IN THE

SUPREME COURT OF THE UNITED STATES

No. ____

ANDRES CARRASCO,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

On Petition for a Writ of Certiorari to the Connecticut Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, when potential *Brady* material (*Brady v. Maryland*, 373 U.S. 83 (1963)), is discovered *during* a criminal trial—and that material consists of the complaining witness' handwritten journals that describe the alleged criminal acts—must that material be reviewed by the trial prosecutors, or at least by *some* prosecutor, or may prosecutors delegate the task of conducting the *Brady* review to a *nonlawyer* on the prosecutors' staff.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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The petitioner, Andres Carrasco, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Connecticut Supreme Court, rendered on June 18, 2024.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court is officially reported at 349 Conn. 300 (2024) and is unofficially reported at 315 A.3d 1014 (2024). That opinion is reproduced in the Appendix at 1a-118a.

The opinion of the intermediate Connecticut Appellate Court is officially reported at 208 Conn. App. 825 (2021) and is unofficially reported at 266 A.3d 888 (2021). That opinion is reproduced in the Appendix at 120a-156a.

JURISDICTION

The judgment of the Connecticut Supreme Court was entered on June 18, 2024. The petitioner timely filed a motion for reconsideration, which was denied by the Connecticut Supreme Court on July 30, 2024. See App. 119a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a), on the grounds that the State of Connecticut has violated the petitioner's rights under the Fifth and Fourteenth Amendments to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The **Fifth Amendment to the Constitution of the United States** provides in pertinent part: "nor shall any person . . . be deprived of life, liberty, or property, without due process of law."

The **Fourteenth Amendment to the Constitution of the United States** provides in pertinent part: ". . . nor shall any State deprive any person of life, liberty or property, without due process of law; . . . ."

Connecticut General Statutes § 53-21(a) provides in pertinent part: "Any person who . . . (2) has contact with the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child . . . shall be guilty of . . . a class B felony for a violation of subdivision (2) of this subsection. . . ."

Connecticut General Statutes § 53a-72a provides in pertinent part: "(a) A person is guilty of sexual assault in the third degree when such person (1) compels

another person to submit to sexual contact (A) by the use of force against such other person or a third

person . . . ."

Connecticut Practice Book § 40-3, entitled "Continuing Obligation to Disclose," provides:

"If prior to or during trial a party discovers additional material previously ordered to be disclosed or which the party is otherwise obligated to disclose, such party shall promptly notify the other party and the judicial authority of its existence."

Connecticut Practice Book § 40-11, entitled "Disclosure by the Prosecuting Authority," provides in pertinent part:

"(a) Upon written request by a defendant filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the prosecuting authority, . . . shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose in writing the existence of, provide photocopies of, and allow the defendant in accordance with Section 40-7, to inspect, copy, photograph, and have reasonable tests made on any of the following items:

(1) Any books, tangible objects, papers, photographs, or documents within the possession, custody or control of any governmental agency, which the prosecuting authority intends to offer in evidence at chief at trial or which are material to the

preparation of the defense or which were obtained from or purportedly belong to the defendant;. . . ."

Connecticut Practice Book § 40-13A, entitled "Law Enforcement Reports, Affidavits and Statements," provides:

"Upon written request by a defendant and without requiring any order of the judicial authority, the prosecuting authority shall, no later than forty-five days from receiving the request, provide photocopies of all statements, law enforcement reports and affidavits within the possession of the prosecuting authority and his or her agents, including state and local law enforcement officers, which statements, reports and affidavits were prepared concerning the offense charged, subject to the provisions of Sections 40-10 and 40-40 et seq."

Connecticut Practice Book § 40-15, entitled "Disclosure of Statements; Definition of Statement," provides in pertinent part:

"The term 'statement' as used in Sections 40-11, 40-13 and 40-26 means:

(1) A written statement made by a person and signed or otherwise adopted by such person; . . . ."

18 U.S.C. § 3500, entitled "Demands for production of statements and reports of witnesses," provides in pertinent part:

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has

testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

* * *

(e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means-

(1) a written statement made by said witness and signed or otherwise adopted or approved by him; . . . ."

INTRODUCTION

This case is out of the ordinary, perhaps even *sui generis*. It took the Connecticut Supreme Court seventeen months to decide the case, and the decision consists of four opinions that fill 118 pages of the Connecticut Reports. One Justice described the case as "posing a unique set of facts amid a legal landscape that is not well developed," thereby presenting "an unusual dilemma." *State v. Andres C.*, 355 (D'Auria, J., concurring in part and dissenting in part). Another Justice noted that "the circumstances under which the state came into possession of the journals [the potential *Brady* material] were certainly unusual." *Id.*, 354 (McDonald, J., concurring). And a third Justice observed that the trial prosecutors had to make decisions "under unforeseen and unusual circumstances that took everyone by surprise." *Id.*, 403 n. 22 (Ecker, J., dissenting).

For introductory purposes, the circumstances giving rise to that "surprise" may be briefly summarized.

The defendant[1] was charged with sexually abusing his niece when she was under sixteen years of age. He waived his right to a jury trial and was tried by a single judge. The complainant was the state's first witness. She testified on direct and cross-examination about the alleged sexual abuse, which consisted principally of being forced to masturbate the defendant. Then, during her redirect examination by the prosecution, she revealed that while undergoing therapy, she had kept personal journals in which she *wrote about her past sexual abuse, including the defendant's alleged sexual abuse of her*, and "how the abuse happened." When defense counsel asked her if the journals would be the "best record" of what happened, she responded "yes." She indicated that she still had the journals, and she brought them to the prosecutor's office the next day—333 pages handwritten in Spanish.

Neither the parties nor the trial judge were quite sure how to proceed. Defense counsel initially requested that *the judge* review the journals *in camera*, but he declined to do so (and he could not have done so because he did not speak Spanish). Instead, the judge directed the prosecutors to review the journals for two purposes: to determine if they contained either the discoverable "statement" of a prosecution witness, i.e., *Jencks*-type material;[2] or *Brady* material. See *Brady v. Maryland*, 373 U.S. 83 (1963).

