

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING

DAY 1

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: JANUARY 15, 2010

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

STEVEN DRIZIN
Attorney at Law
On behalf of the defendant.

ROBERT J. DVORAK
Attorney at Law
On behalf of the defendant.

LAURA H. NIRIDER
Attorney at Law
On behalf of the defendant.

JOSHUA A. TEPFER
Attorney at Law
On behalf of the defendant.

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THOMAS F. GERAGHTY
Attorney at Law
On behalf of the defendant.

ALEX HESS
Law Student
On behalf of the defendant.

ADAR CROSLEY
Law Student
On behalf of the defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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I N D E X

WITNESSES

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1 THE COURT: This is State of Wisconsin v.
2 Brendan Dassey. It's Case No. 2006 CF 88. It's
3 also Court of Appeals No. 2007 XX 1073.
4 Appearances. Starting with the prosecution.

5 ATTORNEY FALLON: Morning, Your Honor.
6 May it please the Court, State appears by Special
7 Prosecutors Tom Fallon from the Attorney
8 General's Office and Ken Kratz from the Calumet
9 County District Attorney's Office.

10 ATTORNEY DRIZIN: Good morning, Your
11 Honor. Is it okay if I introduce my team?

12 THE COURT: Go ahead.

13 ATTORNEY DRIZIN: Okay. For the record,
14 on behalf of Mr. Brendan Dassey, I'm Steve
15 Drizin.

16 To my left is Laura Nirider,
17 N-i-r-i-d-e-r.

18 Sitting at counsel table assisting with
19 the technology today is Alex Hess. He is a
20 third-year law student at Northwestern University
21 School of Law.

22 In the first row is Mr. Joshua Tepfer
23 T-e-p-f-e-r. He is a law professor at
24 Northwestern Law School.

25 Sitting next to Mr. Tepfer is Ms. Adar,

1 A-d-a-r, Crosley. She is a third-year law
2 student at Northwestern University.

3 To her right is Mr. Thomas Geraghty. He
4 is a law professor and a director of the Bluhm
5 Legal Clinic at Northwestern Law School.

6 And behind me is Mr. Robert Dvorak who
7 is co-counsel with me on this case.

8 THE COURT: All right. Thank you. I'm
9 going to give a short introduction to the hearing
10 here today.

11 Uh, this is a case in which the
12 defendant, Brendan Dassey, was charged on
13 March 3, 2006 -- and before I forget, the record
14 will also reflect that Mr. Dassey is here
15 personally -- was charged on March 3, 2006, with
16 being party to the crimes of first degree
17 intentional homicide, first degree sexual
18 assault, and mutilating a corpse.

19 The victim in all three charges was
20 Teresa Halbach, who was murdered on August -- on
21 October 30, 2005.

22 Mr. Dassey -- excuse me -- was tried in
23 Manitowoc County by a jury chosen in Dane County.
24 The jury returned guilty verdicts to all three
25 charges on April 27 -- or April 25, 2007.

1 On August 2, 2007, this Court sentenced
2 Mr. Dassey on the intentional homicide conviction
3 to life in prison with the possibility of release
4 to extended supervision on November 1, 2048.

5 Additional concurrent sentences were
6 given for the other two convictions.

7 The defendant, through his counsel,
8 filed, on August 25, 2009, a motion under Section
9 809.30 of the Wisconsin Statutes seeking
10 post-conviction relief.

11 Specifically, Mr. Dassey is seeking a
12 new trial. He alleges he is entitled to this
13 because his trial counsel and his counsel, who
14 represented him immediately before trial counsel
15 was appointed, were ineffective in their
16 representation of him.

17 He also requests a new trial in the
18 interest of justice because he alleges that the
19 real controversy was not fully tried and his
20 conviction represented a miscarriage of justice.

21 To prove ineffective assistance of
22 counsel, a defendant must show deficient
23 performance and prejudice resulting from that
24 deficient performance. A hearing is required and
25 that is what we will be starting here today.

1 In Wisconsin, this hearing is also -- is
2 often called a **Machner** hearing because part of
3 its origin lies in a case entitled **State of**
4 **Wisconsin v. Machner** at 92 Wis. 2d 797.

5 Now, Mr. Drizin, have I correctly
6 summarized what relief your client is seeking?
7 There's -- there 's nothing else that you have in
8 your motion?

9 ATTORNEY DRIZIN: I believe so. We
10 are -- we are seeking two forms of relief. A new
11 motion to suppress Mr. Dassey's statements and a
12 new trial.

13 Um, and the only other thing I will say
14 is, is that we believe there are two standards
15 operating in this case to judge the
16 ineffectiveness of Mr. Kachinsky's conduct, and
17 those include the **Strickland** standard, which you
18 articulated, the prejudice standard, and a
19 different standard that governs, um, conduct by
20 an attorney when they are in a -- a conflict of
21 interest and there's a breach of a duty of
22 loyalty, which we've labeled the adverse effect
23 standard.

24 THE COURT: All right. Are you prepared to
25 proceed?

1 ATTORNEY DRIZIN: We are. There's one
2 preliminary motion but we're prepared.

3 ATTORNEY FALLON: And just so the record
4 is clear, we take issue as to whether or not
5 there is a bifurcated standard here and whether
6 it applies in this particular context. Not the
7 existence of it but whether it applies here.

8 THE COURT: I understand. Go ahead.
9 Motion.

10 ATTORNEY DRIZIN: I'd -- I'd have
11 Mr. Dvorak argue this initial motion, Judge.

12 THE COURT: Well, before we do that, maybe
13 we should -- and maybe I should have done this
14 before. But who's going to be doing what here
15 today?

16 ATTORNEY DRIZIN: Uh, we're going to be
17 examining separate witnesses. It depends on
18 whether or not the witnesses who we subpoenaed
19 show up.

20 Mr. Kachinsky was subpoenaed to be here
21 today. He has, to the best of my knowledge, not
22 appeared yet. Um, that witness is going to be
23 examined by Mr. Dvorak.

24 I'm going to be examining, um,
25 Mr. Kratz, and Mr. Geraghty's going to be

1 examining Mr. Fassbender and Mr. Wiegert, if we
2 get that far.

3 THE COURT: All right. Mr. Dvorak, your
4 motion?

5 ATTORNEY DVORAK: Judge, it was just
6 a -- a -- a motion I think that was brought
7 earlier to exclude witnesses. And -- and there
8 was, in my understanding, some argument by the
9 State that, um, somehow they -- their view of
10 themselves as being in a rebuttal posture, uh,
11 and I guess I'm not sure that I understand what
12 the argument is.

13 But we're asking that there be the
14 standard order to exclude witnesses and that they
15 not be allowed to discuss their testimony.

16 THE COURT: That's fine. I -- I think
17 this -- what Mr. Dvorak is alluding to was a
18 conference that was held in chambers, I think, on
19 the afternoon of the 12th, Tuesday of this week, in
20 which we discussed this. The Court said that it
21 would sequester or separate witnesses.

22 Uh, Mr. Kratz suggested that since his
23 case was a rebuttal case, although the witnesses
24 that we were talking about were Mr. Wiegert and
25 Mr. Fassbender, both of whom I understand are

1 going to be called by the defense in any case.

2 Is that -- so we'll have them sequestered.

3 ATTORNEY FALLON: I -- I do have one
4 request for one exemption under that order. It
5 would be Investigator Skorlinski, um, who
6 assisted us in conducting some of the interviews
7 in preparation for these proceedings. Um, he's
8 not available today because he's still in another
9 trial in Marinette County so he will not be
10 available until next week in any event.

11 So we would ask for an exception under
12 9-0-6-1-5 for him to assist us in presenting, um,
13 information in this case, particularly for
14 purposes of conducting cross-examination.

15 THE COURT: Any objection to that?

16 ATTORNEY DRIZIN: Not at all, Judge.

17 THE COURT: All right.

18 ATTORNEY DRIZIN: And we have one
19 request for an exception, and -- and it's only
20 because her testimony is going to be very narrow
21 and really not focused very much on the issues in
22 this case, and that's that Brendan's mother be
23 allowed to remain in the room during the course
24 of this hearing.

25 THE COURT: Fine.

1 ATTORNEY FALLON: Um, I would object to
2 her presence during the testimony of only two
3 witnesses, and that would be Fassbender and
4 Wiegert. Absent that, she can stay for the rest
5 of the hearing.

6 THE COURT: All right.

7 ATTORNEY DRIZIN: I don't have a problem
8 with that.

9 THE COURT: With that qualification, we'll
10 do it that way. All right. Now are we set?

11 ATTORNEY DRIZIN: We are set, Judge. As
12 our first witness, the defense calls Kenneth
13 Kratz.

14 THE CLERK: Please raise your right hand.

15 **KENNETH KRATZ,**
16 called as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

18 THE CLERK: Please be seated. State your
19 name and spell your last name for the record.

20 THE WITNESS: Kenneth Kratz, K-r-a-t-z.

21 ATTORNEY DRIZIN: Judge, just a quick
22 question. Um, would you prefer that I stand up
23 to address the witness? Does it matter? The
24 microphone's here so...

25 THE COURT: Matters not to me.

1 ATTORNEY DRIZIN: Okay. Thank you,
2 Judge.

3 DIRECT EXAMINATION

4 BY ATTORNEY DRIZIN:

5 Q Mr. Kratz, may -- may I call you Ken? Or
6 Mr. Kratz? Or District Attorney Kratz? How
7 would you like to --

8 A I answer to everything. Ken is fine, Mr. Drizin.

9 Q Okay. Thank you. How long have you been the
10 district attorney of Calumet County?

11 A Since 1992.

12 Q Okay. And how long have you been a prosecutor?

13 A Since 1985.

14 Q Okay. During the course of your career have you
15 ever been a criminal defense lawyer?

16 A No.

17 Q Okay. And in the course of your career as a
18 prosecutor it's fair to say you've been involved
19 in a fairly high number of high profile cases?

20 A Yes.

21 Q Okay. Would you agree that the Steven Avery and
22 the Brendan Dassey case, if I can refer to them
23 together, um, was the highest profile homicide
24 case you had ever been involved in as a
25 prosecutor?

1 A I believe it was the most watched homicide case in
2 Wisconsin history. So I -- I suspect that's true.

3 Q Okay. Um, now, I want to begin with your early
4 involvement in this case. Why was a special
5 prosecutor needed in the prosecution of Mr. Avery
6 and Mr. Dassey's case?

7 A Early on in this case, uh, even the morning that the
8 victim's vehicle had been discovered, the Manitowoc
9 County Sheriff's Department, with the advice of the
10 Manitowoc County District Attorney Mr. Rohrer,
11 realized that there may be a potential conflict
12 between Manitowoc County and, specifically, Steven
13 Avery of the Avery family.

14 Mr. Avery had filed a -- a civil federal
15 lawsuit, as I understand, um, seeking damages
16 from the county and others.

17 And the investigation of Mr. Avery by
18 that civil defendant in such a potentially high
19 profile manner in the opinion of the sheriff of
20 Manitowoc and the opinion of the district
21 attorney of Manitowoc raised the potential for
22 a -- a conflict of interest.

23 Therefore, even at the investigative
24 stage of this case they had sought the assistance
25 of another prosecutor to, um, step in and handle

1 both the assistance that is often provided to law
2 enforcement at a pre-charging stage, as well as
3 being willing to handle any prosecution that may
4 come out of that case.

5 Teresa Halbach was a young woman who
6 happened to live in Calumet County and so our
7 investigators were already involved in the search
8 efforts for Teresa.

9 We were generally familiar with her, um,
10 whereabouts on the day of October 31. They had
11 already consulted me. I was assisting, actually,
12 in the missing persons investigation, um, for the
13 preparation of cell phone subpoenas and the like,
14 whereby we were trying to ascertain her
15 whereabouts. And so I also was familiar with
16 this case.

17 It's also my understanding that
18 Mr. Rohrer, in deciding who to ask be special
19 prosecutor in the case, um, preferred somebody
20 with a number of years of trial experience, a
21 number of years of assisting law enforcement in
22 major case investigations.

23 And at least in the surrounding counties
24 at that time I was probably one of the most
25 experienced of prosecutors available.

1 So with that long answer it seemed
2 natural for Mr. Rohrer to ask me to assist in
3 this case. He called me directly and I proceeded
4 to the Avery salvage property. I agreed to be
5 named special prosecutor.

6 Q So it would be fair to say that you were involved
7 in this case from the beginning of the missing
8 persons report, and then your involvement in this
9 case grew even more once, um, Teresa Halbach's
10 car was discovered on the Avery property?

11 A Very much so.

12 Q Okay. Um, now, as a special prosecutor, and this
13 is something I need to understand, your role is
14 simply to assume the role that would have been
15 taken by the Manitowoc County prosecutor.

16 Are there any additional duties and
17 responsibilities that you have as a special
18 prosecutor than there would have been for the
19 Manitowoc County prosecutor had there not been
20 this conflict of interest?

21 A No. I think that -- I think that's fair. There are
22 some logistical nuances with working with other
23 counties and getting bills paid and those kinds of
24 things that I still may have had to do some things
25 through the Manitowoc D.A's Office, but that

1 notwithstanding, you're very much -- you very much
2 step in the shoes of the D.A. from that home county.

3 Q Okay. Now, one of your duties as prosecutor of
4 this case -- special prosecutor -- was to review
5 the evidence that was being developed and then
6 ultimately decide whether or not to file charges
7 in this case against Mr. Avery?

8 A Yes. That wasn't my first of -- my first
9 responsibility but, ultimately, a charging decision
10 is what you're talking about, uh, fell squarely on --
11 on me.

12 Q Okay. That's what I wanted to know. Now, at the
13 time that you made a decision to charge Mr. Avery
14 with the homicide in this case, um, you did not
15 know exactly what had happened to Teresa Halbach
16 prior to the time that her body had been burned;
17 correct?

18 A I think that's fair.

19 Q Okay. And at the time that you filed criminal
20 charges against Steven Avery, um, for the murder
21 of Teresa Halbach you did not have sufficient
22 evidence at that point in time to support sexual
23 assault charges against Mr. Avery; correct?

24 A That's -- that's true.

25 Q Okay. You knew that something horrible had

1 happened to her but you didn't know exactly what
2 had happened to her after the time that she went
3 missing and the time that her car was discovered?
4 A Right. Obviously the physical evidence suggested
5 various, um, theories that included some --
6 Q Nothing hard? No -- nothing hard?
7 A No.
8 Q Okay. And so would it be fair to say that you
9 did not get a narrative of Teresa Halbach's final
10 hours, if you will, until Brendan Dassey gave his
11 statement on March 1?
12 A That was the first individual who was involved in the
13 criminal enterprise to give me a narrative of what
14 had happened.
15 Narrative, you know, can be provided by
16 crime lab personnel, and here's what the physical
17 evidence suggests, and this came first and --
18 Q But prior to the --
19 A -- and --
20 Q -- time -- prior --
21 THE COURT: Hang on here. One at a
22 time. Finish your answer.
23 THE WITNESS: All right. And so, um, I
24 had received, um, a narrative in -- in that
25 respect from the forensic scientists that were

1 involved.

2 However, from a -- a purely layperson's
3 standpoint, for lack of a better term, A, this
4 came first and this came second and this came
5 third, I hadn't heard that series of events until
6 after the -- the 1st of March.

7 Q (By Attorney Drizin) Okay. So you had some
8 evidence. You were getting some reports from,
9 you know, various crime lab people, but there
10 were significant gaps in the narrative that were
11 filled in only when Brendan Dassey's statement
12 was presented to you?

13 A I think that's fair.

14 Q Okay. Now, on or about March 1, did you actually
15 view Brendan Dassey's statements to the
16 investigators?

17 A Which ones, sir?

18 Q The ones on March 1?

19 A No.

20 Q Okay. Did you -- did you review the ones in
21 February? 27? 28? Prior to March 1?

22 A I don't recall. I would doubt it. What I -- can I
23 expand on that?

24 Q Yeah, please.

25 A What I -- what I would normally do, and -- because I

1 was involved on, you know, I've got to say a daily
2 basis for the first several months of this case,
3 investigators -- the co-invest -- co-leading
4 investigators, Wiegert and Fassbender, would meet
5 with me, would provide me with, really, daily updates
6 as to the development of the case.

7 Would ask for my opinion, and not only
8 legal but strategic, on what should happen next,
9 where the investigation should -- should go next.

10 And it was in that regard that, after
11 the interview of Mr. Dassey on the 27th of
12 February, we had a pretty long meeting about that
13 interview of Mr. Dassey who was, at least
14 represented to me, very much a witness at that
15 time, not a suspect.

16 And that Messrs. Wiegert and Fassbender,
17 um, still believed that after the 27th of
18 February that Brendan had seen a lot more than he
19 had been willing to disclose.

20 Q So --

21 A I can go into why, but -- but for right now that's --
22 they believed that he knew a lot more than he was
23 saying.

24 Q Okay. This meeting with your investigators,
25 Mr. Wiegert and Mr. Fassbender, did it occur

1 before the Two Rivers interview on the 27th or
2 after the --
3 A After.
4 Q -- Two Rivers? Okay. Thank you.
5 A And -- and -- and probably -- probably the 28th,
6 Mr. Drizin, because of the, um -- the number of
7 interviews on the 27th, and -- and, you know, where,
8 physically, those took, um, I'm sure this happened
9 the next day some time.
10 Q Okay. When was the first time you viewed Brendan
11 Dassey's statement on March 1? Viewed it.
12 A I don't know.
13 Q Would it have been within a few days after
14 announcing the charges against him?
15 A I've got to think it was either on the 2nd, or at
16 least I got a preview of portions of it on the 1st.
17 Certainly, I viewed it in its entirety before the
18 3rd, before, um, Mr. Dassey was charged.
19 Q Okay. And you didn't have a transcript yet of
20 that interview at the time that you filed charges
21 against Mr. --
22 A No, but I'm --
23 Q -- Dassey?
24 A -- quite certain I watched it from start to finish,
25 including, as you know, the last couple of hours,

1 perhaps, of virtually nothing happening on the tape,
2 so... But I still watched it all the way through.

3 Q Prior to you filing charges or the -- or the day
4 after you filed charges?

5 A Oh, no, prior to.

6 Q Okay. Now, when you saw Mr. Dassey's statement
7 for the first time, um, you knew that in your
8 case against Steven Avery you couldn't count on
9 being able to show that confession to Mr. Avery's
10 jury; correct?

11 A Um --

12 Q You couldn't just walk in and press the play
13 button for that statement in Avery's trial?

14 A Yeah. You're -- you're asking that I -- I think a
15 lot about a co-defendant's, um, statement and how I
16 might strategically, uh, weave that into Mr. Avery's
17 case.

18 I wouldn't say that was at the forefront
19 of -- of any decision-making.

20 Um, if you're asking me if I was
21 familiar with the law of co-defendant's
22 statements, the necessity of some kind of
23 immunity, the necessity of some kind of plea
24 deal, the necessity of thinking ten steps ahead
25 in this case, uh, I probably was cognizant of --

1 of all of those things. That's what a prosecutor
2 does.

3 But on the 3rd, certainly, um, my focus
4 was on, um, choosing charges against Brendan
5 Dassey that were supported not just by his
6 statement but by the corroborative physical
7 evidence that we had at the time.

8 Q But at some point prior to the trial of Mr. Avery
9 you were thinking about the evidence you had
10 obtained against Mr. Avery and you realized, for
11 the reasons you discussed, that you could not use
12 that statement without immunity, some kind of
13 plea discussions, some kind of other activity on
14 your part? You couldn't just play that tape in
15 the --

16 A Something --

17 Q -- Steven Avery --

18 A -- pretrial would have to happen to play that tape.

19 Q Thank you. Okay. Now, did Mr. Dassey's
20 statement enable you to amend the charges against
21 Steven Avery?

22 A Yes.

23 Q Okay. And after Mr. Dassey's statement, how did
24 you amend those charges?

25 A Are you talking about Mr. Avery's case now?

1 Q Yes.

2 A I -- I added charges of sexual assault, um,
3 kidnapping, I believe, and something else.

4 Q Okay.

5 A There was a -- a sixth charge. And then -- I should
6 know this, but -- but I don't know what the sixth
7 charge was. I'm sorry.

8 Q It's been a long time. I don't expect you to
9 know everything about this. Okay.

10 Prior to Brendan Dassey's case, or,
11 let's say, prior to your involvement in Steven
12 Avery's case, had you ever met Len Kachinsky?

13 A Yes.

14 Q Okay. What was your relationship with him?

15 A Len was a defense attorney in the Appleton area. Uh,
16 strictly a professional relationship. Len and I have
17 never seen each other socially, um, unlike some other
18 attorneys in town that I do have closer personal
19 relationships with.

20 I did not have that kind of a
21 relationship with Mr. Kachinsky. So it was
22 purely professional, and I -- I think, um -- I
23 think always prosecutor/defense attorney.

24 We -- some -- some defense lawyers will
25 do Guardian ad Litem work or other work that I

1 will do, and we're aligned in interest on a case,
2 but Mr. Kachinsky and I were, professionally at
3 least, always in an adversarial posture.

4 Q Okay. Um, just a brief geography lesson.
5 Appleton is in Calumet County?

6 A The south side of the city of Appleton is in Calumet.

7 Q Okay.

8 A Appleton's in three different counties.

9 Q Okay. So had you ever tried any cases with
10 Mr. Kachinsky?

11 A I believe I have.

12 Q Those cases, did they go to trial actually?

13 A Not sure.

14 Q Okay. Have you ever entered plea agreements,
15 prior to the Avery case and the Dassey case, with
16 Mr. Kachinsky?

17 A Most certainly.

18 Q Would it be fair to say that many more of the
19 cases you were involved in with Mr. Kachinsky
20 resulted in plea deals as opposed to trials?

21 A Many more of the cases with every defense attorney
22 ends up in a plea deal.

23 Q I understand that. But with Mr. Kachinsky, in
24 particular, that would still be the same answer?

25 A Yes.

1 Q Okay. Now, Mr. Kachinsky was appointed to
2 represent Brendan Dassey in early March of 2006;
3 correct?

4 A After -- yes. After Mr. Sczygelski withdrew from the
5 case.

6 Q Okay. And shortly after Mr. Kachinsky began --
7 was appointed to represent Mr. Dassey, he began
8 making public comments to the press, um, almost
9 from the minute he was appointed to this case.
10 Would you agree with that?

11 A I understand that he answered some questions to the
12 press. I don't know at which, um -- or what
13 Mr. Kachinsky's role was in offering statements
14 instead of being responsive to questions, but perhaps
15 it doesn't make any difference.

16 Statements were made by Mr. Kachinsky
17 about not only -- interestingly, not only the
18 procedural posture of the case one might expect
19 an attorney to -- to talk about, Mr. Kachinsky
20 seemed somewhat more willing to discuss either
21 metal -- matters of trial strategy or what he
22 believed may happen in the case. A predictive
23 kind of -- kind of statement.

24 Q And some of the things that he was discussing had
25 to do with entering pleas on behalf of Brendan

1 Dassey?

2 A Yes.

3 Q Okay. In your experience as a prosecutor, your
4 years of experience, was that unusual to have a
5 defense attorney that early in the case talking
6 publicly about the possibility of a plea deal for
7 his client?

8 A Yes.

9 Q Okay.

10 A And, in fact, I -- I -- I should tell you with his --
11 with some of the statements that he was sharing --
12 and -- and it's not totally unique for a defense
13 attorney to want to paint his client in a positive
14 light, uh, with the media. Um, but Mr. Kachinsky
15 seemed to, um, adopt that role quite -- quite
16 vigorously.

17 And I will candidly say that in at least
18 one correspondence to Mr. Kachinsky, just out of
19 my professional courtesy to him, I reminded him
20 of his ethical responsibilities as far as contact
21 with the media, what I believed he should and
22 should not be disclosing to the media, and sort
23 of a friendly reminder, lawyer to lawyer, about
24 what his future responsibilities might be.

25 But I don't want to sound -- I -- I

1 didn't have an agenda in doing that. I certainly
2 did as well. I wanted it to stop.

3 Q I hear you. And, you know, just so I'm clear,
4 this is -- this one instance where you, um, you
5 know, communicated with him some of your
6 concerns, this was by e-mail in -- in about April
7 of -- April 14, I believe --

8 A I think that's fair.

9 Q -- of 2006. So prior to April 14 you made no
10 attempts to contact Mr. Kachinsky concerning his
11 comments about plea deals on behalf of his
12 client?

13 A I don't know if that's true or not, Mr. Drizin. I
14 think what likely would have happened is during our
15 ongoing discussions, unrecorded oral-type discussions
16 about the case, which happens in virtually every
17 criminal prosecution, that topic may have come up.

18 I'm telling you I don't recall it nor do
19 I have a recorded, um, representation of that.
20 Like that e-mail that you're referring to.

21 Q Okay.

22 ATTORNEY DRIZIN: Judge, just one
23 matter, please. Um, we had an order for a motion
24 to exclude witnesses at the beginning that was
25 granted.

1 Mr. Kachinsky is not here today in the
2 courtroom. I just want to clear -- make clear
3 for the record that I'd like you to extend your
4 order. If Mr. Kachinsky is at home watching this
5 on some television screen, or it's being
6 streamlined, that he is not to be seeing what's
7 happening in this courtroom in any way, shape, or
8 form.

9 THE COURT: All right.

10 ATTORNEY DRIZIN: Thank you.

11 THE COURT: Motion is granted.

12 Q (By Attorney Drizin) Okay. Now, um, this is the
13 first time we're going to do this, Mr. Kratz, so
14 I would like you to turn to tab number 310. And
15 I will get that for you right now. It is in
16 binder number five, I believe.

17 A I think I have it here. This looks like the Health
18 Care Bill.

19 Q It does.

20 THE COURT: Let's keep politics out of
21 this.

22 ATTORNEY KRATZ: Except I've read those,
23 Judge, so that's the difference.

24 ATTORNEY FALLON: Which one, Counsel?

25 THE WITNESS: Three-ten?

1 ATTORNEY DRIZIN: Three-ten.

2 THE WITNESS: All right. I found it.

3 Q (By Attorney Drizin) Okay. Um, on March 7,
4 2006, Mr. Kratz, or Ken, um, Mr. Kachinsky and
5 Mr. Sczygelski appeared together on NBC -- local
6 NBC TV-26 -- um, and criticized you for the
7 amount of detail that you released to the public
8 in your Complaint. Do you recall that interview?

9 A No.

10 Q Okay. Um, would reading a summary of that
11 interview refresh your recollection?

12 A No.

13 Q How do you know if you haven't read the summary?

14 A Because I'm -- I'm sure I don't recall Mr. Kachinsky
15 or Mr., um, Sczygelski being critical of the amount
16 of detail that was found in a Criminal Complaint.
17 That's something that I would have remembered and
18 would be very unusual.

19 But, um, I can assure you, as I sit
20 here, that I wasn't aware of the criticism, at
21 least from Mr. Kachinsky and from Mr. Sczygelski,
22 as to content in the Criminal Complaint.

23 Q Okay. This is a multi-page exhibit. If you
24 wouldn't mind turning to the third page of this
25 exhibit, Mr. Kratz.

1 At the bottom it, says "Len Kachinsky,
2 Dassey's attorney." And there's a quote
3 attributed to him. Do you see that?
4 A I don't. Um, there's a -- a bunch of different page
5 numbers and so if you see at the very bottom of the
6 page --
7 ATTORNEY DRIZIN: May I approach the
8 witness?
9 THE COURT: Sure. It's the third page one.
10 THE WITNESS: The third page one. Okay.
11 This is more like that Bill than I thought,
12 actually.
13 Q (By Attorney Drizin) Have you had an opportunity
14 to read the comment attributed to Mr. Kachinsky
15 there?
16 A That -- the last comment, "We have --
17 Q Beginning with --
18 A -- a --
19 Q -- "We have a 16-year-old --
20 COURT REPORTER: One at a time, please.
21 Q (By Attorney Drizin) The one beginning with, "We
22 have a 16-year-old."
23 A I see that, yes.
24 Q Do you recall at the time of March 7, or shortly
25 thereafter, hearing Mr. Kachinsky speak publicly

1 and saying:

2 "We have a 16-year-old who, while
3 morally and legally responsible, was heavily
4 influenced by someone that can only be described
5 as something close to evil incarnate."

6 Do you recall that?

7 A No.

8 Q Okay. Do you recall comments like that that he
9 was making in this general timeframe?

10 A No.

11 Q Okay. Had you heard him say publicly that he --
12 his client was morally and legally responsible,
13 would you have spoken to him about it?

14 A Probably not. I think that's a -- at least a --
15 legally responsible, I think, is a -- an obvious
16 statement of -- of the law in Wisconsin.

17 As far as morally, um, that might be his
18 opinion. But that wouldn't have been the kind of
19 egregious use of his position as advocate for his
20 client that I would have taken the unusual step
21 to contact him about.

22 Q You didn't see this comment as a red flag that
23 perhaps Mr. Kachinsky was not acting in his
24 client's best interests?

25 A That requires me to comment with my opinion and with

1 my knowledge of Mr. Kachinsky's reputation. If you
2 want me to do that I will. But I -- I --

3 Q I --

4 A -- I -- I'm not sure that's the -- that's the
5 question that you really want to ask. I don't want
6 to -- I don't want to -- I don't want to offer, kind
7 of sua sponte, my opinion in -- in -- in these kinds
8 of -- of matters. Is there a way, perhaps, you could
9 rephrase that question?

10 Q Um, I'll rephrase it, but I -- I think it's
11 pretty clear. What I'm asking you is -- let
12 me -- let me ask it this -- different question,
13 okay?

14 A Did I think he was representing Brendan's interest?

15 Q No, that's not my question.

16 A I suspect it's (unintelligible) --

17 THE WITNESS: I'm sorry.

18 THE COURT: Let him finish asking the
19 question before you answer. Don't anticipate.

20 Q (By Attorney Drizin) Would the fact that
21 Mr. Kachinsky had not yet met Brendan Dassey have
22 influenced your opinion about whether or not this
23 comment, you know, raised a red flag to you about
24 whether he was representing Brendan's best
25 interests?

1 ATTORNEY FALLON: Still calls for
2 speculation.

3 THE COURT: It -- it does. I'm going to --
4 if that's an objection --

5 ATTORNEY FALLON: That's an objection.

6 THE COURT: -- it's sustained.

7 ATTORNEY DRIZIN: Okay.

8 Q (By Attorney Drizin) At the time that
9 Mr. Kachinsky was making these comments shortly
10 after he was appointed, were you aware of whether
11 or not he met -- he had met his client?

12 A No.

13 Q Okay. At the time that Mr. Kachinsky was making
14 these comments on March 7, had you approached
15 Mr. Kachinsky in any formal way about striking a
16 plea deal with Brendan Dassey?

17 A I -- I don't recall. And -- and the one -- the one
18 person who is conspicuously absent from this hearing
19 is Mr. Sczygelski, the first lawyer, and I have a
20 understanding or a belief that --

21 Q Do you know for a fact whether -- are you
22 testifying about what your belief is or what you
23 know for a fact?

24 A What I know for a fact.

25 Q Okay.

1 A I know for a fact that Mr. Kachinsky waived the
2 prelim and he got skewered --

3 Q That was Mr. Sczygelski.

4 A Mr. Sczygelski waived the prelim and got skewered by
5 his brethren in the defense bar because of waiving a
6 prelim in a homicide case.

7 I have the opinion that was absolutely
8 the right thing to do with what he had on his
9 plate, and that Mr. Sczygelski at that time was
10 of the opinion that somewhere down the road this
11 case was leading to a plea, not to a trial.

12 That was in his client's best interest.

13 Q And is --

14 A We haven't heard from Mr. Sczygelski, and so all of
15 this -- this early plea negotiations and the -- how
16 inappropriate it might be, we're apparently not going
17 to hear from Mr. Sczygelski having said that.

18 Q You can call him, if you would like.

19 A And we might.

20 Q Okay.

21 A Having said that, however, Mr., um, Kachinsky, taking
22 the same practical approach with what he knew at the
23 time, trying to paint Mr. Dassey in an incredibly
24 difficult set of facts in a positive or neutral light
25 with not only the media but with me, was going to be

1 an uphill battle.

2 This appeared to me to be the beginning
3 of that process.

4 So to answer the question, I'm not
5 necessarily sure that's an unusual step for a
6 competent defense attorney to take.

7 Q Same day he's been appointed counsel.

8 A Absolutely. Get on it.

9 Q Okay. Um, in -- can you imagine a situation
10 where a self-respecting defense attorney would
11 discuss, publicly, a plea deal in a murder case
12 for a client that he believed was innocent?

13 A I don't know how many self-respecting defense
14 attorneys there are, but the ones that you are
15 theoretically talking about, um, don't walk into a
16 representation thinking whether their client is
17 innocent or -- or guilty.

18 Q Okay. Can you imagine --

19 A In fact, if I can -- if I -- a self-respecting
20 defense attorney, uh, whether they're innocent or
21 not, would not be included in the calculus as to
22 whether or not he can achieve a positive disposition
23 for his client.

24 Q My point, Mr. Kratz, here, is that when
25 Mr. Kachinsky was making these comments, he was

1 telegraphing to the world that it was his opinion
2 that his client was guilty; correct?

3 A Well, I -- I don't -- I don't know what he's --

4 ATTORNEY FALLON: Still specula -- I'm
5 going to --

6 THE WITNESS: -- telling the world --

7 ATTORNEY FALLON: -- object to
8 speculation trying to ask Counsel what he thinks
9 was in Mr. Kachinsky's mind at the time he
10 offered those comments.

11 I can come up with three variations
12 right now just thinking in the top -- of the top
13 of my head, so --

14 ATTORNEY DRIZIN: I'll with --

15 ATTORNEY FALLON: -- I'm going to --

16 ATTORNEY DRIZIN: I'll with --

17 ATTORNEY FALLON: -- object.

18 ATTORNEY DRIZIN: I'll withdraw the
19 question.

20 THE COURT: All right.

21 Q (By Attorney Drizin) It would be fair to say,
22 though, Mr. Kratz, that at the time Mr. Kachinsky
23 was making these comments you did not have any
24 kind of a written plea understanding with
25 Mr. Kachinsky?

1 A That's fair.

2 Q Okay. And any discussions with him about pleas
3 would have been at the very preliminary stages?

4 A Absolutely.

5 Q Do you know whether at the time Mr. Kachinsky was
6 making comments to the press about his client's
7 guilt whether he had viewed the statements that
8 his client had made or listened to them, um,
9 prior to making those comments?

10 A I -- I don't know. And -- and I'm quite sure I
11 wouldn't have had that conversation with him at that
12 early stage whether or not he had viewed the --
13 the -- the videotape.

14 The odd thing, or what I like to say,
15 is -- is the positive thing about my office, the
16 Calumet D.A.'s office, is we provide discovery,
17 which means all the materials that we have, to
18 the defense without a formal request, without
19 them asking for it, and as early in the process
20 as we can.

21 And so I do that for the practical
22 benefit of the potential for timely plea -- plea
23 discussions or dispositions. And so I don't even
24 know whether Mr. Kachinsky had the DVD at that
25 time.

1 Q You don't know if they had been transcribed yet
2 either; right?

3 A Quite sure had not.

4 Q Right. And this is March 7 we're talking about
5 so, um, had Mr. Kachinsky even made a formal
6 discovery motion at that point in time?

7 A I don't know. But I just told you he wouldn't have
8 had to.

9 Q Okay. On March 17, Mr. Kachinsky appeared on the
10 Nancy Grace show. Do you recall that television
11 appearance?

12 A I do not.

13 Q Okay. Did you know that Mr. Kachinsky was
14 beginning to speak not only to the local press
15 but also the national press about his client?

16 A I don't think so.

17 Q Would that have raised any red flags to you if he
18 was telegraphing to a bigger audience his belief
19 that his client was guilty?

20 ATTORNEY FALLON: I'm going to object.
21 He's -- he's again asking for the -- for the
22 opinion of another lawyer on the competence, or
23 the strategy, or the ideas, or the techniques,
24 uh, of the one who was suspected or accused of
25 being ineffective.

1 And that is, um -- first of all, it's an
2 improper use of an opinion. It calls for
3 speculation. And, more importantly, that type of
4 testimony is -- is impermissible in Wisconsin,
5 asking one lawyer to comment on the techniques or
6 strategies of another, in a *Machner* hearing.

7 And if the Court wants case law on that
8 I'll be happy to provide it.

9 ATTORNEY DRIZIN: May I respond, please?

10 THE COURT: Go ahead.

11 ATTORNEY DRIZIN: Mr. Kach -- Mr. Kratz
12 has testified that based on Mr. Kachinsky's
13 comments, his public comments, he felt the need
14 to send him a letter or an e-mail saying, you
15 know, you are, um, violating or approaching
16 violating ethical rules in the model code of
17 ethical rules.

18 So he, himself, began to get concerned
19 about Mr. Kachinsky's comments. I feel I'm
20 entitled to ask him whether the fact that
21 Mr. Kachinsky was going national raised any red
22 flags in that regard in March, not in April, when
23 we're going to get to that discussion.

24 THE COURT: I'm going to sustain the
25 objection. I -- this continual asking of

1 Mr. Kratz's opinion of what Mr. Kachinsky was doing
2 at a particular point in time, it seems to me, is --
3 is simply going to lead us to nowhere.

4 ATTORNEY DRIZIN: Your Honor, it's -- it
5 it's -- as you know, it -- it is our position
6 that Mr. Kachinsky breached his duty of loyalty
7 to Brendan Dassey.

8 It is also our position that Mr. Kratz
9 may have been aware of those breaches and may
10 have, in fact, facilitated some of those breaches
11 and clearly benefited from some of those
12 breaches.

13 I think it's important that I be able to
14 interview Mr. Kratz or question Mr. Kratz about
15 what he was aware of with regard to these
16 breaches and how they affected his actions at the
17 time.

18 THE COURT: The ruling stands. The
19 objection is sustained. Move on.

20 ATTORNEY DRIZIN: Okay.

21 Q (By Attorney Drizin) How long after you were
22 appointed -- uh, Mr. Kachinsky was appointed to
23 this case do you remember having serious plea
24 discussions with Mr. Kachinsky with regard to his
25 client?

1 A I remember having plea discussions with Mr. Kachinsky
2 prior to the May 4 suppression hearing.

3 Q Okay.

4 A Um, I don't think I can pinpoint a date, but the May
5 4 hearing becomes an important pivotal date in our
6 plea negot -- discussions, because we both
7 recognized -- Mr. Kachinsky and I recognized that
8 until we received a ruling from the Court there could
9 not be any serious plea discussions other than just
10 kind of some general ideas about where this case was
11 going until both attorneys knew whether the March 1
12 statement was going to withstand the motion to
13 suppress.

14 And so what I'm saying is, even though
15 we discussed plea negotiations, we had jointly
16 agreed that after we received the ruling on the
17 May 4 suppression motion that any plea offers,
18 any plea discussions, or efforts by Mr. Kachinsky
19 to, perhaps, paint his client in a positive
20 light, which I'm sure we'll talk about in a few
21 minutes, uh, was going to wait until after the
22 suppression ruling.

23 Q Okay. Um, if you will, Mr. Kratz, I would like
24 you to take a look at Exhibit 343, binder number
25 five.

1 And if -- if you'd like, feel free to
2 review it because it's -- it's an e-mail and it
3 may refresh your recollection.

4 A I've reviewed it and I'm now familiar with its
5 contents.

6 Q Okay. Do you recall sending this e-mail to
7 Mr. Kachinsky?

8 A Vaguely. When -- when I -- when I read it, um,
9 clearly it's authored by me, and it sounds like stuff
10 I say to defense attorneys. So, yes, I -- I
11 recognize it in -- in that regard.

12 Q Okay. Thank you. Now, at the very end of that
13 e-mail, the second page of that e-mail on Exhibit
14 No. 343, it says page two of two at the top.

15 Um, there are -- there is -- there are a
16 couple paragraphs that talk about plea potential;
17 correct?

18 A There are.

19 Q Okay. And at -- in those -- does this in any
20 way, um -- is this consistent with the testimony
21 that you gave about serious discussions about
22 pleas would have to wait until after the 5-4
23 hearing?

24 A Right. This -- this is what I would consider the
25 opening salvo, if you will, as far --

1 Q That's the --
2 A -- as --
3 Q -- words I was going to use. The opening salvo.
4 A -- as far as our plea discussions.
5 Q So this is March 24; correct?
6 A Yes.
7 Q So it'd be fair to say that prior to March 24,
8 2006, you had not made a serious invitation to
9 Mr. Kachinsky to enter a plea on behalf of his
10 client?
11 A Right. And, in fact, the end of this memo -- uh,
12 memo, um, makes it clear that any discussion about
13 plea potential will occur after the May 4 motions.
14 Q Okay. You invite him in this memo to talk to you
15 prior to the May 4 motion; correct?
16 A Yes.
17 Q Okay. Was there any discussions with
18 Mr. Kachinsky prior to the May 4 motion about
19 entering a plea on behalf of his client?
20 A I don't recall.
21 Q Okay. Was it your understanding at the time you
22 made this opening salvo that Brendan Dassey was
23 insisting that he was innocent in this case?
24 A No.
25 Q Was it your understanding from Mr. Kachinsky that

1 Brendan Dassey was claiming responsibility for
2 some of the actions in March 1? I mean, some of
3 the actions in connection with the death and
4 disappearance of Teresa Halbach?

5 A I didn't know if I asked Mr. Dassey. I relied upon
6 Mr. --

7 Q I know you didn't talk to Mr. Dassey.

8 A Oh, no. I -- I'm sorry. Mr. Kachinsky. I was
9 relying upon Mr. Dassey's own statements --

10 Q Right.

11 A -- on the 1st. And let's be fair, um, Mr. Dassey was
12 engaging in a number of conversations with his family
13 in which he described various topics. But things
14 like whether Brendan should engage in plea
15 discussions, but, more importantly, whether Brendan
16 should testify as -- against Uncle Steve, or
17 discussions frequently had with Brendan's most
18 immediate and with his extended family.

19 Q But you knew that he had recanted his confession
20 or his statement of March 1. That his position
21 was that that statement was not true?

22 A You know, as of the 24th of March, I -- I'm not sure
23 I did know that.

24 Q Okay. I'd like you to look at page one, if you
25 would, of this document. Just go back a page.

1 And focus on the bottom paragraph, if you will?

2 A Yes.

3 Q In this bottom paragraph you -- how would you
4 characterize what you said to Mr. Kachinsky in
5 this bottom paragraph? I don't want to do it for
6 you.

7 A This requires that I step back, um, just very
8 slightly, just -- just this one step, as to the state
9 of the investigation at this time. The investigation
10 had, although been thorough, uh, was far from being
11 complete.

12 When you look at a serious crime scene,
13 um, it's important from a law enforcement
14 perspective, and -- and this wasn't news to me,
15 but you look at what's there and you look at
16 what's not there. You look at what's missing.

17 Q Right.

18 A And in this case there was one item of what we
19 believed was significant physical evidence that had
20 not been recovered. And that was Steven Avery's
21 digital camera.

22 We knew Steven Avery had a digital
23 camera. We knew he had it at his home. We knew
24 from his girlfriend, Jody, that he had taken
25 dig -- digital photographs, and we suspected, as

1 you think about a case like this, that a digital
2 camera of Mr. Avery might yield some important
3 evidence.

4 Up to this point we were not able to
5 ever find the digital camera. And so my
6 suggestion to Mr. Kachinsky is there are some
7 items of physical evidence that are still missing
8 that haven't been discovered. One of those, and
9 I even identify, the digital camera. That
10 digital photos may exist, and suggested that in a
11 discussion with his client that is exactly the
12 kind of information that the State would find
13 helpful.

14 Now, what am I saying? Um, you don't
15 have to even read between the lines very much to
16 know that should you be interested in painting
17 Mr. Dassey in a positive light with the State in
18 garnering some kind of benefit for your client,
19 the receipt of, or the knowledge of, some of the
20 missing physical evidence may go a long way
21 towards your client demonstrating his
22 helpfulness. Therefore, maybe something that we
23 would consider in discussions about a positive
24 recommendation as to an extended supervision, or
25 parole eligibility date.

1 And so that's a lot to say in two lines.
2 I'm sure Mr. Kachinsky got exactly what I was
3 saying.

4 Q I understand. You were inviting Mr. Kachinsky to
5 provide you with evidence that was missing from
6 your case against Steven Avery, um, and you were
7 asking him to see if his client could assist you
8 into obtaining that evidence; correct?

9 A If his client was interested in painting himself in a
10 positive light, this was a way he could do it.
11 That's what I was suggesting.

12 Q And on the next page, if you will, it would be
13 fair to say that another piece of evidence that
14 you asked Mr. Kachinsky to speak to his client
15 about was Teresa Halbach's hair, and whether his
16 client could shed any light on where that might
17 be; correct?

18 A Right. Sexually motivated homicides, especially
19 with, um --

20 ATTORNEY DRIZIN: Your Honor, I would
21 ask that the witness just answer that question.
22 He doesn't need to talk about sexually motivated
23 homicides here.

24 THE COURT: Just answer the question.

25 THE WITNESS: I will. Thank you.

1 Q (By Attorney Drizin) You were asking
2 Mr. Kachinsky about whether or not his client
3 could shed some light on where Teresa Dassey's
4 hair might be? Yes or no?
5 A Teresa Halbach. But, yes.
6 Q I apologize for that. Yes. Okay. And, again,
7 this was before serious plea negotiations had
8 begun; correct?
9 A That's right.
10 Q Okay. One more question about that document. In
11 the last paragraph you say, "If you or your
12 client have any further ideas about his case or
13 the eventual Avery trial, I am happy to listen."
14 Do you see that line?
15 A I do.
16 Q By using the word "further" were you suggesting
17 that you had already had discussions with
18 Mr. Kachinsky about information that his client
19 had given him?
20 A No. That further ideas about the case refers to the
21 last several paragraphs where I've just given him my
22 ideas about the case.
23 Q Okay. So it doesn't refer to prior transmission
24 of information from Mr. Kachinsky to you?
25 A Absolutely not.

1 Q Okay. I want you to take a look at, Mr. Kratz,
2 Exhibit No. 344 in binder five.

3 A All right.

4 Q Okay. Have you seen this?

5 A I have.

6 Q And is this the correspondence that you spoke
7 about earlier when you talked about, um, raising
8 some of your concerns with Mr. Kachinsky about
9 his public comments in this case?

10 A Yes, that's one paragraph of it.

11 Q But this is the one you were referring to?

12 A It was.

13 Q Okay. Um, was there anything particular that
14 Mr. Kachinsky was saying publicly that you were
15 responding to? Or were you concerned that he
16 might say something publicly, um, that would
17 violate the ethical rules?

18 A Mr. Kachinsky -- or I should say I became aware of
19 Mr. Kachinsky developing evidence that was most
20 clearly inadmissible at trial.

21 And when I, as a prosecutor, think of a
22 reason that a defense attorney develops
23 inadmissible or prejudicial evidence that's never
24 going to see the light of trial, I am concerned
25 about it being used for an improper purpose such

1 as public dissemination or prejudicing a -- a
2 potential jury pool. That is the point of this
3 memo.

4 Q Okay. Now, in that last paragraph you
5 essentially, um, quote from the rules. You --
6 you cite the rules to him and you tell him,
7 unless you're going to refer to -- unless you
8 intend to summarize facts contained in a public
9 document, like a Criminal Complaint, please cease
10 making statements to the media about your client
11 or about this prosecution. Is that fair?

12 A Yes.

13 Q Okay. Now, the statements that we talked about
14 earlier, Mr. Kachinsky's public statements about
15 the guilt of his client, those were not
16 summarized in a public document; correct?

17 A If you can point to where Mr. Kachinsky calls his
18 client guilty, I'd be happy to see that.

19 Q Okay. When he said morally and legally
20 responsible, Brendan is morally and legally
21 responsible, okay, those were not documents that
22 were contained -- those were not statements that
23 were contained in a public document; correct?

24 A Well, that was -- right. That -- that -- that's half
25 the -- half the quote.

1 His previous quote is, if this statement
2 is to be believed, and there's no defense for it,
3 then Mr. Kachinsky might be in a position where
4 it'd be either very difficult or where there's no
5 defense.

6 I think that's the quote. But -- but
7 the morally and legally responsible, I think was
8 referring to his age at the time. That a
9 16-year-old in Wisconsin is legally responsible.

10 But we -- we can quibble about that, but
11 my -- my -- my point is, because I am not as
12 familiar with those previous statements,
13 certainly didn't watch them on Nancy Grace or any
14 other kind of nationally televised show, I'm in a
15 poor position, I guess, to comment as to his
16 intent about those things.

17 Q I'm not asking you to comment about his intent.
18 What I'm asking you to do is answer a simple
19 question.

20 A Your question asked if Len said he was guilty. I
21 don't think that ever happened. If you want to use
22 that word, Mr. Drizin, show me where he said his
23 client was guilty.

24 THE COURT: All right. Enough. Look, if
25 there's a question, answer it.

1 THE WITNESS: Okay. I did. He's never
2 said his client was guilty.

3 Q (By Attorney Drizin) Okay.

4 A Unless you can point to me.

5 Q But he was making public comments about entering
6 a plea on behalf of his client?

7 A He was.

8 Q And criminal defense attorneys don't generally do
9 that in a homicide case when their clients are
10 innocent; correct?

11 ATTORNEY FALLON: Again --

12 THE WITNESS: Assume --

13 (Multiple persons talking at once.)

14 ATTORNEY FALLON: I -- I -- I have an
15 objection here. One, relevance. Who cares what
16 other defense attorneys do on other cases on --
17 in any other world.

18 Two, we're still asking for speculation.

19 And, three, this is pretty far afield of
20 what the issues are in this case.

21 THE COURT: I'm going to sustain the
22 objection.

23 ATTORNEY DRIZIN: Judge, the reason we
24 have to go down this road is 'cause Mr. Kratz is
25 not answering questions that are obvious to

1 everybody.

2 I mean, I'm just -- if -- if -- if he
3 wants to just answer a question that calls for a
4 yes or no answer, that's fine. We won't have to
5 go down this road.

6 But it is -- it is relevant to know that
7 Mr. Kratz did not make any comments about
8 Mr. Kachinsky's many public comments, none of
9 which referenced, or very few of which
10 referenced, anything that was put in a public
11 document.

12 THE COURT: That's argument.

13 ATTORNEY FALLON: Right.

14 THE COURT: And -- and just go on with the
15 questions, please?

16 ATTORNEY DRIZIN: Okay.

17 Q (By Attorney Drizin) You mentioned being
18 concerned that Mr. Kachinsky might pollute the
19 jury pool if he talked about some evidence that
20 you had learned he was planning to develop on
21 behalf of Brendan Dassey; correct?

22 A That's right.

23 Q Okay. And my question to you is, were you
24 concerned about Mr. Kachinsky polluting the jury
25 pool based on any of his other comments in this

1 case prior to March 24?

2 A My honest answer is I'm not sure. I mean, I -- I
3 know that -- and -- and -- and as of April 12, um,
4 this particular species of evidence is problematic
5 that we were referring to in -- on April 12. I think
6 things prior to that were not as obvious to me or
7 egregious as to what the improper strategic purpose
8 might be for their dissemination.

9 Q Okay. The comments that Mr. Kachinsky was making
10 prior to this e-mail had no potential to harm
11 your case; isn't that correct? Against Steven
12 Avery? Your case against Steven Avery?

13 A Other than garnering sympathy for Mr. Dassey.
14 Setting that aside, which was, I think, an obvious
15 goal, I think that's a fair statement.

16 Q Okay. And this was the first inkling you had
17 that he might be making some public comments that
18 could harm your case against Steven Avery and
19 Brendan Dassey?

20 A Well, that -- that that might be the use of this
21 inadmissible evidence.

22 Q So you're just being very cautious to make sure
23 that didn't happen; correct?

24 A That's true.

25 Q Okay. I want to focus on the May 4 suppression

1 hearing, okay?

2 A All right.

3 Q Now, at the beginning of the May 4 suppression
4 hearing, Mr. Kachinsky announced that he was not
5 going to raise any questions about the -- whether
6 or not Brendan Dassey was in police custody for
7 any of his interviews in February and March of
8 2006. Is that a fair statement?

9 A Yeah. I think the -- the May 4 statement was related
10 to the 27th of February and March 1. But I think
11 that's fair. Other than we didn't find those dates
12 of those statements.

13 Q Okay. And as a lawyer who's practiced in this
14 area you knew that by conceding the issue of
15 custody he was effectively waiving any potential
16 arguments about the way in which Mr. Wiegert
17 and/or Fassbender read Brendan his **Miranda**
18 rights?

19 A The sufficiency of the **Miranda** issue. There's two --

20 Q Right.

21 A As -- as you know, there's two issues at those
22 hearings. Usually **Miranda** and voluntariness, and --

23 Q Right.

24 A -- so the **Miranda**, because I asked, I think, for him
25 to be more specific, **State v. Allen** and -- and

1 otherwise. Um, but to narrow the focus if -- if we
2 can, judges sometimes appreciate that, that -- that
3 we know what the purpose of that hearing is, and
4 Mr. Kachinsky made it clear that we were talking
5 about voluntariness.

6 Q Okay. But also by conceding custody, if you
7 will -- by conceding, excuse me, a lack of
8 custody, um, he also was eliminating one factor
9 that is relevant to the question of whether or
10 not the statements are voluntary; correct?

11 A That's true.

12 Q Okay. Now, in your experience isn't it unusual
13 for a lawyer to abandon potential legal arguments
14 that could result in the suppression of a
15 statement made by his client?

16 A No. Not arguments without merit. Happens all the
17 time with good ethical lawyers that don't attempt a
18 shotgun approach. Attempt a rifle approach. Happens
19 all the time.

20 Q But the question about whether or not these
21 arguments had merit is not yours to make. Or
22 Mr. Kachinsky's, necessarily, to make. It's the
23 judge's to make. Would you agree with that?

