

1 effect that not only was Mr. Duncan effective but he
2 did above and beyond. Would you agree or disagree with
3 that opinion as paraphrased?

4 A I would completely, completely disagree with that view.
5 But, you know, Mr. Peters was the prosecutor in the
6 case and there's some problems there, and I can
7 understand why he would make that statement. But the
8 fact is, there is no evidence to support that Bob
9 Duncan was competent in this case whatsoever. In fact
10 it's all to the contrary.

11 Q Let's turn our attention to Mr. Peters then. Let's
12 start off, have you had an opportunity to evaluate the
13 bond order he secured?

14 A Oh, yes.

15 Q All right. Can you tell us when that -- whether there
16 are any ethical problems with that bond order?

17 A There's a huge one. And, you know, in dealing with
18 Mr. Middleton, I've talked to Missouri defense
19 attorneys whom I respect, Jay DeHardt here in Kansas
20 City, Dee Wampler of Springfield. I've never seen a
21 bond requirement like that at all.

22 Q Which part of the bond requirement are you talking
23 about?

24 A That Mr. Middleton cannot get rid of any marital assets
25 without seeking permission of the prosecutor and the

1 probate court.

2 Q Was there a probate proceeding going on at that time?

3 A It hadn't been filed at that point, nor had it -- and
4 when it was filed a few days later, there was no
5 administrator appointed. So the probate court in
6 essence had no authority, one way or another, and could
7 never have authority, at least until somebody is
8 appointed administrator. There was a petition filed,
9 but it had never been followed up on. So probate court
10 really didn't have the authority to act, and a defense
11 attorney or a defendant is hardly going to go to a
12 prosecutor and say, I need to sell this house, I need
13 to sell this, so I can pay my defense attorney.

14 Q Now let's back up a second. If there's no effective
15 probate authority from whom to seek permission, then by
16 default does that leave the sole discretion for the
17 releasing of assets in the hands of the prosecutor?

18 A Well, that's calling for an interpretation of that
19 bond. But the only one who would have legal authority
20 to say yes or no would in essence be the prosecutor.
21 And the one thing I would not want is the prosecutor
22 running my defense cost.

23 Q And is that also a conflict of interest for the
24 prosecutor?

25 A I think it's a huge conflict of interest for the

1 prosecutor.

2 Q In all your years, have you ever seen a prosecutor
3 impose that kind of a condition on a bond, that you
4 have to seek his permission as well as the judge's?

5 A No.

6 Q You've seen them where you have to ask a judge for
7 permission, that's not uncommon?

8 A Well, it is if -- and when I say it is, it's generally
9 not the criminal judge, the judge hearing the criminal
10 case, that you have to ask. Because in the situation
11 like this, there would be another judge or another
12 court or another division of the court that would be
13 handling it. And once that's set up, you have to ask
14 that judge anyway.

15 Q But -- I'm sorry?

16 A You just can't go and ask for it yourself.

17 Q But it's absolutely improper to also have to ask a
18 prosecutor for permission to dispose of a defense
19 asset?

20 A Absolutely. !

21 Q That wasn't just marital, it was jointly held?

22 A Jointly held.

23 Q Did you happen to review documents pertaining to
24 Mr. Peters' father?

25 A I have.

1 Q Can you tell us where he was at the time?

2 A Well, he was of counsel of the law firm that had filed

3 the civil action against Mr. Middleton.

4 Q And we're not talking about probate, correct?

5 A No, the civil action.

6 Q When you say civil action, do you mean probate or

7 wrongful death?

8 A There are so many cases involving Mr. Middleton.

9 The -- when I say the civil action, I am talking about

10 the civil action filed in Jackson County.

11 Q And that's for wrongful death?

12 A For wrongful death. Not the probate matter. Plus

13 there's an interpleader in there from -- for some life

14 insurance in there also.

15 Q Okay. And then there's also a probate matter that was

16 handled by the same firm?

17 A That's correct.

18 Q So they handled the probate and the wrongful death?

19 A That's correct, and the interpleader.

20 Q Now, is there such thing as a Chinese wall between of

21 counsel and the rest of a firm?