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[1] The petitioner, Andres Carrasco, was the "defendant" in all state court proceedings. For consistency, he will be referred to as the defendant in this petition.
[2] Connecticut's definition of a "statement" (a "written statement made by a person and signed or otherwise adopted or approved by such person"); Conn. Practice Book

Because neither of the two trial prosecutors spoke Spanish, they assigned the task of reviewing the journals to a bilingual investigator, a nonlawyer, on their staff. The prosecutors assured the judge that they gave proper and adequate instructions to the investigator on how to review the journals.

Following the investigator's review, the prosecutors asked the trial judge to inspect just four pages of the journals, which the prosecutors believed may have contained material (about the complainant's sexual history) that was protected by Connecticut's "rape-shield" statute. After an *in camera* review of those four pages, the judge disclosed a single paragraph to the defense. That paragraph made no reference to the defendant or to any of his alleged acts of sexual abuse.

At the conclusion of the trial, the judge convicted the defendant of sexual assault in the third degree and risk of injury to a child. On May 2, 2019, the judge sentenced the defendant to 20 years, execution suspended after 12 years, and 15 years probation.

The defendant's initial appeal was filed in the Connecticut Appellate Court, which is Connecticut's intermediate appellate tribunal. A three-member panel of that court held, inter alia, that defense counsel had *waived* the defendant's right to disclosure of the journals as the discoverable "statement" of a prosecution witness. See *State v. Andres Carrasco*, 208 Conn. App. 825, 844-855 (2021). The Connecticut Appellate Court also rejected the defendant's claim that where, as here, potential

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§ 40-15(1); "was borrowed from the federal Jencks Act, 18 U.S.C. § 3500." *State v. Andres C.*, 319.

Brady material is discovered during a trial, the *Brady* review of that material should be conducted by prosecutors rather than by a nonlawyer. See *id.*, 855-861.

The defendant sought further review in the Connecticut Supreme Court, and review was granted on two questions: (1) whether the defendant had waived his right to seek disclosure of the journals as the discoverable "statement" of a witness; and (2) whether the review of the journals by a nonlawyer was constitutionally adequate under *Brady*. See 158a (Order granting review).

Ultimately, the Connecticut Supreme Court did not address the "waiver" question on which it granted review. Instead, a majority of the court held that the complainant's handwritten journals *did not meet the definition* of a discoverable "statement" because it had not been demonstrated that the complainant had "adopted or approved" *her own handwritten* journals. *State v. Andres C.*, 349 Conn. at 316-326. With respect to *Brady*, a majority of the court rejected the defendant's request for a prophylactic rule and held that "prosecutors have no constitutional obligation *personally* to conduct a review for *Brady* material that comes to light during trial[.]" (Emphasis added.) *Id.*, 342.

Two members of the Connecticut Supreme Court voted to grant relief. They concluded that the case should be remanded to the trial court, so that the journals could be *translated into English and then reviewed in camera by the trial judge.* As Justice Ecker noted in his dissenting opinion, "*no member of the legal profession*—not the prosecutors, defense counsel, the trial court, the Appellate Court, or any member of this [supreme] court—has reviewed these journals to determine whether

they contain discoverable statements or *Brady* material." (Emphasis added.) *State v. Andres C.*, 349 Conn. 300, 378 (2024) (Ecker, J., dissenting), at App. 79a. See *id.*, 390-91, at App. 91a-92a ("To this day, no lawyer, judge, *or other trained legal professional* has reviewed these journals to determine whether they contain either exculpatory material that could be used to raise doubt about the defendant's guilt or as impeachment material that could be used to challenge the trial testimony of the complainant, whose credibility was determinative of the outcome of the case.") (Emphasis added.)

The complainant's journals were marked as a trial exhibit and were ordered sealed. They remain in the clerk's office. They remain untranslated. And their contents remain "unknown and unknowable to anyone with responsibility for ensuring that justice is done." *Id.*, 378, at App. 79a (Ecker, J., dissenting).

STATEMENT OF THE CASE

The defendant was arrested by warrant on March 11, 2016, and was charged with sexual assault in the third degree; Conn. Gen. Stat. § 53a-72a(a)(1)(A); sexual assault in the fourth degree; Conn. Gen. Stat. § 53a-73a; and risk of injury to a child; Conn. Gen. Stat. § 53-21(a)(2). All three felony charges arose from a complaint by the defendant's niece that he had sexually molested her on various occasions between 2007 and 2011, when she was between eleven and fourteen years old.

Within ten days of his arrest—and three years before trial—defense counsel filed a motion for discovery. It sought the production, inter alia, of "[a]ll exculpatory information or materials," as well as "[a]ll books, . . . papers, . . . or documents

which are within the possession, custody, or control of any State agency, and which are material to the preparation of the defense. . . ." Motion for Discovery, ¶¶ 8 and 13, reproduced in the Appendix to the defendant's brief in the Connecticut Supreme Court, at pp. 60-65.

The defendant pleaded not guilty to all charges. He initially elected a jury trial, but later waived his right to a jury and elected to be tried by the court.

A five-day court trial was held before Judge Jon M. Alander in February of 2019. Because the defendant's primary language is Spanish, he was assisted by official court interpreters at all court sessions.

I. The Trial Court Proceedings

The complainant was twenty-two years old when she testified as the state's first witness, and she described the specific acts of sexual misconduct allegedly committed by the defendant. No other persons had witnessed the alleged misconduct, and there was no forensic or other external evidence to corroborate the complainant's allegations.

The Connecticut Supreme Court summarized the facts that the trial court reasonably could have found:

"'When [the complainant] was ten years old, [she], along with her mother and siblings, moved into her grandmother's home. Shortly thereafter, the defendant, the [complainant's] uncle, moved in. At some point, during the time that the [complainant] and the defendant were living at the grandmother's house, the defendant . . . had the [complainant] apply lotion to his penis and masturbate him. .

. . This type of abuse occurred more than ten times over the next two years while the [complainant] lived at her grandmother's house and continued after she had moved to another house.

"'The [complainant] described other instances of inappropriate behavior by the defendant. On one occasion, the defendant, while dressed only in boxer shorts, went into the [complainant's] bedroom, got under the covers with her, and rubbed the [complainant's] stomach and legs under her shirt and pajama bottoms. After the [complainant] had moved to another house, she would, on occasion, sleep over at her grandmother's home. During several of these occasions, the defendant got into bed with the [complainant] and rubbed himself against her so that she felt his penis against her back.