24 A I would.

25 Q Okay.

1 A You asked my opinion, though. That was my opinion.
2 Q Okay. I understand that was your opinion, okay?
3 Um, and this was a case that was primarily based
4 on the statements that Brendan Dassey had given,
5 at least at this point in time, to police
6 officers in February and March; correct?
7 A Um, no.
8 Q Okay. Um --
9 A You -- and, I'm sorry. You wanted yes or no, and I
10 said, no.
11 Q Okay. The statement -- there was no physical
12 evidence at this point in time that linked
13 Mr. Dassey to the Avery bedroom; correct?
14 A Correct.
15 Q There was no evidence that you had that --
16 physical evidence that proved that Brendan Dassey
17 was in Steven Avery's bedroom; correct?
18 A No. There was no DNA. There was no --
19 Q Okay.
20 A -- things left behind that we could --
21 Q Right. There was -- there was no trace of
22 Mr. Dassey's DNA, his fingerprints in or around
23 Teresa Halbach's car that you could -- you were
24 prepared to use at trial?
25 A Yeah. I think that the -- the -- the DNA is a

1 correct statement. I'm not sure that the fingerprint
2 analyst at that early stage had compared fingerprints
3 recovered with -- with Mr. Dassey. With that caveat,
4 I think that's true.

5 Q And there was no fingerprints or DNA, if you
6 will, at that point in time that placed Brendan
7 Dassey in Steven Avery's garage?

8 A Yeah. I think that's true but I don't think we
9 looked.

10 Q Okay. Okay. Now, at the May 4 hearing, okay,
11 Mr. Kachinsky raised questions about his clients'
12 suggestibility; is that correct?

13 A That's true.

14 Q Okay. Did it surprise you that Mr. Kachinsky did
15 not have Brendan Dassey evaluated by a
16 psychologist prior to the May 4 suppression
17 hearing?

18 A Not necessarily.

19 Q Okay. Um, in your experience in the context of
20 **Miranda** motions or voluntariness hearings, that
21 is a step that some defense attorneys take;
22 correct?

23 A When voluntariness -- if we're talking about such a,
24 um, diminished cognitive ability or something like
25 that, they will call a witness to discuss that.

1 On the issue of suggestibility, or what,
2 in its broader scope, is a false confession
3 claim, um, I hadn't seen that before this case.

4 So quite candidly, um, if -- if
5 Mr. Dassey would have been evaluated for that
6 reason, that would have been the first time I saw
7 it.

8 Q But in terms of evaluating him based -- for his
9 intelligence, um, and, um, you know, perhaps any
10 psycho -- psychological problems he might have
11 that would weigh on these issues, you've seen
12 those kinds of evaluations before at this stage?

13 A I think that's fair.

14 Q Okay. And it -- it was not a red flag for you
15 that that was not done in this case?

16 A No. He called the school psychologist.

17 Q Okay. Now, you're also aware that -- that -- in
18 your experience that -- that defense attorneys
19 will hire psychologists to evaluate a -- a -- a
20 client on the question of whether that client
21 could knowingly and intelligently waive his
22 **Miranda** warnings; correct?

23 A I don't think that's true.

24 Q You've never seen that happen at a motion to
25 suppress?

1 A I -- I think, um -- I don't know that there's a test
2 available where a expert witness can walk into court
3 and render an opinion whether or not somebody is
4 capable of waiving **Miranda**.

5 Q It hasn't --

6 A I haven't seen that.

7 Q It hasn't happened in your --

8 THE COURT: Hang on a second. The
9 question was: Have you ever seen that?

10 THE WITNESS: No.

11 Q (By Attorney Drizin) Okay. That's all I need to
12 know. So, again, it wasn't a red flag that you
13 didn't see in this case?

14 A No.

15 Q Okay. Now, you knew in this particular case,
16 'cause you had seen the March statement prior to
17 May 4, okay, that after Brendan Dassey confessed
18 to his involvement in Teresa Halbach's murder,
19 that he asked Investigators Wiegert and
20 Fassbender if they would take him back to school?

21 A Yes.

22 Q Okay. In light of that statement didn't the fact
23 that --

24 ATTORNEY DRIZIN: I'll strike that,
25 Judge.

1 Q (By Attorney Drizin) You also knew, after
2 viewing the March 1 statements, that there was a
3 third DVD of the March 1 statements; correct?

4 A I -- (unintelligible) the last couple of hours of --
5 of the statement? Is that --

6 Q Yeah. I mean, there were -- there were three
7 DVD'S --

8 A Yes.

9 Q -- that were presented --

10 A Yes.

11 Q -- right? The first two had to do with basically
12 interrogation, or whatever you want to call it,
13 of Mr. Dassey that led to statements that he
14 made, and the third one was -- was primarily him
15 eating his sandwich, drinking water, um, and the
16 like; correct?

17 A Yes.

18 Q Okay. Third DVD also had on that DVD a snippet
19 that included a conversation between Brendan
20 Dassey and his mother, Barb; correct?

21 A Yes.

22 Q Okay. And that statement, that, um -- that
23 conversation, there were parts of that
24 conversation during which Mr. Wiegert and
25 Mr. Fassbender were not present?

1 A That's correct.

2 Q Okay. So, um, during the conversation between

3 Mr. -- between Barb and, um, Brendan, Brendan

4 made some statements to his mom that could be

5 considered -- at least we consider -- a

6 recantation; correct?

7 ATTORNEY FALLON: Objection to the

8 phrasing of the question. That could be

9 considered, or we can --

10 ATTORNEY DRIZIN: I --

11 ATTORNEY FALLON: -- we can consider --

12 ATTORNEY DRIZIN: -- I'll rephrase --

13 ATTORNEY FALLON: (Unintelligible.)

14 ATTORNEY DRIZIN: I'll rephrase that

15 question.

16 THE COURT: All right.

17 Q (By Attorney Drizin) He made some statements to

18 his mom about why he'd confessed --

19 A Yes.

20 Q -- to (Unintelligible.)

21 A Yes.

22 Q -- Wiegert and Fassbender? Yes?

23 A Yes.

24 Q And he also made -- she -- his mom asked him,

25 point blank, did you, um -- did you do the things

1 that you confessed to, or something along the
2 lines, and he said, "Not really." Correct?
3 A I don't recall what his answer was to that.
4 Q Okay. You don't recall what his answer was to
5 that.
6 A I -- I don't.
7 Q Okay. Um, do you recall that he explained to his
8 mother, when she asked him why he had made those
9 statements, he said, "They got to my head."?
10 A Yes.
11 Q Okay.
12 A Among other explanations.
13 Q Okay. And that statement, "They got to my head,"
14 was never introduced by Mr. Kachinsky during the
15 motion to suppress Brendan Dassey's statements,
16 was it?
17 A I don't know if that's true. I -- my sense of this
18 is that the videotape was reviewed by Judge Fox in
19 its entirety, including Judge Fox prob -- probably
20 watching Brendan eat a sandwich for two hours,
21 because it was provided pre-hearing so that we
22 wouldn't take however many hours to view it then.
23 So from a presentation, did he present
24 that evidence and was that included in the
25 analysis of Judge Fox, I suspect it was.

1 ATTORNEY FALLON: Your Honor, that -- if
2 I may imp -- I -- I don't know if it's an
3 objection, but it's certainly a point of
4 clarification.

5 If the record could reflect, and if you
6 would take judicial notice of the fact, that at
7 that suppression hearing that all those exhibits
8 were marked. You had received them in advance,
9 reviewed them in advance of the hearing, and they
10 were introduced, uh, in toto, for purposes of the
11 hearing and the discussion.

12 So the fact that Counsel may or may not
13 have mentioned them orally wouldn't matter. The
14 fact is that the -- the entire statement was
15 introduced as evidence in the suppression
16 hearing.

17 ATTORNEY DRIZIN: Okay.

18 Q (By Attorney Drizin) What I'm really getting at,
19 Mr. Kratz, is he did not argue the relevance of
20 that statement to the voluntariness of Brendan's
21 confession to Judge Fox?

22 A I don't recall.

23 Q Okay.

24 ATTORNEY DRIZIN: The record'll speak
25 for itself on that.

1 Q (By Attorney Drizin) Um, and he didn't talk to
2 Barb about that particular statement when he put
3 Barb on the stand?

4 A He didn't question her about that.

5 Q That's right. Okay. Now, after the motion to
6 suppress on May 4, um, the Court set ruling on
7 that motion for May 12; correct?

8 A Yes.

9 Q Okay. Now, you mentioned earlier that between
10 May -- that after May 4, plea negotiations
11 between you and Mr. Kachinsky began to heat up,
12 if you will? How would you describe the state of
13 plea negotiations in that period between May 4
14 and May 12?

15 A I would say they were certainly beginning, but they
16 were also -- we also recognized that we had to wait
17 until the ruling on the 12th before any specific
18 offers were going to be made.

19 Q Okay. I'm going to show you what's been marked
20 as document Exhibit No. 338, which is in Exhibit
21 5. Okay? Which is in binder five.

22 Please take your time. It's a short
23 e-mail, but, you know, before I ask you question
24 I'd like to know you finished reviewing it.

25 A All right. I've done that.

1 Q Okay. Um, do you remember receiving this e-mail,
2 Mr. Kratz?

3 A No.

4 Q Okay.

5 A I -- I know I did, but I -- I don't have an
6 independent --

7 Q Okay.

8 A -- memory of it. I should say, um, I've reviewed it
9 several times before today. I realize the context in
10 which I had been copied on this -- this e-mail. Um,
11 but as I sit here right now I don't have a
12 independent recollection of it.

13 Q Do you remember the context in which this
14 discussion was occurring?

15 A Very much.

16 Q Okay. And this is an e-mail dated May 5 of -- of
17 2006; correct?

18 A Yes.

19 Q And this would have been the day after the motion
20 to suppress had been argued; correct?

21 A Yes.

22 Q But prior to the time that it had been ruled
23 upon?

24 A That's correct.

25 Q Okay. Now, um, in this e-mail, Mr. Kachinsky

1 tells Mr. Wiegert that Michael O'Kelly had
2 developed some information in the course of his
3 investigation that might shed some light on the
4 whereabouts of the Suzuki and Barb's van which
5 may contain useful evidence in this case;
6 correct?

7 A You've omitted the most important line, but, yes,
8 that's correct.

9 Q Um, what did I omit? I'm sorry.

10 A That he developed it not from his client, Brendan,
11 but from other sources.

12 Q Okay. That's fair. He developed it not from
13 Brendan, but he had developed some evidence that
14 could you -- lead to -- he developed some
15 evidence that could lead to information that
16 would be useful to the prosecution in the
17 prosecution of Steven Avery?

18 A I think that's fair.

19 Q Okay. And by implication that information might
20 also be useful in the prosecution of Brendan
21 Dassey?

22 A That wasn't -- well, what are you asking me?

23 Q I'm asking you if it is information -- the
24 information that Mr. Kachinsky had developed
25 could also have been useful in the prosecution of

1 his own client?

2 ATTORNEY FALLON: Objection.

3 Speculation.

4 THE COURT: Overruled.

5 THE WITNESS: I don't think that's
6 necessarily true.

7 Q (By Attorney Drizin) Okay.

8 A I think when we're talking about a murder weapon, um,
9 that clearly is meant to implicate Mr. Avery, not
10 Mr. Dassey.

11 Q Is that what you're talking about here? A murder
12 weapon, Mr. Kratz?

13 A Well, I think that the next e-mail -- that's, I
14 think, what he's talking about.

15 Q Okay. So -- and so you were aware at or around
16 this time, maybe not this particular e-mail, that
17 Mr. Kachinsky's investigator had developed
18 evidence that might lead to the discovery of a
19 murder weapon in this case?

20 A I think that's true.

21 Q And that would have been a knife that was used in
22 this crime; correct?

23 A Yes.

24 Q Okay. And Mr. Dassey, in his statements, had
25 mentioned the use of a knife?

1 A By himself and his uncle, yes.

2 Q That's correct. So the -- the discovery of this
3 knife, had it been found, um, could have been
4 used against Mr. Dassey in his trial?

5 A If he had a stand-alone trial, that -- that's true,
6 Mr. Drizin.

7 Q Okay. Now, um, he mentions his investigator,
8 Michael O'Kelly, in this e-mail; correct?

9 A Um-hmm.

10 Q Um, had you met Mr. O'Kelly prior to this e-mail?

11 A No.

12 Q Okay. Did you know of Mr. O'Kelly's existence
13 prior to this e-mail?

14 A Um, I'm going to say I think so, but -- but here's
15 why. Because I didn't want anything to do with it.
16 You see that the -- that the e-mail is sent to
17 Mr. Wiegert, sent to my investigator, and some time
18 either just prior to this e-mail or some time very
19 shortly before that I'm sure I told Mr. Kachinsky, if
20 you're going to have an investigator talk about
21 anything investigative in nature, you're going to
22 either do it with Wiegert or Fassbender.

23 I don't get in the middle of
24 investigations. I'm sure as heck not going to
25 make myself a witness to any of this stuff. Deal

1 with my investigators. They'll let me know how
2 it goes after that.

3 So I suspect cc, being courtesy copy,
4 the operative word there is "courtesy," uh, I
5 didn't have any direct contact with Mr. O'Kelly.

6 Q The last thing you wanted was to be cc'd on this
7 e-mail?

8 A That's not necessarily true. I think -- I think
9 knowing about those investigative efforts is -- is
10 just fine. I'm not doing any investigation, however.

11 Q Okay. And this evidence that Mr. Kachinsky --
12 this murder weapon that Mr. Kachinsky's
13 investigator had a lead on, um, he believed could
14 be used in connection with a search warrant to go
15 obtain that evidence; correct?

16 A That there could be, um, probable cause developed.
17 And I suspect from the sources of Mr. O'Kelly, I
18 suspect from whoever had received this information
19 from, but I can envision a scenario whereby a -- a
20 search warrant with an appropriate affidavit could be
21 drafted, and presented, and granted for this very
22 kind of thing.

23 Q In this e-mail, Mr. Kachinsky tells you that he
24 and Mr. O'Kelly would prefer not to be named in
25 any affidavits that are filed in connection with

1 that search warrant; correct?

2 A That's right.

3 Q He did not want to be known publicly as the

4 source of information that led you to the

5 discovery of the murder weapon?

6 A I don't know what he wanted.

7 Q Okay. What, if anything, did you instruct your

8 investigators about this, um -- about trying to

9 obtain this evidence?

10 A Handle it. You know, seriously, I'm -- I'm, um --

11 this, as well as any other investigative leads that

12 will lead to the potential discovery of physical

13 evidence, um, it's -- it's pretty much in -- in -- in

14 my line of work, especially in such a import-type

15 profile case, that I'm just going to rely upon their

16 expertise and say go ahead and do it. Handle it.

17 Q Okay. So go and try to find this evidence,

18 essentially, is what you would have said to him?

19 A Handle it. Now, that -- that may very well mean that

20 the information provided by Mr. O'Kelly or any

21 citizen isn't going to be reliable enough to raise to

22 the level of information to be provided in a

23 affidavit to secure a search warrant. So not

24 necessarily go get this stuff.

25 And -- and, I mean, I know how -- I -- I

1 know how this concludes so I have the benefit
2 of -- of hindsight, or I guess it would be
3 foresight from that point forward, but, anyway,
4 um, it did not conclude with a search warrant.
5 Q Right. Do you know whether or not Mr. Wiegert or
6 Mr. Fassbender did anything to try to secure the
7 Suzuki and Barb's van?
8 A I think they did through consent.
9 Q Through consent. And when they did that, were
10 they able to find the murder weapon in those
11 cars?
12 A I believe they were not.
13 Q Okay. Um, did the fact that Mr. O'Kelly was
14 alerting your investigators to the murder weapon
15 in this case raise any concerns to you about
16 Mr. Kachinsky's -- any red flags, if you will --
17 about Mr. Kachinsky's role in this?

18 ATTORNEY FALLON: Objection. Again,
19 he's asking for the prosecutor's opinion. It's
20 no different than asking for another defense
21 attorney's, if certain conduct would have raised
22 a red flag or would have signified to you that
23 there was some deficient performance afoot here,
24 and that type of testimony is impermissible.

25 The facts are what this hearing is

1 about. Counsel can make his arguments when the
2 facts are in.

3 So I'd object under **McDowell**. Um, and
4 if the Court wants further information, um -- the
5 Court of Appeals opinion in **State v. McDowell** at
6 2003 WI App. 168, page -- paragraph 62, note 20,
7 um, and there are cases from other jurisdictions
8 talking about impermissible opinion testimony.

9 THE COURT: I'm going to sustain the
10 objection.

11 ATTORNEY DRIZIN: Okay.

12 Q (By Attorney Drizin) Did you take any steps, for
13 example, with the dis -- disciplinary authorities
14 of the State to reveal what Mr. Kachinsky did or
15 was suggesting in this e-mail at anytime?

16 A No.

17 Q Okay. On Friday, May 12, the Judge issued a
18 ruling in this case; correct?

19 A Yes.

20 Q Okay. And that ruling was a denial of
21 Mr. Kachinsky's motions to suppress Brendan
22 Dassey's statements?

23 A Yes.

24 Q Okay. Now, prior to May 12, there's some
25 additional correspondence between Mr. O'Kelly and

1 you that you were copied on? Are you aware of
2 that fact?

3 A And I disagree with that characterization. It wasn't
4 with me. I was copied on -- on things. I don't
5 know --

6 Q I'm sorry (unintelligible) --

7 A -- that it -- that it's (unintelligible) --

8 Q -- you were copied on things --

9 THE COURT: Here. Again --

10 ATTORNEY DRIZIN: I'm sorry.

11 THE COURT: -- just try not to talk over
12 each other.

13 ATTORNEY DRIZIN: Okay. That's fair.

14 Q (By Attorney Drizin) Um, you were copied on some
15 correspondence between Mr. O'Kelly and one or
16 more of your investigators?

17 A Yes.

18 (Wherein cell phone rings.)

19 Q Thank you. Okay. And that correspondence had to
20 deal with obtaining some materials from
21 Mr. O'Kelly that he was planning to take into the
22 detention center on Friday, May 12?

23 A The provision of some discovery. What would commonly
24 be referred to as discovery materials. Photographs,
25 documents, and the like, yes.

1 Q And you told your investigators to handle that as
2 well?

3 A Well, interestingly, that would be handled by my
4 staff --

5 Q Okay.

6 A -- since we at that point were the single point for
7 dissemination of discovery materials. That would
8 have been a direction to my staff to handle it, to
9 give it to either Mr. Wiegert or Fassbender, and then
10 to forward it to whoever they were going to forward
11 it to.

12 It's the kind of material that
13 Mr. Kachinsky either had or was going to be
14 getting. And so the provision of it didn't
15 necessarily concern me. Again, it's photographs
16 and other things that he either had or would have
17 gotten shortly.

18 Q When you produced this, or your staff produced
19 this material -- did your staff produce this
20 material to Mr. O'Kelly?

21 A I believe it -- well, for Investigator Wiegert, yes.

22 Q Okay. Um, when this was produced to Mr. O'Kelly,
23 did you have any idea what Mr. O'Kelly was
24 planning to do with it on May 12?

25 A No.

1 Q Okay. Did you have any discussions with
2 Mr. Kachinsky about why Mr. O'Kelly needed this
3 material?

4 A I don't think so. I know what was contemplated with
5 my investigators, but I don't know what Mr. Kachinsky
6 planned with his investigator.

7 Q Okay. And you knew, though, that Mr. O'Kelly was
8 planning to at least bring, you know, videotaping
9 equipment into the detention center for this
10 interview?

11 A At that time, candidly, I -- I did not have a -- a
12 sense or an idea of that at all. I knew what my guys
13 were going to do.

14 And in -- in fact, just so our framework
15 is clear, um, if I have a trained investigator
16 from the Department of Justice and my lead
17 homicide detective, they're going to do their own
18 stuff. They're going to do their own
19 interviewing. They aren't going to rely upon
20 either a private investigator or any other
21 citizen to accomplish that goal.

22 Q My question was: Did you know that he was going
23 to bring in videotaping equipment into the
24 detention center?

25 A No.

1 Q Did you or your staff do anything to facilitate
2 his bringing that equipment into the detention
3 center?

4 A Not to my knowledge, no.

5 Q Okay. And do you know whether or not Mr. Wiegert
6 or Mr. Fassbender would have done anything to
7 facilitate that?

8 A I'm sure they would not have. I know their
9 personalities and their investigative style. They
10 wouldn't have cared what Mr. O'Kelly did.

11 Q Okay. Um, now, some time on the evening May 12
12 you received a phone call relating to what had
13 occurred during Mr. O'Kelly's interview of
14 Brendan Dassey on May 12 in the detention center?

15 A I know I received a call indicating that
16 Mr. Fassbender and Mr. Wiegert were authorized to
17 take a statement the next day. I don't know that
18 that was connected to Mr. O'Kelly's own investigative
19 efforts.

20 I knew what we, meaning the State, was
21 being allowed to accomplish and I knew why. I
22 wanted a -- a second statement from Mr. Dassey
23 the next morning.

24 Q Did you receive a phone call that evening from
25 Mr. Fassbender?

1 A I don't recall, but probably.

2 Q Okay. Did you receive a--

3 A Somebody -- from somebody.

4 Q Right. And did Mr. Fassbender disclose to you

5 anything about the information that Brendan

6 Dassey had given to Michael O'Kelly in that phone

7 call?

8 A No. And I'm sure he didn't know.

9 Q Okay.

10 A And -- and, if -- if I may, the only reason I know

11 that is because we've discussed it subsequently. It

12 wasn't part of that conversation.

13 Q Okay. Um, did you speak to Mr. Kachinsky that

14 evening?

15 A Either that afternoon or that evening. I -- I --

16 I -- I don't know which. We would have, on Friday,

17 after the ruling of Judge Fox and before the

18 interview, uh, on Saturday, um, spoken.

19 Now, there is a possibility that a

20 message was relayed between my investigators

21 and -- and Mr. Kachinsky, but Mr. Kachinsky, I

22 know, was very much involved in the authorization

23 for the -- the statement.

24 And I know that I insisted upon

25 something in writing from Mr. Kachinsky, perhaps

1 to Mr. Fassbender or Wiegert, um, setting forth
2 not only that Brendan could be interviewed by
3 them the next -- next morning, because that's
4 unusual, that's an unusual step for a defense
5 attorney to authorize his client to be
6 interviewed on another occasion by the State, but
7 that at that point I insisted that whatever, um,
8 correspondence memorialized that included that
9 Brendan understood he was to receive no
10 compensation for that -- that decision. Was to
11 receive nothing of value for it.

12 Q Because you didn't know what he was going to say?

13 A Absolutely.

14 Q And so you're not going to make a deal with him
15 until you have any idea what he can offer you;
16 right?

17 A Yes. His utility to me was on Saturday, in theory,
18 going to be determined.

19 Q That's right. Now, just so I'm clear, 'cause
20 I -- I didn't understand your testimony, you said
21 that you spoke with Mr. Kachinsky some time about
22 the -- did you speak with Mr. Kachinsky on Friday
23 evening about the terms of his producing Brendan
24 the next day?

25 A And -- and -- and, again, it was either directly with

1 him or through my investigator. It was certainly,
2 um -- I wanted the correspondence from
3 Mr. Kachinsky --
4 Q Right.
5 A -- and nobody else. And I wanted one of my
6 investigators to receive that. So whether I had that
7 discussion with Mr. Kachinsky, or Mr. Wiegert or
8 Fassbender did, um, that conversation occurred.
9 Q Okay. You got that e-mail from Mr. Kachinsky;
10 correct?
11 A I did. Either it was a copy of it or directed to me.
12 Q Okay. I'd like to focus on that e-mail now, if
13 it's okay?
14 A Be fine. What number, please, sir?
15 Q Um, I'm going to find it for you right now. I
16 think it's tab number 356. Binder five.
17 A All right.
18 Q Would you take your time and -- and take a look
19 at that, please?
20 A Yes. And -- and I am very familiar with 356.
21 Q Okay. Just please tell me when you're finished
22 reviewing it.
23 A I'm done.
24 Q Okay. This is an e-mail from Mr. Kachinsky to
25 Mr. Fassbender; correct?

1 A Yes.

2 Q And you were copied on this e-mail?

3 A Yes.

4 Q Okay. And this e-mail reflects, um, the response
5 of Len Kachinsky to your insistence that he put
6 down the terms of your understanding in writing;
7 correct?

8 A Yes.

9 Q Okay. Now, um, you received this e-mail
10 9:19 p.m. on Friday, May 12?

11 A That's when my e-mail received it. I'm sure I
12 didn't.

13 Q Okay. Were you out --

14 A I -- I wasn't working at nine o'clock on a Friday.

15 Q Do you remember where you were, Mr. Kratz?

16 A I -- I don't.

17 Q Okay. That's fine. Um, you weren't waiting by
18 the phone for a phone call from your
19 investigators?

20 A Probably not.

21 Q Okay. Now, in this e-mail you learned that
22 Mr. Kachinsky was not going to be present at the
23 interview the next day between his client and
24 your investigators; correct?

25 A That's right.

1 Q Okay. And this was rather unusual, as you said,
2 in your experience; correct?

3 A Yes.

4 Q That a defense lawyer would, um, allow his client
5 to meet with investigators without him being
6 present?

7 A No. The unusual part, what I suggested, was a
8 defense attorney allowing his client to be subjected
9 to a second interview.

10 Q Okay. Without --

11 A Whether he's there or not.

12 Q Okay.

13 A That's unusual.

14 Q But that's also unusual, you know -- that makes
15 it even more unusual, the fact that he's not
16 there, um, during that second interview?

17 A Um, no. But I -- but I knew why it had to be done on
18 Saturday, so --

19 Q Okay.

20 A I -- I -- I -- I knew the urgency of this statement
21 being taken. But -- so, in general terms, it is
22 unusual in this context. I knew exactly why
23 Mr. Kachinsky allowed this to happen.

24 Q I understand that. In your experience as a
25 prosecutor have you ever had a situation where a

1 defense attorney has presented a 16-year-old
2 client for an interview with investigators when
3 he was not present?

4 A Clients that are suspects involved in either criminal
5 or delinquency matters, no. I mean, sometimes
6 attorneys are attached to witnesses in cases and they
7 will allow, and have allowed, the interview of
8 their -- what would be their client -- in -- in that
9 setting. But I know you're talking about suspects,
10 and, no, I haven't run across that.

11 Q And this wasn't a suspect. This was a defendant,
12 just to be clear?

13 A It was.

14 Q Okay. Now, um, in this e-mail, Mr. Kachinsky
15 also memorializes your -- your agreement that
16 Brendan was not being promised anything in return
17 for whatever he told your investigators; correct?

18 A That's right.

19 Q Okay. You learned in this e-mail that
20 Mr. O'Kelly would be available to brief your
21 investigators prior to the interview; correct?

22 A I see that in the -- in -- in the e-mail. That
23 wasn't part of something I had insisted on. But I
24 see that.

25 Q Right. But you were aware that Mr. O'Kelly was

1 being authorized by Mr. Kachinsky to speak to
2 your investigators about what he had learned that
3 evening?

4 A It's included in the e-mail. The fact that I got it,
5 or it was sent to me, on 9/19, on a Friday, I'm very
6 much doubting the fact that prior to the interview of
7 my investigators occurring on that Saturday morning,
8 that I would have been aware that Mr. O'Kelly was
9 available to be there.

10 Q Okay. So just so I'm clear, you knew there was
11 going to be an interview of Brendan on May 13?

12 A Yes.

13 Q Okay. You knew that Brendan was not going to
14 have Len Kachinsky there?

15 A Yes.

16 Q And you don't think you knew that Mr. O'Kelly was
17 planning to be there?

18 A I didn't say that. I -- I said I didn't think that
19 Mr. O'Kelly was going to be available to brief
20 Mr. Fassbender or Wiegert. I'm quite sure I knew
21 Mr. O'Kelly would be there in a representative
22 capacity of Mr. Kachinsky.

23 Q Okay. Thank you. Did you know that -- do you
24 know whether, in fact, Mr. O'Kelly briefed your
25 investigators?

1 A I -- I know for a fact he did not.
2 Q Okay.
3 A They didn't want him to. That goes back to their
4 personality.
5 Q Okay. Um, I'd like to show you a document, if
6 you will, Mr. Kratz, and that document would
7 be -- um, I'll return to this line of
8 questioning.
9 A All right.
10 Q Um --
11 THE COURT: Here. Let me ask you, how
12 much longer do you envision yourself -- I realize
13 this is --
14 ATTORNEY DRIZIN: Yeah.
15 THE COURT: -- a bad question ever to
16 ask a lawyer.
17 ATTORNEY DRIZIN: I'd like to take a
18 break now, if that's okay, for five minutes?
19 THE COURT: Let's take 15.
20 ATTORNEY DRIZIN: Okay.
21 (Recess had at 10:25 a.m.)
22 (Reconvened at 10:45 a.m.)
23 THE COURT: Proceed.
24 Q (By Attorney Drizin) Okay, Mr. Kratz, we're on
25 the home stretch here. Um, prior to the break,

1 you testified that you were certain that
2 Mr. Fassbender had not been briefed by
3 Mr. O'Kelly prior to his five thir -- prior to
4 the 5-13, um, interview of Brendan at the
5 Sheboygan County Jail; is that correct?
6 A Had not been briefed on what occurred on the 12th.
7 Q Okay. And do you have that same degree of
8 certainty with regard to Mr. Fassbender as well?
9 A Um, Mr. Wiegert, yes.
10 Q Okay. So both your investigators, your testimony
11 is, had not received any information from
12 Mr. O'Kelly about what he had learned from
13 Brendan on May 12 prior to the May 13 interview?
14 A That's my understanding.
15 Q Okay.
16 A My understanding is to this day they don't know.
17 Q Okay. And so the e-mail we spoke about in --
18 authorizes Mr. O'Kelly to brief, um,
19 Mr. Fassbender and Mr. Wiegert prior to the
20 May 13 interview; correct?
21 A It does.
22 Q Is it also your understanding that Mr. O'Kelly
23 never briefed Mr. Fassbender or Mr. Wiegert on
24 5-13, on May 13, prior to the interview?
25 A Yes.

1 Q Okay. Now, prior to the May 13 interview, did
2 you have any instructions with Mr. Fassbender and
3 Mr. Wiegert about what they should do or what
4 strategies they should take with regard to
5 Mr. Dassey on May 13?

6 A Not strategies. But I certainly, um, suggested to
7 them what would be of most use to me in a subsequent
8 trial of a co-defendant. What kind of form, if you
9 will, the statement should take that would be most
10 useful in the presentation to a jury.

11 Q And what did you tell them in that regard?

12 A That I wanted not only a --

13 ATTORNEY FALLON: I'm going to object to
14 the relevance of this as it pertains to the
15 activities of Counsel Kachinsky.

16 And I would renew my standing objection
17 to the relevance of the inquiry regarding
18 Kachinsky and O'Kelly and the activities leading
19 to the May 13 statement.

20 THE COURT: Respond.

21 ATTORNEY DRIZIN: Mr. -- during this
22 interview with Brendan Dassey, Investigators
23 Wiegert and Fassbender, um, not only questioned
24 Brendan about what had happened to Teresa
25 Halbach, they also persuaded Brendan Dassey to

1 make telephone calls to his mother that evening,
2 um, which were then used against Mr. Dassey at
3 his trial.

4 I want to know to what extent Mr. Kratz
5 knew about that prior to the interview on May 13
6 and whether, in fact, he directed Mr. Wiegert and
7 Mr. Fassbender to do that, um, and thereby
8 profited from the fact that Mr. Kachinsky was not
9 present during that conversation.

10 THE COURT: I'll overrule the objection.
11 You can answer that question.

12 THE WITNESS: Which -- there were two
13 questions. Which -- which one should we --

14 Q (By Attorney Drizin) The first question.

15 ATTORNEY DRIZIN: Can you read back the
16 question? I'm sorry.

17 (Wherein question is read back by the
18 reporter.)

19 THE WITNESS: I think you're talking
20 about the -- did I give them any specific
21 instructions (phonetic) as to what would be most
22 helpful at the presentation to a jury.

23 Q (By Attorney Drizin) That's correct.

24 A And my answer is, yes, that Mr. Dassey's March 1
25 statement, although highly inculpatory in nature, in

1 my opinion also kind of goes all over the place.

2 It isn't a chronological, here's what
3 happened first, and next. And if at all
4 possible, I wanted a pristine statement from
5 start to finish as to Mr. Dassey's involvement in
6 the number of crimes that occurred on the 31st.
7 What he knew of them beforehand. What
8 conversations occurred afterwards. And what
9 attempts were engaged in between he, his uncle,
10 uh, and, perhaps, others, to either destroy
11 evidence or to conceal the existence of the
12 crime.

13 Four-hour interviews are difficult to
14 watch by a jury, and if this was able to be
15 provided in a more concise manner, that would be
16 of more utility to me.

17 The reality is that if there was to be
18 an agreement with Mr. Dassey, I needed or wanted
19 to satisfy myself that not only had he provided
20 all of the relevant information that he may have
21 regarding this particular case, but that it would
22 be beneficial to the case of Steven Avery.

23 Quite frankly, the Steven Avery trial
24 could be tried two different ways. It could be
25 either a -- a very scientific sort of

1 forensic-laden case, or we could rely upon
2 Mr. Dassey and be very straight forward with the
3 co-defendant's participation in what evidence was
4 presented and what the defense would do in
5 response to that, um, were all factors that went
6 into that.

7 And, quite frankly, having a -- a more
8 pristine statement from Mr. Dassey expanded my
9 options on how I could try the Steven Avery case
10 depending on future developments.

11 And so that was my -- my goal in seeking
12 that additional statement from Mr. Dassey.

13 Q And in your conversations with Mr. Kachinsky, um,
14 or through your investigators' conversations with
15 Mr. Kachinsky, is that what you expected
16 Mr. Dassey to deliver to you on May 13?

17 A I expected him to subject himself to an interview by
18 the investigators and I suspected he, to the best of
19 his ability, to be truthful and honest. That's what
20 I expected.

21 Q You were, um, looking, also, for -- well, were
22 you also looking to fill in some gaps in
23 Brendan's story on March 1?

24 A Not necessarily. I don't know that there was
25 anything missing from Mr. Dassey's March 1 statement.

1 Certainly not to prosecute Mr. Dassey.

2 Um, but the utility, as I mentioned

3 before, if Mr. Dassey was to participate in

4 Mr. Avery's case, um, there was, perhaps, more of

5 Mr. Avery's involvement and more from a planning

6 standpoint, that is, what may have happened

7 before October 31, that I was interested if

8 Mr. Dassey had that information.

9 Q Now, in the March 1 statement, um, Mr. Dassey's

10 description of his involvement in stabbing

11 Ms. Halbach took place in the bedroom; isn't that

12 correct?

13 A That's what he said, yes.

14 Q Right. Did you instruct your investigators prior

15 to the March 13 -- May 13 interview to see

16 whether or not Brendan would tell you that that

17 activity took place in the garage?

18 A No.

19 Q Okay. Did Mr. Wiegert and Mr. Fassbender speak

20 to you at anytime during the interrogation?

21 A I -- I don't believe so. No. I -- I've -- I've been

22 trying to reconstruct that and I know they spoke to

23 me afterwards and we spoke before. Um, it'd be

24 highly unusual during the interview process for them

25 to seek any kind of input from me.

1 Q Did you instruct Mr. Wiegert or Mr. Fassbender to
2 ask Brendan to confess again to his mom on -- by
3 telephone after the May 13 interrogation?

4 A I don't believe so. I can't imagine -- the only --
5 the only way I can answer that is I can't imagine
6 doing that. And, to the best my recollection, I did
7 not.

8 Q Okay. So to the extent that happened by
9 Mr. Wiegert and Mr. Fassbender, that was
10 something on them?

11 A Yeah. But the -- but you've got to understand the --
12 the dynamic with -- with Barb Janda, his mother, at
13 that time. Especially brokering a deal with
14 Mr. Kachinsky required Barb to be on board. Um, up
15 until that point when plea discussions were even
16 contemplated or when I talked to the investigators,
17 um, it wasn't just Brendan that had to sign on, if
18 you will, to the plea agreement, his mother very much
19 had to -- had to agree to that.

20 You're, I'm sure, familiar with phone
21 calls from other family members saying, "Brendan,
22 don't take any deals in this case."

23 Q Right.

24 A "Don't testify against Steven." And so for that to
25 be overcome there was going to have to be involvement

1 or acquiescence from Barb.

2 Q But there way -- there were ways of getting Barb
3 on board that did not have to result in the
4 development of additional confessions by her son
5 that could be used against him at trial --

6 A Yeah.

7 Q -- correct?

8 A I don't know why they choose to have or -- or to use
9 that forum in which to -- to do that. I can tell you
10 that I wanted a plea, if there was going to be one,
11 perhaps even before the 9th.

12 That's why that weekend was so
13 important. That's why getting a statement was so
14 important. Because pretrial motions before
15 Judge Willis were due on the 9th. That was the
16 last day that we could file pretrial motions.

17 So in a very real sense by the 9th of
18 May I had to elect which way I was going to try
19 the Avery case because of what motions I filed.

20 And any use of Brendan Dassey was going
21 to require some kind of notice or motion, if you
22 will, to the court, and that would have to be
23 filed before the 9th.

24 So, um, I was of the hope that if
25 Brendan was, in fact, interested in a plea, uh,

1 if there was going to be any plea that included
2 his testimony against his uncle, uh, that that
3 was probably going to happen as early as the 8th.
4 As early as what was that Monday.

5 Q This was on the 13th when this occurred. So you
6 were already past the time when you had filed
7 pretrial motions in the Avery case; correct?

8 A Yeah. I'm sorry. I misspoke, then. But there was
9 a, um -- whatever that Monday was -- would be the
10 15th -- um, there was an event or a -- a reason
11 either in the Dassey or Avery cases, um, that I
12 wanted the plea secured sometime earlier that next
13 week.

14 And, in fact, if I misspoke as to the
15 dates of the motions, then -- but that's why that
16 weekend was chosen.

17 Q Okay. Um, had Brendan Dassey confessed to you
18 in -- in a -- in a form that you felt was -- was
19 going to be useful to you in the Avery case, um,
20 couldn't you have come back into court after
21 May 15, which was that Monday, and said, "Your
22 Honor, we'd had a bombshell here. I need to file
23 some additional motions."?

24 A Probably.

25 Q Okay.

1 A There were more, you know, that -- bombshells
2 happened on a weekly basis with the Avery case, so,
3 uh --

4 Q The point is, is that --

5 A Yes.

6 Q -- you could have waited for a time where
7 Mr. Kachinsky could have been present during that
8 interview had you wanted to?

9 A Probably. But there's a -- again, there is a very,
10 and was a very, real strategic reason to do it
11 that -- that weekend.

12 I recognized the problem of
13 Mr. Kachinsky not being there, uh, and his
14 sending a surrogate in his place.

15 Um, however, I thought his discussions
16 with Brendan, his written acquiescence to it,
17 satisfied at least our legal and ethical
18 responsibilities of taking that statement.

19 Q And just so we're clear the surrogate was
20 Mr. O'Kelly; correct?

21 A Yes.

22 Q And Mr. O'Kelly is not a lawyer; correct?

23 A That's right.

24 Q Okay. Now, um, do you remember the word you
25 used, Ken, when I spoke to you about the events

1 of May 13?

2 A Yes.

3 Q What was that word?

4 A Fiasco.

5 Q Okay. And why was that a fiasco?

6 A Well, that was -- that was, uh, paraphrasing

7 Mr. Wiegert and Fassbender's characterization of

8 their interview with Brendan. They walked into that

9 interview very much expecting a very clear and

10 concise and even cooperative subject. And they

11 didn't get that.

12 Q Okay. In fact, when Brendan began that interview

13 he had reverted back to the very first story that

14 he had told the investigators about only being

15 present during the fire with Steven; correct?

16 A Brendan made some inconsistent statements during that

17 May 13 interview. That's correct.

18 Q Okay. What is your understanding -- when you use

19 the word "proffer," Mr. Kratz, what do you mean?

20 A I'm sorry?

21 Q When you use the word "proffer," what do you mean

22 by that term?

23 THE COURT: In what context?

24 Q (By Attorney Drizin) Did you consider the events

25 of this weekend to be part of a proffer?

1 A I don't use that term in that -- in that context.
2 I'm sorry. I use it to the court when I make an
3 offer of proof, but -- but that's the only context in
4 which I use that.

5 Q Okay. Now, with regard to the May statements
6 that were obtained from Brendan, okay? Um --

7 A I'm sorry. Which dates?

8 Q May 13 statements. Okay?

9 A All right.

10 Q Okay. You did not use the May 13 statements
11 against Brendan at trial; correct?

12 A That's correct.

13 Q Okay. You did use telephone confessions that
14 Brendan made to his mother against Brendan at
15 trial; correct?

16 A In rebuttal, yes. After Brendan came up with this
17 *Kiss the Girls* idea. That's when we used that
18 statement.

19 Q But my point is that they were used against him
20 at trial?

21 A They were used -- yes.

22 Q Okay.

23 A Not in my case in chief.

24 Q Okay. But they were referenced in closing
25 argument as well?

1 A Yes.

2 Q Prior to this May 12 and 13 -- prior to this

3 May 13 fiasco, had you had any discussions with

4 Mr. Kachinsky in which the word "proffer" was

5 used?

6 A Maybe by Mr. Kachinsky. I -- I can't imagine by me.

7 Q Okay.

8 A That isn't a -- a -- a word in my --

9 Q What context was he using that word?

10 A I don't know that he did. If you can point to it --

11 to something, I'd be happy to look at it and tell you

12 what I think he means by that.

13 Um, I -- as I mentioned, we were of the

14 understanding that this statement was to be

15 presented for Mr. Dassey to place himself in a

16 positive light, or to hopefully garner from the

17 State a reduced or positive dispositional

18 recommendation. Mostly talking about, um, parole

19 or extended supervision eligibility dates, not

20 the charge itself.

21 The charge that I was going to insist

22 upon was contemplated was always first degree

23 intentional homicide.

24 Q So--

25 A So we're -- we're talking about the -- is he going to

1 spend the rest of his life in prison or not.

2 Q Okay. So just so I'm clear, regardless of how
3 Brendan performed on May 13, and how helpful his
4 testimony would have been against you -- against
5 Steven Avery at trial, under no circumstances
6 were you going to take a -- a -- first degree
7 murder charges off the table?

8 A That was my position certainly in May of '08.

9 Q Were you going to take the sexual assault charges
10 off the table?

11 A Probably not. Not if I was going to use them against
12 Steven.

13 Q Right.

14 A The sexual assault conviction and the jury knowing
15 about that, for strategic reasons, was absolutely
16 imperative.

17 Q Okay.

18 THE COURT: Hang on just a second. Just
19 to make the record clear, you just said, "That
20 was my position in May of '08." I think you
21 meant '06.

22 THE WITNESS: I'm sorry. I did.

23 Q (By Attorney Drizin) Okay. Um, just to tie up a
24 few other things, Mr. Kratz, from earlier, you
25 testified earlier today that the instances in

1 which Brendan was questioned by your
2 investigators in February and in March were
3 interviews; is that correct?

4 A Certainly February was. And that's certainly my
5 characterization of how the March 1 contact with him
6 began. Began as a witness interview.

7 Q But it then morphed into an interrogation;
8 correct?

9 A It did.

10 Q Okay.

11 A I think that's fair.

12 Q Okay. And so once it morphs into an
13 interrogation, okay, um, doesn't that have
14 special significance for **Miranda**-related
15 arguments?

16 A No.

17 Q Why not?

18 A Because I believed that **Miranda** provision was
19 absolutely adequate and any challenge to that would
20 have been unsuccessful. That was my -- my take on
21 it.

22 Q I understand that was your belief. But it does
23 have special significance in terms of being able
24 to raise **Miranda**-based arguments in trying to
25 suppress the statement; correct?

1 ATTORNEY FALLON: Ob -- ob -- I'm going
2 to object. Counsel is certainly capable of
3 answering the question, but, um, the Court is the
4 source of the law, and this is a fact-finding
5 hearing, and asking for Counsel's --

6 I mean, if Counsel wants, I'll be happy
7 to have Mr. Kratz share his knowledge on **Miranda**
8 considering the amount of training he does on the
9 issue.

10 ATTORNEY DRIZIN: These are just
11 preliminary questions to ask this question, okay?

12 THE COURT: I'm going to sustain the
13 objection.

14 ATTORNEY DRIZIN: Okay.

15 Q (By Attorney Drizin) Um, after the interviews on
16 May 27 of Brendan Dassey -- of -- of February 27
17 of Brendan Dassey, okay, Mr. Dassey had
18 implicated himself in -- in activities relating
19 to building the fire, um, in which Teresa
20 Halbach's body was burned; correct?

21 A That's right.

22 Q Okay. And he also had admitted to seeing some
23 parts of her body in the fire; correct?

24 A That's right.

25 Q As a result of that interview, didn't you believe

1 that you had probable cause to charge Brendan
2 with a mutilation of a body under Wisconsin law?
3 A No.
4 Q Okay. Why not?
5 A Because mutilation requires an intent, a scienter
6 element, that he has an intent to do that, to conceal
7 a crime.
8 His statement, although certainly
9 knowing that his Uncle Steve was involved in that
10 process, uh, probably fell short of his admitting
11 that scienter or that intent element.
12 Q Okay. During the May -- the February 27
13 interview of Brendan at the Two Rivers Police
14 Station, okay, a **Miranda** form was used with
15 Brendan, um, that was -- a -- a certain **Miranda**
16 form was used to administer his rights; correct?
17 A Yeah. I don't think it was our form.
18 Q No, it wasn't.
19 A But it was somebody's --
20 Q It was somebody's form. Prior to the interview
21 on May 1 did you instruct Officers Wiegert and
22 Fassbender to administer a different **Miranda** form
23 to Brendan?
24 A **Miranda** warnings. I don't know if I suggested what
25 form to use.

1 Q Okay. Um, but did you suggest to them that the
2 **Miranda** warnings that were given in Two Rivers
3 were problematic and that they should give a
4 different **Miranda** warnings?

5 A No, I don't think I did.

6 Q Okay.

7 ATTORNEY FALLON: If I may, I think
8 Counsel misspoke when he said May 1. I believe
9 he meant the March 1 statement in his question.

10 ATTORNEY DRIZIN: Thank you. I did.
11 Um, you know, at this time, Your Honor, I would
12 ask that the exhibits that were referred to by
13 Mr. Kratz and authenticated by him be moved into
14 evidence. Um, and for the record, those are
15 Exhibits 310, 343, 344, 338 and 356.

16 ATTORNEY FALLON: No objection.

17 THE COURT: They're received. Any further
18 questions?

19 ATTORNEY DRIZIN: No further questions.

20 THE COURT: Clarification questions?

21 ATTORNEY FALLON: About five or six if
22 it goes the way I plan.

23 **CROSS-EXAMINATION**

24 BY ATTORNEY FALLON:

25 Q Um, I guess I'll pick up, uh, right where the

1 defense left off. Mr. Kratz, um, let's start
2 with February 27, the statement at the Mishicot
3 High School. Do you believe, based on your
4 experience, that **Miranda** rights were necessary
5 for the statement at the school?

6 A No.

7 ATTORNEY DRIZIN: Objection, Your Honor.
8 He objected to my asking that --

9 THE COURT: Yeah.

10 ATTORNEY DRIZIN: -- very statement.

11 ATTORNEY FALLON: Well, he just clar --
12 he just asked questions about instructing on
13 **Miranda** and I'm going to ask why.

14 ATTORNEY DRIZIN: And those objections
15 were substained (phonetic) -- sustained.

16 THE COURT: I'm going to sustain this --

17 ATTORNEY FALLON: All right.

18 THE COURT: -- objection.

19 ATTORNEY FALLON: Very well.

20 Q (By Attorney Fallon) All right. Mr. Kratz, if
21 you could, um -- ah, yes. Explain to us, um --
22 first all, let me ask this question:

23 In order to convict Steven Avery of
24 first degree murder, and I'm talking of the
25 murder charge, did you need the testimony of

1 Brendan Dassey to do that?

2 A No. It wasn't offered at Steven Avery's trial.

3 Q Would it be fair to say that the only benefit to
4 Mr. Dassey's testimony would have been to support
5 the charges of sexual assault, kidnapping, and
6 false imprisonment?

7 A No. I think there were side benefits to -- to Mr. --
8 Mr. Dassey, and when we talked about trial strategy,
9 if we felt less comfortable trying this case from a
10 forensic science standpoint rather than a, um, you
11 know, statement of witnesses or co-defendant
12 statement, that certainly would have had a collateral
13 benefit.

14 Having said that, um, as you, and
15 probably everybody now knows, we chose to try the
16 Avery case very much as a circumstantial forensic
17 science case.

18 Q All right.

19 A But to sustain the conviction for sexual assault
20 against Mr. Avery I think it's fair to say that we
21 would have needed Mr. Dassey to testify.

22 Q All right. Now, it -- you indicated there were
23 other reasons or matters, and I'm not sure that
24 we heard them all, but what -- what was the
25 urgency for proceeding with the May 13 interview

1 of Mr. Dassey?

2 A Well, as I mentioned, there was an event, and -- and
3 I apologize for not knowing what it is because I'm
4 sure it wouldn't have been that hard to figure out,
5 on the week of the 15th of May. Something was
6 happening that week whereby, for a strategic or legal
7 reason, um, I wanted this plea wrapped up early that
8 next week.

9 Q All right. However, for purposes of completing
10 the record, it soon became apparent that the
11 Avery case would not proceed to its originally
12 scheduled trial date; is that correct?

13 A That's right. There were many postponements.

14 Q All right. Um, why did you suggest to
15 Mr. Wiegert and Fassbender that they Mirandize
16 Mr. Dassey prior to the March 1 statement?

17 A Well, I suspected that was going to -- how do I say
18 this? That was going to be a important statement
19 that could include inculpatory statements by
20 Mr. Dassey.

21 And although -- although you and I,
22 Mr. Fallon, train cops around the state about
23 **Miranda**, 5th and 6th Amendment, not to Mirandize
24 if you don't have to, there is a school of
25 thought that if it's anywhere close, you offer

1 **Miranda** warnings.

2 It's sort of the wearing a belt and
3 suspenders. Just making sure there's really no
4 down side to Mirandizing somebody even if it
5 turns out to -- to be a non-custodial issue.

6 So it was under that extra caution that
7 I made that recommendation.

8 Q So it's simply, then, as a precautionary measure?

9 A Absolutely. I -- if Mr. Dassey was going to
10 inculpate himself on March 1, there's no way I wanted
11 to lose that statement.

12 ATTORNEY FALLON: That's all I have.

13 THE COURT: Redirect, if any?

14 **REDIRECT EXAMINATION**

15 BY ATTORNEY DRIZIN:

16 Q Prior to the March 1 statement, you had
17 discussions with -- with Mr. Wiegert and
18 Mr. Fassbender, um, about their plans for that
19 interview; correct?

20 A In a general sense, I think that's -- that's fair.

21 Q Okay. And you expected that interview to be --
22 that there were the potential for that interview
23 to morph into an interrogation; correct?

24 A I think that's true.

25 Q And so when you advised Mr. Fassbender and

1 Wiegert to read him his **Miranda** rights that was
2 one of the reasons that you did; correct?

3 A Well, certainly on the -- on -- on -- on the
4 mutilation, as you have aptly noted, Mr., um --
5 Mr. Dassey came close to inculping himself on --
6 on -- on the **Miran** -- excuse me -- on the mutilation
7 charge already, and -- on February 27th, um, but, you
8 know, I -- I stand by that being very much a witness
9 interview rather than an interrogation, and to
10 Mirandize or to provide **Miranda** warnings early on,
11 um, again, gives an investigator more flexibility to
12 perhaps slide seamlessly into an interrogation mode
13 without having to stop and Mirandize.

14 Q Okay. In your discussions with Mr. Wiegert and
15 Mr. Fassbender prior to the March 1 interview,
16 did they tell you that they intended to try to
17 ask question -- to ask questions of Mr. Dassey to
18 link him to the sexual assault of Teresa Halbach?

19 A I don't think so. Quite frankly, the -- the red
20 flag, for term that you've been using, that Brendan
21 said on the 27th, had to do with the clothing. Had
22 to do with the clothing that was used to clean up
23 the -- what we believe were blood stains in the
24 garage.

25 And Brendan had given a statement as to

1 his knowledge of that clothing in some kind of a
2 bag, but then that got kind of glossed over and
3 so, frankly, that was the part of that statement
4 that we kind of looked at ourselves in saying, he
5 needs to be interviewed again.

6 Q And you -- you knew, though, that Investigators
7 Wiebert (phonetic) -- Wiegert and Fassbender were
8 going to try to get Brendan to admit more details
9 about what he knew about Teresa when he saw body
10 parts in the fire; correct?

11 A Well, I don't know if that was just it, but we -- we,
12 collectivity, Wiegert, Fassbender, and myself,
13 believed Brendan knew more than he had told on the
14 27th.

15 Q Okay. Now, your -- your -- your statement is
16 that this started out as an interview; correct?

17 A That's my opinion, yes.

18 Q Okay. And you -- you know that the **Miranda**
19 warnings that were given to Brendan were given to
20 him in the car; correct?

21 A It's my understanding -- well, they were first given
22 to him there.

23 Q But they were never fully given to him again at
24 any other point in time?

25 A They were refreshed, though, before the -- the, um --

1 the interview began.

2 Q And by "refreshed," you mean they -- the officers
3 asked him if he remembered what they had done,
4 you know, an hour or so before?

5 A That's what it's called, yes.

6 Q Okay. And so in an abundance of caution you had
7 asked them to give him **Miranda** warnings in what
8 you're classifying was an interview not an
9 interrogation?

10 A Yes.

11 Q Okay. At some point this became an
12 interrogation; right?

13 A Yes.

14 ATTORNEY FALLON: At this point I'm
15 going to object as being beyond the scope of my
16 re -- my cross.

17 THE COURT: It is. Where are we going?

18 ATTORNEY DRIZIN: I just want to ask one
19 more question. --

20 Q (By Attorney Drizin) Did --

21 THE COURT: One more.

22 ATTORNEY DRIZIN: One more.

23 THE WITNESS: (Unintelligible.)

24 Q (By Attorney Drizin) Did you advise, in an
25 abundance of caution, Investigators Wiegert and

1 Fassbender to re-administer **Miranda** warnings to
2 Brendan once this became clear it was an
3 interrogation?

4 A No.

5 Q Okay. Um, with regard to the sexual assault
6 charges in this case, um, those charges were, in
7 fact, dropped against Steven Avery when Brendan
8 Dassey's, um, plea discussions fell apart;
9 correct?

10 A It wasn't dismissed, I don't believe, until the
11 trial. And plea discussions with Brendan,
12 Mr. Fremgen, Mr. Edelstein, um, were ongoing up and
13 through the -- the Avery trial.

