

## OPENING STATEMENT ERRORS

### FLOYD MARSH – ROBBERY CASE # CR1401585

On August 9, 2017, Clackamas County D.D.A. Russell Amos gave his Opening Statement to the jury on the first day of Trial in the above case. Transcripts reveal numerous mis-statements of fact that he at best failed to verify, and at worse deliberately fabricated to his own ends. These no doubt contributed to jury confusion and laid one of the most horrendous foundations for miscarriage of justice in Oregon's history. In short, Amos got almost nothing right – *and this is just the Opening Statement!* Read on and make your own determination.

Consider that, according to Amos, it is the "details" that matter. Since his details such as math, dates, locations, relationships, timelines, etc. were impossible, on what did he found his case? Someone should have clued him in: **Before you connect the dots, you must collect the dots.** CCSO Det. Eric Lee testified that he verified nothing and took Gerry's word for everything. And Gerry was neither truthful nor consistent.

It is a shame so much evidence was intentionally withheld from the jury, as Amos violated Motions to Compel.

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#### Trial Page #

#### 212

Amos: *Zdena immigrated to the USA in 2008.*

**Fact:** Actually, she immigrated to the USA in 1996. Amos is 12 years off.

Amos: *Zdena lived at 24011 SW Gage Road, Wilsonville, OR with her husband.*

**Fact:** Arnold and Zdena have never been married, but thanks to Amos' ignorant statements in court, the Oregonian reported them such to all its readers.

Amos: *Due to this experience, Zdena still fears for her life.*

**Fact:** She has every reason. Amos helped her attacker go free.

#### 214

Amos: *Arnold had come over from Europe in 1966 with money.*

**Fact:** He came with a knapsack. He had no money. He landed in Chicago, shared a rented room and drove taxi cab 80 hours per week, taking English classes at night. He made so much money the first couple of

years, that it caught the IRS's attention. That is when he first made up the story of "bejeweled knives" he'd brought over from Europe – to explain his wealth. The IRS was so impressed, they dropped the matter. His "bejeweled knives" story was dusted off to pad his 2011 insurance claim for this robbery, proving his willingness to lie about safe contents, which becomes critical later.

**Amos:** *Gerald Wiese met Floyd Marsh in 1981 or 1982.*

**Fact:** They met in 1987 at American States Karate, as part of Floyd's career that started in 1982. Check out Floyd's personnel file. Amos is 5-6 years off.

**Amos:** *Gerald Wiese was 19 or 20 when they met, and Floyd was about 27.*

**Fact:** How does this work if they are nearly 11 years apart in age - not 7-8? Floyd was born May 1957 and Gerry was born December 1967. If Amos is right and they met in 1982, Gerry would have been 14, and as Gerry's parents are Jehovah's Witnesses, they would not have allowed their minor son to participate in violent sports. Ask them.

Based on DOB alone, Gerry was probably 18, and Floyd was about 30 when they met in 1987.

(This becomes important when determining the age of Zdena's attacker, whom she initially described was around age 25 or 30 - in 2011. It is not disputable that Floyd was 54 years old at the time of the robbery.)

## 215

**Amos:** *Arnold began to cheat on his wife, Gail Kachlik (with me in 1988).*

**Fact:** Arnold had been cheating on *Gail* for years. He already had one child on the side from their marriage by the time I met him in 1988.

**Amos:** *During the course of Floyd's 2003 investigation into my matter concerning Arnold, Floyd began a relationship with me.*

**Fact:** Completely wrong. I know it fits everyone's worldview that I bribed him with sex to help me in that case – and I tried. Floyd would have none of it. He was suffering from having recently been falsely accused by a female seeking monetary award for alleged sexual impropriety, so he would not go there with me at all. As for me, he was my hero – the only person interested in the truth in my case, the only person who would do his job to help my child. Only after my son Erik was rightfully returned to my home, did Floyd and I begin seeing one another romantically. That

was 2004. Anyone who believes otherwise is dead wrong. To say such in court, is slander to the highest degree.

**Amos:** *When Floyd and I began seeing one another in 2003, I was living at 342 Camrin Loop, Creswell, OR, Lane County.*

**Facts:** There is so much wrong with this, I hardly know where to begin.

Not only did our relationship not exist yet, *Camrin Loop* did not even exist yet! The subdivision barely did. It was a field.

In 2007, Floyd was still living and working M-F up in Clackamas. Ask Sheriff Roberts. He attended Floyd's retirement party in Oregon City, gave a speech. I was there. So how could Floyd be seeing me two hours away? In a field.

After Floyd's 2007 retirement, a 2008 disbursement of some of his retirement funds were used to start building our house on Camrin Loop in Lane County. Financial trails are undeniable.

Call Creswell City Hall. Ask them when our Creswell address was issued its occupational permit. I'll save you time: it was April 2009. This time, Amos is six years off.

**Amos:** *Arnold divorced Gail in 2005.*

**Fact:** That is likely when they *separated*. I think the actual divorce was not final until about 2010. Perhaps a public records search will show how many years Amos was off this time.

## 216

**Amos:** *Floyd started Silvergate Construction in 2006.*

**Fact:** Oregon CCB License # 151701 registered June 2002.

Four years off.

**Amos:** *In 2007, upon his retirement, in order to expand Silvergate Construction, Floyd moved to my location in Creswell, to open an office on First Street.*

**Fact:** Recall that the house did not exist yet, so neither of us lived in Creswell in 2007. Elsewhere Amos says I already been there since 2003; impossible. Lease records from the Summerlin complex will show I lived in West Linn from January 2006 through October 2008. Check it.

Silvergate's office was located at 615 High Street, Suite C, Oregon City, from 2005 through October 2008. Contact the owner of the building,

Paul Kolia, for lease records. Or you can talk to my Admin Assistant, Natalie Smith, who worked with me there every day till October 2008.

There never was an office on First Street in Creswell. That location was an 1800 sq. ft. shop Floyd rented to store leftover tools and supplies after Silvergate shut down and we moved to Creswell in October 2008. You can verify with the shop's owner, John Hammer, of Hammer Lumber in Eugene. Floyd did not start renting it for storage until about 2009, shortly after we relocated to Creswell. It was not an "investment" as Amos claims. It was an expensive storage shed.

**Amos:** *In 2007, 2008, Gerald Wiese began to work for Floyd.*

**Facts:** That's not what Gerry said in his drug proffers. Oh, wait. He admitted those were fictitious interviews. Never mind.

Why would Gerry *start* to work for us in 2007 or 2008 when the market crashed? That is when we were wrapping things up! By November 1, 2008, Silvergate had zero payroll. Check with ADP or the Employment Department.

Gerry first worked for Floyd on the Oregon City home of Larry Beckwith. That was in **2005**. Ask Larry. He is retired CCSO.

Gerry spent almost all of **2006** doing sheetrock for us in Seattle. Bank and payroll records verify this. He worked sheetrock on three high-rises for us there, including the Decatur and Tobira, who were converting units into condos then.

In **2007**, Silvergate began to build a house on Auburn Lane in Creswell for my brother, now Retired ANG Sgt. Brian Loop. Gerry was in charge of that crew and was quite resentful for being assigned to work away from the Portland area so much. All this time, Floyd had continued to work at his day job in Oregon City. Check his personnel records.

Early **2008**, almost a year after his retirement, Floyd and I broke ground on our own house in Creswell.

**Amos:** *Gerry claims he was called in to save Floyd because jobs were not getting done.*

**Fact:** About February 2006, Floyd knew that he planned to retire in 2007 and become a full-time contractor. Until then, he had only been doing small handyman or remodel work on the side. He decided to ramp up his construction biz in anticipation of it becoming his full-time work.

I began helping Floyd in his office around October 2005. He taught me how to write contracts and I was soon negotiating them and filing the paperwork to expand Silvergate into Washington for those big Seattle jobs that Gerry did for us in 2006. See Washington Bureau of L&I.

