiretap transcript during trial. However, the only way to enter any part of the recording of the wiretap is by playing it to the jury. The only way to enter any part of the transcript is by reading it onto the record. The full transcript may not be entered into evidence. This Court does not rule on whether the recording must be played or the transcript must be read in whole or in part. Having considered the parties' motions, the arguments of counsel, as well as the applicable law;

IT IS HEREBY ORDERED THAT:

1. The Defendants' Motion to Exclude is DENIED.

IT IS SO ORDERED.

Lincoln A. Watt

Hon. Lincoln Alexander Watt

IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS

STATE OF MIDLANDS

v.

AVERY BANCROFT

CHASE COVINGTON

Defendants.

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Case No. CR2015-05-0803

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CR2015-05-0804

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ORDER GRANTING MOTION TO EXCLUDE WIRETAP EVIDENCE

This matter came to be heard on the 15th day of August, 2015, upon motion by the defendants to exclude the admission of wiretap evidence. This Court held an evidentiary hearing to evaluate the wiretap evidence and for both parties to supplement their briefs with oral argument. Midlands Revised Code 2518(10)(a) states that “an aggrieved person may move to suppress wiretap evidence when *** (2) the order of authorization or approval under which it was intercepted is insufficient on its face.” Suppression is required where there is a failure to satisfy any of the statutory requirements that implement the legislature’s intention to limit the use of intercept procedures. *State v. French* (1974). M.R.C. further requires that when the State applies for a wiretap authorization, the “identity of the person, if known, committing the offense and whose communications are to be intercepted” must be specifically disclosed. M.R.C. §2518(1)(b)(iv). Officer “Mickey Keenan” only listed Avery Bancroft on the wiretap application even though Chase Covington’s name was clearly known by “Keenan” when the application was named. The defendants’ motions are well taken. **No references to the wiretap, either by counsel or by witnesses, are permissible at any time during trial.** Having considered the parties’ motions, the arguments of counsel, as well as the applicable law;

IT IS HEREBY ORDERED THAT:

1. The Defendants’ Motion to Exclude is GRANTED.

IT IS SO ORDERED.

Lincoln A. Watt

Hon. Lincoln Alexander Watt

**IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS**

STATE OF MIDLANDS

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Case No. CR2015-05-0803

v.

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CR2015-05-0804

AVERY BANCROFT

*

CHASE COVINGTON

*

Defendants.

ORDER ON MOTIONS IN LIMINE: UNDERCOVER OFFICER’S TESTIMONY

This matter came to be heard on the 15th day of August, 2015, upon pretrial motion by the defendants in the above-captioned case. The defendants submitted a very thorough and well-reasoned motion asking this Court to order the State to disclose the true identity of “Mickey Keenan” at trial pursuant to Mid. R. Evid. 403, Mid. R. Evid. 601, Mid. R. Evid. 608, the Confrontation Clause, and several of defendants’ due process rights to a fair trial.

The defendants asked this Court to require Midlands State Police Officer “Mickey Keenan” to testify using “Mickey Keenan’s” legal name. The defendants cited no authority for their request and this Court has serious concerns about the defendants’ legitimate interests in knowing “Mickey Keenan’s” real name. The Confrontation Clause does not require the defendants to know the full legal name of witnesses to confront them during cross examination, and this Court is not going to require it either. Any attempt to ask “Mickey Keenan” questions about “Mickey Keenan’s” real name during examinations is fertile ground for being held in contempt and for ethical violations being reported to the Midlands Attorney Disciplinary Committee. This Court **DENIES** the defendants’ requests.

The defense also asked this court to require “Mickey Keenan” to testify without concealing “Mickey Keenan’s” appearance or other identifying features. This is a closer case. While a criminal defendant has an expressed constitutional right to confront her

accuser and to cross-examine any witnesses that testify against her, the State also has a significant interest in protecting its police officers, and the safety of their families. The Court must strike an appropriate balance. To that end, the Court orders as follows:

1. If the State calls “Mickey Keenan” to testify, “Mickey Keenan” may wear a disguise that alters or conceals the witness’s facial features or body type. However, such disguise may not obstruct or hinder the jury’s view of the testimony. That is, any efforts to obscure the true identity of “Mickey Keenan” may not be done with screens, walls, or any other construction that would eliminate the jury’s ability to take into consideration “Mickey Keenan’s” body language, movements, and voice inflection for purposes of affording the testimony the appropriate weight it deserves.
2. If the State calls “Mickey Keenan” to testify, “Mickey Keenan” must communicate any personal testimony with the jury without the aid of a voice-altering device. Voice recordings, voice modulators, auto-tuning devices, video recordings, digitally enhanced or altered recordings, and the like are strictly prohibited.
3. If the State calls “Mickey Keenan” to testify, “Mickey Keenan” may take other appropriate steps to keep “Mickey Keenan’s” actual identity a secret so long as those steps do not violate this Order.

This Order does not prohibit either party from making objections based on the wording of the questions asked during examination or the substantive testimony offered by “Mickey Keenan.” Upon review of the facts and the arguments of counsel, the Court finds the defendants’ motions are not well taken and the defendants’ motions are hereby **DENIED.**

IT IS SO ORDERED.

Lincoln A. Watt

Hon. Lincoln Alexander Watt

**IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS**

STATE OF MIDLANDS

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Case No. CR2015-05-0803

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CR2015-05-0804

v.

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AVERY BANCROFT

*

CHASE COVINGTON

Defendants.

ORDER ON MOTIONS IN LIMINE: CHARACTER EVIDENCE

This matter came to be heard on the 15th day of August, 2015, upon pretrial motion by the defendants in the above-captioned case to exclude character evidence under Mid. R. Evid. 404 and 608-609. Specifically, the defendants sought to reserve the right to object to any evidence offered by the State of Midlands regarding evidence of prior crimes, wrongs or acts. In its Reply Brief,¹ the State of Midlands averred that our Local Rules require notice from the defendant of any character evidence of the accused that the defendants intend to offer under Mid. R. Evid. 404(a). The defendants objected to the State's request for notice.

Preemptory Character Evidence

For better or worse, this jurisdiction has historically been an outlier in the United States criminal justice system. Our focus on judicial economy has created a unique local rule that prohibits the Government from calling rebuttal witnesses. Typically, the permitted use of character evidence by the Prosecution is limited to either specific instances of conduct as detailed in Mid. R. Evid. 404(b) or through rebuttal witness testimony following the Defense case-in-chief, assuming the Defense elected to introduce character under Mid. R. Evid. 404(a)(1), or through specific instances on

¹ The State of Midlands responded to defendants' initial arguments by citing Mid. R. Evid. 404(b). In short, the State argues that any attempts to use specific instances of conduct by the defendant would be permissible under the exceptions enumerated in R. 404(b)—in so far as the evidence would be offered for the limited purposes enumerated in R. 404(b)(2).

cross examination of the defense witnesses introducing 404(a) evidence for the purposes of establishing a character trait or through 405(b) for the purpose of rebutting an asserted character trait introduced through an affirmative defense. However, since there is no opportunity to recall witnesses—and, therefore, no chance to offer rebuttal evidence—in Midlands, for the purpose of the trial in the above-captioned case, this Court orders as follows:

1. The defendant must provide the State of Midlands with notice of any intent by the defendant to offer evidence of the character of the defendant pursuant to R. 404(a)(1). Defendants should indicate the specific traits of character they intend to pursue.
2. Upon receipt of notice by the defendant that the defendant intends to offer evidence under R. 404(a), the State of Midlands may elect to pursue “preemptory rebuttal evidence” of competing traits during its case-in-chief. If the defendant does not provide notice of its intent to offer R. 404(a) evidence, neither party may introduce such evidence at trial.
3. The State of Midlands must, as always, offer similar notice to the defendant regarding its intent to offer evidence of prior crimes, wrongs, or acts, pursuant to R. 404(b).
4. If the Defendant has given the required notice of an intent to pursue an affirmative defense that relates to character evidence, the State of Midlands may introduce rebuttal character evidence through Rule 405 without giving any additional pretrial notice.

The defendants also object to the introduction of any character evidence offered by the State of Midlands pursuant to Mid. R. Evid. 608 and 609. Because Rules 608 and 609 apply only to testifying witnesses, the defendants’ objection is premature. This Court has reserved ruling on these objections as they apply to the defendants—or any other witness—until trial; however, both parties are still required to comply with the same notice requirements as set forth above for evidence governed by R. 404.

IT IS SO ORDERED.

Lincoln A. Watt

Hon. Lincoln Alexander Watt

**IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS**

STATE OF MIDLANDS

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Case No. CR2015-05-0803

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CR2015-05-0804

v.

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AVERY BANCROFT

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CHASE COVINGTON

Defendants.

**ORDER ON MOTIONS IN LIMINE: SEVERABILITY AND ADMISSIBILITY
OF INTERROGATIONS**

This matter came to be heard on the 15th day of August 2015, upon pretrial motion by the defendants to sever the defendants for trial and exclude the admissibility of the interrogations of the defendants.

Motion to Sever Defendants' Trials

The defendants argue that a consolidation of their trials will cause prejudice and deprive the defendants of their constitutional rights to a fair trial. Severance of the defendants is within the sound discretion of this Court. A defendant may be prejudiced by the admission of a statement or confession made by a co-defendant. In certain cases, this prejudice cannot be dispelled by cross-examination or jury instructions. At the motion hearing, this Court ordered the State to deliver for in camera inspection any of the defendants' statements that the State intended to use as evidence at trial. After reviewing the evidence, this Court is required to balance the potential prejudice to the defendants against judicial economic interests in trying the case at the same time.

WHEREFORE, this Court finds joinder so manifestly prejudicial that it outweighs the dominant concern with judicial economy and compels the exercise of the court's discretion to sever. Motion to Sever Defendants' Trials is thereby GRANTED.

Motion to Exclude Interrogations

The defendants further argue that the April 17, 2015 interrogations of the defendants should be inadmissible at trial. This Court finds that the interrogations were conducted in a manner that did not deprive defendants of their constitutional rights and the interrogations appropriately ceased immediately at the point where defendants invoked their right to counsel. Moreover, this Court finds that the defendants knowingly and voluntarily waived their Fifth Amendment rights during the interrogations. The more difficult issue arises given this Court's immediately prior ruling that the trials of Bancroft and Covington be severed. Here, confrontation clause issues come into clear focus, and it is clear to this Court that admission of the other defendant's interrogation in a trial in which that defendant is not present would be an egregious violation of that individual's constitutional rights.

WHEREFORE, this Court denies the defendants' motion in part and grants it in part. In the trial of Avery Bancroft, the interrogation of Bancroft is admissible without additional foundation and at any point. In Bancroft's trial, Chase Covington's interrogation may not be read to the jury, admitted into evidence, or otherwise mentioned by counsel or by witnesses in any manner. Similarly, in Covington's trial, the interrogation of Covington is admissible without additional foundation at any point and Avery Bancroft's interrogation may not be read to the jury, admitted into evidence, or otherwise mentioned by counsel or by witnesses in any manner.

IT IS SO ORDERED.

Lincoln A. Watt

Hon. Lincoln Alexander Watt

IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS

STATE OF MIDLANDS

v.

AVERY BANCROFT

CHASE COVINGTON

Defendants.

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Case No. CR2015-05-0803

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CR2015-05-0804

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ORDER ON MOTION TO STRIKE EXPERT'S TESTIMONY

This matter came to be heard on the 15th day of August, 2015, upon pretrial motion by the defendants to strike, and therefore completely exclude, the testimony of F. Reese Warren under *Tarot Readers Assoc. of Midlands v. Merrell Dow* (1994). This Court held an evidentiary hearing pursuant to *Tarot Readers* to evaluate the qualifications of the expert.

The parties are in agreement that F. Reese Warren possesses extraordinary training, experience, and skill in the fields of forensic linguistics and forensic psychology. For the reasons discussed at the hearing, this Court will not exclude F. Reese Warren's conclusions under Mid. R. Evid. 702 or *Tarot Readers*. While there are certainly concerns about the overlap between F. Reese Warren's conclusions and multiple sections of Midland's evidentiary rules, this Court is convinced that the State has met the threshold requirements of Mid. R. Evid. 702 and *Tarot Readers* with respect to the admissibility of F. Reese Warren's conclusions regarding the linguistic analysis of language used by law enforcement officers and Avery Bancroft. However, Warren may not testify with regard to the intent of any individual as this Court does not believe there is sufficient foundation to say that linguistic analysis can reliably speak on that subject. This Court is silent about the weight that F. Reese Warren's opinion should be given by the trier of fact and the admissibility of F. Reese Warren's testimony under all other sections of the Midlands Rules of Evidence as well as the admissibility of discrete portions of Warren's testimony under *Richards v. Mississippi BBQ* and Mid. R. Evid. 703.

IT IS HEREBY ORDERED THAT:

1. The Defendants' Motion to Strike is DENIED.

IT IS SO ORDERED.

Lincoln A. Watt

Hon. Lincoln Alexander Watt

**IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS**

STATE OF MIDLANDS

v.

AVERY BANCROFT

CHASE COVINGTON

Defendants.

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Case No. CR2015-05-0803

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CR2015-05-0804

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STIPULATIONS

1. During its 2014 legislative session, the Midlands Legislature ordered the three-member Midlands Gambling Commission, chaired by Chase Covington, to select the recipient of a new casino license by May 1, 2015. The Commission operates by majority vote, meaning that at least two members were required to agree for the Commission to make a decision.
2. One must have a license to operate a casino in Midlands. Each license enables its owner to run a single casino. On April 17, 2015, the Midlands Gambling Commission's voted to give Avery Bancroft a second casino license. Chase Covington and Harper Walton voted for Bancroft's proposal; Riley Geis voted for the only alternative proposal, from J.C. Longstreet and Shannon Stark. Before April 17, 2015, no casino owner had ever been awarded multiple casino licenses in Midlands.
3. Chase Covington and Tracey Minetos are non-biological step-siblings. Neither Minetos nor Covington is biologically related to Avery Bancroft.
4. Both parties waive all objections to the admissibility of Exhibit 8, the transcript of the March 31, 2015 meeting between Bancroft, Keenan, and Hyde and stipulate to its accuracy though they acknowledge a dispute over statements made during the

inaudible portion noted in the transcript.

5. The voices on the audio recording of the wiretap, Exhibit 3(a), are those of Avery Bancroft and Chase Covington and the transcript of that wiretap, Exhibit 3(b), is accurate.
6. The transcript of the April 17, 2015 interrogation of Avery Bancroft (Exhibit 30) is a fair and accurate representation of the interrogation. The following exhibits were shown to Bancroft and identified at that interrogation: Exhibits 4, 10, 17, 20, 21, 24, 25, 26, 28, and 29.
7. The transcript of the April 17, 2015 interrogation of Chase Covington (Exhibit 31) is a fair and accurate representation of the interrogation. The following exhibits were shown to Covington and identified at that interrogation: 10, 19, 22, 26, 27, and 28.
8. The parties and witnesses waive all objections arising under the United States Constitution.
9. The seal on Exhibits 10, 13, and 15 is the official seal of the State of Midlands.
10. Avery Bancroft, Chase Covington, and Tracey Minetos voluntarily provided DNA and hair samples to Pat Sikorsky.

Attorney for the State of Midlands

Attorney for the Defendant

IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS

STATE OF MIDLANDS

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Case No. CR2015-05-0804

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v.

CHASE COVINGTON

*

Defendant.

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JURY INSTRUCTIONS (BRIBERY)

The defendant, Chase Covington, is charged with receiving a bribe in violation of §609.42(a)(2) of the Midlands Penal Code. You must find the defendant not guilty unless you find that the government has proven beyond a reasonable doubt that the defendant is guilty of receiving a bribe as set forth in Instruction No. 1.

INSTRUCTION NO. 1: RECEIVING A BRIBE

You will find the defendant, Chase Covington, guilty, if and only if, the government has proven beyond a reasonable doubt all of the following:

- A. The defendant was a public official;
- B. The defendant received something of value or benefit in return for being influenced in the performance of an official act; and
- C. The defendant acted with the intent to be influenced in the performance of an official act.

INSTRUCTION NO. 2: PRESUMPTION OF INNOCENCE

The law presumes a defendant to be innocent of a crime, and the indictment shall not be considered as evidence or as having any weight against him. You shall find the defendant not guilty unless you are satisfied from the evidence alone and beyond a reasonable doubt that the defendant is guilty. If upon the whole case you have a reasonable doubt as to guilt, you must find the defendant not guilty.

INSTRUCTION NO. 3: RIGHT TO REMAIN SILENT

The defendant is not required to testify, and the fact that a defendant does not testify cannot be used as an inference of guilt. If, however, a defendant does testify, you shall judge the defendant's credibility as you would any other witness.

INSTRUCTION NO. 4: ARGUMENTS AND REMARKS OF COUNSEL

Remarks of the attorneys are not evidence. If the remarks suggest certain facts not in evidence, disregard those remarks. However, you are to consider carefully the closing arguments of the attorneys. Ultimately you must draw your own conclusions from the evidence and decide your verdict according to the evidence, under the instructions given to you by the court.

INSTRUCTION NO. 5: CREDIBILITY OF WITNESSES

It is the duty of the jury to scrutinize and weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony. In determining the credibility of each witness and the weight to give the testimony of each witness, consider these factors:

- A. whether the witness has an interest or lack of interest in the result of this trial;
- B. the witness's conduct, appearance, and demeanor on the witness stand;
- C. the clearness or lack of clearness of the witness's recollections;
- D. the opportunity the witness had for observing and for knowing the matters the witness testified about;
- E. the reasonableness of the witness's testimony;
- F. the apparent intelligence of the witness;
- G. bias or prejudice, if any has been shown;
- H. possible motives for falsifying testimony; and
- I. all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive. There is no predetermined way for you to evaluate the testimony; instead, you should use your common sense and experience.

INSTRUCTION NO. 6: EVIDENCE; INTERPRETING EVIDENCE

When making your decision, you may rely on both direct and circumstantial evidence. Direct evidence is testimony by a witness about what that witness personally did, saw, or heard. Circumstantial evidence is indirect evidence from which the fact finder may infer that another fact is true. Neither type of evidence should be given categorically more weight than the other.

The State's burden of proving its case beyond a reasonable doubt applies to each and every element of the crime charged. This burden, however, does not operate on the many subordinate, evidentiary, or incidental facts as distinguished from proof of the elements of the crime or of an ultimate fact. Where, however, the State relies in whole or in part on circumstantial evidence to prove an element of a crime, although each link in the chain of evidence need not be proven beyond a reasonable doubt, the cumulative impact of that evidence must, in order to support that inference, convince the finder of fact beyond a reasonable doubt that the element has been proven.

INSTRUCTION NO. 7: UNANIMOUS VERDICT

The verdict of the Jury must be unanimous as to guilty or not guilty, and be signed by one of you as Foreperson.

DATE: _____

JUDGE

IN THE DISTRICT COURT OF
POLK COUNTY, MIDLANDS

STATE OF MIDLANDS

v.

AVERY BANCROFT

Defendant.

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Case No. CR2015-05-0803

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JURY INSTRUCTIONS (ENTRAPMENT)

The defendant, Avery Bancroft, has been charged with the crime of bribery. While a criminal defendant is normally presumed innocent, **the defendant has admitted to the elements of that crime**, to wit, that [1] the defendant gave or offered something of value or benefit to a public official; and [2] the defendant acted with the intent to influence an official act of that public official in the course of a public duty.

However, the defendant contends that the defendant was entrapped into doing so by a government agent. If, as set out in Instruction No. 1, you find that the defendant was entrapped into committing bribery, you must find the defendant not guilty.

INSTRUCTION NO. 1: ENTRAPMENT

You will find the defendant, Avery Bancroft, was not entrapped and is guilty of bribery if either:

1. The government proves beyond a reasonable doubt that the defendant was predisposed to commit the crime before being approached by government agents; OR
2. The defendant fails to prove by a preponderance of the evidence that government agents induced the defendant to commit the crime.

INSTRUCTION NO. 2: PREDISPOSITION

In determining whether the defendant, Avery Bancroft, was predisposed to commit the crime before being approached by government agents, you may consider the following factors:

- A. Whether government agents initially suggested the criminal activity;
- B. Whether the defendant demonstrated reluctance to commit the offense;
- C. Whether government agents repeatedly pressured or persuaded the defendant to perform the criminal activity;
- D. The defendant's level of participation in the offense;
- E. The defendant's character and reputation, including criminal history or lack thereof.

INSTRUCTION NO. 3: INDUCEMENT

Inducing a defendant to commit a crime means employing methods of persuasion or encouragement that create a substantial risk that a crime will be committed by a person who was otherwise unlikely to commit it. It does not include merely providing a defendant with the opportunity, means, and facilities to commit the offense.

INSTRUCTION NO. 4: GOVERNMENT AGENT

A government agent is a person acting in furtherance of a government organization's interests. Law enforcement officers, if acting in their professional capacity as employees of the government, may be agents for the purposes of entrapment.

An informant is a person who does not normally act as a government agent in his or her professional capacity, but who nonetheless works in furtherance of the government's interests by providing information about a crime to a law enforcement agency. An informant, if acting in furtherance of the government's interests, is a government agent for the purposes of entrapment.

INSTRUCTION NO. 5: RIGHT TO REMAIN SILENT

The defendant is not compelled to testify, and the fact that a defendant does not testify cannot be used as an inference of guilt. If, however, a defendant does testify, you shall judge the defendant's credibility as you would any other witness.

INSTRUCTION NO. 6: ARGUMENTS AND REMARKS OF COUNSEL

Remarks of the attorneys are not evidence. If the remarks suggest certain facts not in evidence, disregard those remarks. However you are to consider carefully the closing arguments of the attorneys. Ultimately you must draw your own conclusions from the evidence, and decide upon your verdict according to the evidence, under the instructions given you by the court.

INSTRUCTION NO. 7: CREDIBILITY OF WITNESSES

It is the duty of the jury to scrutinize and weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony. In determining the credibility of each witness and the weight to give the testimony of each witness, consider these factors:

- A. whether the witness has an interest or lack of interest in the result of this trial;
- B. the witness's conduct, appearance, and demeanor on the witness stand;
- C. the clearness or lack of clearness of the witness's recollections;
- D. the opportunity the witness had for observing and for knowing the matters the witness testified about;
- E. the reasonableness of the witness's testimony;
- F. the apparent intelligence of the witness;
- G. bias or prejudice, if any has been shown;
- H. possible motives for falsifying testimony; and
- I. all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive. There is no predetermined way for you to evaluate the testimony; instead, you should use your common sense and experience.

INSTRUCTION NO. 8: EVIDENCE; INTERPRETING EVIDENCE

When making your decision, you may rely on both direct and circumstantial evidence. Direct evidence is testimony by a witness about what that witness personally did, saw, or heard. Circumstantial evidence is indirect evidence from which the fact finder may infer that another fact is true. Neither type of evidence should be given categorically more weight than the other.

The State's burden of proving its case beyond a reasonable doubt applies to each and every element of the crime charged. This burden, however, does not operate on the many subordinate, evidentiary, or incidental facts as distinguished from proof of the elements of the crime or of an ultimate fact. Where, however, the State relies in whole or in part on circumstantial evidence to prove an element of a crime, although each link in the chain of evidence need not be proven beyond a reasonable doubt, the cumulative impact of that evidence must, in order to support that inference, convince the finder of fact beyond a reasonable doubt that the element has been proven.

INSTRUCTION NO. 9: UNANIMOUS VERDICT

The verdict of the Jury must be unanimous as to guilty or not guilty, and be signed by one of you as Foreperson.

DATE: _____

JUDGE

Applicable Provisions from Midlands Penal Code

Midlands Penal Code 609.42 BRIBERY.

(a) Acts constituting.

Whoever does any of the following is guilty of bribery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both:

- (1) offers, gives, or promises to give, directly or indirectly, to any person who is a public officer or employee any benefit, reward or consideration with intent thereby to influence the person's performance of their powers or duties as such officer or employee; or
- (2) being a public officer or employee receives, directly or indirectly, any such benefit, reward or consideration with the intent that it will have such an influence.

(b) Forfeiture of office.

Any public officer who is convicted of violating or attempting to violate subdivision (a) shall forfeit the public officer's office and be forever disqualified from holding public office in the state.

Midlands Penal Code 645 ENTRAPMENT.

(a) Definition.

Whoever is induced by a government agent to commit a crime and who does not have a predisposition to commit the induced crime is not guilty of that crime.

(b) Procedure.

- (1) Whoever offers a defense of entrapment as a defense to a criminal charge has the burden of proving by a preponderance of the evidence inducement to commit the crime by a government agent.
- (2) Whoever offers a defense of entrapment as a defense to a criminal charge and proves inducement to commit the crime by a government agent is not guilty of the crime charged unless the government proves that the defendant was predisposed to commit the crime at a time prior to the alleged inducement to commit the crime.

Midlands Case Law

The following are selected excerpts from binding state law on questions of criminal procedure and evidence in a Midlands court of law. Both parties have reviewed and researched all of the citations and agree they are accurate. The cases are not quoted in their entirety, but the relevant sections, supplied below, have been agreed upon by both parties as well as the Court. All cases are from the Midlands Supreme Court, the highest court in Midlands, and are binding on all Midlands trial courts.

Basis of Evidentiary Rulings

Zomerfeld v. Noto (2012)

Pursuant to Midlands Rules of Evidence 104(a), when evaluating the admissibility of evidence, a trial court is permitted to rely on both admissible and inadmissible evidence. The use of underlying inadmissible evidence does not make that inadmissible evidence admissible. Instead, the court is merely permitted to consider the underlying inadmissible evidence in order to assess the admissibility of the offered evidence. In a jury trial, the jury may not always be privy to the underlying facts used to determine what evidence is admissible, but the Court may hear it. Previous upheld examples of this in Midlands include using character evidence to make a ruling on hearsay exceptions, using hearsay to make a ruling on character evidence, and using hearsay to decide whether an expert has adequate foundation to testify.

Burden of Proof

State v. Lowe (1985)

A criminal defendant's decision to exercise the constitutionally protected right not to testify in his or her own defense may not be commented upon by the State either explicitly or implicitly. However, if the defendant does choose to testify, his or her credibility is to be judged like that of any other witness.

Graham v. State (1974)

While the prosecution in a criminal case must prove each of the elements of its burden beyond a reasonable doubt, this burden does not typically apply to evidentiary matters. In Midlands, the proponent of the evidence need only prove these evidentiary matters by a preponderance of the evidence (i.e., it must establish that all elements are *more likely than not* true).

Misconduct in a Criminal Trial

State v. Parsons (1983)

In the guilt phase of a criminal trial, admission of evidence offered solely for the purpose of discussing the available penalties for the crime charged is strictly prohibited. This has no impact on evidence of prior crimes of witnesses that is admissible subject to the Midlands Rules of Evidence.

State v. Campbell (2007)

In Midlands, all criminal trials are bifurcated with a guilt phase followed by a penalty phase. It is improper for an attorney to comment on sentencing or discuss potential penalties during the guilt phase of the trial. Such conduct is grounds for a mistrial and may constitute conduct for which sanctions are appropriate.

Entrapment Defense

State v. Sheikh (1988)

When a defendant pursues an affirmative defense of entrapment, he or she necessarily admits to the elements of the crime. Thus, when a defendant pursues an entrapment defense, the prosecution need not prove the elements of the charged crime, and any evidence offered for the purpose of contesting the elements of the charged crime is inadmissible at trial.

State v. Walton (1990)

A defendant's decision to offer an affirmative defense, including entrapment, must be disclosed to the State at least 15 days before trial. The proper remedy for a defendant's failure to disclose the defense 15 or more days before trial is typically a continuance of the trial date; however, when a continuance is not practicable, the secondary remedy is rejection of the affirmative defense by the trial court.

State v. Heflin (1972)

Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute. A valid entrapment defense has two related elements: (1) government inducement of the crime, and (2) the defendant's lack of predisposition to engage in the criminal conduct. The government bears the burden of proving beyond a reasonable doubt that the defendant was predisposed to commit the crime. The defendant bears the burden of proving by a preponderance of the evidence that the government induced the defendant into committing the crime. The defendant should be found not guilty only if the prosecution fails to meet its burden *and* the defense meets its burden.

State v. Jeffcott (1989)

In determining a defendant was predisposed to commit a crime for the purposes of an entrapment defense, the trier of fact should consider the following factors:

- A. Whether government agents initially suggested the criminal activity;
- B. Whether the defendant demonstrated reluctance to commit the offense;
- C. Whether government agents repeatedly pressured or persuaded the defendant to perform the criminal activity;
- D. The defendant's level of participation in the offense;
- E. The defendant's character and reputation, including criminal history or lack thereof.

State v. Jewell (1991)

When defendants raise the defense of entrapment, they necessarily put their character at issue. Therefore, character evidence showing a defendant's predisposition is admissible to rebut the entrapment defense and may be proven through reputation or opinion testimony pursuant to Rule 405(a) and specific instances of conduct pursuant to Rule 405(b).

State v. Veli and Pickerill (1995)

In determining whether a defendant was induced to commit a crime for the purposes of an entrapment defense, the trier of fact should consider whether government agents employed methods of persuasion or encouragement that create a substantial risk that a crime will be committed by a person who was otherwise unlikely to commit it. It is not sufficient for a government agent to merely provide a defendant with the opportunity, means, and facilities to commit the offense, though evidence of such may be relevant.

State v. Dressel (2000)

An informant participating in a government investigation is a government agent for the purposes of an entrapment defense. As such, the actions of an informant are attributable to the state and may be the basis for showing that a defendant was induced to commit a crime.

State v. Donsa (1980)

The means by which a law enforcement officer recruited an informant or obtained an informant's participation do not in and of themselves support an argument that a defendant was induced into committing a crime. The pressure applied to an informant is not the pressure that was applied to the defendant. However, the interactions of a law enforcement officer with an informant may still be relevant to an entrapment defense if they impact or explain either the law enforcement officer's or the informant's interactions with the defendant.

Lee v. State (2001)

Even if inducement has been shown, a finding of predisposition is fatal to an entrapment defense. The predisposition inquiry leads the fact finder to consider whether the defendant was an unwary innocent or, instead, a criminal who readily availed himself of the opportunity to perpetrate the crime. Thus, predisposition should not be confused with intent or mens rea: a person may have the requisite intent to commit the crime, yet be entrapped. Also, predisposition may exist even in the absence of prior criminal involvement.

Authentication

Filteau v. Wanek (1992)

A statement's admissibility will sometimes turn on the identity of the person making a statement. Because Midlands law contains a strong preference for jury determinations of important questions, courts must be careful not to usurp the jury's role in this context. As long as the proponent of the statement produces evidence that would permit a reasonable jury to find, by a preponderance of the evidence, that a given person made a particular statement, the court must assume for the purposes of assessing the statement's admissibility that the statement was made by that person.