14 So it wasn't until we were unable to
15 secure Brendan's assistance through a plea deal
16 that it became clear that we'd have to abandon
17 the sexual assault.

18 ATTORNEY DRIZIN: All right. No further
19 questions. Thank you for your cooperation.

20 ATTORNEY FALLON: Nothing.

21 THE COURT: You may return to your seat.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: Next witness.

24 **LEONARD KACHINSKY,**

25 called as a witness herein, having been first duly

1 sworn, was examined and testified as follows:

2 THE CLERK: Please state your name and
3 spell your last name for the record.

4 THE WITNESS: Len Kachinsky,
5 K-a-c-h-i-n-s-k-y.

6 DIRECT EXAMINATION

7 BY ATTORNEY DVORAK:

8 Q Mr. Kachinsky, um, why don't you give us a little
9 bit of -- of your background? You're -- you're
10 an attorney practicing in Wisconsin?

11 A Yes. I graduated from the University of Wisconsin
12 Law School in 1978.

13 Then I served as a JAG officer on active
14 duty for it's got to be over four years.

15 And been in private practice since then
16 and also in the Army Reserve. Retired from the
17 Army Reserve July, 2007, as a lieutenant colonel.

18 Q Okay. Now, specifically regarding Brendan
19 Dassey, uh, you were appointed -- was it on
20 March 7 or March 8?

21 A March 7.

22 Q March 7. Okay. Um, and on March 7, how did you
23 get word that you were appointed? Did you get a
24 phone call first?

25 A Uh, state public defender called us up, asked me if I

1 would take the case, and I said, yes.

2 Q Do you remember about what time of the day that

3 was?

4 A I think it was sometime in the morning.

5 Q Okay. And where was Brendan Dassey being held at

6 this time?

7 A Sheboygan County Juvenile Detention.

8 Q And your office is in Appleton?

9 A Correct.

10 Q And is -- were you in Appleton at the time that

11 you got that call?

12 A I believe so.

13 Q All right. How far is that away?

14 A From Sheboygan?

15 Q Yeah.

16 A Approximately 80 to 90 miles.

17 Q Okay. Um, and did you talk to Brendan on that

18 day? On March 7?

19 A I don't believe I did.

20 Q Okay. Um, however, you did, uh, talk to the

21 press; is that right?

22 A Um, yes. I rec -- shortly after the appointment the

23 calls starting rolling in at the office.

24 Q Sure. Was it substantial public interest in this

25 case?

1 A Correct.

2 Q Um, I want to draw your attention to Exhibit 317.

3 I think it's in -- in binder five up there.

4 A Three seventeen?

5 Q Yes.

6 A Yes.

7 Q Okay. I'd just like you to -- to review that in

8 its entirety.

9 A Okay. I reviewed it.

10 Q Okay. Thank you. One of the things -- and --

11 and this is a -- a news report from Chanel 26; is

12 that right?

13 A Right.

14 Q Okay. You recall that interview?

15 A I do.

16 Q All right.

17 A Vaguely.

18 Q Vaguely. Sure. Um, this help refresh your

19 recollection about --

20 A Um, yes. There's at least one -- it does. There's

21 at least one significant part that's absolutely

22 incorrect and not something I said.

23 Q Okay. Well, it says here that you accepted the

24 case knowing it'd be your, uh, greatest

25 professional challenge; is that right?

1 A That's correct.

2 Q Um, and they also quote you as having said, and

3 it -- it is in quotes, it says:

4 "We have a 16-year-old who, while

5 morally and legally responsible, was heavily

6 influenced by someone that can only be described

7 as something close to evil incarnate."

8 Right?

9 A That's what it says I said. But that wasn't me.

10 Q Okay. Um, and -- okay. Did you -- what did you

11 say? What did you recall saying?

12 A Of the things that are in Exhibit 317, I recall

13 saying -- I don't recall -- the thing about

14 criticizing Avery in that fashion is not something

15 that I said.

16 I also would -- I would guess it might

17 have been said by Mr. Sczygelski, but I don't

18 know. Um --

19 Q Well, did you -- did you watch the broadcast that

20 night?

21 A No, I don't think so.

22 Q Did anybody talk to you about the broadcast?

23 Hey, I saw you on TV?

24 A All the time in the community, and the Y, other

25 places.

1 Q Okay.

2 A Church.

3 Q And -- and -- and why don't you think that this

4 isn't something that you said? What do you

5 recall saying?

6 A I don't think I even touched the topic. Uh, I

7 certainly did not say that about Mr. Avery. It's

8 just not something I would normally have said.

9 Q Well, do you mean Mr. Avery or do you mean

10 Mr. Dassey?

11 A I don't -- the whole thing is just not something that

12 I -- I made -- I was very, very careful not to be

13 committal as to whether or not Mr. Dassey was

14 involved in this or not.

15 Anything I would have said would have

16 been statements conditional, you know, this is on

17 the Complaint. If this is true, that might be.

18 But I don't use -- typically don't use

19 words like levil (phonetic) incar -- evil

20 incarnate. That's just not something I'd say.

21 Q Okay. And -- and why wouldn't you say that?

22 A It's just not my personality. I -- I am much calmer,

23 I think, and -- and more restrained. And I just

24 don't say that stuff.

25 Q Okay.

1 A It's not my -- just not my language pattern, I guess.

2 Q What about -- I -- is there thing about this

3 statement that bothers you?

4 A I think it would be bothersome to say -- to say that

5 we have a 16-year-old who's morally and legally

6 responsible. Um, that would, in effect, admit guilt.

7 And that is something you should definitely not say.

8 Q And it's fair to say that you -- you really

9 shouldn't say anything that even suggests guilt

10 to the press; correct?

11 A I think you can go through the process of explaining

12 the process and -- and tell people if the Complaint's

13 accurate, this and this applies, you know, go through

14 some hypotheticals and conditional-type statements.

15 But not something of that nature where

16 you're -- at least if that's an out-of-court

17 statement, uh, that would just simply -- I -- as

18 I recall, that might be something that was said

19 at the initial bail hearing. I don't know.

20 But...

21 Q All right. It also, later on, you say in here

22 that -- if I can find it here. Do you recall --

23 and on -- I want to draw your attention, because

24 this is what I'm going to use, to Exhibit 55 --

25 A That's in this volume? Volume one?

1 Q In volume one, yes.

2 A Should I keep --

3 Q I'm sorry. Two.

4 A -- this other one open?

5 ATTORNEY FALLON: Volume two?

6 ATTORNEY DVORAK: Yeah. Volume two.

7 THE WITNESS: Look at 57, you said?

8 Q (By Attorney Dvorak) Fifty-five.

9 A Fifty-five. Oops. It's a copy of my invoice.

10 Q Okay. And would you just look through it and --

11 and -- and -- and say that that's a -- an

12 accurate -- an accurate copy of your invoice to

13 the public defender's office; correct?

14 A Um, yes. That could be. I think we were still

15 submitting them this way instead of electronically at

16 that time.

17 Q Okay. I tell you what, just for the sake of room

18 here --

19 A Sure.

20 Q -- I'm going to give you a copy of 55 --

21 A Okay.

22 Q -- because I'm going to -- I'm going to be using

23 that.

24 Now, on -- at -- your -- your voucher

25 says that on -- on March 8, the next day, um, you

1 did some research, and it says that you
2 researched the *Lilly* and, um, *Crawford* cases; is
3 that right?

4 A Yes.

5 Q Okay. And I assume that refers to *Lilly v.*
6 *Virginia* and *Crawford vs. Washington*, two
7 confrontation clause cases?

8 A Yes.

9 Q And *Lilly v. Virginia* had to do with the
10 admissibility of a co-defendant's confession in a
11 case; is that right?

12 A Yes.

13 Q Okay. And -- and -- under -- under the old
14 *Roberts* paradigm?

15 A That might be.

16 Q That's fine. But -- but *Crawford* changed the
17 whole landscape of confrontation clause? Fair to
18 say?

19 A Yes.

20 Q Okay. And this being your first thing, you
21 were -- I assume you were -- you were looking to
22 see that -- a -- a -- whether or not the State
23 could introduce Brendan's confession in Steven's
24 case?

25 A Yes. The -- the issue was brought up, I -- I think,

1 from some of the media questions. I think I knew --
2 I thought I knew the answer and -- but I wanted to
3 look at the cases just to be absolutely sure so that
4 if I answered those questions they would be accurate.

5 Q Okay. Um, had you had any conversations with
6 Mr. Kratz yet about the case?

7 A I'd have to look at the -- whatever the -- whatever's
8 on the voucher would reflect it. I suppose the
9 answer is, no.

10 Q Okay. And it also -- your -- your voucher also
11 reflects that you spoke with, um, it looks to be
12 three members of the media, J. Lee, who's a
13 reporter for the *Post Crescent*?

14 A Correct.

15 Q Uh, and you did an interview with TV-2?

16 A Yes.

17 Q And, um, three e-mails to and from Aaron Keller?

18 A Correct.

19 Q And who is Aaron Keller?

20 A I believe he works for TV-26.

21 Q Okay. Um, you had also -- regarding that
22 interview with Chanel 2, would you take a look at
23 Exhibit 306 please?

24 A Yes.

25 Q Okay. You -- you've indicated that -- you stated

1 you've always liked difficult and exciting cases
2 and this is one of them?

3 A Yes.

4 Q Okay. What was it about this case that excited
5 you?

6 ATTORNEY FALLON: Objection. Relevance.

7 THE COURT: Overruled. He can answer.

8 THE WITNESS: Um, it at that time
9 appeared to be just involving -- publicity was
10 high. There would be difficulties at that time.
11 There was certainly a -- you know, the family
12 history and everything else with -- with the
13 Averys. So it was in that respect a difficult
14 high profile case.

15 Q (By Attorney Dvorak) Okay. So you were
16 attracted by the fact it was a profile case?

17 A Oh, sure.

18 Q And then you -- you make the statement that if
19 the confession is valid and admissible as
20 evidence, uh, you -- I mean, it would almost
21 certainly result in a conviction? Right?

22 A Correct.

23 Q Okay. You didn't have any problem talking about
24 the possibility of a conviction at this point?

25 A No. I didn't think there was -- I thought this was

1 pretty much stating the obvious.

2 Q Okay. You hadn't talked to Brendan yet, though,

3 right?

4 A I don't recall the exact day -- day as this.

5 Q This is the 8th.

6 A I don't believe I may have. I don't believe I did.

7 I think --

8 Q Yeah. Okay.

9 A -- the first day --

10 Q Well, just --

11 A Yeah.

12 Q -- just to help you with this, Mar -- March 10

13 appears to be the first time you went to see him.

14 Is that --

15 A That sounds correct.

16 Q Okay. Good. What did you know about the case?

17 A Uh, Criminal Complaint. The publicity that had

18 attended the case ever since the death of Teresa

19 Halbach. That was in the local media, which I would

20 have seen.

21 Q So -- so when you were talking about this you

22 were re -- relying, at least in part, on press

23 reports; right?

24 A Correct.

25 Q Okay. Um, even though, for example, they seemed

1 to have gotten it seriously wrong on March 7?

2 A With respect to that portion of the Aaron Carol --

3 Keller interview, I think he attributed it to the

4 wrong person.

5 Q Did somebody else say that?

6 A I don't know if they did or not. But I know I

7 didn't. I know there were some things that were

8 attributed to me that I think was Mr. Sczygelski's

9 argument on bail or something.

10 I think that Mr. Sczygelski had used the

11 word "coercion," for example, and I definitely

12 would not have, because coercion didn't seem to

13 fit the facts. And coercion's not really a

14 defense in this sort of case, etc. I don't know

15 what he said or when he said it, but I know I

16 didn't do it.

17 Q Okay. You say coercion didn't fit the facts.

18 But what you knew about the facts so far was what

19 you read in the Complaint and what you read in

20 the press? Heard --

21 A Correct.

22 Q -- in the press?

23 A I -- I would expect that --

24 Q All right. And you then went on to say that a

25 conviction would carry an automatic life

1 sentence. Since Dassey's just 16, Kachinsky
2 hopes to argue a case that won't leave his client
3 behind bars forever. Is that a fair, um, summary
4 or accurate statement of what you said? It's the
5 last --

6 A Right.

7 Q And -- and then you finish with, I think life
8 without parole certainly for Brendan would be
9 unjust?

10 A I -- that's a fair summary, yes.

11 Q Okay. That's, of course, assuming at this point
12 that -- that Mr. Dassey was going to get
13 convicted of this; correct?

14 A Correct.

15 Q And then on March 9, the next day, um, you had
16 two -- uh, exchanged two e-mails with reporters;
17 right?

18 A Correct. Aaron Keller, yes.

19 Q Right. Was it Aaron Keller that did the
20 interview on March 7?

21 A Yes, it was.

22 Q Okay. Did -- did you have a discussion with
23 Mr. Keller about his story on March 7?

24 A No, I don't think I monitored what the story was so I
25 didn't -- wasn't really directly aware of it.

1 Q All right. And then you did two other things
2 on -- on March 9; right? You had a -- a --
3 actually, you had -- you also had an interview
4 with TV-26; right?

5 A Yes.

6 Q Okay. And you note on that same line that you'd
7 had a phone conference with Barb Dassey?

8 A That should have been Barb Janda, but, yes.

9 Q Okay. All right. Um, and you've got -- you got
10 .6 hours? Do you know how long you talked to
11 each -- either one of these folks? Was it a long
12 conversation with Barb?

13 A Maybe about ten minutes.

14 Q Okay. You had a -- you had a -- a -- a phone
15 conference, also, or e-mail, or both, I guess,
16 with Sergeant Wiegert? What was that about? Do
17 you remember?

18 A Right now I can't recall what it was. It was
19 something about getting access to evidence, perhaps,
20 or something like that.

21 Q Okay. Do you recall when you first got access to
22 evidence?

23 A I don't recall the -- the date. It might be
24 reflected here when I started reviewing stuff, but...

25 Q Okay. You -- you then go to visit -- strike

1 that. On -- with respect to your interview, I
2 want you to turn to Exhibit 40. That would be in
3 volume one.

4 A I have 40 in front of me.

5 Q Okay. Excuse me. I just lost my place here for
6 some reason. All right. Well, I'm sorry. We'll
7 move on to Exhibit 306 until we figure that out.
8 I'm sorry. Three-nineteen.

9 A Okay. I have it here.

10 Q Okay. And there's discussions in here about a
11 plea deal; is that right?

12 A Yes, there is.

13 Q Okay. You've -- you've indicated you haven't met
14 with Dassey, but you're not ruling out a plea
15 agreement?

16 A Correct.

17 Q Okay. And you don't deny saying that?

18 A That's correct.

19 Q And -- and you also mention in this interview
20 that -- that a plea agreement, if one were to be
21 reached, could include testifying against Steven
22 Avery. Mr. Dassey testifying against Steven
23 Avery?

24 A Yes.

25 Q Okay. Um, and you go on to -- to talk about that

1 part of any plea agreement is that Brendan
2 testify truthfully at Steven Avery's trial? Um,
3 the trial of anyone else that might end up
4 getting charged in the case?

5 A Correct.

6 Q Okay. I'd like you to refer to Exhibit 320? The
7 next one? Oh. This was on March 9; right?

8 ATTORNEY FALLON: Excuse me. Exhibit
9 319 or 320 is March 9?

10 ATTORNEY DVORAK: Both of them are.

11 ATTORNEY FALLON: All right.

12 THE WITNESS: Okay. I have 320. I -- I
13 have it in front of me. Obviously, I wasn't
14 hired as the reporter said, but that's nothing I
15 told her.

16 Q (By Attorney Dvorak) Okay. And you indicated
17 here in this statement that while you haven't met
18 with Mr. Dassey yet, that you're not ruling out
19 the possibility of a plea agreement which could
20 include Dassey testifying against Steven Avery?
21 Is that an accurate summary of what you said?

22 A Yes.

23 Q Okay. Um, in your mind, talking about a plea
24 deal, that assumes Brendan entering a guilty
25 plea; correct?

1 A It would.

2 Q Yeah. Um, now, I also want to draw your
3 attention, while we're on March 9, to Exhibit
4 360?

5 A I see it.

6 Q Okay. It's a communication between Mr. Wiegert
7 and yourself informing you they need another set
8 of palm prints; right?

9 A Correct.

10 Q And, um -- and then there's a sentence that Ken
11 will talk with us about some things. Do you
12 recall what that was? Do you recall what he was
13 referring to?

14 A That's what the secretary wrote down. I'm not sure
15 what Mr. Wiegert would have said. My interpretation
16 of that, upon reading it in my computer, was that
17 they were going to get some more prints from
18 Mr. Dassey and wanted me to know about it in case
19 Dassey called up and complained that police were
20 talking to him again without me being present.

21 Q Okay. But -- but the next line -- had you had
22 any other discussions with Wiegert about anything
23 other than palm prints up to this point?

24 A No. I'm not even sure I talked to Wiegert that time.

25 Q All right. Well, I mean --

1 A 'Til I got the message.

2 Q -- up to this point, however?

3 A No.

4 Q Sorry.

5 A No.

6 Q All right. And what about with Mr. Kratz? You

7 had any conversation with Mr. Kratz? I assume

8 the Ken, here, that we're referring to, is -- is

9 Ken Kratz? The D.A.?

10 A I don't -- I don't --

11 Q All right.

12 A -- think so.

13 Q Okay. This is -- this is March 9; right?

14 A Yes.

15 Q Yeah. Okay. Um, now, on your bill, we'll move

16 on to March 10, um, this is the -- you go to --

17 to visit Brendan?

18 A Correct.

19 Q Correct. Okay. Had you had conversations with

20 the press prior to going out to visit Brendan?

21 A I think they might have called our office sometime

22 this morning and ask if that was going to happen,

23 yes.

24 Q Okay. How would they have found out that you

25 were contemplating going to see him on the 10th?

1 A I think they were calling -- they called, wondering
2 if I'd spoken to Brendan yet. And I says, no, I
3 haven't, I'm going to see him this morning in
4 Sheboygan.

5 Q Okay. And -- and when you got out from that
6 meeting, um, the press was there waiting for you;
7 right?

8 A They were there waiting when I got there.

9 Q Okay.

10 A Yes, they were.

11 Q All right. Now, you -- I want you to refer to
12 Exhibit 321. And if you would -- now, this is
13 a -- a -- an interview with you on -- a -- a
14 script of an interview with you from NBC 26 on
15 March 10?

16 A Yes, it is.

17 Q Okay. Um, and I want to refer to -- you -- you
18 to what would be the third page of that exhibit?

19 A Okay.

20 Q It says you met with him for about an hour.
21 That's about accurate; right?

22 A Yes.

23 Q Okay. And it says that you describe Dassey as
24 sad, remorseful, and overwhelmed by the charges
25 against him; right?

1 A Yes.

2 Q Okay. Is that accurate?

3 A I believe so.

4 Q Okay. You used the term "remorseful"; right?

5 A Yeah. That -- that -- that I'm not sure I said. I

6 know I said sad and overwhelmed. I don't know about

7 remorseful or remorseful.

8 Frequently, I was asked, you know, is

9 Brendan remorseful, and I certainly can't answer

10 that question. That is an implication of guilt.

11 I don't think I said the word

12 "remorseful" but certainly sad and overwhelmed.

13 Q So the press got it wrong again?

14 A They might have.

15 Q Okay. And I want you to refer to the next page

16 after that. The, I guess, second full paragraph

17 down. It says that Kachinsky says at this point

18 he hasn't ruled out negotiating a plea deal in

19 the case; right?

20 A That's correct.

21 Q Okay. You just come out from talking to Brendan;

22 correct?

23 A Yes.

24 Q And, again, you -- you -- you state to the press

25 that you haven't ruled out negotiating a plea

1 deal?

2 A Correct.

3 Q Okay. Um, the -- I want you to look at the --

4 let's see. It's probably about five pages down.

5 It's two or three pages after that. It starts

6 A-26 on the top, if you see that line, above

7 the -- sort of a header?

8 A Oh, I see it.

9 Q Okay.

10 A May 26. Yes.

11 Q All right. I want you to --

12 ATTORNEY FALLON: Excuse me, Counsel.

13 How many pages down on this exhibit? Seven?

14 ATTORNEY DVORAK: Yeah.

15 ATTORNEY FALLON: Thank you.

16 Q (By Attorney Dvorak) And if you go to -- you see

17 where it says A-27 on the upper top?

18 A Okay.

19 Q It says that -- again, at the bottom of the page,

20 after meeting with the 16-year-old for the first

21 time, Len Kachinsky describes Dassey as

22 remorseful?

23 A I do.

24 Q Okay. Did you say that?

25 A I might have.

1 Q Okay. Again, you've just come out from -- from
2 talking to Brendan, um, in the jail? You meet
3 the press as you walk out?
4 A Correct.
5 Q Okay. And -- and you add that he seems sad,
6 concerned about a happen -- will happen to him,
7 and just overwhelmed by the whole thing; right?
8 A Yes.
9 Q And then you go on to describe that, you know, at
10 this point you're going to keep your options
11 open?
12 A Oh, correct.
13 Q Yeah. And -- and that you, in the bottom of page
14 A-27, you haven't ruled out a plea deal?
15 A Oh, sure. Yes, I said that.
16 Q And then on A-27, the next page?
17 A Okay.
18 Q Uh, third paragraph down?
19 A Yes.
20 Q It says, Kachinsky also blames Steven Avery for
21 leading his nephew down the criminal path?
22 A Yes.
23 Q Okay. And, now, is that something you said?
24 A I don't think the part in all caps is what I said.
25 That's -- was their summary or interpretation of it.

1 Q I see. Okay.

2 A But the person below is -- is correct.

3 Q Okay. So -- so what you're saying, then, is

4 if -- if you didn't say it, certainly the

5 impression that was left is that Steven Avery's

6 to blame for Brendan Dassey's involvement in this

7 case?

8 A That's the way they could have interpreted it.

9 Whether that's reasonable or not, accurate or not, I

10 don't know. But that's a matter of their

11 interpretation.

12 Q So that's the message that got out to the press?

13 A That's the message the press sent to the public. I

14 don't...

15 Q Okay. Well, the -- the -- the information came

16 from you at some point?

17 A The -- the stuff that I'm quoted here, correct.

18 Q All right. And -- and by -- when we talk about

19 criminal path here, Brendan had never been

20 convicted of anything before; correct?

21 A Oh, correct.

22 Q There no juvenile adjudications? No -- nothing

23 as an adult? So if we're talking about criminal

24 path, we're talking about this case?

25 A Oh, correct. I wanted public to feel sympathetic

1 toward Brendan because of his lack of prior record.

2 Q Okay. Now, you then say, I think common sense
3 says he's a 43-year-old who's been in prison,
4 referring to Steven Avery, right or wrong, it
5 certainly stands to reason that Brendan Dassey
6 could, perhaps, not be coerced but easily led
7 into the offenses he allegedly committed; right?

8 A That's correct.

9 Q Okay. So what you're speculating at this point
10 that Brendan's guilty?

11 A I guess I'm just pointing out the obvious. I didn't
12 certainly make any judgments by that -- that
13 statement. Pointing out the -- what people might
14 think about it.

15 Q Okay. And how -- how did that advance Brendan's
16 case by talking about -- by -- by saying things
17 like, um, Steven led him down the criminal path,
18 or saying that while he may not have been coerced
19 could easily have been led in -- led into
20 committing the offense?

21 A I thought it was important to get accurate
22 information to the media about the case, about
23 options, about how the criminal justice system works.

24 And, in part, because I knew that
25 Brendan's family was watching these news casts,

1 and so in effect in some ways it was a message
2 that was, um, sent to them, uh, to try to get
3 them accustomed to the idea that Brendan might
4 take a legal option that they don't like and try
5 to explain why he would do that and, perhaps, to
6 cut down on possible interference from his
7 family.

8 So part of the intended audience was
9 Brendan Dassey's family.

10 Q And --

11 A And Brendan himself. He watched -- he was isolated
12 in the Sheboygan County Detention Facility, and about
13 his only contact with the outside worlds -- world was
14 visits with his parents and television.

15 Q So -- so the message that you were sending was
16 intended not just for Brendan's family but for
17 Brendan as well, correct?

18 A In -- in a -- in a sense, yes.

19 Q Yeah. Now, during that meeting with Brendan on
20 that day he told you he didn't do this; correct?

21 ATTORNEY FALLON: Objection.

22 Self-serving hearsay.

23 THE COURT: Overruled. You can answer
24 that.

25 THE WITNESS: I believe he did.

1 Q (By Attorney Dvorak) Okay. He -- he -- he --
2 and -- and he said that the statements that he
3 had made, especially the ones in the Complaint,
4 you asked him about that; right? You went over
5 the Complaint with him?
6 A Yes.
7 Q And he told you that what he said and what was in
8 the Complaint about what he said was not true;
9 correct?
10 A I believe he said that.
11 Q Okay. And he also told you at that time that he
12 wanted to take a polygraph test --
13 A Oh, correct.
14 Q -- to prove that; correct?
15 A Yes.
16 Q So Brendan is asserting his innocence --
17 A Yes.
18 Q -- when he talks to you. Um --
19 ATTORNEY FALLON: Excuse me, Counsel.
20 Are we still March 10?
21 ATTORNEY DVORAK: We're still March 10.
22 ATTORNEY FALLON: Thank you.
23 ATTORNEY DVORAK: But we'll move on.
24 On -- I just want to briefly go through -- I just
25 want to briefly go through March 11 through

1 March 14, just to -- to summarize what's going on
2 there.

3 Q (By Attorney Dvorak) Um, would you take a look
4 at those -- Exhibit 25? Or 55?

5 A Yes. Okay.

6 Q All right. Um, the only work you did on the case
7 during those three days was correspondence with
8 the media; correct?

9 A Not entirely.

10 Q Okay.

11 A Clyde Crib was an -- C. Crib is Clyde Crib. He was
12 an investigator.

13 Q Right.

14 A Cindy McCafferty. I don't recall who she was. I
15 think it was some member of the public that just
16 wrote me and said --

17 Q Who's Andy Thompson?

18 A Uh, he's a reporter for the *Appleton Post Crescent*.

19 Q Okay. So you had talked to Aaron Keller again?

20 A Right.

21 Q You talked to Leslie Fox?

22 A Yes.

23 Q That's from Court TV?

24 A I believe so.

25 Q Okay. That's national syndicated program?

1 A Yes.

2 Q All right. Um, Kathy Bender from Dateline NBC?

3 A Yes.

4 Q Another national program?

5 A Right.

6 Q And you got Angenette?

7 A Yes.

8 Q Is that Angenette -- is it Levy or Levy?

9 A Levy.

10 Q Levy. Okay. And she's with a -- a TV station in

11 what? Green Bay?

12 A Correct.

13 Q All right. You first name basis with her?

14 A At this point, yes. Not then.

15 Q Okay. Well, I'm -- you did an interview with

16 TV-5?

17 A Yes.

18 Q Uh, you did an -- an interview with Lorin Cook on

19 Fox 11?

20 A Yes.

21 Q All right. And you spent .1 hours during this

22 period of time e-mailing your investigator?

23 A I believe so.

24 Q Okay. Now, on March 17 is the first appearance

25 in court. I -- there was -- there's some

1 confusion when I was reading the record about
2 whether this was actually an arraignment or -- or
3 a scheduling conference. Was -- Brendan was
4 present, however; correct?

5 A I believe so.

6 Q Okay. You hadn't seen Brendan, um, since March
7 10?

8 A Correct.

9 Q You hadn't talked to Brendan since March 10?

10 A Correct.

11 Q Okay. Had you -- so had you prepared him for
12 what was going on? That -- what was going to
13 happen on March 17? Did you talk to him at all
14 about what was going to happen?

15 A I think I told him that it was going to be a status
16 conference to decide when other dates were going to
17 be scheduled and that's all that there was to say
18 about it.

19 Q Okay. And when would you have told him that?

20 A During a meeting we had on March 10.

21 Q Okay. Um, now, also, on March 17, you went on
22 Nancy Grace; right?

23 A They called me. But, yes.

24 Q Okay. I'm sorry?

25 A They called me. But, yes.

1 Q Yeah. Okay. And Exhibit 41 -- by the way, what
2 is -- what is Nancy Grace?

3 A Nancy Grace, uh, was a news reporter that had a
4 nationally syndicated show dealing with criminal
5 justice issues. You said 41?

6 Q Yes. And page ten.

7 A Correct. I have it.

8 Q Okay. Um, your first comment is, you're saying:
9 "No, he has his wits about him, I'm
10 sure. But he certainly has learning difficulties
11 that are greater than that of the average
12 person."

13 Um -- um, did you -- that's information
14 that you had obtained from Mr. Dassey?

15 A I believe I -- oops. I believe I'd obtained that
16 from -- from his mother.

17 Q So you're -- you're -- you're -- and -- and
18 probably as well as your observations of
19 Mr. Dassey?

20 A Sure.

21 Q Okay. So, um -- and -- and then you -- you say:
22 "If the tape is accurate" --
23 That's the next thing down.
24 -- "an accurate recollection of what
25 occurred, there is, quite frankly, no defense.

1 Coercion under Wisconsin Statutes is not a
2 defense to first degree intentional homicide and
3 it requires an imminent threat of death or great
4 bodily harm. So our first thing we're going to
5 look at is whether or not the statement's
6 admissible, whether or not there was some sort of
7 promises or threats made to Dassey to cause him
8 to make that statement. Since it's been
9 preserved on videotape, we should be able to tell
10 that soon after I get that, although there's also
11 other circumstances to consider."

12 Is that accurate?

13 A Yes.

14 Q Okay. So you're telegraphing the importance
15 of -- of -- of that statement to -- to everyone
16 and -- and -- and -- and the importance of it to
17 the case; right?

18 A I don't know if telegraphing is the word. I'm kind
19 of restating the obvious.

20 Q Okay. And you're, in -- in the course of this,
21 also indicating that, you know, if you concede
22 the accuracy, and you're making a statement that
23 there's no defense here; right?

24 A Correct.

25 Q Um, now, again, are you -- do you -- are -- are

1 you going on -- on national -- this is national
2 TV; right?

3 A The Nancy Grace one is, yes.

4 Q Yeah. Were you anticipating that Brendan's
5 family was going to be watching again? And --
6 and Brendan as well?

7 A I thought at some point they might. That they might
8 hear about the interview or something.

9 Q Okay. And -- and going on national TV and -- and
10 talking about the fact that there's -- making
11 statements like there's no defense, using words
12 like there's no defense, um, were you sending out
13 a message to the Dasseys?

14 A Not by that. I was pretty much stating the obvious.
15 I mean, it's -- if you take those two words and don't
16 look at the context about it being a condition, and
17 if it's accurate, and da--da-da--da-da, I mean, I
18 suppose if somebody wanted to misconstrue it, yes,
19 that could be taken that way. Certainly wasn't what
20 I was saying.

21 Q You -- you -- you see the possibility for it
22 being misconstrued?

23 A I guess by some -- someone who wanted to do that,
24 yes.

25 Q You -- you hadn't reviewed -- by this point you

1 hadn't reviewed that -- you still hadn't reviewed
2 that statement; right?

3 A No.

4 Q That's correct?

5 A That's a correct --

6 Q That first statement?

7 A Correct.

8 Q All right. And had you reviewed any discovery?

9 A At the time of the interview I -- I'd seen the
10 Criminal Complaint, which was rather detailed.

11 Q Okay. But that's it?

12 A I believe so, yeah.

13 Q Yeah. There -- there was no transcript prepared
14 yet of -- of the March 1 interview; correct?

15 A Um, correct. And I -- I don't think at that point I
16 have the CD either.

17 Q Okay. Now, your -- you know, your -- your
18 statement if -- well --

19 THE COURT: Counsel, I think what we'll do
20 is we'll adjourn for lunch --

21 ATTORNEY DVORAK: Okay.

22 THE COURT: -- at this point. We'll be
23 back at 1:15. I have a meeting at one o'clock that
24 I have to attend. See you then.

25 (Recess had at 12:10 p.m.)

1 (Reconvened at 1:16 p.m.)

2 THE COURT: You can proceed, Mr. Dvorak.

3 ATTORNEY DVORAK: Thank you, Judge.

4 Q (By Attorney Dvorak) We were talking about
5 March 17, if you want to refer to your voucher
6 just --

7 COURT REPORTER: Could you use the
8 microphone, please?

9 ATTORNEY DVORAK: Sure.

10 Q (By Attorney Dvorak) And I'd like to draw your
11 attention to Exhibit 322.

12 A I have it.

13 Q Okay. It's a Fox 11 broadcast on March 17;
14 right?

15 A Correct.

16 Q Okay. And you indicate you're -- you -- you tell
17 the press there that, in quote, you gave two
18 interviews a couple of days apart. One was
19 apparently quite general from the Complaint. The
20 other one much more extensive. I've been told
21 the tape is approximately four hours in length.
22 In any criminal case, the defendant would see if
23 there's a reasonable opportunity to keep the
24 statements he made out of evidence if there
25 wasn't compliance with his constitutional rights

1 or if it was involuntary for some reason; right?

2 A Oh, correct.

3 Q Remember saying that?

4 A Yes.

5 Q Okay. The fact that Mr. Dassey had given two

6 statements wasn't out in the public yet, had it?

7 A That I'm not sure. I -- I don't know.

8 Q Okay. You didn't, at the time, bother to check

9 that you made that statement?

10 A I'm just -- I'm not sure where I -- I got it. I was

11 pretty sure it was from the public. Certainly not

12 from Mr. Dassey.

13 Q Okay. Um, and how does saying that Mr. Dassey

14 confessed twice advance his case? What's your --

15 A Well --

16 Q -- thinking there?

17 A -- it didn't really say that he gave -- that he

18 confessed twice. It said that there were two -- two

19 statements. That would certainly, I guess, explain

20 the process.

21 Q Okay. So -- so your -- your thought was -- was

22 just helping the public understand the

23 investigative process?

24 A And -- and the process of representing somebody on a

25 case like this. That applied to a lot of the

1 comments that I made.

2 Q Okay. All right. And you also did a phone
3 conference with CNN and Headline News on that
4 day; right?

5 A Yes.

6 Q And, um, had another conversation with CNN -- or
7 interview with Nancy Grace. That was the one we
8 previously referred to. I'm sorry. All right.
9 So let's move to March 19.

10 A Okay.

11 Q Um, there's a -- a phone conference you -- you
12 note a phone conference with B. Dassey. Was that
13 Brendan or Barb? Do you remember?

14 A I -- I'm not sure. Most likely Barb.

15 Q Okay. So to this point you've talked to Brendan
16 once for about an hour; correct?

17 A Once alone in a conference at the jail, um, talking
18 to him in -- before and after court to some extent.

19 Q Okay. Those would have been brief conversations
20 I take it?

21 A The ones before --

22 Q Before and after --

23 A -- and after court --

24 Q -- court. Yeah.

25 A Yes.

1 Q Okay. And -- and your voucher shows an e-mail to
2 J. Lee; right? J -- J. Lee's John Lee, again,
3 the reporter for *Post Crescent*?
4 A Correct.
5 Q Okay. And on March 20, um -- well, do -- do you
6 remember what you talked to John Lee about?
7 A I don't. Much of this, again, I wanted to make sure
8 they got the facts straight, understood what the --
9 the law was that we were dealing with so that there
10 was no misinformation to the public, uh, which could
11 cause difficulties in dealing with Brendan's family,
12 as well as just -- I just think it's a professional
13 obligation to at least help the public understand the
14 process of how criminal case work.
15 Q Okay. Even if it's your own case?
16 A It -- it's hard to get in general terms. You know,
17 especially if you provide (unintelligible) they
18 should, I think, would have some -- some basic
19 understanding.
20 Q Was there some misunderstanding about how many
21 times -- a misunderstanding of the public about
22 how many times Brendan was interrogated?
23 A I --
24 Q Or questioned?
25 A -- I don't know.

1 Q Okay. On March 20 you spent .4 hours on the
2 phone with the D.A.'s office and then a *Milwaukee*
3 *Journal Sentinel* reporter. Do you -- do you
4 remember what the call to the D.A.'s office was?
5 A I think it might have been regarding receiving
6 discovery or being able to observe some of the
7 discovery in the Calumet County D.A.'s Office.
8 Q Had you gotten discovery yet?
9 A That I'm not sure.
10 Q Okay. You hadn't -- or the tapes as far as you
11 know?
12 A I'm not sure the -- the --
13 Q Okay.
14 A -- date of receipt exactly at this point. I see the
15 entry's on the 23rd so I may have gotten them that
16 day or the day before or something.
17 Q Okay. Um, do you remember what you -- who --
18 what you talked with Mike Nicholas about for the
19 *Milwaukee Journal Sentinel*?
20 A I think he wanted confirmation as to future court
21 dates, what the process is if the Judge wanted us to
22 go through in terms of filing motions, things of that
23 sort.
24 Q Okay. And you accommodated him -- him with that
25 information?

1 A Yeah. I wanted to make sure he got it straight.

2 Q Right. Um, and you reviewed a couple of criminal

3 cases, including **Jerrell**; right?

4 A Correct.

5 Q To familiarize yourself again with the standard

6 on voluntariness, etc.? Motion to suppress?

7 A Uh, correct.

8 Q Yeah. Um, and -- and you spent .6 hours on that;

9 right?

10 A Correct.

11 Q There was a phone conference with Dean Strang.

12 Do you remember what that was about?

13 A I think it was sort of an icebreaker sort of

14 conference telling us where they were at. I guess he

15 was trying -- probably trying to figure out where my

16 head was at on the case.

17 I think most of my responses to him was

18 that I was noncommittal, I'd have to see the

19 discovery, talk it over with Brendan, etc.

20 But that there was nothing imminent in

21 terms of anything dealing with his client in

22 particular.

23 Q Okay. Certainly all the signals you've been

24 sending into the press were -- had to do with

25 plea agreements?

1 A Well, I don't know if I was sending any signals.
2 That's a question they kept asking. I -- I said I
3 didn't initiate the contacts with the media. They
4 were just bombarding our office with phone calls. I
5 would return number of them.

6 Q But up until this point you've -- you've -- you
7 refer to number of times to the press about the
8 possibility of a plea agreement?

9 A Oh, sure.

10 Q And, um -- and -- and still up until this point
11 you'd only talked to Brendan once, and during
12 that conversation Brendan had told you that his
13 March 1 statement was not the truth, that he was
14 innocent, and that he wanted to take a polygraph
15 to prove that?

16 ATTORNEY FALLON: Objection. Asked and
17 answered.

18 THE COURT: Sustained.

19 ATTORNEY DVORAK: As it's -- as to this
20 time I don't think it's been asked and answered.

21 THE COURT: With that qualification, you
22 can answer it.

23 THE WITNESS: I believe so, yeah.

24 Q (By Attorney Dvorak) Okay. Then on -- two days
25 later, March 22, your work on the case amounted

1 to a -- apparently a phone conference with K.
2 Sanger (phonetic) of Dateline?

3 A Correct.

4 Q Okay. The next day, the 23rd, you -- know if
5 it's the same person or not, but you have a phone
6 conference with K. Singer (phonetic); right?

7 A Yes. I -- I believe it probably was. She was -- I
8 think she's confirming some procedural information or
9 something.

10 Q Okay. But it also notes that you've -- you're
11 now beginning to review the tapes?

12 A Correct.

13 Q Right? Okay. So this is the first time that --
14 that you've reviewed any of the tapes?

15 A Correct.

16 Q All right. And --

17 A I'm not sure if it was a tape or a CD. Maybe it was.
18 I -- I'm not sure.

19 Q Okay.

20 A May have been a C -- but it was -- I believe it was
21 a -- I'm just not sure, tell you the truth.

22 Q Fair enough. Whatever it was, it was a -- an
23 audio with respect to the February 27 interview;
24 right?

25 A Yeah. I believe that was audio only. That's maybe

1 why there's a difference between that one and some of
2 the later ones.

3 Q Okay. Um, and did you have -- all right. And --
4 and -- and when you did that, you were -- did you
5 start making notes on that?

6 A Yeah. As the tape was being -- being played I would
7 make some notes.

8 Q Okay. And on March 24, uh, you got an e-mail
9 from Mr. Kratz; right?

10 A Um, I did.

11 Q And I'll draw your attention to Exhibit 343.

12 A I have it in front of me.

13 Q Okay. Had a chance to look at it?

14 A Yes.

15 Q Okay. Um, I just want to get clear at this point
16 on the -- the third item that -- that starts --
17 says the transcripts will be done by the -- um,
18 soon.

19 Um, do you recall what discovery you had
20 to this point? Did you -- did you have -- let me
21 ask it this way:

22 Did you have everything, uh -- all the
23 discovery related to your case as far as you
24 know?

25 A I'm not sure. Most likely it was more than simply

1 the two tapes. There may have been some paper
2 discovery that I'm -- I'm just not sure what -- what
3 else I'd have.

4 Q Was -- were there any forensics reports or
5 anything? You recall seeing any of that?

6 A I -- I don't.

7 Q Okay.

8 A Not at this point.

9 Q All right. The -- the fifth item -- well, he --
10 he mentions a box of discovery and invites you to
11 come in. Did you -- did you do that?

12 A Eventually I did, yes. It -- it was a lot of
13 photographs taken at the scene of the Avery compound,
14 uh, photographs seized from Steve Avery's possession,
15 including pictures of his girlfriend in various
16 stages of undress and -- and some other things.

17 Q Okay. And -- and did you have a -- a -- copies
18 made of that for yourself?

19 A Not -- not of the stuff that was in Kratz's office
20 that I had viewed of that nature. Stuff that applied
21 strictly to -- to Steve Avery.

22 I think I received some reports
23 generally on the search of the Avery compound and
24 their interview process and everything else that
25 started with beginning of the case. But this

1 stuff was -- as I looked at it, I think I made
2 some -- some notes as to what was in there.

3 But I didn't see, frankly, any use of it
4 for -- for us, that I needed to have it in my
5 possession. It might -- something came up later,
6 of course, we could -- could get it.

7 But I didn't see it as something I
8 needed to keep in my office.

9 Q So -- so your -- in -- in your view it wasn't
10 necessary that you have a copy of it?

11 A Not -- not at that time, no.

12 Q Okay. And -- and what you know what was in there
13 were -- were photographs of the scene?

14 A There were some aerial photographs, all kinds of
15 stuff like that, that certainly was -- was important
16 in establishing that a crime took place but didn't
17 really deal directly to -- to Brendan's involvement
18 in it.

19 Q Okay. So from the statement that you had read
20 when you reviewed those statements you didn't
21 think that any of that evidence had any relevance
22 to what Brendan's statement was?

23 A I guess in a sense, yes. I mean, in a general sense,
24 of course, it had some relevance in which might come
25 in if the case went to trial, but I didn't see any

1 need at that time immediately to request copies of
2 it.

3 Q You didn't expect that the case was going to go
4 to trial at this point?

5 A At that point I wasn't sure.

6 Q Okay. Now -- well, um, but it -- also at this
7 point Brendan was saying that he was not guilty
8 and he didn't do anything. Were you -- were you
9 focused on -- on trying to determine that?

10 A Well, at this point I hadn't reviewed his -- his
11 statement yet. Including the -- the tapes. So I
12 guess at that point I really wasn't focused on -- I
13 think I -- I looked -- as I -- I -- I'd gone -- when
14 I later went -- started going through the discovery,
15 I worked particularly on the most critical element
16 pertaining to Brendan which was the timeline of
17 activity that occurred the afternoon and evening of
18 October 31, 2005, and accounting for where Brendan
19 was at various times. But...

20 Q What about -- you -- so you -- did you -- you
21 didn't look at anything that related to physical
22 evidence?

23 A I would have read the descriptions of what was done,
24 that was in the narratives done by the law
25 enforcement agencies.

1 Q Okay. All right. And then the fifth paragraph,
2 it says:

3 "If Avery is granted a prelim on his new
4 charges of sexual assault, false imprisonment,
5 and kidnapping, your client will be called as a
6 witness, and I assume granted use immunity for
7 that hearing only. You can discuss that with him
8 if it comes about. It's set for 4-13. If it
9 happens at all, Judge Willis needs to decide that
10 issue."

11 Um, did you have any discussions with
12 Mr. Kratz prior to receiving this about Brendan
13 testifying?

14 A Not -- not about testifying at the prelim for -- for
15 Avery, no.

16 Q What about Mr. -- what about Brendan testifying
17 at all? Had you had discussions with him about
18 that?

19 A I think I probably did. I think I -- we had had some
20 discussions. I said I think I understand what the
21 State would be coming from in this case if you're
22 going to -- I assume at some point you're going to
23 make us a plea offer, because the State does that in
24 virtually any case of any type, and I'm assuming that
25 any plea offer would be conditioned on Mr. Dassey

1 testifying truthfully against Mr. Avery.

2 Q Had you discussed the possibility of Brendan
3 testifying against Steven with -- with Brendan?

4 A At some point certainly I told Brendan about --
5 generally what would be happening, or discussable, or
6 within the realm of the possible if we went the plea
7 bargaining route, and that that would probably be a
8 condition of a -- of any plea bargain.

9 Q Well, up to this point that would only have
10 happened at -- at your interview on March 10;
11 right? You hadn't talked to him other than that;
12 is that fair?

13 A I think -- yeah. That may be true.

14 Q Did you view this as -- as -- as being good news?
15 The invitation by the State to have Brendan
16 testify against Steven Avery?

17 A I was actually concerned because it was awfully soon,
18 and I wasn't sure that that is what Brendan wanted
19 to -- wanted to do.

20 Uh, I thought I was pretty sure he
21 didn't want to, because he was pretty quiet,
22 noncommittal, and everything else about a lot of
23 things.

24 So I guess I was concerned about it
25 being so soon that -- that there'd be some real

1 problems with it, 'cause I really hadn't seen
2 Brendan that much. I hadn't reviewed all the
3 discovery yet. I hadn't sent Brendan -- I guess,
4 what I ended up doing, reviewing most of the
5 discovery, sending Brendan letters kind of
6 summarizing what was in it.

7 So, yeah, I -- I was concerned this was
8 happening pretty soon. Might not be prepared to
9 do it.

10 Q Um, and -- and the final thing that Mr. Kratz
11 does is invite you -- invites you to get
12 information for him from Brendan; right?

13 A Yes.

14 Q Okay. Had you had any -- given any signals to
15 Mr. Kratz that you were willing to do that?

16 A Not at that point, no.

17 Q Okay. You don't think your statements in the
18 press may have signaled that?

19 A No.

20 Q The things that you were signaling to Brendan's
21 family?

22 A Not about dis -- not about finding physical evidence,
23 no. I -- I didn't -- I assumed that the State had
24 thoroughly searched everything and come up with
25 everything they would have possibly been able to come

1 up with respect to Brendan.

2 There'd been some search warrants around
3 the time of his arrest. Searches of his house.
4 Some other things. I -- I didn't think there was
5 any physical evidence that we'd be able to
6 present if we wanted to.

7 Q All right. But this certainly gave you a signal
8 what the State would have been looking for;
9 right?

10 A Yes. I mean, they're always hopeful to get more
11 evidence.

12 Q And -- and they -- and they were hopeful to get
13 it from Brendan?

14 A Right.

15 Q All right. And he also invites discussions about
16 plea potentials, um, after the five -- the May 4
17 motion? Did you --

18 A Yes.

19 Q -- did you respond to that? Did you call him up
20 after you got this and -- to talk about it?

21 A I don't recall if I did or not or if I e-mailed him.

22 Q Did you -- would you have made notes of that?

23 A If there was something specific, yes. I -- I
24 certainly don't -- I don't recall at this point.

25 Q Okay. Up until this point had you given any

1 thought to Brendan's request to take a polygraph
2 test?

3 A I had. I have, professionally, a negative opinion
4 about polygraphs. I've had truthful clients flunk
5 them and untruthful --

6 Q My --

7 A -- clients pass them.

8 Q My -- my only question is whether or not you had
9 given any thought to -- or if -- given any
10 thought to complying --

11 COURT REPORTER: One moment, please.

12 THE COURT: Hold up a second.

13 (Court reporter's computer
14 malfunctioned.)

15 COURT REPORTER: Okay. Please start
16 from where you said:

17 "My only question is whether or not you
18 had given any thought to -- or if -- given any
19 thought to complying..."

20 Q (By Attorney Dvorak) The -- the -- the question
21 I want the answer to is did you do anything with
22 respect to Brendan's request to take a polygraph
23 test up to this point?

24 A I'm not sure when the exact timing was, but I know
25 Brendan had to ask me a second time before I did it.

1 And then at that point I acquiesced and went out and
2 tried to make the arrangements.

3 Q Right. And you hadn't seen him twice. I mean,
4 up until this point you've talked to Brendan for
5 about an hour?

6 A Correct.

7 Q Um, the -- March 25, the next day, you -- you --
8 you, um, listen to the tapes; right? You listen
9 to tape four and you prepare notes?

10 A Correct.

11 Q And you listen to tapes one and two of the
12 March 1 -- and -- and I'm -- when I use the word
13 "tapes" I'm talking about whether they're --

14 A Right.

15 Q -- CDs, DVDs, whatever they may be just for --

16 A I called --

17 Q -- convenience sake.

18 A -- them tapes so it's -- if it was a mistake, it was
19 mine.

20 Q Um, and I just want to focus on the March 1
21 issue. Um, reviewing the March 1 statements, you
22 reviewed one and two, and it's my understanding
23 you couldn't get tape three to work; right?

24 A That may have been the case.

25 Q Okay. You, uh -- on the next day you -- you send

1 an e-mail to Mr. Kratz, uh, to the effect that
2 the tape doesn't work. Do you recall that?

3 A At this point, no.

4 Q Okay. Um, the -- you sent a letter to Brendan
5 also. Do you remember what was in that letter?
6 We can't find it. Do you have any idea? Do you
7 have it with you by any chance?

8 A I -- I don't. Um --

9 Q This -- this would have been after you've --

10 A Right.

11 Q -- reviewed the tapes?

12 A Any letters I would have put in the materials that
13 were forwarded to the next attorney. Looking at the
14 context I probably would have told him a summary of
15 what I saw in the tapes. Just looking at the length
16 of the letter that's probably what it was.

17 Q All right. Uh, well, it took you .2 to -- to do
18 the letter.

19 A Oh. Right. It was -- would have been relatively
20 short.

21 Q Right. Um, March 27 you get a -- an e-mail from
22 Kratz, um, regarding tape three and a phone
23 conference. Do you recall what that e-mail was
24 about?

25 A I think it was just about how he was going to take

1 care of the problem.

2 Q Take care of the problem with tape three?

3 A Correct.

4 Q Okay. And your -- your notes say that you -- you

5 got around to reviewing tape three.

6 A I might have.

7 Q Okay.

8 A I'm sure if I got it I did.

9 Q Do you remember the significance of tape three on

10 the -- on the March 1 interrogation?

11 A No, I don't. It was a short one as compared to what

12 I'd seen before. It might have been from the time

13 that they left the -- I believe it was called the

14 Mishicot Inn. I forgot. From the time they left,

15 though, the place where Brendan was, to the time they

16 got to the sheriff's department for the interview.

17 Q Well, that's -- the -- the -- the substance of

18 that tape is -- is -- is Brendan's retraction?

19 Brendan -- Barb -- Barb comes in, and, uh -- and

20 at some point during the conversation between

21 Barb and Brendan, Brendan -- Barb wants to know

22 why he -- she said those things if they weren't

23 true, and Brendan said, "They got into my head."

24 Do you remember that?

25 A I do.

1 Q Okay.

2 ATTORNEY FALLON: Your Honor, from here
3 on I'm going to impose an objection and simply
4 ask that the questions be stated in what happened
5 as opposed to stating it with a legal conclusion.
6 It's his witness. It's not cross-examination.

7 THE COURT: Fair enough.

8 ATTORNEY DVORAK: He's -- well, I -- I
9 think, Judge, in all fairness, it's -- he's an
10 adverse witness under the circumstances.

11 THE COURT: I understand that and you
12 certainly have more leeway to examine him. But by
13 the same token we are starting examinations with
14 opinions.

15 Q (By Attorney Dvorak) You had a phone conference,
16 according to your notes, on this date, also, with
17 Mr. Dederling; right?

18 A Yes.

19 Q And who's John Dederling?

20 A I believe he's a police officer.

21 Q Okay. He -- he was one -- one of the police
22 officers that was on this case; right?

23 A Right.

24 Q Do you remember what that conversation was about?

25 A I think it was about getting copies of some discovery

1 or something like that.

2 Q You don't remember?

3 A I don't remember.

4 Q Okay. And you didn't make any note of that?

5 A No.

6 Q All right. Um, you also had another phone

7 conference with John Lee on that day?

8 A Yes.

9 Q March 27?

10 A Yes.

11 Q You reviewed tape three? You prepared some notes

12 of that; right?

13 A Yes.

14 Q Um --

15 ATTORNEY DVORAK: Excuse me, Judge.

16 Q (By Attorney Dvorak) I'd like you to look at

17 Exhibit 359, please. Oops. And the second to

18 last page.

19 A The one where it mentions about tape three. Reviewed

20 3- --

21 Q Yes.

22 A -- -27- --

23 Q Right.

24 A -- -06 --

25 Q Those --

1 A -- okay.

2 Q -- would be your notes relating to your review of
3 tape three?

4 A Correct.

5 Q And the date next to, 3-27, would refer to the
6 date that you took those notes; right?

7 A Yes.

8 Q Do you make any notation in your notes on this
9 tape of Brendan saying, "They got into my head."?

10 A I don't think I did.

11 Q Okay. Do you think that would be a -- something
12 to investigate on a motion to suppress?

13 A I suppose would have some relevance, yes.

14 Q Um, on March 28, your work on that day is a phone
15 conference and a TV interview with TV-2?

16 A Right.

17 Q Okay. Um, I'd like you to look at Exhibit 323
18 and 324.

19 A I'm looking at 3 -- okay.

20 Q Um, you -- you make the statement to the press
21 that this statement is the strongest and only
22 piece of evidence?

23 A Yes.

24 Q Okay. Um, and so based on your review of the
25 evidence to this point that's what your opinion

1 of the -- of -- that's what your assessment is?

2 A I suppose "only" might be an overstatement, but

3 certainly "strongest" is correct.

4 Q Well, on your review of the evidence to date did

5 you come upon any physical evidence that

6 corroborated what Brendan said?

7 A Not that I knew of. Not of a careful examination of

8 the Avery compound. I (unintelligible) if there was,

9 you know, circumstantial evidence as to where he was

10 when, uh, during the evening of October 31 that I

11 thought was of greatest relevance.