By the time Floyd retired from his day job in June 2007, we regularly employed about 22 persons – you can verify this with ADP - of which Gerry was the highest paid. And we had expanded Silvergate from our 150 sq. ft. office on High Street, into an 800 sq. ft. one in the same building. In all, we rented that commercial space for almost three years. We vacated in October 2008 when we moved to Creswell to finish our house ourselves. Gerry, now a wannabe drug lord, had stopped showing up for work and instead preferred to stay out all night at Hispanic Clubs in the Portland and Salem areas. I was horribly stressed to be required to finish my own sheetrock, tile, paint and landscaping myself. He and his crew had literally turned in timesheets for which they got paid, but when we visited Creswell to see the progress, it was clear they had not been there. We later learned Gerry took our crew (and trucks and tools and supplies) to work his side jobs.

Gerry *might* have had a small karate biz when Floyd hired him in late 2005 or early 2006. According to Floyd, Gerry did from time to time. However, it always struggled, and he was in severe financial trouble and behind on child support when he accepted Floyd's job offer early 2006. Check with Oregon and Washington Child Support offices.

Amos: *Gerry went down and did a good job for Floyd.*

**Question:** Where is this exactly?

Amos: *Weise decided to "partner up" with Floyd.*

**Fact:** Gerry was never anything more than an hourly employee.

**217**

Amos: *"I think there was some profit-sharing."*

**Fact:** If you ask Gerry what his understanding of such a four-syllable word is, you'll likely hear something like *if we have it, he should get 50% of it.*

At Trial, Amos asked me about Silvergate's properties. Silvergate had none. But that Gerry believed it did, would explain both Amos' question as well as Gerry's entitlement mentality to Floyd's and my real estate. Around 2012, Gerry became furious that Floyd refused to sell our

properties to pay off Gerry's drug debts. Gerry and Amos both missed the point that all properties were then and always had been in my LLC's name. Gerry did not know what he was talking about and Amos did not do a 5-minute public-records search to verify. Who owned over half-a-mil in real estate? Answer: Not Silvergate. That is a big "detail."

**Amos:** *Gerry sold his karate dojo in Vancouver.*

**Question:** Who did he sell it to, Amos? Show me the lease, receipt, contract or bank records.

**Fact:** Gerry had nothing to sell. He was behind on his commercial rent, forced to close. Not the first time.

Perhaps you will be more successful than this investigator, at finding if Gerry EVER owned a Washington business license. I could not locate one. Perhaps one could find his landlord or his tax returns for the real story. I know he was heavily garnished when he worked for us. The States of Oregon and Washington will have records of this.

**Amos:** *In 2008, Arnold met Zdena.*

**Fact:** They probably started *dating* about 2008 after he separated from Gail, but they had known one another socially for *many* years. Recall that Amos was off by 12 years on when Zdena entered the USA.

**Question:** Were the victims of this case so unavailable that no one thought to even ask them of their marital status or how long they had known one another? If it didn't matter, why did Amos make sure the jury and the local media knew *his* version of their relationship?

**Amos:** *In 2008 or 2009, Gerry had been working a year or two for Floyd.*

**Fact:** First job: 2005. Gerry's last job for Silvergate was on the Spencer Hotel in downtown Portland, summer 2008. Why not call them and ask them? I was upset that all our Lane County house-building projects sat dormant during that time-wasting, money-losing job. It racked up a \$30K Workers Comp bill with Liberty Mutual that hurt us badly.

**Amos:** *It was in 2008 or 2009 that Gerry began to get disturbing info about the company's financial state. The company is broke.*

**Fact:** That's going to happen when you don't finish jobs and rob the company blind, Gerry.

Anyhow, that had nothing to do with me by then. Floyd took me off Silvergate's CCFCU bank account October 2008 when we moved to Creswell. He likely closed that account then. I wouldn't know, but your Detectives are supposed to. For all practical purposes, the company shut down entirely that month other than for Floyd and me to personally finish our houses ourselves after Gerry took what we paid him to do so and ran.

Amos: *Per Gerry, per Floyd, it is the bookkeeper's fault. "Money is missing."*

Fact: That is a long chain of hearsay without an investigation.

**In reality, I was the bookkeeper, and no money was missing.**

The IRS would begin an audit in 2010, completed in 2012, that dissected the 2007 and 2008 financials of both myself as well as Floyd Marsh DBA Silvergate Construction. During all those years, no mention was ever made of missing money by anyone, not one time.

The IRS required tax records to be kept for seven years. I kept them for 10, which was six years after the audit completed. Why would I do that if I was trying to hide anything?

In their blind quest to find a non-existent meth-lab upon Floyd and Gerry's 2014 arrests, ITF investigators - who conducted a search warrant at the shop on First Street in Creswell - **tripped** over Silvergate's archived and clearly-labeled business records. These included all bank statements with matching canceled or carbon checks in date order, alphabetized client files with contracts, and color-coded receipts stapled to corresponding vendor statements, also all in date order. Not one piece of paper was missing.

Not one investigator ever said one word to me prior to Trial about missing money. The first time I heard anything about it was at Trial when Amos asked me about missing money as if I did it. Just like that, out of the blue, after ignoring records right under their noses that I would have willingly offered at any time had anyone simply asked during the 10 years I saved them.

Rose Cooley and Zella Richardson are local Quickbooks experts we hired to assist me in 2007 and 2008 to take my meticulously complete ledgers and enter them into QB. I had all the original source documents for cross-reference, and they knew the mechanics. They will both testify that there was no missing money. Rose complimented me that I personally

line-item labeled transactions better than any business owner for whom she has ever worked.

In his 9/5/14 Proffer, Gerry stated he had invested a lot of “money” into Silvergate *“in terms of the work (he) did.”* Listen to that statement. Did he literally invest money, or did he add perceived value only in terms of labor? If he did invest money, Amos has copies of the transactions, right? Or our Credit Union would. But they don’t. It never happened.

By the way, “a lot of money,” is a well-used Gerry term. He used it on Zdena when he tasered her. Like it was her fault he was broke.

Gerry did not steal only from us. We later found out the reason we could not keep Hispanic workers he found for us, was because Gerry was illegally acting as a labor broker, stealing a portion of their paychecks from them. Floyd and I were appalled, but we had limited recourse after the fact. We were at a disadvantage, as neither Floyd nor I spoke Spanish. Ask Sgt. Kraus; he knows firsthand that Floyd doesn’t speak Spanish as he needed to interpret for him in the past. Recall that in her police report, Zdena said her assailant spoke Spanish. Everyone knows Gerry speaks Spanish, and that Mexican Clubs are a second home to him.

November 2005, I obtained a six-figure settlement from Arnold because he lied about me; I still have photocopies of the check and the apology. Bank records will show I used that money to live on for the first two years I worked for Silvergate. During 2006 and most of 2007, I was paid \$13 per hour, part-time. Sometime in 2007, I switched to salary and Floyd paid me about \$30K each in 2007 and 2008. My tax returns reflect. Floyd signed every one of my paychecks until the last day. No exceptions. Check the Credit Union.

In December 2006 or 07, Floyd had Silvergate working on a Portland-area Mexican Club owned by David Rivero, a friend of Gerry’s. The man had not yet made a progress payment to us. For our first payroll date that month, I deposited \$15K of my last settlement money into Silvergate Construction to cover our payroll – including Gerry’s wages. Two weeks later, I hocked my truck at the Clackamas County FCU for an additional \$15K to make a second payroll. This will all be on record. Finally, Rivero came through and paid. I got back my \$30K. This clearly shows I invested into Silvergate, rather than stealing from it. Check with CCFCU where I got my loan.

Discovery shows a \$15K transaction by me having to do with Silvergate. It was only one page of 1000’s. It was a partial page; I saw no date on it.



It was apparently retained into evidence as proof of my pilfering. Did no one notice it was labeled as a Deposit!

218

Amos: *Reiterates that Gerry sold his karate business.*

**Fact:** To whom? There was no business. It was a hobby. There was no value, no buyer, no sale. A search will likely prove the only piece of paper you can find associated with Gerry's "lucrative" dojo business, was an Eviction Notice. Did you check his banking or tax records? Not that he really does those types of things. He usually doesn't even have a driver's license.