Grover's of New Mexico v. R.G.D. Boots Co. (2014)

That an email is listed as coming from an address that either is known or purports to belong to a particular person is sufficient to lay foundation that the email was sent by the person in order to determine its admissibility, at least absent a particularized reason to believe that the email may have been sent by someone else. This ruling does not foreclose challenges to the admissibility of an email on other grounds.

Ginger v. Heisman (2015)

Discussing the admissibility of misleading text messages allegedly sent to voters by a candidate or his agents in an election fraud case, we reiterate that text messages received on a cell phone are properly authenticated when the proponent of the evidence shows, by a preponderance of the evidence, the author of the message. The evidence offered to meet this standard may include direct or circumstantial evidence of authorship.

Hearsay

Illiadis v. State (1987)

Rule 801(d)(2) may be invoked in only one direction in a criminal case. Specifically, Rule 801(d)(2) permits the State to offer statements by a criminal defendant.. The rule does not permit a defendant to offer statements from himself. This rule remains the same even if the State has already elicited out-of-court statements by a defendant during a preceding examination. Consider a case where the defendant made a variety of statements to a police officer, who was called by the State at trial. Rule 801(d)(2)(A) permits the State to elicit the defendant's statements during the direct examination of the police officer, because those statements are being offered "against an opposing party" (i.e., the defendant). The State thus elected to admit only a few of the statements provided by the defendant. But when defense counsel attempted to elicit other, less inculpatory statements by the defendant on cross-examination of the police officer, the State properly objected because those additional statements would not be offered "against an opposing party."

America's Best Cookie v. International House of Waffles (2009)

Although practices may be different in other jurisdictions, in Midlands it is entirely possible for an out-of-court statement by a person who is or will be testifying in a particular trial to be excluded by the general rule against hearsay. Subject to Rule 801(d), hearsay is any out-of-court statement offered to prove the truth of the matter asserted in the statement. And although the Midlands Rules of Evidence contain a variety of exceptions to the rule that hearsay is generally inadmissible, there is no categorical principle permitting receipt of any out-of-court statement simply because the person who made that out-of-court statement is or will be a witness in the trial.

State v. Capaldi (2010)

In a criminal case, a law enforcement officer is not considered a "party opponent" for the purpose of admissibility of a statement made by that officer under Midlands Rule of Evidence 801(d)(2). This remains true even when a law enforcement officer is designated as a "party representative" for purposes of Rule 615. Midlands allows prosecutors to designate a police officer to remain in the courtroom throughout trial. However, the same logic that allows the State to admit admissions by a criminal defendant as admissions by a party opponent under Rule 801(d)(2) does not permit defense attorneys to offer statements of a police officer as statements of the State of Midlands. This ruling should not be misconstrued to preclude the admissibility of a law enforcement officer's outside-of-court statements under other applicable provisions of the Midlands Rules of Evidence.

State v. Goodman (2013)

The provisions of *State v. Capaldi* apply to informants working on law enforcement operations. Informants are not "party opponents" under Midlands Rule of Evidence 801(d)(2).

State v. Chambliss (1985)

Criminal conspiracy to commit a given crime occurs when a person agrees with another or others to commit an offense, attempt to commit an offense, solicit the commission of an offense, or aid another in the planning or commission of an offense. However, an informant working with law enforcement is an agent of the government and, as such, cannot be said to be in conspiracy with a defendant for the purposes of Midlands Rule of Evidence 801(d)(2).

State v. Owens (2010)

For a statement to qualify under the hearsay exclusion of Midlands Rule of Evidence 801(d)(2)(E), the proponent must establish the existence of said conspiracy by a preponderance of the evidence. In addition, the statements may be admitted conditionally subject to Rule 104, meaning that the proponent of such statements may lay proper foundation before offering the statements or the trial court may allow the proponent to admit the statements first and lay the foundation for the predicate conspiracy during the remainder of the trial. As Rule 801(d)(2)(E) makes clear, proof of conspiracy may be based in part on the statements themselves, but the proof must also include some independent corroborative evidence.

Character Evidence

Kopel v. State (1989)

In an entrapment case, a criminal defendant's proclivities for criminal conduct similar to the crime(s) charged, as shown by specific past examples, are natural friends of the litany of permissible uses of character evidence already contained under the umbrella of 404(b). Rule 404(b) plainly allows specific instances of past conduct to prove that a criminal defendant has committed a newer crime alleged at trial. In the instant case, the evidence of past bribes, blackmail and insider trading demonstrated several uses already written in 404(b) itself, such as "intent," "knowledge," "absence of mistake," and "lack of accident." Several of the other participants in the past bribery acts were even participants in the acts of bribery brought to trial in the instant case, which helped prove that the defendant was aware of the criminality of his acts and that he intended to break the law.

Smith v. State (1995)

Evidence admissible under *Kopel v. State* is neither wide-sweeping nor practically all-inclusive. The case of *Kopel v. State* is merely an affirmation of law that already exists in the text of the statutory rule itself, Rule 404(b). Under Rule 404(b), *Kopel* evidence is to be introduced only if it is relevant to rebut the facts alleged in a legal defense offered at trial.

Expert Witness Foundation and Testimony

Davis v. Adams (1993)

Under the Midlands Rules of Evidence, trial judges must ensure that any scientific testimony or evidence admitted is not only relevant but reliable. In determining whether expert testimony is sufficiently reliable, judges should consider only the methods employed and the data relied upon, not the conclusions themselves. The proponent of the evidence has the burden of proving each section of Rule 702 by a preponderance of the evidence.

Tarot Readers Association of Midlands v. Merrell Dow (1994)

In assessing reliability under Rule 702(c) of the Midlands Rules of Evidence, judges should consider, among other factors, whether the theory or technique has been or can be tested, whether it has been subjected to peer review and publication, whether it has a known error rate, and whether it has gained widespread acceptance within the field. These factors, while relevant, are not necessarily dispositive. For example, lack of publication does not automatically foreclose admission; sometimes well-grounded but innovative theories will not have been published. Some expert fields, meanwhile, have no known error rate because a strict mathematical rate of success cannot be applied to the expert's methodology. Indeed, there is no definitive checklist in making a preliminary assessment of whether reasoning or methodology underlying expert testimony is scientifically reliable. Judges must make such assessments based on the totality of the circumstances, and the proponent of such expert testimony must meet the threshold proof requirement of a preponderance of the evidence.

Pahlke v. Piper (1996)

Under Rule 702, a court may qualify an expert witness to testify to expert conclusions in front of a jury either during the trial itself, or before the trial in a special hearing (a “*Tarot Readers* hearing”) under which the factors of expert foundation are scrutinized, at a *Tarot Readers* hearing. Either party may demand a *Tarot Readers* hearing prior to trial to settle issues of expert foundation based on *Tarot Readers Association of Midlands v. Merrell Dow* (1994) or its progeny. The effect of a court order from an *Tarot Readers* hearing for a specific expert witness is binding on the rest of the trial, and the proponent need not lay any additional foundation of the ruled-upon issue during trial, although the proponent may freely elect to re-lay that foundation at trial when they are in front of the jury in order to bolster the weight the jury gives the expert's conclusions. If the parties elect to forgo a *Tarot Readers* hearing, the proponent must offer all of the necessary foundation under Midlands Rule 702, *Adams*, and *Tarot Readers* before an expert can testify to his or her conclusions.

Richards v. Mississippi BBQ (1997)

Midlands Rule of Evidence 703 does not afford an expert unlimited license to testify or present a chart in a manner that simply summarizes inadmissible hearsay without first relating that hearsay to some specialized knowledge on the expert's part, as required under Midlands Rule of Evidence 702. The court must distinguish experts relying on otherwise inadmissible hearsay to form scientific conclusions from conduits who merely repeat what they are told. The testimony of the former is admissible; that of the latter is not. Of course, statements admissible if offered through any other witness are not rendered inadmissible simply because they are offered by an expert witness. Thus, this case does not apply to and does not render inadmissible (a) statements that are not hearsay; (b) statements that qualify as party opponent statements under Rule 801(d)(2); and (c) statements that qualify as exceptions to the hearsay rule.

AFFIDAVIT OF [REDACTED] "MICKEY KEENAN"

1 After being duly sworn upon oath, [REDACTED] hereby states as follows: I
2 am over 18 and competent to make this affidavit. I am testifying voluntarily and was not
3 subpoenaed or compelled to testify.

4 I am a Detective in the Special Investigations Division of the Midlands State Police
5 Department (MSPD). I was the valedictorian of my class at the Midlands State Police Academy
6 and joined the MSPD the day after graduation. I started off as a beat cop, but after a few years
7 ticketing drunken college students leaving Chuggie's Bar on Saturday nights, I asked to be
8 transferred. Because my background isn't typical of many of my colleagues—I didn't grow up in
9 Midlands and didn't go to the Academy right out of high school—I was assigned to the Special
10 Investigations Division, where I now do undercover work. In many of my cases, I go undercover
11 in drug rings, helping to bust suppliers or dealers. I am currently undercover on a new case,
12 which is why my name is redacted throughout this affidavit.

13 My involvement in the Bancroft-Covington case began in June 2013. At that time, I had
14 just wrapped up an investigation and was looking for my next case. I was in luck, because the
15 MSPD had just gotten a new Chief: Frank Kimball. On his first day in office, Kimball sent an e-
16 mail to the whole investigative unit. That e-mail told us to focus on catching big fish rather than
17 focusing on petty crimes. I was thrilled. I didn't become a police officer to spend my summers
18 trying to catch teenagers slipping \$20 bills in their pockets and giving stuffed animals to their
19 sweethearts. Chief Kimball told me that I was going to be the point person on a new
20 investigation of corruption in the Midlands Gambling Commission (MGC). Everybody on the
21 MGC is appointed by the governor, so we wouldn't be looking for election fraud—they don't run
22 for office—but we'd be looking for corruption in how the Commission does its work.

23 I started as a staffer at the Commission on July 1, 2013. I operated under the alias Mickey
24 Keenan. The position gave me the opportunity to accompany Chase Covington everywhere, to
25 have access to board proposals, to sit in on meetings (both in our office and elsewhere), and
26 generally to have almost complete access to the Commission's activities. Despite this level of
27 access, for the first year-and-a-half, I never saw Covington solicit or accept a bribe.

28 On October 1, 2014, the Commission announced that it would seek proposals for a new
29 casino, and I had hoped that Avery Bancroft would apply. Bancroft already owned a casino in
30 Midlands—the Black Bear—but Bancroft is an empire builder. When the Commission

announced the opportunity to apply for the license, there were rumors everywhere that Bancroft was willing to pad some pocketbooks to become the first person in Midlands to own two casinos. But, even as 2015 rolled around, Bancroft hadn't expressed any interest, as far as I was aware.

That changed on February 13, 2015. That morning, I was giving Covington a daily briefing when Covington's secretary buzzed in the intercom. "I have Avery Bancroft on the phone for you." Covington pressed a button and put Bancroft on speakerphone. Bancroft said, "I saw the announcement about a new casino. I'm putting together a proposal and I'd like to talk to you about it. To, you know, grease the wheels." Covington's tone changed completely, becoming harsh. Covington said, "Avery, I'm in here with a staffer. I'll have to talk to you later," and immediately hung up the phone before Bancroft could respond.

This was what I was waiting for, and I saw that we could be dealing with two big fish in a single exchange. I knew I needed to investigate further. But, for that to happen, I needed to find a way to infiltrate Bancroft's business. Since Bancroft already owned a casino, I had dealt with Bancroft throughout my time at the MGC. Most of my interactions with Bancroft had been through Bancroft's Executive Assistant, Corey Hyde, who had a big mouth and had spent a lot of time in Vegas before moving to Midlands. Hyde told some tall tales, and I thought those could give me the leverage I needed to persuade Hyde to help with the investigation. To be clear, I had no evidence that Hyde had ever violated the law, but I don't think Hyde ever figured that out.

I met with Hyde on March 2, 2015 after calling Hyde the day before to schedule the meeting. When Hyde arrived at my office on the 2nd, I told Hyde a little bit about the requirements for a bid but then quickly moved the conversation along to Bancroft. Hyde seemed initially reluctant to talk about Bancroft, so I implied that I had evidence Hyde had violated gambling regulations in Vegas years ago. Once I slid my badge across the table, Hyde was fully on board. I told Hyde that Hyde would be responsible for setting up meetings among Bancroft, myself, and Covington. Hyde said this was no big deal—that sort of thing was essentially Hyde's job anyway as an Executive Assistant. Over the next month, I prepped Hyde. The goal was to make sure that Hyde wouldn't give us away and that Hyde would do what Hyde was told. Hyde was fully cooperative throughout the process.

The first time I met Bancroft was on March 31, 2015. Hyde, Bancroft, and I met in a private suite at the hotel connected to the casino. I had Hyde wear a wire to make sure we had evidence of the conversation, and I sent Hyde an e-mail the day before the meeting with some

instructions about how the meeting should go. I've seen the transcript of the conversation, and it is an accurate reflection of what was said. From the moment I walked into the room, I was confident both that Bancroft had no idea I was a cop and that Bancroft thought the purpose of the meeting was to talk about "greasing the wheels" at the MGC. This wasn't my first case, and I knew the look on Bancroft's face proved that Bancroft was chomping at the bit, just waiting for a chance to give somebody way more money than I could ever imagine in exchange for what Bancroft wanted. It almost felt too easy. For example, at the part of the transcript where there is static, Bancroft said "I'm not one of those Chicago or Jersey folks, but I know how to play the game" and winked at me. Bancroft was notorious for a reason.

Now that I had Bancroft on board, I went back to the MGC and spoke to Chase Covington in a private meeting that same day. Covington was more than willing to meet with Bancroft. Covington said that Covington was likely to vote against giving Bancroft a second casino, but that Covington "could be persuaded." I asked Covington what would fit the bill, and Covington indicated that Covington needed to know how Bancroft's proposal stacked up against the other proposals the Commission was bound to get. I tried to pry a bit, asking Covington if I should let Bancroft's people know that Covington was willing to accept something off-the-books. Covington looked around the room and then started yelling at me. Covington said, "Look, I'm sure I've heard all of the same stories about Bancroft that you have but that's not my style. I do things by the books." But Covington still asked for the meeting with Bancroft, so I called Hyde and set a meeting for April 13, 2015 at the hotel.

Over the next few weeks, Hyde started getting cold feet. I called Hyde to talk about it. When Hyde told me Hyde was worried, I told Hyde, "Backing out now would be the worst decision of your life." I reminded Hyde that charges could still be brought against Hyde. Hyde agreed to stay on board and even called me on April 12, 2015—the day before the meeting among Bancroft, Covington, and me—to tell me that we couldn't record the conversation at that meeting because Bancroft was going to have us searched.

I got to the location of the meeting, room 312 of the hotel, the next day around 3p.m. Danny Hoy, the head of security for the casino, was waiting for me in the hallway. Hoy confiscated my cell phone, just as Hyde had suggested would happen. Because there was no way to record the meeting, I needed to make sure that someone else could verify that the meeting happened. So, as Hyde and Bancroft were walking into the room, I picked up the telephone and

called room service, ordering a bottle of Romanee Conti and a cheese plate for immediate delivery. As I hung up the phone, Covington came in holding a black briefcase and we sat down around the coffee table in the suite.

Covington started the conversation and asked Bancroft what Bancroft was planning. Bancroft responded with a lot of business-speak, talking about square footage and the number of conference rooms. Hyde got up to use the suite's restroom. While Hyde was gone, Covington started asking questions about money: how much Bancroft expected to bring in and how Bancroft planned to do it. Bancroft said, "Of course, it's always about the money with you." Then there was a pause. Bancroft and Covington seemed to be staring each other in the eye. I didn't want to break the silence. I didn't want to put any words in Bancroft's mouth. Then I grabbed a black pen and a napkin off the coffee table and handed them to Bancroft. Bancroft just wiped Bancroft's face with the napkin and set the pen back down. Bancroft then asked Covington, "What do you think of my proposal?" Covington said, "I think I am going to need some more information." There was another pause. I gave Bancroft another napkin and slowly repeated Bancroft's own words, "It's always about the money." Bancroft took the napkin and wrote in black ink, "Yes = \$150k." Then Bancroft slid it across the table to Covington. Covington said, "I don't think you understand what kind of position this puts me in." Then Covington slid the napkin back to Bancroft. Bancroft picked it up, but this time scribbled something and put the napkin on the table again. It read: "Yes = ~~\$150k~~ \$250k." This time, Covington didn't say anything but picked up the napkin and put it in a pocket. That's when Hyde walked back into the room.

At that moment, there was a knock at the door. I went over to the door, and a bellhop whose name badge said "D. DelSesto" had the wine and cheese plate I had ordered. I asked DelSesto if DelSesto knew the people in the room. DelSesto nodded. I wanted to make sure that not only could DelSesto verify the meeting happened but that DelSesto could identify all of the people at the meeting. I ushered DelSesto into the room and DelSesto placed the wine and cheese on the coffee table. As soon as Covington saw DelSesto, Covington went wide-eyed and said "I thought this was a private meeting." Bancroft said, there was no need to worry because employees at the Black Bear knew how to be discreet. But right after DelSesto left the room, Covington said, "I think that's enough for now" and immediately ended the meeting.

123 Because the last meeting wasn't recorded, I obtained a warrant for a wiretap of
124 Bancroft's phone. On April 15, 2015, we executed the warrant and obtained a recording of a
125 short conversation between Bancroft and Covington.

126 After listening to the call, I met with Covington to see if I could get more information. I
127 asked if Covington had talked to Bancroft lately. Covington looked spooked and said, "Bancroft
128 just called. How did you know?" I said I didn't and that I just guessed. Covington said, "What's
129 going on here? Why do you need to know so much?" I apologized and said that I was just
130 curious. Covington seemed skeptical and said, "Look, this is my vote and I am going to vote
131 whichever way I think is best. I'm onto you. Now get out." That was bad. I was nervous that
132 Covington suspected me of being a police officer. But there really wasn't anything I could do at
133 that point. I just had to see if Covington went through with it the next day.

134 On April 16, 2015, I was supposed to meet Hyde, Covington, and Bancroft again in room
135 312 at noon. The MGC was scheduled to vote on the casino bids the next day, and we needed to
136 make sure that everything was going as planned. I was the first to arrive at the room, but I didn't
137 have a key, so I had to wait outside. Hyde and Bancroft soon came and opened the door and we
138 went in. Hyde asked me if everything was going smoothly, and I told Hyde that, as far as I knew,
139 it was. We were still waiting for Covington to arrive so everybody was just checking their e-mail
140 on their phones and talking about the weather. We sat there for about fifteen minutes, and
141 Covington still had not arrived. Hyde tried to contact Covington, with no luck. Eventually, I sent
142 a text message to Covington asking where Covington was, but there was no response. After a
143 half an hour, I went to the bathroom to calm myself down. When I got back, Bancroft was gone.
144 I was furious. I had been working too hard on this for too long, and this wasn't going to end with
145 Covington just not showing up. I looked at Hyde and said that unless Covington turned up
146 immediately, I would personally make sure that Hyde spent time in a little metal cell. Hyde and I
147 waited in the suite until about 1:30 p.m.

148 I left the room and started looking for Bancroft. I saw DelSesto, the same bellhop who
149 had brought us wine on April 13th. I asked DelSesto if DelSesto had seen Bancroft. DelSesto had
150 not. Bancroft was not in Bancroft's office. Bancroft was not in the parking lot. I even checked
151 the public restrooms. I couldn't find Bancroft anywhere. I lost track of time, so I am not sure
152 how long it took me, but I finally found Bancroft playing a game of blackjack in the VIP room. I
153 noted that the dealer at the table was wearing a nametag saying A. Thomas. I asked Bancroft

154 what had happened. Considering how angry I was, Bancroft seemed very calm. Bancroft said
155 that Bancroft couldn't go through with it, but that Bancroft believed Bancroft's casino bid would
156 be fine because Covington would still vote for Bancroft's proposal. Bancroft then picked up a
157 briefcase and left.

158 During the April 17th vote for casino approval, Covington and Harper Walton voted for
159 Bancroft's proposal; Riley Geis voted against. Because I had to be undercover at the meeting,
160 my colleague Dale Williams interviewed Devyn DelSesto, the bellhop I had spoken with; Danny
161 Hoy, the head of security for Bancroft's casino; and Ali Thomas, the dealer at the table I saw
162 Bancroft playing at the day before. Based on the outcome of the vote and the content of Officer
163 Williams' interviews, a warrant was obtained to arrest both Bancroft and Covington and to seize
164 any briefcases they had in their possession. When Covington was arrested, Covington had on
165 Covington's person an empty black briefcase. This was the only briefcase found in Covington's
166 home, vehicle, or office at the Midlands Gambling Commission. The briefcase that was in
167 Covington's possession looked very similar to the one Covington had at the meeting in room
168 312, but I couldn't say whether they were the same or not. The briefcase was turned over to Pat
169 Sikorsky, the head of the crime lab, for analysis. When Bancroft was arrested, no briefcase was
170 found on Bancroft's person or in Bancroft's home, vehicles, or office at the Black Bear.

171 The MSPD obtained a warrant to seize security footage from the VIP room of the casino
172 as well as any security footage around room 312 of the hotel. Despite having numerous cameras
173 in the room, there was a blind spot at one table. The footage from April 16 showed Bancroft
174 entering that blind spot at 2:05 p.m. and Covington following at 2:15 p.m. Covington left fifteen
175 minutes later at 2:30 p.m. and I met Bancroft at the table shortly after that.

176 The MSPD also obtained a warrant to search Bancroft's and Covington's email accounts
177 and home. In Covington's home we found a bank statement indicating a deposit of \$200,000. We
178 then subpoenaed Bancroft's and Covington's bank accounts. A review of Covington's account
179 confirmed the deposit. There was no corresponding withdrawal from Bancroft's account.

180 I am familiar with following exhibits: Exhibit 1 is the briefcase found on Covington's
181 person after Covington was arrested. Exhibit 2 is the napkin I saw Chase Covington and Bancroft
182 exchange at the April 13, 2015 meeting. Exhibit 3(a) is the wiretap of the conversation between
183 Avery Bancroft and Chase Covington; Exhibit 3(b) is the transcript of that conversation. Exhibit
184 4 appears to be a diagram of the VIP room at the Black bear where I found Bancroft on April 16.

I saw the cameras in the locations indicated and the diagram seems to show the area covered by the cameras based on the footage I viewed. Exhibit 5 is a map of room 312 at the Black Bear. Exhibit 6 is the receipt for the room service I ordered at that meeting. Exhibit 8 is the transcript of the first meeting I had with Bancroft and Hyde on March 31, 2015. Exhibit 10 is the memorandum seeking public comment I wrote that summarizes the two proposals for new casinos before the April 2015 vote. Exhibit 11 is Covington's bank statement, which was obtained from the bank via subpoena. Exhibit 16 is the e-mail I got from Chief Kimball on his first day as Chief (the e-mail is to the entire force, including me; the redactions hide my real name). Exhibit 18 is an e-mail exchange between Hyde and me. Exhibit 19 is an April 1 e-mail exchange between Covington and me. Exhibit 22 is an April 13 e-mail exchange between Covington and me. Exhibit 27 contains my complete text message history with Covington. Though the screenshot in that exhibit is from Covington's phone, I have compared it to the texts on my phone. The screenshot accurately reflects our complete text message history. I recall sending and receiving those texts.

I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told I should include everything that I know may be relevant to my testimony, and I followed those instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment before opening statements begin in this case. I am not familiar with any other exhibits other than those listed above nor have I read any affidavits other than my own.

 aka Mickey Keenan

Subscribed and sworn before me on this, this 10th day of August, 2015:

Rebecca Kertzman-Medel

Rebecca Kertzman-Medel, Notary Public

AFFIDAVIT OF COREY HYDE (PROSECUTION)

1 After being duly sworn upon oath, Corey Hyde hereby states as follows: I am over 18 and
2 competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or
3 compelled to testify.

4 I live in Midlands City, Midlands. I graduated from Miami University in Oxford, Ohio
5 with a major in philosophy. I didn't want to go to law school, so I moved to Vegas immediately
6 after graduating. I'd had enough of those Miami winters but wanted to keep the partying lifestyle
7 I had grown accustomed to in college. I worked odd jobs for a while trying to make it as a
8 gambler. Soon I realized that wasn't for me and moved to Midlands when I got an offer to work
9 at the Black Bear Casino as Avery Bancroft's Executive Assistant. The first thing I ever read
10 about Bancroft was that Bancroft was "notorious." But I didn't know what that meant. At the
11 time, I had no idea who Bancroft was other than that Bancroft owned a casino. But my friend
12 Amari White, who worked at the Black Bear, told me that Bancroft would do anything to save a
13 dime, and everybody else I spoke to told me the same. But hey, a job's a job, so I took it.

14 At first, I thought I wouldn't want to be anyone's assistant. But before long, I realized
15 that being so close to a person as powerful as Bancroft came with plenty of responsibility and
16 plenty of perks. So I decided to stay on the job and am still doing it to this day. As Bancroft's
17 Executive Assistant, I am responsible for managing my boss's calendar, scheduling meetings,
18 answering phones, and plenty of other administrative tasks. I even have a company credit card. I
19 also have to know everything about my boss. For instance, I know that Bancroft loves Sour Patch
20 Kids, has an undying love for chicken wings, and only wears a super rare (and incredibly
21 expensive) fragrance: *La Nuit D'Warihay*. It's my job to make sure Bancroft never runs out of
22 these things.

23 There is very little that goes on in Bancroft's office without my help. In addition to
24 procuring all of Bancroft's favorite items, I help on the business end. In early 2015, one of my
25 jobs was to help prepare a proposal to open a second casino. You see, you can't open a casino in
26 Midlands without getting approval from the Midlands Gambling Commission and they don't just
27 hand out approvals every day. A new casino license is only given out about once a decade, and
28 the Commission indicated they would be issuing one this year. That meant we had to prepare a
29 proposal for the Commission. If we could get "yes" votes from two of the commissioners, we'd
30 be set.

31 This whole thing started on March 1, 2015, when I got a phone call from an auditor at the
32 Midlands Gambling Commission—or at least what I thought was an auditor—named Mickey
33 Keenan. The auditor wanted to discuss the new gambling license being offered by the Gambling
34 Commission and said that we were being considered. I was eager to meet with Keenan because I
35 thought I might be able to make some progress on opening the new casino and make my boss
36 happy.

37 I went over to Keenan's office the next day, but I had no idea what I was getting myself
38 into. At first, Keenan asked me questions about our proposal and explained the requirements for
39 the bid. But soon Keenan's tone changed. Keenan had concerns about possible gambling
40 violations by me and Bancroft. I said that I had not done anything wrong (which was true) and
41 that, as far as I knew, neither had Bancroft. Of course I had heard rumors about Bancroft, but I
42 had never seen anything illegal happen in all my time working in Bancroft's office. But Keenan
43 looked me in the eye and said, "Look, I'm not playing around here" and put a Midlands State
44 Police Department badge on the table. At that point, I knew I wasn't just talking to a gambling
45 commission auditor. The "auditor" was really a cop! I thought I had better just go along with
46 whatever Keenan wanted. Keenan said my problems would go away if I cooperated. I agreed to
47 help, even though I didn't know exactly what I would be doing. I want to make clear that I never
48 did anything wrong. I just thought helping the police was the right thing to do, and, of course, it
49 would make my life easier.

50 Keenan explained how the operation was going to work. Keenan said: The plan was to
51 catch Bancroft bribing the chair of the Midlands Gambling Commission, Chase Covington.
52 Keenan would stay undercover as a gambling auditor and my role was to set up meetings among
53 Bancroft, Keenan, and Covington. I thought that was no big deal—that sort of thing was
54 essentially my job anyway as an Executive Assistant. I had even set up meetings between
55 Bancroft and Covington before. It's not that unusual for a casino owner to meet with a member
56 of the gambling commission for one reason or another.

57 I also knew of Covington because of how often Covington came into the casino.
58 Covington played a lot of poker. And blackjack. And roulette. Now that I think about it,
59 Covington just did a lot of gambling. Covington often played with the high rollers, which
60 surprised me since Covington was a government employee. I don't know how Covington could
61 afford it. Like a lot of gamblers, it seemed like Covington was pretty streaky. Sometimes

Covington would leave carrying a huge stack of chips worth more than I made in a year. Other times, it seemed like Covington would lose just as much. Getting Covington to meet Bancroft at the Black Bear was going to be a piece of cake.

Over the next month, Keenan prepped me on the investigation with the help of a couple of other officers. I think Keenan was also vetting me to make sure I could be trusted. I set up a meeting between Keenan and Bancroft to take place on March 31, 2015. Before the meeting, Keenan sent an email to me with instructions. Of course, I didn't say anything to Bancroft about the investigation. We met in a private suite at the hotel connected to the casino. Keenan had me wear a wire to make sure we had evidence of the conversation. I've seen the transcript of the conversation and it's an accurate reflection of what was said. The static on the transcript must have been caused by me hitting the microphone when I reached into my bag to get my cell phone. At that moment, Bancroft nodded and said, "We can talk about that later." During that meeting, it seemed like Bancroft was playing dumb, but not very well. Whenever we mentioned the bribe, Bancroft smiled and nodded. Let's just say Bancroft's poker face isn't as good as the legendary Shannon Stark's.

Our next meeting wasn't for a couple weeks, so things went back to usual at the casino. Bancroft and I met a few times and exchanged some emails. I remember we emailed about that fragrance I mentioned, *La Nuit D'Warihay*. Getting that fragrance might have been the most challenging part of my job. You can't buy it anywhere in Midlands—believe me, I've tried! And you can't even buy it online, at a place like tobyssupplies.com which typically has everything you could ever want. You have to order it from this lady, Ella Dumas, who lives in France and makes like one bottle of the stuff at a time. It was always a huge pain in the neck to order, but Bancroft needed it to wear at some fancy gala. Between getting that fragrance and worrying about this meeting, I couldn't do anything else.

About a week and a half after the March 31st meeting, I started feeling really uncomfortable. I didn't want to be the one to set my boss up. I wasn't sure I wanted to go through with Keenan's scheme. So I called Keenan to talk about it. When I told Keenan I was getting cold feet, Keenan told me, "Backing out now would be the worst decision of your life." Keenan reminded me that charges could still be brought against me. I agreed to stay on board, but, from that point on, I just did what I was told—nothing more, nothing less.

92 It was my job to set up the meeting between Bancroft and Covington. After confirming
93 Bancroft was free, I called Covington's office on April 5. Usually I'd get Covington's assistant,
94 but this time Covington answered directly and said, "Ah, Bancroft! I thought I'd be hearing from
95 you again." Covington must have seen the number on the caller ID, but I was surprised. I didn't
96 know Bancroft and Covington had already been talking. I said, "Actually, this is Corey Hyde,
97 Avery Bancroft's assistant." Covington seemed surprised and said, "Oh really? What's this about
98 then?" I explained that Bancroft wanted to meet with Covington about a proposal for the new
99 casino, and, since Covington had seemed to be waiting on a call from Bancroft, I asked "Were
100 you expecting something else?" Covington replied, "No, that's exactly what I was expecting."