12 Q And -- and -- or forensic evidence --

13 A Right.

14 Q -- for that matter. There --

15 A Right.

16 Q -- was no forensic evidence -- sorry. We're

17 talking over each other. Apologize. There was

18 no forensic evidence that corroborated anything

19 that Brendan had said that you had seen to this

20 point; correct?

21 A That -- that is correct, in terms of DNA,

22 fingerprints, things like that, yes.

23 Q Right. Um, and you also make the statement that

24 if the judge throws out Dassey's confession would

25 jeopardize the prosecution's case; right?

1 A Correct.

2 Q You got motions due in, what, another week or so?

3 A I don't know what the deadline was.

4 Q Okay. Your hearing is -- is April 5, I believe?

5 A Yes.

6 Q All right. May -- May 4. You have a hearing

7 coming up on May 4? I'm sorry. Sound right?

8 A Right.

9 Q Okay. Um, and I want you to look now at Exhibit

10 No. 324.

11 A Right.

12 Q In your conversation here, um -- and I'm -- want

13 you to look at page two of -- of that exhibit.

14 ATTORNEY FALLON: This is 324, Counsel?

15 ATTORNEY DVORAK: Yes, it is.

16 ATTORNEY FALLON: Thank you.

17 Q (By Attorney Dvorak) You -- you state here that

18 there were some techniques used here that are

19 pretty standard and quite legitimate and in terms

20 of making the suspect feel police know everything

21 and the suspect should tell him because the

22 police already know it; right?

23 A Yes.

24 Q Okay. So you're -- you recognize here that --

25 that there are -- have you had -- you've had

1 confession cases before I assume?

2 A Yes.

3 Q Okay. And, um, have you ever consulted with an
4 expert in confession cases?

5 A Not prior to this one, no.

6 Q Okay. Had you -- had you -- did you consult with
7 an expert on confessions in this case?

8 A Yes. Um, after the motion to suppress was denied, I
9 believe there was a reference at some point -- I
10 talked to a Mr. -- a Dr. Thompson after talking to
11 Drizin and some other folks about possible
12 references. It would have occurred after the
13 suppression hearing was over.

14 Q All right. So -- but -- so prior to the
15 suppression hearing you had not contemplated
16 consulting and/or calling any kind of an expert?

17 A Well, not on the issue of characteristics of false
18 confessions. There was obviously the need to bring
19 in the underlying evidence of Brendan's intelligence
20 level and so forth from his school records, and some
21 psychological evidence of that sort is one of the
22 many factors a judge has to consider on a motion to
23 suppress.

24 Q Let me -- let me ask --

25 A Sure.

1 Q -- you this: You -- you did not consider,
2 certainly at least to this point, or from what
3 you're saying at all, you did not consider, um,
4 the -- or calling a -- or -- or consulting with a
5 con -- a -- an expert on interrogation techniques
6 as it relates to voluntariness?

7 A I remember certainly mentally thinking about the
8 possibility of a psychologist or some expert witness
9 and whether that would be beneficial or not. But I
10 certainly would -- decided that -- at least it was my
11 opinion it would not have been. Just based on just
12 general background knowledge. I didn't -- don't
13 think I specifically documented it anywhere.

14 But I -- I didn't think it generally was
15 possible to find a witness that would say Brendan
16 could not have understood his **Miranda** rights
17 given, you know, his, um, mental status.

18 Q Okay. So -- so what you're saying is that you --
19 you considered it but you -- you -- are you
20 saying you considered it but rejected it?

21 A Yes. I didn't think it would be effective on the
22 suppression issue.

23 Q What about, um, issues of, you know, what the
24 definition of psychological coercion is and --
25 and what tactics are coercive or not coercive?

1 A Based on what was in the tape and the sort of tactics
2 I observed there, I didn't think there was an expert
3 that was going to --
4 Q Okay.
5 A -- would say something like that. But I didn't ask
6 one.
7 Q Okay. Um -- excuse me a second. Um, on
8 March 29, you conducted a -- two more phone
9 conferences with the press. Pete at NBC 26 and
10 Singer at -- from Dateline; right?
11 A Right.
12 Q And you spent maybe 40 minutes or 45 minutes
13 reviewing reports?
14 A Correct.
15 Q Um, do you remember what those reports were or
16 what they had to do with?
17 A Not specifically, no.
18 Q Okay. Um, by the way these -- these -- your
19 voucher accurately reflects the -- what you did
20 on -- on the case and -- and -- and the time you
21 put on it; right?
22 A It does.
23 Q Okay. Um, on March 30, the next day, your only
24 work on the case would have been an e-mail with
25 Aaron Keller; right? Again, a news person?

1 A Right.

2 Q On March 31, um, your only work on the case would
3 have been two e-mails with Keller and, um, an
4 interview with TV-26; right?

5 A Right.

6 Q And on April 1, um, your only work on the case
7 would have been with Becky from TV-11, an
8 interview with TV-11. You reviewed a -- a
9 Dateline, apparently. Was that a broadcast? Is
10 that what that means?

11 A Yes. I don't recall specifically which one that was.

12 Q Okay.

13 A Um --

14 Q Yes or no would be fine.

15 A Yeah.

16 Q Okay. And, um, so you watched the TV-11 news
17 cast? I assume you watched the -- the news cast
18 of your interview? That's what you're talking
19 about?

20 A No, I don't think so. I think the Dateline there was
21 a -- a feature on the Avery family, which I know I
22 watched somewhat. I'm not sure when it was.

23 Q Okay.

24 A Just describing, you know, their relationship with
25 the Manitowoc community and so forth.

1 Q Okay.

2 A I'm not sure if that was it or not.

3 Q All right. And -- and, also, you had a -- an

4 e-mail with Aaron Keller again; right?

5 A Right.

6 Q Now, on the interview on April 1 with Fox 11 --

7 and I want to draw your attention to Exhibit 325.

8 A Okay. I remember that.

9 Q Okay. This had to do -- apparently Steven Avery

10 had made some comment in the press about Brendan

11 possibly being someone who could be coerced into

12 making a statement; right?

13 A Among other things --

14 Q Okay.

15 A -- yes.

16 Q And -- well, there's a quote here. There's --

17 second paragraph on first page. And -- and this

18 is from Avery, apparently.

19 "I know he was, um, that is, coerced,

20 into making a statement, 'cause they ain't no

21 evidence to back it up. They took everything out

22 of the trailer and they ain't going to find

23 nothing."

24 And then it's a quote from you that

25 you've reviewed the four-hour videotape from

1 Dassey and you don't see it that way. Uh, didn't
2 appear to me that they were putting words in his
3 mouth which is kind of what Avery suggests;
4 right?

5 A Correct.

6 Q Okay. Now, after having reviewed the February 27
7 tape, as well as the March 1 tape, you're saying
8 you didn't see any evidence at all of suggestive
9 questioning or contamination by the police of the
10 interrogation?

11 A I would have to say, um, yeah, it appeared to me that
12 they took great pains to try to make the details in
13 that interview come out from -- from Brendan and not
14 something that was suggested by them. Um, relatively
15 low number of -- of leading questions, um, and -- and
16 things of that sort that you'd might expect to -- to
17 have from a heated high power -- high-powered
18 interrogation.

19 Q So by -- I -- I guess what I'm -- your -- what
20 you're saying here is -- is -- or, you know, what
21 you're sending out is -- is that, um,
22 Mr. Dassey's confession is -- is a good
23 confession?

24 A Well, I was saying that it didn't certainly appear to
25 be something that was shoved into his brain like

1 Avery had suggested.

2 Q Well, let's --

3 A And -- and I was putting out the message to Avery
4 that I thought he was trying to intimidate Bran --
5 Brendan Dassey through the media.

6 Q Okay. But what -- what message do you think it
7 was sending to Brendan?

8 A Which -- which one?

9 Q Well, the -- the -- the message that you're
10 saying the confession looks pretty good to me?

11 A Nothing I hadn't already told him. I think at that
12 point that was -- that was the case.

13 Q So you had -- you had told him already that --
14 that you thought this was a good confession?

15 A Yes.

16 Q And that was your -- your position going into
17 preparing the motion?

18 A I -- I believe I told him I thought the chances of
19 the motion to suppress being granted were not
20 terribly good. I'd give it my best professional
21 shot.

22 I'd -- I had a transcript. I could --
23 would apply the case law to the facts of the
24 case. Anything that looked questionable at all
25 I'd put in the motion and argue it. But I wasn't

1 count -- told him don't -- don't count on it
2 being granted.

3 Q Um, now, the -- were you aware of the
4 significance of the -- of the March 1, or at
5 least significance of part of the March 1
6 confession in terms of physical evidence?

7 A Which -- which part of it? I'm not sure --

8 Q Well, where they --

9 A -- what you're --

10 Q -- where they talk about --

11 A -- referring to.

12 Q -- shooting in the head. Do you remember that?

13 A At this point I --

14 Q Okay.

15 A -- guess I'm just not sure.

16 Q I -- I just want to play --

17 A Yeah.

18 Q -- a --

19 A Sure.

20 Q -- five. I just want to play clip five. Or four
21 and five.

22 ATTORNEY FALLON: Clip -- and where --
23 what is that reference to, Counsel?

24 ATTORNEY DVORAK: Um, it identifies 315.

25 ATTORNEY FALLON: Exhibit 315?

1 ATTORNEY DVORAK: Yes.

2 ATTORNEY FALLON: All right.

3 ATTORNEY DVORAK: Page nine.

4 (Wherein clip is played.)

5 Q (By Attorney Dvorak) Does that sound like
6 putting words into somebody's mouth? Certainly
7 is --

8 A It'd certainly be a leading --

9 Q -- suggesting.

10 COURT REPORTER: Excuse me.

11 THE COURT: Okay. You ask the question,
12 you wait 'til he asks it, then you can answer it,
13 okay?

14 THE WITNESS: Okay.

15 Q (By Attorney Dvorak) Oh, I -- um, were you --
16 were you aware that there had been a -- a fairly
17 recent discovery in the case that had some
18 significance with respect to being shot in the
19 head?

20 A It didn't stick out in my mind, no.

21 Q Okay. So you weren't aware of the significance
22 of that question at the time that you listened to
23 the tape?

24 A Correct.

25 Q Or at the time that you filed the motion?

1 A Correct.

2 Q Okay. Um, and Steven Avery says that he feels
3 that -- didn't think his nephew was very smart?
4 It'd be awfully easy for someone in law
5 enforcement to coerce him? And you refute that
6 statement, too; right? In this interview?

7 A Yes.

8 Q Okay. So, you're -- you're telling the press and
9 world at this point that you don't think that
10 Mr. -- that your -- your client is someone who's
11 likely to be coerced by law enforcement? What
12 you say is that I think that would be inaccurate;
13 correct?

14 A Right. Whatever I said, I would say. What the
15 meaning was behind, I'm not totally sure.

16 Q Okay. Um, and then you talk about, um, some
17 Avery trying to intimidate or influence a
18 witness, uh, as showing some consciousness of
19 guilt?

20 Um, again, do you understand that the
21 implication that's behind that is that Brendan's
22 confession is -- is accurate and that he may be
23 testifying that that signal gets sent?

24 ATTORNEY FALLON: Objection. Relevance.

25 THE COURT: Overruled. You can answer it

1 if you have an answer.

2 THE WITNESS: I'm not sure what spin
3 somebody would want to put on that. I'm not --

4 Q (By Attorney Dvorak) Now -- and again, this --
5 this whole discussion that we're talking about
6 here precedes the motion to suppress? Precedes
7 your filing on the motion to suppress; right?

8 A It probably did. I don't know.

9 Q Okay. Um, the tenor of this discussion would
10 suggest that not only is Avery guilty, but
11 Brendan's complicit in it?

12 A I don't know if that's conclusions anybody would draw
13 or not. The words were the words and...

14 Q Well, if you're -- if you're saying in this
15 conversation that Brendan is not someone who's
16 easily coerced, um, or someone who would be
17 subject to having words put in his mouth, you're
18 in -- at least backhandedly vouching for the
19 accuracy of the confession; fair?

20 A I was -- no. I think it just act -- I'm just
21 vouching for Brendan's general personal
22 characteristics.

23 Q So what you're saying in advance of the hearing
24 is that Brendan's personal characteristics are
25 such that he's not someone who would be subject

1 to having someone put words in his mouth or
2 otherwise being coerced?

3 A I -- I don't know what spin you'd put on it.

4 Q All right.

5 A Certainly wasn't directed at Judge Fox.

6 Q Um, yeah. Exactly. On April 2, you -- again,
7 your work on the case was an e-mail to the press
8 and a phone conference with a Jeanette from TV-2?

9 A Yes.

10 Q All right. Then on April 2 you indicate that
11 you've -- you now have finally reviewed the rest
12 of the initial paper discovery; right?

13 A Right.

14 Q And you send an e-mail to Mr. Kratz and you spend
15 about -- you spent 4.2 hours doing that?

16 A Right.

17 Q Um, and there is also -- you've also talked to
18 the press on April 2, I believe. I refer your --
19 you to Exhibit 326. This is a -- a fairly long
20 one. The first several pages of it is something
21 of a tribute to Teresa, the Teresa Halbach
22 Memorial Fund?

23 A Uh-hmm.

24 Q And if you go to the last page?

25 A Right.

1 Q And the second to laugh -- last paragraph, you're
2 quoted as saying, well, Kachinsky does believe
3 Dassey has some intellectual deficits. He
4 believes Brendan has a reasonably good ability to
5 recall events he participated in. That accurate?
6 A Yes, it is.
7 Q Okay. So it -- the next day, April 3, you --
8 you -- let's back up a minute. Up -- up until
9 that point, um, you have spent -- well, let me
10 see if I -- you have spent, if -- if -- if I'm
11 doing my math right, and let me know if I'm
12 close, um, you've spent about an hour with your
13 client and probably about at least ten hours with
14 the press? Sound about right?
15 A That -- that could be. I'm not sure if I saw him,
16 you know, when I talked to him between that, and
17 there was at least one letter, but...
18 Q Right.
19 A -- that would be close.
20 Q And there was a -- there was a jail visit that
21 you did on -- on April 3?
22 A Right.
23 Q Okay. And did you, again, contact the press
24 prior to going out there?
25 A No.

1 Q Okay. But they -- they did do a -- a -- did have
2 an interview on that day with the press; right?

3 A I believe so. I think they caught me probably on the
4 way out of the detention center. They may have
5 called my office saying they wanted to talk to me and
6 somebody told them where I was.

7 Q Okay. So --

8 A I don't know exactly.

9 Q So, um, once again, your going to visit Brendan
10 was a newsworthy event?

11 A I -- was it -- I don't know. I didn't make the
12 decision. I -- these calls were all initiated by the
13 media.

14 Q Okay. Um, you had a -- it shows you had a phone
15 conference with TV-11? Um, do you know how long
16 that conference was?

17 A Probably very short. Five -- five minutes at the
18 most.

19 Q Okay. So it -- it's -- it's kind of bundled up
20 on your voucher here. The -- the phone
21 conference with TV-11 and your conference with
22 Brendan Dassey at the Sheboygan Detention Center.
23 And you got 1.4 hours. So you're saying maybe
24 you saw Brendan for about an hour and fifteen
25 minutes?

1 A I might have. I don't recall.

2 Q Okay. Well, does that sound about right? You

3 spent about an hour and fifteen minutes with him

4 so far? Or on this --

5 A On that --

6 Q -- date?

7 A -- particular occasion --

8 Q Yeah.

9 A -- that would be about the normal length. Brendan's

10 not real talkative, so...

11 Q Okay. Um, and -- and --

12 ATTORNEY FALLON: If I may -- excuse me,

13 Counsel. When he says an hour and fifteen

14 minutes, are we referring to April 3 or --

15 ATTORNEY DVORAK: Yes.

16 ATTORNEY FALLON: -- is that in -- out

17 of the hour and 40?

18 ATTORNEY DVORAK: Well, it's 1.4. It

19 says --

20 ATTORNEY FALLON: Well -- excuse me --

21 ATTORNEY DVORAK: -- goes into tenths.

22 ATTORNEY FALLON: -- 1.4. You're right.

23 ATTORNEY DVORAK: Yeah.

24 ATTORNEY FALLON: Okay. All right. I

25 just wanted to make sure that we're on the same

1 page.

2 ATTORNEY DVORAK: Yeah.

3 Q (By Attorney Dvorak) And it's at this point
4 where you first come upon Michael O'Kelly;
5 correct?

6 A I believe so. I think this may have been the time
7 Brendan made a second request for the polygraph.

8 Q Right. Once again, um, you go to -- you go there
9 to interview Brendan and Brendan tells you that
10 the March 1 statement and the statements that he
11 made inculcating himself were not true; right?

12 A I don't know. Didn't quite put it that way, but I
13 think he was kind of non-communicative. But he
14 definitely told me to get a polygraph again.

15 Q Well, did he -- did he tell you that -- on this
16 occasion is there any question in your mind that
17 he told you that he was innocent?

18 A He didn't use those words I don't recall, but --

19 Q Well, okay. Was the message that he communicated
20 to you was that he didn't do this?

21 A I think at that time, yeah, he said, I didn't do
22 this. I want a polygraph. It -- it sounded kind of
23 rote to me, but certainly I was going to --

24 Q So my --

25 A -- grant his request.

1 Q -- my -- my question to you is: Did, what
2 Brendan tell you, that he didn't -- he was not
3 involved in this? Was that the message that he
4 was telling you?

5 A Yes.

6 Q Okay. Whatever words he used, whatever the words
7 may have been, his message to you was, I'm not
8 guilty. I want a jury trial.

9 A He definitely didn't use the word jury trial. But he
10 said he wanted a polygraph.

11 Q Well, okay. I guess one flows from the other,
12 and maybe he didn't use the word jury trial, but
13 he did at least say --

14 ATTORNEY FALLON: Objection.

15 THE COURT: Yeah. Yeah. Keep the comments
16 the -- the judgment comments to yourself, Counsel --

17 ATTORNEY DVORAK: I'm sorry.

18 THE COURT: -- at this time.

19 Q (By Attorney Dvorak) And -- and tied in with
20 that was, uh, I want to take a polygraph test;
21 right?

22 A Yes.

23 Q Okay. So how did you come upon Michael O'Kelly?

24 A I did not know any polygraph examiners in the
25 Sheboygan area. Um, I knew one in Green Bay but he

1 had charged \$500. I knew the State Public Defender
2 would only authorize 350.

3 Um, so I just -- I did a search engine
4 for polygraph examiners in Sheboygan, and I think
5 it was on Superpages or something. One of those
6 internet -- an internet directory rather than
7 Google. And Mr. O'Kelly was about the only name
8 that came up.

9 Q Okay. And what -- are you saying -- okay. But,
10 in -- what made you decide to -- to contact
11 Mr. O'Kelly? And doesn't sound like there was
12 anybody else to compare him to --

13 A Correct.

14 Q -- is that what you're saying?

15 A Right. In that specific area. That would -- might
16 possibly be willing to work at the rate the State
17 Public Defender would pay.

18 Q Okay. So what did you do once -- and -- and did
19 you do any follow-up to check out his background
20 or anything?

21 A No.

22 Q Okay. Um, so you -- you saw him on Superpages or
23 wherever you made -- and saw that he did
24 polygraphs? You thought you'd give him a call
25 and see if he'd be willing to do this for 350

1 bucks?

2 A I don't know if I called --

3 Q (Unintelligible.)

4 A -- him. I think I e-mailed him. But told him what
5 the conditions might be. If he was interested, uh,
6 etc.

7 Q Okay.

8 ATTORNEY DVORAK: One second, Judge.

9 Can I have one second, Judge?

10 THE COURT: Go ahead.

11 Q (By Attorney Dvorak) I want to refer you to --
12 I'm sorry -- Exhibit 347.

13 A Okay.

14 Q The -- this is a -- a letter that you sent to
15 Brendan following your interview; right?

16 A Following the April 3 interview?

17 Q It's the same day --

18 A Correct.

19 Q -- as the interview --

20 A Yes.

21 Q -- right? Okay. And you tell Brendan that
22 you've located a polygraph examiner and that he's
23 coming. You also discuss some of the -- some of
24 the facts in the case.

25 I want to draw your attention to the

1 second to the last paragraph. And in the middle
2 of that paragraph you write Brendan:

3 "But, once again, the videotape is
4 pretty convincing that you were being truthful on
5 March 1. You need to stop thinking about who
6 benefits from what you say and just think about
7 what really happened.

8 If a judge or jury thinks you are lying,
9 cover up for Steve or yourself, you are writing
10 yourself a sentence to life imprisonment without
11 parole.

12 If you accept responsibility for what
13 you did and cooperate in Steve's case, at least
14 one of the Halbachs will ask Judge Fox to go
15 relatively easy on you."

16 Right?

17 A Correct.

18 Q Okay. Brendan, I just told you that he's not
19 guilty; right?

20 A Yes.

21 Q And you're sending him a letter saying, I don't
22 believe you?

23 ATTORNEY FALLON: Objection.

24 THE WITNESS: I --

25 THE COURT: Well, the letter speaks for

1 itself, Counsel.

2 Q (By Attorney Dvorak) And, um -- and the letter
3 also talks about --

4 ATTORNEY FALLON: My object -- just so
5 the record was clear, my objection was to the
6 form. I don't mind Counsel inquiring as to what
7 his stated intent. It's just that my question
8 was the form and the opinionation of the
9 question.

10 THE COURT: Objection is noted.

11 ATTORNEY DVORAK: All right.

12 Q (By Attorney Dvorak) Do you -- do you suppose
13 that -- do you suppose that might be part of what
14 Brendan had in mind? That and -- and the
15 messages he was seeing on TV part of what he had
16 in mind when Brendan wrote the letter to the
17 judge on June 30 asking for a new lawyer?

18 A I have no idea.

19 Q Okay. Now, um, let's see. You -- did you
20 have -- do you recall what your next conversation
21 was with O'Kelly?

22 A Whenever it was, it would have been on my invoice.

23 Q Okay. On April 4, um, the only work you do on
24 the case is a phone conference with somebody from
25 Inside Edition?

1 A Correct.

2 Q All right. Um, and on April 5, you travel to the
3 D.A.'s office to have a conference with Mr. Kratz
4 and to review some evidence; right?

5 A Correct.

6 Q Do you recall what you looked at?

7 A Uh, this was the stuff primarily pertaining only to
8 Steve. Pictures. Some other stuff that was --
9 pictures taken from surveillance air crafts.
10 Diagrams of the Avery property. Um, things seized
11 from Mr. Avery again. And pictures. Personal
12 pictures. Things like that.

13 Q What -- how -- how much volume of stuff are we
14 talking about that you looked at? Boxes? A --

15 A I would say --

16 Q -- box?

17 A -- three or four banker boxes worth of stuff.

18 Q Okay. Um, did you make copies of any of it?

19 A No. I just made some notes.

20 Q Okay. So you looked at it, made ~~some notes~~, and
21 moved on? Didn't make any copies?

22 A Correct.

23 Q Did you make an inventory of what was in there?

24 A No.

25 Q Um, and what did you talk to Mr. Kratz about on

1 that occasion?

2 A Probably just the procedures, progress of the case.

3 Nothing that I remember specifically.

4 Q Okay. There were -- there were no substantive

5 discussions about resolution of the case that you

6 recall?

7 A Not that I recall, no.

8 Q Any issues about discovery that you recall?

9 A Not that I recall.

10 Q Okay. Um, by the way, up until this point had

11 you retained an investigator?

12 A Not until after -- no, not until after the polygraph.

13 Q Okay. And you also had a phone conference with a

14 guy named Bob Healey?

15 A Yes.

16 Q Is that a -- a news person?

17 A Yes.

18 Q Okay. Did -- did that person know that you had

19 gone to the D.A.'s office? Do --

20 A No.

21 Q -- you remember?

22 A I don't think so.

23 Q Okay. The next day you spend .2 hours on a

24 letter to Brendan, and a half an hour in a phone

25 conference with -- or having, it appears,

1 apparently an in person conference with a news
2 reporter; right?

3 A Yes.

4 Q April 7 you got an e-mail from Mr. Kratz?

5 A Yes.

6 Q Um, I don't know what that is. Do you remember
7 what that was about?

8 A No.

9 Q Okay. You don't have a copy of that?

10 A No.

11 Q Um, and that was your only work on the case on
12 that day?

13 A I think so, yeah.

14 Q All right. Um, and on April 8 you do some legal
15 research. It says, Mishicot School District, an
16 e-mail. The -- the legal research. What was
17 that about?

18 A I think it would have been how to obtain Brendan's
19 records from the school district to offer them into
20 evidence at the suppression hearing.

21 Q Okay. And then you -- you sent an e-mail to a
22 psychologist and the teachers. I assume that
23 means at the school. The school psychologist?

24 A Correct.

25 Q Okay. April 11, um -- okay. Let's see 63.

1 The -- I -- I just have a question about Exhibit
2 63 if you can -- if you can look at that. That's
3 volume two. I'm not sure if you have that up
4 there, do you?

5 ATTORNEY NIRIDER: He does.

6 THE WITNESS: I do not.

7 Q (By Attorney Dvorak) Just to make it easier,
8 it's very short and my question's very short so
9 rather than take things apart. That's an e-mail
10 between you and Michael O'Kelly; right?

11 A I don't think it's a phone mes -- I don't think it's
12 an e-mail. Um --

13 Q Whatever it is, it's communication between you
14 and O'Kelly?

15 A I believe so. Some -- some kind of -- something I
16 needed -- I felt it needed documented for some
17 reason.

18 Q Okay. It's -- it's about your -- your visit with
19 O'Kelly; right? Or -- I'm sorry. O'Kelly's
20 going to give an information about where he needs
21 to be? It's -- it's an e-mail from O'Kelly to
22 you; is that right? Or a communication phone
23 message?

24 A I believe it's a phone message. Sometimes I get
25 messages from the -- the staff, and then I'll type

1 some more things on it for some reason or another,
2 uh, so I've got the information documented and
3 available, and then print it. That's --
4 Q Okay.
5 A -- apparently what this was.
6 Q There's the address of the detention facility.
7 There is a note there that says, "Dassey wants to
8 do it on Sunday morning." Which is Easter?
9 A Yeah.
10 Q Right? And -- and the "it", I assume, is the
11 polygraph test?
12 A I think Dassey was referring generically to the
13 defense team. Really, more accurately, O'Kelly, um,
14 rather than Mr. Dassey feeling Easter was a kind of
15 day he'd want to do a polygraph. I think it dealt
16 with O -- O'Kelly's schedule and needing to arrange
17 for the Sheboygan County Jail to let Mr. O'Kelly in
18 to do his polygraph.
19 Q Right. And that's why they have Captain
20 Schulte's (phonetic) phone number on there;
21 right?
22 A Correct.
23 Q Schielke (phonetic), rather?
24 A Yeah.
25 Q Okay. Did -- did you have contact with -- with

1 Schielke or did you somehow help set up the --
2 the conference or the polygraph test on Easter
3 Sunday?

4 A Yeah. We did a fax, or an e-mail, or something to
5 him saying, you know, Michael O'Kelly's on the
6 defense team. Like to do it then. Um, please let
7 him have a professional-type visit with Mr. Dassey.
8 Something like that.

9 Q Okay. So there was -- there obviously would need
10 to be some communication to alert them to the
11 fact that somebody was coming in, and that --
12 that -- that it was a member of the defense team,
13 so that they could have a contact visit; right?

14 A Correct.

15 Q Okay. April 12, um, it says meeting with
16 Synthesis Productions. What's Synthesis
17 Productions?

18 A That was Laurie Ricciardi. She was doing some kind
19 of documentary on this case. And I think that even
20 she -- I believe she's here today --

21 Q Okay.

22 A -- outside of here. And she wanted some -- wanted to
23 go into my personal background, and other stuff, um,
24 regarding what it was like to work on a case like
25 this.

1 Q All right. And you spent 2.9 hours with her;
2 correct? And -- and .5 hours you spent on other
3 issues related to the case; right? E-mail to
4 Kratz and Mike O'Kelly, .3 --
5 A Oh.
6 Q -- hours?
7 A On that particular day, yes.
8 Q Yes. And legal research on polygraph disclosure
9 .2 hours --
10 A Yeah.
11 Q -- correct? Okay. Um, you also -- that e-mail
12 to -- that you got from Mr. Kratz --
13 A Right.
14 Q -- I refer you to Exhibit 344.
15 A Got it. April 12, 2006?
16 Q Right. Now, in that e-mail Mr. Kratz is advising
17 you that he learned that plans were on the way to
18 have Brendan subjected to a polygraph
19 examination?
20 A Yes.
21 Q Right? Um, do you know how he had learned that
22 information?
23 A I can draw some inferences, but I don't personally
24 know it, no.
25 Q Okay. And you suspect that it may be that the

1 jail personnel may have alerted him to the fact
2 that somebody's going to be bringing polygraph
3 equipment into the jail?

4 A Quite likely.

5 Q Yeah. Okay. Had you given any thought, perhaps,
6 to seeking an order from the judge that -- that
7 the people in the Sheboygan County facility
8 not -- be ordered not to disclose that, uh,
9 information to the prosecution as much as its --
10 its -- it relates to attorney/client work
11 product?

12 ATTORNEY FALLON: Objection. Relevance,
13 speculation. And if there's an attempt at
14 impeachment, the first prong was never attempted
15 in the questioning of Mr. Kratz.

16 So it's procedurally deficient. It's --
17 it's irrelevant. It's immaterial. And it calls
18 for speculation as to what this witness thinks
19 what Mr. Kratz knew.

20 THE COURT: I didn't understand that to be
21 the question.

22 ATTORNEY FALLON: Well, then I'm missing
23 something. So maybe the question needs to --

24 THE COURT: Why don't --

25 ATTORNEY FALLON: -- be --

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THE COURT: -- you re-ask --
ATTORNEY DVORAK: Yeah. I --
THE COURT: -- the question.
ATTORNEY DVORAK: -- I think I can do
this and resolve his -- his problem.

Q (By Attorney Dvorak) Um, you didn't tell the
prosecution that you were going to have Brendan
take a polygraph test; correct?

A Correct.

Q The information did not come from you; right?

A Correct.

Q Had you told anybody else?

A No.

Q So the only person -- well, all right. Um, so
there's a -- a -- a reasonable inference that you
were drawing that this information came from the
people in the facility?

A Right.

ATTORNEY FALLON: Still objection.
Irrelevant, immaterial to the issue at hand.

THE COURT: I -- he's answered the
question. I'm going to overrule the objection.

ATTORNEY DVORAK: Thank you.

Q (By Attorney Dvorak) Um --

A And -- and I did not think about a protective order,

1 no.

2 Q Okay. Did you respond in any way to Mr. Kratz's
3 e-mail? Specifically, I guess, the e-mail covers
4 a couple of issues so let me just deal with the
5 polygraph issue first.

6 A Sure.

7 Q Did you -- did you contact him in any way to --
8 to discuss his concerns about polygraph?

9 A I -- I don't believe I did. If I did, it would be on
10 the -- on the voucher.

11 Q Okay. Now the other issue that Mr. Kratz raises
12 in this e-mail is his concern about pretrial
13 publicity that you've chosen to engage in and --
14 and cites the rule. Um, did you respond to him
15 about that?

16 A I don't think I responded to him, no.

17 Q Okay. Did you read the rules that he had cited?

18 A Yes.

19 Q You were familiar with the rule before he cited
20 it?

21 A Yes.

22 Q Okay. And are you sug -- you're saying that you
23 didn't have any concerns that you -- your
24 contacts with the press implicated the -- the
25 rules relating to attorneys con-- discussing

1 pending matters with the press?

2 A I thought the way that I was doing it, primarily in
3 terms of process and not as to what specifically we
4 were doing in the case, was legally permissible.

5 Q Also, on this day, you got word that someone from
6 Brendan's family was -- might have been able to
7 post bail, or talking about posting property as
8 surety; correct?

9 A Yes.

10 Q And did you consider that to be good news?

11 A I thought it was worth a try.

12 Q Okay. You didn't see any problems with it?

13 A Well, I mean, property bonds are often frowned upon,
14 and I think Avery's attempt to do it had already been
15 rejected by Judge Willis. Um, but I thought we'd at
16 least give it a try for Brendan and see if it -- it
17 would work out.

18 Q All right. And -- and there -- the -- um, on
19 April 13 you have a phone conference with
20 Angenette Levy, .2 hours; right?

21 A Right.

22 Q And a phone conference with B. Janda? That's
23 Barb; right?

24 A Correct.

25 Q Okay. What did you talk to Ms. Levy about?

1 A I think she just wanted to know if there was anything
2 new in the case. A lot of the calls were that day,
3 sure. And I'm not sure what I talked to her about.
4 I -- I know positively I didn't tell her about the
5 polygraph test. But other than that I can't really
6 recall.

7 Q All right. Were you aware -- I mean, you're
8 aware up to this point that -- that Barb has some
9 concern about your representation and -- and
10 things that you're saying in the press. Did you
11 get any concerns? Expressions of concern from --
12 from Barb at this point about that?

13 A I don't recall. I don't recall getting any, no.

14 Q Okay. Um, on April 14 -- take a look at Exhibit
15 350.

16 A I see it. Yeah.

17 Q It's -- it's relaying information about the fact
18 that the polygraph test is coming up in two --
19 couple of days. And you make mention of a recent
20 discussion with your mother, um, that people have
21 the impression that what you're trying to do in
22 the case is to get a quick plea, and drop it,
23 and -- right?

24 A Now that you refresh my recollection, I do recall she
25 said something that her relatives were telling her

1 that that's what I wanted to -- to do in the case.
2 Something like that.

3 Q And, in fact, that's what the message that you
4 had been trying to send to them by your talking
5 to the press?

6 A No.

7 Q You testified earlier on; right?

8 A That's not the message I was trying to send about a
9 quick plea and drop it.

10 Q Okay. Well, but you -- you did indicate that you
11 were trying to prepare the family for the fact
12 that that may well be what you're going to end up
13 doing in this case; right?

14 A Let them know about all the options that are -- are
15 considered. Everything ranging from, you know, a
16 jury trial to a -- a -- a plea agreement. Right.

17 Q At -- at -- at this point never once did you
18 mention in the press that Brendan said that he is
19 not guilty; right?

20 A Correct.

21 Q And that -- that -- that he's not guilty and
22 intends to fight the charges?

23 A I did not say that. That's correct.

24 Q Okay. Which is what his position, in fact, was,
25 up to this point; correct?

1 A To look at -- you could look at it that way, yes.

2 Q Okay. You -- you indicate that -- also, by the
3 way, you indicate that the -- you're not going to
4 disclose the results of the polygraph test to
5 Barb, um, or that Mr. O'Kelly is not going to,
6 but that he will disclose them to you; right?

7 A Right.

8 Q Okay. Um, you've indicated that your primary
9 focus at this point in that letter is on the
10 motion to keep the statements out of evidence
11 and -- right?

12 A Correct.

13 Q And -- and what you've done so far is -- is
14 talked to Brendan twice, listened to the tapes
15 and summarized them, and read a couple of cases?

16 A And reviewed the additional discovery that was at the
17 D.A.'s office and in my possession.

18 Q Okay. Which you did not see to be relevant
19 toward any of Brendan's statements?

20 A Which -- what are you referring to on that? The
21 stuff --

22 Q No, I'm just -- I guess I'm just saying back what
23 you had already said. That you didn't really
24 view any of this stuff as being terribly
25 significant to Brendan's case. He didn't bother

1 to copy it? He didn't bother to take it back?
2 He left it in the D.A.'s office?

3 A At that point --

4 Q You didn't see any significance to -- to -- to
5 much of what they had?

6 A I didn't see it as insignificance, independent, or in
7 addition to what was in narratives -- narrative forms
8 describing it in some of the discovery.

9 Q Okay. So you -- had you, in -- in -- in the
10 course of analyzing this statement, considered
11 possibility of contamination from outside sources
12 or from interrogators at -- at this point?

13 A I certainly considered it as I watched it, and, also,
14 when I went over the -- the transcript again. Um,
15 from my observations of it I didn't see contamination
16 as being there.

17 Q Um, and you -- you -- you indicate that you also
18 analyzed the statement for purp -- for **Miranda**
19 purposes?

20 A Yes. The whole, you know, (unintelligible) the
21 rights advisals (phonetic) down through the end of
22 it, correct.

23 Q Okay.

24 ATTORNEY DVORAK: Um, can we play -- I
25 believe it's chapter three to -- and I guess I

1 don't need the whole thing, but... I'm just
2 going to read it. Um, what exhibit -- 315.
3 Um --

4 THE WITNESS: That the transcript of the
5 interview maybe?

6 Q (By Attorney Dvorak) Yeah. Yeah, 315.

7 A Okay.

8 Q Um, item two. And this is page 13. Sorry.

9 A The first word on there is, up to this thing?

10 Q No.

11 A Oh, thirteen. Excuse me. Okay. I see there's
12 pages. The number's on the bottom. Okay. Go ahead.

13 Q Okay. Yeah. Page thirteen. You got it?

14 A Right.

15 Q Chapter three, **Miranda**?

16 A Right.

17 Q Okay. Um, and we're talking about the 2-27-06
18 Two Rivers Police Station video, okay?

19 A Okay.

20 Q All right. It says, uh -- and --

21 ATTORNEY FALLON: Your Honor, I'm going
22 to object again. And if the Court will permit
23 this as a standing continuing objection, fine.

24 But I -- the State continues to object
25 to questioning regarding his statement, which was

1 never introduced into evidence. And that's what
2 this questioning is about, February 27, 2006.

3 ATTORNEY DVORAK: It's relevant, Judge,
4 to the motion to suppress. The issue of
5 effect -- or duty of loyalty with respect to the
6 motion to suppress.

7 ATTORNEY FALLON: Absolutely not. We
8 take strong issue with that, and we're ready to
9 debate that right now.

10 Plus -- well, I'll wait. Unless you
11 want more argument.

12 THE COURT: No. Um, I'm going to sustain
13 that objection.

14 ATTORNEY DVORAK: Um -- okay.

15 Q (By Attorney Dvorak) Let me ask it this way:
16 The -- were you aware or had you come to the
17 conclusion that the **Miranda** warnings that were
18 given to Mr. Dassey on February 27, 2006 at the
19 Two Rivers Police Station was illegally
20 deficient?

21 A I didn't come --

22 ATTORNEY FALLON: Objection, again.
23 Same issue. Same question.

24 THE COURT: Well --

25 ATTORNEY FALLON: Illegal deficiency is

1 a -- is a question of law for the Court. Well,
2 it's a mixed question of law and fact. But...

3 THE COURT: I'm going to overrule the
4 objection. He can answer that. I'm not interested
5 in hearing any more about this.

6 ATTORNEY DVORAK: Okay.

7 THE COURT: Answer it if you can.

8 THE WITNESS: Sure. The answer is that
9 I don't think I carefully looked at the issue
10 regarding February 27 as a **Miranda** warning-type
11 issue because the State had indicated that it
12 wasn't going to use that as evidence. And the
13 only thing, then, that was the subject of the
14 suppression motion was the March 1 statement,
15 which I, of course, did go over quite carefully.

16 Q (By Attorney Dvorak) Okay. The -- let me --
17 I -- let me just ask you this question then: Had
18 you looked at the sufficiency and made any
19 determination as to the sufficiency of that
20 February 27 **Miranda** advisal?

21 A I -- I'd say no.

22 Q Okay. If it was -- if it were not sufficient, do
23 you think -- well -- hold on. That's fine. I'll
24 move on. On April 16, Mr. O'Kelly polygraphs
25 Brendan, um, and you spend .3 hours on the phone

1 with him. Did Mr. O'Kelly tell you what the
2 results of the polygraph were?

3 A Yes.

4 Q And what did he tell you the results of the
5 polygraph were?

6 A He said the results were inconclusive.

7 Q Okay. And did you at all relay that to Barb at
8 that time?

9 A I doubt it. I don't think I did.

10 Q At -- at -- at that time do you recall whether or
11 not Michael O'Kelly had discussed with you or
12 mentioned to you that Brendan was wanting to get
13 a new lawyer?

14 A I don't recall him -- I don't recall that, no. At
15 some point he did -- at some point he did warn me
16 there might be problems. I'm not sure where that
17 fell in the timeline.

18 Q Um, do you have Exhibit 94 in front of you?

19 A Ninety-four?

20 Q Yes.

21 A No, I do not. I think it's in a -- it must be in
22 volume two. I think the Judge has that one.

23 Q I'll just give him this real quick. It's rather
24 lengthy. Um, and what I'd like you to do is just
25 tell me if you've ever seen anything like that

1 before?

2 ATTORNEY FALLON: Counsel, what Exhibit
3 again?

4 ATTORNEY DVORAK: Ninety-four.

5 ATTORNEY FALLON: Thank you.

6 THE WITNESS: Right. That was -- that
7 was a form given to me by Mr. Kelly (sic) after
8 the results of the polygraph exam and his
9 interview with Brendan.

10 Q (By Attorney Dvorak) Um, and now prior to
11 interviewing Brendan, did you talk with
12 Mr. O'Kelly about inter -- your -- you know, what
13 was going to happen or what you were looking for
14 from his meeting with him on that day?

15 A I related to Mr. O'Kelly simply -- I wanted to send
16 him a copy of the Complaint, and that the issue in
17 the case was or was not Brendan present when all
18 these things had -- had occurred.

19 So it was a very relatively easy issue
20 to polygraph. It's not a question of admitting
21 to the act and intent or something like that.

22 So I wanted -- I said, you know, look at
23 it. See what -- if he -- how he polygraphs.
24 Basically on the issue if he was there, did he
25 participate in some way in burning the corpse, or

1 assisting in the homicide or a sexual assault.

2 Q Right. And did you convey to him the -- the
3 potential for plea agreement down the road?

4 A At that time, no.

5 Q Did you convey to him at all your sense that the
6 statement that he gave was truthful?

7 A I think I was non-committal.

8 Q Okay. Um, which is -- which is more than what
9 you had told Brendan then?

10 A I was non-committal to Mr. O'Kelly 'cause I wanted to
11 avoid, first of all, contaminating the -- the
12 polygraph process. I don't want him to do a
13 polygraph, giving me predetermined results. I wanted
14 it to be -- to be accurate.

15 Q Okay. And what was your reaction to the
16 polygraph results?

17 A After --

18 ATTORNEY FALLON: Objection. Relevance.

19 THE COURT: Overruled.

20 THE WITNESS: Okay. After O'Kelly told
21 me that it was inconclusive, he made some comment
22 to the effect that he thought that Mr. Dassey was
23 a kid without a conscience or something. Um, so
24 I -- I guess took from that I really was -- was
25 non -- non-determinative.

1 Q Okay. So -- so, now, Mr. O'Kelly has told you
2 that -- essentially that Brendan Dassey's a
3 sociopath?

4 ATTORNEY FALLON: Objection to the
5 characterization.

6 THE COURT: Yeah. That -- that's
7 sustained.

8 ATTORNEY DVORAK: I'm sorry? Oh. Okay.

9 Q (By Attorney Dvorak) Um, all right. Well,
10 knowing that -- that that's Mr. O'Kelly's view of
11 the case, you then went on to hire him as your
12 investigator; right?

13 A Yes.

14 Q By the way, did you believe that that was the
15 issue in the case?

16 THE COURT: That what was the issue?

17 ATTORNEY DVORAK: I'm sor --

18 Q (By Attorney Dvorak) The -- you -- you -- the
19 issue that you had talked about. The -- the --
20 whether or not Brendan was there, I think you
21 said. Is that right?

22 A Correct. Either -- right. I thought the case was
23 pretty much a case of was -- based on what Brendan
24 has said, was he there? And did he participate in
25 some way in aiding and abetting, uh, Mr. Avery? Or

1 was he not involved in the offense whatsoever?

2 Q Okay. Well, this -- the -- he had -- he had
3 all -- always admitted to you that he was by the
4 fire; right?

5 A Right.

6 Q Okay. That was -- that was not an issue?

7 A Right.

8 Q Okay. So I guess one other thing that I -- I
9 wanted to touch on at this point about your
10 preparation for the **Miranda** hearing that you had
11 con -- that you -- did you at all consider any
12 custody arguments? Custodial statements, that
13 is?

14 I mean, as I recall, you -- you waived
15 **Miranda** issues and I'm just wondering whether or
16 not you looked at whether or not any argument
17 could be made that he was in custody at the time
18 some of these statements were made, particularly
19 February 27?

20 A I didn't deal at all with February 27 because it
21 wasn't going to be used by the State. Only thing I
22 was concerned about was -- was March 1.

23 Q Okay.

24 A Um, and so March 1, it was a question of the overall
25 circumstances of that particular statement.

1 Q So if there was -- if there were problems with
2 the February 27, you're saying you -- you -- you
3 didn't think that that would impact the
4 legality -- you never considered whether it would
5 impact the legality or the admissibility of the
6 March 1 statement?

7 A Oh, I certainly considered it, but it was two days
8 later, independent **Miranda** warnings, other events. I
9 thought the intervening events were so strong that
10 any spillover or prejudice was probably nonexistent.

11 THE COURT: Counsel, let's stop here.
12 We'll take an afternoon recess of 15 minutes. I'd
13 like to see counsel in chambers as well.

14 (Recess had at 3:00 p.m.)

15 (Reconvened at 3:15 p.m.)

16 Q (By Attorney Dvorak) Mr. Kachinsky, I'd like you
17 to look at a transcript of the motion hearing on
18 February 4. Drawing your attention to page 110.

19 Um, the -- starting with the second to the last
20 paragraph.

21 A I believe it's May 4.

22 Q May. What did I say?

23 A February. I pay attention.

24 Q I meant May 4. I'm sorry. I think it's
25 important to listen to specific wording from

1 there.

2 A That's Judge Fox's statements or mine?

3 Q Um, I believe it's yours.

4 ATTORNEY FALLON: What page number,

5 Counsel?

6 ATTORNEY DVORAK: One-ten was it?

7 THE WITNESS: One-ten.

8 Q (By Attorney Dvorak) I believe it's your

9 argument.

10 A Okay.

11 Q All right. Does that refresh your recollection

12 as to whether or not you made any arguments and

13 considered February 27 statement?

14 A It does.

15 Q Okay. And did you?

16 A Yes, in very much of a -- a summary fashion.

17 Q What you say in that argument is that you need to

18 consider the February 27 statement because it's

19 part of a continuum of the police investigation

20 in this matter?

21 A To some extent, yes.

22 Q Yes. Okay. Thank you. Um, the -- the next day,

23 February -- April 18, the -- you -- this is now

24 your third visit to Mr. Dassey; correct?

25 A Yes.

1 Q Okay. Um, you spend about an hour and ten
2 minutes with him?

3 A Or -- well, 1.1 is actually an hour and six but...

4 Q Okay.

5 A Probably an hour of time getting in and out of the
6 jail and so forth, yes.

7 Q Sure. Okay. We don't have any notes of that
8 interview. What did you talk about?

9 A I think I talked to him about the status of where the
10 case was at so far. About any additional facts might
11 need regarding the suppression, uh, issue. About
12 trying to get a bond motion in for a property bond.
13 Things of that nature.

14 Q Okay. Um, and based on your interview with him
15 then, he was still at that time maintaining his
16 innocence; correct?

17 A I don't think we talked about that issue --

18 Q Okay.

19 A -- at that time. But there hadn't been any sudden
20 change of heart or anything.

21 Q All right. The -- the next day, April 19 -- by
22 the -- um, who is Joel Christopher?

23 A Uh, he is a reporter for the Appleton Post Crescent.
24 I think he's the head of the reporting bureau or
25 division. Something like that.

1 Q All right. So on that day you spoke to ten
2 members of the press, and Michael O'Kelly, and
3 got a message from Brendan Dassey; right?
4 A Correct.
5 Q On April 20, are -- on April 20, you also had a
6 couple of press conferences?
7 A I don't think they'd be called press conferences
8 but...
9 Q Well, okay. You had -- you talked with the press
10 again. I refer your attention to 327.
11 A I'm lost where you are.
12 Q Oh. No --
13 A Exhibit 327?
14 Q Yes.
15 A Okay.
16 Q I'm sorry.
17 A All right. I don't know if that was a -- oh, yeah, I
18 believe I did. Now that I re-read that, I did say
19 something like that, sure.
20 Q Okay. And -- and, also, on 328, an interview
21 with Fox-11?
22 A That's Exhibit 328 instead of March 28, but, um --
23 Q Thank you.
24 A Yes. I -- I don't know if -- there might have been a
25 short interview, yes.

1 Q Okay. Have you reviewed that?

2 A The one -- Exhibit 328?

3 Q Yeah.

4 A Yes. And I'm not sure. Sometime during this case I
5 took -- did what I knew that Avery's attorneys were
6 doing. Dean Strang in particular. I started sending
7 copies of my motion to -- motions and other
8 pleadings, uh, to the media so that they get the
9 story straight, and try to reduce the number of
10 incoming phone calls, and things like that.

11 I know Dean Strang was doing it at that
12 time. That's why I figured that was a good idea
13 that might -- that might work.

14 In fact, a article in the *Wisconsin*
15 *Lawyer* about four months ago or so suggested some
16 of the things that I actually did in this case.

17 Q Okay. So what you're saying is that you -- you
18 had picked up on the idea that rather than
19 talking to them you would send motions to the
20 press so that they would have it.

21 A Right. I would do it at such a time as I knew that
22 they had already gotten the clerk of courts here
23 because I didn't want Judge Fox to hear about
24 something before it got to the -- got here.

25 But I tried to time it so that they

1 would get it the same morning that it came here.
2 So that way they'd stop asking questions. 'Cause
3 they were monitoring this case on CCAP.

4 Q Okay. Now, you -- you had a phone conference
5 with Michael O'Kelly on that day, also. And
6 I'm -- I'm wondering, um, uh, what -- what you --
7 what -- what your -- what the direction was for
8 Mr. O'Kelly at this point?

9 A I really don't recall.

10 Q Okay. On -- on -- I want to take you up to 4-23.
11 There's a reference here to an e-mail from Kra --
12 Mr. Kratz. Do you recall what that was about?

13 A I do not.

14 Q All right. You had -- on April 24, you had
15 contact with five members of the media; right?

16 A Um, actually there were three. A. Levy is twice on
17 that day.

18 Q Okay. Um, there -- there's also mention in there
19 of an e-mail from Mr. Kratz -- from Mr. Kratz and
20 to Mark Wiegert. Do you know what that was
21 about?

22 A I'm not sure if this was the time, but there was
23 certainly some discussion at some point of making the
24 March 1 video available for Barb Janda or other Avery
25 family members to view. But I'm not sure if that's

1 what this was about or not.

2 Q And to what end?

3 A I think it was just to show them how convincing it
4 was and, perhaps, affect the advice they were giving
5 Mr. Dassey.

6 Q Yeah. Um, and the advice you were giving to
7 Mr. Dassey at that point was that his case was
8 pretty much hopeless and that really what he
9 ought to be doing here is focusing on a guilty
10 plea?

11 A I think I really was strong -- more strongly in that
12 direction once the decision was made on the motion to
13 suppress. That was our -- basically our only hope,
14 in my opinion, based on the evidence available to
15 have an -- to acquittal. There was no -- the
16 confession was suppressed, the State would probably
17 have to dismiss the case for lack of evidence as far
18 as I knew.

19 Q Right. And -- and you were making that known to
20 the press. The fact that if -- if the Judge
21 suppresses this evidence, that Dassey may well
22 walk. Mr. Dassey may well walk out the door?

23 A I believe so, yeah.

24 Q Um, on -- let's see. Four. Some of the -- I
25 mean, were you aware that Mr. O'Kelly went out

1 to -- what's St. John's Church? What's the
2 significance of St. John's Church in this case?

3 A Which, uh --

4 Q April 24. Um, it's not in your notes. I'm just
5 asking a general question. What is the
6 significance of St. John's Church?

7 A Offhand I can't remember.

8 Q Okay. Does that have anything to do with Teresa
9 Halbach?

10 A I -- I never followed the end of that case that
11 closely. It might have.

12 Q If -- if he went out to St. John's Church and
13 took a photograph of St. John's Church, do you
14 have any idea why he might do that?

15 A Um, yes. That would be for the purpose of, perhaps,
16 persuading Mr. Dassey to reconsider his position that
17 he didn't commit the crimes he was charged with.

18 Q Okay. So at this point, then, Mr. O'Kelly had
19 given you his opinion about Mr. Dassey. You had
20 conveyed your opinion to the Dassey family, as
21 well as to Brendan, that they did not believe
22 his -- his claim of not being involved in this.

23 Uh, and you at this point were setting out to try
24 and convince him otherwise? Did I summarize --

25 A Yeah, I -- I believe that would be a fairly accurate

1 summary.

2 Q Okay. So maybe St. -- St. John's Church did have
3 something to do with Teresa Halbach?

4 A I -- I -- it might have.

5 Q Okay. Um, on April 25, there's a contact with
6 eight members of the press?

7 A That's correct.

8 Q And that's the only thing you did on that day,
9 other than review Mr. Avery's motion for
10 adjournment; correct?

11 A Well, there was also the e-mails from Mr. Kelly.

12 Q Okay. And -- and that took two-tenths of an
13 hour? Those two e-mails?

14 A Right.

15 Q Um, you got a -- an e-mail from -- from Dean
16 Strang, um, as well as one from Mr. O'Kelly, um,
17 and in -- in -- in that e-mail you -- you thank
18 Mr. Strang for sending information regarding
19 false confessions, or at least stuff that
20 Mr. Buting had sent to you; right?

21 A I did.

22 Q Yeah. Was -- was there anything new? Was there
23 any new information that you didn't already know
24 about confessions in there that you recall?

25 A I read it, and I tried to correlate it to the known

1 facts related to Mr. Dassey. I mean, I thought it
2 was interesting. I didn't think it was persuasive.

3 But I thought that if Dassey rejected my
4 advice and decide to go to trial it certainly
5 would be useful material.

6 Q Okay. But there's no doubt that the focus of
7 your investigation and your proceeding at this
8 point is -- is to convince Mr. Dassey of the
9 futility of doing that.

10 A Well, I'd also previously, you know, reviewed
11 partic -- particular emphasis on the timeline, and at
12 least one witness that somebody had asked me to talk
13 to. I believe it was a -- an employer that had
14 called the Dassey household.

15 So I also at least looked at the -- the
16 alibi possibility as -- as a -- as a defense.
17 But I concluded that it wasn't going to work very
18 well. That they were not very convincing
19 witnesses.