Amos: *Gerry learned he was not getting any money.*

**Fact:** Gerry never turned in a time-sheet during the entire time he worked for us that he was not paid for. He made \$25 per hour. We even financed his little red Sonoma truck for him, as he had no credit.

Years later, after Gerry refused to work for us, he went off and located construction jobs in the Portland area like the one where he alleges Arnold's stolen safe is buried, and Gerry hired Floyd. I warned Floyd to stop having anything to do with Gerry, the crook. Sure enough - Floyd did not get paid for those jobs. If only that were the worst Gerry did to him!

Amos: *There was bad blood about Arnold not paying child support.*

**Fact:** False. While it is true that the entire trouble Arnold and I had in 2001-03 began over child-support, by 2011 Arnold had been paying for years. We had no disagreements about this. Did anyone even ask him? I have bank records showing Arnold *did* in fact pay child support via Social Security any time that our son Erik lived with me over the years. Where Erik lived when, we left up to him. He bounced back and forth as he wished. Ask Erik if there was ever an issue of him living where he wanted, when he wanted. There was not. If you talk to Erik, you will likely find that he *may* have listened to his dad grumble any time he had to route some of his Social Security to me, but our son never heard one word out of *my* mouth ever about it. It was handled long ago. I told this to Lee at my house in September 2014. Did Lee misrepresent, or did Amos make this up?

Amos: *Floyd always had this thought about breaking into the Kachlik home to take money.*

**Fact:** Who is a mind-reader? Floyd had \$750K in assets, retired from a great career, with a booming construction biz until the crash of 2008. Why

would he steal from his step-son's elderly co-parents? By then, everyone was attending school functions together, getting along civilly for Erik's sake, for years.

## 219

**Amos:** *Gerald Wiese was loyal to Floyd.*

**Fact:** Gerald Wiese was jealous of both Floyd and Arnold. Besides, just like you, in 2014, Gerry thought Floyd was never coming home from Chicago. Gerry had nothing to lose and everything to gain by throwing Floyd under the bus for his own robbery and drug dealing. The cops ate it up for their own political agendas. Don't you agree?

**Amos:** *Floyd hired Gerry to be the driver.*

**Fact:** Wiese cannot keep his story straight from his proffer to Trial, as to who drove.

**Amos:** *Gerry has owned up to what he did.*

**Fact:** Gerry's version of his conversation with Zdena, match her version of the conversation she had with her attacker. Hence, Gerry is her attacker. Yet Gerry's version omits the stun gun. Gerry has not owned up to anything.

**Amos:** *Arnold was visiting Czechoslovakia.*

**Fact:** Since Jan. 1, 1993, there has been no such country.

## 220

**Amos:** *Gerry had never been to the Kachlik residence.*

**Fact:** Gerry admitted he *had* been there.

Gerry saw Zdena at the Kachlik house when he rode with Floyd; he made a comment to Floyd about her age. Plus, Erik has seen Gerry in the truck with Floyd at his dad's house.

**Amos:** *Gerry waited in the van while Floyd attacked Zdena.*

**Question:** Then how was he able to give a proffer than included a very detailed description of the stun gun, what was said to Zdena while she was being tasered, how tight her zip-ties were, and how she got onto the floor?

**Fact:** Gerry's version of his conversation with Zdena, match her version of the conversation she had with her attacker. Hence, Gerry is her attacker.

Zdena described her attacker as age 25-30. At the time of the robbery, Gerry was 43 and Floyd was 54. I ask you, which age is closer to 25 or 30?

**221**

**Amos:** *Amos quotes Floyd in the first person. According to Amos, after Zdena is in the closet, Floyd tells Gerry, "You go this way, Mr. Wiese. I'll go that way." Amos then describes how Gerry claims to have gone aimlessly through the sitting area, dining room and kitchen.*

**Fact:** But in his robbery proffer, Gerry clearly said he simply stood around while Floyd was the one who started in the dining and kitchen areas before ending up in the bedrooms on the other side of the house. But I guess it is hard to recall what you said years ago when you were lying, isn't it?

Further, this quotation by Amos is not in Gerry's proffer and appears nowhere in Discovery. Amos made it up. He appears to like doing so in the first person.

Lastly, the obvious: Why would Floyd use Gerry's formal name in the entryway, a few feet from Zdena? That is ridiculous and fabricated.

**Amos:** *The new large bedroom safe was not known to the robbers.*

**Fact:** True, because they were acting on very outdated info. And the robbers never found Arnold's bar-area safe.

Floyd has known where the untouched bar-area safe was since 2003. Arnold admits Floyd knew about it. In Discovery, Arnold claims that Floyd "barged in" during its installation in 2002. Floyd confirms seeing the bar safe being installed, but that was 2003, not 2002. Floyd and Arnold had no contact between 1996 and 2002. Old police reports will verify this. Arnold is off by a year.

If everyone agrees that Floyd knew long ago about the bar-area safe, and it was not touched during the robbery, this would seem to indicate that Floyd was not behind *even the planning* of the robbery. Correct?

**222**

**Amos:** *Gerry makes one extra last trip into the house to kick the chair away from the door so that Zdena can exit the closet.*

**Fact:** I've seen the broken chair in person. It's back and frame are broken. There's no way anyone sees that chair and believes Gerry kicked it out of the way. Zdena said on record that she had to use tremendous force to get out of the closet. She broke the chair because it was NOT moved for her.

## 223

**Amos:** *Zdena says she cannot describe her assailant.*

**Fact:** Even under those harrowing circumstances, she probably *would* have been able to ID a man she'd seen several times before, as she has Floyd over the years – both before and since.

Weise's proffer says no disguises were worn and Zdena described facial hair on her attacker. Hence, one would conclude no disguises were worn. But at Trial, knowing it would not be believable for Floyd not to have been recognized without a disguise, Gerry's story changes to... drumroll... bandanas. Was this a result of Amos' coaching?

**Amos:** *The attacker was yelling at Zdena.*

**Fact:** Zdena would have recognized Floyd's voice. Floyd's voice and Gerry's sound nothing alike.

**Amos:** *Zdena is unable to give a good description.*

**Fact:** Not that true. Her statements at the time of the robbery were specific and describe nothing like Floyd, whose medical records show he was disabled by 2011 due to a documented hit and run. Check with Dr. Blum in Creswell. Zdena's description changes by trial six years later.

## 224

**Amos:** *Goes into first person again, claims Arnold said on the phone from Czechoslovakia... "the defendant, Mr. Marsh."*

**Fact:** Floyd was not a defendant on the day of the robbery. Why does Amos keep misquoting people?

By now, can we all agree the name of the country is the Czech Republic?

**Amos:** *One person came back to Zdena while she was in the closet, Amos would later explain that Gerry did this to reassure and calm her down.*

**Fact:** The person came back to taser her again, because she was too loud and trying to escape.

And why would her zip-ties fail at all if installed by a professional? Is there any record of Floyd's zip-ties ever failing in his career? No? Not once? Hm.

And why would either Floyd or Gerry, karate experts *supposedly*, need to stun a little old lady half their size to restrain her? Perhaps this is one reason Gerry's dojo failed.

Anyhow, it's all unprofessional. No cop did this.

Amos: *Lists the contents of the safe.*

**Fact: No CZ coins are mentioned. Neither were any mentioned in property loss reports, nor in initial police reports.**

When I found some Czech coins *in a round-about way* almost three years after the robbery, I gave Arnold a chance to ID them. I even gave him hints, such as wrapping. He still could not ID them.

When I handed the coins to Lee in September 2014, he stared at my face in my home and he lied to me. He said they were from the robbery. The fact is his later reports state he went directly out and called Arnold to ask if they were his, who could not ID them to Lee either. In the end, Lee ended up describing them to Arnold, if you can believe Lee's reports.

