

Memo to file:

File 22, 23:

February 25, 2005

1:30 – 3:40

Originally NCDA answered LEO request for Lopez/CDL documents saying they had nothing: See William Belford's memo in "New Investigation Folder -- NCSO has no injury report on cdl, NCDA originally said it had no LEOs.doc." That was on 7/13/04 with contact being through Lance Kutnick. Then, Tinker's office contacted the DA and he sent them some materials saying that was responsive to the Tinker's LEO request. Those dox (received by Tinker on 2/24/05) are in File 23. Then JSL, Tinker and Perez went to D.A.'s office and met with Kutznick, as described below, and found many more dox than had been provided to Tinker by Kutnick.

Rick Perez, JSL & Doug Tinker visited Nueces County District Attorney's office on 2/25/05. Lance Kutnick showed us a single redwell of paper documents and let us photocopy everything other than work product.

He insisted that there was no physical evidence that he knew of in this or any other case. There was no storage area. Doug brought in an old DA investigator still with the office who recognized his own handwriting on some of the documents in CDL's case to say that they has destroyed all physical evidence previously archived in all prior cases including CDL's. I showed them a document in their own file showing they had checked the evidence out from the district court and thus were obliged not to destroy it and instead to give it back to the court. They joked about someone getting in trouble for this but continued to insist that they had destroyed the exhibits.

Eventually Doug determined from someone in the DA's office that a small archive of old exhibit boxes remained on the 5th floor and we were escorted up there. We found evidence mainly from capital and non-capital homicide cases going as far back as 1975 and certainly to 1983, but there were no DeLuna files there.

I was troubled by the discrepancy between the report of Doug Tinker's assistant Tina, earlier in the day, that she had been told by Kutnick that he had "boxes" of material in his office that he wanted her to come look at as a follow up to Doug's request (on our behalf but not necessarily mentioning our name) to see the record in CDL's case, because they were preparing to destroy the materials. I am sure she referred to multiple boxes, not to a single redwell. This made me wonder whether Kutnick had the boxes in his office but was refusing (e.g under exemptions to the Open Records Act) to let us know they were there. This "decision" to withhold the evidence (if such a decision was made) may have been encouraged by Tinker's statements to Kutnick while I was there that I was looking for DNA. Kutnick pressed very hard repeatedly to get me to tell him why we wanted the information and kept joking about efforts to make the DA's office look bad by finding an innocent guy. I did not provide information, as is my right under the Open Records Act.