20 So, yeah, the focus was trying to
21 convince Mr. Dassey that this is what the best
22 thing for him to do was.

23 Q So -- so you had interviewed a witness then?

24 A At least one. I think it --

25 Q Yeah.

1 A -- was Mr. Connerly (phonetic).
2 Q Okay.
3 A I may have misspelled his name on the slip.
4 Q All right. Um, on April 27 -- you don't have
5 this here, but there was an e-mail that Mike
6 O'Kelly sent you? It's Exhibit 64.
7 A That's a volume two item again?
8 Q Yes.
9 A Okay. I see it. April 27. Right.
10 Q Okay. Had -- you recall receiving that and
11 reading that?
12 A Yes, I do.
13 Q Okay. And this is a report from Michael O'Kelly
14 about the work that he's been doing on behalf of
15 Brendan; correct?
16 A Correct.
17 Q And what he's -- what he's saying in here is that
18 he's in the process of -- of -- he's describing,
19 first of all, going out to the property and --
20 and rather comically expressing the reaction of
21 the Avery family as running around. It was like
22 a field mice watching for a cat, is the way he
23 describes it; right? And that's the second
24 paragraph -- first full paragraph on the second
25 page?

1 A Right. That's his description.

2 Q Okay. Um, he then -- two paragraphs down from

3 that I have Barb collecting information regarding

4 Brendan's medical, educational, family history so

5 we can begin assimilating the mitigation

6 information for sentencing and penal placement?

7 A Right.

8 Q Okay. The focus at this point was on sentencing.

9 That's what Mr. O'Kelly's doing; right?

10 A Well, that was part of what he was supposed to do,

11 yes.

12 Q Okay. Well, and the other thing he was doing was

13 developing -- trying to develop information that

14 the State could use; right?

15 A I --

16 Q Against Mr. Avery? Correct?

17 A Correct.

18 Q Yeah. 'Cause he talks about developing inside

19 information that in the immediate days after

20 Terese (sic) was murdered, that Earl moved both

21 the Suzuki and her van to the boneyard.

22 And he's concerned that evidence is

23 going to be degraded and/or disposed of in the

24 crusher by the Averys.

25 Um, he says, it's clear in the discovery

1 detectives are quietly asking about the Suzuki
2 and trying not to sound an alarm for fear of
3 losing the Suzuki and its possible evidentiary
4 contents.

5 Now, this is the knife that we're
6 talking about; right?

7 A Right.

8 Q Is that what he was thinking?

9 A I believe so.

10 Q Yeah.

11 A I don't know what he was thinking but --

12 Q Yeah.

13 A -- what he wrote.

14 Q Okay. That's what your understanding was. So
15 he's out looking for -- for evidence? Um --

16 A Right.

17 Q Okay. Um --

18 A Giving me options.

19 Q This possible linking evidence and Brendan's
20 truthful testimony may be the break-through that
21 will put their case more firmly on all fours.

22 It says, uh, is there a way that we can
23 secure the Suzuki and protect them for the
24 prosecution in Avery's case? And can we obtain
25 an -- an SDT to secure both of those items?

1 Right?

2 A That's what he wrote.

3 Q Okay. He's looking for you to -- to help him,
4 um, get a -- a -- some kind of search warrant or
5 something to -- to seize -- or an order that'll
6 allow him to seize that stuff so they can inspect
7 it?

8 A That was -- that's what he was asking for, yes.

9 Q Yeah. Okay. And then there's a -- the next
10 paragraph, something I -- I -- grammatically I
11 have a problem with, but he says, I am not
12 concerned with finding connecting evidence
13 placing Brendan inside the crime scene as Brendan
14 will be the State's primary witness.

15 So, in other words, he's not concerned
16 that if he's going to -- he's going to come
17 across evidence that -- against Brendan that's
18 going to nail Brendan, he's not worried about
19 that?

20 A He didn't --

21 Q Right?

22 A He didn't think that it was available or something.
23 You'd have to ask him what he was thinking.

24 Q Sure. Fair enough. This will only serve to
25 bolster the prosecution. It will actually

1 benefit the State if there's evidence attributed
2 to Brendan, it will corroborate his testimony and
3 color him truthful; right?

4 A That's what he wrote.

5 Q Okay. Well, did you -- did you tell him to stop
6 doing that?

7 A No, I didn't tell him to stop. He --

8 Q You had --

9 A -- was --

10 Q You had --

11 A -- providing options.

12 THE COURT: Let him finish.

13 ATTORNEY DVORAK: Sorry.

14 THE WITNESS: It was his job to provide
15 the options and I would make the decision whether
16 we do it or not. These ones, in particular, I
17 don't think we ever did.

18 Q (By Attorney Dvorak) Okay. You had his blessing
19 to go in this direction?

20 A Right. See what he could come up with.

21 Q Right. And --

22 A I was trying to control his number of hours. That
23 proved to be a real problem but...

24 Q Um, and -- and up until this point Brendan's
25 position to you is that he was not guilty?

1 A Yes.

2 Q Okay. And then he goes on in the next paragraph
3 about salvaging Brendan's future and, um, and --
4 and gathering mitigating information; right?

5 A What he wrote.

6 Q Okay. Um, he has a curious statement here. If
7 the detectives were trained in linguistic
8 analysis, they would have arrested Brendan close
9 to when they did Steve.

10 Do you -- did you have a discussion with
11 him about what he was talking about?

12 A No.

13 Q Okay.

14 A I didn't discuss it with him, no.

15 Q Okay. And, um, he was also going to try and
16 collect a wooden spoon that Barb had apparently
17 used to beat Brendan with when he was a little
18 kid?

19 A That's what he said.

20 Q Okay. He also says, I like how you practice law
21 and defend your client. I enjoy working with an
22 ethical defense attorney who is not underhanded
23 and plays hide the ball. You guys were a good
24 team.

25 A I guess I had -- I had his respect. I certainly had,

1 also, concerns that he was, at times, out of hand,
2 especially on the expenditure of -- of hours. It was
3 going way over what was authorized, and I -- it was
4 clear to him that if it wasn't authorized he wasn't
5 going to get paid.

6 Q Okay. Fair enough. Um, but his actions were
7 authorized by you? One of the things that he
8 billed for?

9 A I gave him a general direction to investigate. Come
10 up with whatever he could come up with. What was
11 going on with the Avery family. If there was
12 anything that might support or detract from potential
13 alibi. Those were the main directions I wanted him
14 to look at.

15 Q All right. On May 1, you have a -- and this is
16 a -- a hand-written note that you have. And I'll
17 just ask you, there's a -- a note on a -- on one
18 of your pieces of paper that says, psych on
19 Branden (sic), with a question mark. Do you
20 recall that? Look at 361. I'll just -- let's
21 just do it that way. Maybe that will refresh
22 your recollection.

23 A Okay.

24 Q Um, do you know what you were thinking about when
25 you wrote that?

1 A I believe what this is, is a number -- is a -- notes
2 that I took during a conversation with O'Kelly
3 because it makes reference to when he would be
4 unavailable.

5 Q Okay. Now --

6 A He may have -- may have talked about whether or not
7 we should have a psychiatric or psychological
8 evaluation done.

9 Q And that would be for the purposes of the
10 sentencing I take it?

11 A I believe -- I'm not sure what the purposes were
12 going to be. I -- I guess. I don't remember.

13 Q Okay. Um, but it wasn't -- didn't have anything
14 to do with the motion to suppress?

15 A I don't believe so, no.

16 Q That's like three days away?

17 A Right.

18 Q Yeah. Okay. Um, and on May 3, um -- or on May
19 2, you -- you file a reply to the D.A.'s memo?
20 You have a phone conference with the judge and,
21 uh, Mr. Kratz followed up by an e-mail? And then
22 you talked to the press, um, on May 3; is that
23 right?

24 A There was a short phone conference with Angenette
25 Levy and with Laurie Ricciardi. I'm not sure what it

1 was.

2 Q Okay. I -- I was --

3 A I didn't call them.

4 Q I was -- I was summarizing May --

5 A Sure.

6 Q -- 2. But -- yeah. Okay. And then I --

7 A The 2nd. Yes.

8 Q Yeah.

9 COURT REPORTER: One at a time, please.

10 ATTORNEY DVORAK: Oh. Sorry.

11 THE WITNESS: Yes.

12 Q (By Attorney Dvorak) Okay. And on -- on May 3,

13 again, there's a -- a -- an e-mail to O'Kelly.

14 You review a Strang motion. Two phone

15 conferences with members of the press. And you

16 reorganize your file for the hearing.

17 The phone conference with Ricciardi and

18 reorganizing your file, uh, for the hearing is --

19 accounts for half an hour; correct?

20 A Right.

21 Q And so your billing records to this day

22 accurately summarize the preparation that you did

23 for the hearing on May 4?

24 A Yes.

25 Q By the way, you stipulated to the **Miranda**

1 warnings issue. Did you ever talk to Brendan
2 about that?

3 A I don't recall if I did or not.

4 Q Okay. Um, in -- in -- did you, as part of the
5 **Miranda**, or as part of the -- the motion to
6 suppress, did you consider any of the police
7 tacks -- uh, tactics that may have negated the
8 **Miranda** warnings?

9 A Not as they related to **Miranda**. I did as they
10 related to voluntariness as the memory items I filed
11 indicate.

12 Q Okay. And how much time did you -- you called
13 Barb at the hearing; right?

14 A I did.

15 Q And when did you talk to Barb about that hearing?

16 A Several times before it was conducted. Not for very
17 long periods of time. I know I talked to her -- I
18 was undecided whether to call her.

19 I was kind of reluctant to call her,
20 but, uh, finally decided, I think, a day or two
21 before the hearing to do it because she would
22 have the best knowledge from being Brendan's
23 mother for all of his natural life as to whether
24 or not he was suggestible.

25 I thought, though, the primary evidence

1 as to the suppression was the -- the tape,
2 itself, for three-and-a-half hours, which the
3 Judge had already seen.

4 Q Right. Right. And when you asked her the
5 question about suggestibility she seemed to
6 answer -- it was kind of nonresponsive. Do you
7 remember that?

8 A I do.

9 Q Yeah. Do you -- do you think she even knew what
10 the word "suggestibility" meant?

11 A I -- I didn't know what the -- the problem was 'cause
12 I talk -- used the word "suggestible" and things like
13 that in previous conversations with her and she
14 seemed to know what it was so I just quit while I was
15 ahead.

16 Q Yeah. And there's -- I'm just skimming back, uh,
17 just even the last -- maybe the last couple of
18 pages on this, and there's no indication, at
19 least from April 26 to the present, that you had
20 talked to Barb?

21 A Probably not. April 26, that's --

22 Q Through the date of the hearing.

23 A That sounds about right.

24 Q Yeah. Okay. And I don't know how -- I'm not
25 going to go back and figure it out. But at least

1 from that period of time you never talked to
2 Barb?

3 A I don't believe so.

4 Q Okay. Um -- I want to -- on -- on May 5, the day
5 after the hearing, um, I want to refer you to
6 Exhibit 338.

7 A Okay.

8 Q This is an e-mail from you to Mr. Wiegert; right?

9 A Uh, correct.

10 Q And Mr. Kratz is copied on it?

11 A I believe so.

12 Q And I -- I can't read what the other one is.
13 Um -- oh, that's Mike O'Kelly. That's right.
14 Don't lie to me.

15 A Right.

16 Q Don't lie to me O'Kelly. He says, our
17 investigator -- what -- what you -- you're
18 telling Mr. Wiegert in this -- Mr. -- and -- and
19 just for the record, Mark Wiegert is an
20 investigator in this case; right?

21 A Correct.

22 Q Yeah. Um, so you're sending an e-mail to him
23 informing him that Mike O'Kelly has developed
24 some information in the course of talking to
25 Brendan's relatives, but not Brendan, uh, that

1 might shed some light on the whereabouts of the
2 Suzuki and Barb's van, which may contain some
3 evidence useful in the case. You are authorized
4 to talk to him directly. And you give him
5 Mr. O'Kelly's phone number; right?

6 A Right.

7 Q Or by e-mail at the address above, and the cc.
8 Uh, this appears to be insufficient, in and of
9 itself, to establish probable cause for another
10 search of the Avery salvage yard. However, it
11 may go a long way toward getting you there.

12 Um, had you -- so -- so you --
13 obviously, you had a -- a discussion with O'Kelly
14 about turning this stuff over to the State?

15 A The information, yes.

16 Q Okay. Had you ever talked to Brendan that you --
17 about doing that?

18 A No.

19 Q Okay. You never got Brendan's okay to -- to have
20 your investigator talk to the police and -- and
21 give the police information that your
22 investigator had gathered in the course of
23 representing Brendan?

24 A That's correct.

25 Q Would you -- and it goes on. Would you -- we

1 would prefer to stay unnamed in any affidavit for
2 search warrant if at all possible.

3 Um, now, I'm assuming that that's
4 because you wouldn't want the Avery family or
5 Brendan to know that that's what's going on?

6 A The Avery family, certainly.

7 Q Okay. Uh, what about Brendan? If Brendan found
8 out about that, do you think it might cause a --
9 a problem with your relationship with him?

10 A I don't think I even -- I don't think I considered
11 that at that time.

12 Q You didn't even think about it. Okay. Um, Mike
13 has not made any direct observations of the
14 subject vehicle but it may lead you to
15 re-question some witnesses prior to another
16 search warrant application.

17 And then you request some information
18 from the D.A.'s office so that he can look at the
19 aerial photos; right?

20 A I requested they made -- made available to O'Kelly to
21 view. Those were some of the materials that I did
22 not make copies of.

23 Q Okay. So -- so -- and you didn't have -- you
24 didn't have copies of those already; right?

25 A Correct.

1 Q That's some of the material that you had
2 previously reviewed and decided that it really
3 didn't matter much to -- as far as you could tell
4 to Brendan's case?

5 A At least not immediately, no.

6 Q Yeah. Okay. Um, did -- did you ever turn this
7 memo -- or this -- copy of this e-mail over to
8 Mr. Fremgen?

9 A I don't know if I did or not.

10 Q Okay.

11 A I'm not sure I printed it.

12 Q Or Mr. Edelstein?

13 A Right. Well, Edelstein was under contract from
14 Fremgen.

15 Q Okay. On May 7, Michael O'Kelly -- and I'm
16 referring to Exhibit 65.

17 A Okay.

18 Q This is an e-mail from Len Kachinsky to you;
19 correct?

20 A Uh, from -- it's from Mr. O'Kelly to --

21 Q I'm --

22 A -- me.

23 Q Yeah. I'm sorry. That's right. Um, and
24 Mr. O'Kelly copies Mr. Kratz, Tom Fassbender --
25 Special Agent Fassbender -- John Dederling, who is

1 with the Calumet Sheriff's Department. Right?

2 A Correct.

3 Q And he is notifying you and the prosecution that

4 he's going to be meeting with Brendan on Friday,

5 May 12, when Brendan returns from the hearing at

6 the Manitowoc County Courthouse, and telling you

7 that he would like to start meeting with Brendan

8 upon his arrival? In other words, as soon as

9 Brendan gets back; right?

10 A Yes.

11 Q What's the significance of May 12?

12 A I believe May 12 was decision day on the motion to

13 suppress. Or at least it was supposed to be.

14 Q Okay. So this is the -- this is a -- a key day,

15 as far as you're concerned, in terms of this --

16 where this case is headed?

17 A Whenever -- I don't -- whatever day that decision was

18 made, yes.

19 Q Yeah. That's -- that's a key day. All right.

20 Um, and he says in bold letters that he's cc'ing

21 the prosecutor, and Special Agent Fassbender, and

22 Dederling, and makes a request that he wants the

23 following information. And he lists a number --

24 11 items there; right?

25 A Right.

1 Q Okay. Um, did you -- what -- what do you -- what
2 do you -- what can you tell me about what's going
3 on here?

4 A I guess as I got this, I started getting concerned
5 that he's doing the prosecutors' work for him. Um,
6 and just demands, I think, were --

7 Q Well, you had --

8 A -- excessive.

9 Q Okay. You had talked to him about setting up a
10 meeting once the decision --

11 A Right.

12 Q -- once the decision had come down. You had --
13 you had talked to Mike O'Kelly about talking to
14 Brendan to get him to confess again; correct?

15 A Right. Well, at least to see if he had changed his
16 position. I don't know if I'd call it confess again,
17 but, yes.

18 Q Well, changing his position means going from
19 saying, I wasn't involved, to I was involved?

20 A Correct.

21 Q Okay. And saying, I'm involved is a -- a
22 confession?

23 A Essentially.

24 Q Okay. Did you -- did you talk to Mike O'Kelly,
25 by the way, about the concerns that you had?

1 That you just expressed about?

2 A I don't -- I don't think I ever talked to him about
3 his attitude, but I told him a number of his demands
4 in there were -- were excessive, and un --
5 unnecessary, and he was running up time and costs
6 without any benefit to --

7 Q Right.

8 A -- to --

9 Q Right.

10 A -- the case. And he wasn't going to -- I was -- you
11 know, there were limits to what the State Public
12 Defender was going to pay, and I wasn't going to keep
13 dumping requests on them without tangible usable
14 results.

15 Q Sure. Yeah. So you wanted him to -- to lean
16 down a little bit about this?

17 A Right.

18 Q (Unintelligible.)

19 A (Unintelligible.)

20 COURT REPORTER: One at a time, please.

21 THE COURT: Let's just rewind this. Start
22 over.

23 Q Sure. The -- your -- your concern that you're
24 expressing is the concern with the number of
25 stuff that he wants, and your concern that the

1 Public Defender's Office isn't going to pay for
2 it; right?

3 A Um, that, and I just thought that this was a -- well,
4 it was going to take so much time to look at and read
5 this stuff, and it just really was not necessary for
6 him in terms of doing the job he needed to do for us.

7 Q Right.

8 A So it was running up, you know, in that sense,
9 excessive hours.

10 Q Okay. Your concern was not that he was
11 communicating with the prosecution?

12 A Correct.

13 Q Your concern was not that he was gathering
14 information to lay on Brendan to get him to move
15 off -- or -- or to -- to confess; right?

16 A That was the objective. We weren't -- the provision
17 of information beyond the one instance you cited, uh,
18 wasn't going to be made until another interview by
19 Kelly with -- with Brendan.

20 Q And you selected May 12 because you knew that if
21 the decision went against Brendan, that -- and
22 Brendan learned about that, and you told him,
23 well, we've lost the motion, this confession's
24 coming in, you knew that this would be a low
25 point for Brendan. This would be a -- a body

1 blow for Brendan?

2 A This would be a point he was most likely to think
3 about what really happened and -- and tell me.

4 Q Yeah. You -- you -- you figured he would be most
5 vulnerable at this point?

6 A From talking to me, yes.

7 Q Okay. So that was a -- a strategic decision, I
8 guess you could say, on your part?

9 A The time of the interview shortly after the motion
10 hearing.

11 Q Yeah.

12 A Yes.

13 Q On May 8 -- Exhibit 339.

14 A Okay.

15 Q You have -- it's a -- it's a e-mail from
16 Mr. O'Kelly to Dederling and Special Agent
17 Fassbender; correct?

18 A Right.

19 Q He didn't -- and -- and -- and what he's telling
20 Fassbender and Dederling that he thinks their
21 investigation would be well-served by consulting
22 a student of his -- a former student of his --
23 named Doug Weber, the Osceola County Sheriff in
24 Iowa.

25 Did you have any -- did -- and -- and he

1 didn't cc you on this? Didn't copy you on this?
2 Did you know he was going to do that?

3 A No.

4 Q Do you know what that was about?

5 A Mr. O'Kelly had a belief that you could tell whether
6 somebody was lying or telling the truth based upon
7 linguistic analysis. And so that's the best I can
8 think about it.

9 Q Okay. And did you authorize him to talk to
10 the -- or communicate with the State, agents of
11 the State, whether it be the D.A. or any of the
12 officers on the case, without your knowing about
13 it?

14 A No, I did not authorize that.

15 Q Okay. When did you first learn about this
16 e-mail?

17 A Uh, two minutes ago.

18 Q Okay. Um, you had a conversation, however, with
19 Mr. O'Kelly about linguistic analysis?

20 A I think certainly mentioned it off and on.

21 Q Okay. What's your opinion of statement analysis?

22 ATTORNEY FALLON: Objection. Relevance.

23 ATTORNEY DVORAK: I'll withdraw --

24 THE COURT: Sustained.

25 ATTORNEY DVORAK: -- the question. I'm

1 sorry.

2 Q (By Attorney Dvorak) Um, did you ask him to
3 conduct a -- a linguistic analysis of Mr. -- of
4 Brendan?

5 A No.

6 Q Then on May 9 there's a -- a couple more e-mails.
7 I want you to refer to 66.

8 A Okay.

9 Q And I want you to start -- this is a -- a chain
10 which starts on the back end of it. It's -- I
11 think it starts on the second page is what I want
12 to re -- direct your attention to.

13 It says, Thanks, Mike. Original
14 message. And you go down. And before there's a
15 list of things -- you're talking about making
16 arrangements for him to do a videotaped in --
17 interview on May 12; right?

18 A It was certainly an interview. And he mentioned he
19 was going to videotape it.

20 Q Right. He's -- he talks. And --

21 A Right.

22 Q In fact, you mention it in your e-mail. He's
23 going to bring recording devices. A camcorder.
24 Dictaphone. Portable audio recorder.
25 Accessories. Tripod. Blank recording tapes.

1 Toshiba laptrop -- -top. A Canon IP-90 portable
2 printer and paper. He wants to bring all of this
3 stuff in; right?

4 A Right.

5 Q Okay. This is going to be a production on May
6 12?

7 A That's -- that's what he wanted to try to do
8 depending on what the conversation was.

9 Q Yeah. Okay. And, um, your -- you find out --
10 your -- you know about this, and you say earlier,
11 up farther, you're going to -- you're going to
12 make that communication.

13 And, um, on your part of the e-mail,
14 you're going to communicate with him. Try to get
15 the okay. Uh, and you suggest that he call
16 the -- the D.A.'s office, speak to Shirley to get
17 access to the items that he's -- what is it?
18 This 11 items that he's asked for; right? Rather
19 than your doing it?

20 A I believe so.

21 Q And then you say, um, in the next paragraph,
22 unless you think it would be a bad idea, I was
23 planning on going to Sheboygan on Wednesday
24 afternoon for a general pep talk, and to talk to
25 him about giving a complete statement to you on

1 Friday. Um, right?

2 A Correct.

3 Q Okay. You wanted his opinion about that?

4 Whether that was a good idea for you to do?

5 A Right.

6 Q Okay. The next day you hear back from

7 Mr. O'Kelly, and he says -- and it's -- this is

8 the third paragraph from the bottom. "I think

9 that your visit," you see that?

10 A Right.

11 Q I think that your visit will be counterproductive

12 to our goals for Brendan. It could have Brendan

13 digging his heels in further. He could become

14 more entrenched in his illogical position and

15 further distort the facts.

16 He has been relying on a story that his

17 family has told him to say about October 31.

18 Thus, it will take me longer to undo, if I can

19 even, without your visit.

20 So he's telling you not to go?

21 A That was his recommendation, yes.

22 Q Okay. And -- and you reply back to him; is that

23 right?

24 A Correct.

25 Q And you say, Mike, I will cancel my planned visit

1 for today. I have plenty of other work to do.

2 Right?

3 A Correct.

4 Q He goes on to say that Brendan needs -- and this
5 is the last paragraph. Brendan needs to be
6 alone. When he sees me this Friday, I will be a
7 source of relief. He and I can begin to bond.

8 He needs to trust me and the direction
9 that I steer him into.

10 Brendan needs to provide an explanation
11 that coincides with the facts, slash, evidence.

12 Right?

13 A Right.

14 Q You knew that's what -- that's where he's headed?
15 Strategies that -- that he was going to try and
16 use; right?

17 A Yes.

18 Q So not only did he not want you to go down there
19 and let him know that -- what was going to happen
20 on Friday, May 12, um, he also didn't want you
21 there on May 12?

22 A That's correct.

23 Q Okay. So on May 12 a judge issues a decision
24 denying your motion; right?

25 A I believe that was the day.

1 Q Yeah. Um, and as part of -- prior -- yeah.

2 And -- and up until this point, up until May 12,
3 Brendan is still maintaining his innocence;
4 correct?

5 A Yeah. He hadn't made any statements contrary to what
6 he made in the previous one or two. The first ones
7 when he said he didn't do it, wanted the polygraph.

8 Q Yeah. Okay. Um, and you hadn't told him about
9 the results of the polygraph, had you?

10 A At some point I did. I'm not sure when it was. I
11 told him it was inconclusive. I think it was -- I
12 probably told him that -- the one time -- the first
13 time I met him after it was, uh (unintelligible) --

14 Q Would it surprise -- I'm sorry. Would it
15 surprise you to learn that, um, the -- one of the
16 first things that Mr. O'Kelly did when he was
17 with Brendan was to show him a computer screen
18 and explain to him that those were the polygraph
19 results, and that it was 90-some percent
20 conclusive that --

21 ATTORNEY FALLON: I'm going to object to
22 this detail on the polygraph discussion.

23 THE COURT: The grounds?

24 ATTORNEY FALLON: Court's previous
25 ruling. There's enough evidence in the record

1 for state of mind-type of questioning.

2 But for this particular detail, I think
3 it's beyond the scope of what would be permitted
4 for that.

5 So I would object based on the Court's
6 previous ruling of inadmissibility.

7 ATTORNEY DVORAK: I have a better idea,
8 Judge. Let me try to rephrase the question. If
9 his objection is to detail, because I --

10 Q (By Attorney Dvorak) Um, Mr. -- Mr. O'Kelly -- I
11 guess what I'm getting at is, is the -- the tape
12 from May 12 would suggest that Brendan did not
13 know the results of that polygraph test. Would
14 that surprise you?

15 A It would, 'cause I know I told him at least once.
16 But maybe he didn't -- I -- I don't know why he
17 wouldn't remember something like that.

18 Q All right. The -- let me see.. You give a press
19 conference -- or you talk to the press after --
20 you talk to Fox 11 after that hearing on May 12.
21 And I refer you to Exhibit 329.

22 A Okay.

23 Q And you -- you express -- you tell the press that
24 you're not terribly surprised at the ruling as
25 much as you're disappointed in it. So we'll just

1 have to take it from there?

2 A Right.

3 Q You -- you weren't surprised?

4 A No.

5 Q You'd expected to lose?

6 A Yes.

7 Q Um, and at this point there is a -- an issue of
8 bail that's addressed by the State where things
9 are to be sealed; right?

10 A There's mention of that in there.

11 Q Yeah. Okay. And the State is asking that it be
12 sealed, presumably, because they don't want the
13 information to become public; right?

14 A Right.

15 Q And your comment about that is -- the second
16 page. Or is it the third page? I'm sorry. The
17 third page, second to the last paragraph.
18 It's -- it -- you got it?

19 A Yeah.

20 Q It's not -- it's not what I would characterize as
21 smoking gun evidence regarding Dassey. Certainly
22 it does, to some extent, corroborate his
23 confession about all I can really say about it.

24 Um, clearly this evidence was not in the
25 public domain yet; right?

1 A Correct.

2 Q Okay. And, clearly, it is prejudicial to

3 Brendan? At least to some extent? Whatever it

4 is?

5 A As I recall, it dealt with some crime lab results.

6 Q Okay. You say --

7 A Not directly --

8 THE COURT: Well, here.

9 Q -- that it does to some extent corroborate his

10 confession. That's what you say in the press.

11 Whether it does or not, I don't care. Is that

12 what you -- that's what you said, though;

13 correct?

14 A Yes.

15 Q Okay. Um, meanwhile, um, Mr. O'Kelly is waiting

16 for Brendan at the Sheboygan facility; right?

17 A He was supposed to.

18 Q Had you pretty much given Mr. O'Kelly carte

19 blanche to do whatever he saw fit at this

20 interview? I mean, you trusted him to -- to --

21 to do what he was going to do; right?

22 A I assumed he would act within, you know, ethical

23 moral behavior.

24 Q Okay. Do you assume that he would -- did you

25 have a discussion with him about what he was

1 going to do?

2 A Only in very general terms that he was going to go
3 over the evidence that existed in the case with
4 Brendan, compare that with his statement, and try to
5 convince Brendan, logically, that if confession was
6 valid and that the State was probably going to get a
7 conviction if there was a trial.

8 Q Okay. Now, but at this point were you aware of
9 any physical evidence, any DNA, any fingerprints,
10 or anything of that nature, that put Brendan in
11 Steven Avery's house that night?

12 A Not that I was aware of, no.

13 Q Okay. In fact, there was none; right?

14 A I don't know what developed after I was off the case.

15 Q Right. But certainly to this point there was no
16 physical evidence of -- of certainly no
17 fingerprints, or DNA, or anything of that nature,
18 that put Brendan inside Steven Avery's house?

19 A That I was aware of, no.

20 Q Right.

21 A Yes.

22 Q Okay. Do you know if Mike O'Kelly was aware of
23 any?

24 A I don't think so.

25 Q Okay. Did -- but you did -- you knew that

1 Michael O'Kelly was going to bring the tape
2 because of the e-mail. Did you ever take a look
3 at that tape?

4 A No.

5 Q You never did?

6 A No.

7 Q Okay. What I'd like to do is --

8 ATTORNEY DVORAK: Can I just have one
9 second, Judge? Judge, at this point what I would
10 like to do is play some of the clips from the --
11 that May 12 interview for Mr. Kachinsky to see
12 if -- what he knew, and if he knew it, whether he
13 would have approved of what was going on with
14 Mr. O'Kelly.

15 ATTORNEY FALLON: The State would object
16 to that proffer at this particular time based on
17 the status of the record.

18 Mr. Kachinsky has indicated he was
19 unaware, had never reviewed the tape, um, and
20 there's been no authentication or identification
21 of that matter, uh, what we're going to see is,
22 in fact, what occurred or allegedly transpired on
23 May 12.

24 THE COURT: I take it that's a foundation
25 objection?

1 ATTORNEY FALLON: Yes. And, most
2 importantly, I would still object as it relates
3 to relevance and materiality un -- under the
4 underlying proceeding.

5 THE COURT: Court is going to sustain the
6 objection.

7 ATTORNEY DVORAK: Judge, uh -- go ahead.

8 ATTORNEY DRIZIN: May I respond, Your
9 Honor?

10 THE COURT: No.

11 ATTORNEY DRIZIN: Can I make -- can we
12 make an offer of proof with regard to this, Your
13 Honor?

14 THE COURT: Go ahead.

15 ATTORNEY DVORAK: Um, if the -- I think
16 the -- the evidence would show that Mr. O'Kelly
17 had laid out a -- a rather elaborate display of
18 material that he had gathered from his
19 investigation, and those materials included
20 photographs of Teresa Halbach, of the church,
21 ribbons from her -- from the church, a photograph
22 of a sign from the Avery property that said "dead
23 end." Um, and --

24 Yes. Yes. Okay. That is I -- I'm just
25 describing what the setting was. And -- and it

1 also had a laptop computer on it. The laptop
2 is -- Mr. O'Kelly goes in and starts with the
3 laptop and points to the laptop and asks
4 Mr. Dassey -- asks Brendan, what do -- does he
5 know what that is. And Brendan says, no.

6 And he then proceeds to say that it's
7 the polygraph results, and proceeds to -- to tell
8 Brendan that the results of the polygraph test
9 essentially are that he has -- that he lied and
10 that he failed the polygraph test. That there
11 was 98 percent showing of deception.

12 And a -- Mr. O'Kelly asks Brendan
13 whether or not he knows what that means. And
14 Brendan turns to him and says, does that mean I
15 passed? And Mr. O Kelly says, no, it means you
16 failed.

17 Um, that's how this interview starts.
18 The -- the clip -- the second clip is going to
19 show that Mr. O'Kelly then engaged in several
20 coercive tactics, uh, techniques to get Brendan
21 to confess.

22 Um, and -- and the -- the third clip,
23 he -- he tells Mr. -- he tells Brendan that the
24 only two things that he doesn't know about this
25 case is whether or not Brendan is sorry for what

1 he did and whether he would do it again.

2 And Brendan tells him that he doesn't
3 know if he's sorry because he didn't do anything.

4 Michael O'Kelly then tells him that his
5 situation is essentially helpless. He tells
6 Brendan that -- Michael O'Kelly -- that I cannot
7 help you, and that you're going to spend the rest
8 of your life in prison. Essentially telling him
9 that he has no hope. He has no other option.

10 In clip four you would see that --
11 Michael O'Kelly saying you understand it now.
12 Brendan knows that he has no one in the justice
13 system to help him. That -- that he's -- he is
14 totally alone. Totally abandoned.

15 That even his lawyer at this point
16 doesn't believe him, and that his -- it really --
17 he's all alone in this and he's by himself.

18 He then gets Brendan to retract his last
19 statement on this survey form. The previous one
20 that I think we had introduced into evidence.
21 And -- and that previous survey form in -- in
22 which Mr. -- Brendan had -- had claimed
23 innocence, and telling Mr. Dassey that it was not
24 an option but to retract it.

25 And -- and did that again in clip seven

1 and eight.

2 Um, I would like to know from
3 Mr. Kachinsky whether or not, had he been there,
4 he would have authorized any or all of those
5 techniques. Any or all of those statements to
6 Mr. -- to Brendan, to his client. Um, and what
7 he thought about that activity. Whether he would
8 have stopped the interrogation. Whether he would
9 have done anything to mitigate it or minimize the
10 impact of -- of these clearly coercive
11 techniques. Or whether or not he would have let
12 Mr. O'Kelly continue.

13 Um -- did you -- and -- and I would
14 have -- I would like to know from Mr. Kachinsky
15 whether or not he knew that was going to -- the
16 interview was going to proceed that way. Whether
17 or not he had previously authorized any of these
18 tactics, um, any of this procedure before
19 Mr. O'Kelly engaged those things. Um --

20 THE COURT: Does that complete your offer
21 of proof?

22 ATTORNEY DVORAK: No.

23 ATTORNEY DRIZIN: Judge, I don't want to
24 interrupt Counsel, but I just need to be clear.
25 Did you sustain the objection on relevance

1 grounds or did you sustain the objection on
2 foundation grounds?

3 THE COURT: Actually, at this point, it is
4 on foundation grounds. I'll reserve rule -- ruling
5 on relevance grounds. Okay.

6 ATTORNEY DVORAK: Well, then, Judge,
7 could we offer it conditionally subject to
8 proving it up? Uh, proving --

9 THE COURT: No.

10 ATTORNEY DVORAK: Okay. Then we reserve
11 the right to call Mr. Kachinsky again.

12 THE COURT: How much longer, Counsel, are
13 we going to be spending with Mr. Kachinsky?

14 ATTORNEY DVORAK: Um, I'm -- I think I'm
15 actually pretty close to being done, Judge,
16 'cause I don't plan on going past May 13.

17 THE COURT: You're on May 12, so --

18 ATTORNEY DVORAK: Yeah, so not much --
19 not much left.

20 THE COURT: Okay. Go.

21 ATTORNEY DVORAK: Um, and -- well, I --
22 and I do have a few follow-up questions. All
23 right.

24 Q (By Attorney Dvorak) Um -- all right. You
25 then -- you get a -- a phone call from

1 Mr. O'Kelly later that evening on the 12th;
2 right?

3 A Yes.

4 Q Okay. Um, and what do you -- what's your
5 recollection of that phone call?

6 A Approximately nine p.m. he calls me. It's a Friday
7 night. He tells me about the interview. And that as
8 a result of his interview, that Brendan had indicated
9 he was involved in the death and sexual assault of
10 Teresa Halbach. And that Brendan wanted to give --
11 now give a statement to -- to law enforcement.

12 Q Okay. Did you get the details of -- of what
13 Brendan had said from Mr. O'Kelly that night?

14 A No.

15 Q Ultimately, an interview was set up for the
16 following day; correct?

17 A Saturday, the 13th, yes.

18 Q Right. And did you sit down with Mr. O'Kelly and
19 get the details of what Mr. -- of what Brendan
20 had said with him any time prior to the interview
21 with Wiegert and Fassbender on the 13th?

22 A No.

23 Q Okay. Now, you did -- what -- what -- what
24 happened next? Tell me what happened next?

25 A We discussed when this would take place.

1 Q Okay.

2 A I told him I had a --

3 Q Had you -- I'm sorry. Let me --

4 A Sure.

5 Q -- interrupt for a second. Had you alerted --

6 ATTORNEY FALLON: Your Honor, I'm going
7 to object. You -- you can't ask a question, the
8 witness starts to answer, and then interrupt with
9 another question. He's got to wait for the
10 answer.

11 ATTORNEY DVORAK: I -- I'm sorry.

12 THE COURT: All right. Finish your answer.

13 THE WITNESS: Sure. I told him that --
14 the ques -- question was when it would be done.
15 He wanted to do it Saturday. I told him Saturday
16 would be a problem because I couldn't be there
17 'cause I had a prior military commitment with my
18 Army Reserve Unit that I thought was going to be
19 my last drill. Some important administrative
20 material to -- to take care of.

21 And, then, at some point he put Brendan
22 on the phone, and Brendan said -- I said the
23 alternative was to go Wednesday, when that was
24 the next available day I had without canceling
25 court appearances.

1 And, then, Bren -- he put Brendan on the
2 phone. Brendan said he wanted to do it now. He
3 didn't want to wait 'til, um, Wednesday. He
4 didn't want me there.

5 Um, and so I had some discussions with
6 Mr. O'Kelly that we needed to have a member of
7 the defense team present during this interview,
8 even though it was going be videotaped, and even
9 though it was basically a -- a proffer for -- for
10 plea negotiations, and that was there some way we
11 could work it out.

12 I'd have to be available by -- by phone
13 and he'd have to be there to monitor it. We have
14 to do something if we're going to do it on
15 Saturday as opposed to waiting until Wednesday.

16 Q How long did this conversation last? Um -- okay.

17 ATTORNEY DVORAK: Judge, I would like to
18 play a -- a clip of that conversation. I think
19 that Mr. Kachinsky can at least authenticate
20 whether or not it's an accurate rendition of what
21 the conversation was.

22 THE COURT: Okay.

23 ATTORNEY FALLON: From -- from which
24 conversation, Counsel?

25 ATTORNEY DVORAK: The conversation he's

1 just describing.

2 ATTORNEY FALLON: With Mr. O'Kelly?

3 ATTORNEY DVORAK: Yes. And with
4 Mr. O'Kelly as well as with Mr. -- with Brendan.
5 I think that's ten.

6 ATTORNEY FALLON: I'm sorry? What was
7 that again?

8 THE COURT: The exhibit number and the
9 clip? I take it there's a transcript in here?

10 ATTORNEY DVORAK: Speak up.

11 ATTORNEY NIRIDER: Sorry, Your Honor.
12 The transcripts of what we're going to
13 (inaudible) is on Exhibit 315. I'll have the
14 page number for you in just a moment. And the
15 video that we'd like to play (inaudible) Exhibit
16 212.

17 ATTORNEY FALLON: Exhibit 315.

18 ATTORNEY DVORAK: Judge, I think we'll
19 wait -- we'll wait and do it with Mr. O'Kelly.

20 THE COURT: Okay.

21 Q (By Attorney Dvorak) Now, what conversations did
22 you have with the prosecution prior to -- let me
23 back up a minute.

24 Um, the prosecution, State, knew that
25 you were going to go in and talk to Brendan on

1 May 12; right?

2 A I'm not sure if they knew or not. I mean --

3 Q There was -- there was an e-mail that we
4 discussed earlier where Mr. O'Kelly was -- let
5 everybody know that this was going to happen on
6 May 12?

7 A Might have.

8 Q Remember that?

9 A Certainly he needed advance warning to the sheriff's
10 department to visit Brendan on a professional visit
11 level.

12 Q There's Exhibit 65. Would you review Exhibit 65
13 and see if that refreshes your recollection?

14 ATTORNEY DRIZIN: Judge, may I ask a
15 question? How long do you intend to go today?
16 Because, you know, I don't know whether it's a
17 good time to break now because I don't know if
18 the State's going to have enough time to finish
19 their cross.

20 THE COURT: Courthouse is supposed to close
21 at 4:30.

22 ATTORNEY DRIZIN: That's what I thought.

23 THE COURT: And I'm allowing this on
24 Mr. Dvorak's representation that he had not many
25 more questions. But one more day -- and I suppose I

1 should have asked Mr. Fallon or Mr. Kratz whether
2 they have a significant number of questions that
3 they think they will be asking?

4 ATTORNEY FALLON: Based on the Court's
5 preliminary rulings, I have lots of questions.

6 THE COURT: All right. Then, let us call
7 it a day.

8 ATTORNEY DVORAK: Can we get the answer
9 to the last question?

10 THE COURT: About --

11 ATTORNEY DVORAK: Might as well finish
12 it up before --

13 THE COURT: Okay. Sure.

14 THE WITNESS: Which number?

15 ATTORNEY FALLON: Exhibit 65.

16 ATTORNEY DVORAK: Sixty-five.

17 THE WITNESS: Okay. That's what I have
18 in front of me. Yes.

19 Q (By Attorney Dvorak) Does that refresh your
20 recollection? Let me see if I can --

21 A Right. The watch commander was notified.

22 Q And -- and --

23 A Well, he had sent us (unintelligible) --

24 Q (unintelligible) -- everybody was cc'd on it --

25 A He --

1 Q -- correct?

2 A -- did, yes.

3 Q So everybody knew about it.

4 ATTORNEY DVORAK: Um, Judge, the, um --
5 at this point we would move into exhibits that we
6 have referred to; 317, 55, 306, 319, 320, 3 --

7 ATTORNEY FALLON: Slow down.
8 Three-twenty.

9 ATTORNEY DVORAK: 360, 321, 4 -- 41,
10 322, 343, 359, 323, 324, 325, 326, 347, 63, 350,
11 94, 328, 327, 64, 361, 338, 65, 339, 66, 329, 65,
12 um, and Exhibit 337, which is a -- a -- an
13 exhibit summary of the media statements that we
14 referred to, and Exhibit 212, which is a -- a
15 summary -- a -- a video.

16 THE CLERK: I also had Exhibit 40.

17 ATTORNEY FALLON: That last one was
18 Exhibit 212?

19 ATTORNEY DVORAK: Yeah.

20 THE COURT: Yes.

21 ATTORNEY DVORAK: And 315, which is
22 sum -- is a summary of the video transcripts.
23 The portions that -- anyhow that we played.

24 ATTORNEY FALLON: Um, do you want
25 argument? Or it might -- given the number of the

1 exhibits here I have some general comments. Most
2 of it I don't object to but I do have -- there
3 are cert -- some objections to some of the
4 material in the exhibits.

5 Most notably, the media reports and
6 the -- the interpretations by the members of the
7 media as to what they think Mr. Kachinsky may or
8 may not have meant, I object to that.

9 As to the parts of those exhibits
10 directly attributing comments to Mr. Kachinsky in
11 quotes, which he identified as, yes, I said that,
12 we have no objection to that.

13 But I object to the -- to the use of the
14 statements by the -- by the media, or their
15 connotations, interpretations, or whatever,
16 because they're irrelevant and immaterial. And
17 they're also -- well, arguably, hearsay. But...

18 THE COURT: Yeah. And I think in most
19 instances Mr. Kachinsky voiced his reservations
20 about those portions of those --

21 ATTORNEY FALLON: He did.

22 THE COURT: -- media -- media releases that
23 he thought did not accurately reflect what he said
24 or even what was said.

25 ATTORNEY FALLON: Right.

1 THE COURT: And I understand that. I
2 understand your objection as well. I'm going to
3 receive them, but -- but I'm also going to -- I'm
4 also going to view them, if I have to, through --
5 through the testimony of the witness --

6 ATTORNEY FALLON: All right.

7 THE COURT: -- who was allegedly quoted.

8 ATTORNEY FALLON: All right. But I do,
9 then, have -- the only concerns remaining, then,
10 are these exhibit summaries, uh, 212, 337. I
11 don't think those have been identified, and I
12 don't know -- 'cause I haven't looked at them,
13 and examined them, and we haven't discussed
14 them -- I don't know if they include additional
15 matters not discussed at this time given that
16 they haven't concluded their direct examination
17 of Mr. Kachinsky.

18 ATTORNEY DVORAK: That's --

19 ATTORNEY FALLON: So --

20 ATTORNEY DVORAK: -- fair, Judge.

21 ATTORNEY FALLON: So I -- I ask you to
22 just take that -- those summary exhibits under
23 advisement until we have further discussions and
24 review.

25 THE COURT: Yeah. I -- I just looked at

1 317, I think it was, or --

2 ATTORNEY FALLON: 337 and --

3 THE COURT: 337.

4 ATTORNEY FALLON: -- 212 or something.

5 THE COURT: Almost looks like a -- a chart.

6 ATTORNEY FALLON: Right.

7 THE COURT: Sort of a Chapter 910 exhibit.

8 But I don't think Mr. Dvorak is asking at this point
9 to have them received today. Is that correct?

10 ATTORNEY DVORAK: Correct. That's
11 correct, Judge.

12 ATTORNEY FALLON: Okay. Then we'll just
13 hold that part in abeyance and that's fine.

14 ATTORNEY DVORAK: Right.

15 THE COURT: All right. Now, I think that
16 concludes the testimony today. Court will reconvene
17 at 8:30 on Tuesday morning. Court -- courtrooms are
18 not open on Monday morning next week. So any
19 questions?

20 THE CLERK: I just had one exhibit that
21 wasn't read that they referred to which was Exhibit
22 40. I don't know if that's --

23 THE COURT: Well, let's clear that up.

24 ATTORNEY FALLON: It was a question
25 regarding Exhibit 40?

1 ATTORNEY DVORAK: I don't think I did.
2 Yeah. I may have mentioned it, Judge. I don't
3 know that I -- I presented it to --
4 THE COURT: You may have mentioned that in
5 error. I recall you mentioning it, and looking at
6 it --
7 ATTORNEY DVORAK: Yes.
8 THE COURT: -- and I don't think that's
9 what you meant to be talking about.
10 ATTORNEY FALLON: It was mentioned in
11 the questioning -- I remember now -- regarding a
12 news report. There were going to be some
13 questions on it. There may have been one but
14 then they moved on to another topic.
15 So I'm not sure if they want Exhibit 40
16 in or not. It is what it is, as they say, in
17 terms of a media account.
18 THE COURT: Right.
19 ATTORNEY FALLON: I don't care.
20 ATTORNEY DRIZIN: Why don't we take that
21 up on Tuesday morning, Judge.
22 THE COURT: All right.
23 ATTORNEY DRIZIN: Thank you.
24 THE COURT: Anything else?
25 ATTORNEY FALLON: Could -- could we have

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a little chat in chambers?

THE COURT: Sure. You may step down.

THE WITNESS: Thank you, Your Honor.

(Recess had at 4:40 p.m.)

1 STATE OF WISCONSIN)
2) SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 24th day of March, 2010.

16
17
18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
21
22
23
24
25

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3
4 STATE OF WISCONSIN,

5 PLAINTIFF,

MOTION HEARING

DAY 2

6 vs.

Case No. 06 CF 88

7 BRENDAN R. DASSEY,

8 DEFENDANT.

9
10 **DATE:** JANUARY 19, 2010

11 **BEFORE:** HON. JEROME L. FOX
Circuit Court Judge

12 **APPEARANCES:**

13 KENNETH R. KRATZ
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 THOMAS FALLON
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 STEVEN DRIZIN
Attorney at Law
18 On behalf of the defendant.

19 ROBERT J. DVORAK
Attorney at Law
20 On behalf of the defendant.

21 LAURA H. NIRIDER
Attorney at Law
22 On behalf of the defendant.

23 JOSHUA A. TEPFER
Attorney at Law
24 On behalf of the defendant.

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THOMAS F. GERAGHTY
Attorney at Law
On behalf of the defendant.

ALEX HESS
Law Student
On behalf of the defendant.

ADAR CROSLEY
Law Student
On behalf of the defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR
Official Court Reporter

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1 THE COURT: This is State of Wisconsin v.
2 Brendan Dassey. The Manitowoc County number
3 06 CF 88. Court of Appeals number is 07 XX 1073.

4 Just for the record, the appearances
5 this morning.

6 ATTORNEY KRATZ: State appears by
7 District Attorney Ken Kratz from Calumet County
8 and Assistant Attorney General Tom Fallon
9 appearing as special prosecutors.

10 ATTORNEY DVORAK: Good morning, Your
11 Honor. May it please the Court, Mr. Dassey
12 appears with Attorney Robert Dvorak. Also,
13 appearing is Attorney Steve Drizin, Tom Daughtery
14 (sic), Laura Nirider, and Josh Tepfer. And two
15 students, Alex Hess and Adar Crosley.

16 THE COURT: All right. I believe,
17 Mr. Dvorak, you were examining the witness when we
18 last met?

19 ATTORNEY DVORAK: That's correct, Your
20 Honor. Mr. Kachinsky.

21 THE COURT: Are you going to call him
22 again?

23 ATTORNEY DVORAK: Yes, we are.

24 THE COURT: Let's do it. Come on up here.
25 I'll just remind you, Mr. Kachinsky, you've

1 previously been sworn. You're still on oath.

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Go ahead.

4 CONTINUED DIRECT EXAMINATION

5 BY ATTORNEY DVORAK:

6 Q All set?

7 A Okay.

8 Q Uh, you had initially hired Mr. O'Kelly to do a
9 polygraph test; right?

10 A Correct.

11 Q And you kept him on -- had him continue on as
12 your investigator in this case?

13 A Yes.

14 Q So he was working under your direction in that
15 capacity?

16 A Yes.

17 Q Okay. You were telling him what it was that you
18 needed done and -- and -- and he would go out and
19 do it?

20 A Hopefully.

21 Q Okay. Uh, he would report back to you?

22 A From time to time, yes.

23 Q Okay. You -- and -- and you monitored his
24 activities and -- and what it was that he was
25 doing?

1 A Best I could, yes.

2 Q Okay. Did you have problems in that capacity?

3 A There were times he was going off on tangents and
4 expending way more hours than was authorized.

5 And so I had some discussions with him
6 as to confine your activities to what we need --

7 Q Okay.

8 A -- done, and if you keep running over this -- these
9 hour limits, don't expect to get paid unless SPD is
10 going to authorize it.

11 Q All right. Substantively, though, other than
12 financial and your concern about whether your
13 relationship with the Public Defender's Office
14 and their paying his bill, did you -- you were
15 monitoring his activities?

16 A I didn't give a general directions, um, as -- I -- I
17 believe, you know, but -- possibly would be defense
18 in the case in terms of whether I guess the alibi for
19 the period of time in the late afternoon and early
20 evening of October 31.

21 Q Okay.

22 A Although there wasn't much work done on that because
23 the law enforcement officers had already interviewed
24 most of the key witnesses, and I had -- I had talked
25 to him.

1 There was also working on family
2 matters, possible mitigations to the matter,
3 proceed to sentencing, uh --
4 Q I would --
5 A -- and also establishing a rapport with the members
6 of Mr. Dassey's extended family.
7 Q Okay. I -- I -- what I'd like to do is confine
8 it up to this point up to May 13 -- up and to and
9 through May 13.
10 A Right.
11 Q Okay?
12 A Okay.
13 Q So let's -- that's the period of time that we're
14 talking about so far unless we say otherwise.
15 A Okay.
16 Q But I think that's where we're going to confine
17 ourselves to. So up -- up through that period of
18 time Mr. O'Kelly was working for you? He was
19 reporting back to you? You were telling him what
20 to do? And you were monitoring what he was -- he
21 was doing?
22 A He was my agent, yes.
23 Q Okay. Um, now, I want to talk about the --
24 the -- the May 12 interrogation. Um, you knew
25 that he was going to tape that interrogation of

1 his; right?

2 A I don't think I specifically mentioned it but I know
3 that early on he had indicated he taped everything.
4 So I don't know if we went over the details that he
5 was going to tape it. We might have.

6 Q Would -- would it -- I'd like you to refer you to
7 Exhibit 65.

8 A What volume? It must be --

9 THE COURT: Volume two.

10 ATTORNEY DVORAK: Volume two.

11 THE WITNESS: I have it.

12 Q (By Attorney Dvorak) Okay. That's the e-mail
13 that we had referred to earlier that, um,
14 Mr. O'Kelly had sent to you about the meeting on
15 May 12 and that this is an e-mail dated May 7?

16 A Correct.

17 Q And he was telling you that he wanted to bring in
18 recording devices, etc.; right?

19 A Correct.

20 Q Okay. And I -- I -- I assume that you had to --
21 to do something to help him get that stuff into
22 the jail?

23 A I'd notify the jail that he was working for the
24 defense and, therefore, that as a professional
25 visitor that those were appropriate things for him to

1 bring in.

2 Q Okay. So getting back to the question, you were
3 aware that he was videotaping this May 12 -- or
4 he had -- he was -- he -- he had the intention of
5 videotaping the May 12 interrogation that he did?

6 A Yes.

7 Q Okay. Um, by the way, did you ever view the tape
8 that he made?

9 A No.

10 Q All right. Um, did you -- were you aware, for
11 example -- um, were you aware at all of -- of how
12 he was going to go about doing that
13 interrogation? Did you discuss with him, in
14 other words, any -- any tactics that he was going
15 to use?

16 A We talked about how he had gained rapport with
17 Brendan over time and that he was basically to go
18 over the evidence that was there at this point, uh,
19 and the extent to which it showed that he was
20 involved in the Teresa Halbach homicide and sexual
21 assault.

22 Um, and to see if -- knowing now that
23 that statement was going to be admissible into
24 evidence, that, in my opinion, at trial he was
25 likely to be found guilty, and from that to see

1 whether or not he was going to change what he was
2 telling us as to whether or not he was involved
3 in the Teresa Halbach homicide and sexual
4 assault.

5 Q All right. And up until this point, um, that is,
6 up until the -- Mr. O'Kelly called you on the
7 evening of the 12th, Brendan had always
8 maintained his innocence with you; correct?

9 A Well, he never used the word maintain innocence, but
10 he was nonresponsive to questions whether he did it
11 or the -- I think, initially, he wrote down, of
12 course, on that polygraph Easter weekend, you know
13 that he --

14 COURT REPORTER: One moment, please.

15 THE WITNESS: -- he was not involved
16 in -- in the offense, yes.

17 Q (By Attorney Dvorak) Okay. So he had
18 consistently denied involvement in the offense to
19 you up to May 12, including May 12, I guess,
20 until you got the call from Mr. O'Kelly that
21 evening?