I had a yard sale (with his blessing) of Floyd's Creswell shop contents in May 2014. A few days later, a young man named Randy Mogstad phoned me to let me know he had found some "silver coins" in an empty paint-can I'd sold him from the shop. I raced over to get them. His wife, Toshua, gave them to me. They were Czech coins. I took them to Ace Pawn in Glenwood. They told me they were of little value, like maybe a quarter. I decided to keep them for my son, Erik because they were Czech. In hindsight, they were likely his anyhow. Like I said, Arnold could not ID them. Prior to trial, Zdena was the only person who sort of identified them to Lee - *through Arnold*. But at Trial, she did not have much luck identifying them. Even though I had never showed them to Erik years prior, he identified them at court in 2017 better than anyone.

I wanted to tell Lee about the coins and more specifically how they were found, which he could have verified while he was in town, but he and Delehant left quickly after I gave them the coins. I hoped they would have better luck with them than I did in finding the truth. I was hopeful because at first Lee had refused to take my phone calls for months and then here he is all the way down south at my house, finally putting in some effort. As the years went by, I believed I would finally have my day

in court to tell how I came to possess the coins that **I believed – but have no firsthand knowledge** - were once in Floyd's shop. I did not get that chance. Floyd's attorney never spoke to me prior to the last day of Floyd's trial. And not since.

**The CZ coins are likely not associated with the robbery at all.** I think my then-teen son put them in Floyd's shop. That would be consistent with his behavior at the time, plus he was the person at Trial who best identified them.

***Did Lee ever see the coins in Floyd's shop? Neither did I.***

**There is no evidence that Floyd ever knew about the existence of the low-value coins found years after the robbery, in his shop to which my son often made access.**

Recall that Arnold made up stories about non-existent bejeweled knives in his safe. I've known him 30 years, turned back odometers with him for over five. He would lie about Czech coins if he thought it would implicate Floyd. But today, he regrets that Zdena's attacker was not sent to prison.

Amos: *Arnold named Floyd as a suspect right away and then later to Patti Rhodes, OSP.*

**Fact:** LE never contacted Floyd, me or Erik about the robbery prior to 2014.

**226**

Amos: *We always listen.*

**Fact:** False. I called Lee in May 2014. He did not call back. He showed up at my house in September. He never listened.

Floyd repeatedly asked for an interview about his Oregon charges. The only one he got was when Burgess and Wold came in and essentially told him it was the wrong venue for such. And anyhow, why should they listen to him. After all, Burgess, the one in charge of exculpatory evidence that went missing, reminded Floyd that Floyd had once ridiculed him, asking him if he could read or write. Yep, that's on tape. So, no. They don't listen.

Amos: *In first person, Amos quotes Gerry as saying on September 5<sup>th</sup>, 2014:*

***"I have to tell you what happened on October 1<sup>st</sup>, 2011."***

**Fact:** Get real. **By 2014, Gerry had no clue when the robbery happened!** At his robbery proffer, Gerry repeatedly said it was **"just before or after**

**Thanksgiving.”** And no one corrected him. Read it! There is no way Amos gave an accurate quote! Why does Amos keep getting by with misquoting people in court?

**Amos:** *Gerry was arrested in 2014 with several pounds of various hard drugs.*

**Fact:** Gerry gave two 2014 drug proffers falsely blaming Floyd for his own drugs. Then, he surprised everyone on the first day of 2017 Trial by claiming he'd made up his two prior proffers. Amos mentions these two bogus drug proffers in his Opening Statement to the jury, but never reveals that Gerry retracted them.

**Questions:** How long had Amos known Gerry would retract two of three prior proffers?

The first two instructed Gerry to tell of any and all known crimes. He did not mention the robbery in proffer until over four months later. Lee testified that it was his idea to interview Gerry about the robbery. How did he know to ask? Who reached out to whom and when? Why are there no Discovery reports connecting the dots? And when he gave the robbery proffer in September, was Gerry still lying about the drugs?

Floyd sat in jail in Chicago from February 2014 to April 2016 on made-up charges that were eventually dismissed; he won a settlement due to the crooked cops there. During that time, despite Gerry's drug proffers blaming his dealing on Floyd, Floyd was never charged with any drug crimes in Oregon. This seems to indicate that the CCDA or CCSO knew very early on that Gerry was lying.

Why did Amos wait until the first day of 2017 Trial to inform Floyd's defense that Gerry finally admitted the drugs were his? Was it so that Floyd's defense would waste the few precious hours of prep he was allotted by taxpayers, on chasing ghosts?

Why was Amos not reprimanded for this last-minute under-handed tactic? Other attorneys in the same courthouse have been.

Since it had become known to Amos that Gerry had a history of giving not one, but *two* prior fictitious proffers to blame Floyd for his crimes, why did Amos pursue the last one, the robbery proffer, at all? Gerry was known, without dispute by then, to have committed unworn perjury, yet Lee's response was to do yet *another* proffer? And the DA takes it seriously?

**Amos:** *Gerry told about the robbery to his detriment.*

**Fact:** Gerry cut a sweet deal.

Amos: *Gerry was cooperative.*

**Fact:** Gerry went straight back onto the streets to sell yet more drugs, get rearrested in Portland, and did not receive any consequences at all for violating every possible provision in all his proffer agreements. Upon his October 2017 arrest, he told Sgt. Hogan of MCSO that he would rather face any jail time than give up his *true* drug suppliers. Ask Hogan.

## 228

Amos: *Gerry says Floyd tried to pawn the robbery silver.*

**Fact:** Gerry's proffer tells a different account. It pinpoints several transactions Gerry did, but only one Floyd did. Arnold only got a judgment for the one transaction Floyd did, and none of the ones Gerry did. This is despite that Floyd had a receipt for where he got the silver he sold – from Gerry's girlfriend, Olympia. Wold has this exculpatory receipt in evidence and withheld it from trial.

Amos: *"(Gerry) goes on to say, 'The defendant tried to clean the money.'"*

**Fact:** Once again, Amos is talking in first person and misquoting. Gerry would not have called Floyd a defendant during his 2014 proffer! At that time, *Gerry* was the defendant cutting a deal.

Amos: *Floyd tried to distance himself from the proceeds of the robbery.*

**Fact:** How, exactly? By using his own name and ID? Is that the work of a **seasoned career financial investigator** trying to hide a transaction?

Gerry's in court statements about silver sales do not match his own proffer.

## 229

Amos: *"We will prove that stun gun is a dangerous weapon."*

**Fact:** We need a court of law to do this?

Amos: *The bank account Floyd used of Julie's was not often used.*

**Fact:** Floyd's 2011 bank records Burgess seized from Camrin Loop show 100's of monthly transactions made by Floyd in and out of Julie's account each month. He used it as his primary account, as Silvergate's was long gone.

## 233



Amos: *Describes Gerry's "small act of compassion" when he went back to kick the chair away from the door to let Zdena escape the closet.*

*Amos reiterates... "compassion."*

**Facts:** Zdena says no one kicked the chair away. Let that sink in.

Have you seen the flipping chair?! Discovery photos show it is a mangled mess. **If Zdena was lying**, and the chair *was* kicked away, how did it get broken to pieces by the time cops arrived if not when she broke out of the closet?

Let's recall Gerry's *other* alleged acts of kindness (in his proffer). While *Floyd* raced through the kitchen area (in *this* version), Gerry just stood around by the entryway and told Zdena to calm down because they would be gone shortly. Zdena's version is that her attacker, same voice, came back from working on the safe theft, and tasered her a second time because she was being too noisy. "Now look what you made me do." In order to taser Zdena again, who was *not* escaping due to the chair in place, Gerry actively removed the chair, reached in to taser her again, and then put the chair in place for its final time. This is according to her account to me this afternoon, which matches her 2011 police reports.

Gerry is still on the streets. All of us are in danger.

Amos: *Claims details and circumstantial evidence will make a difference.*

**Fact:** **I am having trouble counting how many *details* Amos got wrong in this Opening Statement alone.** And since he got so much wrong here, whether from neglect or on purpose, what else did he get wrong? Lots!