101 On April 12, 2015, the day before our meeting with Covington, Danny Hoy, the head of
102 security at the Black Bear, stopped by Bancroft's office and said Hoy needed to follow up with
103 Bancroft about some security precautions for the meeting. Bancroft told Hoy that Bancroft was
104 keeping Hoy in the loop. Since I wanted to know what the security was going to be like at the
105 meeting, I sat in on the conversation, and Bancroft never told me to leave. Bancroft told Hoy to
106 do a sweep of room 312—the room I had reserved for our meeting with Covington. Bancroft
107 asked if there were any cameras in the room. Hoy said there weren't. Hoy said, "There are
108 cameras almost everywhere but not in the private suites." Hoy kept offering "suggestions" for
109 making security better, like putting a mobile security camera in the room or holding the meeting
110 in one of our glass-walled conference rooms. Hoy even suggested sitting in on the meeting for
111 "additional security." Thankfully, Bancroft wouldn't hear of it. The only suggestion at the
112 meeting that Bancroft liked was one of Hoy's—to pat down everybody before they came in the
113 room. Bancroft told Hoy to do that. Then, once the meeting started, Hoy was to stand guard
114 outside the door, and Hoy, eager to please as always, was thrilled to get to do something that
115 seemed important.

116 I was worried about this pat down, because it meant that I wouldn't be able to wear a
117 wire. I called Keenan and told Keenan that some kind of contingency plan was in order because
118 we'd likely be patted down beforehand. Sure enough, the next day right before the meeting
119 started at 3 p.m., Hoy patted everybody down—Keenan, Covington, and me—before we went
120 into the room. Hoy even took our cell phones. The screening was very thorough. This kind of
121 thing never happened with our usual business meetings.

122 When I went into the room, Keenan reached for the phone and called room service to
123 order a bottle of wine and a cheese plate. I thought it was strange. Covington then came in, and
124 we all sat down around the coffee table in the suite.

125 Covington then asked Bancroft, “What do you have for me?” Bancroft replied by giving
126 a variation on the same pitch that Bancroft had given at the previous meeting. Bancroft talked
127 about Bancroft’s experience, the reasonably priced bid Bancroft had gotten from Neuhaus
128 Construction, and the money that the new state-of-the-art casino would bring to Midlands.
129 Bancroft was trying really hard to explain why the new casino didn’t need a concert venue, and
130 Covington was pushing back saying that a concert venue would be really nice. I guess Bancroft
131 was still trying to sell the idea to Covington, but that clearly wasn’t getting the job done.
132 Covington said, “That’s all well and good. I like a nice casino as much as anybody. But what do
133 you have for *me*,” stressing the word “me.”

134 I still can’t believe Bancroft was playing dumb. It was clear that Covington was there for
135 a bribe. I mean, we’d just been patted down and Bancroft had the room swept. Bancroft clearly
136 knew what was going on. At that point, Keenan and I exchanged glances, and Keenan spoke up:
137 “You need to do something to make this more appealing to Covington. The deal is not going to
138 get done if you don’t.” Covington said, “I’ve got another good proposal sitting on my desk. I’m
139 going to need at least a quarter of a million reasons to vote for your proposal.” Bancroft hesitated
140 at first, but replied, “That’s a lot reasons, but I’ll see what I can do.” After that, they went back to
141 talking about whether or not they needed to add additional parking spaces to the proposed
142 parking lot, and I excused myself to use the suite’s restroom.

143 When I walked back into the room, there was a knock on the door and someone said,
144 “Room service!” and Keenan stood up and went to the door. At that point, Covington reached
145 under the table and pulled out a black briefcase. Covington looked at Bancroft and said, “I’d also
146 like a new one of these if you catch my drift.” Then, Covington showed Bancroft the briefcase,
147 and it looked like Bancroft nodded. While this was happening, I saw Bancroft hand one of
148 Bancroft’s business cards to Covington. Covington then put it inside Covington’s briefcase.

149 I turned towards the door and saw Devyn DelSesto, one of the bellhops, standing there.
150 Keenan was holding the door wide open and whispered something to DelSesto. DelSesto put the
151 wine and cheese on the coffee table. When DelSesto left, Keenan came back to the table and
152 grabbed a piece of cheese. Covington seemed annoyed and said, “You ordered room service? I

153 thought this was a private meeting. I have to go.” Covington immediately stood up, grabbed
154 Covington’s briefcase, looked at Bancroft, and left the room. Then everybody followed
155 Covington out.

156 Soon after that meeting, I ordered the briefcase that Covington showed Bancroft. I found
157 it on www.tobysssupplies.com, an online retailer that carries everything from chemistry sets to
158 scuba gear. It came a couple days later and looked just like the one Covington had at the
159 meeting. I gave it to Bancroft that day.

160 On April 16, 2015, I saw that Bancroft was in the office, but the door was slightly ajar. I
161 had been fielding interview requests from Reagan Thomas, a reporter for BNN who was
162 covering the Commission vote, and I needed to ask Bancroft if Bancroft would be willing to do
163 an on-camera interview with Thomas. When I walked into Bancroft’s office, Bancroft was
164 standing behind Bancroft’s desk putting stacks of bills into the briefcase from
165 www.tobysssupplies.com. I know it is the same one because the shipping box was next to the
166 briefcase on Bancroft’s desk, and I saw the receipt with the office credit card number I used to
167 order it for Bancroft. Bancroft put at least \$200,000 in that briefcase while I was standing there. I
168 asked Bancroft what was going on with the briefcase, and Bancroft just said, “There’s no turning
169 back now. Let’s go.”

170 We left Bancroft’s office and walked to room 312 for our noon meeting. Bancroft took
171 the briefcase. When we got there, Keenan was waiting outside the room. I opened the door and
172 sat down across from Keenan at the coffee table. Keenan asked if everything was going
173 smoothly. I told Keenan that, as far as I knew, it was. We were still waiting for Covington to
174 arrive so everybody was just staring at their phones and making awkward small talk about how
175 for once Koala had gotten the weather forecast basically right. But soon it got uncomfortable.
176 We had been waiting there a long time, and you can only drink so many glasses of water.
177 Bancroft finally said, “So is this happening?” Bancroft looked at Keenan. “You’ve done too
178 much for Covington to back out now.” Keenan looked nervous and said, “I’m sure Covington is
179 coming. Covington is coming, right, Hyde?” I was worried Covington was getting cold feet but I
180 said that I was sure Covington was coming and that I would call to see where Covington was.

181 Keenan texted Covington, but Covington didn’t respond. Now I was really nervous. I
182 didn’t know what would happen to me if Covington backed out. A half an hour must have gone
183 by when Keenan got up to use the restroom. Bancroft looked at me and said, “I’ve had it. I need

184 this to work. I'm in too deep. You need to fix this." Bancroft then got up, grabbed the briefcase,
185 and stormed out.

186 As soon as the door shut behind Bancroft, Keenan came storming into the room, hands
187 still wet. Keenan yelled, "Where did Bancroft go?" When Keenan returned, Keenan was livid.
188 Keenan looked at me and said, "Remember who you are dealing with. This isn't some game. If
189 you don't find Bancroft—and I mean now—I'm going to make sure you go to jail." I waited
190 with Keenan in room 312 until about 1:30 p.m. While we were waiting, Bancroft texted me to
191 see if Covington had come to the suite. When I left the suite, I was terrified. I ran to Bancroft's
192 office, I checked at the front desk, and I even checked the bathrooms. No matter where I looked,
193 I couldn't find Covington. I panicked. I went to my office to cry, and about an hour later
194 Bancroft showed up, still carrying a briefcase. I yelled at Bancroft, "Did you find Covington?
195 Everything is ruined." Bancroft replied, "It's all taken care of. We never needed your auditor
196 friend anyway."

197 The next day, the Midlands Gambling Commission voted to approve the new casino. I
198 don't know what Bancroft did that day, but it worked. I wasn't surprised. Things always tend to
199 work out for Bancroft. For example, in 2008, Bancroft wanted to open the Slo-Lo gym, but there
200 was a bunch of citizen opposition bulldozing the historic building that was in the way. People
201 will really complain about anything! Anyway, we talked to the Zoning Board members and it
202 looked like we were going to be one vote short of getting approval to demolish the building. But
203 when the big vote came on October 15, 2008, Angie Wang—one of the board members who said
204 she was going to vote against us—changed her mind! That really surprised me because she was
205 running for city council at that time, and voting to demolish the building was really unpopular.
206 Then, in 2012, the Midlands Legislature passed a bill that would legalize online gambling;
207 Bancroft was irate. Bancroft had worked really hard, talking to legislators to try to convince
208 them to vote against the bill; it passed anyway. But, it never went into effect because Governor
209 Walton vetoed it right around June 1st that year. Bancroft's even lucky in court. In December,
210 2013, one of the bartenders at *Le Gros Poisson*, the restaurant at the Black Bear, sold a bunch of
211 wine coolers to a high school student, and the business got charged too. I coordinated all of the
212 meetings with Bancroft and Bancroft's lawyers and was even supposed to go to the hearing with
213 Judge Brandt in April 2014. But, when we showed up to the courtroom, Judge Brandt said he
214 dismissed all of the charges and was off to a fundraiser for his reelection campaign.

I am familiar with following exhibits: Exhibit 1 looks like the briefcase that Covington showed Bancroft on April 13, 2015 and the briefcase from tobyssupplies.com. I can't tell the difference between the two or if they were the same one. Exhibit 4 is a diagram of the VIP Room at the Black Bear. I've seen cameras in the locations indicated on the map, but I don't know if those are all of the cameras in the room. I've also never seen security footage from the room, so I do not know whether the camera coverage indicated on the map is accurate. Exhibit 5 is a diagram of room 312 at the Black Bear. Exhibit 8 is a transcript of the March 31, 2015 conversation between Keenan, Bancroft, and me. Exhibit 9 is the Receipt from tobyssupplies.com. Exhibit 10 is a memorandum issued by the Midlands Gambling Commission that accurately, as far as I know, describes Bancroft's casino proposal as well as the competing proposal. Exhibit 14 is a portion of Bancroft's casino bid that describes Bancroft's personal background. Exhibit 15 is a listing of Avery Bancroft's campaign contributions. Bancroft occasionally has me call the Department of Records to get a copy of this report so Bancroft can remember to whom Bancroft has donated recently. Exhibit 17 is a March 30 e-mail from me to Bancroft. Exhibit 18 is a March 31 e-mail exchange I had with Keenan. Exhibit 21 is an April 13 e-mail exchange I had with Bancroft. Exhibit 23 is an e-mail exchange I had with both Bancroft and Covington. Exhibit 24 is an e-mail exchange I had on April 15 with Bancroft, and Exhibit 25 is another e-mail exchange I had with Bancroft in April. Exhibit 29 is my complete text message history with Bancroft. Though the screenshot in the picture is from Bancroft's phone, I have compared it to the texts on my phone. The screenshot accurately reflects our conversation. I recall sending and receiving those texts. I am not familiar with any other exhibits other than those listed above nor have I read any affidavits other than my own.

I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told I should include everything that I know may be relevant to my testimony, and I followed those instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment before opening statements begin in this case.

Corey Hyde

Corey Hyde

Subscribed and sworn before me on this, this 7th day of August, 2015:

Jack Pearlman

Jack Pearlman, Notary Public

AFFIDAVIT OF COREY HYDE (DEFENSE)

1 After being duly sworn upon oath, Corey Hyde hereby states as follows: I am over 18 and
2 competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or
3 compelled to testify.

4 I live in Midlands City, Midlands. I graduated from Miami University in Oxford, Ohio
5 with a major in philosophy. I didn't want to go to law school so I moved to Vegas immediately
6 after graduating. I'd had enough of those Miami winters but wanted to keep the partying lifestyle
7 I had grown accustomed to in college. I worked odd jobs for a while trying to make it as a
8 gambler. Soon I realized that wasn't for me and moved to Midlands when I got an offer to work
9 at the Black Bear Casino as Avery Bancroft's Executive Assistant. The first thing I ever read
10 about Bancroft was that Bancroft was "notorious." But I didn't know what that meant. At the
11 time, I had no idea who Bancroft was other than that Bancroft owned a casino. But my friend
12 Amari White, who worked at the Black Bear, told me that Bancroft always did the right thing
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15 that being so close to a person as powerful as Bancroft came with plenty of responsibility and
16 plenty of perks. So I decided to stay on the job and am still doing it to this day. As Bancroft's
17 Executive Assistant, I am responsible for managing my boss's calendar, scheduling meetings,
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20 Kids, has an undying love for chicken wings, and only wears a super rare (and incredibly
21 expensive) fragrance: *La Nuit D'Warihay*. It's my job to make sure Bancroft never runs out of
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24 procuring all of Bancroft's favorite items, I help on the business end. In early 2015, we had been
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27 approvals every day. A new casino license is only given out about once a decade, and the
28 Commission indicated they would be issuing one this year. That meant we had to prepare a

proposal for the Commission. If we could get “yes” votes from two of the commissioners, we’d be set.

This whole thing started on March 1, 2015, when I got a phone call from an auditor at the Midlands Gambling Commission—or at least what I thought was an auditor—named Mickey Keenan. The auditor wanted to discuss the possibility that the Gambling Commission would offer a new gambling license and that we were being considered. I was eager to meet with Keenan because I thought I might be able to make some progress on opening the new casino and make my boss happy.

I went over to Keenan’s office the next day, but I had no idea what I was getting myself into. At first, Keenan asked me questions about our proposal and explained the requirements for the bid. But soon Keenan’s tone changed. Keenan had concerns about possible gambling violations by me and Bancroft. I said that I had not done anything wrong (which was true) and that, as far as I knew, neither had Bancroft. Of course I had heard rumors about Bancroft, but I had never seen anything illegal happen in all my time working in Bancroft’s office. But Keenan looked me in the eye and said, “Look, I’m not playing around here” and put a Midlands State Police Department badge on the table. At that point, I knew I wasn’t just talking to a gambling commission auditor. The “auditor” was really a cop! I thought I had better just go along with whatever Keenan wanted. Keenan said my problems would go away if I cooperated. I agreed to help, even though I didn’t know exactly what I would be doing. I want to make clear that I never did anything wrong. I just thought helping the police was the right thing to do, and, of course, it would make my life easier.

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surprised me since Covington was a government employee. I don't know how Covington could afford it. Like a lot of gamblers, it seemed like Covington was pretty streaky. Sometimes Covington would leave carrying a huge stack of chips worth more than I made in a year. Other times, it seemed like Covington would lose just as much. Getting Covington to meet Bancroft at the Black Bear was going to be a piece of cake.

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Our next meeting wasn't for a couple weeks, so things went back to usual at the casino. Bancroft and I met a few times and exchanged some emails. I remember we emailed about that fragrance I mentioned, *La Nuit D'Warihay*. Getting that fragrance might have been the most challenging part of my job. You can't buy it anywhere in Midlands—believe me, I've tried! And you can't even buy it online, at a place like tobyssupplies.com which typically has everything you could ever want. You have to order it from this lady, Ella Dumas, who lives in France and makes like one bottle of the stuff at a time. It was always a huge pain in the neck to order, but Bancroft needed it to wear at some fancy gala. Between getting that fragrance and worrying about this meeting, I couldn't do anything else.

About a week and a half after the March 31st meeting, I started feeling really uncomfortable. I couldn't tell if Bancroft really wanted to go through with the bribe, and I didn't want to be the one to set my boss up. I wasn't sure I wanted to go through with Keenan's scheme. So I called Keenan to talk about it. When I told Keenan I was getting cold feet, Keenan

91 told me, “Backing out now would be the worst decision of your life.” Keenan reminded me that
92 charges could still be brought against me. I agreed to stay on board, but, from that point on, I just
93 did what I was told—nothing more, nothing less.

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108 sweep of room 312—the room I had reserved for our meeting with Covington. Bancroft asked if
109 there were any cameras in the room. Hoy said there weren’t. Hoy said, “There are cameras
110 almost everywhere but not in the private suites.” Hoy kept offering “suggestions” for making
111 security better, like putting a mobile security camera in the room or holding the meeting in one
112 of our glass-walled conference rooms. Hoy even suggested sitting in on the meeting for
113 “additional security.” Thankfully, Bancroft wouldn’t hear of it. The only suggestion at the
114 meeting that Bancroft liked was one of Hoy’s—to pat down everybody before they came in the
115 room. Bancroft told Hoy to do that. Then, once the meeting started, Hoy was to stand guard
116 outside the door, and Hoy, eager to please as always, was thrilled to get to do something that
117 seemed important.

118 I was worried about this pat down, because it meant that I wouldn’t be able to wear a
119 wire. I called Keenan and told Keenan that some kind of contingency plan was in order because
120 we’d likely be patted down beforehand. Sure enough, the next day right before the meeting
121 started at 3 p.m., Hoy patted everybody down—Keenan, Covington, and me—before we went

122 into the room. Hoy even took our cell phones. The screening was very thorough. This kind of
123 thing never happened with our usual business meetings.

124 When I went into the room, Keenan reached for the phone and called room service to
125 order a bottle of wine and a cheese plate. I thought it was strange. Covington then came in, and
126 we all sat down around the coffee table in the suite.

127 Covington then asked Bancroft, "I've read your preliminary proposal, but why don't you
128 talk for a bit about what you were thinking?" Bancroft replied by giving a variation on the same
129 pitch that Bancroft had given at the previous meeting. Bancroft talked about Bancroft's
130 experience, the reasonably priced bid Bancroft had gotten from Neuhaus Construction, and the
131 money that the new state-of-the-art casino would bring to Midlands. Bancroft was trying really
132 hard to explain why the new casino didn't need a concert venue, and Covington was pushing
133 back saying that a concert venue would be really nice. I guess Bancroft was still trying to sell the
134 idea to Covington, but that clearly wasn't getting the job done. Mickey started glaring at
135 Bancroft, and Bancroft said, "That's all well and good. I like a nice casino as much as anybody.
136 But I think Mickey here wants me to ask what *I* can do for *you*," stressing the words "I" and
137 "you."

138 They still didn't seem to get it. All they—especially Covington—wanted to talk about
139 was whether or not the proposal needed to include space for conference rooms, and, if so, how
140 many square feet of conference rooms should be added. At that point, Keenan and I exchanged
141 glances and Keenan spoke up: "Avery, you need to do something to make this appealing to
142 Covington. The deal is not going to get done if you don't." Then Covington said, "I've got
143 another good proposal sitting on my desk. I'm going to need some good reasons to vote for your
144 proposal." Bancroft replied, "How about 100,000 reasons?" Covington paused, looked around
145 the room, and then suddenly seemed to become taken aback. Covington said, "No! Nothing like
146 that. I don't know where people get these ideas." After that, they went back to talking about
147 whether or not they needed to add additional parking spaces to the proposed parking lot, and I
148 excused myself to use the suite's restroom.

149 When I walked back into the room, Covington reached under the table and pulled out a
150 black briefcase. At that point, there was a knock on the door and someone said, "Room service!"
151 Keenan stood up and went to the door. Covington and Bancroft were just glaring at each other. It
152 looked tense. Bancroft looked at Covington and said, "Do you want a new one of these?" Then

Covington showed Bancroft the briefcase and it looked like Bancroft nodded. I saw Devyn DelSesto, one of our bellhops, at the door. DelSesto put the wine and cheese on the coffee table.

Then Keenan came back to the table and grabbed a piece of cheese. Covington seemed annoyed and said, "You ordered room service? I thought this was a private meeting. I have to go." Covington immediately stood up, grabbed the briefcase, looked at Bancroft, and left the room. Then everybody followed Covington out.

Soon after the meeting, I saw a briefcase sitting in Bancroft's office. It looked just like the one Covington showed Bancroft at our meeting. In the trashcan, I saw a receipt for the briefcase. I picked it out of the trashcan because I was curious where Bancroft found an identical briefcase. It was from www.tobyssupplies.com, an online retailer that carries everything from chemistry sets to scuba gear. The credit card number was the company card that only Bancroft and I have access to, but I know I didn't order it so it must have been Bancroft.

Around 11:45 a.m. on April 16, 2015, I saw that Bancroft was in the office, but the door was slightly ajar. I had been fielding interview requests from Reagan Thomas, a reporter for BNN who was covering the Commission vote, and I needed to ask Bancroft if Bancroft would be willing to do an on-camera interview with Thomas. When I walked into Bancroft's office, Bancroft was standing behind Bancroft's desk putting stacks of bills into the briefcase from www.tobyssupplies.com. I know it is the same one because the shipping box was next to the briefcase on Bancroft's desk. Bancroft put at least \$200,000 in that briefcase while I was standing there. I asked Bancroft what was going on with the briefcase, and Bancroft just said "There's no turning back now. Let's go."

We left Bancroft's office and walked to room 312 for our noon meeting. Bancroft took the briefcase. When we got there, Keenan was waiting outside the room. I opened the door and sat down across from Keenan at the coffee table. Keenan asked if everything was going smoothly. I told Keenan that, as far as I knew, it was. We were still waiting for Covington to arrive, so everybody was just staring at their phones and making awkward small talk about how for once Koala had gotten the weather forecast basically right.

But soon it got uncomfortable. We had been waiting there a long time and you can only drink so many glasses of water. Bancroft finally said, "So is this happening?" Bancroft looked at Keenan and said, "You've done too much for Covington to back out now." Keenan looked nervous and said, "I'm sure Covington is coming. Covington is coming, right, Hyde?" I was

worried Covington might be getting cold feet but I told them that I was sure Covington was coming and that I would call to see where Covington was.

Keenan texted Covington but Covington didn't respond. Now I was really nervous. I didn't know what would happen to me if Covington backed out. A half an hour must have gone by when Keenan got up to use the restroom. Bancroft looked at me and said, "I've had it. We are through here. I'm sick of being Keenan's pawn." Bancroft then got up, grabbed the briefcase, and stormed out.

As soon as the door shut behind Bancroft, Keenan came storming into the room, hands still wet. Keenan yelled, "Where did Bancroft go?" When Keenan returned, Keenan was livid. Keenan looked at me and said, "Remember who you are dealing with. This isn't some game. If don't you find Bancroft—and I mean now—I'm going to make sure you go to jail." I waited with Keenan in room 312 until about 1:30 p.m. While we were waiting, Bancroft texted me to see if Covington had come to the suite. When I left the suite, I'd had it with Keenan. I didn't want anything to do with Keenan anymore. I stormed out of the room and into the hotel lobby. I left the casino and didn't turn back.

The next day, the Gambling Commission voted to approve the new casino. This whole scheme was Keenan's idea and Keenan was so controlling. It just wasn't right. I don't know what happened to make Covington vote in Bancroft's favor; I'd like to think Bancroft's proposal was just that good.

I am familiar with following exhibits: Exhibit 1 looks like the briefcase that Covington showed Bancroft on April 13, 2015 and the briefcase from tobyssupplies.com. I can't tell the difference between the two or if they were the same one. Exhibit 4 is a diagram of the VIP Room at the Black Bear. I've seen cameras in the locations indicated on the map, but I don't know if those are all of the cameras in the room. I've also never seen security footage from the room, so I do not know whether the camera coverage indicated on the map is accurate. Exhibit 5 is a diagram of room 312 at the Black Bear. Exhibit 8 is a transcript of the March 31, 2015 conversation between Keenan, Bancroft, and me. Exhibit 9 is the Receipt from tobyssupplies.com. Exhibit 10 is a memorandum issued by the Midlands Gambling Commission that accurately, as far as I know, describes Bancroft's casino proposal as well as the competing proposal. Exhibit 14 is a portion of Bancroft's casino bid that describes Bancroft's personal background. Exhibit 15 is a listing of Avery Bancroft's campaign contributions. Bancroft

occasionally has me call the Department of Records to get a copy of this report so Bancroft can remember to whom Bancroft has donated recently. Exhibit 17 is a March 30 e-mail from me to Bancroft. Exhibit 18 is a March 31 e-mail exchange I had with Keenan. Exhibit 21 is an April 13 e-mail exchange I had with Bancroft. Exhibit 23 is an e-mail exchange I had with both Bancroft and Covington. Exhibit 24 is an e-mail exchange I had on April 15 with Bancroft, and Exhibit 25 is another e-mail exchange I had with Bancroft in April. Exhibit 29 is my complete text message history with Bancroft. Though the screenshot in the picture is from Bancroft's phone, I have compared it to the texts on my phone. The screenshot accurately reflects our conversation. I recall sending and receiving those texts. I am not familiar with any other exhibits other than those listed above nor have I read any affidavits other than my own.

I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told I should include everything that I know may be relevant to my testimony, and I followed those instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment before opening statements begin in this case.

Corey Hyde

Corey Hyde

Subscribed and sworn before me on this, this 7th day of August, 2015:

Marie R. Gosch

Marie R. Gosch, Notary Public

AFFIDAVIT OF DEVYN DELSESTO

1 After being duly sworn upon oath, Devyn DelSesto hereby states as follows: I am over 18
2 and competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or
3 compelled to testify.

4 I'm a bellhop at the hotel attached to the Black Bear Casino. It's a great job. I moved
5 around a lot growing up, and I really wasn't sure what I wanted to do with my life after I
6 graduated high school. I did the college thing for a semester, but I spent too much time having
7 fun and not enough time going to class. My parents said they weren't going to pay for any more
8 college (and I certainly wasn't going to waste my money on that or take out student loans I'd
9 probably still be paying back when my grandchildren graduated from law school), so I burned
10 my savings traveling and came back to Midlands City once I was ready to settle down. I didn't
11 know how I'd be able to make a living, but I went to a Speedy Financial and Life Success
12 seminar run by this great motivational speaker, Terry Chapin, who said that we find inner peace
13 through service to others. That seminar changed my life! I haven't got rich—quickly or
14 otherwise—but I think I have found my calling in the hospitality industry. The work isn't too
15 hard, but the tips are great. And, there are some great perks, like the celebrities you get to meet.

16 I know you probably think that the best place to work at a place like the Black Bear is in
17 the casino—as a dealer or something—or at the front desk to the hotel. You would be wrong.
18 Being a dealer is really hard because there are all of these rules you have to follow, and the
19 bigwigs upstairs are always watching you to make sure you either don't screw up or steal.
20 Working at the front desk is awful because the tips are few and far between. Plus, everyone calls
21 you angrily when they get to their room and realize that they have a view of the parking lot
22 rather than something pretty. I'm not sure what people really expect. We're in Midlands, and
23 the Black Bear isn't exactly oceanfront property. Being a bellhop is the best. You get to do a
24 little of everything—helping people with their luggage, parking their cars, checking their coats,
25 bringing extra towels to the pool, or answering room service requests—but you don't have to
26 have extended conversations with people, and you're always on duty with something else, so if
27 you figure out the complainers early—and, believe me, that's not hard to do—you can always
28 make someone else deal with them. Plus, the tips are off the charts.

29 I know I mentioned celebrities earlier, and I really shouldn't talk about them other than to
30 say that all of the crazy things you've read about them on BNN are probably true, but Bancroft

would fire me if I went into specifics. I think the coolest thing is that the celebrities I get to meet aren't all washed-out reality TV stars (though those people can be really fun under the right circumstances). I get to see lots of politicians (excellent tippers because they never figure out that I'm not going to vote for them just because they paid me \$100 to bring them a bottle of Cristal) and some judges (mediocre tippers). It's a couple of years old now, so I can probably tell this story because the person isn't, strictly speaking, actually a celebrity. I was putting the luggage for an older couple on a luggage cart when Bancroft came up to the couple and said, "Elaine, just tell them to bill your spa treatments to me this weekend—it's the least I can do for you and Eric." Bancroft introduced me to the couple, telling me that Eric was a judge! As soon as Bancroft said it, I recognized Eric as Judge Eric Brandt—I saw him on TV. He was running for reelection and had these great commercials saying he'd be "tough on crime." Judge Brandt thanked Bancroft for contributing to Brandt's campaign and told Bancroft that Brandt was "happy to be of service" and that Bancroft had "made it worthwhile."

You probably want to know about what happened with this casino debacle, so let me tell you everything. As early as Thanksgiving 2014, there were rumors flying around (the housekeeping staff knows everything about stuff like this because they read the stuff in the politicians' rooms when they clean them) that Bancroft was going to get this second casino, but everyone was all up in arms because nobody else had two casinos. People will complain about everything.

So, going into 2015, I heard rumors, but I hadn't heard anything myself, though the entire housekeeping staff was convinced it was all but a done deal. Really, the first I heard anything first-hand that this second casino was in the works was the Monday after Valentine's Day—February 16, 2015—while I was working the valet stand. While Bancroft was waiting for the valet to pull up Bancroft's car (yes, that was a major failure on my part for not jumping at those keys fast enough), Bancroft was nice enough to ask me how my holiday had been. I started telling Bancroft about my great weekend, and Bancroft seemed to be really listening to me. But, then Bancroft's phone rang, and Bancroft turned away mid-sentence once Bancroft looked at the caller ID. Bancroft was talking so loud that it was hard not to overhear what Bancroft was saying, though I don't know who was on the other line. Bancroft said, "Thanks for calling me back. I'm putting together the proposal, and I just want to get it done. If you're for sale, I'm willing to pay the price—whatever it is. I really just want to get this sorted out." Bancroft kept

62 talking as the valet pulled up with Bancroft's car. Still on the phone, Bancroft took out a crisp
63 \$50 to tip the valet and drove away.

64 That was all I heard about the process for a couple of months, until mid-April. Then, at
65 around 3:00 p.m. on April 13, 2015, I was just getting off my shift when we got an order in from
66 room 312 for a cheese plate and a bottle of Romanee Conti. I thought this order might come with
67 a big tip, and the rest of the staff was swamped getting eggs benedict up to the rooms before the
68 hollandaise congealed, so, even though I wasn't on the clock, I told my boss that I'd take it up.
69 After I got out of the elevator, I put on my best "I'm here to serve you" face and headed to the
70 room. I saw Danny Hoy, our head of security, standing just outside the room. Hoy looked kind of
71 like a bouncer at a bar, standing in the middle of the hallway, arms crossed. Hoy asked me what I
72 was delivering to the room, and I showed Hoy the wine and cheese plate. Hoy inspected each
73 really thoroughly—I almost thought Hoy was going to take a bite to make sure I hadn't poisoned
74 the food! Hoy looked at me and asked me if I was going to enter the room because Hoy needed
75 to search anyone who entered. I told Hoy I was just going to drop the food off, and Hoy didn't
76 search me.

77 I knocked loudly on the door, hollered out "room service," and then waited. Someone I
78 recognized as Mickey Keenan opened the door and greeted me. I had seen Keenan around the
79 casino a lot lately, palling around with the bigwigs. But Keenan was nice and liked to talk to us
80 workers. We once even chatted about the FIFA World Cup.