22 A It was during the times the issue had been raised,
23 yes.

24 Q Okay. Um, now, were you aware that Mr. O'Kelly
25 had, in preparation for Brendan arriving in the

1 room where he was going to be questioned, that he
2 had laid out a number of items, um, including the
3 original poster -- um, missing person poster --
4 for Terese (sic)?

5 A I don't recall him telling me about that, no.

6 Q Okay. Uh, that he had a photo of Teresa's
7 website laid out on the table?

8 A That I didn't know about.

9 Q That he had a -- photos of Teresa's family?

10 A I didn't know about that.

11 Q Okay. That he had a photo of a -- of a "dead
12 end" sign on the Avery property and -- and told
13 Brendan that that was the last thing that she saw
14 and told him that it was pretty prophetic?

15 A I don't recall anything like that.

16 Q That there was a -- a bow and a picture of that
17 bow on a tree near her house?

18 A I didn't know anything about that.

19 Q Okay. There were two pieces of ribbon from
20 Teresa's church?

21 A Unaware of that.

22 Q You were aware of that?

23 A Not aware of that.

24 Q You're not aware of that. Okay. That there were
25 photos of Steven's trailer, bedroom, and hallway?

1 A I don't recall that, specifically, but that was a
2 sort of thing I would have expected him to have in
3 terms of discovery that we had from the State that he
4 had access to because of me.

5 Q Sure. And -- and for the same reason, I suppose
6 it wouldn't surprise you that he had a photo of
7 the RAV4?

8 A Right. That -- that would make sense.

9 Q Okay. Um, were you aware that also on the table
10 was a -- a laptop that he pointed to as probably
11 one of the first things that he did, and --
12 and -- and pointed to it and told Brendan that he
13 had failed the polygraph test?

14 A Well, I knew he had the laptop with him. I didn't
15 know that he was going to display the polygraph
16 results. And as I indicated on Friday, I believe I
17 was told the results were inconclusive. So that
18 would have been something I didn't know --

19 Q Okay.

20 A -- from the --

21 Q So either he would have -- either Mr. O'Kelly
22 would have lied to you about the results or would
23 have lied to Mr. -- or lied to Brendan about the
24 results of the polygraph test?

25 ATTORNEY FALLON: Objection. This

1 witness has already indicated that he hasn't seen
2 that tape and didn't know that there was a tape.

3 So a lot of the accusations attributed
4 to Mr. O'Kelly are hearsay at this particular
5 point and beyond the scope of this witness'
6 knowledge because he said, "I didn't see the
7 tape."

8 THE COURT: Objection is sustained.

9 ATTORNEY DVORAK: And I'm -- I'm just
10 asking if he was aware of those things, and if he
11 was, my follow up question was going to be would
12 he have approved those things.

13 I can, um -- and it -- it'll get tied up
14 later. Or else I can play the tape right now.
15 And he can identify Mr. O'Kelly. He can identify
16 Brendan. Um -- and -- and we can take it from
17 there.

18 THE COURT: It's up to you.

19 ATTORNEY DVORAK: Um, if -- all right.
20 Well, let's play the tape, then. Or --

21 ATTORNEY FALLON: How's this witness
22 going to authenticate something they haven't
23 seen?

24 ATTORNEY DVORAK: It'll get -- it'll get
25 tied up later with Mr. O'Kelly, Judge.

1 ATTORNEY FALLON: Well, then, Counsel,
2 just -- my -- I guess my question is just ask the
3 with witness, would you have approved the --
4 that -- the tactics I just discussed.

5 ATTORNEY DVORAK: Okay.

6 ATTORNEY FALLON: And let's move on.

7 ATTORNEY DVORAK: All right.

8 ATTORNEY FALLON: You can have Mr.
9 O'Kelly when he gets here.

10 THE COURT: I think that's fair.

11 ATTORNEY DVORAK: I -- I thought he was
12 objecting to me even doing it. Maybe I
13 misunderstood.

14 ATTORNEY FALLON: It's the phrasing of
15 the questions.

16 ATTORNEY DVORAK: Okay.

17 Q (By Attorney Dvorak) Would you have approved
18 of -- of Mr. O'Kelly doing -- doing the tactics
19 as -- any of the tactics that I've described up
20 to this point?

21 A It's a rather broad question. I would not have
22 approved of lying to Mr. Dassey about the results of
23 the polygraph. I certainly would not have --
24 certainly would have approved of showing him basic
25 crime scene sort of photographs.

1 Um, I don't know else, specifically
2 you're -- it -- well, it's kind of a broad
3 question.

4 Q Okay. Well, were you aware that during this in--
5 interrogation by Mr. O'Kelly that throughout it
6 Mr. O'Kelly conveyed the impression that he had
7 superior knowledge about the case and that he
8 knew Brendan was guilty, and -- and that anything
9 other than an admission of involvement would not
10 be acceptable? That he would not believe it?

11 A Would I -- the question is would I have approved
12 that? Or did I know about that?

13 Q Yeah. Well, for example, let me -- let me give
14 you an example. You said, I know everything I
15 need to know except two things: Are you sorry?
16 And will you do it again?

17 And, then, in reference to his previous
18 statement he said, I know that -- the -- the
19 previous survey that was filled out at the
20 polygraph part that you had referred to moments
21 ago, uh, he said that he knew that that was a
22 lie?

23 THE COURT: So the question is?

24 Q (By Attorney Dvorak) The question is, um,
25 would -- would you have approved of a tactic that

1 would -- where -- where Mr. O'Kelly claims to
2 have superior knowledge of his guilt, and -- and
3 would not allow Brendan, and would not accept any
4 statement from Brendan, that anything other than
5 that he was involved in this?

6 A Well, I certainly wanted -- just to answer that, I
7 certainly wanted Mr. O'Kelly to convey to Brendan the
8 facts of the case and the evidence that would lead
9 any jury to find he was guilty based on what we had.

10 That, I suppose, implies superior
11 knowledge of the events, uh, to what Brendan had
12 told us at that point.

13 Um, as to whether or not being
14 acceptable, I -- I guess I wouldn't have really
15 strong opinion one way or another. I mean, what
16 was acceptable it was ever Brendan ultimately
17 came up to.

18 He hadn't -- we hadn't proceeded in the
19 case to the point where what would you call a --
20 a final answer to whether we were going to pursue
21 plea negotiations or we were going to prepare for
22 trial.

23 So I was looking to kind of come to the
24 point in the case, once we knew what all the
25 evidence would be that would be admissible at

1 trial, whether Bren -- where that was going to
2 convince Brendan that we ought to be seeking a
3 plea agreement or whether, in spite of that, it
4 was his desire to prepare for trial. That the
5 confession wasn't true.

6 So we were looking -- and that happens,
7 of course, in almost any type of criminal case.

8 Q Another tactic that he used, that I'm -- I'm
9 wondering if you feel is appropriate for your
10 client, is that he asked him a series of
11 questions, um, and repeatedly told Brendan that
12 he couldn't help him if he -- if he lied, and by
13 that he meant if he stuck by his story that he
14 was only by the fire, and that Michael O'Kelly
15 repeatedly told him that he would spend the rest
16 of his life in prison?

17 ATTORNEY FALLON: I'm going to object to
18 the phrasing of the question as a -- a --
19 alleging a fact yet to be established as to what
20 Mr. O'Kelly intended when he said to him, I want
21 you to say the -- the truth here or something to
22 that effect.

23 THE COURT: Well, these are all becoming at
24 least compound questions and, I think, no real
25 foundation. Can you rephrase the --

1 ATTORNEY DVORAK: Yeah, I'll rephrase
2 it. It was very -- I agree it's compound. I --
3 I'm just trying to cover ground quickly, Judge,
4 and I apologize.

5 Q (By Attorney Dvorak) Um, Mr. O'Kelly repeatedly
6 told Brendan that if he essentially didn't admit
7 the offense, um, that there was nothing that he
8 could do for him. Do you have a problem with --
9 with a tactic involving that type of ploy?

10 A That would be a -- I would say too harsh, um, even --
11 even for a confidential attorney/client sort of
12 conversation.

13 I mean, the -- I guess it's not a
14 question we can't do anything for him, it's
15 just -- what I think I put in the letter to him,
16 it was -- the jury's going to have a heck of a
17 hard time finding reasonable doubt in this case.

18 I mean, I would have -- I had certainly
19 faced life in prison, and I had -- I think in a
20 previous letter, we testified about, uh, Friday,
21 told him that, um, it was certainly a
22 possibility.

23 I didn't want to minimize it even though
24 I was certainly thinking in terms that he would
25 probably get twice as much incarceration time if

1 he was -- went to trial and claimed he didn't do
2 it, was found guilty, than he would if he had
3 cooperated with the State and entered a plea
4 agreement.

5 Q Okay. And, for example, if he said, if you lie
6 to me, guess what I have to do? I have to stand
7 up, put everything away, and leave, because you
8 are going to prison for the rest of your life.

9 And then followed up with, and -- or if
10 you say even one single lie, I cannot help you at
11 all.

12 That's something you would not have
13 approved of I take it?

14 A Too harsh.

15 Q Yeah. Did you tell or authorize, either one,
16 Mr. O'Kelly to have Brendan write out another
17 statement?

18 A I didn't give any specific direction as to whether
19 they should give a -- a written statement or not.

20 Q Are you aware that he did on that evening?

21 A I believe he did, yes.

22 Q Okay. Are, um -- now, I want to talk about the
23 decision to have Brendan give another
24 interrogation with, uh, the Fassbender and
25 Wiegert the next day.

1 When Mr. O' Kelly called you that
2 evening, um, he did not give you the details of
3 the statement; right?

4 A As far as I remember, that's correct.

5 Q Okay. He had not at any time that evening
6 reviewed the tape, um, or any written statement
7 that Brendan had made; correct?

8 A He hadn't reviewed it with me. That's correct.

9 Q Okay. And you sent an e-mail to Fassbender that
10 you copied with -- to Mr. Kratz and -- and
11 Mr. Wiegert that evening confirming the meeting
12 for the next day; right?

13 A Yes.

14 Q And -- and I refer you to Exhibit 356, please.

15 A I have it.

16 Q Okay. Have you had a chance to review it? And
17 is that the e-mail that you sent out to
18 Mr. Fassbender?

19 A Yes.

20 Q Okay. I want to -- I want to back up a minute.
21 I forgot one other question. I'm sorry. Um, the
22 other thing that -- were you aware that Michael
23 O'Kelly told Brendan that if he did not confess
24 he would never have a family?

25 A I was not aware of that.

1 Q Okay. Would you have approved that?

2 A I would have thought that is too harsh.

3 Q Um, on -- all right. Getting back to Exhibit

4 356. Now, in this exhibit you authorized Michael

5 O'Kelly to provide copies of his work product;

6 correct?

7 A Yes.

8 Q Okay. Had you ever talked to Brendan about that?

9 A I don't believe so. But I don't think we ever

10 ultimately provided those anyway.

11 Q Okay. And you authorized the interrogation of

12 Brendan without your being present; correct?

13 A Unfortunately, that is correct.

14 Q You also authorized the interrogation without

15 Michael O'Kelly being physically present at the

16 discretion of the officers?

17 A Initially, yes. Later that was changed.

18 Q I'm sorry?

19 A Initially, yes. Later we changed it so that O'Kelly

20 was supposed to be present, yes.

21 Q He was not supposed to be present?

22 A Was supposed to be --

23 Q He was --

24 A It was changed later on as -- as I think -- well, I

25 think the record shows, but...

1 Q Well --

2 A Initially, I said, no --

3 THE COURT: Here. Why don't you let him
4 ask it?

5 THE WITNESS: Oh, yes, Your Honor.

6 Q (By Attorney Dvorak) Okay. Well, what -- were
7 you aware of the physical layout of the
8 interrogation setting?

9 A I knew simply it was going to be a interrogation room
10 typically used by law enforcement officers for things
11 like this that was videotaped. So it would be
12 relatively small. A table, a chair for Brendan,
13 chair for investigators, and, hopefully, a chair for
14 Mr. O'Kelly.

15 Q Okay. Were you aware that Mr. O' Kelly was not
16 present in the room when he was being
17 interrogated?

18 A Not until afterwards.

19 Q Okay. So you're saying -- but -- but in this
20 e-mail, now, you're saying that his -- you --
21 you -- you authorized the interrogation without
22 Mr. O'Kelly being physically present.

23 And then you add, if they believe it
24 would be better that way. So long as it is
25 videotaped; right?

1 A At the time I said that I think later on that evening
2 that was changed to a different arrangement.

3 Q Well, who did you have this discussion with?

4 THE COURT: Which discussion?

5 Q (By Attorney Dvorak) The discussion about
6 changing whether or not Mr. O'Kelly was going to
7 be physically present in the interrogation room?

8 A Uh, it was a phone call. And I'm not sure who that
9 call was -- was with. If it was with Mr. Kratz or
10 Mr. -- somebody from the DCI, or -- but -- but I know
11 it -- there was discussion and, ultimately, the final
12 plan that evening was that Mr. O'Kelly would be
13 present during the questioning of Mr. Dassey.

14 Q Was that ever memorialized in any way? In
15 writing? An e-mail? Confirmed in an e-mail? Or
16 anything like that?

17 A That part I don't believe. I think the initial part
18 was my phone would be on while I was at drill so that
19 my -- something came up I could be contacted by
20 O'Kelly.

21 Q All right. Well --

22 A I don't believe that was ever though confirmed in a
23 written e-mail, no.

24 Q Okay. And do you recall when you had that
25 discussion with anybody?

1 A That would have been, later that night after the time
2 of the e-mails.

3 Q Did you talk with Mr. Kratz personally that
4 night?

5 A I don't -- I don't recall. I have to look at my time
6 records to see if I did or not. If I did, it would
7 be on my time --

8 Q Exhibit 55?

9 A Yes. Oops. I think that would have been me talking
10 to O'Kelly. If there had been something later --

11 THE COURT: Hold on. To the camera folks,
12 the court reporter is having a lot of trouble taking
13 this with the clicking of the cameras.

14 Now, obviously, you have a right to take
15 pictures. I ask you do it -- I ask you to do it
16 during periods of silence, okay? Go ahead. I'm
17 sorry for the interruption.

18 THE WITNESS: Sure. I believe there was
19 something after -- something came back from one
20 of the investigators, and I talked to Kelly
21 (sic), and said, well, be there, and any problems
22 come up, let me know. I'll have my phone on
23 while I'm at drill.

24 Q I'm sorry, I -- I --

25 A So I was in the -- yeah. I talk -- I think I talked

1 to O'Kelly.

2 Q Okay. You said up -- some problem came up with
3 one of the investigators or something, but --

4 A No. No. If a problem came up during the -- during
5 the interview, itself, Mr. O'Kelly was supposed to
6 contact me. Or if Mr. Dassey wanted to talk to me
7 during it, um, Mr. O'Kelly was supposed to contact
8 me. And I could stop -- I was doing duties. I could
9 stop what I was doing, and take a call for a few
10 minutes, and deal with what -- with what the problem
11 was.

12 Q Okay. That was the plan from the beginning;
13 right?

14 A Yes.

15 Q That was the reason for having Mr. O'Kelly there?

16 A Right.

17 Q Are you saying that something else came up after
18 you got the phone call from Mr. O'Kelly? And
19 after you sent this e-mail, did something else
20 come up that caused you to change your mind?

21 A No. I think I thought -- thought the situation
22 through a little bit more, and then I thought it was
23 essential, after thinking it over a little bit more,
24 that a member of the defense team be present there,
25 and able to contact me immediately when these -- the

1 interview was taking place, you know, in case
2 Mr. Dassey wanted to talk to me, or if problems came
3 up, or whatever the situation would be. So it's
4 something I probably thought of some time after the
5 e-mail.

6 Q Okay. Now, you said "present there." Um, I
7 guess that could mean monitoring it remotely or
8 actually being in the room. What -- what message
9 did you convey to Mr. O'Kelly?

10 A I don't know what message I conveyed. I -- I don't
11 think I was specific as to whether he should be in
12 the room or be elsewhere. So I wasn't specific.

13 Q Okay. So did -- I -- I -- I'm just trying to
14 understand what Mr. O'Kelly's instructions were
15 at this point.

16 He was -- he was to be -- you --
17 you'll -- you expected him to be in the building
18 when the interrogation was happening; right?

19 A Uh, correct. And it's such a situation that Brendan
20 knew he was there, that Brendan knew that he could
21 contact O'Kelly to get a hold of me for at any point
22 during the -- the interview.

23 The id -- and that was the way it was
24 left at the end of the evening. The plan by the
25 end of the evening was O'Kelly was to be there.

1 Brendan was to know that O'Kelly was there. To
2 know that O'Kelly could get a hold of me if
3 needed to talk to me about anything.

4 Q Okay. So it was just that if Brendan had wanted
5 to talk to somebody, he knew that somebody was
6 there?

7 A Correct.

8 Q It was nothing more than that?

9 A I don't think there was anything more that was said
10 about it than that, no.

11 Q Okay. So getting back to the question about his
12 being physically present in the room, that was
13 left to the discretion of -- of Fassbender and
14 Wiegert?

15 A I suppose in retrospect, yes.

16 Q Okay. Now, had you also communicated with Agent
17 Fassbender the conditions of the interrogation
18 that you had agreed to here? In other words,
19 you -- you -- one of your conditions was that it
20 be videotaped; right?

21 A Absolutely.

22 Q Okay. And in terms of the -- the content of the
23 interview, did you -- you -- had you talked to
24 Agent Fassbender about filling in gaps or
25 something like that?

1 A No.

2 Q You had not?

3 A No.

4 Q Okay. Um, what -- had you had any discussion
5 with Agent Fassbender about how -- about the
6 subject of the -- of the interrogation or -- or
7 limits about the subject of the interrogation?

8 A It was -- it was limited to the offenses that
9 Mr. Dassey was charged with. The primary purpose was
10 to see whether or not Dassey would be a cooperative
11 witness, if necessary, in the Avery case.

12 (Exhibit No. 363 marked for identification.)

13 Q I'm showing you what's been marked as Exhibit 363
14 and I particularly want to draw your attention to
15 the second paragraph on the second page.

16 THE COURT: Excuse me, Counsel, do you have
17 an extra copy that I could have?

18 ATTORNEY DVORAK: Sorry, Judge.

19 THE COURT: Okay. Thank you.

20 Q (By Attorney Dvorak) Have you had a chance to
21 review that second paragraph?

22 A Yes.

23 Q Okay. Um, this is a -- a -- this purports to be
24 Agent Fassbender's report of his conversation
25 with you that evening, and he reports in his --

1 in this exhibit that you advised him that the
2 interview on Saturday had something to do with
3 filling in gaps and such.

4 Does that refresh your recollection at
5 all about whether you had said that or were
6 thinking that at the time?

7 ATTORNEY FALLON: Objection, Your Honor.
8 It's asking for this witness to comment or
9 speculate on another witness' interpretation of a
10 conversation. He can certainly ask, is that your
11 understanding, but --

12 ATTORNEY DVORAK: I'm just asking if it
13 refreshes his recollection about it at all. And
14 if it doesn't, I'm -- I'm fine with it. If it
15 does --

16 THE COURT: That -- that's -- that's a -- a
17 fair question. You can answer that, Mr. Kachinsky.

18 THE WITNESS: I believe that was at
19 least part of the purpose of it, yes.

20 Q (By Attorney Dvorak) Okay. Had you discussed
21 a -- a -- gaps with anybody from the State
22 previously?

23 A I don't believe so. I know -- as I recall there was
24 one particular piece of evidence that Brendan knew
25 about that he hadn't previously disclosed. That was

1 going to be part of it.

2 Q Okay. Um, and you had also approved Michael

3 O'Kelly to -- to talk with the agents about his

4 conversation with Brendan on the 12th and to

5 share any of his work product with him; is that

6 right?

7 A Yes.

8 Q Okay. Um, other than your -- your -- did you

9 have any phone calls with Michael O'Kelly, um,

10 other than the ones when he was at the jail? Did

11 you talk with him later in the evening? Do you

12 know?

13 A I don't know where he was, but I didn't talk to him

14 any later than about 9:15 or 9:30.

15 Q Okay. Okay. You did talk to him while he was at

16 the jail though? You were aware of that?

17 A At least afforded -- represented he was, yes. And --

18 Q Okay.

19 A -- Brendan was on the phone so it would have had to

20 have been in the jail.

21 Q Right. Right. And you had actually talked to a

22 guard there to -- to confirm that it was you on

23 the cell phone so that he could pass it to --

24 right?

25 A Pass to Brendan. I believe so, yes.

1 Q Yeah. Okay. Now, regarding May 13, I want to
2 talk about you -- any discussions you had with
3 the State, um, regarding the May 13
4 interrogation.

5 Had you discussed with Kratz --
6 Mr. Kratz -- on the -- on the 12th, um, either
7 during, before, or immediately after the hearing
8 in court, did you have any discussions with him
9 about the O'Kelly interrogation that night?

10 A I said I don't know if I'd call O'Kelly's an
11 interrogation because I wasn't -- wasn't there. But
12 I know I certainly told Ken a number of points prior
13 to that that really the tipping point as far as
14 making any final decision as to the direction we're
15 going to go would occur after the decision on the
16 motion to suppress, and that we'd be talking with
17 Brendan shortly thereafter and let him or his agents
18 know what direction we were going in.

19 So it was something I certain -- um, I
20 had informed him that we had dissipated coming to
21 pretty much a final decision on the direction of
22 the case shortly after the Judge's ruling on the
23 motion to suppress.

24 Q All right. At around this time, say, after
25 May 7, between May 7 and May 13, had you had any

1 discussions with Mr. Kratz about specific
2 information that he was interested in getting
3 from Brendan?

4 A I don't believe so.

5 Q Okay. What about any communication with any of
6 the other agents or law enforcement personnel?
7 Did you have any conversation with them about
8 specific information that they were interested in
9 hearing about?

10 A There was one thing -- and I don't remember what it
11 was -- that Kratz had asked me about at some point.
12 But I -- I don't even recall what it was now at this
13 point. But certainly nothing between that week
14 before the 12th of any specificity.

15 Q Okay. Well, there was the -- the e-mail that you
16 had received very early on, which we already
17 talked about, where he listed a number of things
18 that he was interested in -- in finding out
19 about, like Mr. Avery's camera and such?

20 A I -- yes. Now that you remind me, yes.

21 Q Anything -- anything after that?

22 A Not that I recall.

23 Q All right. What about after, um, your -- after
24 court, between the -- at any time after you left
25 Mr. Kratz that day at court, did you speak with

1 him at all personally that evening on the 12th?

2 A I don't believe so.

3 Q What about on the 13th at any time during the

4 day?

5 A No.

6 Q What about with law enforcement? Did you have

7 any conversation with law enforcement other than

8 your -- your phone conversation with Agent

9 Fassbender that evening in the jail, uh, making

10 arrangements for the following interview as well

11 as your e-mail? Any other conversations with law

12 enforcement?

13 A Not that I recall.

14 Q Okay. On the 12th or the 13th?

15 A Nothing other than what's in the e-mails and billing

16 records that you've got.

17 Q All right. Um, did you have a -- now, going into

18 this, um -- going into this meeting you had

19 indicated in the -- in your e-mail to Agent

20 Fassbender that the -- that this would be a --

21 a -- a -- a -- basically a free interview; right?

22 There was no consideration being offered by the

23 State?

24 A Correct.

25 Q Okay. Had you discussed the -- the -- had you

1 discussed at all with Mr. Kratz the -- or made
2 any arrangements with Mr. Kratz about the May 13
3 interrogation?

4 A Not directly. As I recall, I think Fassbender or
5 Wiegert had contacted him and gotten some directions
6 from him that were either authorized (unintelligible)
7 or conveyed to me. But I'm not totally sure on
8 the --

9 Q Okay.

10 A -- details of that.

11 Q My -- my question, specifically, relates to any
12 conversation that you had with Mr. Kratz about
13 the May 13 interrogation in terms of -- of what
14 it was.

15 A Nothing directly, no.

16 Q Okay. Um, and up to the point where that
17 interrogation happened, you still had not been
18 given any of the specific details of what Brendan
19 had told Michael O'Kelly; correct?

20 A There's one in particular about the location of some
21 evidence in the residence occupied by his mother.

22 Q Okay. But you had not reviewed the tape; right?

23 A Correct.

24 Q You had not reviewed Brendan's written statement;
25 correct?

1 A Correct.

2 Q Okay. Um, did -- did Fassbender -- Agent

3 Fassbender -- mention to you anything about what

4 he wanted to have accomplished on May 13

5 interview that you recall?

6 A I don't recall anything.

7 Q You don't recall anybody say -- telling you that

8 they wanted to get a -- a pristine statement or

9 a -- a narrative from beginning to end?

10 A No.

11 Q Okay. Did Brendan know that this was -- that

12 there were no -- that this was -- that no

13 consideration was being offered by the State?

14 Had he had been -- had he been told that?

15 A We had talked about it. Brendan told me on the

16 phone, you know, he wanted to do the interview with

17 the -- the police. He wanted to do the interview

18 even if I wasn't there and not wait for three days

19 when I could be there.

20 Uh, and I -- as I recall, I would have

21 told him something to the effect, you know, we're

22 good -- I guess this is a gesture toward the

23 police that we're going to cooperate in the -- in

24 him being a witness against Avery.

25 Q All right. Prior to this interview you hadn't

1 requested any kind of immunity letter or talked
2 about an immunity letter with Mr. Kratz; right?

3 A Correct.

4 Q Um, where -- are -- were you satisfied going into
5 this that Brendan understood what was expected of
6 him on the May 13 interview?

7 A Yes, I -- O'Kelly told me that he had come clean
8 about what happened. Brendan had confirmed he wanted
9 to do the interview. He wanted to do it promptly.
10 Not wait. He didn't particularly care whether or not
11 I was present, even though I offered to be so.

12 So it seemed to me like he was ready
13 to -- to do it. To change his perspective of the
14 whole case and change the direction that we were
15 going to go in. Or at least establish a
16 direction. Because we really hadn't established
17 a direction yet.

18 Q Okay. But you hadn't really -- you -- at --
19 at -- at the -- at the time that you got that
20 report you really didn't know what had happened
21 on the evening of the 12th; right?

22 A Correct.

23 Q Um, and by the way, did you have any discussion
24 with any of the prosecutors on the case about the
25 admissibility or future use of the statement that

1 they were about to take on May 13?

2 A Not before it happened. I think after it happened,
3 uh, there may have been some.

4 Q Okay. Do you feel that, uh -- well, had you
5 had -- did you have a conversation with Michael
6 O'Kelly about the ground rules as you saw them
7 and his role in May 13 -- in monitoring the
8 May 13 interrogation?

9 A Simply that he was to be there monitoring it. If
10 something came up, Brendan wanted to talk to me, uh,
11 or something else, my phone was open. Call me.

12 Q Okay.

13 A That was it.

14 Q Um, and on the 13th when -- when things were
15 being set up, were -- were you advised what the
16 arrangement would be? In other words, whether or
17 not O'Kelly would be in the room?

18 A I was not.

19 Q Okay. Did you know on the 13th whether or not
20 Mr. O'Kelly would be able to monitor the
21 conversation as it was going on?

22 A My understanding was he'd be able to monitor it. I
23 didn't have a clear understanding as to whether he
24 was to be in the room or immediately outside the
25 room. He was certainly to be in the immediate

1 vicinity.

2 Q All right. Um, did you have any discussion with
3 him about, you know, if -- if -- if things look
4 like they're going south, that he ought to pull
5 the plug or stop the interview?

6 A Not in those sort of words. Just, something came up,
7 troublesome, please call me.

8 Q Okay. Would you -- did you get any calls from
9 Michael O'Kelly during the May 13 interrogation?

10 A No.

11 Q Okay. Would it be -- would you agree with me
12 that a bad proffer is probably worse than no
13 proffer at all?

14 Let me rephrase the question. If -- if
15 a client goes into a proffer and, um, is giving a
16 number of inconsistent statements, um, that's
17 likely to be more harmful than helpful, wouldn't
18 you agree?

19 A It'd certainly be -- be a problem, yes.

20 Q Okay.

21 ATTORNEY DVORAK: I would, Judge, at
22 this point like to play some clips from that tape
23 of the May 13 interrogation.

24 THE COURT: All right.

25 ATTORNEY FALLON: Would the record

1 reflect our standing objection to the relevance
2 of the May 13 and the May 12 events?

3 THE COURT: All right. It'll so reflect.

4 Q (By Attorney Dvorak) Had you seen this tape of
5 the May 13 interrogation?

6 A Yes.

7 Q Okay. When did you first see it?

8 A About a week later. What's ever reflected in the
9 billing records.

10 Q Okay. Tape No. 1, um --

11 ATTORNEY FALLON: What exhibit are we
12 watching, Counsel?

13 ATTORNEY DVORAK: Two twelve.

14 ATTORNEY FALLON: Thank you.

15 ATTORNEY DVORAK: Chapter 5.

16 ATTORNEY FALLON: All right.

17 ATTORNEY DVORAK: Clip one.

18 (Wherein tape is played.)

19 THE COURT: Counsel, that's not audible
20 or intelligible.

21 ATTORNEY DVORAK: Right. It's not. Um,
22 let's stop it. Let me do it orally.

23 THE WITNESS: Okay.

24 Q (By Attorney Dvorak) Were you aware during
25 that -- during this interview that Brendan had

1 changed his, uh, story about whether or not he
2 had cut Teresa's throat on May 13?

3 A After I saw the tape I became aware of that, yes.

4 Q Okay. On May 13 you weren't aware of it though?

5 A Correct.

6 Q Okay. Were you aware that he changed his
7 sorry -- story about seeing Steve at the RAV4
8 and -- and what happened to the license plates on
9 May 13?

10 A No.

11 Q Were you aware that he had changed his story
12 about whether or not he personally had shot
13 Teresa on May 13?

14 A No.

15 Q Um, that's --

16 ATTORNEY DVORAK: Just for the record,
17 Judge, that'd be clip two. The issue on the
18 RAV4 is clip three.

19 Q (By Attorney Dvorak) Were you aware that he
20 changed his story four times about whether or not
21 he cut Teresa's hair on May 13?

22 A No. I -- I don't -- said I don't know what -- if
23 that was different than what he told O'Kelly on the
24 12th for that matter.

25 Q Or even during the tape he changed his story

1 about that?

2 A Right. I believe so.

3 Q Okay.

4 ATTORNEY DVORAK: That's clips four,
5 six, nine, and sixteen.

6 Q (By Attorney Dvorak) Did -- were you aware that
7 he's getting a call from Blaine's, uh -- that --
8 that police felt there -- Wiegert, Fassbender
9 felt that he was not being truthful about whether
10 he called Blaine's boss that evening? Did you
11 know that on May 13?

12 A No.

13 ATTORNEY DVORAK: That's clip five.

14 Q Were you aware that he changed his story about
15 seeing Steve put the -- Teresa's cell phone,
16 camera, and purse, and stuff in the burn barrel
17 on May 13?

18 A No.

19 ATTORNEY DVORAK: That's clip seven.

20 Q Were you aware that he changed his story about
21 ever seeing the stuff in the burn barrel?

22 A No.

23 ATTORNEY DVORAK: That's clip eight.

24 Q About whether or not he saw Steve clean the knife
25 that was supposedly used?

1 A No.

2 ATTORNEY DVORAK: That's clip 11.

3 Q And about whether or not, um, he had ever seen,
4 uh, Steven with a key or dropped the key?

5 A No.

6 ATTORNEY DVORAK: That's 12 and 13.

7 Q Um, so going into this interview on May 13, you
8 had not personally talked to Brendan about what
9 he was going to say on May 13; right? In detail.

10 A In -- in detail, right. He wanted to do it, and he
11 wanted to do it fast, and I guess I didn't say no.
12 So...

13 Q Okay. You had not personally interviewed him
14 about the details that he was going to -- to
15 disclose or what he was going to say; correct?

16 A Correct.

17 Q Um, so he was sent into the interview without,
18 essentially, any preparation from his lawyer?

19 A Not from me directly, no. I -- I was trusting
20 O'Kelly. Had briefed him.

21 Q Okay. Now, you're -- were you aware that Mr. --
22 that the agents had requested, or suggested, or
23 cajoled Brendan into making a phone call to his
24 mother that night?

25 A I wasn't aware of that until I saw the tape.

1 Q Okay. Um, you're aware that happened when you
2 saw the tape; right?

3 A Yes.

4 Q Okay. You -- and -- and at what point did you
5 become aware that that had happened?

6 A When I read the tape. When I saw the tape. I guess
7 was that the question?

8 Q Yes. When --

9 A I became aware of that at the time that I saw the
10 tape.

11 Q Okay. Would you have -- if -- had you been
12 there, would you have approved of that procedure?
13 To have the -- the detectives, um, try to get
14 Brendan to make a phone call to his mother that
15 night over the telephone from the jail?

16 A Certainly not a monitored call, no.

17 Q Okay. Well, that's about the only kind there
18 is --

19 A Right.

20 Q -- to be outside in the jail; right?

21 A Yeah.

22 Q So the answer's, no, you would not want him to
23 have another uncounseled -- making another
24 uncounseled statement talking about the case;
25 right?

1 A Right.

2 Q Okay. O' Kelly was there and he saw that. If --

3 had you -- had you given any instructions to

4 O'Kelly about limiting in any way what Brendan is

5 saying or to whom he is saying it?

6 A No.

7 Q Did -- did Mr. O'Kelly, after the in -- did you

8 talk to Mr. O'Kelly immediately after the May 13

9 interrogation by Wiegert and Fassbender?

10 A I'd have to look at the billing records to see if I

11 did or not.

12 Q Sure. Go ahead.

13 A I thought I did. Yes. Okay. I did.

14 Q You did. And during that conversation did he

15 tell you how the interview went?

16 A As I recall, he told me the interview went fine and

17 that, you know, Brendan -- Brendan was on board with

18 cooperating in the Avery prosecution and, ultimately,

19 entering a plea agreement.

20 Q Did he tell you that Wiegert and Fassbender

21 had -- did he make you aware that Brendan had

22 been -- agreed to make a phone call to his mother

23 that night and talk about what he had told

24 Wiegert and Fassbender on the 13th?

25 A No.

1 Q Would you have expected O'Kelly to -- to put --
2 to stop that from happening?

3 A Yes, I would have expected him to do that. I would
4 have expected him to at least, yeah, have him call me
5 or something, yes.

6 Q Okay. Now, prior to that May 13 interview, were
7 you aware of lab results -- the lab results
8 regarding Steven Avery's -- the DNA -- lack of
9 DNA on Steven Avery's cuff and the fact that no
10 DNA had been found in his bedroom?

11 A Yes.

12 Q Or at least of -- of -- of Brendan's? And were
13 you aware that there was a contamination issue
14 about Steven Avery's blood on the hood of the
15 SUV?

16 A I wasn't aware, I think, of the contamination issue.

17 Q Okay. Um, your Guard duty on the 13th, was that
18 your last -- supposed to be your last meeting or
19 something?

20 A It was supposed to be. I -- my -- my mandatory
21 release date was supposed to be 18, May, 2006, and it
22 was my impression at that time that some orders
23 automatically would find me at 28 years -- or
24 conditions -- service minus law school time and then
25 I would be out.

1 So I had some drill to do by then or
2 things just weren't going to get done in terms of
3 evaluation reports, things of that nature.

4 Q Was there a party scheduled?

5 A Not at that time, no.

6 Q Okay.

7 A No. There had been one the previous weekend, sort
8 of, at a -- a drill at Fort (unintelligible).

9 COURT REPORTER: Please repeat that.

10 THE WITNESS: Fort Sheridan,
11 S-h-e-r-i-d-a-n.

12 Q (By Attorney Dvorak) Okay. I want to limit this
13 discussion to events prior to May 13 that you had
14 submitted a voucher to the Public Defender's
15 Office; correct?

16 A Prior to May 13?

17 Q No. No. Um, let me back up. You had submitted
18 a -- a voucher to the Public Defender's Office
19 for your time spent on the case?

20 A Right. The -- the billing record should the --
21 exhibit whatever number it is.

22 Q Fifty-five.

23 A Yes.

24 Q Right. Okay. And the Public Defender's Office
25 had cut your bill for time spent on the media?

1 A Correct.

2 Q Correct? Okay. And prior to May 13 is it fair
3 to say that about 8.2 of those hours were cut?

4 A I don't recall where they took the cuts, but...

5 Q Okay. Now, also, during this time period, that
6 is in 2006, you were running for an elected
7 office; right?

8 A Not during the time period I represented Brendan, no.

9 Q Okay. You had run for judge, and -- and --
10 and -- and lost a primary?

11 A It was a run for circuit judge in Winnebago County,
12 yes.

13 Q Okay. And -- and then later in 2006 --

14 ATTORNEY FALLON: Objection. Relevance.

15 ATTORNEY DVORAK: I think it has to do
16 with some of -- perhaps some of his motive with
17 respect to the press.

18 THE COURT: I thought he just said that his
19 election campaign predated his representation of
20 Brendan.

21 ATTORNEY DVORAK: Well, there was -- my
22 next question was going to be about a recount
23 that occurred -- that -- that -- that was going
24 on during that period of time.

25 THE COURT: Objection is sustained.

1 ATTORNEY DVORAK: All right.

2 Q (By Attorney Dvorak) Did you ever turn over
3 Michael O'Kelly's May 12 tape to Attorneys
4 Fremgen and Edelstein?

5 A I don't -- I don't think he gave it to me so I don't
6 think I ever turned it over.

7 Q All right. So you never had it?

8 A I believe that's correct.

9 Q You never saw it?

10 A I know I never watched it.

11 Q Okay. You never re -- also, you never reviewed
12 the tapes of any of Brendan's statements that he
13 made to the police with Brendan? Ever actually
14 went through them with him; is that correct?

15 ATTORNEY FALLON: Objection. Vague and
16 indefinite as to what statements what day.

17 THE COURT: Can -- can you --

18 ATTORNEY DVORAK: Sure.

19 THE COURT: Rephrase that?

20 ATTORNEY DVORAK: Sure.

21 Q (By Attorney Dvorak) Any -- there's -- all of
22 the statements that the police made with Brendan
23 in November, in February, and in March were
24 either taped and/or video recorded; right?

25 A I'm not sure about the first one shortly after the

1 death of Ms. Halsbach (sic) but subsequent ones I --
2 I know were --

3 Q Yeah. Did you ever review those tapes or audio
4 recordings with Brendan prior to May 13?

5 A I had offered to ask him if he was interested in
6 doing it at various times and he had declined.

7 Q Okay. You didn't -- you didn't insist that this
8 was something that you -- you should really do?

9 A If he didn't want to do it, I wasn't going to push
10 him.

11 Q Okay.

12 ATTORNEY DVORAK: I have nothing
13 further, Judge.

14 THE COURT: Mr. Fallon?

15 ATTORNEY FALLON: Thank you.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY FALLON:

18 Q Mr. Kachinsky, how long have you practiced
19 criminal law in the state of Wisconsin?

20 A Pretty much since I was released from active duty.
21 The first time in 1982 it was initially split between
22 criminal and other -- and other things, but after
23 that it was -- it eventually evolved into almost
24 exclusively criminal, traffic, and other cases in
25 which the State was the opposing party.

1 Q All right. And when did that, um -- the -- the
2 criminal practice dominate your practice of law?
3 When did that switch from --

4 A Well, ac -- actually, I should say when I was a JAG
5 officer in the Army, three of my four years I was a
6 prosecutor there. And the rules aren't that much
7 different than civilian practice.

8 Um, I would say by -- by 1990 for sure
9 criminal traffic came pretty close to exclusive.
10 I wanted to get rid of divorce cases in the worst
11 possible way.

12 Q All right. Now, with respect to the suppression
13 hearing, you were asked some questions regarding,
14 um, your concession on the presence or absence of
15 custody and the need for **Miranda**.

16 Could you tell us your thinking or
17 reasoning on why you conceded that point, please?

18 A Sure. Because at the beginning of the interview, as
19 I -- I recall for the March 1 interview, uh, Brendan
20 was informed that he was free to leave. He was
21 brought there with his mother who was nearby. Nobody
22 told him he was under arrest. He wasn't handcuffed
23 or -- or confined in any way.

24 And, further, the **Miranda** rights were
25 read appropriately from what I observed on the

1 tape.

2 Q And you were aware he was transported in Special
3 Agent Fassbender's vehicle?

4 A Correct. And that -- that whole thing had been
5 recorded as well.

6 Q All right. And that vehicle was an unmarked car?
7 It was a -- it looked like a regular car? The
8 back doors worked like any other car; correct?

9 A That was my understanding, yes.

10 Q All right. Now, with respect to the two
11 statements on February 27, which were also
12 somewhat part of that suppression hearing, there
13 was a statement at the high school and the
14 statement at the Two Rivers Police Department.

15 With respect to the statement of the --
16 at the high school, you, likewise, conceded
17 **Miranda** to be inapplicable.

18 Could you explain to us your thinking
19 there?

20 A Sure. It was clearly a noncustodial interrogation.
21 It wasn't required for the **Miranda** portion of a
22 suppression motion.

23 Q All right. And how about the -- the subsequent
24 statement which occurred shortly thereafter at
25 the Two Rivers Police Department? What was your

1 thinking there?

2 A Same thing a -- applied in terms of that statement
3 being custodial and requiring **Miranda** warnings.

4 Q In other words, you didn't think that the
5 circumstances dictated a custodial environment?

6 A Correct. It's obviously different. You know, goes
7 to -- but it goes to the voluntariness issue, not to
8 **Miranda** per se.

9 Q All right. Now, in that particular case on that
10 ride to the Two Rivers Police Department you were
11 aware that the defendant's mother rode with him
12 in the back of Agent Fassbender's car; correct?

13 A Yes.

14 Q Now, Counsel asked you about a -- a question, or
15 an argument you made, or a comment you made, in
16 that suppression hearing about the presence or
17 absence of coercion. I think he read something.

18 And in -- in your way of thinking, was
19 there a difference between psychological coercion
20 and legal coercion as that term is used in
21 Wisconsin as it relates to suppression hearings?

22 A Correct. Coercion, at least as I was referring to
23 it, would have been something in the nature of
24 threats of -- of some type, of an unlawful nature,
25 uh, as opposed to, um -- I -- I wouldn't call it

1 coercion. I'd call it a -- more of an inducement
2 where somebody tries to establish rapport. I guess,
3 the -- the so-called Reid technique of -- of
4 interrogation. It's --

5 Q So --

6 A -- different.

7 Q -- that was what you meant in the context of your
8 comment on coercion when you were talking to the
9 Court?

10 A Right. No threats, no unlawful promises were made.

11 Q All right. Now, um -- and I believe that was
12 with respect to the February 27 proceedings? Or
13 the two statements?

14 A I don't recall what the --

15 Q Okay.

16 A -- the --

17 Q Fair enough.

18 A -- statements were.

19 Q All right. Now, there was a -- a fair amount of
20 discussion, initially, um -- I think it was
21 Exhibits 319 and 320 were discussed briefly, in
22 your comments to the press about a -- a plea
23 being a possibility. What did you mean by that
24 at that stage?

25 A Simply it was an option that anyone who's charged

1 with a criminal offense would be open to considering
2 at any time regardless of the state of the evidence.
3 I mean --

4 Q Did you think that you were then just stating an
5 obvious possibility or -- I mean, in terms of
6 what the facts are? In terms of how these cases
7 are handled?

8 A Correct. I was -- yeah. I was signaling it was --
9 could happen at any time. It was always an option
10 any defendant had to either do that or do the
11 opposite.

12 Q Which would be to take the case to trial?

13 A Right.

14 Q All right. Um, I also think that there was some
15 comment in reference about Exhibit -- I think it
16 was 324. You've consulted someone about, um,
17 false confessions in this case; correct?

18 A Yes.

19 Q Who did you consult?

20 A Amongst I believe I called Mr. Drizin, D-r-i-z-e-n
21 (sic).

22 Q All right.

23 A Uh, just to get some names of psychologists that I
24 might possibly consult. This was done, I believe,
25 after, uh --

1 Q After the suppression?

2 A After the suppression hearing and after Mr. Dassey
3 subsequently was not interested in pursuing a plea
4 agreement. So I think it was sometime in June.
5 Whatever's reflected on the billing records.

6 Q All right. And at that particular point you were
7 preparing to try this case?

8 A Correct.

9 Q Now, you mentioned something in -- with respect
10 to the -- the -- the polygraph and Mr. Dassey's
11 request for a polygraph.

12 You used a phrase, it seemed like a -- a
13 question of rote, or seemed to be a matter of
14 rote. What did you mean by that?

15 A He was talking in such a manner as it appeared it was
16 some line he was supposed to tell me that had been
17 memorized, because he had been told that by somebody.
18 That was just -- that was an impression I got from
19 Mr. Dassey on a number of things.

20 Q And what was it about the way in which the
21 request came that -- that led you to that belief?

22 A I guess "polygraph" just seemed to be a word above
23 his normal vocabulary level and also above his level
24 of prior experience with the criminal justice system,
25 which had been zero.

1 Um, he could have discussed it, quite
2 conceivably, with members of his mother's family
3 that were a little bit more experienced in those
4 things.

5 Q All right. Um, how many times did Mr. Dassey ask
6 you about taking a polygraph?

7 A Twice.

8 Q And after the second time you acceded to his
9 request?

10 A Yes.

11 Q And a -- a polygraph was administered on Easter
12 Sunday, April 16?

13 A From all indications, yes. I, of course, wasn't
14 personally there.

15 Q And I think you said -- and I just want it to be
16 clear -- were you advised as to what or how
17 Mr. Dassey did by Mr. O'Kelly shortly after the
18 test was administered?

19 A Yes.

20 Q All right. And did you, then, subsequently relay
21 those results to Mr. Dassey at some point after
22 April 16 and prior to May 12?

23 A It would have been my first visit with him as
24 reflected in the billing records, um, after the
25 polygraph took place. When I talked to him at that

1 point, I'm sure I told him that the polygraph had
2 been inconclusive or he would have asked me. I --
3 I -- I can't conceive of any -- any other possible
4 sequence of events.

5 Q All right. Now, in -- in your discussions with
6 Mr. Dassey can you describe his -- his
7 communicative skills with you as you, um, talked
8 about the case and the matters that you were
9 trying to work with him on?

10 A Um, yeah. Brendan was very concrete. He under -- I
11 think he understood the basic processes that were --
12 were going on at times.

13 There some things he would say that just
14 seemed like he was -- memorized and been prompted
15 by somebody to say this -- this to me.

16 So he was definitely introverted, not a
17 very talkative person. I would end up doing
18 almost all the talking during the interviews. He
19 didn't provide a lot of information.

20 Q In terms of -- was your personal experience with
21 him, did it seem to, um, coalesce with what you
22 learned from the school, and the school's
23 individual education plans, and things that they
24 had worked up regarding Brendan? Did -- did your
25 personal experience seem to mesh with what you

1 had discovered up to that point?

2 A Yes. Those results from the school appeared to
3 reflect my experiences with Brendan in terms of his
4 communicative and understanding levels.

5 Q All right. Now, um, I think you described -- in
6 response to Counsel's questions about Brendan
7 maintaining his innocence, I think you described
8 them as assertions of no or noninvolvement.

9 How would you characterize his -- his
10 assertions of noninvolvement? I mean, tell us
11 about that.

12 A It would seem very unemotional. He was very -- had
13 very flat affect, a-f-f-e-c-t, I think as a
14 psychologist would -- would say.

15 It didn't seem passion. He didn't act
16 like somebody that felt he was being terribly
17 wronged by being in jail.

18 He just -- was just kind of -- he was
19 telling me that, you know, they put words in my
20 head, into the -- the May 1 tape. Particularly,
21 I -- I would ask him about it several times.

22 Q You mean the March 1 --

23 A March 1, yes.

24 Q Right. In terms of the way he was expressing
25 himself, did that appear to be genuine or was

1 that also a matter of rote?

2 A Certain portions of it, it looked like they were
3 rehearsed sort of things.

4 Q At any time did you ever get a -- a passionate
5 expression of innocence from Mr. Dassey?

6 A Not -- not that I personally considered passionate,
7 no.

8 Q All right. In terms of Mr. Dassey's ability to
9 understand his legal predicament, um, was he able
10 to grasp the concept that he was being charged as
11 a party to a crime?

12 ATTORNEY DVORAK: Judge, I'm going to
13 object. That calls for speculation as to -- with
14 respect to Mr. Dassey.

15 THE COURT: Well, we've been asking --
16 you've been asking Mr. Kachinsky about his opinions
17 with respect to things. I think this is fair.
18 Overruled. Go ahead.

19 THE WITNESS: Mr. Dassey, I think,
20 clearly understood that even if he wasn't the one
21 that pulled the trigger, uh, or did something
22 that would have caused the death of another
23 individual, such as Teresa Halbach, that if he
24 assisted somebody else in doing it in some way,
25 knowing that it was part of a criminal activity,

1 that he was guilty of a criminal offense. That
2 it was immoral, etc.

3 Q All right. In terms of his reticence to carry on
4 a conversation with you, did -- in your ability
5 to work with him, did he -- did he seem to
6 function all right and understand your questions?

7 I mean, were you able to communicate and
8 work with him?

9 A Oh, sure. Um, I think he had the ability to
10 cognitively, that is, intellectually, understand what
11 I was telling him. I wouldn't -- I would make my
12 vocabulary in talking to him appropriate.

13 If I found myself using lawyerly-type
14 words, I would restate something in a little bit
15 more basic -- basic terms to him and talk slowly
16 and understandably.

17 But he appeared to -- to understand, you
18 know, what the next court hearing might be. Uh,
19 what I had seen in terms of evidence I had
20 reviewed.

21 And we also, I think, had some
22 discussions -- I would send him -- he didn't want
23 to have all of the State's discovery in his cell
24 to read. And I -- and he was alone, for that
25 matter, isolated from the world. But he didn't

1 want to have all that stuff in his cell.

2 But he said that I -- I certainly -- I
3 think I sent -- sent him some letters summarizing
4 certain points as I had seen them.

5 Q All right. And so he was able to understand them
6 and at least -- at least on some level discuss
7 with you their meaning?

8 A Yes. And I think I concentrated on my discussions
9 with Brendan on -- on the timeline of the late
10 afternoon and relatively early evening of October 31,
11 2005.

12 Q All right. In your dealings with Mr. Dassey and
13 his family, did he appear to be heavily
14 influenced by family members?

15 A I couldn't --

16 ATTORNEY DVORAK: Ob --

17 THE WITNESS: I couldn't tell from my --

18 ATTORNEY DVORAK: I'm going to -- I just
19 want to enter an objection, Judge. Unless --
20 unless there's going to be some foundation about
21 that.

22 ATTORNEY FALLON: He's --

23 THE COURT: Foundation?

24 ATTORNEY FALLON: Foundation? The
25 question is the nature of the relationship

1 between Mr. Kachinsky and Mr. Dassey. And the
2 accusation is, is that Mr. Kachinsky failed in
3 his representations.

4 And they're entitled to explore one
5 as -- aspect of it. I have another angle that
6 might attrib -- contribute to what the facts
7 really mean in this case.

8 And this is what I'm getting at in terms
9 of my questioning did he have some, um, problems
10 in -- in working with and communicating with his
11 client based on outside influences.

12 They've already talked about Mr.
13 O'Kelly's influence. There -- there a lot of
14 influences in this case. O'Kelly is not just
15 one.

16 THE COURT: Court believes that's a fair
17 avenue to explore. You can answer the question if
18 you remember it.

19 THE WITNESS: Sure. Our -- okay. I
20 recall getting the e-mail from O'Kelly -- I
21 believe it's in evidence -- regarding the
22 numerous phone calls allegedly made by Avery to
23 the residence with Barb Janda, and I was also,
24 during the course of the case, being aware of the
25 jail conversations between Brendan and his

1 mother.

2 And in talking to him, I mean, it
3 appeared to me that, based on that, plus the way
4 he was talking about certain things, that they
5 were giving him advice and direction.

6 Q All right. And you were aware that there were a
7 number of jail calls from family members to your
8 client during this -- this time of March, April,
9 and May, 2006?

10 A Oh, absolutely.

11 Q And, in fact, um, many family members had told
12 Brendan, don't take a deal, don't cooperate,
13 don't testify against Steven; isn't that correct?

14 ATTORNEY DVORAK: Objection. Calls for
15 hearsay.

16 THE COURT: Well, phrased that way it does.

17 Q (By Attorney Fallon) All right. Were you aware
18 that there was advice given to Mr. Dassey by
19 family members that might be inconsistent with a
20 road that was a possibility in this case?

21 A Right. I reviewed --

22 ATTORNEY DVORAK: I think it still calls
23 for hearsay.

24 THE COURT: I'll overrule the objection.
25 You can answer.

1 THE WITNESS: I reviewed the jail tapes
2 that the State had provided to me I believe after
3 Mr. Dassey had told me he wanted a new counsel
4 the first time that that occurred.

5 And in those tapes there were numerous
6 references to him, or suggestions to him, not to
7 take a deal, uh, to go to trial, to fire me as
8 his attorney, things of that nature.

9 Q All right.

10 (Exhibit No. 364 marked for identification.)

11 ATTORNEY FALLON: May I approach the
12 witness?

13 THE COURT: You may.

14 Q (By Attorney Fallon) Mr. Kachinsky, I'm showing
15 you what has been marked as Exhibit 364. If
16 you'd take a moment to examine that?

17 A Yes.

18 Q Does Exhibit 364 -- is that the type of
19 information that you were just discussing that
20 you reviewed certain calls from family members?

21 A Yes. I remember this quite vividly.

22 Q All right. And there are quite a few calls on
23 Exhibit 364, is there not?

24 A Correct.

25 Q And the -- the dates of those calls range from

1 the first ones beginning what date?

2 A First from March 23 of 2006 to May 22 of 2006.

3 Q All right. Now, in terms of your dealing with
4 your client, and in your review of those calls,
5 is it your opinion that there was a -- some
6 coercion being employed on Mr. Dassey by the
7 family?

8 A I don't know if coercion would be the word but
9 certainly persuasion.

10 Q And the persuasion was to do what?

11 A The persuasion was not to rat on Steve Avery, to fire
12 me as his attorney, and to go to trial.

13 Q All right. If we may, I'm going to talk a little
14 bit about the police strategy that Counsel was,
15 um, asking you about in this case.