"'A few years later, the then sixteen year old [complainant] began speaking with a therapist [Milagros Vizueta], and she disclosed the sexual abuse during her first session. At a therapy session attended by her mother and brother, the [complainant] disclosed the sexual abuse by the defendant. Thereafter, on October 28, 2015, the [complainant] reported the defendant's conduct to the police. . . .'" *State v. Andres C.*, 349 Conn. 300, 307-08 (2024) (quoting *State v. Andres C.*, 208 Conn. App. 828-29).

On November 15, 2015, just weeks after reporting the alleged abuse to the police, the complainant provided the police with a signed authorization for the release of her therapist's records. But later that same day the complainant called the police and *revoked her authorization* because she considered it an invasion of

her privacy. The therapist's records were never disclosed to the defense, and the therapist did not testify at trial.

A. The Journals: Trial Day 1

During defense counsel's cross-examination of the complainant, she testified that her therapist, Milagros Vizueta, sometimes took notes during the therapy sessions. Then, on redirect examination by the prosecutor, the following exchange occurred:

"Q: Have you ever seen any kind of records, if they exist at all, from Dr. Vizueta?

A: *I have my journals.*

Q: Okay.

A: I don't have - - I don't know *her* records, but *I have my journals.*

Q: And, so, when you were working in therapy, tell us about - - you *made your own* journals?

A: Yes.

Q: And what kind [of] journals did you make?

A: For the journals she would have me write a lot about either *my relationship to [the defendant], with [the defendant], how the abuse happened,* I would reflect a lot on how it made me feel, how I was missing, why I didn't want to talk. Sometimes in the journal we'd write about - - like if I was having family fights, so *my journals are the abuse that I lived with [the defendant],* but also family fights with my siblings with my mom.

Q: It was your words through therapy?

A: Yeah."

(Emphasis added.) Tr. of 2/13/19, at 155-56. See *State v. Andres C.*, supra, 349 Conn. at 308-09 (quoting portions of same).

Defense counsel then commenced brief recross-examination of the complainant. When asked if she had read her own journals prior to coming to court, she said "I looked at a few pages in one." Tr. Of 2/13/19 at 156. The following colloquy then ensued:

"Q: Okay. Were those—and the—the journals that you have, are those your notes that [you] wrote at the time things were happening?

A: No, it was while I was in therapy.

Q: Okay. But it was part of the therapy process about what you spoke to the doctor about, what she told you and *what happened to you*, right?

A: Yes.

Q: And it would be much closer in time to the events that we're talking about; fair to say?

A: When I was journaling closer to the abuse, yes.

Q: Would—would those be *the best record you have of what happened*?

[ASS'T. STATE'S] ATTY. MARY SANANGELO: Objection.

THE COURT: No, I'll allow it.

A: Yes.

Q: Okay. And you still have those journals?

A: Yes."

(Emphasis added.) Tr. of 2/13/19 at 156-57; *State v. Andres C.*, 349 Conn. at 309.

Immediately after the complainant testified that she still had the journals, defense counsel "ask[ed] for an *in camera* review of the records." The prosecutor objected, asserting that the journals were "more akin to a diary and I'm not aware of case law that makes a victim turn over their personal diary." Defense counsel responded: "I think they are statement (sic) that were closer in time to the alleged events and which she said are best recorded recollection that she has of the events. It would be at least fair for—as a preliminary matter, for the Court to look at them to see if there are exculpatory materials there." Tr. Of 2/13/19 at 157-58; *State v. Andres C.*, 349 Conn. at 309-310.

The court responded to defense counsel by noting that the obligation to review the journals for exculpatory material rested with the prosecutors, and that the court would "only get involved if . . . if there is a claim of privilege. . . ." The court also posed the question of whether the defense was "asking for [the journals] as part of discovery, just straight out and whether you're entitled to that," and then admitted, "I'm trying to figure this out as we go, what the—what the various claims are here." Defense counsel's response made clear that "discovery" was definitely part of the equation: "I *am* asking for [the journals] *as discovery*; however, I was trying to be as respectful as I could be to the complainant." (Emphasis added.) Tr. of 2/13/19 at 158-59; *State v. Andres C.*, 349 Conn. at 310. At the court's suggestion, the complainant stepped down from the witness stand (with the stipulation that she

could be recalled if needed). Court adjourned for the day, and the judge invited the parties to join him so they could all "have a discussion in chambers see where this is all going and then we can go from there." *Id.*

B. The Journals: Trial Day 2

When court opened on the second day of trial, the court noted that it had met in chambers with the parties at the end of the previous court day, and again that morning, to discuss the journals. Based on those discussions, the court had arrived at the following conclusions: "I have determined that those journals should be reviewed by the State to determine what, if anything in those journals concern - - comprise *statements by [the complainant] concerning the incidents in question here, and any exculpatory material.* That upon that review [the state] *should disclose to defense counsel any such material* specifically *statements made by [the complainant] in her journals concerning the sexual assault allegations here or any exculpatory material,* and if there's anything that the State is uncertain as to whether it's exculpatory they can provide those portions of the journals to me and I will review them in-camera to determine whether they should be disclosed to defense counsel." (Emphasis added.) Tr. of 2/14/19, at 1; *State v. Andres C.*, supra, 349 Conn. at 310.

The court noted that the complainant would be bringing her journals to the State's Attorney's Office that afternoon. Inasmuch as the journals were written in Spanish, the court observed that "the State needs the assistance of someone on their staff to interpret those journals so that they can fulfill their obligations as I've

outlined them." Tr. of 2/14/19 at 1-2; *State v. Andres C.*, 349 Conn. at 310-311. Neither party raised any objection to the court's comments.

When that day's trial testimony concluded, the prosecutor announced that the journals were expected to be delivered to the State's Attorney's Office that afternoon, and that "we have made arrangements with my investigator [so] that we will be able to look at the journals" the next morning. Tr. of 2/14/19 at 92.