22 A Not that I'm aware of.

23 Q Now, let's talk about these rings. Have you had an

24 opportunity to evaluate documents and statements such

25 as that from Ray Vasquez in connection with these

1 rings?

2 A Yes, I have.

3 Q Can you lay out for us what your findings are with
4 respect to the timeline?

5 A If I could start at the beginning. Initially, we have
6 the bond tying everything up. It talks about, you
7 know, that you have to go to probate court. Well, some
8 four days later, Mr. Peters' father's law firm files an
9 action in probate court. And during the pendency of
10 Mr. Middleton waiting to go to trial, a wrongful death
11 action was also filed against Mr. Middleton.

12 Then we ultimately get to trial,
13 Mr. Middleton is convicted. The only family member of
14 his wife, Kathy Middleton, who testified against him
15 was Mildred Anderson, Mr. Middleton's sister-in-law.
16 And based upon the documentation, the Blue Springs
17 Police Department was authorized to release \$18,500
18 worth of jewelry, basically, Mrs. Middleton's jewelry,
19 to Mildred Anderson.

20 Q Mildred wasn't the only sister, correct?

21 A She wasn't the only heir. The two sisters and a
22 brother and -- see, here --

23 Q Actually, I was going to ask -- am I incorrect, did not
24 Ray Vasquez actually call Pat Peters personally and
25 ask? Is that what Mr. Vasquez said in his deposition,

1 that he called Mr. Peters and said, Mildred Anderson's
2 here, should I release this jewelry to her?

3 A That was my understanding of it. And again, I've not
4 reviewed that in a few weeks. But nevertheless, at the
5 time it was released, it was based on Mr. Peters'
6 say-so. Now the problem with this is, number one, it
7 was -- I think sentencing was on a Friday and this was
8 on a Monday, the following Monday. And the one person
9 who testified against him receives all this jewelry.!

10 In and of itself, that might not be unusual.
11 However, no letters of administration have been
12 released, no -- and ultimately, once the probate case
13 was completed, that jewelry never showed up in the
14 probate estate whatsoever. It is basically a gift to a
15 witness.!

16 Q The probate proceeding --

17 THE COURT: Let me -- I've got to stop you.
18 I have to make a telephone call. I've got to change
19 plans for tonight.

20 (A recess was taken.)

21 THE COURT: Okay. You may proceed.

22 MR. LAURANS: Thank you, Judge. Can I have
23 my last question read back?

24 THE COURT: I'm sorry.

25 (The last question was read by the reporter

1 as follows:

2 "Q. Actually, I was going to ask -- am I
3 incorrect, did not Ray Vasquez actually call Pat Peters
4 personally and ask? Is that what Mr. Vasquez said in
5 his deposition, that he called Mr. Peters and said,
6 Mildred Anderson's here, should I release this jewelry
7 to her?")

8 THE COURT: The answer was, Let me go back to
9 the beginning, and that's when I took the break, so --
10 I think that's right.

11 Q (By MR. LAURANS) And just for clarification,
12 Mr. Carter, did the transfer of rings from Vasquez to
13 Mildred Anderson occur after the trial, before
14 sentencing, or after the sentencing?

15 A I want to say it occurred after the trial but before
16 sentencing.

17 Q Trial ended on either Thursday or Friday, correct?

18 A The 22nd, I believe, is -- no, excuse me, was it
19 19th? 19th, I believe, is when the trial ended.

20 Q Sentencing was a few days thereafter, correct?

21 A More than a few days after.

22 Q But the ring was only a few days after?

23 A Rings, I believe, was the 22nd of February.

24 Q So --

25 A I don't have my paperwork in front of me, and I brought

1 one-tenth of what I have on this case with me, so
2 you've got to forgive me if I can't spit the dates out
3 as well as I would like.

4 Q Would it be fair to characterize, as we say the ink
5 wasn't even dry yet?

6 A That would be a very fair characterization.

7 Q Prosecutors have an obligation to avoid even the
8 appearance of an impropriety, correct?

9 A That's correct. In fact Missouri has a number of cases
10 that specifically spell that out. And the federal
11 courts have a number of cases also.