16 Um, I believe you testified, correct me
17 if I'm wrong, that the serious negotiations would
18 take place after the Court ruled, which turned
19 out to be May 12; is that correct?

20 A Correct.

21 Q All right. Now, I would imagine there was some
22 discussions leading up between yourself, and
23 Mr. Kratz on behalf of the prosecution, in, um --
24 from the beginning of May through the suppression
25 hearing and then shortly thereafter. There was

1 some discussions occurring with him; is that
2 correct?

3 A Right. Mr. Kratz would, you know, occasionally make
4 some statements that we've discussed, you know, what
5 ultimately the State might be looking at should the
6 motion to suppress be denied.

7 Q All right. And, um, I believe you used the
8 phrase the "Statement of May 13 was to be
9 considered a proffer towards a possible plea."
10 Is that correct?

11 A Yes.

12 Q Could you explain to us your understanding or
13 what you meant by that?

14 A Sure. What a -- what a proffer is, is a statement
15 given by a person who's charged with a crime to law
16 enforcement. It's for the purposes of negotiations
17 and, therefore, not admissible under the -- the
18 evidence code, uh, where basically you're showing the
19 State the sort of information and cooperation that
20 the client would provide in the event that there's a
21 plea agreement worked out.

22 In the event the agreement works out, of
23 course, the person's normally required to testify
24 truthfully against others that might be involved
25 in the crime or some other offense, as well as

1 other sort of conditions.

2 It's basically because a prosecutor's
3 plea offer would normally depend upon the quality
4 of the testimony given by the client.

5 Q All right. And in this particular case have you
6 engaged in this -- this proffer approach in -- in
7 previous criminal cases?

8 A Uh, yes. Primarily in -- in federal court done it a
9 number of times.

10 Q All right. And I believe you said you had a --
11 a -- well, let me ask you. Had you had a
12 long-standing professional relationship with the
13 prosecutor in this case? Mr. Kratz?

14 A Yes.

15 Q Did you feel you could trust his representations
16 and his word?

17 A I've also known Mr. Kratz to be a hard-working
18 adversary but also a very ethical one.

19 Q All right. So you didn't have any concerns about
20 having any conditions up front in providing the
21 proffer? In other words, he didn't make any
22 promises to you of what the State would do until
23 the -- the proffer was in and you and he could
24 then discuss what -- what it was?

25 A Yeah. The State -- I think the -- some of the

1 conversations we had Mr. Kratz would make comments,
2 like, you know, we really don't need any more
3 evidence against -- against Brendan other than the
4 statement and surrounding sorts of corroborative sort
5 of evidence.

6 We could convict him easily with just
7 his own March 1 statement. We didn't even need
8 the May -- February 27 one or anything else.

9 But that if he would assist in Avery
10 then certainly he would get a better deal than if
11 he didn't.

12 Q All right. Now, with respect to, um, trying to
13 put your client in the best light to, um -- to
14 negotiate a favorable deal, did you believe that
15 the State actually needed Mr. Dassey's testimony
16 to convict Steven Avery?

17 A No.

18 Q All right. So did -- did -- in your view, then,
19 that made it a little more difficult to -- made
20 it more difficult to negotiate; did it not?

21 A It certainly would be a factor. I know Mr. Kratz to
22 be, as I said, not only a vigorous advocate but a
23 fair one. Certainly, as a representative of the
24 State, he would want to establish a pattern
25 institutionally that person's that cooperated with

1 the State would get better deals than those that
2 didn't cooperate or obstructed justice.

3 Q All right. And in your experience he had given
4 consideration in the past for those who
5 cooperated?

6 A Yes. There is generally for persons that were
7 remorseful or helpful to law enforcement, like, when
8 somebody was involved, perhaps, in a -- maybe in a
9 burglary that, you know, find the stolen property,
10 things like that.

11 Q All right. In your dis--- in your discussions
12 with Mr. Dassey, did you -- did you ask him
13 directly why he told the police what he told them
14 on March 1? In other words, why he, quote,
15 confessed, closed quote?

16 A I know I asked him a number of times. I never got
17 much of an answer.

18 Q Is it fair to say he never directly answered that
19 question?

20 A That's the way I would characterize it, yes.

21 Q Did he -- did you ever offer him the opportunity
22 of reviewing any of the statements he made in
23 this case? The Nov -- two November statements to
24 the Marinette authorities, the two February 27
25 statements, and the March 1 one?

1 A Yes, I told him I could --
2 ATTORNEY DVORAK: (Unintelligible)
3 Judge.
4 THE COURT: I'm sorry?
5 ATTORNEY DVORAK: I said it's been asked
6 and answered.
7 THE COURT: I don't recall that.
8 ATTORNEY DVORAK: Okay.
9 THE COURT: Go ahead.
10 THE WITNESS: Okay. Yes. I think early
11 on in the case, once I had seen the tape, I think
12 I told him I would review the CD or tape,
13 whatever it was, uh, and if he wanted, I could
14 bring my laptop over to the Sheboygan County Jail
15 and we'd find a time when he could sit there for
16 three-and-a-half hours and -- and watch it, and
17 have to do it, basically, for an afternoon or
18 morning to avoid interfering with jail meals and
19 things like that.
20 Q All right. Did he ever take you up on the offer
21 to listen to or watch any of those statements?
22 A No, he said he really didn't feel he had a need to.
23 Q Did he ever give any other explanation?
24 A No.
25 Q During the course of your discussions with him

1 did he ever offer you the explanation that he got
2 the idea to, quote, confess, closed quote from
3 the book or the movie called *Kiss the Girls*?

4 A No.

5 Q Did he ever suggest to you that he got any of
6 those ideas from friends, or media accounts, or
7 anything else?

8 A No.

9 Q All right.

10 ATTORNEY FALLON: No further questions.

11 ATTORNEY DVORAK: Can I have a few
12 minutes to caucus, Judge?

13 THE COURT: Does a few minutes mean what?

14 ATTORNEY DVORAK: Few minutes. Or if
15 you want to take the morning break?

16 THE COURT: All right. Let's take a
17 morning break. Fifteen minutes.

18 (Recess had at 10:05 a.m.)

19 (Reconvened at 10:43 a.m.)

20 ATTORNEY DRIZIN: We've been having
21 technical difficulties. I think we've worked
22 them out. But I'd ask your permission to allow
23 one of -- member of our counsel's team to sit in
24 the jury box for the purpose of playing videos
25 with the next witness as opposed to counsel

1 table.

2 THE COURT: That's fine.

3 ATTORNEY FALLON: Your Honor, if counsel
4 would permit the State one last question before I
5 pass the witness. There was one I omitted.
6 They --

7 THE COURT: Go ahead.

8 ATTORNEY FALLON: Thank you.

9 Q (By Attorney Fallon) Mr. Kachinsky, um, when
10 Attorneys Fremgen and Edelstein became the
11 counsel of record in this case, did you provide
12 them with all of your file materials in this
13 case?

14 A Yes.

15 Q Was there anything that you can recall holding
16 back?

17 A There was one thing I remember that I hadn't printed
18 out, and that was the notes I had taken at the
19 Calumet County District Attorney's Office of the
20 material that was referred to on -- on Friday, and I
21 met -- saw Mr. Edelstein in -- in court in Oshkosh,
22 and at that point I transferred that on my PDA to his
23 PDA because I had -- that had been -- that had not
24 been printed out. But everything else that I had I
25 gave them.

1 Q All right. And, um, then I guess when you say,
2 everything I had, did that include Mr. O'Kelly's
3 work product stuff? I mean, all that material
4 that he did or --
5 A Any of the portion of it that I had I turned over.
6 Um --
7 Q All right.
8 A -- Mr. O'Kelly didn't necessarily give me everything.
9 Q And that would then explain why you had not seen
10 the May 12 video before this?
11 A It might.
12 Q All right. Okay.
13 ATTORNEY FALLON: Your witness. Thank
14 you, Counsel.
15 ATTORNEY DVORAK: Sure.
16 **REDIRECT EXAMINATION**
17 BY ATTORNEY DVORAK:
18 Q Let's start with that. You handed over the file
19 in the condition that they were in your office?
20 A Yes.
21 Q Okay. And so what you handed over was -- was
22 everything you had and -- and reflected your --
23 what you had reviewed in your work product to
24 that date; right?
25 A Yes.

1 Q Okay. I want to talk about the March 1 statement
2 at the station.

3 I -- I believe you said that he felt
4 that he was -- that the police had told him that
5 he was free to leave. Would it surprise you if
6 they never told him that at that time?

7 A No. I -- I'm not -- don't have really close memory
8 of it. I remember it was noncustodial, you know, in
9 terms of the overall situation. He might not have
10 explicitly said that.

11 Q All right. And -- and -- and that his mother was
12 nowhere in the building? She was at court at
13 that time?

14 A That might be the case.

15 Q And that there was no full reading of his **Miranda**
16 rights at that time?

17 A March 1?

18 Q Yes. At the station. At the station.

19 A As I recall on the tape it was -- it was read.
20 Whatever the tape reflects, it reflects.

21 Q Okay. So if -- if you -- if you conceded those
22 issues, those would have been based on mistaken
23 assumptions?

24 ATTORNEY FALLON: Objection.
25 Mischaracterization.

1 THE COURT: Can you rephrase --

2 ATTORNEY DVORAK: I'll withdraw -- I'll
3 withdraw the question.

4 Q (By Attorney Dvorak) Um, now, you -- you said
5 that you had a -- a trusting relationship with
6 Mr. Kratz throughout your career? You've
7 developed one; right?

8 A At least from the time he became, I believe, first an
9 assistant and later the district attorney in Calumet
10 County.

11 Q Okay. And -- and what you testified on cross is
12 that there had been ongoing discussions with
13 Mr. Kratz about Mr. Dassey eventually entering a
14 plea and testifying against Mr. Dassey? Or
15 against Mr. Avery?

16 A Right. Some --

17 Q And -- and -- and it was in -- your -- your
18 testimony is that it was in conjunction with
19 those discussions that the March 13 statement was
20 set up?

21 ATTORNEY FALLON: May 13.

22 ATTORNEY DVORAK: I'm sorry. May 13.
23 Thank you.

24 THE WITNESS: Not directly. I mean, it
25 was not directly part of that, no.

1 Q (By Attorney Dvorak) Well, okay. But your --
2 your view -- what you're -- what you've told us
3 is that in your view those -- that May 13
4 statement was part of a -- a plea negotiation and
5 therefore not admissible?
6 A Correct.
7 Q Okay. And in order for that to happen it would
8 mean that it would have to be part of a plea
9 negotiation; correct?
10 A Yes.
11 Q And it would have to be part of a plea
12 negotiation with a prosecutor; right?
13 A Yes.
14 Q Is it your understanding that that confession
15 would also have to be made in the presence, at
16 least under Wisconsin law, of the prosecutor?
17 A I'm not sure.
18 Q Okay. Um, did you -- did you, uh -- and --
19 and did -- would -- would your understanding of
20 this plea negotiation process have included the
21 follow-up phone call between Mr. Dassey and his
22 mother?
23 A Um, no. It was that the agents that would be in the
24 interview would contact Kratz as to whether they
25 wanted to go ahead with it at that time.

1 Q Well, okay. But you set up the May 13 -- you set
2 up the May 13 interview with the understanding
3 that it was going to be in the nature of what you
4 call a proffer?
5 A Yes.
6 Q And that that proffer was not going to be
7 something that was admissible into evidence;
8 right?
9 A Right.
10 Q Okay. And during that proffer another
11 arrangements were made for Dassey to make another
12 statement; correct?
13 A Right.
14 Q By the phone call to his mother; right?
15 A That's what's reflected in the -- in the evidence,
16 yes.
17 Q Right. And -- and -- I mean, isn't it fair to
18 say that you would have expected that Mr. Kratz,
19 at least, would have included that statement in
20 the proffer understanding out of fairness, if
21 nothing else, see how it was induced by them and
22 you weren't there?
23 ATTORNEY FALLON: Objection.
24 Speculation. Mischaracterization of the
25 evidence.

1 THE COURT: Well, it -- it's certainly
2 conjectural. I'll sustain the objection.

3 Q (By Attorney Dvorak) The -- would you have,
4 given your trusting relationship with Mr. Kratz,
5 and knowing how that May 13 phone call came
6 about, would -- did you expect that Mr. Kratz
7 would include that phone call as part of the
8 May 13 proffer?

9 A Yes.

10 Q Okay. Did you, um -- after finding out about
11 that, were you upset that they had done that?

12 ATTORNEY FALLON: Objection. He was --
13 Well, uh, only into the, um -- the phrasing of
14 the question. When? There's a timing issue.
15 Upset.

16 ATTORNEY DVORAK: Okay.

17 ATTORNEY FALLON: Did you --

18 Q (By Mr. Dvorak) Would you --

19 THE COURT: Well, the question was a
20 little bit vague. Why don't you --

21 ATTORNEY DVORAK: I'm sorry.

22 THE COURT: -- rephrase the --

23 ATTORNEY DVORAK: I'll rephrase it.

24 Q (By Attorney Dvorak) Where -- when -- when you
25 learned -- when you first learned that

1 Mr. Kratz's investigator had arranged the May 13
2 statement, were you upset to -- not the May 13
3 statement but the May 13 phone call -- did that
4 upset you?

5 A It was something I didn't expect.

6 Q Okay. Did you think it -- anything underhanded
7 had happened there?

8 A I just didn't make that judgment, no.

9 Q Okay. Had you ever in the course, when you were
10 now in trial preparation mode, made any motion to
11 exclude any evidence of the May 13 phone
12 conversation or the May 13 interrogation?

13 A I was giving that very careful consideration. That
14 was going to follow soon after the speedy trial
15 demand was filed. But I hadn't done it yet. I think
16 there was some --

17 ATTORNEY FALLON: Your Honor, I'm going
18 to impose an objection. Counsel has been telling
19 us, and they've been more carefully crafting
20 their questions since last Friday, that we're
21 only concerned with the events leading up to May
22 of 13.

23 Now, this is delving into strategy
24 decisions, ideas, and concepts post-May 13. And,
25 again --

1 ATTORNEY DVORAK: Judge, I --

2 ATTORNEY FALLON: -- so I say the door
3 is open for the discovery of those documents they
4 claim are privileged. That's twice now.

5 And I don't see how they're going to get
6 through the next two witnesses, the other two
7 lawyers in this case, without going down that
8 road.

9 THE COURT: Well --

10 ATTORNEY DVORAK: I'm --

11 THE COURT: -- we'll see.

12 ATTORNEY DVORAK: -- I'm -- I'm going
13 to -- I'll withdraw the question, Judge.

14 THE COURT: All right.

15 ATTORNEY DVORAK: And the answer.

16 Q (By Attorney Dvorak) Um, now, you had -- you had
17 not known Brendan Dassey prior to being appointed
18 to represent him; correct?

19 A That is correct.

20 Q Um, you had -- over the course of your
21 representation up until March 13 -- had seen him
22 three times; correct?

23 A What's ever in the billing records is when I saw him.

24 Q I'm sorry. May 13. Uh, and you had -- and that
25 was for about a total of about three hours;

1 right?

2 A As far as conversations that took place in the
3 Sheboygan County Detention Center, yes. There were
4 also some incidental conversations, of course, that
5 took place during the course of, and immediately
6 before or after, court proceedings.

7 THE COURT: Look, Counsel, I think we
8 covered this on Friday.

9 ATTORNEY DVORAK: Very good.

10 THE COURT: Do you have different questions
11 that are related to those items that were -- or --
12 or that testimony that was brought forward from
13 Mr. Fallon's examination?

14 ATTORNEY DVORAK: Well, it -- it --
15 Judge, it's somewhat laying the groundwork for
16 the issues about, um, the impositions of the
17 family. But I'll try to shorten it up.

18 Q (By Attorney Dvorak) Um, given -- given the
19 amount of time that you had spent with him had
20 you ever known him to be impassioned about
21 anything?

22 A No.

23 Q During that time you knew that he had been
24 interrogated three time -- or several times.
25 During some of those interrogations he had been

1 told that he was free to leave, uh, and that if
2 he confessed that he wouldn't get into trouble,
3 and yet he found himself in -- in jail. Do you
4 think that he was having some problems
5 understanding how all this was happening?

6 ATTORNEY FALLON: Objection. Again,
7 mischaracterization of the -- of the status of
8 the record right now.

9 THE COURT: I -- I think that's a fair
10 objection and I'm going to sustain it.

11 Q (By Attorney Dvorak) Did you, um -- you -- you
12 testified that he -- he never gave you an answer
13 for why he confessed. Um, but he did tell you,
14 didn't he, that they had put words into my head?

15 ATTORNEY FALLON: Objection. Leading
16 the witness.

17 THE COURT: Overruled. You can answer
18 that.

19 THE WITNESS: I remember him saying
20 something to that effect, yes.

21 Q (By Attorney Dvorak) Okay. And you never
22 insisted on going over those tapes with him? To
23 talk about those tapes with him? That is, the
24 tapes of his statements?

25 A That is correct.

1 Q Okay. Now, is it unusual for -- you know, you --
2 you've got a young man who's charged with first
3 degree intentional homicide and -- and several
4 other very serious offenses. It's -- it's not
5 unusual that he would talk to his mother; right?
6 A Correct.
7 Q Or that he would want to talk to his mother;
8 right?
9 A Correct.
10 Q And in listening to those phone calls, isn't it
11 true that Barb's position with Brendan, when
12 talking to Brendan, was that if he did it, that
13 he should plead, and if he didn't do it, then he
14 shouldn't?
15 Do you remember any phone calls where
16 Barb said that? Or words to that effect?
17 A I believe there may have been, yes.
18 Q Okay. Um, you mentioned on -- on cross that
19 there were frequent contacts with the family, but
20 far -- by far most of those were with his mother;
21 correct?
22 A As far as I understand, yes.
23 Q Okay. Um, the -- you spoke to the press, um,
24 often, as we have gone over, and -- and mentioned
25 the plea deals from very early on; correct?

1 A Not --

2 ATTORNEY FALLON: Objection. Beyond the

3 scope.

4 ATTORNEY DVORAK: Let --

5 THE COURT: Well, it --

6 ATTORNEY DVORAK: -- let me --

7 THE COURT: -- is. I didn't understand

8 the question in the first place.

9 ATTORNEY DVORAK: I'm sorry. Okay.

10 Q (By Attorney Dvorak) Um, you testified

11 previously that part of your strategy with

12 talking to the press was to send a message to --

13 to Mr. Dassey's family that a guilty plea down

14 the road may be a possibility here?

15 A Yes.

16 Q Okay. Do you suppose that it's -- it's equally

17 likely that the family was concerned about your

18 representation because of everything that they

19 were hearing from you about the case? The amount

20 of time that you had spent with Brendan? And the

21 conclusion they may have come to that you weren't

22 doing a very good job for him?

23 A I don't know what was going through their head.

24 Q Okay.

25 ATTORNEY DVORAK: I have nothing

1 further.

2 ATTORNEY FALLON: Nothing.

3 THE COURT: You may step down.

4 ATTORNEY DRIZIN: Your Honor, at this

5 time the defense will call Dr. Richard Leo.

6 THE COURT: All right.

7 ATTORNEY FALLON: Your Honor, we -- Your

8 Honor, we would move into evidence Exhibit -- I

9 think it was 364.

10 THE COURT: Three sixty-three?

11 ATTORNEY FALLON: I think that was their

12 exhibit. I have no objection to that, although

13 the witness is yet here to -- is not yet here to

14 authenticate it. The report. But Exhibit 364

15 was the --

16 THE COURT: The phone log.

17 ATTORNEY FALLON: -- the phone log.

18 THE COURT: All right. That's offered.

19 Any objection to it?

20 ATTORNEY DVORAK: No, Your Honor.

21 ATTORNEY DRIZIN: No objection, Your

22 Honor. Mr. Dvorak failed to move into evidence

23 Exhibit 356, and we'll sub -- so move that into

24 evidence as well.

25 THE COURT: Three fifty-six is offered.

1 Are you also offering 363?

2 ATTORNEY DRIZIN: Um, yes, Judge.

3 THE COURT: Any objection to those?

4 ATTORNEY FALLON: Um, 356 is which one
5 again? The e-mail?

6 ATTORNEY DRIZIN: Yes.

7 THE COURT: Yes.

8 ATTORNEY FALLON: I have no objection to
9 that.

10 THE COURT: That was received on Friday.

11 ATTORNEY FALLON: Okay. And for 363,
12 um, subject to the calling of Investigator
13 Fassbender, I would have no objection. But I'm
14 not sure that the foundation is -- supports its
15 admissibility at this point.

16 THE COURT: All right. I'll reserve ruling
17 on that.

18 ATTORNEY DRIZIN: Dr. Leo, would you
19 please take the stand?

20 THE COURT: Come on up here, please. Just
21 remain standing. The clerk will administer the
22 oath. After that, please be seated.

23 THE CLERK: Please raise your right hand.

24 **RICHARD LEO,**
25 called as a witness herein, having been first duly

1 sworn, was examined and testified as follows:

2 THE CLERK: Please be seated. Please state
3 your name and spell your last name for the record.

4 THE WITNESS: My name is Richard Angelo
5 Leo. My last name is spelled L-e-o.

6 DIRECT EXAMINATION

7 BY ATTORNEY DRIZIN:

8 Q Doc -- Dr. Leo, just to sort of catch you up to
9 speed, you're surrounded by a number of binders
10 from one -- they're labeled one through five.
11 And at various points in time I may ask you to
12 look at exhibits in those binders. So you're
13 going to have to go open the binder to those
14 exhibits.

15 A Okay. Could I get some water?

16 THE COURT: I think you can do that.

17 Q (By Attorney Drizin) At this time, Dr. Leo, I'd
18 ask you to look at Exhibits 100 and 316. Exhibit
19 No. 100 is in the third binder, Exhibit No. 316,
20 I believe, is in the fifth binder.

21 A Okay. So I have a binder marked number one and a
22 barn -- binder --

23 Q Look --

24 A -- number five.

25 Q -- behind you.

1 A Okay. Can you tell me again what's in three and
2 what's in five?

3 Q Exhibit No. 100 is in binder number three. It's
4 the first document. And Exhibit No. 316 is in
5 binder number five.

6 A Okay.

7 Q Okay. I'd like you to take a look at Exhibit No.
8 1, do you recog -- 100, do you recognize this
9 document?

10 A Yes.

11 Q And what is this?

12 A This is my curriculum vitae dated December, 2009.
13 Curriculum vitae is a fancy word for resumé.

14 Q Would it assist you to be able to refer to this
15 document, perhaps, in the beginning part of our
16 testimony?

17 A Sure.

18 Q Any objection, Counsel?

19 ATTORNEY FALLON: No.

20 ATTORNEY DRIZIN: Okay.

21 Q (By Attorney Drizin) Dr. Leo, where are you
22 currently employed?

23 A The University of San Francisco School of Law where
24 I'm a professor.

25 Q And what is your position there?

1 A I'm an associate professor of law.

2 Q Okay. And are you currently teaching any courses
3 at University of San Francisco?

4 A I am, yes. My regular teaching responsibilities
5 currently include criminal law, criminal procedure,
6 and a seminar on the wrongful conviction of the
7 innocent. The last two of which I'm teaching this
8 semester.

9 Q Okay. Can you tell the Court, briefly, about
10 your academic training and the degrees that you
11 hold?

12 A Sure. Well, I have four degrees. A bachelor's and
13 master's in sociology, and then a Ph.D and a JD.

14 My Ph.D is in a -- a interdisciplinary
15 social science and law program at UC-Berkeley
16 where you can specialize in any of the social
17 sciences as they apply to the study of law and
18 legal institutions. And in my case, I
19 specialized in criminology and social psychology.

20 I got both of my degrees in two
21 thousand -- I'm sorry -- in 1994.

22 Um, the second part of your question,
23 um, in terms of my specialization, the Ph.D is a
24 research degree, and -- and you take classes and
25 exams, and, ultimately, do a research project.

1 Um, so my specialization, like anyone's
2 specialization who gets Ph.D in any field, is
3 general in that I have to master certain
4 disciplines; criminology, social psychology,
5 sociology, and law.

6 But it's also specific, and so
7 researchers, who are not generalists, um, develop
8 specific areas of research specialization.

9 Um, in my case, it's -- it's been the
10 study of police investigation, police
11 interrogation, the psychology of interrogation,
12 coercive interrogation, false confessions, and
13 the wrongful conviction of the innocent.

14 And in my career, going back -- research
15 career -- going back to the early 1990's, when I
16 was a graduate student, I published -- researched
17 and published extensively in these areas?

18 Q Okay. Would it be sar -- fair to say that,
19 concerning your testimony here today, the most
20 relevant experience that you have, the most
21 relevant training that you have, and expertise,
22 is in the social psychology of police
23 interrogations and how psychological
24 interrogation tactics can produce coerced and
25 unreliable confessions?

1 A Yes.

2 Q Okay. Let's break down some of those terms.

3 When you say the social psychology of
4 police interrogations, what do you mean?

5 A What I mean is that the interrogation is a process.
6 Now, social psychology -- social psychologists are
7 interested -- it's a psychological process. Social
8 psychologists are interested in, generally, how
9 people's perceptions are influenced or shaped by
10 those around them, and how and why they dis -- decide
11 to do what they do, and act the way that they act.

12 So a social psychologist, studying the
13 interrogation process is interested in how the
14 influences in interrogation, um, cause a suspect
15 to behave the way they do. Namely, usually, stop
16 denying and -- and, ultimately, start admitting.

17 What is it about the environment of
18 interrogation? What is it about the techniques
19 of interrogation which police are trained to use?
20 What is it about the process that causes a
21 suspect to change his or her behavior and,
22 ultimately, stop denying and start admitting to
23 something that is against their self-interest and
24 can land them in prison for many years?

25 Q Okay. You mention the words "psychological

1 interrogation tactics." What do you mean by
2 those words?

3 A So going back to the 1940's police have developed
4 a -- a psychology of interrogation. They have
5 developed training manuals on how to break suspects
6 down and get confessions.

7 Police realize this is the premise of
8 their manuals and their training that most people
9 are not going to make admissions at the beginning
10 of an interrogation. And so you've got to use
11 techniques or methods to -- to break down their
12 resistance and move them from denial to
13 admission.

14 And so these -- when I say psychological
15 techniques, I mean the techniques that they write
16 about in their manuals. That they train
17 interrogators, detectives to use during
18 interrogation. That social scientists, like
19 myself and many others, have studied for a long
20 time.

21 Q Okay. And when you use the words, as we are
22 going to use today throughout your questioning,
23 "psychological coercion," what do you mean when
24 you use those terms?

25 A Well, I mean one of two things:

1 Either techniques that are recognized in
2 the psychological community as being inherently
3 coercive, um, because, by their very nature, they
4 are likely to overwhelm or overbear somebody.
5 Um, techniques like deprivations, physical or
6 psychological deprivations, but, more commonly,
7 threats or promises, whether implied or express.
8 Um, so certain techniques are inherently
9 psychologically coercive.

10 Um, and, then, a broader view of
11 psychological coercion, um, because, ultimately,
12 psychological coercion is about breaking down
13 somebody's will to the point where they will do
14 or say anything that they're directed to do.

15 Um, looking cumulatively at the
16 interrogation process, not just at a particular
17 technique, and analyzing whether or not the
18 interrogation process caused the suspect to
19 perceive that they had no choice but to do what
20 they were directed or told to do, um, that
21 perception of no choice is -- is the result of
22 psychological coercion.

23 Q And the last term I want you to define, because
24 gonna -- we're going to be using it throughout,
25 is the term "unreliable confession." What do you

1 mean by an unreliable confession?

2 A Well, what I mean by an unreliable confession is a
3 confession that doesn't fit the evidence. That's not
4 corroborated. Um, that there is no reason to believe
5 is accurate.

6 Q Okay. Now, have you done research, yourself,
7 into the social psychology of police
8 interrogations?

9 A Yes, I've done extensive research on this topic.

10 Q Was this a topic of your doctoral dissertation?

11 A Yes. Although my doctoral dissertation was really a
12 study of routine. But historical interrogation
13 practices in the 20th century -- early 20th
14 century -- in America, as well as routine
15 interrogation in the -- in the 90's.

16 Um, most of my work on the social
17 psychology of interrogation was after my doctoral
18 dissertation, but that was about part of it.

19 Q And as part of your doctoral dissertation did you
20 conduct field research during which you observed
21 actual police interrogations?

22 A I did. The Oakland Police Department in northern
23 California, which is very close to Berkeley where I
24 was receiving my doctorate, allowed me to sit in for,
25 um -- I ended sitting in for nine months, that -- on,

1 ultimately, 122 interrogations. Live interrogations
2 as they occurred.

3 And then two other police departments in
4 the bay area that were smaller, Oakland -- I'm
5 sorry -- Hayward and Vallejo, each gave me 30
6 videotaped -- fully videotaped -- interrogations,
7 which was less common at that time. So 182
8 interrogations I observed either live or by
9 recording.

10 Q And is that experience, being able to actually
11 observe interrogations as they happen, um, an
12 experience that sets you apart from other experts
13 in the field?

14 A I think observing the interrogations live does set me
15 apart, especially in the early 90's. Now that
16 electronic recording has become more widespread, of
17 course, other experts have access to that -- to
18 those -- to those tapes.

19 Usually, um -- but to -- to my knowledge
20 very few experts have had access to actual live
21 interrogations.

22 Q And just so we're clear, when you observed these
23 interrogations were you actually in the room or
24 were you monitoring them from another location?

25 A No, I was in the room. I was trying to be as

1 unobtrusive as possible and not have any effect on
2 the actual process, although it was up to the
3 interrogator whether to introduce me or not.

4 Q Um, now, after your doctoral dissertation, have
5 you continued to study and research the social
6 psychology of police interrogations by reviewing
7 actual videotapes of police interrogations and
8 confessions?

9 A Yes. And audio tapes in case files, and other
10 related materials.

11 Q Can you estimate how many such interrogations
12 you've reviewed in your career?

13 A Um, well, I'd estimate that I've studied, um,
14 probably three thousand or more interrogations at
15 this point.

16 Not all of them have been recorded
17 interrogations. Um, though I -- I would venture
18 that at this point most of them have been. In
19 the earlier years most were not recorded but
20 that's changed.

21 Q Okay. Have you and other scholars from the
22 social sciences been able to empirically study
23 the workings of the effects of these
24 psychological interrogation techniques?

25 A Yes.

1 Q Okay. And how have these studies been conducted?

2 A There are five methodologies that social scientists
3 use.

4 The first, which you've alluded to,
5 would be field observation. Studying something
6 in its natural context.

7 Um, I've relied on that method,
8 obviously.

9 Um, I've also relied on another method
10 which involves interviews. Interviews of the
11 participants.

12 Social scientists have also studied
13 documentary materials. I mentioned doing
14 historical analysis -- excuse me -- but I've also
15 studied contemporary materials, case files, which
16 often contain data or information relevant to the
17 effects of the techniques.

18 And then there are experiments that
19 social scientists have done and -- in this area,
20 as well as surveys that can also get at the
21 effects of these techniques.

22 Q You've performed some of this research in -- in
23 these areas; correct?

24 A Correct.

25 Q Um, you've done observational studies?

1 A Correct.

2 Q You've done some experimental research?

3 A Yes.

4 Q You've obviously analyzed actual cases of false
5 confessions?

6 A Correct.

7 Q Um, you've done documentary analysis of case
8 files?

9 A Yes.

10 Q Okay. And you've reviewed, you know, the --
11 pretty much the extent of the literature of other
12 scholars as well?

13 A Yes. This has been the -- the focus of my career --
14 research career -- for two decades.

15 Q And aside from your work, how large would you say
16 is the body of work dealing with the social
17 psychology of police interrogations?

18 A I would say at this point the body is quite large.
19 Uh, that there are hundreds of articles, dozens of
20 books, edited books, and -- and books. Um, so it's
21 quite extensive going back many years.

22 Q And do these studies in this body of work
23 deduct -- discuss the risks that attend to
24 psychologically coercive interrogations?

25 A Um, much of it does, yes.

1 Q And what are those risks?

2 A Well, the risks would be, um, that somebody could be
3 induced through psychological interrogation
4 techniques or coerced into giving an involuntary
5 statement. A statement against their will.

6 Um, and that they could be induced or
7 coerced into giving a false statement. A false
8 confession, in particular. And that -- that
9 these kinds of statements, and admissions, and
10 confessions, if involuntary and/or false, could
11 lead to the wrongful conviction of the -- of the
12 innocent, and, perhaps, even the over-conviction
13 of the guilty.

14 Q Okay. Let's talk about your study and your work
15 in the area of unreliable confessions. Have you
16 also done research on the subject of unreliable
17 confessions?

18 A Yes.

19 Q Can you describe -- when did you begin to study
20 that top -- subject area?

21 A Well, I -- I began to study the subject of unreliable
22 or false confessions in the early 1990's. Um, at
23 first began to write about it in -- in the early
24 1990's.

25 Q And of the unreliable confessions you have

1 studied, are we talking about actual cases of
2 unreliable confessions?

3 A Yes. Um, so I've studied many, many cases of actual
4 unreliable or false confessions. I've done
5 individual case studies. I've done aggregated case
6 studies. Yes.

7 Q And amongst the unreliable confessions that
8 you've studied, some of them were what we call
9 proven false confessions; correct?

10 A Correct.

11 Q And what do you mean by a proven false
12 confession?

13 A Well. It's very difficult to prove a confession
14 false, because you have to prove the negative. And,
15 strictly speaking, that's impossible to do.

16 So what we in the field have tried to do
17 is figure out how can you say, when you're doing
18 research on confession cases, that a confession
19 is false to near or absolute certainty.

20 And there four ways you can talk
21 about -- there are four ways you can prove a
22 confession false. Or to that standard. And so
23 we describe those as proven false confessions.

24 One, if you could show it was physically
25 impossible for the crime -- for the person to

1 have committed the crime.

2 Let's say they were in --

3 Q I'm sorry. You were going to give an example of
4 what that means. I didn't mean to --

5 A Yeah. Uh, no. Um, I'll be very brief. That they
6 were in jail at the time.

7 Two, if you could show that the crime
8 did not occur.

9 Say, the murder victim showed up alive.

10 Three, and this is more common these
11 days, if there's scientific evidence that
12 exonerates dispositively.

13 And then, four, if the true perpetrator
14 is -- is identified and everyone agrees that's
15 the true perpetrator.

16 Q Okay. Um, would it be fair to say that you have
17 analyzed and documented more cases of proven
18 false confessions than any other expert in the
19 field?

20 A Um, along with my co-authors, yes.

21 Q Okay. Know how -- approximately how many proven
22 false confessions you've analyzed?

23 A I would say between 200 and 300 that I've personally
24 analyzed.

25 Q Okay. And there also unreliable confessions that

1 fall short of this proven standard; correct?

2 A Correct.

3 Q And you've developed a categorization for those
4 kinds of confessions as well?

5 A Yeah. We call those highly probable false
6 confessions. Um, the four situations that I
7 mentioned, you could be innocent and have falsely
8 confessed and still not be able to prove your
9 confession false because the crime did occur.

10 Um, the true perpetrator has not been
11 apprehended, and, um, it was not physically
12 impossible.

13 Maybe you were with your family and no
14 one's believing that alibi.

15 Um, and there's simply no -- no
16 scientific evidence. Many crimes don't leave
17 behind scientific evidence.

18 So we talk about highly probable false
19 confessions when in our analysis the weight of
20 the evidence overwhelmingly supports that the
21 confession is false and there's no good evidence
22 that it's reliable or true. A lesser standard.

23 Q So for the purpose of this examination, if you're
24 comfortable with this, when I refer to proven
25 false confessions, um, I'm going to be talking

1 about those pristine confessions where those four
2 kinds of proof were presented.

3 And when I talk about unreliable
4 confessions, I'm going to talk about all the
5 other types of unreliable confessions.

6 A Okay.

7 Q Okay. Now, you've been a prolific scholar. Have
8 you written any books based on your research and
9 study of police interrogations and unreliable
10 confessions?

11 A I have.

12 Q And how many books have you written, Dr. Leo?

13 A Uh, well, several books. Um, one -- the primary book
14 is, um, the book that I see there, *Police*
15 *Interrogation and American Justice*, um, which is
16 about the history, psychology, and policy, and legal
17 issues related to police interrogation and false
18 confessions published 2008.

19 I've also edited a book on ***Miranda***.
20 Issues related to ***Miranda***, which include the
21 psychology of interrogations and false
22 confessions.

23 And I've -- I've written a -- a case
24 study of a multiple false confession case in
25 Norfolk, Virginia.

1 Q Okay. And have any of your books received any
2 awards?

3 A Yes.

4 Q Which books?

5 A The *Police Interrogation and American Justice* book
6 has received multiple awards, um, this year and --
7 well, last year and the year before.

8 Q Okay. I'm not going to go through all of your
9 law review articles and your psychological
10 articles. But of all the articles and book
11 chapters that you have written, which do you
12 consider to be the most noteworthy in the field?

13 A Well, it's a hard question to answer. Um, the -- the
14 work that I've done with Richard Ofshe, who's a -- a
15 retired professor at Berkeley and also a social
16 psychologist, trying to analyze the interrogation
17 process and how the techniques break suspects down
18 and lead to the decision to confess, I think is -- is
19 among the most noteworthy in terms of understanding
20 the process through which interrogation leads to
21 false confession, as well as the work that I've done
22 with him on -- and others -- on the problem of
23 contamination and separating reliable and unreliable
24 confessions. One other article with him in
25 particular.

1 Q And how much of the work that you've done and
2 published has been submitted to the rigors of a
3 peer review process?

4 A Um, well, I would say probably two-thirds to
5 three-quarters. I am an interdisciplinary scholar so
6 I'm primarily a social scientist. My primarily
7 study -- I'm sorry -- publish in social science
8 journals that go through the rigors of peer review.

9 But I'm also a legal scholar and I'm
10 currently a law professor, and so much of my work
11 is also published in law reviews which typically
12 have a lesser form of peer review, though not
13 always.

14 Some law reviews, um, like the *Journal*
15 *of Criminal -- Criminal Law and Criminology*,
16 where I've published a number of articles has a
17 peer review process.

18 Q And are you also a peer reviewer yourself?

19 A Yes.

20 Q And is that a um -- you know, an honor in the
21 field to be considered a peer reviewer?

22 A Uh, it is. I -- I guess, after I think about, it is.

23 Q Okay.

24 A Lot of tedious work sometimes, but, yes, it is an
25 honor.

1 Q Has the work that you've done, your books, your
2 articles, been cited in courts in the United
3 States of America?

4 A It has, yes.

5 Q Okay. Has it been cited by Wisconsin courts?

6 A I -- I believe it has. Um, off the top of my head,
7 um, yes, it has.

8 Q Okay. And was it cited by the Wisconsin Supreme
9 Court in the **Jerrell J.** case?

10 A Yes.

11 Q Okay. And has your work been cited by the United
12 States Supreme Court?

13 A Yes.

14 Q And how many times that you're aware of?

15 A I'm aware of two times.

16 Q Okay. And one would be **Corley v. United States**
17 in 2009?

18 A Yes.

19 COURT REPORTER: Would you please spell
20 that?

21 ATTORNEY DRIZIN: **Corley**, C-o-r-l-e-y,
22 **v. United States.**

23 Q (By Attorney Drizin) And what was the second
24 one, Dr. Leo?

25 A **Missouri v. Seibert** in 2004, I believe.

1 Q Okay. That's S-e-i-b-e-r-t; correct?

2 A Correct. Yeah.

3 Q Okay. Have you ever attended any police
4 trainings?

5 A Yes.

6 Q And can you discuss some of those that you've
7 attended?

8 A When I was a graduate student doing my doctoral
9 dissertation research, I attended five interrogation
10 training courses.

11 The first was put on in-house by the
12 Oakland Police Department in Northern California.

13 The second and the third were the
14 courses by the Reid and Associates interrogation
15 training firm in Chicago. They are the leading
16 firm. They travel the country.

17 And at the time, and I believe still
18 today, put on a three-day introductory
19 interrogation course for detectives, and police
20 officers, and law enforcement officials, public
21 and private. I believe they do a four-day course
22 in the Chicago area. But when they travel, it's
23 a three-day course.

24 So I attended and participated in that.
25 And then I also attended and participated in a

1 two-day advanced interrogation training course
2 that Reid and Associates also does across the
3 United States.

4 Um, after that, I attended and
5 participated in a -- a five-day introductory
6 interrogation training course in Northern
7 California at the San Mateo County Community
8 College.

9 It was basically for detectives in the
10 Bay area who had promoted from patrol to get them
11 up to speed on interrogation practices and
12 getting confessions.

13 And, then, finally, the fifth and final
14 one I attended was put on by the Federal Law
15 Enforcement Training Center in Glynn County,
16 Georgia. That was an advanced interrogation
17 training course. It was by invitation that I was
18 allowed to attend and participate.

19 And that's where, at the time, and I
20 believe this is still true today, all federal
21 police were trained, with the exception of the
22 FBI, who, of course, have their own training
23 academy.

24 Q You mentioned the Reid interrogation training.

25 Um, are you a cert -- certified Reid

1 interrogator?

2 A Well, I guess I am. I -- I do have the certificates,
3 yes.

4 Q Okay. And have you ever been on the advisory
5 committee of police departments?

6 A I have. Of one police department. The Long Beach
7 Police Department in Southern California. It's a --
8 a police department that serves over a city of two
9 million people. And I was on academic advisory
10 committee from, I believe, the middle of 2001 to
11 around the middle of 2003.

12 This is a committee that advised the
13 chief academics. Local academics.

14 Q Have police departments ever brought you in to
15 train their officers?

16 A Yes.

17 Q On how many occasions?

18 A Two occasions. Um, the first was in the summer of
19 2002. It was the Broward County Sheriff's Office in
20 Fort Lauderdale. They are the second largest
21 Sheriff's Department in the country, and they had me
22 put on three days of training. It was the same
23 training each day, eight hours, to a hundred
24 different felony investigators on interrogation, and
25 coercion, and false confessions.

1 And the Miami Beach Police Department,
2 six months later, in early 2003, had me do
3 another one of those -- basically the same
4 eight-hour session.

5 Q Okay. Um, have you ever given testimony before
6 legislative or executive bodies on the subjects
7 of police interrogations and confessions?

8 A I have, yes.

9 Q Have you ever done that in the state of
10 Wisconsin?

11 A Yes.

12 Q Can you tell me when?

13 A I believe it was in 2006, and it was to the Criminal
14 Justice Study Commission.

15 Q Okay. I want to talk to you about your court
16 testimony and how many times you've testified in
17 court, okay?

18 A Okay.

19 Q And to the extent, referring to the second
20 exhibit -- what was that? Three-sixteen, is
21 that --

22 A Yes.

23 Q -- what it was?

24 A Yes.

25 Q Would that help you, if you need to refer to

1 that, about how many times you've testified --
2 A Yes.
3 Q -- in court?
4 A Yes.
5 Q Okay. Um, how many times have been -- you been
6 qualified as an expert to testify?
7 A A hundred and eighty-eight times.
8 Q Okay. And how many of those times have been in
9 federal court? If you don't mind looking at your
10 report?
11 A Ten times.
12 Q And in the affidavit you filed in this court you
13 summarized the -- the -- the extent of your court
14 testimony; correct?
15 A To that time, yes.
16 Q Yeah. And the document that's before you today
17 is -- is -- included, actually, updated
18 information?
19 A Correct.
20 Q Okay. So how many times have you testified in
21 state court?
22 A Let me, um, say that I tes -- I said I testified ten
23 times in federal court. But I've also testified five
24 others times in military courts. And I think,
25 technically, military courts are federal court. So

1 188 times total. Um, 15 times in federal or military
2 court. So that would mean 173 times in state court.

3 Q Okay. And how many different states have you
4 testified in?

5 A Twenty-seven.

6 Q Okay. And have you ever been qualified as an
7 expert in the state of Wisconsin?

8 A I have. Prior to today, I believe, on two occasions.
9 Um, one time in Appleton and one time in Chippewa
10 Falls.

11 Q And in Appleton, would that have been the case of
12 State v. LaBatte?

13 A Yes.

14 Q And did you testify as an expert in that case at
15 the suppression hearing?

16 A Yes.

17 Q On issues relating to the reluc -- to the --
18 whether there was psychological coercion in the
19 underlying interrogation.

20 A Yes.

21 Q And the second time you testified in Wisconsin,
22 Dr. Leo?

23 A Was in Chippewa Falls at a trial. It was last month.

24 Q Okay. Do you remember the name of that case?

25 A Yes. It was State of Wisconsin v. Timothy

1 Schemenauer, S-c-h-e-m-e-n-a-u-e-r, I think.

2 Q Okay. Valiant effort. Um, and in both of those
3 times that you testified in Wisconsin was your
4 testimony limited in any way?

5 A I don't recall the testimony being limited.

6 Q Okay. Now, you testified both at the pretrial
7 stage and at the trial stage; correct?

8 A Yes.

9 Q And when you testify at the pretrial stage, what
10 generally do you testify about?

11 A When I testify at the pretrial stage I usually
12 testify in, um, suppression motions or what -- what
13 are called motions in limine to exclude basically the
14 same thing.

15 Usually the testimony is both general
16 and specific. The general testimony is about the
17 research on the psychology of police
18 interrogation. Um, and psychological coercion,
19 and police interrogation practices, more
20 generally.

21 And the specific research, of course, is
22 applying that knowledge to the case and opining
23 about whether or not there were any coercive
24 interrogation techniques used.

25 Q I don't know if three exhibit can help you -- 316

1 can help you parse through this, but do you know
2 how many times you have testified as an expert in
3 pretrial stages?

4 A Yes.

5 Q How many times?

6 A Sixty-five times.

7 Q Okay. Now, you also testify in trials; correct?

8 A Yes.

9 Q Um and when you testify at trials, what is
10 your -- generally, the subject matter of your
11 testimony?

12 A The -- the subject matter of the testimony is
13 generally the same except that there's more
14 discussion of the problem of false confessions.

15 Um, sometimes the topic of false
16 confessions is relevant in pretrial suppression
17 hearings, sometimes it's not. But -- but it's
18 the primary focus of my testimony at trial.

19 And so when I testify at trial, not only
20 do I testify about what I mentioned earlier in
21 the suppression motions, um, but also about the
22 social science research on how and why police
23 interrogation can lead to false confessions, what
24 we know about the phenomena of false confessions,
25 um, the risk factors, both situational, having to

1 do with the interrogation environment, as well as
2 interrogation techniques, um, for false
3 confessions, as well as individual factors that
4 might predispose a suspect to be more vulnerable
5 to suggestion or interrogation influence and make
6 a false confession.

7 Um, indicia of reliability and
8 unreliability, how social scientists study
9 reliability, the problem of contamination.

10 And sometimes also good and bad police
11 practices. Police manuals will articulate things
12 police should do and shouldn't do. It's largely,
13 I think, based on the research, or the least in
14 part, and so the scope of the testimony usually
15 is much broader in a trial, and it's more focused
16 on the -- the issues related to false confessions
17 usually.

18 I might offer specific opinions about
19 interrogation practices. Sometimes I'm asked to
20 do that, other times I'm not, about the risks
21 inherent in certain practices.

22 Um, I never, however, testify about the
23 ultimate opinion. Whether or not I personally
24 think a confession is false.

25 Q Okay. So you provide a framework for the fact

1 finder to analyze whether or not a confession is
2 reliable or not, but don't reach the ultimate
3 conclusion?

4 A Correct. And the framework to understand the
5 psychology of interrogation. Um, much of this is
6 beyond common knowledge, and -- and -- and even
7 counterintuitive.

8 Q Have you ever testified as an expert in
9 post-conviction proceedings (unintelligible) --

10 A I have, yes.

11 Q Do you know how many times?

12 A Yes, I do. Um, Exhibit 316 lists -- sorry -- 11
13 times. But since then I've testified in one
14 additional post-conviction proceeding. So 12 times
15 total.

16 Q And is the subject matter of your testimony in
17 the post-conviction stage the same?

18 A Yes. In -- in my experience there's often fewer
19 limitations, if any, because of the nature of a
20 post-conviction proceeding.

21 Q Now, you've testified in a lot of cases, Dr. Leo.
22 Do you testify in every case on which you are
23 asked to consult?

24 A No.

25 Q Okay. Can you give us a sense of how often you

1 testify in relationship to how often you are
2 consulted?

3 A Yes. So what I mean by consulted is not just a phone
4 call. I only count consultations when an attorney
5 sends me materials and signs me up, essentially. Um,
6 gets an authorization so that I'm -- I'm -- I'm
7 compensated for my work.

8 So of the cases where I am consulted,
9 and review documents, and provide a professional
10 opinion, about 15 to 20 percent of those cases I
11 testify in.

12 And this document, 316, lists, at least
13 to December 30, the number of cases in which I
14 had consulted. And this goes back almost 15
15 years.

16 Uh, eleven hundred and thirty-two, and
17 then of that, 187 times to December 30 I had
18 testified. So 15 to 20 percent of the times.

19 The primary reason I don't testify in
20 every case is because defense attorneys often
21 have cases that I can't be helpful in. They're
22 weak cases from my area of expertise. I don't
23 think the interrogations --

24 ATTORNEY FALLON: I'm going to impose an
25 objection as narrative form because that is

1 unresponsive to his question.

2 THE COURT: That's -- that's a fair
3 objection.

4 ATTORNEY DRIZIN: I'll ask the question.

5 THE COURT: Sure.

6 Q (By Attorney Drizin) Um, in, uh -- if I get --
7 if I understand this right, Dr. Leo, 80 to 85
8 percent of the time that you were consulted to be
9 an expert you don't testify in those cases --

10 A Correct.

11 Q -- correct? And in the 15 to 20 percent when you
12 do, you feel like you have something to add to
13 the case and to the Court; correct?

14 A Correct.

15 Q What is the reason why you don't testify in the
16 other 80 to 85 percent? What are the reasons?

17 A Yes. Succinctly stated, my testimony can't be
18 helpful to the attorney who's contacted me. Um, and
19 in some of those cases, they resolve prior to
20 suppression hearing or trial.

21 Q Okay. And have you ever consulted with the
22 prosecution about giving expert testimony in one
23 of their cases?

24 A Yes.

25 Q Um, have you ever actually testified for the

1 prosecution?

2 A Yes.

3 Q Can you say how many times you've consulted for
4 the prosecution?

5 A Um, I would have to go through my records. I believe
6 no more than half a dozen times.

7 Q Okay. And how many times have you actually
8 testified for the prosecution?

9 A Two times.

10 Q And what was the substance of your testimony
11 in -- in, um -- can you name the cases where you
12 testified?

13 A Sure. Well, it was two times in one case. The case
14 was the State of California v. Richard Tuite,
15 T-u-i-t-e. I testified both in a pretrial
16 suppression motion as well as at trial.

17 The nature of the testimony was exactly
18 as I described in response to your prior question
19 at the suppression motion and at the trial.

20 Q Um, so the prosecution asked you to testify about
21 the subject of false confessions and coerced
22 confessions --

23 A Correct.

24 Q -- in that case. Okay. Was there another time
25 you testified for the prosecution? Or was it

1 just the two times in that one case?

2 A Correct. Just the two times in that one case.

3 Q Okay.

4 ATTORNEY DRIZIN: Judge, I don't know --
5 um, at this time I'd like to testi -- uh, to
6 tender Dr. Leo as an expert in the field of
7 police interrogations and -- and confessions, um,
8 and the social psychology of police
9 interrogations and confessions.

10 THE COURT: Any objection from the State?

11 ATTORNEY FALLON: Uh, if there's an
12 objection, I'll make it on a foundation ground as
13 our rules of evidence require. There's not a --

14 THE COURT: All right.

15 ATTORNEY FALLON: -- necessity for a
16 finding here.

17 THE COURT: That's correct.

18 ATTORNEY DRIZIN: I'm sorry, I don't
19 understand that objection.

20 THE COURT: What he's saying is, he will
21 object as, apparently, questions are raised during
22 Dr. Leo's testimony.

23 You're proffering him as an expert
24 witness here. His credentials certainly entitle
25 him under Chapter 907 to be considered an expert

1 witness.

2 ATTORNEY DRIZIN: Okay. Thank you.

3 Q (By Attorney Drizin) Dr. Leo, um, let's begin
4 with -- with talking about interrogation,
5 generally, okay? You spoke about psychological
6 interrogation tactics earlier? What is the
7 leading police interrogation training manual?

8 A The manual that I referred to earlier, put out by
9 John Reid and Associates, the first author is Fred
10 Inbau, I-n-b-a-u; the second author is John Reid; the
11 third author is Joseph Buckley, B-u-c-k-l-e-y; and
12 the fourth author is Brian Jayne, J-a-y-n-e.
13 *Criminal Interrogations and Confessions* in its fourth
14 edition published in 2001.

15 Q And Mr. Inbau and Mr. Reid are no longer alive;
16 correct?

17 A Correct.

18 Q Okay. And what's the leading interrogation
19 training firm in the United States?

20 A Reid and Associates.

21 Q Okay. And the president of that firm?

22 A Joseph Buckley.

23 Q Okay. Now, aside from the Reid manual, you've --
24 I take it you've reviewed other police
25 interrogation training manuals?

1 A Yes.

2 Q Okay. Are there psychological interrogation
3 techniques described in the Reid manual
4 consistent with those that you've seen in other
5 manuals?

6 A Yes.

7 Q Um, and do police typically receive training in
8 psychological interrogation methods and
9 techniques?

10 A Yes. More training when they promote to detective or
11 perform the detective function, yes.

12 Q They get some training in the academy and -- and
13 they may get more training as they rise through
14 the ranks?

15 A Correct.

16 Q Okay. Now, in your writings, Dr. Leo, you refer
17 to what you call the "mind trick of psychological
18 interrogation." Do you know what I'm referring
19 to?

20 A Yes. I mean, I think I've referred to that once or
21 twice in my writings.

22 Q What do you mean by the mind trick of
23 psychological interrogation?

24 A Um, well, what I mean is that, um, interrogators have
25 a hard task. They are tasked with getting somebody

1 to confess, um, to committing a crime, which is in
2 the way we conceive of self-interest in this society
3 against your self-interest because it will rele --
4 lead to the deprivation of your liberty, um, and many
5 years, possibly, of incarceration. Even, possibly,
6 execution.

7 So the trick, or the mind trick of
8 interrogation, is psychologically manipulating a
9 suspect to perceive that it's in their
10 self-interest to make incriminating statements or
11 confess.