Perhaps Amos will argue that dates are not relevant after all. Then why did he include them in just about every point he made! He was obviously trying to paint historical scenarios that did not exist. **He was off by dozens of years if you add up all his errors.**

**Questions:** Why did Amos do this? How did he get so much wrong? On whom was he relying? Was it ignorance or malice? Does he do this in every case? What percentage?

How many innocent persons have been **wrongfully convicted** by your office? How many victims of violent crimes still fear for their lives because their attackers are **wrongfully freed**? How many violent offenders like Gerry are laughing at your justice system in Clackamas County? Why did Floyd get only 18 months of credit for four years of time served in jail waiting for Trial - with no opportunity thereafter for

“good time” - for this robbery which he neither committed nor had knowledge, while I can find no verification that Gerry served any time beyond his last proffer statement? It appears Gerry got reduced (if any) sentence for pushing several pounds of hard drugs, plus total immunity for: Kidnapping II, Robbery I, Robbery II, Money Laundering, Burglary 1, Unlawful Use of a Stun Gun, Assault II and Aggravated Theft II.

Why did the CCDA listen to the CCSO in this case when it was clear that Sheriff **Roberts was out for his own political career**, possibly suffers from mental illness, and his office staff has a known history of not doing its job? From the start of his assignment as a newly-promoted, Lee appears to have been solely on confirmation mode, repeatedly threatening me if I had any contradictory evidence to offer. Recall that Roberts immediately distanced himself from and convicted Floyd in the press as soon as Floyd was falsely arrested in Chicago by proven-crooked cops in 2014. Way to stand by a friend. We campaigned for him. Lee’s promotion of his boss’s agenda *might* account for some inherited inaccuracies by Amos in the Opening Statement, not to mention the rest of the Trial. However, the issues wrong with this case are truly mind-boggling.

Mr. Foote, as a Prosecutor, certainly you care not only about justice, but also about the integrity and performance of your staff. Perhaps there is some reasonable explanation of why Floyd and I are enabled to write volumes of books about the problems associated with this case. Can we please address these?

Personally, I’m quite offended that I went to great lengths to defend my good name in 2005, winning a large settlement against Arnold – only to now be publicly slandered as an embezzler into public record by Mr. Amos, who knows next to nothing about this case, much less of me. This could cause me troublesome ramifications, as I work in the financial services industry. I am considering a variety of remedies such as an OSB complaint, a lawsuit to include uncomfortable and indefensible depositions, and even a book deal. If this occurs, Amos will be required to come up with evidence to prove his Opening Statement “details” are true, which is not possible. Amos may lie. Math doesn’t. Therefore, I suggest you and I come up with a more mutual approach for the greater good. I am willing to meet with you to discuss options at a time and place of your choosing, and in accordance with terms with which you feel comfortable. My goal is for an open and problem-solving dialogue. Lee need not attend.

Connie Loop

(503) 477-2335





## Opening Statement

1           Okay. All right. Thank you.

2           MR. AMOS: Thank you, Judge. Good morning,  
3 ladies and gentlemen, welcome back. You are going to hear  
4 today and then during the course of this week about what  
5 this case is about. This is a picture of 68-year-old  
6 Zdenka Trnkova. She came over here from Europe. She  
7 immigrated in 2008. She met a man by the name of  
8 Arnold Kachlik. She had been -- in 2011, when this  
9 incident occurred, she had been living with him as a  
10 partner. They were unmarried. They were living at their  
11 residence in Wilsonville.

12           You are going to hear that this is the Kachlik  
13 residence at 24011 Southwest Gage Road in Wilsonville,  
14 Clackamas County; that she lived here with her husband;  
15 and that on October 1st, 2011, one of her worst nightmares  
16 came true. She was at home that day. She was in the  
17 kitchen, in the residence, making some lunch. Her son was  
18 supposed to come over that day to have lunch with her,  
19 which he periodically did, so she was rather excited about  
20 that happening.

21           Instead she found herself in a closet, a small  
22 closet. She found her hands tied with zip ties, flex  
23 cuffs, the door jammed shut, locked, so she couldn't get  
24 out. She was wearing a vest that was kind of heavy that  
25 day. She was crotched down. She, of course, couldn't



## Opening Statement

1 move her hands. It was hot, and she was having difficulty  
2 breathing. She was trying to get out. She was screaming,  
3 "Help, help, help," and pushing on the door, and it felt  
4 like somebody was pushing back, and, in fact, somebody did  
5 come and told her to get back in that closet.

6 She sat there, not only afraid for her life, but  
7 afraid for her son, who was supposed to be there any  
8 minute now. She was scared out of her mind. That fear  
9 that she had lasted long past October 1st, 2011, when this  
10 event occurred. That fear that she had of people invading  
11 her home, locking her in a closet, tying up her hands, not  
12 only that, but zapping her with a taser, lives with her  
13 even to this day, to the point where she wouldn't answer  
14 the door anymore, to the point where she wouldn't stay at  
15 home by herself. When her husband is gone, which  
16 periodically he was, she would go stay with a friend,  
17 because she was afraid.

18 You are going to learn, ladies and gentlemen,  
19 that what this case is about money and emotion --  
20 the emotion being desperation and anger. You are going to  
21 learn, with regards to Zdenka Trnkova, she was collateral  
22 damage. Collateral damage that she is going to have to  
23 live with for the rest of her life.

24 Let me tell you what happened in this case and  
25 give you some background as well about some of the people

## Opening Statement

1 that you are going to hear from.

2           Arnold Kachlik, who I talked about, he was the  
3 partner of Zdenka, who moved here from Czechoslovakia in  
4 1966 at 27 years old. He move from Czechoslovakia because  
5 of the communist regime. His plan was to go to Germany  
6 and live. When got there, they said he couldn't stay.  
7 Fortunately, enough for him, he was able to come to the  
8 United States, which he did. He went to Chicago. In  
9 Chicago, he met his wife, Gale Kachlik.

10           He had come over from Europe with money, so they  
11 were able to put money down on an apartment complex and  
12 invest in two taxicabs. They then lived there for a  
13 period of time until 1977, at which point he moved to  
14 Oregon because he loved the mountains. At that point he  
15 had invested wisely and had five apartments

16           Meanwhile, 1976, 1977, the defendant, Mr. Marsh,  
17 had married Julie Marsh, who you will hear from this week.  
18 In about 1981 and 1982, that's when Gerald Wiese, which  
19 you'll hear about as well, met the defendant, Mr. Marsh.  
20 Gerald Wiese was about 19 or 20 years old, and the  
21 defendant was about 27. They had been in karate class.  
22 They had an interest in martial arts, and ironically  
23 enough they didn't really get along. My understanding,  
24 they even got into a fight, or almost got into a fight  
25 when they met.



## Opening Statement

1           Mr. Wiese is a marshal artist, and he eventually  
2 invested in his own karate studio. After that, they had  
3 become friends on and off for years, acquaintances.  
4 Around 1988, Arnold Kachlik began having an affair with a  
5 lady by the name of Connie Loop. They met at Bend on a  
6 ski trip, and he began to cheat on his wife, Gale Kachlik.  
7 During the course of their relationship, they also had a  
8 child in 1996, Erik Kachlik. You will meet him as well.

9           Meanwhile, the defendant, in 1992, moved into  
10 Julie Marsh's current residence, 10717 Navaho Way in  
11 Oregon City. You will hear about that location. There is  
12 some property in there, and there is a barn in the back.

13           In 1996, Arnold Kachlik and Connie Loop had  
14 their son, Erik, and there was also an investigation,  
15 which is irrelevant to this case, by the defendant, who  
16 was a police detective at the time. But that was the  
17 initial contact that he had with Arnold Kachlik and  
18 Connie Loop, kind of the connection between the parties.