C. The Journals: Trial Day 3

On the morning of the third day of trial, the court indicated it had again discussed the journals with counsel in chambers. Tr. of 2/15/19 at 1,3. The court noted that "[t]he state has received those journals and is in the process of reviewing those journals." *Id.* The court then made the following statement: "We had a discussion regarding the journals in chambers and it's - - it's my order - - And *I'm not sure I was clear previously*, so I - - I want to be clear now. *It's my order that the state review those journals to determine if there's any exculpatory information with respect to those journals that need[s] to be disclosed to the defendant, and that includes any inconsistent statements and any statements regarding the therapy method used that may have fostered or- - instructed her to use her imagination or speculate or embellish as to what happened but, basically, the - - the state needs to review those journals under its Brady obligations and - - and turn over to the defendant anything that is exculpatory.* (Emphasis added.) *Id.*; *State v. Andres C.*, 349 Conn. 311.

In the ensuing discussion, the prosecutor indicated that "[t]he state is very aware of its obligations under *Brady* to look for exculpatory information and we are doing that. But, other than that, I do not believe there is any state of the record which would give [defense] counsel the permission to just get copies of these private journals of the complainant." Tr. of 2/15/19 at 5.

When the court inquired about the size of the journals, the prosecutor replied that there are "three separate books" comprised of "probably 200 pages," "written exclusively in Spanish."[3] *Id.*; *State v. Andres C.*, 349 Conn. 311. The prosecutor continued: "My investigator has started the process and has spent hours so far and at the present state of our review *there is nothing inconsistent, there is nothing exculpatory* in the records." (Emphasis added.) *Id.* The following exchange then occurred:

"THE COURT: And you've given clear instructions *to your investigator as to what she* is to look for?

ATTY. SANANGELO: Judge, my investigator *who has done this* is Rosa Vazquez, she is a bilingual investigator [i]n our office, *I gave her very, very clear instructions on what is exculpatory and what is not. I sat in an office directly next to her so if she had any questions at all she came to me*, and there is nothing exculpatory or inconsistent so far at all, Judge."

(Emphasis added.) *Id.*; *State v. Andres C.*, 349 Conn. 311-12.

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[3] We now know, from Justice Ecker's dissenting opinion, that the journals "contain 333 pages of entries." *State v. Andres C.*, 349 Conn. at 377 n. 1, and 407.

The journals were marked as Court Exhibit E and were sealed for possible appellate review. The court also noted that the parties had "agreed in chambers that [the journals did not] need to be translated . . .at this point." Tr. of 2/15/19 at 6-7; *State v. Andres C.*, 349 Conn. 312.

D. The Journals: Trial Day 4

On February 25, the state reported to the court that the review of the complainant's journals had been completed:

"These records, Judge, were reviewed by my office, specifically Rosa Vasquez, who is inspector - - excuse me, an investigator for the State's Attorney's Office, she has been with the State's Attorney's Office for 15 years, she has been an investigator in our office for five years, she is bilingual, she is a 2013 graduate of Albertus Magnus College with a major in Criminal Justice. She was instructed very carefully by Attorney [Brian] Sibley and I as far as what she was looking for, we explained to her very carefully what the state's obligation is for exculpatory and *Brady* material.

"She indicated that she spent about 10 hours reviewing these materials because they are in Spanish, and she took her time. These materials never left the State's Attorney's possession; they did not go to her home, they were done during business hours. She indicated she spent about 10 hours reviewing them and whenever she had any questions she would talk to Attorney Sibley and I and it is the state's position, as we disclosed to counsel last week in writing, that there is

nothing in those materials that are *Brady* or exculpatory materials." Tr. of 2/2519 at 4-5; *State v. Andres C.*, 349 Conn. 312-13, n. 5.

Nevertheless, out of an "abundance of caution," the state asked the court to review four redacted journal pages. The prosecutor asserted that those pages were "not exculpatory" and were "not *Brady* material." Tr. of 2/25/19 at 5. The prosecutor wanted the court to review those pages only because they contained information about the complainant's sexual history, information that might be privileged or confidential under Connecticut's "rape shield statute," Conn. Gen. Stat. § 54-86f(a). Tr. of 2/25/19 at 2-9.

After reviewing those four pages, the court determined that one paragraph of one page, and an English translation thereof, should be disclosed to the defense because it *did* contain *Brady* information that was "material and exculpatory." *State v. Andres C.*, 349 Conn. at 313-14. That paragraph related to an incident in which the complainant, when "much younger," had complained to her mother that her sister had improperly "touched" her. The paragraph did not mention the defendant or pertain to any of his alleged acts of abuse.

E. The Journals: Trial Day 5

On the fifth day of trial, the complainant was recalled to the witness stand so that she could be examined in light of the single paragraph from her journals that had been disclosed to the defense. Tr. of 2/26/19 at 2-3.

She reiterated that in her journals she wrote about what had happened to her, including the abuse she had suffered, and she agreed that the journals, along

with her testimony, would be the "best record" of what happened. Tr. of 2/26/19 at 52-54. When defense counsel asked her, "Did you write in your journal *your entire history of sexual contact and abuse*?" she replied, "[m]ost of it, yeah." *Id.*, at 61.

F. The Verdicts and Posttrial Proceedings

On February 28, 2019, the trial court found the defendant guilty of sexual assault in the third degree and risk of injury to a child, both felonies, but not guilty of sexual assault in the fourth degree.

On March 5, 2019, the defendant filed a motion for new trial that was based in pertinent part on the court's failure to disclose the journals. Clerk's App. at 14-18. In the motion, defense counsel asserted that the journals should have been disclosed to the defense because the journals represented the complainant's "statements concerning the offense[s] charged." Clerk's App. at 16, ¶¶ 5-6. Counsel further claimed that the failure to disclose the journals was "materially injurious" to the defendant," and that the nondisclosure of the journals deprived him of his federal and state due process rights and "of the opportunity to confront and challenge the complainant's trial testimony." *Id.*, ¶¶ 7-9.

Although the motion for new trial was timely filed and date-stamped by the clerk, the trial court ignored it or was otherwise unaware of it. On May 2, 2019, the court sentenced the defendant to an effective term of 20 years, execution suspended after 12 years, and 15 years probation. Then, on June 6, 2019, trial defense counsel sent an email to the trial judge inquiring about the fact that he had "not received a ruling on the motion" for new trial. The judge wrote back to defense counsel on June

6: "The motion was never ruled on. I no longer have jurisdiction since defendant has been sentenced." (The email correspondence was reproduced in the appendix to the defendant's brief in the Connecticut Supreme Court, at pp. 141-42.)