81 At the door of room 312, Keenan looked at the receipt, gave me a huge tip, winked,
82 and—after taking a step toward me—whispered that Keenan, Bancroft, and Covington were very
83 thankful for the refreshments. I could then see Bancroft, Hyde, and Chase Covington, the chair
84 of the Midlands Gambling Commission and a regular at the casino, sitting at the other end of the
85 room. With Bancroft and Covington in the room together, I figured they were talking about
86 Bancroft getting a second casino. Keenan motioned me into the room, and stayed by the door
87 while I placed the wine and cheese on the coffee table, nodding to the others. I didn't know what
88 was going on, but things looked serious. I thought I heard Covington say, "I'd also like a new
89 one of these if you catch my drift." I tried to make a joke about this dingy-looking briefcase
90 Covington had by Covington's side. But wow, that didn't go over well. Seeing the stares, I knew
91 it was time to leave. Keenan thanked me again, and shut the door. While I was standing outside
92 the closed door, counting up the tip money, I heard someone yell from inside the room—

something about ordering room service. I've never seen a meeting like this—and I've seen plenty in my brief time at the Black Bear—so I really hope we got the order right. I'd hate to upset my boss. I was halfway down the hall when I heard the door open again, and I saw Covington walk out. I knew better than to stick around, so I hightailed it around the corner and out to my car.

Like I said, I'd seen Covington around the casino a lot. Sometimes I would park Covington's car, a nice BMW, or check Covington's coat, something made by Armani. Covington seemed to have a lot of money to throw around for a government employee. Covington also seemed to have money to lend people. In April I was checking Covington's coat when a note fell out of a pocket. I couldn't resist reading it before I put it back. The note said, "Chase, We came by to give you the money, but you aren't around, so I am leaving it here. Thanks again for making our dreams come true. - Lee and Andy." I don't know who Lee and Andy are (it seems like practically one-in-ten people in Midlands have one of those names) or what Covington did for them, but I always thought better of Covington after I saw that.

A couple of days later, on April 15, a package from tobyssupplies.com arrived at the front desk. I signed for it right when I clocked in at 4 p.m., thinking it was the replacement purple xenon light bulbs for the lobby, but it turned out to be something else. The package was addressed to Avery Bancroft, but it listed Bancroft's office suite (Room 2000), that has both Bancroft's and Hyde's offices in it. Now this was weird. Hyde *always* seemed to order stuff online and have it delivered to the casino, but I had never seen Bancroft order something and have it delivered. When Hyde did this, the packages were always addressed to Hyde. I had never seen a package from an online vendor with Bancroft's name and office suite location on the box. I mean, when you have staff at your house to pick up your mail, why send stuff to your office? I was worried that it was just junk mail, so I opened it; I didn't want it to be some cheap trinket and have Bancroft mad at me because I didn't screen Bancroft's mail. The box contained a briefcase that was nearly identical to the one that Covington had had. I know this because I've become a bit of a luggage expert over the past year. In my line of work, nice luggage means nice tips, so you notice the cheap luggage—really, the cheap tippers—without much trouble after a couple of days on the job. It was the same black, hard-sided briefcase with two buckles and a handle. But, of course, the briefcase looked much nicer than the one I had seen two days earlier. I wasn't really sure what to do with the package, so I just brought the package up to Bancroft's

office (also, and I only admit this because I'm under oath, the main reason I walked it up is because I thought I'd get a great tip from Bancroft). Neither Bancroft nor Hyde was there, so I left it on Hyde's desk. I figured Hyde was trying to copy Covington (that's something Hyde would do—always trying to climb the ladder of success) but was embarrassed so had it sent under Avery's name. I saw that there was a receipt in the box, but I couldn't tell you who the credit card listed on the receipt belonged to.

When I got back to the lobby, I saw Keenan and Bancroft off to the side of the lobby in an alcove where the pay phones used to be. I began to approach them, but then my senses kicked in. Instead, I grabbed an empty luggage cart, got in my "busy-bellhop" posture, and then quietly walked by like I was trying to put the cart back with the others. I don't think either of them saw me. They were definitely talking about a big deal. As I moved past them, I heard something about "getting the job done," and Bancroft saying that Bancroft had the money. I haven't been around Bancroft much, but this didn't seem all that out of the ordinary for Bancroft or, for that matter, for anyone at the casino. I thought about letting Bancroft know about the briefcase I left in the office, but I thought better of it.

I had the late shift at the casino, so I didn't get off until 2 a.m. I didn't sleep much that night—maybe 20 or 30 minutes—because I had to be back at the Black Bear for a shift at 6 a.m. the following day. It should come as no surprise that people show up in droves at the casino once they start expecting their tax refunds. I was busy at the casino the entire next morning, running luggage up to rooms and helping out with room service when I had a free moment, and there weren't many of those. Later that morning, I got a call to bring some Cristal up to our Zeigler Suite on the 15th floor by noon. Normally I'd be excited, but I was just stumbling around like a zombie.

About an hour later I was knocked off my feet—I mean really knocked off—by Hyde in the hotel lobby. I know I was walking around half-asleep, but Hyde came flying around the corner right into me. Luckily I had just dropped off the luggage I was carrying a moment earlier or it would have been like a Three Stooges episode. Of course, I was the one to apologize—that's just how things work in this world, especially at the Black Bear. Hyde helped me up. I told Hyde I would be heading home soon, but asked if there was anything I else I could help with before I left. Hyde seemed out-of-sorts—even more than usual. Hyde just shook Hyde's head and walked away, mumbling something about the deal being dead. I had just gotten back to my

station by the front desk when I saw Keenan looking frazzled. Keenan asked me if I had seen Bancroft and Covington that day. I told Keenan I hadn't.

The guests in the Zeigler Suite had tipped really well, and I was feeling lucky. Plus, my friend at the front desk told me that Blue Ivy Bernstein was playing poker in the VIP room. So, I thought I'd take a walk through the casino after I clocked out at 2 p.m. As I was standing in the VIP room next to the fountain on the side of the fountain near the door, I saw Bancroft and Covington sitting at the center table. It looked like they were playing blackjack. I think this must have been about a half hour after I saw Keenan, but, sleepy as I was, I can't really be sure about any timeframe that day. It was funny, I don't think I'd have even noticed them (they were speaking so quietly), but for seeing that dingy briefcase of Covington's again under the table. That briefcase was right beside a newer looking one, which looked identical to the one I delivered to Bancroft's office. Covington and Bancroft were the only players at their table; they were sitting at the middle of the table. The only other people in the room were a couple of regulars and a dealer playing blackjack at one of the back tables. Satisfied that there was nobody famous in the VIP room, I started to walk back to the lobby. A few minutes later, I was talking to my friends at the front desk and saw Covington walk by. Covington had a briefcase in hand, but I would stake my life on the fact it wasn't the same one I saw Covington with before—either in the hotel suite or next to Covington's chair in the VIP room. I'm certain it was the briefcase that was next to Bancroft's chair at the blackjack table. I'm a professional. I know these things.

I was off the next day. I spent it mostly sleeping and helping my friends plant annuals in their garden. When I returned to the Black Bear on the 18th, there was a great excitement in the air. People were humming over what we found out was Bancroft's newly approved casino. Given how well I'd performed my tasks since I started, I thought there was definitely a place for me in management. After all, they do need experienced people with a modicum of discretion. These dreams, though, suddenly came to an end the following morning when I heard about Bancroft's arrest. I know I'm not a lawyer, but I'm sure Bancroft didn't do anything wrong. As far as I know (and I do get to know a lot, being as behind-the-scenes as I am), Bancroft is on the up and up—and you can quote me on that.

I am familiar with the following exhibits: Exhibit 1 is the briefcase Covington took away from the blackjack table in the V.I.P. room on April 16. I'm certain of that. Exhibit 4 is a diagram of the VIP Room at the Black Bear. I've seen cameras in the locations indicated on the

map, but I don't know if those are all of the cameras in the room. I've also never seen security footage from the room, so I do not know whether the camera coverage indicated on the map is accurate. Exhibit 5 is a map of room 312 at the Black Bear. Exhibit 6 is the receipt for the room service ordered by Keenan on April 13, 2015. Exhibit 7 is the note that fell out of Covington's pocket in April. Exhibit 9 is the receipt for the briefcase I found in the box containing the briefcase I delivered to Bancroft's office and placed on Hyde's desk. I am not familiar with any other exhibits other than those listed above nor have I read any affidavits other than my own.

I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told I should include everything that I know may be relevant to my testimony, and I followed those instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment before opening statements begin in this case.

Devyn DelSesto

Devyn DelSesto

Subscribed and sworn before me on this, this 11th day of August, 2015:

Kevin Wu

Kevin Wu, Notary Public

AFFIDAVIT OF ALI THOMAS

1 After being duly sworn upon oath, Ali Reynolds Thomas hereby states as follows: I am
2 over 18 and competent to make this affidavit. I am testifying voluntarily. I was not subpoenaed
3 or compelled to testify.

4 I am currently one of the dealers at the Black Bear Casino. I started out just dealing cards
5 to try to make ends meet, but now I would say it is a genuine career. I started off dealing over at
6 Joey Dean's club, Peaches'. At Peaches', I started out by learning to deal all the classic table
7 games, like blackjack, craps, roulette, etc. Once I had those under my belt, Joey started letting
8 me deal at his poker tables. It was rough at first—poker players can be a lot harder on the dealers
9 than at your typical table game. Eventually I learned everything I needed to know in order to deal
10 just about any kind of poker variation that suited the customers' fancies: Texas hold'em, Omaha,
11 seven-card stud, razz, deuce-to-seven lowball triple draw, badugi, badaci. You name it, I can deal
12 it.

13 After I had learned the ropes at Peaches', I decided it was time to settle down a bit. There
14 wasn't much room for upward mobility at Peaches', and none of the people who played there
15 were the kind of guys I'd want to work for, if you know what I mean. I may sometimes deal
16 cards to crooks, but I'm not one myself. So I decided to seek out a job working at Avery
17 Bancroft's casino. See, unlike the crew at Peaches', Bancroft had kept Bancroft's business purely
18 on the up and up as far as I could tell. Bancroft had all the legal permits, paid people and actually
19 reported that pay to the IRS. At first, Bancroft's people seemed hesitant to want to hire me. I'd
20 seen Danny Hoy, who is the head of security at Bancroft's Black Bear around Peaches'
21 backroom a few times and I wasn't sure where we stood, so to speak, but eventually I guess my
22 skills won the day, and I started not long after I turned in that application.

23 When I first began dealing at the casino, I started off just like any other new dealer,
24 dealing blackjack in the main table game section of the casino. I like dealing blackjack. The
25 players can be a lot of fun; it's almost like a team event, because if I (the dealer) "bust," then
26 everybody else wins. The casino loses money, of course, but I get to pocket the tips and at the
27 end of the day, the house always gets its money back so it works out well for everybody.

28 Dealing blackjack also taught me that security at the Black Bear was a lot tighter than at
29 Peaches'. Every command a player gives at the table requires a gesture (wave off to hold, tap the
30 table to hit for another card)—all so the cameras are clear that nobody is doing anything funny

and that I'm doing my job correctly. If I accidentally pay out on a hand where the player was supposed to lose, the cameras see it, and you better believe that I'll get written up for it. The cameras generally capture both the dealer and the players to make sure that everybody is on their best behavior. You can be pretty confident that if you're in a casino, you're being watched by a camera. Whether there's actually an employee watching the camera feed is another story.

I have also dealt a decent amount of poker at the Black Bear. Dealing poker can be a lot more stressful than dealing blackjack, since poker players can be more demanding of dealers, as I mentioned earlier. But it is usually much more profitable, since I'll typically get tipped at the end of every hand—and if it's a big pot, the winner will usually give me a big tip. And, if I deal the bad beat jackpot, I can actually make several thousands of dollars in tips for just that one hand, since players will ordinarily tip about 3.5% of their share of the jackpot to the dealer who deals it out. But, while dealing blackjack might be less stressful, poker has its pluses, too. The blackjack players are usually visitors—bachelor parties, folks in town on business—the sort of folks you see once and never again. The poker crowd tends to be more repeat business. Lots of our regulars spend most of their time at the poker tables.

Now that I'm one of the more experienced dealers at the Black Bear, I work a lot of shifts in the VIP room. The VIPs get a lot of special attention, extra drink service, their chips brought right to the table with no need to pull out cash—that sort of thing. The VIP section has its own room with only six tables: two for poker, two for blackjack, one for craps, and one for roulette. It's usually not very busy there, especially in the middle of the day. When it's slow, there might only be a couple of tables open—usually one of the poker tables and one of the blackjack tables. We usually only run all six tables at night when it's busy; Bancroft is too good of a business person to pay dealers to stand behind empty tables. My favorite table to work is the center table closest to the fountain, which is a blackjack table. In early 2014, Bancroft put a big fountain against the wall that faces the players at that table. I think it was one of those psychology things that are all the rage these days—relax the players so they stay and play longer. It sounds boring, but it's really relaxing! I've seen the security cameras in the VIP room, of course. There is a camera that points toward the dealer at each table and one pointing toward the players at each table. I know that Danny Hoy's team is supposed to be watching the footage—that's their job—but I've never been in the security office to see the footage. I have no idea what is covered by the cameras, whether they always work, or whether there are any blind spots in the room that they

62 don't cover. Like I said, you just assume if you're in a casino, you're on camera. I think they
63 took down one of the cameras when they renovated to put in the fountain, but I don't know if
64 they put in a new one I haven't found yet to replace it. I assume they did.

65 It was in the VIP section that I got to see Avery Bancroft play for the first time. Bancroft
66 is a really distinctive person, and you can usually smell Bancroft before you see Bancroft. I
67 asked Bancroft where the fragrance Bancroft wears came from, and Bancroft said that Hyde
68 orders it from some crazy woman who lives in France—it's not something you can just buy.
69 Bancroft told me Bancroft is the only person in the U.S. who this woman sells to. Well, good for
70 Bancroft, I thought. With what Bancroft pays me, I probably couldn't afford it anyway.

71 Bancroft seemed to be a master of just about any game, but also smooth enough to know
72 how to lose money to the right people when necessary. Mostly it seemed like Bancroft was
73 making the effort to play just to mingle with the guests. And the guests were great! The nice
74 thing about the VIP room is that it's only rich people, and a lot of rich people are also famous
75 people! When election season rolled around, the VIP room was basically full of politicians. They
76 all wanted to play with Bancroft, I assume to suck up and try to get some donations. It was really
77 interesting to hear them talk while they were playing cards—you always see on TV that politics
78 is full of backroom deals, and the people who play at my table tell me that's really true. Bancroft
79 plays with the politicians a lot, joking with folks that if they take Bancroft's money at the poker
80 table, Bancroft won't have any left to give to their campaigns! But, Bancroft is only like that
81 with the people whose policies Bancroft likes. A couple of years ago—when that big online
82 gambling bill was going through—the VIP room was packed with a bunch of legislators. I
83 thought they should be back at the statehouse trying to lower my taxes, but they joked they were
84 getting “field experience” about the online gambling bill. I had the folks—Downs, Moore,
85 Rodriguez, and Wright—who were spearheading the opposition to the bill, and I remember
86 Bancroft coming over and saying “You guys are great. Good things come to people whose work
87 I like. Those guys,” and here Bancroft pointed to the other poker table where the legislators who
88 were trying to push the bill through were playing, “shouldn't expect any support from me.”

89 I also saw Chase Covington at the Black Bear on a number of occasions. Unlike when I
90 worked in the backroom at Peaches', here at the Black Bear, it seemed like Bancroft welcomed
91 politicians, celebrities, anyone of power really. There was a signed photo of Governor Walton in
92 Bancroft's office, and I'd heard Bancroft constantly trying to get old London Bennett to come

93 spend some of her inheritance and stay in the hotel suite. Most of the time these kinds of big
94 names came in, Bancroft would rush over to help make their stay more comfortable, sit down
95 and “lose” a few hands of poker to them, the whole celebrity treatment.

96 When Covington first appeared at the Black Bear, Covington would drop ridiculous
97 amounts of money playing blackjack because Covington had no mind for it. For example,
98 everybody at the table could see my face-up card was a 5 of spades (pretty common as a bust
99 card). Covington would then double down on Covington’s face-up 10 of clubs and 3 of
100 diamonds! What a silly move! Naturally, Covington would bust and easily lose \$1000 in a single
101 hand. I am pretty sure I’ve seen Covington lose around \$100,000 in a single day. It was just
102 insane.

103 That’s not to say Covington didn’t win sometimes too. It just wasn’t as often. It usually
104 happened when Covington and Bancroft would play at the same table. Bancroft would raise the
105 stakes large enough to get other players to fold early and then just lose big stacks of chips to
106 Covington whenever possible. After Covington was in a good mood, Bancroft would whisk
107 Covington away to another part of the casino, presumably for more drinks and talking.

108 On April 6, 2015, I saw Covington take home a huge haul, and Bancroft wasn’t even
109 around. There was a lot of commotion at the table next to me, so I couldn’t help but look over. I
110 saw Covington raking in a huge pot at the poker table. The crowd was cheering and slapping
111 Covington on the back. A few other players looked pretty defeated. I couldn’t see exactly how
112 much Covington won, but Covington was practically skipping away from the table. It must have
113 been a lot.

114 After that, the next time I saw Covington was on April 16, 2015 when Covington met
115 Bancroft in the casino. Around 2 p.m. Bancroft sat down at my blackjack table with a briefcase. I
116 have no idea what was in it, but I didn’t usually see Bancroft with a briefcase. Bancroft sat at the
117 center of the table and set the briefcase down under the table. No one else was at my table, and
118 there were just a couple of people at the poker table behind me to my left. A couple of minutes
119 later, Covington walked in, carrying a briefcase! No one ever has a briefcase in the VIP room,
120 and here I had two people, with briefcases, at my table! When Covington sat down, Bancroft
121 said, “What happened earlier?” Covington, said, “Don’t worry about it. I’m here now.”

122 I didn’t think much about it at the time, but both of their briefcases looked really similar:
123 black, two latches, pretty cheap looking, really. You’d think they could afford something a little

124 nicer. Unlike the typical intensity I saw them display during a game, they both seemed distracted
125 and lost a fair amount of money. The whole time they played, they were the only two people at
126 the table. As usual, we were pretty slow during the middle of the day. Bancroft and Covington
127 talked sporadically, mostly about business stuff—square footage for conference rooms, the ratio
128 of penny slot to quarter slots you should have, the type of music you should play to make people
129 play longer, and stuff like that. I really wasn't paying much attention; I assume they were talking
130 about the plans for the new casino Bancroft wants to build. I had heard about that new casino
131 project here and there, but wasn't sure if it was going to happen. I am hoping to get promoted to
132 floor manager if it does, but, with all of this going on, I doubt that will happen.

133 After about 20 minutes, Casey Kelly, one of our regulars, sat down at the table. Bancroft
134 shook Casey's hand, and then looked at Covington and said, "Well, shall we do this?"
135 Covington said, "I think so." And then Covington picked up a briefcase and left. I focused on
136 getting Kelly ready to go, and I didn't pay much attention to Covington's exit from the table.
137 That was the last time I saw Covington play at the Black Bear.

138 Casey Kelly and Bancroft played for a while—maybe a half hour or so—before Mickey
139 Keenan, one of Bancroft's occasional poker buddies, came storming in. "Did you find Chase?"
140 Keenan asked Bancroft. Bancroft replied, "Yeah, I did. But I couldn't go through with it."
141 Bancroft and Keenan talked for a couple of minutes about why Bancroft hadn't been able to get
142 it done, or finish it, or something, but Bancroft was still confident the casino would go through as
143 planned because Covington seemed convinced about its value. I was confused because, just a
144 few minutes before, Covington had said that Covington was going to do it. Maybe it was a
145 different Chase or a different "it" they were talking about. I don't know.

146 I know people are saying that Bancroft and Covington switched their briefcases when
147 they walked out of the room that day. I can't be sure because the two briefcases looked so
148 similar, and I'm not superhuman. The briefcases were under the table, and I don't have x-ray
149 vision. Here's what I know. I distinctly remember seeing both Bancroft and Covington putting
150 their briefcases down under their own seats when they sat down at the table. I remember it so
151 vividly because I was thinking about how funny it was that two rich people had the same cheap-
152 looking briefcases. I also remember that they were the only two people at the table the entire
153 time they played and that they sat in the middle of the table. If they had switched briefcases, I
154 think there would have been some kind of handoff or some kind of awkward "reach under your

neighbor's chair" jujitsu, and, believe me, neither of those two is coordinated enough to do that without making it look really awkward. At the same time, it was really odd that they had briefcases in the VIP room. I had never seen Bancroft with a briefcase on any part of the casino floor before, and Covington never carried a briefcase that I can recall either. So, it does make sense to me that they did switch. Why else would they have been so awkward when they were playing and then—on the same day—just happen to both have briefcases on the floor. That is quite the coincidence! So, I'm honestly not sure if Bancroft and Covington each left with the briefcase they entered with that day.

Also, I know people believe that one of those briefcases had enough cash in it for me to retire today. I can't say whether that's true. Like I said earlier, bigwigs in the VIP room play based on their accounts, and neither Bancroft nor Covington opened up their briefcase to get cash or chips from it. Those briefcases could have been full of cash or full of air; I never saw what was inside.

Of the documents and exhibits I have been shown in this case, I am familiar with the following: Exhibit 1 is a briefcase like the one that Bancroft and Covington had at my blackjack table in the V.I.P. room on April 16. I couldn't tell you whose briefcase it is. Exhibit 4 is a diagram of the VIP Room at the Black Bear. I've seen cameras in the locations indicated on the map, but I don't know if those are all of the cameras in the room. I've also never seen security footage from the room, so I do not know whether the camera coverage indicated on the map is accurate. I am not familiar with any other exhibits other than those listed above nor have I read any affidavits other than my own.

I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told I should include everything that I know may be relevant to my testimony, and I followed those instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment before opening statements begin in this case.

Ali Reynolds Thomas

Ali Reynolds Thomas

Subscribed and sworn before me on this, this 14th day of August, 2015:

Elena Lipschutz

Elena Lipschutz, Notary Public

AFFIDAVIT OF DANNY HOY

1 After being duly sworn upon oath, Danny Hoy hereby states as follows: I am over 18 and
2 competent to make this affidavit. I am testifying voluntarily. I was not subpoenaed or compelled
3 to testify.

4 I live at 2334 Canyon Road here in Midlands. I've been working as the head of security
5 at the Black Bear Casino for three years, but I've been working in private security much longer
6 than that. Avery Bancroft's dad and my dad were friends growing up, and they worked at the
7 country club together. While my dad became a police officer after high school, Bancroft's dad
8 was able to use his country club connections to start building a small business empire. Now it
9 seems like the Bancrofts own half the state. I don't think my dad was too pleased about any of it.
10 He didn't think too highly of the Bancrofts or the fact that I ended up working for one of them.
11 However, I knew growing up that civil servants never get paid what they are due, and, if I am
12 going to put my neck on the line, I want to at least collect a decent paycheck for my trouble.
13 Bancroft paid me well, both for my effort and my discretion.

14 A job in private security involves keeping your eyes and ears open and your mouth shut.
15 You almost become invisible. Most of the time, I can be standing in the same room as others,
16 and they have no idea I'm there. I manage a team of around 30 security employees who handle
17 various shifts and access points around the hotel and casino. Unlike a regular business, when you
18 are managing security in a casino, you have to be concerned about more than just the customer's
19 safety. We certainly want to make sure our patrons are safe on our premises, but we also have to
20 look out for the well-being of the casino itself. So, my job is to also look out for Bancroft.
21 Normally a casino will have camera eyes on every square inch of space. I've worked at three or
22 four different casinos in my career, and all have had only one or two truly "blind spots" on the
23 casino floor. Usually, the owners are aware of these blind spots and just won't put machines or
24 tables in those areas. The Black Bear, though, has a couple of blind spots on the floor where
25 there is actual table play happening. I tried to ask Bancroft about this and suggest we at least
26 double up on physical eyes on those areas, but Bancroft told me not to worry about it, both
27 because those were tables on which Bancroft liked to play and because those spots were limited
28 to "high roller" access. I assumed this meant Bancroft wanted privacy for our most lucrative
29 clients, but I still thought it was a bad idea. Even high rollers can sometimes count cards or pull
30 back chips, and I wanted to make sure nobody cheated on my watch.

Often, the high rollers that come to the Black Bear are people who need a little extra attention from my department. High-level politicians are generally the worst because they come with their own security details with whom I have to coordinate. Luckily, there aren't that many of them—it's not like we're in Iowa during an election year—but, Governor Walton, Lt. Governor Stensland and a couple of the legislative leaders travel with state patrol officers. Governor Walton, in particular, spends a lot of time at the Black Bear, be it meeting with Bancroft or playing cards, so we have a protocol down. Typically when Governor Walton comes, I personally escort him around the premises, ensuring both safety and privacy (you'd be amazed how many college PoliSci majors want his autograph). I know Bancroft likes Governor Walton a lot, too. Bancroft even told me once that I should contribute to Walton's 2012 campaign because "it's always good to have friends in high places, particularly when they are responsive to your concerns." I didn't do it because I only care about taxes, and Walton isn't doing anything about those. But I'm pretty sure Bancroft did. I remember Bancroft talking with Walton about some online gambling thing—I don't really pay attention to politics so I couldn't tell you what it was—in the summer of 2012, right after Bancroft told me I should donate, and I remember Walton responding, "after all of the support you've given me, it was the least I could do."

I was familiar with Covington long before all this business about a second casino started making the rounds. Covington was a pretty stereotypical small-town big shot. It seemed like Covington liked to play the part of a high roller without actually putting too much money on the line. That said, every now and then, Covington would have too much to drink and actually throw a lot of chips around. I remember that, on April Fool's Day of 2015, Covington was an especially big fool. After throwing back some screwdrivers and "Cos-Bros," Covington headed to the high rollers area. I didn't watch Covington play, but after about an hour, Bancroft came to me and told me to get Covington out of there. Bancroft said, "We've got enough of the Chair's money tonight, and we don't want Covington to have bad feelings about this place." So I called AAAA—a cab company with a reputation for discretion—and got Covington a ride home.

Every now and then, Covington would get lucky and hit it big at a high roller table. On those nights, Bancroft would try to get Covington to stick around, so the casino would get some of it back. But Covington would usually try to leave as soon as Covington had a big stack of chips. I'm sure Covington made out like a bandit at least a few times.

Bancroft had a policy that the casino should never be in the press as a place where scandals happen. We all but banned anyone with a BNN byline from ever setting foot in the place. Our famous clients could count on us to keep their names out of the papers and off our lips. I mentioned to Hyde, Bancroft's assistant and the only other person I knew who was as close to Bancroft as I was, that I thought we should talk to Bancroft about Covington's behavior. This was around March of 2015. I was concerned that Covington was spending too much time around the casino and that it would look bad for Bancroft if any reporters started sniffing around, asking questions about possible corruption, particularly with Bancroft seeking another license from the Midlands Gambling Commission. Hyde ignored me. I tried to ask Hyde about it again, and Hyde told me to "stick to being a glorified watchdog" because I didn't "know anything about how politics works." I always thought Hyde was a bit of a sniveling weasel, and I just figured Hyde liked being the one to come up with all the ideas. Bancroft seemed to trust Hyde for some reason, but I had a strong feeling Hyde was full of something other than knowledge. I knew the new casino bid was a big deal for Bancroft, although I thought our efforts were better spent focusing on expanding the Black Bear, so I decided not to press the issue. I just did what I could to make Covington comfortable and happy.

On March 31, 2015, I went to go find Bancroft to discuss the security report for the month. I like to keep Bancroft informed of how the place is running, so at the end of each month, I give Bancroft a report of all the security-related incidents. Some are as small as helping a patron find a lost room key, but others might involve throwing someone out of the place for cheating. I could not find Bancroft anywhere, so I tried to track down Hyde. Hyde was also uncharacteristically missing. I could not see either Hyde or Bancroft on the monitors so I went to check the blind spots on the floor and did not see them there either. It was not until later that evening that I finally ran into Hyde and Bancroft leaving the hotel area. I spoke to Bancroft, who looked especially chipper, and we scheduled a meeting to go over the security report the next day. As Bancroft walked away, I pulled Hyde aside to ask where they had been. Hyde told me to mind my own business. I tried to explain to Hyde that monitoring Bancroft was my business, but Hyde just took off.

When I met with Bancroft the next day to go over the security report, I hesitated to bring up anything that might sound like I was prying into Bancroft's personal business. Instead, I mentioned that I was concerned about overall hotel security, protocol, and Bancroft's safety

92 given a string of random robberies that had occurred in the area lately. There weren't actually
93 any robberies in the area, but I knew Bancroft wouldn't know I was bending the truth a bit, and I
94 wanted Bancroft to take security seriously. Bancroft promised to make sure I was kept aware of
95 all Bancroft's meetings going forward. That was good enough for me. Bancroft has always been
96 honest with me, and if Bancroft said something was going to happen, I believed it.

97 On April 12, Bancroft e-mailed me to request some additional security precautions for a
98 meeting the next day. When I stopped by Bancroft's office to follow up, Bancroft told me, "See,
99 I told you I would keep you in the loop. We want to be extra careful with this, so security needs
100 to be extra tight." I was happy to be part of the discussion, and I made a number of suggestions
101 about locations for the meeting, but Hyde (who decided to sit in on my meeting with Bancroft)
102 insisted the meeting would take place in one of the hotel suites. I also suggested that I should be
103 in the room during the meeting but Hyde interrupted Bancroft before Bancroft could respond and
104 said that it would not be a good idea. Bancroft, though, said I should stay outside to make sure no
105 unauthorized personnel entered the room. Having been shot down twice already, I made one last
106 attempt to prioritize safety over privacy and suggested that I at least confiscate any phones and
107 do a pat down for weapons before anyone entered the room. Hyde tried to interject again, but this
108 time Bancroft said it was a good idea. Hyde complained about not having access to a cell, but
109 Bancroft suggested that cell phones just opened the door for rude behavior and distractions, not
110 to mention the ability to record conversations best kept private, and that it was best to keep
111 phones out of the room.

112 On the 13th, I arrived at approximately 1 p.m. to room 312, where the meeting was to take
113 place at 3 p.m., and I did a sweep of the space to make sure there were no hidden devices and no
114 safety hazards. After about two hours, I was satisfied I had successfully evaluated the space, so I
115 took my position outside the door. The first person to arrive was someone I did not recognize but
116 had been told worked for the Commission. I asked for credentials, and this person gave me a
117 license and staffer badge that both matched the information Hyde had given me about the
118 meeting. I then gave this person—Mickey Keenan—a quick pat down and took Keenan's phone
119 before letting Keenan into the room. Bancroft arrived next, with Covington just an elevator
120 behind. I did not bother to search Bancroft of course. I did do a very minimal pat down of
121 Covington and took Covington's phone. I also noticed that Covington was carrying a rather
122 shabby looking briefcase. I asked Covington to open the case so I could check it, and Covington

123 complied. It was mostly empty, except for a few pens and a tablet. I took the tablet, gave
124 Covington back the briefcase and opened the door to the suite.