19           In 2001, Arnold Kachlik stopped seeing  
20 Connie Loop. In 2003, there was another investigation,  
21 which was irrelevant to this case, but the fact that these  
22 parties were involved. During the course of that, the  
23 defendant began a relationship with Connie Loop. Connie  
24 Loop was living in Creswell, Oregon at 342 Cameron Loop.  
25 In 2005, Arnold Kachlik divorced Gale Kachlik. In 2006,

## Opening Statement

1 the defendant, while working as a police detective with  
2 the sheriff office, started a small remodeling business  
3 called Silvergate Construction.

4           Around 2007, the defendant retired from the  
5 Clackamas County Sheriff's Office as a detective and  
6 attempted to expand his construction business. It was  
7 doing really well. You are going to learn that he, as  
8 part of a requirement to do that and as part of an  
9 investment, he invested in an office in Creswell on  
10 First Street in Creswell, Oregon. It was in the same  
11 location as Connie Loop.

12           In 2007, 2008, Mr. Wiese agreed to work with  
13 him. This was a situation where Mr. Wiese had been called  
14 by the defendant, because there was a job that wasn't  
15 really getting done the way it should be. Mr. Wiese has a  
16 long history and a lot of experience with construction and  
17 was very handy.

18           So Mr. Marsh had called to see if he could come  
19 help out with this job. Mr. Wiese agreed to do that. He  
20 went down and did a very good job. At that time  
21 Mr. Wiese, 2007 in 2008, owned a karate dojo in Vancouver,  
22 Washington. Nonetheless, the defendant, was impressed  
23 with the job that he had done and offered him a job where  
24 Mr. Wiese had been working.

25           So Mr. Wiese decided to essentially partner up

## Opening Statement

1 with the defendant. I think there was some profit sharing  
2 too. He sold his karate dojo in Vancouver and went to  
3 work with him at Silvergate Construction. At the time  
4 business was booming. He had a lot of jobs in Washington  
5 and Oregon. Business was good.

6 In 2008, Arnold Kachlik met Zdenka Trnkova,  
7 which you have already heard about. In 2009, the  
8 defendant officially divorced Julie Marsh. They were  
9 separated for a number of years. In 2004, in 2009 -- and  
10 that was in part due to the relationship that he had with  
11 Connie.

12 Now, in 2009 and 2010, Gerald Wiese began to get  
13 some information that was shocking. Wiese at that time  
14 had been working in the construction for a year or two  
15 years and he was working hard. They had a lot of jobs.  
16 There was a lot of work going on. So he knew the company  
17 was bringing in money, but the defendant came up to him  
18 and was basically like, "We are broke. We don't have any  
19 money."

20 Gerald Wiese is like, "What are you talking  
21 about? I work my tail off. I can tell money is coming  
22 into the business. How are we broke?" At that time the  
23 defendant began to explain to him that he had used  
24 Connie Loop as a bookkeeper and money was missing. He was  
25 not sure what was happening, but they didn't have any

## Opening Statement

1 money, and he was also being audited by the IRS, and he  
2 had concerns.

3           That devastated Mr. Wiese. Mr. Wiese had sold  
4 his karate business, had invested everything he had in  
5 this company, and had been working hard. Basically at  
6 this point in time he was told, "We don't have any money.  
7 You are not getting any."

8           Then around September of 2011, after the company  
9 continued to struggle, there was a plan. The plan wasn't  
10 anything new. You are going to hear from Mr. Wiese, the  
11 defendant, and Mr. Kachlik do not get along. I think that  
12 is going to be absolutely undisputed before you folks.  
13 They do not like each other. It is fair to say that they  
14 hate each other. The defendant always used to complain to  
15 Mr. Wiese about Mr. Kachlik. "I don't like him." Connie  
16 Loop -- "I have seen this woman in the past." Mr. Marsh  
17 and Connie Loop was having another affair:

18           There were issues about money, child support  
19 Mr. Kachlik wasn't paying, and so over the years, leading  
20 up to 2011, the defendant was complaining to Mr. Wiese  
21 about Mr. Kachlik. It was pretty clear that he didn't  
22 like him, and Mr. Kachlik had always done fairly well.  
23 There was always this thought by the defendant about going  
24 and getting some money, breaking into their house, taking  
25 money, whatever they might have.

## Opening Statement

1           Apparently, according to the defendant,  
2 Mr. Kachlik wouldn't keep it in any one place. He would  
3 hide his money throughout the house. Mr. Kachlik is going  
4 to tell you that's true, up until right before  
5 October 1st, 2011, when he just decided to buy a safe to  
6 put all of his valuables in.

7           So now in desperation, without any money, the  
8 business going under, he basically contacts Mr. Wiese  
9 towards the end of September and says, "Let's do this."  
10 Mr. Wiese, making a poor judgment, struggling himself,  
11 loyal, decides to do it. Mr. Marsh says, "You are going  
12 to be the driver. You are going to be the driver. I am  
13 going to go in and take care of it."

14           There is information that on October 1st, 2011,  
15 Mr. Kachlik wasn't going to be there. In fact,  
16 Mr. Kachlik was not there. He was in Czechoslovakia on a  
17 trip. Zdenka Trnkova was there by herself.

18           So Wiese agreed to do it. You are going to hear  
19 from Gerald Wiese. He is going to come in and talk to you  
20 folks in a few days. He is going to tell you about why he  
21 decided to do it and own up to what he did.

22           They needed a van. Mr. Wiese got a van from a  
23 friend. On October 1st, 2011, they met at Julie Marsh's  
24 residence in Oregon City; that being Mr. Wiese and  
25 Mr. Marsh. They drove over to the Kachlik residence.

## Opening Statement

1 Mr. Wiese had never been there before. Mr. Wiese doesn't  
2 know the Kachliks. The Kachliks don't know Mr. Wiese.

3 So they drove over there. There is a long  
4 driveway. You are going to see over here. This is  
5 Gage Road. It is a long driveway, and this is obviously  
6 not to scale. There is a garage. There is kind of a  
7 point over here where you can park. Then if you go in  
8 this direction, there is actually a big barn way in the  
9 back. There is a pool house. There is a pool right  
10 there. There are a couple of bedrooms and an office and a  
11 den.

12 They pull up over by the garage. Meanwhile, the  
13 defendant has got a construction cap on and a vest. The  
14 plan is, he is going to pretend that he is associated with  
15 the cell tower. You're going to see pictures of the cell  
16 tower located right here.

17 You are going to hear from Zdenka Trnkova that  
18 oftentimes people come work on the cell tower, and they  
19 may need something and come knock on the door. That's not  
20 unusual.

21 So they pull up, and the defendant gets out.  
22 Meanwhile, Mr. Wiese is in the van. You can't see or hear  
23 what's going on at the front door, but the defendant walks  
24 over. All the while Mr. Wiese is just going to sit in the  
25 van and wait. A few minutes after the defendant left to

## Opening Statement

1 go to the front door, he came back and waved him inside  
2 the house.

3           When he came inside -- you walk in and there is  
4 a closet around the corner and that's where Zdenka was --  
5 tied up, sweating, fearing for her life, fearing for her  
6 son. They rush in. The defendant kind of gives him a  
7 plan: "You go this way, Mr. Wiese; I'm going that way."

8           The defendant had told him about how Mr. Kachlik  
9 would hide things in different places, so Mr. Wiese went  
10 over here and began looking in the sitting area and the  
11 dining room and the kitchen and the den. He is looking in  
12 vases and looking at other different places and looking  
13 for money or whatever he might find that would be of  
14 value.

15           Meanwhile the defendant goes this way. He is  
16 much more intrusive. He is making a mess. Again, this is  
17 fueled, not only by money, but emotion. They are not  
18 finding anything. Right before this happened, Mr. Kachlik  
19 decided he was going to purchase a safe to put all of his  
20 valuables in, really for no particular reason other than  
21 he thought it was a good idea.

22           So as the defendant is making his way down the  
23 hallway, not finding anything, he goes into the master  
24 bedroom. When he does, up against the wall, out in plain  
25 view, is the safe. So right then and there, he runs back.