II. The First Appeal: the Connecticut Appellate Court

In his initial appeal in the Connecticut Appellate Court, the defendant presented two claims relating to the complainant's journals. First, he claimed that the journals should have been disclosed to the defense as the discoverable "statement" of a prosecution witness. Second, he maintained that under *Brady*, the review of the journals should have been conducted by the trial prosecutors, rather than by a nonlawyer investigator on their staff.

On November 30, 2021, a three-judge panel issued an opinion affirming the judgment of conviction. *State v. Andres C.*, 208 Conn. App. 825 (2021). Regarding the first claim, the Appellate Court held that defense counsel had *waived* his right to seek disclosure of the journals as a statement of the witness, because defense counsel did not object to the review procedures utilized by the trial court. *Id.*, 844-855.

With respect to the claim that the prosecutors had to personally conduct the *Brady* review of the journals, the Appellate Court held that the claim was constitutional in nature and was reviewable on appeal even though the claim had not been raised in the trial court. *Id.*, 855-56. However, the Appellate Court rejected the claim on its merits: "the defendant has failed to demonstrate, through controlling or persuasive authority, that the prosecutors in the present case were

required to personally review the contents of the victim's journals to satisfy *Brady*. We emphasize that, ultimately, the obligation for complying with *Brady* rests with the prosecutor, but it does not follow that the personal review of items such as the victim's journals by a prosecutor is constitutionally required." *Id.*, 860-61.

The defendant thereafter filed a motion for reconsideration, which was denied by the Connecticut Appellate Court on December 29, 2021. See App. 157a.

III. The Second Appeal: the Connecticut Supreme Court

A. The Petition for Certification

On March 1, 2022, the Connecticut Supreme Court granted the defendant's petition for certification, limited to the following two issues:

"1. Did the Appellate Court incorrectly conclude that the defendant had waived his claim that he was entitled to disclosure of the contents of the complainant's journals as the discoverable statements of a witness?

2. Did the Appellate Court incorrectly conclude that the *Brady* review; see *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); of the complainant's journals by a nonlawyer member of the state's attorney's office, was constitutionally adequate?"

State v. Andres C., 342 Conn. 901, 270 A.3d 97 (2022), at App. 158a.

After the grant of certification, the defendant sought permission from the Connecticut Supreme Court to add a related claim to the certified questions. The Connecticut Supreme Court has a rich tradition of invoking its "supervisory authority over the administration of justice" to adopt and implement rules and

procedures to improve the quality of criminal justice. In accordance with that tradition, the defendant requested permission to raise the following supervisory authority claim: "Assuming that the nonlawyer's review of the journals satisfied the *constitutional* requirements of *Brady*, should this Court require, pursuant to its inherent supervisory authority over the administration of justice, that a prosecutor must conduct a review of potential *Brady* material when, as in this case, that material is first discovered while a trial is in progress." (Emphasis in original.) Defendant's Motion to Suspend the Rules to Permit Consideration of an Issue that is Outside the Scope of the Certified Question, p. 2. On June 14, 2022, the Connecticut Supreme Court denied the defendant's request to raise that claim. See App. 159a.

The certified appeal was argued in the Connecticut Supreme Court on January 11, 2023, before five Justices. Nine months later, on October 11, 2023, another Supreme Court Justice, and the Chief Judge of the Appellate Court, were added to the panel. The court issued its decision eight months later, on June 18, 2024. On July 30, 2024, the court denied the defendant's motion for reconsideration. See App. 119a.

B. The Connecticut Supreme Court's Majority Opinion

1. The "Statement" Issue

The majority did not address the first certified question of whether the defendant had waived the right to disclosure of the journals as the discoverable "statement" of a witness. Instead, the majority relied on the state's alternative

ground for affirmance—a ground that had not been raised by the state in the trial court, *or* in the Appellate Court, *or* in a proper pleading under Connecticut's rules of practice—that the journals did not meet the definition of a "statement" under the rules of practice. The relevant rule defines the term "statement" to mean, inter alia, "[a] written statement made by a person and signed *or* otherwise adopted or approved by such person." (Emphasis added.) Conn. Practice Book § 40-15(1). In this case, the majority quickly jettisoned the "signing" element in that definition by simply stating, without any evidentiary proof, that "[t]here is no indication that the complainant signed her journals." 349 Conn. at 319. (It is equally true that there is no indication in the record that the complainant *did not* sign her journals. At the trial, that issue was never raised, and no evidence was elicited on that point.)[4]

Relying largely on federal precedent arising under *Jencks v. United States*, 353 U.S. 657 (1957) and 18 U.S.C. § 3500, the majority concluded that the complainant's journals were not subject to discovery because the complainant "did not formally adopt or approve" her journals as a statement for which she could be held accountable in court. *State v. Andres C.*, 349 Conn. at 315-16, 318, 323, 325, 326.

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[4] Some scholars have endorsed the view that "[d]ocuments that are written by the witness h[er]self should fall within the written statement definition [of the Jencks Act] whether or not they are signed by the witness." (Footnote omitted.) 6 W. LaFave, J.H. Israel, N.J. King, and O. S. Kerr, *Criminal Procedure* (Fourth Ed. 2015), § 24.3(c), p. 460.

2. The *Brady* Claim

The defendant asked the Connecticut Supreme Court to adopt "a limited [constitutional prophylactic] rule to the effect that a prosecutor must personally review potential *Brady* material when that material is first discovered or uncovered during the course of trial." Def. Br., p 47. The majority rejected that claim, noting that there are already "sufficient safeguard[s]" for protecting *Brady* rights. *State v. Andres C.*, 332. For example, the majority suggested that "defense counsel could have asked for in camera review by the trial court" *after* the state conducted the initial review of the journals, but defense counsel failed to make such a request. *Id.*, 332-34. However, as another Justice pointed out, "asking the [trial] court to review them in camera would have been futile. They were in Spanish." *Id.*, 368 (D'Auria, J., concurring in part and dissenting in part). Like the prosecutors, the trial judge did not speak Spanish.[5]

The majority further noted that in the trial court, defense counsel never challenged the qualifications of the investigator who conducted the *Brady* review, and consequently there were no factual findings about the investigator's legal training, or about her knowledge of the facts of the case. *Id.*, 336-337, 341. In addition, the majority noted that the defendant could not cite "a single case in

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[5] When defense counsel asked the judge if he wanted to look at a line on a redacted page, the judge replied: ". . . well, it's not going to help me, it's in Spanish. . . ." See *State v. Andres C.*, 363-64 n. 4 (D'Auria, J., concurring in part and dissenting in part).

which a court has concluded that the government violated *Brady* merely because the records at issue were not personally reviewed by the prosecutor." *Id.*, 344.