125 After Covington arrived, I waited outside in the hallway to prevent interruptions. I stood
126 a few feet away from the door down the hallway, so I didn't hear anything that happened during
127 that meeting. After a few minutes, Devyn DelSesto, one of the bellhops, arrived with room
128 service. I was not sure who had ordered it, but I assumed it was Bancroft. After checking the
129 contents of the tray (a cheese plate) and looking at the glasses and bottle, I let DelSesto knock on
130 the door without any inspection. I heard someone in the room say something to DelSesto while
131 DelSesto took in the tray, but I could not hear what it was, just DelSesto saying yes and then
132 muttering something about being cheap. I assume it was about the tip DelSesto was given. Since
133 Covington never seems to have money to tip me or pay for a cab, I can only assume Covington
134 was the one who answered the door.

135 When the meeting finally broke up, everybody left the room looking pretty pleased. I
136 assumed that Bancroft had managed to persuade Covington as to why Bancroft had put together
137 the best proposal to open a second casino.

138 The next time I talked to Bancroft was on April 15. I was sitting in my office, watching
139 the casino floor on the monitors when Bancroft walked in. It was pretty embarrassing—I quickly
140 threw a box of donuts in the trash and tried to straighten up the papers on my desk. I never
141 worried about it being a mess because no one—especially not the big boss—ever visited me.
142 Bancroft said we needed to talk about security. I was thrilled that Bancroft was taking the
143 security concerns seriously after our previous conversation. Bancroft pointed at the monitors that
144 showed the VIP room and told me to talk about what kind of camera coverage we had on the
145 tables in that particular room. I thought this was odd because Bancroft had never really seemed
146 interested in improving our camera coverage in the VIP sections before, so I said, “well, we have
147 a few blind spots here and there, but I usually double up our men covering those tables or cover
148 them myself when there are big tournaments or things get busy.” I started to talk about general
149 security issues on the main casino floor, but Bancroft interrupted me quickly and told me
150 Bancroft was only interested in the VIP room.

151 I took out a map of the VIP room and showed Bancroft where our coverage was lacking.
152 The VIP room has six tables: four tables for poker and blackjack, a roulette table near the door,
153 and a craps table in the back corner. The security cameras were originally built to accommodate

those six tables arranged in two rows; each table is assigned two cameras to view the front and back of the table. However, in early 2014, Bancroft renovated the VIP room, installing an enormous water fountain against one of the walls. During the renovation, the security cameras were changed. Now, one looks down at the top of the table and the other (which should have monitored the backs of the players at that table) no longer exists. I explained to Bancroft that, as a result, security has no view of the area under the center table, particularly under the center of the table, though occasionally we can get some footage of under the sides of the table from the cameras on either side.

I asked Bancroft whether we might move the cameras to get better coverage of that table (or, better yet, install a new one), but Bancroft didn't seem interested. Since I had just made Bancroft aware of the blind spot, I asked Bancroft if I should get additional people on the area for protection, but Bancroft said no and explained: "I trust the people who play in the VIP rooms, and the dealers can always keep an eye on things. But we should make sure we are more careful when installing cameras when we open the new casino." I agreed to keep security on the table limited to the standard sweeping coverage so as not to crowd VIPs.

I did not see Covington in the casino again until the afternoon of April 16. I didn't see Covington in person though. As I was finishing lunch at my desk, I was monitoring the VIP room on the security camera monitors. I saw Bancroft come in and take a seat at the table by the fountain at about 1 p.m. I saw that Ali Thomas was the dealer at that table, and Bancroft was playing blackjack alone at that table. When Bancroft walked in, Bancroft was carrying a briefcase like the one I had seen Covington with at the meeting a few days earlier. I'd never seen Bancroft bring a briefcase into the VIP room before, and this one looked brand new. I did a double-take to make sure, but then I saw Bancroft (and the briefcase) disappear on the monitors, right where I had told Bancroft the cameras didn't cover. About an hour later, I watched Covington walk into the VIP section and take a seat next to Bancroft. Covington was also carrying a briefcase. Watching on the monitors, I saw Covington's briefcase disappear away from my view under the center table.

I did not watch the game between Bancroft and Covington at the blackjack table take place. Once I saw that Bancroft was in the room, I remembered our conversation about me not hovering, so I directed my attention to monitoring the slot machines in the main room of the casino. I certainly did not see anything odd take place between them. I saw Bancroft on the

185 phone once or maybe twice, but I cannot recall the times of those calls or if Bancroft was just
186 texting, and our security cameras do not record sound, so I certainly did not hear them. I would
187 like to believe that nothing criminal could ever happen under my watch, even by my own boss.
188 After Bancroft was arrested, the cops came and asked for the security footage from that day, and
189 I turned it over to them. I'm sure they couldn't see anything, though, because I was watching
190 live. I saw Bancroft come into the VIP room and disappear into the blind spot. A little while
191 later, Covington came in and disappeared into the blind spot too. After about fifteen minutes,
192 Covington left and I stopped watching.

193 Of the documents and exhibits I have been shown in this case, I am familiar with the
194 following: Exhibit 1 is a briefcase like the one that Bancroft and Covington had at the blackjack
195 table in the V.I.P. room on April 16. I couldn't tell you whose briefcase it is. Exhibit 4 is a copy
196 of the map of the VIP room. The map accurately shows the placement of every camera in the
197 VIP room as well as the portions of the room it films. Areas on the map that are not shaded are
198 not covered by our camera system. Exhibit 20 is an email sent to me by Avery Bancroft on April
199 12, 2015. I am not familiar with any other exhibits other than those listed above nor have I read
200 any affidavits other than my own.

201 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this
202 statement, I was told I should include everything that I know may be relevant to my testimony,
203 and I followed those instructions. I know that I can and must update this affidavit if anything
204 new occurs to me until the moment before opening statements begin in this case.

205
206 Danny Hoy

207 Danny Hoy

208 Subscribed and sworn before me on this, this 12th day of August, 2015:

209
210 Morris Tesler

211 Morris Tesler, Notary Public

AFFIDAVIT OF TRACEY MINETOS

1 After being duly sworn upon oath, Tracey Minetos hereby states as follows: I am over 18
2 and competent to make this affidavit. I am not testifying voluntarily. I was subpoenaed and
3 compelled to testify.

4 I live at 8720 Lynx Road in Midlands City. I live there with my step-sibling, Chase
5 Covington. My spouse (well soon to be ex-spouse) and I used to own Chuggie's Bar. We ran into
6 a bit of trouble and lost our liquor license about a year ago after we got busted, both for not
7 checking IDs closely enough and for over-serving patrons. Some teenagers ended up getting into
8 a horrible accident on Canyon Road one night. Since the driver died in the accident, we were the
9 only people the families could sue. Apparently there were some receipts the police found in the
10 car showing the kids had been downing Chuggie Bombs at our restaurant, and that made me
11 responsible. I was working at the bar that night, and while I don't remember the kids being there,
12 several cops were. I wouldn't be surprised if they planted the receipts. After all, one of the kids
13 who died was the daughter of a cop, and the Midlands Police Department will do just about
14 anything to make a case come out the way they want. Doesn't matter what I believe, though. The
15 only thing that matters is what I can prove, which, in that case, was nothing. You would think
16 having a sibling as a political appointee would carry its own weight, but nope! It doesn't! Chase
17 wanted to "set a good example" and refused to intervene by talking to Chase's friends who are
18 on the Midlands Liquor Control Board—the people who hand out liquor licenses like Chase's
19 Commission hands out casino licenses. So much for "family comes first!" To add insult to
20 injury, I also got charged with a misdemeanor for contributing to the delinquency of a minor for
21 serving underage kids. I was humiliated, and I lost everything: my marriage, my business, and
22 my home. Chase refused to help, claiming it wouldn't be "ethical" to let our relationship get in
23 the way of a vote. When I separated from my spouse, Chase was at least kind enough to let me
24 move in until I get back up on my feet. I try to earn my keep. I do chores, walk Chase's corgi,
25 Amanda, and run errands. I also spend a lot of my day catching up on celebrity gossip. I just
26 have to know who Apple Heytens and Blue Ivy Bernstein are dating, what they're wearing, and
27 where they've been going. Basically I'm Chase's maid, butler, and personal assistant all wrapped
28 into one person.

29 It has been nice getting to spend more time with Chase. My dad and Chase's mom got
30 married when we were in high school, and now our parents have already passed away. Their

estate was split 50-50 between Chase and me. I put my share into Chuggie's and have lost that now, too. I don't know what Chase did with the other share of the inheritance—probably gambled it down the drain. I never had any children, and with my marriage in ruins, Chase is all I have left. As you can imagine, that makes everything that is happening so much harder. Even though I've fallen into a bit of a rough patch, it helps to have family to lean on. I've promised Chase that I'll take care of everything at home no matter what happens with this case.

I moved in with Chase in the fall of 2014. It was right around the time I first heard that the Commission would be approving a new casino in Midlands, and I got really excited. I figured any new business meant new jobs, and new jobs meant new opportunities for income. Chase and I actually talked a lot about the potential for work in a restaurant or something on the premises. I was worried that my criminal conviction, regardless of how minor, would keep me from getting hired at a casino, but Chase promised that anyone the Commission voted for would owe Chase big and that Chase could call in a favor to get me hired. I was surprised by that, since Chase seemed to be big on "ethics," so I asked how that would work. Chase laughed and said, "Don't worry; I would never trade my vote for favors. I'm just saying that, with the other two commissioners determined to disagree on everything, whomever I vote for will likely get it and feel grateful."

I asked Chase at the time who the frontrunners to apply for the casino might be, and Chase said that Avery Bancroft was almost certainly going to bid since Bancroft already owned a casino in Midlands, but that the others were likely to be a variety of businesspeople with deep pockets. Chase had even heard that Shannon Stark—a professional poker player—was thinking about building Stark's own casino! Chase laughed again and said, "Well, they better have deep pockets at least." I asked what Chase meant by that, and Chase shrugged and said, "It's an expensive business." I assumed that meant the Commission would vote for whomever was willing to pour the most money into making the casino as nice as possible, but I don't really understand how all that works.

I asked Chase how Chase knew who was going to apply for the new license, and Chase said that Avery Bancroft had called Chase as soon as the Commission announced on October 1st that they would be issuing a new casino license. And then, right before Thanksgiving, Chase had Avery Bancroft over for drinks! This was pretty unusual—Chase isn't really the type to entertain—but I remember it really well because I was trying to make a good impression. I

62 thought that, if I could impress Bancroft with my bartending skills, maybe Bancroft would hire
63 me as a bartender at the new casino. I don't really remember much about Chase and Bancroft's
64 conversation; their talk about business was incomprehensible to me. I just remember that
65 Bancroft was talking about how Bancroft and Chase could make history if Bancroft got a second
66 casino. Bancroft said that Bancroft had a plan to make it happen, but Bancroft didn't really give
67 any specifics. Bancroft just said, "I know these sorts of things require people like me to go above
68 and beyond just putting together a proposal. I'm happy to go the extra mile." Chase just winked
69 at Bancroft, and they finished their drinks talking about whether or not it was a good idea for a
70 casino proposal to include attached conference space for businesspeople. Bancroft left without
71 even telling me Bancroft enjoyed my signature drink: The Woodward's Reserve Spritz.

72 I don't really know that much about what Chase does at the Commission. I know that
73 Chase got appointed by the governor and that there are two other people on the board: Harper
74 Walton and Riley Geis. Chase doesn't really like either of them, but I think Chase likes the
75 power that Chase gets from the fact that Walton and Geis hate each other far more than Chase
76 dislikes either of them. I think it's a little bit of a power trip for Chase to get to be the deciding
77 vote on pretty much every issue that comes before the board. Chase even talks about how some
78 people who are now in Congress started their political careers on state gambling commissions. I
79 hope Chase gets to do that; we need more trustworthy people like Chase in Washington D.C.

80 Living with Chase has been really nice. We have our ups and downs. Sometimes Chase
81 would come home after what seemed like a really late night at the office and be a bit angry,
82 maybe a little drunk, smelling a lot like cigarettes. I would ask Chase what kind of work would
83 result in getting home at 2 am, smelling like an ashtray, and Chase would just tell me I didn't
84 understand politics. I do know that Chase got a lot of free stuff for being a commissioner. Eddie
85 Keener gave Chase box seats to a Midlands Marauders hockey game (Chase took me), and
86 Hayden Hathaway gave Chase an all-expenses-paid diving trip to that famous sunken ship—the
87 Hepburn. I know that Angie Wang, who got elected to the Midlands City Council a few years
88 ago, gave Chase a bottle of wine worth \$400 for Chase's birthday in 2015. Other times, Chase
89 would bring me really nice surprise gifts: a new watch, a new Armani suit ("for interviews!"), a
90 gift card for a nice dinner at *Le Gros Poisson*, the steakhouse inside the Black Bear. A few times
91 when I was doing laundry, I would find poker chips in Chase's pockets, and I would know Chase
92 had been at the Black Bear the night before. More than a few times, I would see Chase come

home with a brand new briefcase (I know I'm unemployed, but, really, don't you only need one?). I couldn't figure out how Chase could afford any of the nice stuff on a government paycheck, but I didn't complain about the gifts. I asked Chase once why a commissioner would need so many fancy briefcases, and Chase just said "it's the price of doing business." I guess commissioners carry around a lot of paper. Once or twice, I've sneaked a peek inside one of Chase's new briefcases, and it certainly had a lot of paper. All of it green. I have no idea why Chase would carry that much cash around, but I just assumed those were the nights that the casino odds were in Chase's favor.

It was really kind of strange, looking back, that Chase was getting all of this expensive stuff. Chase had never been someone who liked expensive things. Even in college, Chase never spent the money Chase made washing dishes in the cafeteria on new clothes or fancy trips. I know it sounds like I was very nosy and probably a bit rude to someone who has given me a place to stay during a rough patch in my life. But really, I am just looking out for Chase. I have heard too many bad stories about bookies, and I didn't want Chase to get in too deep with anything. It only makes sense to keep checking Chase's pockets and office for any signs of gambling or debts or anything that might cost Chase the way my poor choices cost me. I am just looking out for my family. This is how I ended up finding the napkin in Chase's pocket. I didn't understand what it meant, it just had "Yes = ~~\$150k~~ \$250k." I can't remember exactly when I found that napkin other than that it was sometime around April 15, 2015 (tax day); I thought maybe Chase had been to the accountant, and that was what Chase owed in taxes. My spouse always did the books at Chuggie's and our home taxes, so I never really knew how much people paid in taxes. I used WebTax to calculate my own taxes, and I got a refund in 2015. I kept the napkin and gave it to the police when they came to talk to me. I never got a chance to ask Chase what it meant.

Last spring, my concerns about Chase were growing. Chase's behavior was getting more and more erratic. There were more nights that were bad than good, and I was really worried Chase had gotten into something too tough for Chase to handle. I wasn't sure what to do. I don't like to question Chase because Chase has done so much for me, but I also don't want to see anything bad happen to Chase. I know it was wrong, but I made the decision to break into Chase's private home office. It was the one place I agreed I would never go into because it was Chase's private space and could contain any number of confidential documents. Even though I

cleaned the whole house, this room was off limits. But I couldn't help myself. I found a stack of various financial documents, and the one that stood out to me was a bank statement from one of Chase's accounts dated April 17, 2015. The amount of the deposit was what really struck me: \$200,000! I had no idea where Chase would get that kind of money. I felt sick. I kept the bank statement and turned it over to the police as well. I just hope this is all some horrible misunderstanding.

Of the documents and exhibits I have been shown in this case, I am familiar with the following: Exhibit 2 is the napkin I found when doing Chase's laundry. Exhibit 11 is the bank statement I gave to the police officer who came to talk to me. I am not familiar with any other exhibits other than those listed above nor have I read any affidavits other than my own.

I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told I should include everything that I know may be relevant to my testimony, and I followed those instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment before opening statements begin in this case.

Tracey Minetos

Tracey Minetos

Subscribed and sworn before me on this, this 13th day of August, 2015:

Morris Tesler

Morris Tesler, Notary Public

Official Report of
Midlands Department of Criminal Investigation
DCI Criminalistics Laboratory

Agency:	Midlands State Police Dept.	Offense:	Bribery
Case #:	MSPD-15-0632	Arrest Date:	4/19/15
Officer:	██████████ "M. Keenan"	Criminalist:	Sikorsky
Suspects:	C. Covington & A. Bancroft	Victim(s):	N/A

Background

1. My name is Pat Sikorsky. I am the director of the Criminalistics Laboratory for the Midlands Department of Criminal Investigation (MDCI), a position I have held since 2010. For the ten years before I became Director, I was a Criminalist for the MDCI. I hold a dual Ph.D. in Biology and Chemistry from Washington University in St. Louis. I received a bachelor's degree in Chemistry and Leadership from Marshall University. In addition to my official responsibilities for the MDCI, I am also an Adjunct Professor of Forensic Science at Midlands State University where I teach undergraduate and graduate courses on DNA Analysis.
2. I have published 28 peer-reviewed papers relating to DNA testing, chemical comparison testing, the analysis of trace evidence, and the presentation of forensic evidence to non-scientific audiences, like jurors. I am a member of the American Academy of Forensic Sciences. I also consult for, and am the basis for the protagonist of, *Crime Scene Investigation: Midlands*.

Preliminaries

3. I received a briefcase, collected upon the arrest of Chase Covington, from the officer who arrested Covington on April 19, 2015. The briefcase had been on Chase Covington's person at the time of the arrest.
4. My forensic analysis in this case was limited to an examination of the briefcase that Covington was carrying when Covington was arrested. Covington's home, fleet of vehicles, and office were swept for forensic evidence which was analyzed with a full battery of forensic testing by other criminalists under my supervision. Other than the briefcase, none of the additional evidence we analyzed provided noteworthy evidence. I personally tested three types of physical evidence:

fingerprints found outside the briefcase, hairs found inside the briefcase, and a small, fragrant stain on the fabric inside the briefcase.

Fingerprint Analysis

5. The ridges and furrows on the pads of human fingers create a pattern. Forensic scientists rely on these patterns to determine whether an individual's finger(s) have come into contact with an object.
6. The science of fingerprint analysis is built on two principles: permanence and uniqueness. First, an abundance of peer-reviewed studies have demonstrated that an individual's fingerprint is *permanent* because it remains the same over the course of his or her lifetime. Second, fingerprints are *unique* because no two individuals have been shown to have the same fingerprint. Again, the peer-reviewed evidence is united on this point. These two principles make fingerprints useful forensic evidence. If a fingerprint is found on an object, and that print is matched to a suspect, the evidence indicates that the suspect had come into contact with that object at some point in time.
7. Upon receiving the briefcase, I used magnetic powder to examine the interior and exterior of the briefcase for fingerprints. I used a new disposable brush to spread the powder to prevent contamination.
8. I recovered six (6) prints on the briefcase: three prints on the handle of the briefcase, one print on each end of the briefcase on the lid side (about 2 inches from the latch-side corner), and one print on the unlocking mechanism on the briefcase's right-side latch. When I refer to the "left" or "right" side of the briefcase, I refer to the view looking down at the briefcase with the handle side up and the lid of the briefcase facing what would be "North" on a compass. On the left-side latch, I also found evidence of smeared fingerprints, which I processed for touch DNA evidence, as explained in detail below. Multiple research studies have determined that fingerprint processing does not prevent analysts from gathering uncontaminated biological material for DNA evidence. After processing the case for fingerprints, I reprocessed the surface of the case.
9. Analysts use a procedure called ACE-V (analysis, comparison, evaluation, and verification). This method has passed peer review dozens of times in my discipline's top journals.
10. In the analysis stage, the analyst determines whether a print is of suitable quality to be analyzed and determines where on the print to begin the comparison. All of the prints I recovered were usable for further analysis.
11. In the comparison stage, the fingerprint is compared against prints gathered from suspects or from databases like IAFIS (the FBI's Integrated Automated Fingerprint Identification System). Analysts begin by examining the general type of the fingerprint using the pattern types to include or exclude prints from further

analysis. Then, within pattern types, analysts compare the minutiae of the collected prints against other prints to determine whether the two prints are from the same person. In this case, in addition to using IAFIS, I personally collected fingerprints from Avery Bancroft and Chase Covington while they were at the Midlands State Police Station.

12. In the evaluation stage, the analyst determines if two prints are from the same source (inclusion), different sources (exclusion), or whether the relationship between the two prints is inconclusive.
13. While fingerprint matching is a difficult task, the most common (and reliable) method recognized by courts in Midlands is to look at the number of points of comparison that are the same between a known print and a print collected at the scene. Typically, 16 points of comparison are sufficient for a match.
 - a. At 19 points of comparison, the prints found on the left- and right-side edges of the briefcase were consistent with the known left- and right-hand index fingers of Avery Bancroft.
 - b. At 16 points of comparison, the print found on the right-side latch was consistent with the right-hand thumb of Avery Bancroft.
 - c. At 16 points of comparison, two of the prints found on the handle of the briefcase were consistent with the known right-hand middle and ring fingers of Chase Covington.
 - d. At 16 points of comparison, the remaining print was consistent with the known right-hand index finger of Avery Bancroft.
 - e. Each of the fingerprints consistent with the known prints of Avery Bancroft was inconsistent with the known fingerprints of Chase Covington. Each of the fingerprints consistent with the known fingerprints of Chase Covington was inconsistent with the known fingerprints of Avery Bancroft.
14. Finally, in the verification stage, another analyst independently analyzes the comparisons and evaluations done by the primary examiner. In this case, the verification stage was performed by Criminalist Jules Sebastian, Sebastian agreed on all of the conclusions outlined in this previous paragraph.

Touch DNA Analysis

15. Forensic scientists have used DNA profiling to analyze physical evidence since the mid-1980s. DNA is the abbreviation for Deoxyribonucleic acid, the genetic blueprint that contains the instructions for building a living organism. Perhaps surprisingly, 99.9% percent of human DNA is the same in every individual. However, the remaining 0.1% of DNA varies widely among individuals; no two individuals—with the notable exception of identical (monozygotic) twins—have the same DNA. Hence, every person's DNA is *unique*. It is also the same in all cell types in an individual's body.
16. Over time, DNA analysis has become more and more advanced. The first DNA tests required large and visible samples, often a bloodstain left at the scene. Newer and more advanced techniques allow forensic scientists to make

conclusions from smaller and smaller samples. Touch DNA analysis demonstrates just how far this trend has come. Touch DNA is DNA recovered from the skin cells left behind when a person comes into contact with an object. A normal human sheds hundreds of thousands of skin cells every day; these cells are dead and devoid of nuclear DNA. The DNA analyzed in Touch DNA procedures comes from the hands which act as vectors for other biological material, such as saliva from wiping one's mouth, mucus from wiping one's nose, etc. Using as few as 80 to 140 cells, touch DNA techniques can recover a full DNA profile from an object or at the scene of an alleged crime.

17. A polymerase chain reaction (PCR) was used to amplify fifteen (15) short tandem repeat (STR) loci (the core genetic loci used in the United States' CODIS—Combined DNA Index System—database) and a sexing locus. PCR works by using a DNA polymerase to mirror the natural biological process of DNA replication as applied to specific DNA sequences of interest, amplifying the sample DNA to enable analysis. STR loci are tracts of short, repeated DNA sequences. The loci targeted and amplified were D3S1358, vWA, FGA, D8S1179, D21S11, D18S51, D5S818, D13S317, D7S820, D16S539, TH01, TPOX, CSF1PO, Penta D, Penta E, and Amelogenin (the sexing locus). PCR using these loci is widely used in crime laboratories across the country; these techniques were developed by molecular biologists and then adapted and applied to forensic science in the 1980s. These techniques have passed peer review thousands of times and results such as these have been deemed admissible in court in hundreds of thousands of cases in the United States.
18. For each locus, we can calculate the expected frequency of the sample's genotype in a representative population sample because each locus is independently assorted of the others and the probabilities can be multiplied together to determine the probability of the profile in a population of unrelated individuals. Put differently, the probability of flipping heads using an unweighted coin is .5, so the probability of flipping two heads in a row is $.5 \times .5 = .25$. The same rule applies across each of the 13 loci used in DNA analysis. For each locus, we are able to determine the frequency of that particular genotype in the population, and we simply multiply the 13 frequencies together to obtain the overall probability. This is called the product rule.
19. I personally obtained known samples of the DNA profiles of both Avery Bancroft and Chase Covington's buccal swabs performed at Midlands State Police Department headquarters after their arrests. Covington's step-sibling Tracey Minetos, willingly provided a sample of DNA from a buccal swab performed at the Midlands State Police Department headquarters on April 20, 2015.
20. A DNA profile was developed from the left-hand latch of the briefcase. The DNA profile obtained from this analysis was compared to all profiles contained in the CODIS database (again, the Combined DNA Index System; the FBI's national DNA database, the Midlands Forensic Casework Database (the analogous

database containing profiles of Midlands offenders), and the profiles obtained from Avery Bancroft and Chase Covington.

21. The DNA profile found from the latch matched the known DNA profile of Avery Bancroft. The probability of finding this profile in a population of unrelated individuals, chosen at random, would be less than 1 out of 22 Billion.

Hair Analysis

22. Forensic scientists analyze hairs found on objects to determine whether individuals have come into contact with those objects. For example, if a hair found on the sweater worn by a kidnapping victim matches the hair of the suspect, we have some suggestive evidence that the victim and suspect had come into contact.
23. One area of caution with hair evidence regards timing. Like both fingerprint and DNA evidence, hair evidence allows us to place an individual in contact with some object. It does not allow us to determine a precise time at which point the individual came into contact with that object.
24. The hair follicle is the bulb-like structure at the base of a hair that is normally under the skin. A shaft of hair extends out of a follicle and is visible above the skin; it is connected to the blood stream through the dermal papilla. A hair shaft has three layers. The cuticle is the outer portion of the hair, containing rather flat cells that overlap each other forming the surface of the hair. It is transparent but also gives hair its luster and shine. The cortex is the middle layer of a hair; it contains the pigments that provide hair with its coloring. The medulla is the open area at the center of a hair.
25. Hairs have a three-phase life cycle: the anagen (growing), the catagen (transition), and telogen (resting) phases. On a healthy scalp, 80-90% of follicles are in the anagen phase, 10-18% are in the telogen phase, and the remaining hairs are in the catagen phase. The average life cycle for a hair lasts about 1,000 days, with the telogen phase lasting about 100 days. On an average day, most people lose about 100 hairs from their head.
26. The first step in a hair analysis is to use a microscope to determine whether the hair is a human hair; this process is called a light microscopy analysis. Next, if the hair is from a human, we look to determine from where on the body the hair came and then look for clues about the subject's race, sex, and age. If the hair is from an animal, we determine from what species it came. Human hair differs from other types of animal hair (and types of animal hair are distinguishable by species) based on its characteristic length, shape, appearance of its root, and color, among other features, such as the width of the medulla. Hair often varies across an individual's body; for example, an eyebrow hair is markedly different

from the hair which grows from one's scalp.

27. Light microscopy is conducted using a comparison microscope—essentially akin to two microscopes set side-by-side with both samples appearing in the same field of view. The hair sample being examined is placed in one microscope stage and a known sample hair is placed in the other microscope stage. The trained analyst (in this case, me) visually compares the two hairs. The reliability of light microscopy is affected by the experience and training of the analyst, the quality of the samples, and the condition of the equipment. As a result, it is difficult to give exact probability estimates based on the comparison. Thus, I tend to use light microscopy as a preliminary analysis before performing, if possible, DNA analysis on collected hairs. I have performed over 5,000 hair comparisons using this procedure and teach it to my students. The equipment in MSCL is state-of-the-art (much better than the equipment in the teaching labs at the University), and I have been certified in this technique by the FBI.
28. I found five hairs inside the briefcase. The hairs found in the briefcase were all long, wavy brown hairs of about 12 inches in length. I analyzed each of these hairs against the full array of animal samples and am confident the hairs come from a human individual. Moreover, the class characteristics (shape, curliness, cut, and length) of the hairs provide strong evidence that the hairs are from a human subject's head.
29. Neither age nor sex can be determined definitively from a light microscopy test, but it does provide the analyst with some information. The hairs of infants are short and fine in texture, while hairs from the elderly often suffer from pigment loss (making the hair lighter in color) and changes to the configuration of the shaft of the hair, which make the hair finer and of a variable diameter. Similarly, a microscopic hair analysis tells the analyst little about the subject's sex, though cultural considerations come into play. Women often have longer hair than men, and treated (permed or colored) hair is more common in women.
30. Chase Covington and Avery Bancroft willingly provided me samples of their hair; I also received a sample from Chase Covington's sibling, Tracey Minetos, who told me that Tracey and Chase were step-siblings. I examined each of the collected hairs against those provided by Chase Covington and Avery Bancroft using light microscopy. Each of the collected hairs appeared to be consistent with the sample hairs from Avery Bancroft; in no case was a hair from the briefcase consistent with either Chase Covington's or Tracey Minetos's hair.

Mitochondrial DNA Testing

31. Light microscopy as a sole technique for hair analysis has recently fallen into disrepute, with journalistic reports going so far as to call light microscopy "junk science." To be clear, because I never worked for the FBI, no case in which I have testified was included in that study, and the testimony I have given in trial

has never been called into question.

32. In light of these critiques, I (like most forensic scientists) now view light microscopy testing as a screening test: if we can tell from the microscope that the hairs look nothing alike, there is no need to perform additional testing. If they appear to be consistent with each other, as in this case, we perform DNA testing to verify a match to the highest of scientific standards.
33. Two types of DNA analysis are appropriate for the testing of human hair: nuclear DNA testing and mitochondrial DNA testing. Nuclear DNA testing, when available, is preferable to Mitochondrial DNA testing because Nuclear DNA testing is able to distinguish far more easily among subjects. Mitochondrial DNA profiles cannot distinguish among individuals of the same maternal line (for example between a suspect and his grandmother).
34. Nuclear DNA (nDNA) testing is, as one might guess from its name, only available to the analyst when Nuclear DNA (that is, DNA from a cell's nucleus) is present. Throughout the process of hair growth, skin cells die naturally and are converted into hair through a process called cornification. As part of this process, the cell's nucleus (and the genetic material it contains) degrades. Thus, a hair shaft generally does not contain nuclear DNA. The hair root—specifically keratinocytes within the hair root—is a wonderful location for the extraction of nuclear DNA. Keratinocytes (sometimes called basal cells) are the most common type of cell in the outer layer of our skin. Even the untrained eye can generally see if the root is attached to a hair by looking for a small grayish-white ball on the shaft of the hair.
35. Mitochondrial DNA (MtDNA) testing relies on DNA located in cell's mitochondria, a part of a cell. High school biology teachers are fond of referring to this as a cell's "power plant" due to its energy-providing function. For every singular copy of nuclear DNA in a cell, there are thousands of copies of Mitochondrial DNA. MtDNA testing can be done on any hair sample, even if those hairs that were shed naturally.
36. None of the hairs collected from the briefcase had the bulb of cells at its root that we generally see when a hair is plucked (and therefore is amenable to nDNA testing). Further preliminary testing revealed that there was not enough nDNA in any of the strands of hair for nDNA testing. Hence, I conducted MtDNA testing.
37. Because STR analysis requires nuclear DNA, it is not appropriate for MtDNA analysis. To conduct MtDNA analysis, the analyst uses PCR to amplify the two hypervariable segments of the non-coding portion of the MtDNA. These hypervariable regions (HVR1 and HVR2) contain the DNA sequence that characterizes the sample. Next, the analyst performs sequencing reactions to determine the exact DNA sequence. The sequence from the sample is then compared to known samples from suspects. As discussed above, I had buccal

swabs from Avery Bancroft, Tracey Minetos, and Chase Covington.