## Opening Statement

1 He grabs Mr. Wiese. He says, "Come with me, there is a  
2 safe," and they go in the master bedroom. They try to get  
3 the safe. They try to push it and shove it and break it  
4 loose, but they pulled it in. He ends up getting some  
5 tools. There is a garage here. There are tools in the  
6 garage. There is tools in the barn. Zdenka is locked in  
7 that closet for what she believes for maybe about an hour.  
8 These guys are getting these tools, banging on the floor,  
9 trying to pull up this safe. When they do, they take it,  
10 and they put it on like a blanket, and they drag it  
11 through the utility room, out the garage, in the van, and  
12 they take off.

13 They go back to Julie Marsh's house. The  
14 defendant opens the safe. There is a burn pile there  
15 where they burn their clothes. At that point the police  
16 are called immediately. As Mr. Wiese slips out of the  
17 house, before going through the utility room, all the way  
18 into the garage and into the van, he goes back, and there  
19 is a chair lodged underneath a doorknob to the closet door  
20 keeping Zdenka inside that closet. He goes back, and he  
21 kicks it so she can get out.

22 Marsh is like, "What are you doing?" And he is  
23 like, "I had to get something," and then they leave.  
24 Zdenka Trnkova gets out pretty quickly, and she does call  
25 the Clackamas County Sheriff's Office.



## Opening Statement

1           There is an investigation. The police come out  
2 on October 1st, 2011. You are going to meet the first  
3 deputy who responded and another detective with the  
4 Sheriff's Office, Eric Lee. He was one of the lead  
5 detectives.

6           You are also going to hear from a crime scene  
7 investigator named Greg Martin. He is going to come and  
8 talk to you about the crime scene and you're going to see  
9 pictures. They go inside. They saw the zip ties. They  
10 go in the closet. They saw the rummaged rooms. They saw  
11 the damage to the master bedroom where the safe had been.

12           They talked to Zdenka. Can you tell us what  
13 happened? Can you identify who did this to you? What I  
14 neglected to mention is she said no. At the beginning of  
15 this, when that person knocked on that door, when she  
16 answered the door, thinking he was the cell phone tower  
17 guy, as she opens the door. He pushes his way in.

18           Before she can do anything, he pulls out a stun  
19 gun and zaps her right in the chest and knocks her down,  
20 and knocks her out for a few seconds. As she comes to,  
21 that person is pushing her down and tying her up, yelling  
22 at her, and drags her into the closet. Well, the police  
23 are there saying, "Do you know who did this to you? Can  
24 you give us a description?"

25           She can't give a description other than very

## Opening Statement

1 general. But at the end of the day, on October 1st, 2011,  
2 the police don't really have any leads. They know that a  
3 terrible and horrendous crime was committed, but they  
4 don't know who did it.

5 Now, Zdenka also said there were two people.  
6 She could hear them. She could hear one rummaging around,  
7 and the other one came back to the door. She identified  
8 that there were two people who committed these crimes.

9 So they end up calling Mr. Kachlik, who was in  
10 Czechoslovakia, not only to tell him what happened, but to  
11 find out what was in the safe. The things in the safe  
12 included a lot of different things. There were some guns,  
13 some checks, there were passports. There were also coins.  
14 You are going to hear what they call monster boxes of  
15 American Silver Eagle coins. We are talking about  
16 hundreds of these types of coins that were taken.

17 There were a lot of items taken, and they are  
18 worth tens of thousands of dollars, and they are going  
19 come in and tell you about the items that were taken.  
20 There was jewelry and other things as well.

21 So they call him to try to get some information.  
22 They do it that day. He calls back and says, "You know  
23 what?" They say, "Do you know anybody who might want to  
24 do this?" He says, "You know what, you know who hates my  
25 guts? The defendant, Floyd Marsh. He might be a

## Opening Statement

1 suspect." Of course, Mr. Kachlik didn't have any  
2 evidence, just the suspicion.

3           The only other thing that detectives really knew  
4 at that point was trying to collect some cell phone  
5 evidence to see if there were any calls made or anything  
6 like that. There is a lot of cell phone data from the  
7 different phones, records. It came back negative. There  
8 was no evidence that they were able to find.

9           Then in February, a couple of years later, as  
10 this thing starts to get colder and colder, Mr. Kachlik  
11 calls back and he says, "You know, I still think it might  
12 be the defendant." Not having any evidence, and in all  
13 fairness they hate each other's guts, of course, he thinks  
14 it is probably that guy. But the detectives still had no  
15 evidence about what happened. So in November of 2013,  
16 they had exhausted all leads, and this case went cold.

17           Now, the turning point was with Mr. Wiese in  
18 February of 2014. He got caught running drugs. He is  
19 going to come in and tell you a little bit about that. He  
20 was caught breaking into a storage locker with six pounds  
21 of meth, two pounds of heroin, and five ounces of cocaine.  
22 He was indicted here by a Clackamas County grand jury on  
23 those charges, which are serious.

24           As part of that, those charges that were  
25 pending, he decided he wanted to offer evidence to the

Opening Statement

1 state, cooperate -- what they call a proffer, which is  
 2 talking to the detectives, and you tell them what you know  
 3 about crimes.

4           So we always listen. The detectives in this  
 5 case sat down with him. Originally he was talking about  
 6 his drug activities. There were two proffers on May 22  
 7 and May 29th by an ITF task force, which is the drug task  
 8 force. They were just talking to Mr. Wiese about drug  
 9 activity. There was really no knowledge at that point  
 10 that he might be involved in this robbery.

11           In the last proffer, they asked him a question  
 12 about, well, is there anything else you want to talk to us  
 13 about. He said, "Hold on, let me think about it." Then  
 14 he comes back on September 5th. He comes back with  
 15 Detective Eric Lee. That's when he says, "I have to tell  
 16 you what happened on October 1st, 2011." That's when he  
 17 talked about what he did with the defendant -- when they  
 18 went into that house, broke in, locked Zdenka in the  
 19 closet, and took that safe.

20           Sitting here today, if Mr. Wiese had not said  
 21 anything to the police, you will learn that this case  
 22 probably would have been unsolved. He said it to his  
 23 detriment. Now, based on that information, he entered  
 24 into a cooperation agreement. You are going to see that.  
 25 He has pled guilty to a number of charges involving his

*Wiese has been  
 he's always what he  
 insisted on task proffer as well.*

## Opening Statement

1 drug charges. He is pending sentencing, and he is looking  
2 at a prison sentence. The outcome of what he is going to  
3 get is still unknown, but he agreed as part of the deal,  
4 and nobody is going to keep it from you -- that he  
5 cooperated with our case to come in and testify and tell  
6 you all about what happened.

7           So you are going to hear from Mr. Wiese probably  
8 on Friday. He is going to come in here and tell you about  
9 that. He is going to show you the indictment, the charges  
10 that he has been charged with, the agreement that he has  
11 made. So we are not going to be hiding anything from you,  
12 because you have to assess whether or not you believe him.  
13 That's going to be a big part of this case.

14           So at that point there is a break in the case.  
15 Detective Lee now has some information to follow up on.  
16 So he goes back and starts contacting people, including  
17 Connie Loop, on or about September 8th. What he does, she  
18 gives him some Czechoslovakian coins, which aren't really  
19 worth anything. Mr. Kachlik is going to say that those  
20 look like the coins that were in the safe.

21           On September 22nd, the defendant is eventually  
22 charged. Mr. Wiese is going to testify. As part of the  
23 proffer, what Mr. Wiese tells the police what happened  
24 after the home invasion robbery. He goes on to say,  
25 "Yeah, the defendant tried to get rid of the money." He

## Opening Statement

1 tried to clean it essentially. He tried to make some  
2 money, clean it, separate himself from the proceeds of  
3 that crime.

4           They went to a pawn shop in Vancouver. They  
5 pawned some of it. The detective went up there and looked  
6 and found a pawn shop and couldn't find a record. Then  
7 there is a pawn shop in Tacoma, Tacoma Coin & Pawn. They  
8 went up there, and they found a transaction slip in  
9 October of 2011. The sale of American Eagle coins for  
10 \$9,884 -- and you'll see on the receipt -- to Floyd Marsh.