It should be emphasized that in its discussion of the *Brady* claim, the majority opinion often mischaracterized the essential nature of the *Brady* review that occurred in this case. The majority repeatedly describes a process in which prosecutors "enlist" or "seek" the "assistance" or "help" of a nonlawyer when performing such a review. See, e.g., *Andres C.*, 306, 327, 329, 330 and n. 18, 331, 332 n. 20, 338. The reader of the majority opinion is thus left with the false impression "that the prosecutors *undertook some review* of the journals, with the investigator assisting in that review." (Emphasis added.) See *id.*, 357-58 n. 2 (D'Auria, J., concurring in part and dissenting in part). Justice D'Auria provides the most direct, elegant, and accurate description of what occurred: "The investigator reviewed the journals. Period. The prosecutors did not. Indeed, on this record, as between the prosecutors and the investigator, the latter was the only one who *could* have reviewed them because they were written in Spanish." (Emphasis in original.) *Id.* See *Andres C.*, 402 n. 20 (Ecker. J., dissenting) (quoting portion of same); see *id.*, 402 ("The investigator neither produced a written translation nor read the journals in translation aloud to the prosecutors . . . The simple truth is that the prosecutors did not review the complainant's Spanish language journals—*they delegated this task entirely* to their bilingual investigator.") (Emphasis added.); *id.*, 414 ("The record makes it clear that the prosecutors performed no active oversight of the review process and left it to the investigator to come to them with questions.").

C. The Dissenting Opinions

Two members of the Connecticut Supreme Court believed that the case should be remanded. Justice D'Auria stated: "I would therefore, without vacating the judgment of conviction, remand the case to the trial court to order a certified translation of the complainant's journals, which the court should then review in camera. If the state requests a copy of the translated journals to undertake its own review, consistent with its *Brady* obligation, the trial court should grant that request." *State v. Andres C.*, 376-77 (D'Auria, J., concurring in part and dissenting in part). Justice D'Auria believed that such a remand was particularly warranted, insofar as the defendant had been convicted by a judge, not a jury. Accordingly, a remand to the trial court "would ensure that we would have Judge Alander's view of whether any further exculpatory evidence was 'material' to *his* finding of guilt. Judge Alander is uniquely situated in the present case to determine whether anything in the complainant's journals, if exculpatory, would have impacted his determination of guilt under the applicable materiality standard." (Emphasis in original.) *Id.*, 375-77.

Justice Ecker also wanted to remand the case: "I would retain jurisdiction over the present appeal and remand this case to the Appellate Court with direction to remand it to the trial court and to have that court order the journals translated into English and conduct further proceedings to determine whether the journals, or any portion thereof, contain information subject to disclosure under Practice Book

§§ 40-13A and 40-15(1), or *Brady*." (Footnotes omitted.) Justice Ecker believed that in a case like this one—where the complainant wrote in her journals about "the very events at the center of the criminal charges against the defendant"—"giving a nonlawyer investigator a brief, midtrial, backroom lecture on '*Brady* in a nutshell' is a grossly inadequate substitute for the kind of legal education, training, and experience that would qualify a person to conduct the meaningful review that *Brady* mandates." (Footnote omitted.) *State v. Andres C.*, 395 (Ecker, J., dissenting).[6]

It is significant that both of the votes for remand called for official translations of the journals. "The [Connecticut] Judicial Branch agrees that the risk of an inaccurate translation is genuine. Sensitive to the innumerable languages and dialects that may present themselves in court proceedings, the Judicial Branch has made interpreter and translation services available. As the dissent details, court-appointed translators for the Judicial Branch must pass written, oral, and ethics examinations, must agree to be bound by the Code of Professional Responsibility for

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[6] The investigator was not given instructions "on the record," in open court. The prosecutors asserted that they instructed their investigator to look for *Brady* material and "inconsistent" statements. See, e.g., Tr. of 2/15/19 at 5. In fact, both the prosecutor and court used the terms *Brady* and "inconsistent," but "inconsistency" is not the lodestar of *Brady*. *Brady* encompasses exculpatory information and "impeachment" material, which includes much more than "inconsistent" statements. As noted by Justice Ecker, "there is no indication that [the prosecutors] also instructed the investigator to review the journals for other types of *impeachment* evidence, such as evidence of bias, motive, interest, or reputation for truthfulness." (Emphasis added.) *State v. Andres C.*, 398 n. 18 (Ecker, J., dissenting).

Court Interpreters of the State of Connecticut Judicial Branch, and be sworn by a Superior Court judge." *State v. Andres C.*, 363 (D'Auria, concurring in part and dissenting in part) See *id.*, 400 (Ecker, J., dissenting) (noting the same requirements for translators). Here, "[t]here is no indication in the record that the state's investigator even possessed the foreign language qualifications necessary to read and translate written documents." *Id.*, 399. See *id.*, 363 (D'Auria, concurring in part and dissenting in part) ("Nothing in the record indicates that the investigator's credentials qualified her to provide translation services to the court.") See *id.*, 398 n. 18 (Ecker, J., dissenting) ("Because the investigator had no known qualifications as a translator and was not operating within a framework of enforceable ethical obligations, I cannot conclude that she was competent to translate the complainant's Spanish language journals into English, much less to review those journals for *Brady* material.") *State v. Andres C.*, 398 n. 18 (Ecker, J., dissenting).[7]

REASONS FOR GRANTING THE WRIT

Brady v. Maryland is undoubtedly one of the most consequential criminal law decisions ever issued by this Court. But *Brady* is not self-executing. Its viability, and operational effectiveness, depend to a large degree on the knowledge, integrity,

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[7] In the state court appellate proceedings, *the parties agreed* that if necessary for review, the journals should be officially translated. See, e.g., St. Br. in Ct. App. Ct., p. 32 n. 16; Def. Reply Br. in Ct. App. Ct., p. 15 n. 9; Def. Br. in Ct. Sup. Ct., p. 35; St. Brief in Ct. Sup. Ct., p. 43 n. 15.

honesty, ethics, judgment, and good faith of the person or persons who conduct a *Brady* review.