38. Each of the 5 strands of hair had the same MtDNA profile, indicating that all five came from the same maternal lineage. The MtDNA of each of the hairs matched Avery Bancroft's MtDNA. In each instance, the MtDNA profiles of Tracey Minetos and Chase Covington were inconsistent with the MtDNA profile extracted from the hairs collected in the briefcase.
39. I also compared the MtDNA profile of Chase Covington's hair against the MtDNA profile of Tracey Minetos. Consistent with the fact that Minetos and Covington were non-biologically related step-siblings (as each indicated to me while I was collecting the buccal swabs), the two profiles were inconsistent with each other.

Chemical Comparison

40. When processing the briefcase, I noted a small, fragrant stain found on the bottom interior of the briefcase. The stain was about 1 inch in diameter and appeared to be from a clear liquid. I took a cutting of that stain for analysis.
41. The stain was analyzed using gas chromatography-mass spectrometry (GC-MS). A GC-MS test analyzes the chemical composition of a sample, yielding a pattern akin to a chemical fingerprint. That chemical composition can be compared to the known chemical composition of other substances to determine the identity of the sample substance. GC-MS testing has passed peer review hundreds of times and is the standard method used for chemical comparison in the state of Midlands.
42. The first stage in a GC-MS analysis is gas chromatography. A GS test separates the chemicals from a sample. To perform the analysis, a substance is injected into the column of a gas chromatograph which, in turn, is located in a thermostatically controlled oven which is heated to a high temperature. Once inside, a carrier gas (typically helium) sweeps the substance through the column of the gas chromatograph, and the molecules inside that substance move at different speeds based on the strength of adsorption. Because molecules move at different speeds through the column, they reach the end of the column at different times. The amount of time it takes from injection to reaching the end of the column is called retention time. If a test sample and a known sample have different retention times, they are not the same substance. If the two have the same retention time, they may be the same substance.
43. As a substance leaves the gas chromatograph, it enters the mass spectrometer. A mass spectrometer first ionizes the molecules, converting a portion to ions. Those ions are next extracted from the sample and sorted by their mass-to-charge ratio. From there, the sorted ions move to a detector which records the relative abundance of each type of ion. Often, the mass-to-charge ratio for the substance will be plotted against the relative abundance to form another graph (called a mass spectrum) which can be compared against similar data from

known substances for positive identification. Each substance's mass spectrum is unique.

44. It is possible for two molecules to have the same retention time, but it is nearly impossible for two molecules to have both the same retention time and the same mass spectrum. Hence, when the results of a GC-MS test are consistent with the patterns from a known substance, we can be at least 95% confident that the two substances are the same.
45. Unlike DNA or fingerprint analysis, there is no national database of chemical compositions. Hence, I relied on sample fragrances I collected from the homes of Avery Bancroft (one sample in a small glass vial) and Chase Covington (five samples).
46. GC-MS testing of the spill found on the briefcase was inconsistent with each of the sample fragrances recovered from Chase Covington's home. I was able to positively identify the spill as *La Nuit D'Warihay*, the sole sample recovered from Avery Bancroft's residence.

F. Reese Warren, Ph.D.

July 15, 2015

Dear Counsel for Avery Bancroft:

You asked me to render an opinion as to the extent to which the conversational strategies used by members of law enforcement followed best practices. I have completed my investigation using the information provided to me, and this document contains a full and complete accounting of that opinion based on the work that I have completed. All of my opinions are drawn to a reasonable degree of professional certainty. This report contains all of my significant observations and conclusions associated with this case. I understand that this report will be provided to both parties in preparation for trial, and that I have a duty to update this report if I receive any additional information or make any further observations or conclusions. I understand that I have an obligation to be truthful and complete in this report, and I have complied with that obligation.

Credentials

I am Neil J. Boyce Professor and Chair of the Department of Linguistics at Midlands State University. I received my Ph.D. in Linguistics from Georgetown University (where my fields were Forensic Linguistics with a cognate field in Forensic Psychology) and a B.S. in Linguistics and English from the University of North Carolina, Charlotte. My research and teaching interests involve Forensic Linguistics, a subfield of applied linguistics concerned with the application of linguistics to the law, and I have collaborated with forensic psychologists to investigate how conversational strategies affect individual behavior. I have published 37 peer-reviewed articles (in both linguistics and psychology journals), most of which concern the conduct of law enforcement officers during sting investigations and/or interrogations.

As soon as I knew I wanted to become a linguist, I knew there was no better place to research and teach than Midlands. As most people who have spent any appreciable amount of time in Midlands know, Midlanders have a number of speech patterns unique to this state. For example, many citizens have linguistic speech patterns—particularly accents—that seem to persist even after someone has lived in the state for years. Also, many people who have lived here their whole lives are uncharacteristically likely to have exotic accents.

In addition to my work at Midlands State University, my expertise has led me to a substantial partnership with the Midlands State Police Academy, where I routinely lecture to both cadets and experienced law enforcement personnel on the collection of testimonial

evidence in both interrogations and covert operations. My text *How to Talk to (Alleged) Criminals* is in its 5th edition and is a standard text at police academies nationwide, including Midlands’.

Finally, I also consult with clients who allege entrapment. I have been retained in 23 cases in which the defendant has alleged entrapment. In each of those cases, I testified on behalf of the defendant. I have never testified in court on behalf of the State in state court or the United States in federal court.

Sources

I reviewed two pieces of evidence: a tape of the March 31, 2015 conversation (a transcript of which I made and provided to counsel as part of my investigation) among the undercover officer operating under the alias “Mickey Keenan,” Avery Bancroft, and Corey Hyde (Avery Bancroft’s assistant), and a March 30, 2015 e-mail exchange between Keenan and Hyde. I reviewed the affidavits of Hyde and Keenan. I was not provided with copies of any of the other documents, including e-mail exchanges, mentioned in the affidavits I reviewed. I did not ask to interview the defendant due to potential 5th Amendment concerns. Hence, the bulk of my investigation focused upon an analysis of the March 31, 2015 conversation.

Methods

To investigate, I looked to best practices in police testimonial investigative techniques, as verified by the academic research on forensic linguistics (both my own and that of my colleagues) to determine the extent to which Keenan’s conduct aligns with those best practices. All of the best practices outlined below have been generally accepted by forensic linguists and have been shown to be effective through a variety of observational or experimental (as appropriate) studies. To determine whether these standards were met, I conducted four linguistic analyses on the transcript of the March 31, 2015 meeting: a transcript review, a topic-comment analysis, a contrastive analysis, and a response analysis.

A *Transcript Review* is exactly what it would seem to be: a linguist reads a transcript and codes for the presence or absence of a particular feature or type of conduct. There is no denying that this is a low-tech analysis. But, for many features, it is the only possible one. For example, as I describe below, one best practice in investigation is that the target’s words should be clear on the tape and not obscured by static. The only way to determine whether there is static on the tape is to listen for oneself to determine whether the conversation is obscured by ambient noise. Transcript reviews are the most popular linguistic analysis and have passed peer review innumerable times.

A *Topic-Content Analysis* is a basic linguistic accounting of the domains of conversation among the participants in the speech event. Topics of conversation are essential for analysis because they show the revealed preferences of the individuals in the conversation: generally speaking, individuals bring up topics of conversation because they want to talk about them, and individuals divert the conversation to new topics either when the topic of conversation has been exhausted or the participant desires to move to a new topic of conversation. Individuals who tend to bring up the same topics of conversation over and over reveal their more intense interest in those topics. A bevy of peer-reviewed linguistics research has used this method to discover how variations in the nature, type, introduction, and duration of topics during a speech event affect the power dynamics within a conversation.

A *Contrastive Analysis* is a systematic comparison of (traditionally) two languages to account for differences between them. The method was originally pioneered by linguists who studied second language acquisition and sought to determine why some features of languages are easier to learn than others. Today, forensic linguists have adopted the method to check for a government informant's compliance with the "coaching" of a government agent. Both in the language acquisition and forensic linguistics contexts, highly respected peer reviewed journals have published scholarship that employs this method.

A *Response Analysis* examines the reactions of an individual throughout a speech event. Again, peer reviewed studies have shown that individuals employ a number of different conversational strategies based upon their agreement with a conversational stimulus. Subjects sometimes indicate clear agreement, answering in the affirmative and pushing the conversation forward on the same topic. Conversely, subjects may express clear disagreement, plainly and verbally stating their dissatisfaction. Between those two extremes are a number of more ambivalent response strategies: changing the subject, complete non-response, or an ambiguous verbal response, such as "sure," "okay," or "uh-huh." Response Analyses examine the response strategies used by participants throughout the conversation to determine whether agreement or disagreement was fully and freely given or if it was assumed by law enforcement officers.

Conclusions

1. **Analysis of the transcript reveals that Officer Keenan followed best practices in structuring the conversation on March 31, 2015.** Linguists generally agree that the ideal sequence of conversation during an undercover operation is as follows:
 - a. Ask open-ended questions to the target in the hope that he or she will provide—relatively unprompted—evidence of his or her own guilt.

- b. Drop hints of the illegal conduct in the hope that the target will latch onto those hints and implicate him or herself in the criminal act.
- c. If criminal conduct has already occurred, prompt the target to tell a story recalling the events surrounding the alleged criminal act in the hope that he or she will implicate himself or herself in criminal conduct.
- d. Ask a clear, unambiguous (typically closed-ended) question asking the target whether or not he or she is willing to engage in (or has engaged in) the criminal conduct at issue. In other words, when all else fails, ask the target if he or she has engaged in or will engage in criminal conduct.

Put simply, an undercover operation should (1) allow the target to control the topics of conversation and (2) allow the target to implicate him or herself.

A simple transcript analysis reveals that Keenan and Hyde began the conversation according to point (a), by asking open-ended questions. Indeed, Keenan's first two substantive questions are classic open-ended questions: "What are you thinking?" and "What sort of amenities are you thinking?" These are exactly the sorts of questions that research has shown open up the conversation and put participants on equal footing.

Then, Keenan gradually moves the conversation toward (b) above: subtle hints—by first asking an open-ended question ("What are you willing to do to make this happen?") before telling Bancroft, "You will definitely need to make Chase happy" and "You'll need to pitch more than ideas." By beginning with open-ended questions and gradually dropping hints of illegal conduct, Keenan engages in the exact conversational sequence we hope our law enforcement officers use in practice.

2. **Keenan and Hyde limited their use of conversational strategies shown by research to induce criminal conduct in unwilling targets.** The scholarly literature has identified a number of potential actions that law enforcement or their surrogates can take that tend to induce criminal conduct in targets that would otherwise be less likely to engage in such activities. Below, I outline the ten most important, explaining how they apply in this case, in some instances outlining the additional linguistic analyses I performed to determine the extent to which law enforcement's conduct in this case matched best practices.

- a. ***Interrupting the Target.*** Often, when law enforcement officials and their allies are trying to induce targets to take part in criminal conduct, they will interrupt the target as s/he is about to express disagreement with their offer of criminal conduct. These interruptions have the effect of masking the target's reluctance on the taped conversation because that reluctance cannot be heard. Similarly (and more obviously), when multiple people are talking on the tape, it can be difficult to attribute words and phrases back to individuals, increasing the risk of error in the transcript making process. There are two interruptions on the tape, neither of which is Keenan interrupting Bancroft. In one instance, Hyde interrupts Bancroft to discuss "sweeten[ing] the pot" (a potential concern, as explained below). In the second, Keenan interrupts Hyde to provide a date.

- b. ***Speaking on Behalf of the Target.*** Similarly, another tactic that law enforcement officers sometimes take is to answer on behalf of a target in an attempt to make it seem as if the target has acquiesced to the inducement when the target, in actuality, has not. In the transcript, there is one instance of Hyde speaking on behalf of Bancroft. At one point, Hyde asks “Who do we need to make happy?” in response to Keenan’s statement that Bancroft needs to “make sure everyone is happy.”
- c. ***Using Ambiguous Language.*** Another law enforcement strategy is to use pronouns to obscure the object (criminal conduct) of the investigation. For example, law enforcement officers may repeatedly refer to “doing it” rather than actually naming the criminal conduct at issue. In the transcript, there is no evidence that Keenan or Hyde engaged in this practice.
- d. ***Manipulating the Tape.*** Beyond the verbal obstructions to the tape denoted by practices (a), (b) and (c) another set of physical practices can also lend the appearance of acquiescence. First, the individual who is wearing the wire may create static to drown out portions of the conversation, either to mask part of the conversation or to create the illusion of the target’s acquiescence. Second, sometimes the individual wearing the wire will actually physically manipulate whether or not the tape is recording so that unhelpful parts of the conversation are omitted. I personally examined the audio file, finding that it was recorded in one take. There was some static, however, on the tape at a potentially crucial moment. From my review of the affidavits, there appears to be some discrepancy over what was said during the static. I am unable to determine whether the static was there because Hyde simply shifted position and accidentally bumped the microphone or if Hyde did so purposely to create static and obscure that portion of the conversation.
- e. ***Controlling the Flow of the Conversation.*** As discussed above, the best practice in undercover operations is to use open-ended questions wherever possible to allow suspects to incriminate themselves. Beyond that, law enforcement officials should take care not to dominate the conversation by continually bringing it back to topics that the target finds objectionable. To this end, I performed a Topic-Content Analysis. In egalitarian discussions (think of a first date or a cocktail party), individuals tend to bring up the same number of topics; in hierarchical conversations (think of a job interview), one person tends to dominate the introduction of topics. For example, in an analysis of FBI conduct in ABSCAM, Roger Shuy, a renowned forensic linguist, argued that the FBI’s conduct constituted entrapment based on a topic analysis that found that the target of the investigation introduced less than 25% of all topics in a conversation and further that 60% of the topics introduced by the target were simple requests for information.

In the Topic-Content Analysis, I was interested in (a) the number of topics introduced by each participant and (b) the extent to which law enforcement returned to topics multiple times.

	Keenan	Bancroft	Hyde
Introductions	X		
Casino Specifics	X		
Two Licenses	X		
"Sweeten the Pot"			X
Swing Vote		X	
Bids Due		X	
Next Meeting		X	

As the table above demonstrates, there were 7 total topics in the conversation, with Keenan and Bancroft each introducing 3 topics. Overall, Keenan tended to introduce topics at the beginning of the conversation while Bancroft introduced topics at the end. Keenan never returned to a topic, per se, though Keenan did remind Bancroft at the end of the conversation that Bancroft needed "to make Chase happy." Still, this conversation does not appear to be overly controlled by law enforcement.

- f. ***Coaching Informants.*** Law enforcement officials may attempt to "coach" informants or other cooperating personnel by providing them with scripted words and phrases that they should use to move the conversation along. In this case, coaching was a concern because of an e-mail exchange between Hyde and Keenan the day before the meeting in which Keenan did provide Hyde with suggested phrases and topics of conversation that Hyde could use during the meeting.

Hyde spoke 7 times during the meeting. Two of those contributions to the conversation appear to follow directly from an e-mail Hyde received from Keenan the day before the meeting. For example, in the e-mail, Keenan tells Hyde "At some point, you might want to suggest that Avery should do something to sweeten the pot." During the conversation, Hyde *interrupts* Bancroft to say, "I think what they want to know is whether you'll do anything to sweeten the pot." Similarly, Keenan told Hyde, "we need to make sure Avery realizes that, to get this done, someone needs to be made happy and that person is Chase Covington." During the conversation, Hyde asks Keenan, "Who do we need to make happy?" before Keenan pivots off that phrase, repeating it multiple times. This is textbook coaching.

- g. ***Ignoring Unwilling Conduct or Actions.*** Law enforcement officials sometimes induce criminal conduct by repeatedly returning to an exhausted topic in the hope that the target will eventually relent and either admit to criminal conduct or agree to participate in criminal conduct. To examine this possibility, I performed a response analysis of Bancroft's replies to statements made by the other participants in the conversation. Throughout, Bancroft answers with clear statements of agreement ("Great" and "Ok, I can

do that”). Moreover, Bancroft never uses any negative language to indicate reluctance with the plan as outlined by Keenan.

- h. ***Using Ambiguous Responses as “Yes.”*** Individuals indicate agreement in a variety of verbal and nonverbal ways: by saying yes, nodding their heads, or by making other positive statements. Yet conversations are also peppered with other, more ambiguous, responses to stimuli, such as “sure,” “okay,” or “uh huh” that may seem like affirmative responses but are actually more ambiguous. Law enforcement officials sometimes take ambiguous responses as affirmative responses in an attempt to push the conversation forward and induce the target into criminal conduct. In this case, as noted in part (g), response analysis indicates that Bancroft’s responses were uniformly affirmative; Bancroft gave no ambiguous responses to the inducement.
 - i. ***Inaccurately Restating the Target’s Answers.*** In an attempt to induce targets, law enforcement officers sometimes inaccurately restate the target’s prior words in an attempt to make the target believe s/he had already agreed to something that, in fact, s/he had either refused or was ambiguous toward. Such manipulation of the conversation has the consequence of twisting the target’s words, confusing the target, and making the target more likely to comply with the inducement set forth by law enforcement. Here, response analysis indicated that, because Bancroft was so uniformly positive during the conversation, there were no negative or ambiguous answers for Keenan or Hyde to misstate.
 - j. ***Lying to the Target.*** Law enforcement officials sometimes lie to targets, for example telling them that they will go to jail if they do not comply. In most circumstances, this can cause serious problems since it is typically a strong inducement to participate. However, there is no evidence that either Keenan or Hyde lied to Bancroft about crucial information during this conversation.
3. **I have no opinion about whether the police’s conduct rises legally to the level of entrapment.** I can only speak to my expertise as it relates to linguistic communication. An ultimate conclusion about the totality of the police conduct is for someone else.

Signed:

F. Reese Warren

F. Reese Warren

Addendum (August 11, 2015):

On June 1, 2015, I was contacted by attorneys for Bancroft to determine whether or not the conduct of the Midlands State Police Department rose to the level of entrapment. Bancroft's attorneys agreed to pay me a flat rate of \$10,000 for this initial analysis. On July 17, 2015, I met with Bancroft's attorneys and provided them with a report (the above document), which discussed my conclusion that the MSPD's conduct was reasonable. Bancroft's attorneys compensated me and told me they were uninterested in retaining my services further.

I was initially listed by defense counsel as a witness for Bancroft, and my report was provided to prosecutors during reciprocal discovery. I was later informed by Bancroft's counsel that they did not need my assistance and I would not be testifying on Bancroft's behalf at trial. A few days later, I was contacted by prosecutors from Polk County, Midlands about testifying based on the report they were provided. I did not perform any additional analysis at this time. The only additional compensation I have received is a \$500 retainer from the Breckenridge County Attorney's office, which they paid me on August 10, 2015. I do not expect any additional payment for my testimony in this case, should I be called to testify.

Signed:

F. Reese Warren

F. Reese Warren

Audit Report of J.D. Lorean
Case Ref: Midlands Casino Bribery Case
July 15, 2015

1 Case Objectives

- 1.1 We have been retained for two purposes: (1) provide an expert opinion about procedures used by the Midlands State Police Department's (MSPD) investigation that led to the arrests of Avery Bancroft and Chase Covington on bribery charges; and (2) provide an expert opinion about Mickey Keenan's investigation in light of our 2014 MSPD Undercover Guidelines Audit.
- 1.2 We were contacted by defense counsel in May 2015. The attorney explained that our former client MSPD had recently arrested Avery Bancroft and Chase Covington on bribery charges after an undercover operation led by an officer using the alias "Mickey Keenan."¹ The attorney further explained that our services were of particular interest given our findings during our 2014 MSPD Undercover Guidelines Audit ("2014 Audit"). While access to those findings was originally restricted, there is no escaping the fact that a leak occurred and that BNN made our private audit results very public. I agreed to look into this case; while my main focus would be on the undercover protocols used by Mickey Keenan, I did agree to give my expert opinion on MSPD's entire investigation into Avery Bancroft and Chase Covington and whether MSPD's investigation complied with all relevant administrative guidelines and laws. I was candid with the attorney that I believed this would be a quick investigation, as MSPD had assured me in 2014 that moving forward all of its undercover operations would be in strict compliance with our 2014 Audit's findings.
- 1.3 Greylord Strategies charged our standard rate of \$500/hour in this case for our investigation and for authoring this report. Defense counsel was billed for 40 hours of work and agreed to pay our standard additional fee of \$10,000 for travel expenses and time if I am called to testify at trial.
- 1.4 This report contains all of my conclusions associated with this case. I understand the rules of criminal procedure and further understand that this report will be provided to both parties in preparation for trial. I am aware of my duty to update this report if I receive any additional information or make further observations or

¹ I am aware that "Mickey Keenan" is an alias. However, in order to protect Officer "Keenan's" true identity and family, I will use that moniker in my report. My investigation into "Keenan's" training and certification were done using "Keenan's" legal name. I have signed a confidentiality agreement with MSPD re: "Mickey Keenan's" true identity and will not release that information even if called to testify.

conclusions relevant to this case. I fully understand that I have an absolute obligation to be truthful and complete in this report, and have complied with that obligation in full. All of the conclusions contained in this report are professional conclusions drawn to a reasonable level of certainty based on the accepted standards in my field.

2 Auditor's Qualifications

- 2.1 I have a Bachelor of Science in Applied Mathematics and Statistics from Johns Hopkins University, a Juris Doctor from the University of Virginia School of Law, and a LL.M from Harvard Law School.
 - 2.2 After receiving my LL.M., I worked with the White Collar Crime division of the Federal Bureau of Investigation for 25 years. I was part of hundreds of undercover operations involving bribery, gambling, drug trafficking, insider trading, and extortion as both an investigator and senior agent. I was later involved in implementing the Attorney General's Guidelines on Undercover Operations and was a witness in the congressional hearings that followed.
 - 2.3 For the past five years, I have been the owner and chief auditor for my company, Greylord Strategies, Inc. My company consults with the federal, state, and local police agencies on proper undercover protocol and other police investigation strategies and techniques.
 - 2.4 I have written fifteen law review articles. This research has involved white collar crimes, defenses to white collar crimes, and Fourth Amendment jurisprudence. Five of my published articles focused specifically on entrapment, the character traits of informants and their predisposition for criminal behavior, and the importance of protecting informants from inducement. With two colleagues who are forensic psychologists, I have brought my experience on police procedure to bear on their knowledge of social psychology to publish two peer-reviewed articles on cognitive biases in forensic testing.
 - 2.5 I am licensed to practice law in the State of Maryland and the Commonwealth of Virginia. I am also licensed to practice law in the United States District Court for the District of Columbia.
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3 Relevant Data and Procedures

- 3.1 All of the documents I received about the current bribery charges were collected via public records requests with the Midlands State Police Department. None of the officer certifications, police reports, or other court documents was obtained from defense counsel.
- 3.2 The audio files and transcripts of the recorded conversations between Keenan, Bancroft, and Hyde, as well as a wiretapped conversation among Bancroft and Covington, were obtained from defense counsel. None of the audio files appeared to have been altered in any way.
- 3.3 All of the information related to MSPD's undercover investigative procedures prior to this bribery investigation was collected as part of the 2014 Audit conducted by Greylord Strategies, Inc. None of the information is privileged in nature. Furthermore, as mentioned previously, the 2014 Audit was leaked to the press in its entirety and received considerable news coverage by Reagan Thomas and BNN.
- 3.4 Affidavits and reports for Mickey Keenan, Corey Hyde, and Pat Sikorsky were obtained from defense counsel. I also reviewed all of the e-mail correspondences among Corey Hyde, Mickey Keenan, Avery Bancroft, and Chase Covington.
- 3.5 I began my investigation by reviewing Greylord Strategies' recommendations in our 2014 Audit report. All of the findings in that report were done in compliance with procedures and standards in my field. My assessment mirrors the guidelines used by the FBI and those recommended by the United States Attorney General.
- 3.6 I requested an interview with Chief Francis Kimball at MSPD in order to update my 2014 Audit findings with MSPD's current practices. I assumed that they had implemented our recommendations as promised and were in strict compliance with the Audit. My request was denied. Therefore, for the purposes of this report, I assumed that MSPD's new administrative guidelines for undercover operations were in strict compliance with the recommendations in the 2014 Audit and, therefore, in strict compliance with the Attorney General's Guidelines for Undercover Operations.
- 3.7 In my opinion, I had sufficient information to assess whether Mickey Keenan's undercover investigation was compliant with departmental guidelines and best practices in the field.
- 3.8 At the request of defense counsel, I also examined MSPD's procedures for evidence collection, interrogation, and officer training in this case. The information provided to me—either via public records request, Greylord's prior audit, or defense counsel—was sufficient to offer an opinion related to this case in particular; however, my opinion should not be taken as an audit or assessment of MSPD's practices in these areas as a whole.

4 Relevant Conclusions from 2014 Audit of MSPD's Undercover Investigations

- 4.1 Compliance Benchmark: U.S. Attorney General's Guidelines on Undercover Operations
 - 4.1.1 After Congress and the media were critical of the FBI's ABSCAM undercover operation in the early 1980s, the U.S. Attorney General's Guidelines on Undercover Operations ("Undercover Guidelines") were revised, and have been the benchmark across the nation for undercover operations ever since. The use of undercover techniques is heralded in the Undercover Guidelines as "essential to the detection, prevention, and prosecution of white collar crime, public corruption, terrorism, organized crime, the war on drugs and other high priority areas of investigation across the nation."
 - 4.1.2 High priority white collar crimes such as bribery, gambling, drug trafficking, tech-crimes, and insider trading often require undercover work because they are so-called consensual crimes. In other words, the crime has a willing participant on each side; no actors are being coerced or victimized. In such cases, it is often difficult to find willing material witnesses who would still have credibility with the jury and could survive a likely brutal cross-examination by a defense attorney.
 - 4.1.3 Through the use of undercover techniques, the prosecutor's office can rely on the credible testimony of law enforcement officers and usually an unimpeachable video or audio recording of the defendant caught red-handed. These techniques are also helpful in avoiding issues of mistaken identity, obstruction of justice, vindictive witnesses, and perjury designed to blame an innocent party.
 - 4.1.4 Despite all of these benefits, undercover operations carry a lot of serious risks as well. The most common risks are threats to civilian lives, threats to civilian property, infringing on civilians' privacy rights and civil liberties, compromising law enforcement agents and their families, and even exposing law enforcement agents to criminal charges themselves. Perhaps the most significant risk from any undercover operation is when an officer uses techniques that create crime where none would otherwise have existed—to wit: entrapment.
 - 4.1.5 According to the Undercover Guidelines, any agency using undercover techniques must take steps to minimize the following risks:

- Dangers to agent safety;
- Damage to public institutions through manipulation of, or interference with, political and administrative processes;
- Injury to the targets of undercover operations by needlessly harming their reputations;
- Improper execution of the undercover operation that establishes a defense to prosecution, such as entrapment or outrageous government conduct; and
- Damage to third parties, such as financial loss and criminal victimization caused by the undercover operation's generation of crime.

4.1.6 Failing to adhere to the Undercover Guidelines is not only a violation of the administrative standards and an example of seriously flawed police work, but it also can create serious room for reasonable doubt to creep into the minds of the jurors. It's not uncommon for a jury panel to be polled after a not guilty verdict and state, "If the officer didn't follow her own rules here and there, what's to say she ever played by the book?" or "Why should we trust what the officer said, when he won't listen to his department's rules?" etc.

4.2 Classifying Undercover Operations (UCO)

4.2.1 Authority level and approval processes are prescribed in the Undercover Guidelines based on the type of undercover operation proposed. Undercover operations are classified into two different categories: **Group I** and **Group II**.

4.2.2 **Group I UCO** must be approved by the highest level of authority within an agency. For example, in the FBI, Group I UCO must be approved by FBI Headquarters; and if the UCO involves "sensitive circumstances" joint-approval shall be obtained from the FBI and the Department of Justice. A Group I UCO always involves "sensitive circumstances" or "fiscal circumstances." Examples of operations that are classified as Group I UCO include those with any of the following characteristics:

- Investigations of possible criminal conduct by an elected or appointed official, or political candidate for a judicial, legislative, management, or executive-level position of trust in a federal, state, or local governmental entity;

- Investigations of any public official at a federal, state, or local level in any matter involving systemic corruption of any governmental function;
- Investigations which engage in activity having a significant effect on or constituting a significant intrusion into the legitimate operation of a federal, state, or local governmental entity;
- Investigations which include the establishment, acquisition, or operation of a proprietary business;
- Investigations in which law enforcement provides goods or services that are essential to the commission of a crime and that are reasonably unavailable to a subject of the investigation except from the government;
- Investigations including activities by an undercover employee that is proscribed by federal, state, or local law as a felony or that is otherwise a serious crime;
- Investigations which require the purchase or lease of property, equipment, buildings, or facilities; the alteration of buildings or facilities; or prepayment of more than one month's rent;
- Investigations which require the deposit of appropriated funds or proceeds generated by the undercover operation into banks or other financial institutions; and
- Investigations which use the proceeds generated by the undercover operation to offset necessary and reasonable expenses of the operation.

4.2.3 The Undercover Guidelines expressly require that an application be completed in order to conduct a Group I UCO. The Undercover Guidelines further require that the application include: a description of the proposed objective, scope, duration, and cost of the operation; if the operation involves "sensitive circumstances" and not just "fiscal circumstances," how the operation merits approval in light of the involvement of "otherwise illegal activity" ("OIA"); procedures to minimize the acquisition, retention, and dissemination of any information which does not relate to the matter under investigation; and an explanation of how potential constitutional or other legal concerns are being addressed. Finally, the application must include a letter from the prosecutor's office in the jurisdiction that the operation will occur stating

that the prosecutor's office has reviewed the proposal and agrees with the proposal, that the proposal is legal, that the office will prosecute any meritorious cases, and that the office has had a finding that the potential benefits in detecting, preventing, or prosecuting criminal activity outweigh any direct costs or risks of other harm.