11           You are going to hear from Karen Feldman, I  
12 think tomorrow afternoon. She is coming down from Tacoma.  
13 She is the owner of that shop. She will tell you this was  
14 a transaction; that she wasn't the one who did it. The  
15 actual person who was there is now deceased, but these are  
16 the business records that she has, and it is customary for  
17 them to only do a transaction when somebody  
18 (indiscernible).

19           The detective kept sniffing around to see what  
20 would happen. He began to look at some bank records and  
21 some other things. So Ms. Feldman issued a check from  
22 Sterling Savings Bank to the defendant. The defendant  
23 then took that check from Sterling Savings Bank and got a  
24 cashier's check for the same amount, 9,884.

25           Then the detective discovered on November 1st,

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1 2011, there was a deposit made for \$9,884 to Julie Marsh's  
2 bank account at Chase Bank, a bank account, she will tell  
3 you, the defendant had access to. It wasn't used very  
4 often.

5           The charges in this case, the State intends to  
6 prove the following charges: The charge of robbery in the  
7 first degree, two counts of robbery in the second degree,  
8 kidnapping in the second degree, unlawful use of a stun  
9 gun, a charge of burglary in the first degree, aggravated  
10 theft in the first degree, and money laundering. Those  
11 are all the charges that he has been charged with.

12           The State is going to prove, in regards to the  
13 robbery in the first degree, that in the course of  
14 committing or attempting to commit theft, he knowingly  
15 used or threatened the imminent use of physical force on  
16 another person, with the intent of preventing or  
17 overcoming the resistance of taking the property and  
18 retention of the property immediately after the taking,  
19 the person uses or attempts to use a dangerous weapon;  
20 that being when he pushed the door in against Zdenka, he  
21 took out the stun gun, and he used it.

22           We will prove that stun gun is a dangerous  
23 weapon, that he used that force to prevent her from  
24 overcoming any resistance he may have received breaking  
25 into that house and taking that property.

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1           Robbery in the second degree is pretty similar.  
2   You will say the language is about the same. In the  
3   course of (indiscernible) theft, one would use force on  
4   another person, (indiscernible), overcoming the resistance  
5   of taking of property represented by word or conduct that  
6   he was armed with what purported to be a dangerous weapon.  
7   To prove that charge, all we have to prove is that he  
8   purported to have one. Of course, he had the stun gun.

9           Another theory, another way he committed the  
10   crime of robbery in the second degree, is that he was  
11   aided by another person, so the language in the beginning  
12   is the same, but the fact that he was aided by another  
13   person actually present. Mr. Wiese will tell you about  
14   that.

15           We have to prove that he committed kidnapping  
16   when he locked Zdenka Trnkova into the closet. That is  
17   committed when a person, with the intent to interfere  
18   substantially in another person's liberty and without  
19   consent or legal authority, knowingly takes the other  
20   person from one place to another. So he substantially  
21   interfered with liberty when he tied up her hands, and he  
22   took her into that closet and locked her up.

23           While he used the stun gun, a person recklessly  
24   discharges an electronic stun gun against another person.  
25   The act by the person who did this was an intentional act,



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1 a reckless one, and it is clear that person did in fact  
2 use a stun gun.

3           Burglary in the first degree. A person  
4 knowingly enters or remains unlawfully in a dwelling that  
5 is a home, with the intent to commit the crime. It could  
6 be any crime. In this case it is theft. Obviously they  
7 are breaking into that house to steal whatever they could.  
8 They end up stealing the safe.

9           Aggravated theft in the first degree is when a  
10 person, with the intent to deprive another of property,  
11 takes the property from an owner thereof, the value of the  
12 property is \$10,000 or more, and the property is not a  
13 motor vehicle used primarily for personal transportation.  
14 You will hear that they took a lot of things. It has a  
15 high monetary value; more than \$10,000.

16           Money laundering. A person knowingly conducts a  
17 financial transaction that involves the proceeds of  
18 unlawful activity, knowing that the property in the  
19 financial transaction represents the proceeds of some form  
20 of unlawful activity. The person knows that the  
21 transaction was designed in whole or in part to conceal  
22 and (indiscernible) the nature, location, source,  
23 ownership, or control of the proceeds of unlawful  
24 activity.

25           Obviously you are going to hear that he took

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1 those stolen coins, and that includes going to a coin  
2 shop, and sold those coins for 9,884, got a cashier's  
3 check and deposited it into his wife's account.  
4 Therefore, the crime to conceal the proceeds.

5           The question in this case really is going to  
6 come down to who or what you believe. Folks, it may come  
7 down to whether or not you believe Mr. Wiese.  
8 Mr. Schmonsees is going to come up in a few minutes and  
9 talk to you about that.

10           The question is: Was it the defendant? What  
11 you are going to learn is that Mr. Wiese has a lot of  
12 detail; a lot of detail about what happened. That's going  
13 to lead you to one conclusion: That he in fact did it.  
14 He is going to tell you he did it. We only know that  
15 because the only way you could have that much detail is if  
16 he did it. That's really going to be undisputed in this  
17 trial. The question is: Was that other person the  
18 defendant?

19           One of the questions you are going to ask  
20 yourself is: Who had motive? Who had opportunity? Who  
21 had knowledge of the Kachliks? Where they would be? What  
22 they would be? What money they would have?

23           What about the Tacoma Coin & Pawn shop? Why is  
24 there a slip that says "Floyd Marsh" on it? The financial  
25 transactions that we talked about. The other coins that

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1 were later found in Connie Loop's possession, the  
2 residence that the defendant would frequent. You have to  
3 ask yourself in the course of this trial (indiscernible)  
4 and answers.

5 At the end of the day you are also going to have  
6 to ask yourself what would have happened on October 1st,  
7 2011, if he had not kicked that chair away from that door.  
8 Fortunately for Zdenka Trnkova, her son did show up when  
9 the police were there. What if he hadn't? She would have  
10 been locked in that closet; that small tiny closet  
11 sweating, fearing for her life.

12 That's important, because that is a small act of  
13 compassion, in the context of an extremely serious  
14 crime -- that's compassion, not anger. In this case it is  
15 the small details, folks, that are going to make a  
16 difference. It is circumstantial evidence and the small  
17 details. I appreciate your time. I will come back in a  
18 week and chat with you.

19 THE COURT: Do you want that down?

20 MR. SCHMONSEES: Yes, Your Honor.

21 THE COURT: Okay. You can help him.

22 MR. SCHMONSEES: Your Honor, Counsel, ladies and  
23 gentlemen of the jury, this case is about one phrase, and  
24 it is one phrase that I want you to apply when you listen  
25 to the evidence in the next week. Here it is: "Take my

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1 word for it. Take my word for it."

2 That's what the evidence is going to show  
3 Gerald Wiese is going to ask you to do, just as he asked  
4 the Clackamas County Sheriff's Office to do, and just as  
5 he asked Clackamas County district attorney's office to  
6 do: Take my word for it.

7 You are going to hear evidence that Mr. Wiese  
8 sat down with what Mr. Wiese referred to as a proffer.  
9 What is a proffer? You sit down with detectives. You  
10 give them information. The reason you do that is not  
11 because you are a Good Samaritan. It is to save yourself.  
12 It is to get a deal.

13 We are going to talk about why he wanted to get  
14 that deal. He was able -- as Mr. Amos said, he had a lot  
15 of detail. The evidence is going to show the reason he  
16 had those details is because the (indiscernible) is wrong.  
17 He himself is wrong. As he has done time again, he tries  
18 to blame Mr. Marsh for this wrong -- wrong his right.

19 I'm going to ask you to pay attention to all the  
20 details that Mr. Wiese provides and what evidence the  
21 Clackamas County Sheriff's Office say corroborates. How  
22 much corroborates? What percent? At the close the case,  
23 I think it is going to be less than ten percent the  
24 evidence that he provides that is actually corroborated by  
25 law enforcement