The essential facts set forth in this petition should cause any reasonable person to at least be concerned about *Brady*'s continuing vitality in a state that officially proclaims itself as "The Constitution State." See *Connecticut State Register and Manual* (2020), pp. 800, 818. At least some of Connecticut's prosecutors seem quite willing and content to relax *Brady*'s standards. In fact, at the oral argument of this case, in response to questions, the attorney representing the state asserted that a *Brady* review could be performed by a *secretary or law student intern* in the prosecutor's office, as long as that individual received specific directives on how to proceed.[8]

This is a case in which the complaining witness *testified under oath* that her journals contained a history of the sexual abuse she suffered at the hands of the defendant, and that her journals represented the "best record" of what happened. Yet 329 of the 333 pages have never been translated, or reviewed, by a trained legal professional. If those facts do not suggest that *Brady* was derailed—and that this case is worthy of a grant of certiorari—no amount of legal argument will suffice.

As for precedent, this Court has never confronted the specific question of whether, under any given set of circumstances, a prosecutor must *personally* review

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[8] An audio recording of the oral argument is available on the Connecticut Judicial Branch website (https://www.jud.ct.gov/Supremecourt/Audio/PlayAudio). The referenced question and response occurred at approximately the 36-to-39 minute mark of the audio recording.

potential *Brady* material. Although that question has been answered in the negative by a number of federal[9] and state[10] courts, most of those decisions involved

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[9] See, e.g., *United States v. Jennings*, 960 F.2d 1488, 1489-92 (9th Cir. 1992) (district court had no authority to issue a pretrial order directing federal prosecutor to personally review the personnel files of federal law enforcement agents); *United States v. Herring*, 83 F.3d 1120 (9th Cir. 1996) (holding that the *Jennings* decision survived *Kyles v. Whitley*, supra, because "*Kyles* did not address the question presented by *Jennings* and this case - - whether the district court has the authority to issue a pre-trial order requiring a prosecutor to review personnel files of testifying officers personally"); *United States v. Martin*, 2016 U.S. Dist. Lexis 106565 *2-3; 2016 WL 4261834 (E.D. Cal. 2016) (*Jennings*, supra, "remains the law of the [9th] Circuit"); *United States v. Smith*, 552 F.2d 257, 261-62 (8th Cir. 1977) ("It is unreasonable to impose upon a prosecutor the duty of personally searching [DEA] agency files for favorable evidence."); *United States v. Peltier*, 553 F. Supp. 890, 899 (D.N.D. 1982) (quoting *Smith*, supra), aff'd in part and remanded on other grounds, 731 F.2d 550 (8th Cir. 1984) (per curiam); *United States v. Burk*, 2016 U.S. Dist. Lexis 202678; 2016 WL 11709810 (D. Alaska 2016) ("Courts have no authority to direct the Assistant United States Attorney (AUSA) assigned to a case to personally conduct" a review of personnel files of testifying law enforcement officers); *United States v. Thomas*, 2018 U.S. Dist. Lexis 182664 *8-9; 2018 WL 5268203 (D. N. M. 2018) ("The Government may satisfy its *Brady* duty by following current DOJ policy, in which DEA attorneys or staff examine the case agent's personnel file and produce any *Brady* or *Giglio* material to the Assistant United States Attorney."); *United States v. Principato*, 2002 U.S. Dist. Lexis 19633 *9-11; 2002 WL 31319931 (S.D.N.Y. 2002) ("this Court is not aware of any such rule" in the Second Circuit that would require a "personal review," by an Assistant United States Attorney, of the personnel files of anticipated government employee witnesses); *United States v. Claridy*, 2003 U.S. Dist. Lexis 4183*; 2003 WL 1396846 (S.D.N.Y. 2003) (no requirement that "the prosecutor assigned [to the case] must, personally, review all relevant SEC files").

[10] See, e.g., *State v. Alkire*, 468 P.3d 87, 93, 102-04 (Haw. 2020) (due process clause of the Hawaii constitution does not require that prosecutors personally review police officers' personnel files, which were not in the possession of the prosecution); *Stacy v. State*, 500 P.3d 1023, 1038-39 (Alaska Ct. App. 2021) (holding that "prosecutors have a duty to learn of *Brady* material that may be in the personnel files of law enforcement officers or other members of the prosecution team," but noting that the state can comply with its *Brady* obligations "without having individual prosecutors personally review personnel files").

the *Brady* review of law enforcement officers' personnel records, or the review of files maintained by outside agencies.

As Justice Ecker observed, the personnel cases "provide exceedingly weak authority" for rejecting the defendant's claim; the review of personnel files "normally is a simple and focused exercise," whereas "[t]he material at issue in the present case contains the complaining witness' own narrative description of the sexual abuse she claims to have suffered at the hands of the defendant." *State v. Andres C.*, (Ecker, J., dissenting) 404-06. Given the complainant's sworn testimony about the *content* of her journals, and the mid-trial *timing* of their discovery, it was imperative that the *Brady* review of the journals be conducted by one or more attorneys who were knowledgeable both about *Brady*'s requirements, and about the facts of the case.