- 4.2.4 The Undercover Guidelines also enumerate the limited circumstances that an undercover employee may participate in OIA ("any activity that would constitute a violation of federal, state, or local law if engaged in by a private person acting without authorization"). Any OIA must be approved by an upper-level officer of the law enforcement agency conducting the undercover operations.
- 4.2.5 To avoid entrapment of innocent parties caught up in undercover operations, the Undercover Guidelines require that the following special findings be made, and documented, by an upper-level officer of the agency:
- The illegal nature of the activity is reasonably clear to potential subjects;
 - The nature of the inducement is justifiable in view of the character of the illegal transaction;
 - There is a reasonable expectation that offering the inducement will reveal illegal activity; and
 - There is either a reasonable indication that the subject is engaging, has engaged, or is likely to engage in the proposed or similar illegal activity, or
 - The opportunity for illegal activity has been structured so that there is reason to believe that any persons drawn to the opportunity or brought to it are predisposed to engage in the contemplated illegal conduct.
- 4.2.6 **Group II UCO** are undercover operations that do not require high-level approval. For example, an immediate supervisor can approve Group II UCO. Group II UCO are any operations that are not Group I UCO; in other words, a Group II UCO is any operation that does not have "sensitive circumstances" or "fiscal circumstances."
- 4.2.7 Approvals of Group II UCO require a written determination which must: reference the facts and circumstances indicating that initiation of the undercover operation is warranted under departmental guidelines; demonstrate that undercover operations appear to be an effective means of

obtaining evidence or necessary information; ensure that the operation will be conducted with minimal intrusion to civilian rights and property; and confirm that approval for the use of confidential informants (“CI”) was obtained in accordance with departmental policies.

4.3 MSPD’s 2014 Audit

4.3.1 MSPD hired Greylord Strategies to assess its undercover operations in 2014. Most of the country adopted the Undercover Guidelines in its entirety in the early 1990s. Based on my audit of MSPD’s policies, MSPD adopted the Undercover Guidelines in 2010 after corruption and murder in a local election made national headlines and embarrassed the agency.

4.3.2 With all due candor, the audit of MSPD was shocking. Despite “adopting” the Undercover Guidelines in 2010, between the years of 2010 to 2014, MSPD’s greatest undercover operation was keeping the Guidelines hidden in the shadows.

4.3.3 As part of our audit we asked the following questions:

- Were the initiations of undercover operations authorized?
- Were authorizations to extend undercover operations obtained?
- Were authorizations to conduct interim or emergency undercover operations obtained in accordance with the Undercover Guidelines?
- Were unforeseen “sensitive circumstances” that developed during undercover operations addressed?
- Were written authorizations from the appropriate prosecutors’ offices obtained?
- Was OIA properly authorized and adequately described?
- Did MSPD management adequately supervise the undercover operations?
- Were undercover employees prepared in accordance with the Undercover Guidelines?
- Did MSPD management view the conduct of the undercover employees as required?
- Were undercover operations appropriately classified as Group I UCO and Group II UCO?

4.3.4 **Findings:** Of the 40 undercover operations, which was a normal number for an agency of this size in a state with Midlands’ population (although we did note that operations seemed to spike in two-year cycles), we identified authorization-related errors in 28 cases, or 70 percent. Twenty

undercover operations, or 50 percent, had at least a single violation of the Undercover Guidelines. In five of the cases, the requisite approval was not obtained for operations involving “sensitive circumstances.” Five cases were identified where the prosecutor’s office was not contacted before operations were finished and an arrest was made. Finally, in eight cases, OIA was not properly authorized. A survey found that 80 percent of those responding reported that their division did not maintain records as required by the Undercover Guidelines.

4.4 Recommendations made in Audit

4.4.1 Obviously, serious work was needed for the MSPD to be compliant with the Undercover Guidelines. Some of the more urgent recommendations were as follows:

- Document the training of undercover law enforcement officials and confidential informants;
- Document communications between undercover employees and informants, especially when risk of OIA or inducement exists;
- Strictly adhere to the Undercover Guidelines for all Group I UCO and Group II UCO documentation and authorization guidelines; and
- Make sure the prosecutor’s office approves of all operations before they commence.

4.4.2 Our 125-page report was submitted on November 8, 2014. The above-referenced press leak occurred in early December 2014.

5 Conclusions re: 2015 casino bribery case

5.1 Brief Synopsis of Case

5.1.1 According to the affidavit of Mickey Keenan, the Bancroft-Covington undercover operation (“BCUO”) was ongoing from July 1, 2013 until arrests were made on April 17, 2015. In short, Keenan used OIA and utilized Corey Hyde as an informant to gather evidence of political corruption by Avery Bancroft and Chase Covington.

5.1.2 BCUO was without question a Group I UCO; it involved “sensitive circumstances” and “fiscal circumstances.”

5.2 Concerns re: Mickey Keenan's BCUO Investigation

- 5.2.1 Training: Despite MSPD agreement to be compliant with the Undercover Guidelines and use the best practices within the law enforcement field, I was unable to locate any significant information regarding Mickey Keenan's training. I presume Keenan went to the police academy; however, beyond the most basic of training required of a law enforcement officer, the cupboards were bare. Contrary to the Undercover Guidelines, MSPD failed to document any training that Keenan received regarding proper documentation for undercover operations, the proper implementation of the Reid technique², or how to properly handle OIA and avoid inducing criminal activity in otherwise innocent parties. It appears that all of Keenan's training was learned in the field through trial and error.
- 5.2.2 Undercover Guideline Compliance: After a very thorough search, my investigation uncovered zero authorization documents for the BCUO at the Black Bear or for the operations conducted at the Midlands Gambling Commission. The Polk County District Attorney J. F. Glinka did not approve Mickey Keenan's undercover tactics prior to the operations beginning; she also indicated that until MSPD officers asked her office about warrants in April 2015, she had no knowledge of an undercover operation involving Keenan, Bancroft, and Covington. My investigation also produced zero documents that Keenan created documenting Keenan's interactions with Hyde, Bancroft, or Covington. If my assumption is true that MSPD implemented the recommendations contained in our 2014 Audit, this investigation is hopefully an outlier; the operation, after all, did begin prior to my firm's 2014 recommendations. BCUO was compliant with the Undercover Guidelines in so far as Keenan received authorization from Chief Kimball prior to starting the operation.
- 5.2.3 Entrapment: My investigation of Keenan's techniques during the BCUO raises serious concerns that some of the criminal activity reported was induced by Keenan. In Keenan's affidavit, Keenan is quite candid about

² The "Reid technique" is an interrogation technique trademarked and promoted by John E. Reid and Associates. The premise behind the technique is that the more comfortable the interrogator makes the suspect, the more likely the suspect is to confess. Loaded questions and psychological constructs to justify the suspect's actions are used throughout the process. Little is off-limits (e.g. lying is encouraged) for the interrogator; of course, this does not mean that physical harm or the threat of harm may be used. The nine steps are as follows: (1) direct confrontation; (2) shifting blame to another party; (3) discouraging a denial of guilt; (4) extracting excuses for lack of guilt; (5) reinforcing sincerity; (6) guiding conversation towards alternatives; (7) posing alternative scenarios; (8) repeating an admission of guilt; and (9) recording a confession. The technique is not without its staunch critics, especially in Europe; however, the technique is extremely popular in law enforcement agencies in North America and the industry-standard technique for questioning suspects and obtaining confessions.

the coercive techniques used both to bring Hyde in as an informant in March 2015 and then to keep Hyde in that role in April 2015. Keenan's lack of formal training in the Reid technique and in undercover operations clearly caused Keenan to violate the Undercover Guidelines. Keenan's interactions with Avery Bancroft also raise red flags. Keenan failed to obtain the requisite special findings and documentation required by the Undercover Guidelines to avoid entrapment of innocent parties. There was no documented evidence that there was a reasonable indication that Bancroft was engaging, had engaged, or was likely to engage in a bribery scheme, or evidence that Bancroft was predisposed to engage in the bribery scheme. The bribery scheme was entirely thought up and implemented by Keenan.

- 5.2.4 Predisposition: While Mickey Keenan's affidavit references rumors and innuendo, it fails to properly document character traits that would aid the District Attorney in proving Bancroft's predisposition to commit criminal acts.

5.3 Concerns re: evidence collection, interrogations, and officer training

- 5.3.1 Aside from Mickey Keenan's BCUCO, defense counsel also asked me to evaluate the other investigative techniques used by MSPD.
- 5.3.2 While the interrogations were extremely short in this case, I was unable to find any certifications for the officers involved. Typically interrogation officers are certified in the Reid technique to ensure that no false confessions are obtained. I cannot state with any certainty that the interrogations in this case were in violation of any guidelines, but it is important to note the omission of formal certification documents.
- 5.3.3 While I am not a scientist by trade, I have participated in a number of audits for police-related forensic labs and, in the process, have become familiar with proper forensic protocols as they pertain to evidence collection. All of my training is textbook training; I have never actually collected a piece of evidence nor am I qualified to. My expertise is entirely based upon helping departments devise proper protocols. Most recently, I worked with the FBI to clean up some of the erroneous convictions from flawed forensic analysis testimony.
- 5.3.4 Specifically, I have worked with the FBI to create new protocols to decrease the possibility of tampering with evidence during collection and during storage while awaiting trial.
- 5.3.5 Given MSPD's abject failure at properly maintaining documents, I have concerns regarding the chain of custody and preservation of evidence in

the case. It's highly likely that no errors were committed in the storage and maintaining of evidence; however, I cannot confirm that statement with any reasonable degree of certainty. The evidence was originally collected following standard protocols in our field and still remains in the evidence locker or at the lab. But aside from those facts, I have no information on what has happened between the time of collection and today.

5.3.6 While it is not noted in Pat Sikorsky's official report, even the FBI has fallen victim to overstating the reliability of forensic science. Even larger concerns exist in this case as my investigation uncovered that the lab used by MSPD receives a portion of the court costs, above and beyond restitution for lab fees, for any conviction in cases where their technicians testify. This significantly alters the incentive structure for criminalists, as their lab stands to literally profit off of convictions. This has caused criminalists in some labs to cut corners and take shortcuts, resulting in innocent people going to jail. The problem isn't that criminalists purposely lie—instances of that happening are quite rare—rather, the real worry is unconscious bias, wherein criminalists subconsciously interpret the evidence to fit their preexisting theory while simultaneously discounting evidence that is inconsistent with their beliefs. To be clear, while this has been a national problem, I have no evidence that this incentive altered the behavior of the criminalists, including Sikorsky, in this case.

5.3.6.1 Someone doesn't need a science degree to understand that hair analysis that uses only a light microscopy technique—which is basically just looking at two hairs in a microscope to see if they look the same—is flawed. Hair sample analysis was found by the National Research Council to have “no scientific support” and “no uniform standards” to positively identify a suspect. The NRC went so far as to say, that, at best, light microscopy analysis can rule out a suspect, or identify a wide class of people with similar characteristics. Relying solely on light microscopy hair analysis is a suspect police practice.

5.3.6.2 Indeed, comparative analyses like hair analysis and fingerprint analysis are the very reason courts have the junk science rule and why expert witnesses now must satisfy a judge that their methods are reliable. Unfortunately, the courts have largely ignored the guesswork offered as fact (and the accompanying unconscious biases) because the witness works in a lab, uses scientific terminology, and the judge does not want to admit that he or she has no clue what the technician is talking about.

The British accents and bow ties only create more faux-credibility issues. Though some studies—including one conducted in part by the FBI—show that fingerprint analysts shown the same fingerprints concur on whether or not there is a conclusive match over 99% of the time, others have highlighted the role that unconscious biases can play in these evaluations. In one study, criminalists were shown fingerprints they had analyzed earlier in their careers, reversing their judgments in nearly 20% of cases.

- 5.3.6.3 DNA analysis, both of hair and of other types of evidence, has proven more reliable than light microscopy and fingerprint analysis. Because every individual has a unique DNA profile, the use of DNA evidence stands to improve the usefulness of forensic evidence in the courtroom because it was once thought to completely eliminate the guesswork (and unconscious biases) that plagues the comparative analyses just discussed.
- 5.3.6.4 Moreover, advances in DNA evidence collection means that analysts have become increasingly able to rely upon smaller and smaller samples from which to extract DNA. Yet, with such precision comes a price. In many—but not all—cases, the presence of only a few cells means that the contact of that individual with that object was fleeting and increases the risk of false positive, that is, a criminalist may misuse a positive match by indicating an individual was involved with a crime when she may have merely come into contact with a surface inadvertently well before the crime had been committed.
- 5.3.6.5 The fundamental issue with any forensic analysis is that the evidence can tell us something, but what that something means is always open to interpretation. For example, we can now analyze small numbers of cells from an object, but when only a few of Person A's cells are found on steak knife and Person B was stabbed to death, does that mean that Person A used that steak knife to stab Person B or that Person A and Person B had a nice steak dinner and just didn't wash the knife very well? The answer to that question depends on context, and that context is often open to interpretation. That interpretation depends on one's unconscious biases.
- 5.3.6.6 DNA evidence has not lived up to the hope that it could eliminate all unconscious bias in the analysis of forensic

evidence. Indeed, in 2002, the FBI published a report on its DNA testing of hair samples, disclosing that FBI criminalists reported false hair matches in more than 11% of cases. In the District of Columbia alone, five of the seven defendants who were convicted, in part, on the basis of flawed FBI hair DNA analysis were exonerated.

- 5.3.6.7 All of these issues are compounded by the fact that many types of forensic evidence, including the hair and fingerprint analyses performed by Sikorsky in this case, are unable to, by themselves, pinpoint a timeline. Thus, while a hair might be found at a crime scene, the analyst often cannot know whether that hair was left recently or had been at the scene for days, weeks, or even years.
- 5.3.6.8 Standards for how analysts should testify about their findings are not uniform and do not exist in most jurisdictions across the country, including Midlands. Here, the worry is that, when asked to explain their testimony, these unconscious biases will lead criminalists to be overconfident in their findings in an attempt to weather a difficult cross examination thus leading jurors to the impression that the forensic evidence is stronger than it actually is. The FBI did not create even basic standards for testimony until 2012.
- 5.3.6.9 This overconfidence is a serious problem. In a 2015 report which examined trials in which the FBI laboratory provided microscopic hair comparison testimony, the National Association of Criminal Defense Lawyers and the Innocence Project concluded that 26 of 28 criminalists overstated forensic matches in ways that favored prosecutors. These overstated results occurred in 95% of the 268 trials reviewed by these organizations. These cases include 32 cases in which the defendant was sentenced to death and 14 in which the defendant has already been executed. Of course, the fact that an analyst overstated testimony does not necessarily mean that the defendant was innocent or that there was not other evidence—forensic or otherwise—supporting the guilty verdict. It is also important to note that the NACDL study examined only testimony as it relates to light microscopy hair analysis rather than forensic analysis writ large.



Yes = ~~\$150K~~
\$250K

Wiretap Transcript

Date: April 15, 2015

Time: 9:33am

Covington: Hello?

Bancroft: Hello, Chase. This is Avery Bancroft. I wanted to call you to follow up about the meeting we had yesterday. You ran out so quickly that I felt like we didn't have a chance to discuss specifics.

Covington: That's great. Thanks for calling. Do we need to schedule another meeting with Mickey Keenan?

Bancroft: I don't think so. We've been doing this kind of thing a long time. There's no need for a middleman. I mean, it doesn't take Mickey to clue me in that sometimes you have to get your hands dirty to get things done in Midlands.

Covington: Yeah, just look at what happened to Elizabeth Ginger. Max Heisman was a real dog.

Bancroft: No kidding, I just usually don't have to do it under the table--

Covington: Hold on a second, someone just walked in. Hey, what do you need? Sign where? I'm on the phone. What is this for? I mean, can't we just say this is signed? That's what we usually do. Knock before you come in next time.

What? Yes, I do know what I want for lunch. I want a large non-fat no-whip caramel macchiato from that coffee place on Main. And then I want a chef salad from the deli with just the lettuce and cheese and, um, poppyseed dressing. And I want a cookie. But not from the deli. Go to UnCommon Cookies and I want a Snickerdoodle, but make sure it isn't overbaked. Sometimes they do that and then the cookie is crunchy and I like soft cookies.

41 That shouldn't be too hard for somebody like you to figure
42 out.

43
44 Sorry about that, what's happening on your end?

45
46 **Bancroft:** I'm looking at my cash on hand. I need to see how
47 much I can put down up front. What are you doing for me?

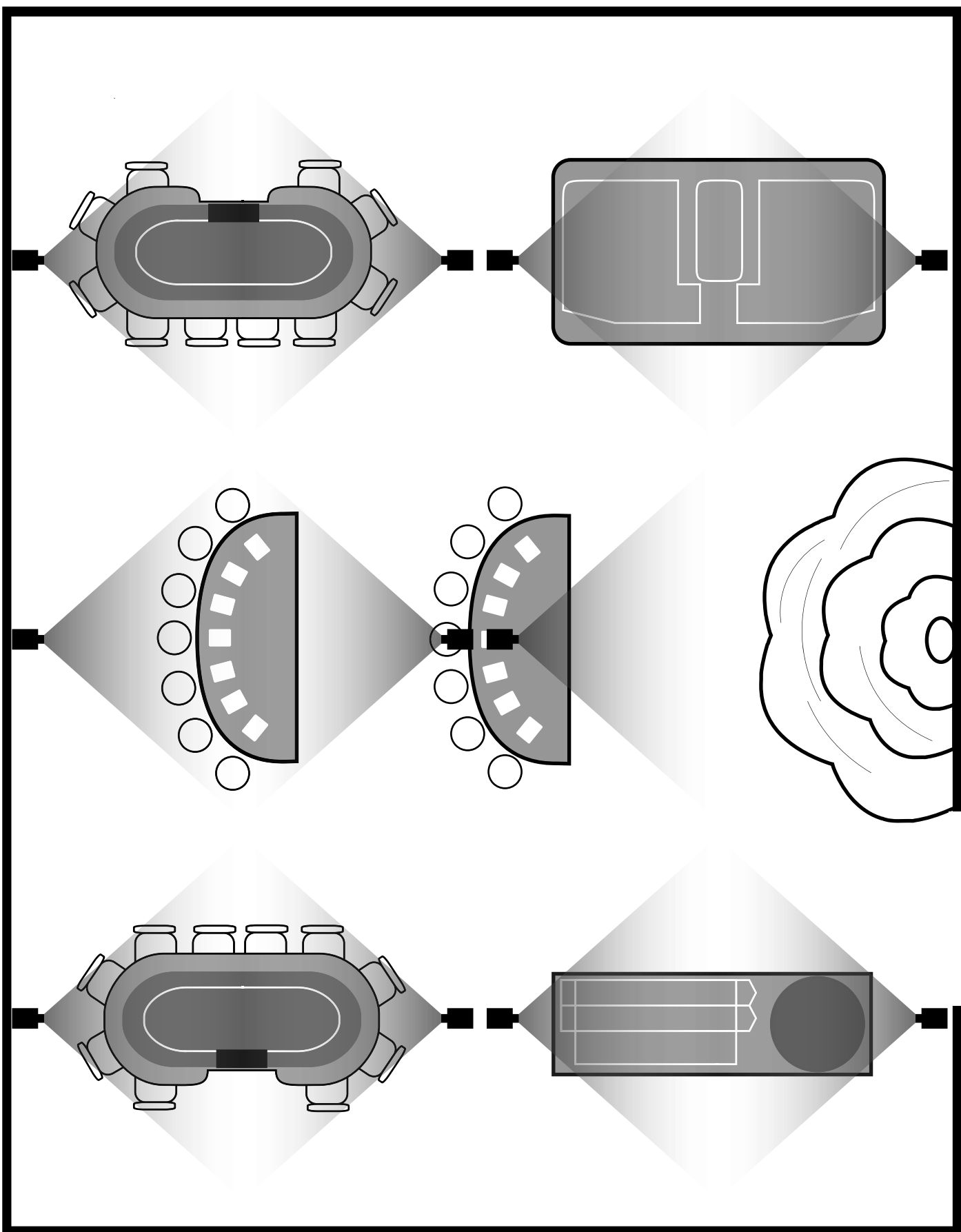
48
49 **Covington:** Well, I mean, the other two—Geis and Walton—are
50 pretty firm. They aren't going to change. Bottom line is
51 that it's my game; whoever I vote for wins.

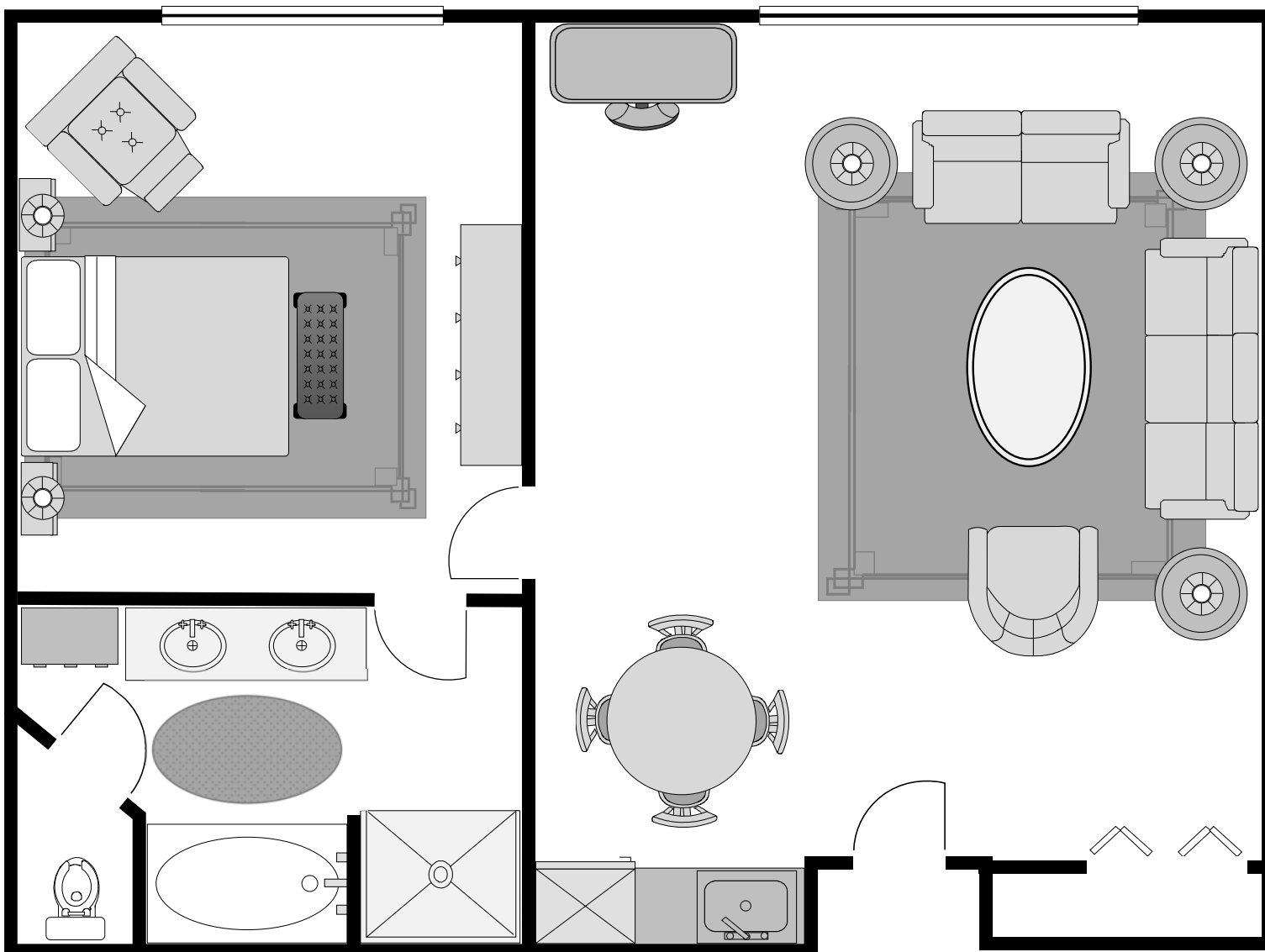
52
53 **Bancroft:** So you're sure you're the only person I need to worry
54 about?

55
56 **Covington:** Yeah. There's no question about that.

57
58 **Bancroft:** Ok, I'll take a good look at the numbers and get back
59 to you. We'll talk soon. I'll ask my assistant to set
60 something up.

61
62 **Covington:** Wonderful.





**THE BLACK BEAR
CASINO AND HOTEL
IN-ROOM DINING**

Date: April 13, 2015
Time: 03:07 P.M.
Room: 312

1	Romane Conti	\$31.95
1	Deluxe Cheese Plate	\$21.95

Subtotal	\$53.90
Service Fee (22 %)	\$11.86
Tax (6%)	\$ 3.95
Payment Due	\$69.71

Thank you for your business!

Enjoy your stay!

Chase,

We came by to give you the money,
but you are not here, so we are just
leaving it here. Thanks again for making
our dreams come true.

—Lee and Andy

1 TRANSCRIPT OF MARCH 31, 2015 CONVERSATION

2 Location: Room 312, The Black Bear Hotel and Casino

3
4 **KEENAN:** Hello, you must be Avery. I'm Mickey Keenan.

5 **BANCROFT:** Nice to meet you, Mickey. This is my assistant, Corey
6 Hyde. I think you spoke on the phone.

7 **KEENAN:** Yes we did, though we've never met before, right Corey?

8 **HYDE:** Yeah... um... right. Nice to meet you.

9 **KEENAN:** I don't have much time before I need to get back to the
10 office, meaning we need to get down to business. So, tell
11 me about your plan. What are you thinking?

12 **BANCROFT:** I'm envisioning building an 18,000 square foot casino
13 with a hotel in Breckinridge County. It would be a state-
14 of-the-art facility—on par with the best of Las Vegas. I've
15 bought a sizeable amount of land in a perfect location and
16 have already started clearing the land to get it ready for
17 construction.

18 **KEENAN:** What sort of amenities are you thinking?

19 **BANCROFT:** We'd build an attached hotel, probably with about 80
20 rooms or so. Built to the finest standards of luxury, of
21 course. And, of course, Loren Bondo is on board to open up
22 another great restaurant at the new casino.

23 **KEENAN:** What about a concert venue?

24 **BANCROFT:** No, I don't think we need one. There's just not the
25 market for it. We hosted a Chatterbox concert at the Black
26 Bear a few weeks ago and we could barely fill the room—and
27 it was a small one. It just doesn't make sense to have a
28 concert venue. I could be convinced to add some conference
29 space though—do some weddings and small business
30 conferences.

31 **KEENAN:** I think that would be very promising. The sticking
32 point is pretty obvious though—why should we let you have
33 two casino licenses?

34 **BANCROFT:** Because I'm the best—

35 **HYDE:** I think what they want to know is whether you'll do
36 anything to sweeten the pot.

37 **BANCROFT:** Well, I guess I could add the conference space.

38 **KEENAN:** Let's try this again. What are you willing to do to make
39 this happen?

40 **BANCROFT:** Well, I know I've got the best proposal. I'm an
41 experienced casino owner and my casino brings millions of
42 dollars in tourism to the state. This new casino would be
43 great for both me and all of Midlands. I will do whatever
44 it takes to make this happen.

45 **KEENAN:** You know that's not what I meant. Here in Midlands, it's
46 not enough to have a good business plan. You have to go the
47 extra mile, you know, make sure everyone is happy.

48 **HYDE:** Who do we need to make happy?

49 **KEENAN:** Well me for one. I have a lot of pull with people who
50 matter.

51 **BANCROFT:** Who do you know at the Commission?

52 **KEENAN:** Everybody!

53 **BANCROFT:** Everybody?

54 **KEENAN:** Everybody!

55 **BANCROFT:** Does everybody include Chase Covington? Covington is
56 the swing vote, right?

57 **KEENAN:** Of course. You will definitely need to make Chase happy.

58 **BANCROFT:** Ok I can do that. I want to pitch my ideas to Chase if
59 you know what I mean.

60 **KEENAN:** You'll need to pitch more than ideas.

61 [Static]

62 **BANCROFT:** Alright, talk to Chase and we can set up a meeting.

63 **HYDE:** Great. I'll set something up in a couple of weeks. Same
64 place?

65 **BANCROFT:** Great. [pause] Oh, one more thing. When are the bids
66 due?

67 **HYDE:** Uh... let me check. I wrote that—

68 **KEENAN:** No need. The initial proposal—with the rough outline of
69 what you're planning—is due on April 5th. You'll pitch your
70 final plan to the Commission before the vote on April 17th.

71 **BANCROFT:** Great. So you're going to set up the next meeting?

72 **HYDE:** Yes. I'll set something up with Chase Covington before
73 the vote.

74 **KEENAN:** We'll see you then. I'll be in touch between now and
75 then with some more information for you. Remember, you need
76 to make Chase happy.

77 **HYDE:** Thanks so much for your help. We really appreciate it.

78 **BANCROFT:** Yeah. Thanks for greasing the wheels here.

Tobyssupplies.com

Receipt

Billed To:

Hyde@mockmail.com

Avery Bancroft

The Black Bear Casino

Room 2000

Midlands City, ML 55555

Order ID: 801D2A404B

Receipt Date: 04/13/15 08:53 p.m.

Billed To: SuperCard XXXX XXXX XXXX 1986

You have selected **2-Day Rush Shipping**. Your items are guaranteed to arrive by **5 p.m. on April 15, 2015**.

Quantity	Item	Manufacturer	Type	Unit Price
1	Basic Briefcase	Walsh Luggage Supply	Black	\$29.99
Shipping (2-Day):				\$5.00
Subtotal:				\$34.99
Tax:				\$0.00
Order Total:				\$34.99

Return Policy

Items must be returned within 30 days in the same or substantially same condition in order to qualify for a refund. To print a shipping label, log on to your account at <http://tobyssupplies.com> or e-mail returns@tobyssupplies.com.

Terms and Conditions

See our full return policy, as well as other terms and conditions pertaining to your order, online at <http://www.tobyssupplies.com/termsandconditions>.



MIDLANDS GAMBLING COMMISSION

*Chase Covington, Chairperson
Harper Walton
Riley Geis*

April 6, 2015

The Commission sought proposals for a new casino to be located in Breckenridge County, as approved by the Midlands State Legislature during its 2014 term. We now, pursuant to Midlands laws requiring a summary of proposals and public comment on those proposals, invite public comment on the two proposals we have received. Comment is requested until April 16, 2015; the Commission will vote on April 17, 2015.

Proposal 1

Avery Bancroft, owner of the Black Bear, seeks to build an 18,000 square foot casino with 525 slot machines and 14 gaming tables. The complex also includes a 75 room hotel and a fine dining restaurant operated in conjunction with Loren Bondo, a celebrity chef in Midlands. There is also an 8,000 square foot conference and wedding venue. The total footprint for the entire complex is 71,000 square feet. Note that never in Midlands's history has a single person or company been allowed to hold two casino licenses.