12 Q How would you characterize the transfer of the rings
13 from Vasquez to Anderson with Peters' knowledge?

14 A Standing alone, it probably shouldn't have been done,
15 and clearly it wasn't done properly. But standing
16 alone, it might not have been that big of a problem.
17 But when you tie it in with the father's law firm, the
18 bond, and I think it's page 536 of the transcript in
19 closing statements, Mr. Peters said something to the
20 effect of, we got to do something to him so he doesn't
21 go out and spend her money. When you tie all that
22 together, there's a huge violation.! That just should
23 not happen. Mr. Peters shouldn't have prosecuted the
24 case if he was prosecuting the case solely for
25 financial gain for this law firm, and all the evidence

1 supports that.

2 Q Are you familiar with Mildred Anderson's testimony in
3 the Arkansas Chancery Court?

4 A Oh, yes.

5 MR. LAURANS: I'm sorry, Judge. I've lost my
6 page.

7 A If I may help you out, are you talking about at trial
8 or in deposition?

9 Q (By MR. LAURANS) Deposition.

10 A Okay.

11 Q What I'm -- oh, okay, I have it now. Page 28 of
12 Ms. Anderson's deposition within Exhibit 44, are you
13 familiar with her testimony concerning whether or not
14 Mildred and her family went down and actually talked to
15 Pat Peters?

16 A I am.

17 Q Can you tell us what -- can you summarize -- I mean the
18 testimony's in the record, but can you summarize it for
19 us?

20 A Well, it would be a whole lot easier if I had the
21 deposition.

22 Q Tell me what Ms. Anderson's talking about there.

23 A Ms. Anderson admitted that the family went down and
24 talked to Mr. Patrick Peters. And if you go to the
25 bottom of the page, you'll see where they agree that

1 their law firm sent out various letters trying to tie
2 up Mr. Middleton's assets. And it's those letters that
3 have Mr. Patrick Peters' father on the letterhead. In
4 addition, Mr. Duncan represented Mr. Middleton in all
5 the civil cases.

6 Q Given your findings and conclusions with respect to
7 Mr. Peters' involvement in this case, do you have an
8 opinion as to his conduct?

9 A When I was on the bench, I wouldn't have allowed that
10 if I'd known all the facts. I consider it
11 reprehensible. As a prosecutor today, I would step
12 aside in any case in which there is even the potential
13 that I would have some sort of financial interest.
14 That's just required. In addition, the American Bar
15 Association has special rules for prosecutors. And
16 they have to see that justice is done, and they have to
17 have an appearance that they are representing the
18 State. Because as you know, charges are filed by the
19 State, charges aren't filed by individuals. And that
20 line seems to have been blurred in this case.

21 Q Now Mr. Peters -- we don't have any evidence, do we,
22 that Mr. Peters was individually personally benefitting
23 from the wrongful death or probate, correct?

24 A That's correct, we have no evidence of that whatsoever.

25 Q But we do know his father was in a firm where there

1 were fees to be made?

2 A Based on \$1.35 million judgment, very large fees to be
3 made.

4 Q Is that the value of the judgment that was ultimately
5 rendered against Ken Middleton in the wrongful death
6 suit?

7 A Yes. It's to grown to some two and a half million
8 dollars today, counting interest and everything.

9 Q In closing, I want to ask you, have you done some
10 investigation into the objective facts within public
11 records concerning the Ed Reuscher case?

12 A I have.

13 Q All right. Can you tell the Court the date that trial
14 started?

15 A I believe the trial started November 30 of 1990. It
16 was completed just prior to Christmas of 1990. There
17 were a few post-trial proceedings, and he was
18 sentenced, I believe, on January 15th, 1991.

19 Q There was actually a sentencing proceeding because it
20 was a death case, correct?

21 A That's correct.

22 Q It wasn't just a show up and a hearing, it was days of
23 witnesses?

24 A That's what should have happened, yes.

25 Q So we're looking at a six-week death penalty trial,