

Debate 2, Transcript of Discovery Question:

Virginia has long been regarded as one of the most restrictive states when it comes to criminal discovery, a process that should happen before trial, where the defendant gets information from the prosecutor in order to make the best case for their defense. In 2020, new rules will go into effect requiring prosecutors to turn over more information to defendants than ever before, such as police reports, witness statements, and witness lists. What kind of criminal discovery policy do you support, and if elected, how would you execute it?

Ashworth:

Thank you. So, right now the law in Virginia is that a defense and the defense attorney are entitled to the statements made by the defendant to law enforcement – any recorded statements, and anything that tends to show they are not guilty, or exculpatory information. For too long in Virginia, that has allowed trial by ambush. And that is not in the interest of justice. When I was in the Special Victims Unit, I quite often provided open file discovery, including not only what the new laws / rules require, but additional information. The more information that a defense has about the case that the prosecution is bringing, the more likely they are to reach a resolution of the charges. And everybody feels more confident that justice is being done. So I would immediately, on Day One, begin those open file discovery policies.

May:

I am very pleased to hear my opponent say that. I called for open file discovery four years ago, and unfortunately, um, from what I understand, the rhetoric doesn't match the record. The very last case that my opponent prosecuted when she was in the Commonwealth's Attorney's Office, she did not have an open file discovery, and when she left, the Commonwealth had to concede that there had been exculpatory materials in that file for as many as two years. Now I realize that her position was that she hadn't looked at the file, and I can understand that, but if you had an open file discovery policy at that time, and somebody would have looked at it, someone would have discovered that. Those kinds of things deprive people of due process and they also put our criminal convictions at risk. This person was ultimately acquitted.

Ashworth Rebuttal:

Yes, the cases that I handled often involved children who were sexually abused by their relatives, and there were often confidential items or things that were not appropriate to be disclosed. And the rules being propounded by the Supreme Court include protections for those. In the case at hand, everything in that file was turned over, so Mr. May's facts are incorrect.