Familiarity with the facts of the case is, of course, critical. This Court has recognized that "the significance of an item of evidence can seldom be predicted accurately *until the entire record is complete*"; (Emphasis added.) *United States v. Agurs*, 427 U.S. 97, 108 (1976); and "the character of a piece of evidence as favorable will often turn on the *context of the existing or potential evidentiary record.*" (Emphasis added.) *Kyles v. Whitley*, 514 U.S. 419, 439 (1995). In this case, the evidentiary record *was* virtually complete when the complainant *first* revealed the existence of her journals. That is why the prosecutors—who elicited the complainant's direct and redirect testimony and observed her cross-examination and recross-examination—were in the best position, actually a unique position, to

review the journals (once translated) for *Brady* material, and to make *reliable* "judgment calls" and contextual decisions about what should be disclosed. *Kyles v. Whitley*, supra, 439. The investigator was clearly not in a position to make such calls or decisions.[11]

It is somewhat ironic, and certainly discomforting, that the prosecutors in this case failed to recognize or identify *Brady* material when they saw it. The majority opinion admits that "the prosecutor's statement that the four pages [shown to the trial judge] contained no *Brady* material *was not correct*," and that the prosecutor "*may have made a mistake* in her *Brady* analysis." (Emphasis added.) *State v. Andres C.*, 343-44 n. 27. Yet that mistake did not alarm the majority, because it "would not demonstrate *conclusively* that [the prosecutor] did not understand her obligations under *Brady*." (Emphasis added.) *Id.*

But Justice Ecker viewed the prosecutors' mistake as being significant: "of the four journal pages that were translated into English, the record demonstrates conclusively that one of those pages contained *Brady* material that went unrecognized and unacknowledged by the prosecutors. This fact does not inspire

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[11] There is no indication that the investigator was ever in the courtroom during the complainant's testimony. "In terms of the facts, we have no reason to think that the investigator was made aware of or had the requisite familiarity with the complainant's pretrial statements or trial testimony, which was necessary to determine whether the description of events set forth in her journals ('the best record' of what happened) was inconsistent with the version of events detailed in those pretrial statements and her testimony." *State v. Andres C.*, 396 (Ecker, J., dissenting). See *id.*, 413-14 n. 29 (the investigator had "no apparent . . . knowledge of . . . the complainant's prior statements or testimony.")

confidence in the prosecutors' own ability to identify *Brady* material, which further casts doubt on the *propriety of delegating that responsibility to a nonlawyer instructed by the prosecutors* and bolsters my conclusion that the state's *Brady* review was inadequate in this case." (Emphasis added.) *State v. Andres C.*, 402-03 n. 21 (Ecker, J., dissenting). In short, "the only evidence in the record of the prosecutors' understanding of *Brady* is an instance *in which they got it wrong.*" (Emphasis added.) *Id.*

Would it be the "better practice" for prosecutors personally to conduct *Brady* reviews? In this case, the majority answers that question with a qualified yes: "We therefore believe that, regardless of when the state becomes aware of potentially exculpatory information or how the information comes to light, *it is the better practice for prosecutors personally to review the information*, or at least to seek assistance from attorneys, or other qualified staff members, who have received comprehensive training in the requirements of *Brady* and who are sufficiently knowledgeable about the case, including possible defenses, to appreciate the import of the information under review." (Emphasis added.) *State v. Andres C.*, 339. See *id.*, 331 n. 19 (quoting Justice Department Manual which states, in part: "It would be preferable if prosecutors could review the information [for *Brady* material] *themselves in every case*, but such review is not always feasible or necessary. . . .") (Emphasis added.)

One Ninth Circuit decision bears mention. In *United States v. Alvarez*, 86 F.3d 901 (9th Cir. 1996), cert. denied, 519 U.S. 1082 (1997), the court took note of its

prior holdings that "the district court cannot order an AUSA personally to review law enforcement personnel files." *Id.*, 905. However, the court went on to explain why "the better practice is for the prosecutor *herself* to review such materials" as an officer's rough notes: "Because the government's failure to turn over exculpatory information in its possession is unlikely to be discovered and thus largely unreviewable, it is particularly important for the prosecutor to ensure that a careful and proper *Brady* review is done. *Delegating the responsibility to a nonattorney police investigator to review his own and other officers' rough notes to determine whether they contain Brady, Bagley [473 U.S. 667 (1985)], and Giglio [405 U.S. 150 (1972)] information is clearly problematic.* . . . we see little justification and much danger to both the prosecutor's reputation and the quality of justice her office serves for a prosecutor *not to review personally those materials directly related* to the investigation and prosecution of the defendants, such as a testifying officer's surveillance notes." (Emphasis added.) *Id.*, 905. See *United States v. Turner*, 2005 U.S. Dist. Lexis 3262 *23 (D. Mass. 2005) (quoting portion of *Alvarez*, supra), aff'd, 501 F.3d 59 (1st Cir. 2007), cert. denied, 552 U.S. 1243 (2008). See also *United States v. Urciuoli*, 470 F. Supp. 2d 109, 112 (D. R.I. 2007) (the district court "did instruct the prosecutors to, personally, review the agents' handwritten notes of the [witness] interview and to produce any *Brady* material not previously furnished to defense counsel").

In many circumstances, the line between the preferred "better practice," and a constitutional requirement, may be blurred or indistinct. But not here. In a case

like this one, involving the mid-trial discovery of the complainant's "best-record-of-what-happened" journals, the better practice (of requiring that prosecutors personally review the potential *Brady* material) *should be* the constitutional requirement. After all, the ultimate responsibility for complying with *Brady* falls upon prosecutors, and they alone are responsible for the final disclosure determination. "Among prosecutors' unique ethical obligations is the duty to produce *Brady* evidence to the defense. . . . Prosecutors are not only equipped but are also ethically bound to know what *Brady* entails and to perform legal research when they are uncertain." *Connick v. Thompson*, 563 U.S. 51, 66 (2011).

Does this case cry out for reversal of the defendant's convictions? Of course not. But it does cry out for a simple remand to the trial court, where the journals can be officially translated and reviewed by the trial court and/or prosecutors for *Brady* material. See, e.g., *Pennsylvania v. Ritchie*, 480 U.S. 39, 57-58 (1987) (in a case where "neither the prosecution nor defense counsel" nor the trial judge had reviewed the file in question, the proper remedy was to remand the case back to the state courts so that the file could be "reviewed by the trial court to determine whether it contains information that probably would have changed the outcome of [petitioner's] trial"). See also *United States v. Djibo*, 730 Fed. Appx. 52 (2nd Cir. 2018) (summary order) (remanding case to the district court so that records of cellphone conversations, including hundreds of pages in Swahili, could be translated and then reviewed for *Brady* material; "Without the complete translation . . . it is impossible to determine whether this conversation presents impeachment or

exculpatory evidence or whether [the cooperating witness'] explanation is confirmed by the remaining untranslated records."); *United States v. Djibo*, 15 CR 00088 (RJD), 2019 WL 1517086 (E.D.N.Y. 2019) (after remand, granting motion for new trial due to *Brady* violation).

CONCLUSION

For all of the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Connecticut Supreme Court.

Respectfully submitted,

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