The casino should provide significant economic benefits to Breckenridge County. In addition to the economic boost provided by a \$40 million development project, the casino will employ 250 full-time equivalent employees and provide over \$7 million in annual payroll and benefits. Additionally, the casino plans to donate a significant amount of its profits, possibly as much as \$1.7 million annually, back to nonprofits and civic projects in Breckenridge County and the surrounding area.

Proposal 2

Shannon Stark, a local professional poker player, seeks to open a casino in Breckenridge County in a partnership with J.C. Longstreet, who owned an amusement park in Breckenridge County. The proposed casino is 25,000 square feet with over 800 slot machines and 20 gaming tables. The plans for the casino include a 12,000 square-foot event center, capable of seating 488 guests for dinner or up to 632 patrons for a show or concert, a 6,000 square-foot restaurant and sports bar, and a full-service salon and day spa.

Financing for the project has been secured through Midlands Savings & Loan, though Ms. Stark has no experience in business or management and Mr. Longstreet's amusement park recently closed. Economic benefits to the local area have not been calculated but are expected to be larger than those for Proposal 1.

Declaration of Roger Michaels

My name is Roger Michaels, and under penalty of perjury, I declare that:

1. I am the Chief Consumer Accounts Administrator for Midlands State Bank and Trust. I have held that position since December 20, 2014. I write this declaration in response to the subpoena I received on April 19, 2015.
2. As part of my duties, and in the regular course of Midlands State Bank and Trust business, I manage and maintain records of consumer bank accounts, including checking accounts. The records I maintain include transaction data and account balances. The information in these records is used to generate monthly bills for services and bank statements for individual customers.
3. The attached bank statement for Chase B. Covington is a true and accurate copy of the bank statement that issued to Covington on April 20, 2015. This statement is generated automatically; that is, no person is involved in its generation.
4. As its custodian, I have personal knowledge that this statement accurately reflects the status of the account at the time, including all transactions from April 1, 2015 through April 20, 2015. I have no reason to doubt the accuracy of the information contained in the attached bank statement.

I swear under penalty of perjury that the foregoing is true, accurate, and complete to the best of my knowledge.

Roger Michaels

Roger Michaels

Signed before me on April 21, 2015:

Jeff Campbell

Jeff Campbell

Notary Public



Midlands State Bank and Trust

Keeping your Cash Safe and Sunny!

Account Statement

Chase B. Covington
8720 Lynx Rd. Midlands City, ML
625-555-2274
covingtoncb@mockmail.com

DATE: APRIL 20, 2015
ACCOUNT NUMBER: XXXXXXXXX55555
ACCOUNT TYPE: PREMIER CHECKING

OPENING BALANCE	CLOSING BALANCE
\$207,001.94	247,371.94

DATE	DESCRIPTION	TYPE	DEBIT	CREDIT	BALANCE
4/1	Katzinger's Deli	Debit Card	21.21		206,980.73
4/1	Cash Withdrawal	Withdrawal	100,000.00		106,980.73
4/1	Black Bear Casino	Debit Card	55.50		106,925.23
4/5	PENKS ENERGY CO.	ACH Debit	55.45		106,869.78
4/6	Cash Withdrawal	Withdrawal	50,000.00		56,869.78
4/6	Black Bear Casino	Debit Card	75.57		56,794.21
4/6	Cash Deposit	Deposit		155,000.00	211,794.21
4/6	Monut's Donuts	Debit Card	31.30		211,762.91
4/8	Cash Withdrawal	Withdrawal	75,000		136,762.91
4/10	Heather's Taco Stand	Debit Card	13.29		136,749.62
4/15	MIDLANDS STATE GOV.	ACH Deposit		1597.63	138,347.25
4/16	The Black Bear Casino	Debit Card	2.50		138,344.75
4/16	AAA Cab Service	Debit Card	25.50		138,319.25
4/17	Cash Deposit	Deposit		200,000.00	338,319.25
4/17	HalvaHotels.com	Online Transaction	1075.85		337,243.40
4/17	MIDLANDS AIRLINES	Online Transaction	1670.50		335,572.90
		Total			335,572.90

State of Midlands

Application for Political Appointment

Today's Date: November 7, 2012

Name: Chase Covington

Date of Birth: December 3, 1976

Address: 8720 Lynx Rd., Midlands City, ML

Marital Status: Single, Never Married

Number of Dependents: None

Explain your educational background, including degrees earned and honors awarded.

In 1997, I received a dual degree in Economics and Accounting, *Summa Cum Laude*, from Sawyer College in Midlands. I continued my education at the Midlands State University School of Law, where I received a J.D. in 2000. I passed the Midlands State Bar Examination in July of that year.

Explain your work and professional experience.

After admission to the Midlands State Bar, I began as an associate attorney at Langford, Leaphart, and Leckrone, P.C., a small firm here in Midlands. I worked at the firm until January 1, 2004 when I left the firm to work as Associate Counsel to the Midlands State Department of Labor. I held that job for two years, leaving in 2006 to become a Deputy Midlands Attorney General. I worked for two years in the Criminal Division of that office before transferring in 2008 to the Gaming Control Division, where I currently work.

Explain any publications, awards won, or certifications earned relevant to your potential service to the State of Midlands.

I am licensed to practice in the State of Midlands, the District of Columbia, and before the 13th Circuit and the United States Supreme Court. I also won the *Rising Star* award from the Gaming Law Section of the Midlands State Bar in 2003.

Explain the Department(s) or Board(s) for which you wish to be considered. If you have a specific position of interest, please explain your qualifications.

I understand that the term of the current chairperson of the Midlands Gambling Commission will expire on January 1, 2013. Given my extensive experience in the Attorney General's office both in this area of law generally and with the Midlands Gambling Commission specifically, I feel that I possess the unique

qualifications necessary to lead the Commission into the future. Given my family's unique history with the gaming industry, I would bring a unique perspective to the Commission, one that truly understands the benefits and harms that the gaming industry can bring both to businesses and to families.

Explain other activities and qualifications that you have which make you an attractive candidate.

I am heavily involved in volunteer work. At the firm, I headed a large-scale pro bono effort to provide representation to the less fortunate in Midlands. I am also the past chairperson of the Midlands State Bar Association Community Service Committee, and am actively involved in a variety of other community organizations. I am attracted to public service because I believe it is my duty to give back and to make this state the premier state in the country for work, play, and business.

I certify, under penalty of perjury, that the statements I have made on this form are true, complete, and correct to the best of my knowledge and belief.

Chase Covington

Chase Covington



State of Midlands
Office of Records

I, **Jesse Sturgeon**, Chief Custodian in the Office of Records for State of Midlands, hereby attest that the appended document, **Financial Disclosure Form 2015-FDF-489633**, is a true and correct copy of a record kept in the custody of this Office, filed in this Office as required by law, maintained by individuals familiar with its contents, and guaranteed by the Great Seal of this State.

Jesse Sturgeon
Jesse Sturgeon

Signed before me Aug. 6, 2015:

Benji Walker
Benji Walker
Notary Public

State of Midlands

Financial Disclosure Form

Today's Date: July 1, 2015 **File Number:** 2015-FDF-489633

This form must be completed by every elected official and political appointee in Midlands annually.

Name: Chase Covington **Title:** Chairperson
Period: July 1, 2014 – June 30, 2015 **Department:** Midlands Gambling Commission

Salary: \$67,000

Nongovernmental Positions Held

Member, Board of Directors Midlands St. Univ. Law School Advisory Board
 Member, Executive Committee Gaming Section, Midlands State Bar Ass'n

Gifts (Report all gifts—including those from family—totaling \$250 or more annually)

<i>Description</i>	<i>Date</i>	<i>From</i>	<i>Value</i>
Diving Trip	July 10, 2014	Hayden Hathaway	\$10,000
Marauders Hockey Tickets	December 1, 2014	Edward Keener	\$250
Painting	December 2, 2014	Shannon Stark	\$800
Statue	December 20, 2014	Max Heisman	\$2,500
Watch	April 1, 2015	J.C. Longstreet	\$250

Assets (Worth more than \$10,000 or a deposit account with a balance over \$5,000.

Report amounts as of the end of the filing period)

<i>Asset</i>	<i>Type</i>	<i>Value</i>
Midlands State Bank and Trust	Savings Account	\$100,001 - 250,000
Midlands State Bank and Trust	Checking Account	\$15,001 - 50,000
Midlands City Property	Home	\$100,001 - 250,000
Midlands Public Retirement System	Retirement	\$50,001 - 100,000
Midlands State Bank and Trust 401(k)	Retirement	\$50,001 - 100,000

Liabilities (Report all liabilities over \$10,000 at any time during the filing period)

<i>Liability</i>	<i>Type</i>	<i>Value</i>
Dept. of Educ. Student Loans	Loan	\$34,567
Chhabra Credit Union	Mortgage	\$75,070
Credit Card Debt	Debt	\$25,500

I certify, under penalty of perjury, that the statements I have made on this form are true, complete, and correct to the best of my knowledge and belief.

Chase Covington

Chase Covington

State of Midlands

Application for Casino License, Biographical Appendix

Today's Date: March 1, 2015

Name: Avery Bancroft

Date of Birth: July 16, 1967

Address: 1536 5th St., Midlands City, ML

Marital Status: Widowed

Number of Dependents: None

Explain your educational background, including degrees earned and honors awarded.

I graduated from Cornell College in 1991 with a degree in Classics. I received an MBA from the Wharton School of the University of Pennsylvania in 2000.

Explain your work and professional experience.

Starting from the age of 18, I have been employed by Bancroft Entertainment, a company with diversified holdings founded by my father. Bancroft Entertainment's marquee property is the Black Bear Casino and Hotel, Midlands's premier gaming establishment. I started at the Casino as a front desk clerk and later rotated throughout many of the major departments in the property, including working as a Front Desk Supervisor and Housekeeping Supervisor on the hotel side of the property and as a Dealer and Cashier on the casino side. I became VP of Operations for Bancroft Entertainment in 2001 and became President and CEO upon my father's death in 2010.

I certify, under penalty of perjury, that the statements I have made on this form are true, complete, and correct to the best of my knowledge and belief.

Avery Bancroft

Avery Bancroft



State of Midlands
Office of Records

I, **Jesse Sturgeon**, Chief Custodian in the Office of Records for State of Midlands, hereby attest that the appended document, **Campaign Finance Report 2015-CFR-613**, is a true and correct copy of a record kept in the custody of this Office, filed in this Office as required by law, maintained by individuals familiar with its contents, and guaranteed by the Great Seal of this State.

Jesse Sturgeon
Jesse Sturgeon

Signed before me Aug. 6, 2015:

Jack Miriyala
Jack Miriyala
Notary Public

State of Midlands

Campaign Finance Contributor Report

Today's Date: March 1, 2015

File Number: 2015-CFR-613

Name: Avery Bancroft

Date of Birth: July 16, 1967

Address: 1536 5th St., Midlands City, ML

Industry: Entertainment

Period: January 1, 2008-July 1, 2015

This computer-generated report lists all financial contributions reported by candidates seeking office in Midlands and their associated campaigns. Pursuant to Midlands Law, all contributions totaling \$25 or more must be reported by campaigns to the State of Midlands Department of Ethics. Midlands, unlike many jurisdictions, does not impose contribution limits (which limit the amount of money that a campaign or candidate can receive from a single donor).

Date	Candidate or Campaign	Amount
February 28, 2015	Elizabeth Ginger for Truman	\$500
February 28, 2015	Re-elect Mayor Heisman Committee	\$7,500
March 15, 2014	Eric Brandt for Law, Order, and Justice	\$3,000
May 15, 2012	Re-elect Governor Walton Campaign	\$5,000
April 15, 2014	Wright is Right for Midlands House of Representatives	\$200
April 15, 2014	Downs for Midlands House of Representatives	\$800
April 15, 2014	Moore for Midlands House	\$625
April 15, 2014	Rodriguez for Legislature	\$1,000
July 1, 2012	Thompson for Midlands Supreme Court	\$750
January 3, 2011	Max Heisman for Mayor	\$10,000
January 11, 2011	Ryan Sullivan for Mayor	\$5,000
October 13, 2008	Angela Wang for a Better Midlands City	\$2,500
August 1, 2008	Sanchez for Midlands Court of Appeals	\$2,500
January 1, 2008	Ryan Sullivan for District Attorney	\$250

[REDACTED]

To: <fkimball@mspd.gov>
From: <[REDACTED]@mspd.gov>
Date: June 18, 2013 9:39 A.M.
Re: Re: Departmental Priorities

Thanks Chief! I'm so glad to know that new management is supporting the types of investigations that matter. Let's be legendary!

[REDACTED]

Francis Kimball

To: <mpd-all@mspd.gov>
From: <fkimball@mspd.gov>
Date: June 18, 2013 9:37 A.M.
Re: Departmental Priorities

All,

I am honored to serve as the next Chief of the Midlands State Police Department. It is truly a privilege to lead such a talented force. Now, it's time to show the citizens of Midlands just how lucky they are to have us. I write today to outline my three major priorities for our force:

1. **Crack Down on Corruption.** Midlands is corrupt. Everyone knows it. It's our job to crack down on corruption and vanquish vice in this state. We know where this corruption is, we just need to find the evidence to prove it.
2. **Be Newsworthy.** We're not focused on the things that make front page news. Our investigative team needs to stop focusing on petty crime and dedicate themselves to building solid and strong cases against the most powerful citizens in this state. Let's reel in the big fish. If it isn't newsworthy, it's not worth your time.
3. **Do whatever it takes.** These criminals are smart, and we need to stay ahead of them. To catch these criminals, we need to push the envelope. Don't break the law, but everything else is on the table. We need to be innovative, and we need to be relentless.

I'll be conducting a listening tour over the next few weeks in each department to get to know you and to learn your thoughts about the best way to implement these priorities.

Francis Kimball, Chief of Police
Midlands State Police Department

Corey Hyde

To: <Bancroft@BancroftEntertainment.com>
From: <Hyde@BancroftEntertainment.com>
Date: March 30, 2015 8:45 a.m.
Re: Tomorrow's Meeting

Hi Boss,

As requested, here is a quick note to get you up to speed about your meeting tomorrow with Mickey Keenan. Keenan is a friend of mine who works as an auditor for the Midlands Gambling Commission. Keenan has offered to meet with you to give you the details about your proposal—both formal and informal—for the new casino in Breckenridge County.

The meeting is at 10:00 a.m. in room 312 of the Black Bear Hotel. It is scheduled to last no more than an hour (then you have an hour in your office to prep before your lunch meeting with Frances Conroy and Hayden Hathaway at *Le Gros Poisson* about bringing their respective businesses under our umbrella—both of their businesses seem to be in bad financial shape following their recent legal troubles).

You obviously know what you are proposing in terms of the size of the casino and the number of beds in the hotel. It is probably savvy for you to emphasize the economic gains Midlands City received after you built the Black Bear; with so many Midlanders over the retirement age these days, the tax base is shrinking, and I think that emphasizing economic development is a smart move for you.

You will want to ask Keenan some specific questions about the current make-up of the Midlands Gambling Commission. As you know, it is a three-member commission (currently composed of Chase Covington, the chairperson, Riley Geis, and Harper Walton, the governor's son), and, since everyone on the MGC is appointed by the governor, they don't run for office. Since you've been such a big contributor to Governor Walton's campaign, I'm sure Mr. Walton will vote for your proposal (and has indicated as such in the press). And, given Geis's hard feelings against the Waltons—I can't believe Governor Walton appointed Geis in the first place—it seems likely that Geis will oppose anything that Walton supports. Long story short, Covington is the swing vote, and you need to find out what you have to do to make this happen.

Corey Hyde
Executive Assistant to Avery Bancroft
Phone: 625-555-1935

Corey Hyde

To: <mkeenan@MidlandsGambling.gov>
From: <hyde@mockmail.com>
Date: March 31, 2015 8:05 P.M.
Re: Meeting

This is helpful. I really wasn't sure what I was supposed to do. Thanks for this. See you soon.

Mickey Keenan

To: <hyde@mockmail.com>
From: <mkeenan@MidlandsGambling.gov>
Date: March 30, 2015 1:36 P.M.
Re: Meeting

Hi Corey,

I just wanted to drop you a quick note to make sure you are comfortable with your role at the meeting tomorrow. The most important thing for you is to relax and act normal. Remember, this is the first time that we've met.

You just need to make sure that the conversation keeps moving in the right direction. At some point, you might want to suggest that Avery should do something to sweeten the pot; it is very important that this comes from you, and not me. We can't make it explicit what you'll be asking—you're wearing a wire, after all—but we need to make sure Avery realizes that, to get this done, someone needs to be made happy and that person is Chase Covington.

MK

Chase Covington

To: <Keenan@MidlandsGambling.gov>
From: <Covington@MidlandsGambling.gov>
Date: April 1, 2015 11:36 a.m.
Re: Meeting Request

that's strange. i wonder why bancroft didn't just call me directly. but i don't see any harm in bringing you in on this. bancroft is willing to do something special to make it happen and its time you learned how things really get done in this office. there's a system to these things.

Sent from my Phone.

Mickey Keenan

To: <Covington@MidlandsGambling.gov>
From: <Keenan@MidlandsGambling.gov>
Date: April 1, 2015 11:13 a.m.
Re: Meeting Request

Chase,

I've just gotten off the phone with Corey Hyde, Avery Bancroft's executive assistant. Bancroft would like to meet with you to discuss a possible bid for the new casino in Breckenridge County. Corey said that Bancroft is aware that no one else in the state has ever received two casino licenses and wants to meet to determine whether or not you think a second license would be a possibility.

Should I set up the meeting? It seems pretty harmless.

MK

Avery Bancroft

To: <Hoy@BancroftEntertainment.com>
From: <Bancroft@BancroftEntertainment.com>
Date: April 12, 2015 10:23 a.m.
Re: Assistance Requested

Danny

I need your assistance for a business meeting tomorrow with some representatives of the Midlands Gambling Commission. Discretion is of the utmost importance, so I'd like you to come and make sure the meeting is private and isn't recorded. It is ESSENTIAL that what we speak about is not on tape, so please sweep both the room and everybody, including Corey Hyde, who will be sitting in on the meeting.

I'm sure you have all kinds of tricks that you use on the casino floor, so just do whatever you need to do. The meeting is 3 p.m. tomorrow in room 312.

Stop up to see me if you have any questions. I'm in all day. Just tell Corey I said you can pop in.

AB

Corey Hyde

To: <Bancroft@BancroftEntertainment.com>
From: <Hyde@BancroftEntertainment.com>
Date: April 13, 2015 8:31 p.m.
Re: RE: Thanks

It's just a cheap thing. Can probably get it online at tobyssupplies or someplace like that.

Avery Bancroft

To: <Hyde@BancroftEntertainment.com>
From: <Bancroft@BancroftEntertainment.com>
Date: April 13, 2015 8:08 p.m.
Re: Thanks

Corey,

I just wanted to drop you a quick note to thank you for all of the work that you've done regarding the casino bid. I think the meeting you set up with Covington today was really helpful in terms of figuring out what we need to do to get the bid. Now, we need to just do what needs to be done.

BTW, Covington's briefcase was nice. Where do you get something like that?

Chase Covington

To: <Keenan@MidlandsGambling.gov>
From: <Covington@MidlandsGambling.gov>
Date: April 13, 2015 5:07 p.m.
Re: Today's Meeting

MK,

Thanks for setting up the meeting today at the Black Bear. It was nice to see Avery and to meet Corey. I'm much more on board with the possibility of letting Avery have another casino than I was before the meeting, so thanks for encouraging me to take it. I think I made it clear to Avery that allowing the same person to operate two casinos is a huge break from precedent, and I'm going to need lots of convincing in the next couple of days before I can be comfortable doing something.

Avery seems to be willing to find a solution that is beneficial for all of us. That's promising.

Chase

Corey Hyde

To: <Covington@MidlandsGambling.gov>
From: <Hyde@BancroftEntertainment.com>
CC: <Bancroft@BancroftEntertainment.com>
Date: April 15, 2015 11:13 a.m.
Re: RE: Update

Chase,

Avery would like to schedule another meeting with you in room 312 tomorrow at noon to wrap things up before the vote. If you're available, please let me know.

Avery Bancroft

To: <Covington@MidlandsGambling.gov>
From: <Bancroft@BancroftEntertainment.com>
CC: <Hyde@BancroftEntertainment.com>
Date: April 14, 2015 10:33 a.m.
Re: RE: Update

Of course!! Nothing but the best for you!

Chase Covington

To: <Hyde@BancroftEntertainment.com>;
<Bancroft@BancroftEntertainment.com>
From: <Covington@MidlandsGambling.gov>
Date: April 14, 2015 9:13 a.m.
Re: RE: Update

just wanted to make sure u 2 had the right impression. need compelling reasons to break from precedent and give u 2.

Sent from my Phone.

Avery Bancroft

To: <Covington@MidlandsGambling.gov>
From: <Bancroft@BancroftEntertainment.com>
CC: <Hyde@BancroftEntertainment.com>
Date: April 14, 2015 9:04 a.m.
Re: RE: Update

YES. Much thanks. Will be in touch.

Corey Hyde

To: <Covington@MidlandsGambling.gov>
From: <Hyde@BancroftEntertainment.com>
CC: <Bancroft@BancroftEntertainment.com>
Date: April 14, 2015 9:03 a.m.
Re: Update

Dear Chase,

Thank you so much for meeting with Avery and me yesterday. You both made it clear how Avery should pitch the project and what we need to do to secure approval. We appreciate your time.

Best,
Corey

Corey Hyde

To: <Bancroft@BancroftEntertainment.com>
From: <Hyde@BancroftEntertainment.com>
Date: April 15, 2015 1:20 p.m.
Re: RE: Update

It will be fine.

Avery Bancroft

To: <Hyde@BancroftEntertainment.com>
From: <Bancroft@BancroftEntertainment.com>
Date: April 15, 2015 1:17 p.m.
Re: RE: Update

Are we sure you're ok with Keenan coming? How well do you really know each other?

Corey Hyde

To: <Bancroft@BancroftEntertainment.com>
From: <Hyde@BancroftEntertainment.com>
Date: April 9, 2015 4:36 p.m.
Re: RE: Le Nuit D'Warihay

The package came. I put it on your chair. Now you can ... be yourself.

Avery Bancroft

To: <Hyde@BancroftEntertainment.com>
From: <Bancroft@BancroftEntertainment.com>
Date: April 5, 2015 4:35 p.m.
Re: RE: Le Nuit D'Warihay

Good. I am running low and you know I need it every day. I don't feel like myself unless I'm wearing *Le Nuit D'Warihay*.

Corey Hyde

To: <Bancroft@BancroftEntertainment.com>
From: <Hyde@BancroftEntertainment.com>
Date: April 5, 2015 4:32 p.m.
Re: Le Nuit D'Warihay

I finally got ahold of that lady in France to order your fragrance. It should be here soon. I had her rush the shipment.

Avery Bancroft

To: <Covington@MidlandsGambling.gov>
From: <Bancroft@BancroftEntertainment.com>
Date: April 15, 2015 1:18 p.m.
Re: RE: Update

It will be fine. Will tell Corey noon works for you. But do we really need Keenan for this?
I mean it's your vote.

Chase Covington

To: <Bancroft@BancroftEntertainment.com>
From: <Covington@MidlandsGambling.gov>
Date: April 15, 2015 1:16 p.m.
Re: RE: Update

noon will work. btw I think Keenan knows about our call something is up.

Sent from my Phone.



4:02 PM



< Texts

Mickey

April 16, 2015 12:35 PM



Where are you?

Don't mess this up.

5:55 PM

It's done. I do things my way.



Send



4:17 PM



< Texts

Avery

April 16, 2015 1:20 PM



What going on?

1:22 PM

You are right. It's my vote. Keenan doesn't need to have anything to do with this.

1:23 PM



What does that mean? Are you going to vote for my casino?



Send



10:43 AM



Corey Hyde

April 16, 2015

Still a no show?

1:10 PM

Still nothing

CH

1:14 PM

Have tried texting and haven't
heard back.

CH

1:18 PM

Send a message



INTERROGATION OF AVERY BANCROFT

Midlands State Police Department Headquarters

DATE: April 19, 2015

TIME: 6:30 p.m.

Bernard: Good afternoon. For the record, today's date is April 19, 2015. The time is 6:30 p.m. The speaker is Detective Andre Bernard of the Financial Crimes Unit. The individual being interviewed is Avery Bancroft. Prior to this interview you filled out a form acknowledging that you waived your Miranda rights, correct?

Bancroft: Correct. I have nothing to hide.

Bernard: Great. I have a few questions for you. You know why you are here, don't you?

Bancroft: I do.

Bernard: Why is that?

Bancroft: I gave money to Chase Covington so that Covington would vote to give me a casino license.

Bernard: [coughing] So. . . so, you admit it?

Bancroft: Yes.

Bernard: Well . . . let's just be clear. You bribed Chase Covington to give you a casino license for the casino that's detailed in this Midlands Gambling Commission Memorandum?

Bancroft: Let's see . . . yes that's the one. My proposal is the first one in the memorandum, and that's the description I gave them of the proposal. It's accurate.

42 **Bernard:** So why are you telling me this?

43

44 **Bancroft:** Because I'm not the one you want. I'm just a business
45 owner and entrepreneur here in Midlands. My casino, the Black
46 Bear, is a well-respected establishment. It creates a lot of
47 business in the area - as do my other ventures. You want the
48 folks that made me do it.

49

50 **Bernard:** Who are those . . . folks?

51

52 **Bancroft:** Mickey Keenan and Chase Covington, obviously. They
53 basically came to me and demanded that I bribe Covington. I'm
54 sure Keenan was getting a kick back. They basically said I'd
55 never get a second casino without giving Covington the money.
56 Before they came to me, I never thought about bribing Covington.
57 I mean Keenan is the one who put us in touch.

58

59 **Bernard:** When did Keenan do that?

60

61 **Bancroft:** Earlier this year.

62

63 **Bernard:** I think you knew Covington pretty well before that.

64

65 **Bancroft:** Sure, I mean everybody knows Chase, at least in our
66 business. Chase is the Chair of the Midlands Gambling
67 Commission. I have to know Chase. I just meant that I did not
68 know. . . I wasn't in touch with Chase . . . in this context.
69 For this purpose, I mean. Really, when Keenan first set up a
70 meeting with Chase, I didn't even know what they wanted.

71

72 **Bernard:** Really? I've got some emails here that seem to indicate
73 you were pretty wise to the whole thing. Are these your emails?

74

75 **Bancroft:** What? What emails? Where did you get those?

76

77 **Bernard:** We got a warrant. And where we got them isn't your
78 problem. Let's just be specific, these emails from your account
79 to Corey Hyde on March 30, April 13, and April 15, to Danny Hoy
80 on April 12, and to Chase Covington on April 13, 14 and 15, you
81 admit that you sent all of them, right?

82

83 **Bancroft:** Yeah, like you don't already know. I sent them.
84

85 **Bernard:** Well in that case, in this email you sent Danny Hoy,
86 your head of security, on April 12, 2015 you said discretion was
87 important. That you wanted to make sure that meeting wasn't
88 recorded. It sounds like you knew you were up to something bad.
89

90 **Bancroft:** No, well, no. Not exactly. I just wanted privacy.
91

92 **Bernard:** And all these text messages here between you and your
93 assistant Corey Hyde? You're saying you still didn't know what
94 was going on?
95

96 **Bancroft:** No, at some point I figured it out. I just, at first,
97 I thought I was just giving a pitch and then I figured it out.
98 And Keenan and Hyde made it seem like there was no choice. I
99 sent those texts because I thought that it had to happen. They
100 said it had to happen.
101

102 **Bernard:** It had to happen? Well you made sure it happened with
103 these texts to Chase Covington isn't that right?
104

105 **Bancroft:** No, I sent those because . . . because . . . Look,
106 this is over. I only agreed to talk because I wanted to help you
107 get the real criminals. If you don't want my help, fine.
108

109 **Bernard:** I don't need your help. The real criminal is right in
110 front of me.
111

112 **Bancroft:** I want an attorney. I'm done.
113

114 [END]

INTERROGATION OF CHASE COVINGTON

Midlands State Police Department Headquarters

DATE: April 19, 2015

TIME 7:30 p.m.

D'Ippolito: Good afternoon. For the record, today's date is April 19, 2015. The time is 7:30 p.m. The speaker is Detective Michael D'Ippolito of the Financial Crimes Unit. The individual being interviewed is Chase Covington. Prior to this interview you filled out a form acknowledging that you waived your Miranda rights, correct?

Covington: That's right. I have nothing to hide.

D'Ippolito: I thought you'd say that. You know why you are here, don't you?

Covington: I don't have the slightest clue. You are the one that brought me here.

D'Ippolito: Chase, can I call you Chase? I'm going to call you Chase. Chase, we have your friend in the other room and your friend has already told us everything.

Covington: My friend? I assume you mean Avery Bancroft.

D'Ippolito: You aren't assuming anything. You already know who is over there. And you know why too. And we know why, because Bancroft has already told us.

Covington: I doubt that, Mr. D'Ippolito. There is nothing to tell.

D'Ippolito: You think I'm lying?

41 **Covington:** I do. I think you are fishing without bait, Dip. Can
42 I call you Dip? I am going to call you Dip.

43
44 **D'Ippolito:** [grumbling] Well, how about these emails among you,
45 Bancroft and Mickey Keenan sent in April?

46
47 **Covington:** What? How did you get those? Those are my personal
48 emails! And what does that matter, Mickey Keenan is just someone
49 who works for me at the Gambling Commission.

50
51 **D'Ippolito:** So they are yours. And you have bigger problems than
52 how we got these emails. It also looks like you were emailing
53 and texting with Bancroft and Corey Hyde. Are these yours too?

54
55 **Covington:** They are. But they don't prove anything. As the Chair
56 of the Commission, I often talk about casino proposals with
57 potential bidders.

58
59 **D'Ippolito:** So Bancroft was just one of the . . . bidders?

60
61 **Covington:** You know what I mean. People who have proposals to
62 build new casinos. They have to submit the proposals to be
63 approved by the Gambling Commission. Shannon Stark also
64 submitted one.

65
66 **D'Ippolito:** You mean like the bids in this Midlands Gambling
67 Commission memo?

68
69 **Covington:** They aren't bids. They are proposals. See it says so
70 right here. These are summaries of the proposals Bancroft and
71 Stark submitted.

72
73 **D'Ippolito:** Sure. Then why were you texting Bancroft on April
74 16?

75
76 **Covington:** I sent those texts to let Bancroft know I was going
77 to vote for Bancroft's license.

78
79 **D'Ippolito:** Did you have to go to the Black Bear on April 16 to
80 let him know that?

82 **Covington:** That's it. We are done here. I want my lawyer.

83

84 **D' Ippolito:** So much for nothing to hide.

85

86 [End]