12 Q Okay. And -- and are there various phases or
13 steps in the psychological interrogation that --
14 that lead a suspect to confess?

15 A Yes. When we say stages and phases, I mean, it's a
16 way of psychologically analyzing the process and how
17 things change. But, yes.

18 Q And can you describe some of those stages?

19 A Sure. Um, usually, a -- a suspect is isolated.
20 Police are trained to bring them on to their turf and
21 separate them from friends and family.

22 And, usually, there's -- but not
23 always -- there's a rapport-building phase early
24 on to disarm the suspect and downplay the
25 adversarial aspects of an interrogation.

1 At some point in a -- in a -- in a
2 custodial interrogation there will be -- the
3 **Miranda** issue will come up, and -- and police
4 have different ways of -- of giving warnings and
5 maximizing the likelihood of eliciting waivers.

6 But the real heart of interrogation,
7 which is really two phases, um --

8 Q Before -- before we get there, can we talk about
9 that rapport-building phase --

10 A Sure.

11 Q -- for a minute?

12 A Sure.

13 Q Okay. You mentioned isolating the suspect. Why
14 are police officers trained to isolate a suspect?

15 A They are trained to isolate a suspect because their
16 ultimate goal is to get a confession, and it's
17 believed that you can exert maximal influence on
18 isolated suspect.

19 If you separate a suspect from friends,
20 or family, or any support network, um, you break
21 down or weaken the ability of the suspect to
22 deny. Um, and that's what police interrogators
23 are trained to do.

24 And then, secondly, um, isolating a
25 suspect is not just about separating them from a

1 support network or familiar environment, but also
2 getting them on the police turf.

3 And so police have carefully
4 orchestrated interrogation rooms, um, that are
5 designed to not allow a suspect to focus on
6 something other than the interrogation. To not
7 distract a suspect.

8 Q Okay. Um, now, you talked about the
9 rapport-building phase, and then, after the
10 rapport-building phase, there's a dramatic shift
11 as the interrogation proceeds; correct?

12 A Correct.

13 Q What happens after this rapport-building phase?

14 A Well, after the rapport-building phase, um, usually
15 police launch into, in one form or another,
16 accusatory interrogation. Um, and that's when the --
17 the full arsenal of techniques, or whichever
18 techniques the interrogators choose to use, are used,
19 and it's the interrogation process proper that I was
20 referring to in my earlier answer when I said the
21 heart of interrogation is really two phases.

22 Q Um, the start of the interrogation process, um,
23 the heart of the interrogation, as you describe
24 it, how does it generally begin? How do police
25 officers begin the accusation part of the

1 interrogation?

2 A Usually by confronting a suspect. Well, accusing the
3 suspect of committing the crime. Um, and then
4 challenging their denials and confronting them with
5 real, or alleged, or made up evidence.

6 Q Okay. And what are some of the other tactics
7 that you commonly see in the heart of most police
8 interrogations?

9 A Well, in the -- in the first phase of -- which we
10 call the accuse -- well, the first of the two phases,
11 um, we usually classify this by the goal that the
12 phase seeks to accomplish, psychologically, which is
13 convincing a suspect that it's -- it's futile to
14 deny.

15 Um, usually, you see repeated
16 accusations of committing the crime, repeated
17 accusations of lying when denying committing the
18 crime. Um, usually, you see monologuing by an
19 interrogator. Sometimes you see interpersonal
20 pressure where the interrogator gets closer.
21 Sometimes, but not always, raises their voice.
22 Um, but applies some kind of pressure on the
23 suspect to stop denying, um, start admitting.

24 Almost always in this phase you see
25 confrontation with evidence, as I alluded to a

1 moment ago, um, that the interrogator is trying
2 to convince the suspect that the evidence
3 irrefutably establishes the suspect's guilt and,
4 therefore, it's pointless to deny and no one's
5 going to believe his or her denials.

6 Those techniques are really the heart of
7 the first phase of -- of -- or stage of in --
8 inter -- of the interrogation proper.

9 Q Okay. And these -- these, um, steps that we --
10 you've discussed, accusation, interrupting
11 denials, confronting with true or false evidence,
12 the point of these tactics is to do what?

13 A Convince a suspect that you are caught, and there's
14 no way out, the jig is up, no one is going to believe
15 your denials. You've got to admit to this crime.

16 Q Okay. What's the next phase?

17 A The next phase, um -- the second phase is -- is about
18 motivating a suspect to see it as in their
19 self-interest to confess using what we call
20 inducements, or incentives, or motivators to persuade
21 a suspect why he or she should confess or will be
22 better off if they confess.

23 Q And what kinds of inducements or motivators do
24 you typically see?

25 A We've described -- my colleague, Richard Ofshe, and

1 I, and -- and others, these as -- inducements as
2 ranging along a continuum, perhaps using a little bit
3 of academic language, but we've talked about the low
4 end of the continuum often being moral or religious
5 appeals.

6 We've talked about the mid-range of the
7 continuum in terms of systemic -- we call them
8 systemic -- inducements that focus a suspect on
9 the system and the processing of their case in
10 the system.

11 And we've talked about inducements being
12 at the high end, which convey some explicit
13 benefit or implied suggestion or promise of
14 leniency. Sometimes maybe even threaten harsher
15 consequences. Um, these high end inducements can
16 be implicit or explicit.

17 So the -- to answer -- continue to
18 answer your question these inducements, uh, go
19 along a range from weak to strong. But these
20 inducements sometimes are delivered through
21 scenarios as well, which police are trained to
22 use to convey benefit or to minimize culpability
23 or to suggest harm will occur or some bad outcome
24 will occur if the suspect fails to confess.

25 Q So you didn't mean to commit this crime. It was

1 an accident. Would be --

2 A Correct.

3 Q -- one such scenario? Or you didn't, um -- you
4 know, you didn't kill this person intentionally.
5 Um, you didn't premeditate. It was impulsive?

6 A Correct. These -- I mean, I -- these scenarios are
7 usually developed more fully than your question
8 implies. But, yes, a scenario -- often the scenarios
9 are contrasted as well.

10 So an accident -- you -- you -- you
11 killed her accidentally versus premeditated, um,
12 will be two scenarios. One suggesting, um,
13 lesser culpability, the other suggesting more
14 culpability.

15 And the way these scenarios work,
16 contextually, is the, um -- which I -- which I
17 really forgot to mention in response to your
18 prior question -- was that there's usually time
19 pressure in the interrogation, and the suggestion
20 is if you don't admit to the good scenario, the
21 one that minimizes your culpability, since the
22 evidence is overwhelmingly established that you
23 did this, and we're beyond talking about that,
24 then everyone is going to think, and part --
25 particular if it's made explicit, the police, the

1 prosecutor, the judge, the jury, that you're
2 really guilty of the bad scenario, the
3 premeditated killing in your example, and the
4 suggestion may be made that that's what will
5 ultimately happen, you'll be convicted of first
6 degree as opposed to negligent killing, let's
7 say, if you don't confess.

8 Q Is one of the scenarios that police frequently
9 use a scenario where they try to get the suspect
10 to minimize his blame and to place, you know,
11 greater braim (phonetic) -- blame on a
12 co-defendant?

13 A Yes.

14 Q And how do you see that in interrogations?

15 A Well, you see that all the time. And the manuals, of
16 course, talk about blaming anybody you possibly can.
17 The idea being that -- that if you communicate that
18 somebody else is at fault, or more at fault, the
19 suspect is going to think that they're own
20 culpability is -- is -- is minimized or sometimes
21 even eliminated.

22 Um, in -- in many interrogations
23 that's -- that's the message that's being
24 communicated. And so it creates an incentive for
25 the suspect to confess, especially if there's now

1 or never time pressure. This is your only
2 opportunity. After -- after this occurs, I can't
3 help you. You're not going to be able to present
4 this later to the judge and the jury.

5 That sort of thing. That minimizing
6 your culpability or eliminating your culpability
7 by blaming anybody, including, especially,
8 co-defendants may communicate either leniency or
9 immunity if the suspect stops denying and starts
10 admitting during the interrogation.

11 Q Is one of the common scenarios you've seen a
12 situation where the suspect is -- it's suggested
13 to the suspect that somebody else made him do the
14 criminal acts?

15 A Yes. Yes. So not only that somebody else was
16 responsible, but al -- a co-defendant, um -- or
17 entirely liable -- but the co-defendant, um,
18 unfairly, um, or improperly pressured or induced the
19 suspect to do what they were doing and, um -- yeah.

20 Q Okay. So you've talked about the inducements.
21 You've talked about the rapport-building phase.
22 What's the final phase of the interrogation
23 process?

24 A I mean, I realize there's a lot of phases here we're
25 talking about. But, um, if we're going to talk about

1 a final phase, what we would -- we'd make an
2 additional dis --

3 Q Did I skip a phase?

4 A No.

5 Q I'm --

6 A No.

7 Q -- sorry.

8 A No, no, no. I'm -- no. If we were -- what we
9 would -- the -- the final phase would be a -- what --
10 what we would really call the post-admission phase.
11 And so I was just going to clarify that by
12 distinguishing -- distinguishing between
13 pre-admission interrogation and post-admission
14 interrogation.

15 Post-admission interrogation occurs
16 after the suspect has essentially said the words,
17 "I did it."

18 So the two phases that I had mentioned
19 before really are pre-admission phases.
20 Convincing a suspect that they're caught, and
21 it's futile to deny, and inducing them to see it
22 as in their self-interest. I call that the heart
23 of the interrogation, which I think it is, but
24 it -- it -- it -- it's -- it's really
25 pre-admission. It's -- it's what police do to

1 get the suspect to stop denying and say, I did
2 it.

3 The final phase, um, might be called the
4 post-admission phase, where interrogators ideally
5 elicit the details about how and why the suspect
6 committed the crime, um, because a confession is
7 not just the admission, "I did it," confession is
8 a narrative about how and why a suspect did the
9 crime.

10 Q Okay. And what is the significance of this
11 post-admission narrative phase?

12 A Well, it has -- there's -- there's several things
13 that are significant about it. Um, first, um, it's
14 significant to law enforcement because if they hold
15 back information, and they do it right, they can get
16 the suspect to either verify his or her inside or
17 non-public knowledge about the crime, and objectively
18 demonstrate if the suspect did -- committed the
19 crime, or is confessing truthfully, that they know
20 details that could not have been guessed by chance,
21 that were not publicly revealed, um, that almost
22 certainly only the true perpetrator would know,
23 absent any contamination if they do it right.

24 So that's one aspect of its
25 significance. It's a way of making confessions

1 bullet proof, and police are trained on hold-back
2 principles, and how to elicit good, corroborated,
3 non-contaminated proper confessions to establish
4 they're reliable.

5 Of course, police interrogators are
6 interested in separating the innocent from the
7 guilty, and so it can also be used to test
8 whether or not using the same exact principles
9 the person possesses. That kind of knowledge.
10 In other words, whether the confession contains
11 indicia of unreliability. And so that's the
12 obvious other side of the coin. Significance for
13 law enforcement.

14 For researchers, it's also significant
15 because it allows us to evaluate whether or not
16 using the same principles that law enforcement
17 use, whether or not it fits with, um, the --
18 the -- not only the suspect possessing
19 non-public, unique knowledge not likely guessed
20 by chance, and whether it contains indicia of
21 reliability, but also whether it contains indicia
22 of unreliability?

23 And so we see patterns in the
24 post-admission narrative in false confession
25 cases, in a proven false confession cases.

1 Doesn't fit the facts. Suspect doesn't know
2 non-public details. Contaminated by police.
3 Can't lead to new or missing evidence. Can't
4 explain anomalies, etc., etc.

5 Q Okay. You mentioned the word "contamination."
6 Um, since you mentioned it now, what do you mean
7 when you say contamination, Dr. Leo?

8 A What we mean by contamination is that the police
9 interrogators -- well, there's multiple sources of
10 contamination. But let's just talk about police
11 interrogation first for a second.

12 Um, in the context of an interrogation,
13 the interrogator has provided the suspect with
14 unique or non-public crime details, or facts, or
15 crime scene details that are then given back in
16 the -- in the confession or post-admission
17 narrative.

18 So they've -- they've educated or fed
19 the suspect with these unique non-public case
20 facts. Of course, a suspect might learn those
21 through other sources of contamination prior to
22 an interrogation.

23 One might be the media, of course.
24 If -- if crime facts have been reported, they're
25 no longer non-public.

1 Another would be overheard communica --
2 uh, conversations or community gossip.

3 Um, yeah. So those would be the other
4 sources of contamination.

5 Q And so when you're assessing the reliability of a
6 confession, Dr. Leo, um, you have to sort of rule
7 out whether or not there were any sources of
8 contamination; correct?

9 A Correct.

10 Q Okay. Now, you talked earlier about two
11 different kinds of psychological coercion. Do
12 you remember that?

13 A Yes.

14 Q Okay. Now, when you analyze an interrogation or
15 interrogations, okay, what is your process for
16 determining whether or not an interrogation
17 contains psychologically coercive tactics?

18 A Well, what I want to do is I want to review the
19 interrogation, itself, and a crucial issue is whether
20 or not the interrogation is recorded. Um, and if the
21 interrogation is fully recorded, as is increasingly
22 common across the country, then I will watch, or
23 listen to, although these days it's mostly watch, the
24 interrogation, usually with a transcript, and
25 evaluate the techniques that are used and whether or

1 not, first, those techniques -- any of those
2 techniques -- are inherently coercive, like the ones
3 I mentioned earlier.

4 And then, secondly, evaluate whether or
5 not, in the totality of the interrogation, it
6 appears to me that the person's will is
7 overborne, is one way of putting it, but, really,
8 a better way of putting it is that they are
9 motivated to comply and, ultimately, confess
10 because they're broken down and perceive they
11 have no choice.

12 And relative to that kind of analysis
13 there might be other case materials that are
14 helpful, um, including interviews with the
15 suspect, if a clinical psychologist is
16 interviewed, or psychiatrist, and produced a
17 report, um, there may even be situations where I
18 interview a defendant, although I'm not likely to
19 do that if there's a fully recorded
20 interrogation.

21 There are times when there are multiple
22 interrogations, or interviews by third parties of
23 a defendant, where they will state things about
24 their state of mind, or what they were thinking,
25 or feeling, or perceiving during the

1 interrogation that might be relevant for that
2 analysis as well.

3 Q Have scholars from the field of police
4 interrogations and confessions found that certain
5 techniques, um, increase the risk of unreliable
6 confessions?

7 A Yes.

8 Q Okay. And which techniques are those?

9 A Well, um, promises, threats, whether implicit or
10 explicit. Um, sometimes these are referred to as
11 minimization techniques. Techniques that minimize a
12 suspect's culpability.

13 Um, scholars have -- have also written
14 about deception, lies about evidence, primarily,
15 which are thought to -- when misapplied to an
16 innocent suspect -- also, raise the risk of
17 interrog -- of false confession.

18 There other factors that really go to
19 the interrogation, like length of interrogation,
20 but not to particular techniques.

21 Q Okay. And you talked about particular
22 techniques. Have these, um, techniques been
23 consistently observed in observational studies,
24 laboratory studies, and actual cases of false
25 confessions?

1 A Yes.

2 Q Okay. Now, last question I want to ask you is,
3 besides the effects of interrogation tactics on
4 unreliable confessions, are there also internal
5 or personality-related factors that increase the
6 risk of false confessions?

7 A Yes.

8 Q What are those?

9 A Um, there are certain groups of individuals who have
10 clusters of these techniques. People with low IQs,
11 or the mentally retarded, juveniles, and sometimes
12 people who are mentally ill.

13 These techniques have to do,
14 essentially, with making somebody's personality
15 more weak or vulnerable to persuasion. Um, low
16 intelligence, high suggestibility, high
17 compliance.

18 Um, suggestibility refers to the extent
19 to which we accept a message that somebody is
20 telling us, and then repeat it back.

21 Compliance is really obedience to
22 authority.

23 And there's traits related to that that
24 make certain people more suggestible and more
25 compliant. Low self-esteem, aversion to

1 conflict, poor memory, and there are others.

2 And so individuals from the groups that
3 I mentioned who tend to manifest these
4 techniques, as well as normal individuals who are
5 not mentally retarded, or low IQ, or juveniles,
6 or mentally ill, sometimes manifest these
7 personality traits as well. High compliance,
8 high suggestibility, etc.

9 ATTORNEY DRIZIN: Judge, at this time,
10 before we're -- I'm about ready to launch into his
11 analysis of Brendan Dassey's interrogations. I'm
12 going to be using the tape machine. Would this be a
13 good time to take a lunch break?

14 THE COURT: It would, indeed.

15 ATTORNEY DRIZIN: Thank you.

16 THE COURT: Back at one o'clock.

17 (Recess had at 12:00 p.m.)

18 (Reconvened at 1:00 p.m.)

19 THE COURT: All right. Mr. Drizin,
20 proceed.

21 ATTORNEY DRIZIN: Dr. Leo, and -- and
22 counsel, and the Court, for the purposes of the
23 rest of this examination, I think it would be
24 helpful if you looked at Exhibit 316. Okay. I'm
25 sorry, 315. I apologize. Three fifteen.

1 Q (By Attorney Drizin) And, Dr. Leo, I want you to
2 look at Exhibit No. 3 as well. Your affidavit.
3 So you should have a volume one, binder one,
4 Exhibit 3, and binder five, Exhibit 316. Three
5 fifteen.

6 THE COURT: For the record, 315 is an
7 exhibit that comprises, I believe, 24 pages.
8 Correct, Counsel?

9 ATTORNEY DRIZIN: That's correct.

10 THE COURT: And it is a copy of various
11 transcripts?

12 ATTORNEY DRIZIN: It is a copy of clips
13 from various transcripts, um, from the various
14 interrogations in this case.

15 THE COURT: And those transcripts
16 accurately represent the words that will appear on
17 the film clips?

18 ATTORNEY DRIZIN: They do. I mean, to
19 the -- to the best of my knowledge they do.

20 THE COURT: Well, one of the reasons I'm
21 saying that is I -- it's always difficult for the
22 court reporter to take these things and --

23 ATTORNEY DRIZIN: That's right.

24 THE COURT: -- if -- if these are vetted
25 transcripts that represent what is being said on the

1 screen, I propose that for those portions she not
2 have to take them. Mr. Fallon, any objection to
3 that?

4 ATTORNEY FALLON: Um, I guess I'd like
5 one foundation question, and then I want to
6 revisit with you the status of that rule.

7 Um, Counsel, are the excerpts, which are
8 contained in Exhibit 315, are those the words?
9 Were they taken from the police reports? The
10 transcripts that were prepared. Or are they
11 something that your team created after listening
12 to certain segments and then typed up?

13 ATTORNEY DRIZIN: They were taken from the
14 police reports.

15 ATTORNEY FALLON: Okay. In all
16 circumstances?

17 ATTORNEY DRIZIN: In all circumstances.

18 ATTORNEY FALLON: All right. Then I
19 don't have too much of a problem from the
20 foundation...

21 ATTORNEY DRIZIN: One second, Tom. I'm
22 sorry. There's -- there's one exception to that,
23 and that would be the -- the transcript of
24 Mr. O'Kelly's interrogation on May 12, which was
25 not, obviously, known to the police.

1 ATTORNEY FALLON: Right. All right. Um,
2 well, I guess we'll have to let Mr. O'Kelly
3 authenticate that part.

4 Then I guess I don't have a problem with
5 the excerpts as represented by Counsel, if
6 that's, in fact, the case, because I haven't
7 compared word for word.

8 My concern is where -- I know there was
9 an amendment floating around. And I'm still
10 under the impression that as uncomfortable as it
11 would be that she may have to take these.

12 THE COURT: I thought this would --

13 ATTORNEY FALLON: Under that --

14 THE COURT: -- comply with the -- the
15 amendment. There had been a -- a Court of
16 Appeals case that -- Ruiz-Veloze (phonetic) or
17 something like that --

18 ATTORNEY FALLON: Ruiz-Valez. Yeah.

19 THE COURT: Which provided that the court
20 reporter had to take this all the time. The Supreme
21 Court amended that about two months ago.

22 ATTORNEY FALLON: It did get passed?

23 THE COURT: Yeah. And -- and I -- I
24 don't -- I can't quote you the -- the SCR, or the
25 Supreme Court Rule, but it was my -- let's recess

1 for a second. The court reporter has it in her
2 office.

3 (Recess had.)

4 THE COURT: All right. I'll just read it.
5 Let's go back on the record.

6 "It is ordered that effective January 1,
7 2010, the Supreme Court Rules are amended as
8 follows:

9 Section 1, SCR 71.01 (2)(e) of the
10 Supreme Court Rules is created to read:

11 SCR 71.01 (2)(e): Audio recordings of
12 any type that are played during the proceeding,
13 marked as an exhibit and offered into evidence.
14 If only part of the recording is played in court,
15 the part played shall be precisely identified in
16 the record."

17 The comment is:

18 "Those seeking to admit at trial
19 videotaped depositions or other testimony
20 presented by videotape should consult Wisconsin
21 Statute Section 885.42 (4)."

22 Um, there is some further comment that
23 really doesn't have anything to do with that.

24 I think the net effect of that is if the
25 audio recording is appropriately marked, and the

1 transcript is shown to be the appropriate
2 transcript, the court reporter doesn't have to --
3 have to take it.

4 ATTORNEY FALLON: Okay.

5 THE COURT: Now, Mr. Tepfer has told us
6 that there may be some errors here. Is that
7 correct, Mr. Tepfer? Why don't you come on up here.

8 ATTORNEY TEPFER: I think for some of --
9 were mismarked. Like, they were six numbers off
10 but not all of them. We have five chapters from
11 my understanding, I think, and one of the
12 chapters the copies that State has and the Judge
13 has are six numbers off in particular points.

14 THE COURT: When you say six numbers off,
15 what does that mean?

16 ATTORNEY TEPFER: It means that -- if I
17 could just consult with Alex.

18 THE COURT: Let's go off the record then.
19 (Discussion off the record.)

20 ATTORNEY TEPFER: Um, what I mean is --
21 this is chapter two, right now?

22 MR. HESS: Um-hmm.

23 ATTORNEY TEPFER: Chapter two, for
24 example, it says number fif -- it says number 15
25 on the sheet you have -- have -- actually --

1 MR. HESS: Josh, it starts recounting at
2 one when it should be seven.

3 ATTORNEY TEPFER: Recounting at one when
4 it should be seven.

5 ATTORNEY DRIZIN: Judge, I, um -- I
6 apologize for this, but I think in -- in light of
7 this, I think it would be our preference that she
8 try to take this down.

9 THE COURT: I think that's what we're going
10 to have to do. Um, understanding that there does
11 exist a transcript that at least, in most respects,
12 appears to be appropriate. Let's proceed.

13 Q (By Attorney Drizin) Dr. Leo, I'd like to begin
14 this afternoon by talking to -- about your
15 analysis of whether there are psychologically
16 coercive interrogation tactics in the
17 interrogations in Brendan Dassey's case.

18 But before I do, let me ask you this:

19 Um, what were you provided with to
20 review for your testimony in preparation of your
21 testimony today?

22 A I was provided with multiple CDs and DVDs of Brendan
23 Dassey's interrogations on February 27, 2006,
24 March 1, 2006, and May 13, 2006.

25 And later, I believe, Mr. Kelly's --

1 DVDs of Mr. Kelly's interrogation of March 12,
2 2006.

3 Q That would be Michael O'Kelly?

4 A O'Kelly.

5 Q And that would be May 12 of 2006?

6 A Correct. I was also provided with supplemental
7 police reports, Wisconsin DOJ criminal investigation
8 reports, Calumet County Sheriff's Department reports.
9 I was provided with trial transcript.

10 Um, I was provided with news stories,
11 um, media stories of the Halbach murder.

12 I was provided with a report by Joseph
13 Buckley of Reid and Associates.

14 I was provided with a report by Lawrence
15 White. Dr. Lawrence -- a Professor Lawrence
16 White.

17 I've also seen a report by Dr. Robert
18 Gordon.

19 Q Okay. In addition to the news stories and
20 broadcasts that you cite in your affidavit in
21 this case, did we send you additional news media
22 accounts from television news in the case?

23 A I believe you did.

24 Q Okay. Now, um, I'm going to focus specifically
25 on the interrogation beginning February 27. Um,

1 but, just generally, a couple questions.

2 When you looked at the videos in this

3 case, did you observe some psychological

4 interrogation tactics?

5 A Yes.

6 Q Did you observe some psychologically coercive

7 tactics?

8 A Yes.

9 Q Okay. And can some of these tactics that you

10 observed, if repeated over and over, become

11 psychologically coercive?

12 A Yes.

13 Q So in and of themselves some of these tactics may

14 not be psychologically coercive?

15 A Correct.

16 Q But if repeated over and over they can become

17 psychologically --

18 A Correct.

19 Q -- coercive?

20 A In combination with other tactics, yes.

21 Q Okay. Now, let's start with the February 27

22 questioning of Brendan Dassey at the school.

23 That's Mishicot High School..

24 A Okay.

25 Q Okay? Um, now, the officers who -- there's been

1 testimony in this case that this conversation was
2 an interview.

3 A Okay.

4 Q Okay. What is the difference between an
5 interview and an interrogation?

6 A Well, an interview is usually not accusatory and it's
7 more open-ended. Um, and the questions that are
8 asked are not asked to elicit incriminating
9 statements. An interview will always be
10 non-custodial. There's no requirement to give any
11 **Miranda** rights during an interview.

12 The goal of an interview is not to get a
13 confession or self-incriminating statements, um,
14 but to get general and specific information that
15 assists in an investigation. You won't see in an
16 interview interrogation techniques.

17 Q Um, and when you reviewed the February 27, um,
18 questioning of Brendan Dassey, what was your
19 opinion about whether or not it was an interview
20 or an interrogation?

21 ATTORNEY FALLON: Again, I'm going to
22 interpose an objection since the fruits of this
23 interview were not played in front of the jury.

24 THE COURT: Mr. Drizin, why are we
25 concerned?

1 ATTORNEY DRIZIN: We're concerned because
2 Dr. Leo has testified and will testify that
3 psychologically coercive interrogation tactics from
4 one interrogation, if repeated in subsequent
5 interrogations, can have a psychologically coercive
6 effect.

7 And many psychologically coercive
8 interrogation tactics, as well as contamination,
9 were introduced in the February 27
10 interrogations.

11 THE COURT: All right. I'll overrule the
12 objection.

13 Q (By Attorney Drizin) Do you remember the
14 question, Doctor?

15 A Can you repeat the question?

16 Q Yeah. When you reviewed the February 27
17 interrogation video -- interrogation audio
18 tape -- at Mishicot High School, did you conclude
19 that it was an interview or an interrogation?

20 A An interrogation.

21 Q And why?

22 A Because they were using interrogation techniques and
23 they were seeking to elicit incriminating statements.
24 And so it looked like not only were they using
25 interrogation techniques, but they were trying to

1 accomplish what is the goal of a -- an accusatory
2 interrogation.

3 Q Okay. And, um, is -- in your experience is it
4 common for police officers to portray
5 interrogations as interviews?

6 A Yes, very common.

7 Q Okay. Is there a legal significance to this
8 distinction between interrogations and
9 interviews?

10 A Yes.

11 Q What is that significance?

12 A Well, the significance would be that if it's -- if
13 it's an interview, then there's no requirement for
14 **Miranda**. If it's an interrogation in custody then,
15 of course, **Miranda** is required.

16 Um, and there may be other
17 constitutional issues triggered as well.

18 Q Okay. Now, Dr. Leo, um, I'm going to refer you
19 to Exhibit 315, page one, clips one and two.
20 Okay?

21 A Yeah. Hold on just a second.

22 THE WITNESS: Is it okay if I just set
23 this right here?

24 THE COURT: Go ahead.

25 THE WITNESS: Okay. So, um --

1 Q (By Attorney Drizin) Exhibit 315 --
2 A Correct.
3 Q -- page one --
4 A Right.
5 Q -- clips number one and two?
6 A Okay.
7 Q You see what I'm talking about?
8 A Yeah. I haven't re-read them but --
9 Q Okay.
10 A -- I see.
11 Q Um, early in the interrogation on February 27,
12 the following exchange occurred.
13 ATTORNEY DRIZIN: Now, I had planned to
14 play the 2/27 audio, Your Honor, but the 2/27
15 audio is too garbled to play. Um, so I'm going
16 to read these clips as they appear on Exhibit No.
17 315. They're not very long.
18 Um, clip number one. Mr. Fassbender
19 speaking.
20 "You're a kid. You know. And we got --
21 we've got people back at the sheriff's
22 department, district attorney's office, and
23 they're looking at this now saying there's no way
24 that Brendan Dassey was out there and didn't see
25 something."

1 They're talking about trying to link
2 Brendan Dassey with this event. They're not
3 saying that Brendan did it. They're saying that
4 Brendan had something to do with it, or the
5 coverup of it, which would mean Brendan Dassey
6 could potentially be facing charges for that.

7 Clip two. Again, Mr. Fassbender.

8 "We've gotten a lot of information. You
9 know, some people don't care. Some people back
10 there say, no, we'll just charge him.

11 We said, no, let us talk to him. Give
12 him the opportunity to come forward with the
13 information that he has and get it off his chest.
14 Now, make it -- look, you can make it look
15 however you want."

16 Okay? How would you describe the
17 techniques that are being used in these clips?

18 A Okay. So you read two clips. I would describe them
19 as interrogation techniques, first of all. And, more
20 specifically, as inducements.

21 Um, these are the kinds of techniques
22 that interrogators use to make somebody think
23 that it's in their best interest to confess or to
24 give them the information they're seeking, um,
25 because there could be negative consequences for

1 failing to do that.

2 In the first clip, um, the Sh -- you
3 know, we've -- we've got people back at the
4 Sheriff's office, the district attorney's office,
5 and there -- there -- um, the description is that
6 they're trying to figure out what Brendan's
7 culpability is, and whether to link him to the
8 crime.

9 Um, and they say explicitly here, you
10 could be facing potential charges. So this would
11 be an example of either a systemic or high end
12 inducement.

13 Um, the second one, um, repeats -- the
14 second of the two clips you read repeats this
15 issue of -- of him being charged, um, and
16 suggests, also, that he has an opportunity to get
17 this off his chest or come forward and get this
18 off his chest, which is really what we meant by a
19 low-end inducement.

20 So these are classic interrogation
21 techniques. They're inducements. They're
22 conveying a -- a -- a high cost being charged
23 with a murder, um, for failing to confess.
24 Continuing to deny. And implying a benefit, um,
25 implying that he might not get charged.

1 Q Okay. Now, some systemic inducements are
2 psychologically coercive; correct?

3 A Yes.

4 Q Do you consider these systemic inducements
5 psychologically coercive?

6 A Yes. The -- um, I think the threat -- threatening
7 him with facing charges and suggesting that what he
8 says will determine or could determine whether he
9 gets charged and is linked to this very serious
10 crime, um, is -- is -- is coercive.

11 I think it rises to the level of an
12 implied threat of charging if he doesn't give
13 them what they're looking for. An implied
14 promise or suggestion of leniency or maybe even
15 immunity if he does.

16 Q Okay. Dr. Leo, in your writing you use the term
17 "pragmatic implication" on occasion. Do you know
18 what that term means?

19 A Yes. It's a term for -- for ling -- from
20 linguistics, and it conveys a very simple idea. That
21 in conversation, um, we often imply the meanings of
22 certain things without explicitly stating them. Um,
23 and it's understood, contextually, the meaning of
24 what's being implied through the particular language
25 use.

1 It -- it -- it's relevant in
2 interrogation because a -- essentially, um,
3 certain meanings can be implied and understood
4 without being expressly communicated. And, in
5 particular, oftentimes promises, or suggestions
6 of leniency, or threats of harsher or higher
7 charging or punishment, are implied pragmatically
8 in the context rather than explicitly stated so
9 somebody would understand or is likely to
10 understand their meaning even if it's not
11 explicitly said.

12 Q Okay. And has this idea of product -- pragmatic
13 implication been studied in the context of police
14 interrogations?

15 A It has, yes.

16 Q Okay. Can you describe some of this research?

17 A Well, it's been studies in two contexts. One context
18 has been an experimental context where the
19 experimental subjects are asked to read transcripts
20 of -- of excerpts from in -- interrogations. And, of
21 course, in an experiment you can vary the conditions.

22 So you then -- you have control groups,
23 and stimulus groups, and you give different
24 transcripts, and you analyze what the people
25 infer from the different transcripts.

1 Whether implied -- whether certain
2 things are implied promises or implied threats,
3 whether it's understood, um, or not, and in the
4 various different conditions, including explicit
5 threats and promises or other statements.

6 So that would be experimentally based on
7 real live interrogation.

8 Um, and then there's been field research
9 of people who've confessed, and analyzing the
10 transcripts of their interrogation, and some
11 cases interviews with them about the meaning that
12 they inferred from things that were stated during
13 the interrogation implicitly rather than
14 explicitly.

15 Q Okay. In your opinion, is there any practical
16 difference in terms of which is more coercive
17 between a direct threat or a promise and one that
18 is conveyed through pragmatic implication?

19 A Not if the one conveyed through pragmatic implication
20 is understood to be a -- a threat. What really is
21 important is how the meaning is understood, or how
22 it's conveyed, and how it's understood.

23 And a threat conveyed through --
24 implicitly through what we call pragmatic
25 implication -- can be just as powerful as

1 implicitly as one that's conveyed explicitly.

2 Q Okay. Um, is the use of threats and promises
3 conveyed through pragmatic implication a strategy
4 that police officers use during interrogations to
5 avoid being, um, associated with direct promises
6 or threats?

7 A Yes. You know, the police officers, themselves, may
8 deny that it's a strategy that they're using, or
9 that, in their opinion, it rises to the level of a
10 threat or a promise. But it -- from -- from -- from
11 a behavioral point of view the answer is, yes,
12 that -- that we ob -- we have observed that.

13 Q Okay. Now, Dr. Leo, I'd like you to turn to
14 Exhibit 315, page one, clip six; and page two,
15 clip seven.

16 But let's start with page one, clip --

17 A Okay.

18 Q -- six. And, again, I would play this but I'm
19 going to read this tape. This as well.

20 Clip six is from Investigator Wiegert.

21 "Um, but we want to go back and tell
22 people that you know Brendan told us what he
23 know. We want to be able to tell people that
24 Brendan was honest. He's not like Steve. He's
25 honest. He's a good guy. He is going to go

1 places in this life.

2 But in order for us to do that, you need
3 to be honest with us, and so far you're not being
4 a hundred percent honest."

5 Clip seven.

6 "Mark and I can" -- "Mark and I both" --

7 This is Investigator Fassbender
8 speaking.

9 "Mark and I both can go back to the
10 district attorney and say, uh, Dassey came
11 forward and finally told us. Can imagine how
12 this was weighing on him. They'll understand
13 that."

14 And then, finally:

15 Mr. Wiegert: "We'll go to bat for ya
16 but you have to be honest with us."

17 Okay? Are these other examples of what
18 you would call systemic inducements?

19 A The first one, in and of itself, not -- excuse me --
20 not necessarily. Number six, um, although it would
21 depend on the context in which number six was given,
22 if it had been preceded by other systemic inducements
23 or references to the consequences in the system for
24 being honest, then contextually it may be referring
25 back to those, um, and conveying the meaning that

1 honesty will pay off in terms of what the prosecutor
2 will or will not do.

3 So this would depend on the context. It
4 just -- if I just read this out of context, then
5 I would say, no. But it could, depending on the
6 con -- context, refer back to something that --
7 that reestablishes that meaning.

8 Number seven I would say no question
9 because, first of all, he's referencing the
10 district attorney. The district attorney is the
11 person who decides whether or not somebody gets
12 charged.

13 And, obviously, that has all kinds of
14 implications in terms of depriving them of
15 their -- of their liberty, and possibly resulting
16 in a -- in a conviction.

17 And suggesting that they will go to bat
18 for him, depending on what he says, he has to be
19 honest, and the meaning of going to bat suggests
20 putting in a word, or persuading, or advocating
21 on his behalf in a way that will minimize, or
22 reduce, or eliminate his culpability.

23 So I think this is no question. The
24 second one you read, no question, is a systemic
25 in -- inducement.

1 Q So with regard to the first one, when
2 Mr. Wiegert -- Investigator Wiegert -- says, we
3 want to go back and tell "people," if the word
4 "people" in that statement refers back to people
5 in the district attorney's office, then you would
6 consider number six a systemic inducement?

7 A Correct.

8 Q Okay. Now, I want you to focus, if you will, on
9 page one, clips four and five. Okay?

10 Um, Mr. Fassbender on page -- on clip
11 four begins by saying:

12 "Talk about it. We're not just going to
13 let you high and dry. We're going to talk to
14 your mom after this, and we'll deal with this the
15 best we can for your good, okay?

16 I promise I will not let you high and
17 dry. I'll stand behind you."

18 Mr. Wiegert then says:

19 "We both will, Brendan. We're here to
20 help ya."

21 Okay?

22 And, number five, Mr. Wiegert says:

23 "We want to help you through this."

24 Okay?

25 Now, I want you to focus on, if you

1 will, page two, clip eight, and page nine, clip
2 nine. Okay? Do you see that?

3 A Yes.

4 Q Okay. Mr. Fassbender then says:

5 "I'll promise you I'll not -- I promise
6 you I'll not let you hang out there alone but
7 we've got to have the truth. The truth is going
8 to be terrible."

9 Clip nine. Mr. Fassbender says:

10 "Talk to us, Brendan, if you want this
11 resolved."

12 Okay.

13 Um, play -- and -- and -- and, finally,
14 clip ten on page two. Okay?

15 Mr. Wiegert. Investigator Wiegert:

16 "It's not your fault. Remember that."

17 Fassbender: "Yeah, it's not your fault.
18 Like I said, Mike -- Mark and I are not going to
19 leave you high and dry."

20 Okay.

21 What, in your opinion, is the
22 significance of these repeated suggestions that
23 the officers are there to help Brendan if he
24 talks?

25 A I -- I think -- the -- these clips that you just

1 pointed to, again, are systemic inducements. I
2 think, again, they convey some sort of promise, or
3 suggestion, or implication of more lenient treatment.

4 Um, the offer to help sounds like it
5 could convey the idea of helping him not face
6 liability, not get charged by a district
7 attorney, not get caught up in the system.

8 Um, and I -- I think that in this
9 context, also, um, "We're not going to leave you
10 high and dry," which implies, being left high and
11 dry, that he would be the one who's charged or
12 blamed for this crime?

13 And when they say, clip nine, "Talk to
14 us, Brendan, if you want this resolved," I think
15 the implication there is resolved means resolved
16 for him. He walks out, he doesn't face criminal
17 charges.

18 Uh, this doesn't -- he doesn't get
19 caught up in this.

20 ATTORNEY FALLON: I'm going to object to
21 that as being speculation. And until we have
22 evidence that's going to tie this up as to how these
23 were taken by the defendant, then I object.

24 THE COURT: Sustained.

25 Q (By Attorney Drizin) Dr. Leo, are these kinds of

1 tactics, in your opinion, particularly
2 problematic with juveniles?

3 A Yes.

4 Q Are they particularly problematic when used with,
5 um, people of below average intelligence?

6 A Yes.

7 Q Why?

8 A Because we know that juveniles and people with a low
9 level intelligence or low level cognitive functioning
10 are more susceptible to interrogation pressure and
11 influence, uh, more likely -- more likely to -- to
12 make false confessions, have -- are easier to coerce
13 into making false confessions.

14 Q Okay. Thank you. I want to move on to the
15 March 1, interrogation, um, and ask you, in your
16 opinion, did the interrogators continue to use
17 improper inducements on March 1?

18 A Yes.

19 Q Okay. And March 1 is the interrogation that --
20 first of all, is the questioning that took place
21 at the police station; correct?

22 A Yes.

23 Q And, in your opinion, was the questioning at the
24 police station on March 1 an interview or an
25 interrogation?

1 A Again, an interrogation.

2 Q Why?

3 A The same reasons I offered before. They were using

4 interrogation techniques. They were seeking to

5 elicit incriminating statements.

6 Q Does the fact that the interrogation took place

7 in what the officer's called a "soft room" change

8 your opinion about whether it was an

9 interrogation or an interview?

10 A No, it doesn't change my opinion. What's important

11 is the techniques that were used and how the

12 questioning was being conducted whether it's in a

13 soft room or non-soft room.

14 Q So whether the suspect is sitting on a couch or a

15 hard back chair doesn't matter to you?

16 A Correct.

17 Q Okay. Um, now, I want you to focus on, if you

18 will, page four, clip 19. We're going to play a

19 series of clips, page four, clip 19, and then

20 clips 22 through 26.

21 Um, but before I get there, um, on

22 March 1 Detectives Wiegert and Fassbender used

23 a -- a -- one tactic over and over again. Um,

24 you called in your report the superior knowledge

25 ploy. Do you recall that?

1 A Yes.

2 Q What is this technique?

3 A Well, this is a technique of confronting a suspect,
4 either with evidence that irrefutably establishes his
5 guilt, or --

6 (Wherein interference noise is coming
7 from DVD player.)

8 A Thought that I did that. Or pretending to have
9 superior knowledge or omniscient knowledge, knowing
10 everything. In other words, knowing that the -- that
11 the suspect did this because you know everything.

12 So this is a kind of evidence ploy.
13 When I referred earlier to confronting a suspect
14 with real or alleged evidence, uh, to convince
15 them they're caught and it's futile to continue
16 denying.

17 Q So would it be fair to say that in and of itself
18 this superior knowledge ploy may not be
19 psychologically coercive?

20 A Correct.

21 Q But if used over and over again throughout the
22 interview, it might become psychologically --

23 A Correct. Especially in combination with other
24 techniques it could have a coercive effect, yes.

25 Q Okay. Um, I'm hoping that we'll be able to play

1 clips 19, and 22 through 26.
2 (Unintelligible.)
3 "Tell me the truth. We already know.
4 Just tell us. It's okay."
5 (Unintelligible.)
6 Clip 22.
7 "Why did he -- why did he have you come
8 over there? Did he need help with something?
9 Remember, we already know but we need to hear it
10 from you. Why did he have you come up there? He
11 needed help, didn't he? What did he need help
12 with? Go ahead and tell us."
13 Clip 23.
14 "Why was he peed off at her?"
15 "I don't know."
16 (Unintelligible)
17 "I think he probably told you. So just
18 be honest. We already know."
19 Clip 24.
20 "What else did he do to her? We already
21 know. Be honest. We got enough here to..."
22 (unintelligible) "...know some things that
23 happened to her. So tell us the truth. What
24 else did he do to her?"
25 Clip 25.

1 "How did you know that?"

2 (Unintelligible.)

3 Q (By Attorney Drizin) Dr. Leo, would you look at
4 that tape for this one?

5 (Unintelligible.)

6 "Be honest with us. We already know.

7 (Unintelligible.) We're going to help you
8 through this, all right?"

9 Okay. Clip number 26.

10 "It's okay, Brendan. We already know."

11 Q (By Attorney Drizin) Okay, um --

12 "What happens next? Remember, we
13 already know. We want to hear it from you. It's
14 okay. It's not your fault. What happens next?"

15 Q (By Attorney Drizin) That was clip 29. And,
16 finally, clip number 30.

17 "Come on. Be honest. You went back in
18 that room." (Unintelligible.)

19 ATTORNEY DRIZIN: Okay. I know you're
20 having difficulty hearing that, but, um, we'll give
21 you the exhibit to the extent you need to fill --
22 fill in what you were unable to hear.

23 Q (By Attorney Drizin) Um, now, Dr. Leo, is this
24 an example of -- a repeated example of the
25 omniscient ploy or the super knowledge ploy?

1 A Yeah. It's an -- they repeatedly tell him that they
2 know and convey superior knowledge or knowledge of
3 everything that occurred.

4 Q And if, in fact, they don't know, then this would
5 be a false evidence ploy; correct?

6 A Correct.

7 Q Okay. Is there anything in the literature, um,
8 that discusses the use of false evidence ploys
9 with teenage suspects?

10 A Yes.

11 Q And what can you tell me what those findings are?

12 A Well, the false evidence ploys are often involved in
13 false confessions. They're considered a risk factor
14 for false confessions. They are considered
15 particularly influential on individuals who have low
16 IQs, or who are juveniles, who they -- may be more
17 gullible or easily led or manipulated into confessing
18 as a result of them.

19 Q Now, you recall I asked you to watch clip 25 and
20 26. Do you remember that?

21 A Yes.

22 Q Okay. During that clip, investigator reaches out
23 and pats Brendan on the knee. Did you see that?

24 A Yes.

25 Q Okay. Are police to drain -- trained to do this?

1 A Yes.

2 Q And what is the significance of that?

3 A Sometimes they use these kinds of body gestures to

4 disarm a suspect, to communicate that they're the

5 friend's suspect or ally, to get closer to -- to them

6 physically. Um, it's believed to help in getting

7 somebody to confess.

8 Q Okay. Now, Dr. Leo, I want to talk about the

9 tactic of minimization which you spoke about

10 earlier?

11 A Okay.

12 Q And I'd like to focus on, if you will, Exhibit

13 315, page five, clip 31.

14 ATTORNEY DRIZIN: Alex, do you have

15 that?

16 (Inaudible response.)

17 ATTORNEY DRIZIN: Okay.

18 "He brings you back there and he shows

19 you her and what do you do? Honestly...

20 (unintelligible) ... I believe you were...

21 (unintelligible) ... we know what happened. Be

22 truthful. We know what happened. It's okay.

23 What did you do?"

24 "I didn't do nothing."

25 "Brendan. Brendan, come on. What did

1 you do? What did Steven make you do? It's not
2 your fault he makes you do it."

3 Q (By Attorney Drizin) Okay. Mr. Fassbender on
4 that clip says to Brendan, "What does Steven make
5 you do?"

6 A Correct.

7 Q Is that an example of minimization?

8 A Yeah. It's blaming -- it's blaming this on somebody
9 else, implying that Steve -- Steven's at fault, as
10 the next sentence suggests as well, and that he,
11 himself, is not at fault, and so his culpability is
12 being minimized here if he admits to being involved
13 as they're trying to get him to admit to.

14 Q Is there a connection between minimization and
15 pragmatic implication?

16 A Yes. Um, uh, pragmatic implication, again, implying
17 the meaning of something rather than explicitly
18 stating it. Minimization is a way to imply
19 suggestions or promises of leniency, essentially,
20 through what we call pragmatic implication.

21 Q So the combination of suggesting that Steven made
22 him do it, and it's your fault --

23 A It's not your fault.

24 Q It's not your fault. I'm sorry. Um, why is that
25 an example of minimization?

1 A Because, again, he's trying to minimize -- he's
2 trying to suggest that Mr. Brendan's -- I'm sorry --
3 Mr. Dassey's culpability will be minimized or
4 eliminated if he admits to this. He's not admitting
5 to something that he's at fault for. He's not
6 responsible for something he's not at fault for.
7 Therefore, he has no criminal liability for something
8 that he's not responsible for. Not at fault for.

9 Q Okay. I want to focus, if you will, on page
10 three of Exhibit 315 and clips -- clip 17
11 followed by page four, clip 18. Okay?

12 "Honesty here, Brendan, is the thing
13 that's going to help you. No matter what you
14 did, we can work through that. Okay? We can't
15 make you any promises, but we'll stand behind you
16 no matter what you did. Okay? Because you're
17 being the good guy here. You're the one that's
18 saying, you know what? Maybe I made some
19 mistakes. But here's what I did.

20 The other guy involved in this doesn't
21 want to help himself. All he wants to do is
22 blame everybody else. Okay? And by you talking
23 with us, it's helping you. Okay? Because the
24 honest person is the one's that's going to get a
25 better deal out of everything. You know how that

1 works. You know, honesty's the only thing
2 that'll set you free; right?

3 And we know -- like Tom said, we know --
4 when we reviewed those tapes, we know there's
5 some things you left out. And we know there's
6 some things that maybe you weren't quite correct
7 that you told us. Okay?

8 We've done -- we've been investigating
9 this a long time. We pretty much know
10 everything. That's why we're talking to you
11 again today. We really need you to be honest
12 this time with everything. Okay?

13 If, in fact, you did some things which
14 we believe some things may have happened that you
15 didn't want to tell us about, it's okay. As long
16 as you can -- as long as you be honest with us,
17 it's okay. If you lie about it, that's going to
18 be problems."

19 Clip 18.

20 "Just take it through honestly now.
21 Come on, Brendan, be honest. (Unintelligible.)
22 We already know what happened. Okay?"

23 "We don't get honesty here -- I'm your
24 friend right now. Or I -- I got -- I got to
25 believe in you, and if I don't believe in you, I

1 can't go to bat for you. Okay? (Unintelligible)

2 Tell us what happened."

3 "Your mom said you'd be honest with us."

4 "And she's behind you a hundred percent
5 no matter what happens here."

6 "That's what she said because she thinks
7 you know more, too."

8 "We're in your corner."

9 "We already know what happened. Now,
10 tell us exactly. Don't lie."

11 Q (By Attorney Drizin) What is the significance of
12 clip 17 and 18?

13 A I think this is the place where you see the most
14 concentrated, um, implied, if not, explicit, promises
15 of -- of help, and suggestions, if not, promises, of
16 leniency.

17 Um, the -- in clip 17, um, they're
18 suggesting that, um, being honest, which means
19 telling them what they regard as honest or the
20 truth, um, will allow, um -- will help him, um,
21 and will allow them to work through it and that
22 they will stand behind him. Um, and he'll get a
23 better deal if he's honest.

24 Um, and if he's honest, this will be
25 okay. But if he lies, that there -- there will

1 be problems.

2 So it seems to me that what they are
3 suggesting here is that there will be specific
4 negative consequences, general negative
5 consequences, if he continues to say things that
6 they don't regard as honest. That they don't
7 regard as the truth.

8 But if he does, he will get help. They
9 will stand behind him. He'll get a better deal.
10 And they even say, "The truth will set you free."

11 Q Tell me about that. I mean, "The truth will set
12 you free."

13 In the context of clip 17 when that
14 comes after the honest person is the one who's
15 going to get a better deal out of everything, how
16 do you interpret the truth will set you free? Or
17 honesty will set you free?

18 A I interpret this as a -- as a kind of quid pro quo.
19 As an implied deal. They even use the word "deal."
20 Right?

21 But the -- the -- the quid pro quo, or
22 the implied deal, or negotiation here is if you
23 tell us what we regard as honest, what we regard
24 as the truth, then you're not going to get caught
25 up in the system. You're not the one who's going

1 to be blamed. You're not the one who's at fault.

2 The truth will set you free, um,
3 suggests that he will be set free if he tells
4 them what they regard as the truth.

5 Q Well, let's take a step back. There's no yelling
6 here?

7 A Correct.

8 Q There's no screaming here?

9 A Correct.

10 Q There's no, um, direct threats of harm, is there?

11 A Um, not explicit. If you do this, then this will
12 follow. If you don't, then that will follow. As you
13 might expect in a contract; right? If someone, uh,
14 writing a contract.

15 Q Um, why do you think this is psychologically
16 coercive?

17 A Because I think it's conveying an implied promise of,
18 if not leniency, immunity, in exchange for telling
19 them what they regard as truthful or honest.

20 And I think it's in -- conveying an
21 implied threat of the opposite if he doesn't.
22 And I think -- you know, you've been playing
23 these clips. But it's also important to remember
24 the context that's established before these sorts
25 of things are said. And I think the message

1 keeps getting driven home here, um, about this
2 negotiation, or deal, or quid pro quo. The
3 benefit if he tells them what they regard as
4 truthful or honest. As being honest.

5 ATTORNEY FALLON: Your Honor, I'm going
6 to renew the objection and ask that the Court
7 take this evidence on conditional relevance.
8 Because until it's established that the doctor's
9 suggestions were, in fact, taken the way that
10 he's now testifying, then all of this is
11 speculation.

12 THE COURT: Well, I don't think it really
13 goes to the admissibility of the evidence. I do
14 think, though, it goes to the weight. So I'm going
15 to overrule your objection.

16 ATTORNEY DRIZIN: Thank you, Your Honor.

17 Q (By Attorney Drizin) Um, is there anything wrong
18 with linking a statement like, I'll go bat -- to
19 bat for you, with honesty on Brendan's part?

20 A I -- I think it's creating -- a -- a statement like
21 that is creating a -- a quid pro quo like deal or
22 expectation. If you say what I want to hear, what I
23 regard as honest, what I regard as truthful, then I
24 will help you out.

25 The idea of going to bat for you, again,

1 you see this in -- in -- seen this many times in
2 interrogations -- that I will be your advocate.
3 I will try to negotiate something better for you.
4 The implication is clear in a murder
5 interrogation.
6 Q Have you ever seen interrogations when detectives
7 tell a suspect that the truth or honesty will set
8 you free?
9 A Yes.
10 Q Okay. Is that a tactic that interrogators are
11 trained to use with suspects?
12 A I'm not aware that they're trained to use that --
13 that tactic, no.
14 Q Okay. Um, and how would you describe that
15 tactic?
16 A Well, I would describe that tactic as an inducement.
17 Um, in anything other than the context of quoting
18 religious scripture, I would describe that as a
19 systemic or high end inducement if it creates the
20 expectation that you will go free if you tell them
21 what they regard as the truth.
22 Q Now, later on in this interrogation, um,
23 Detective Wiegert tells Brendan that we can't
24 make any promises to you?
25 A Correct.

1 Q Okay? You remember that?

2 A Yes.

3 Q Okay. Does, then -- doesn't that allay your
4 concerns that these interrogations are
5 psychologically coercive?

6 A No, it doesn't. And you frequently see this. Um,
7 the detectives can talk out of both sides of their
8 mouth. They say on the one hand, we're not making
9 you any promises, but -- and they may -- they may, in
10 their mind, actually believe that.

11 Um, but, again, this goes back to
12 pragmatic implication, and minimization, and
13 communicating implied promises. Um, so they --
14 they -- they may be saying, we're not making any
15 explicit promises, and they may not be realizing
16 that they are conveying implicitly the same
17 promise, or negotiation, or deal.

18 Q Okay. Thank you, Dr. Leo. I want to play clips
19 14, 15, and 16, which are all on page three and
20 ask you to --

21 "Feel that -- that maybe...

22 (unintelligible) ... Mark and I both feel that
23 maybe there's some -- some... (unintelligible)
24 ... or that you could tell us that you may have
25 held back for whatever reasons, and I want to

1 assure you that Mark and I both are in your
2 corner. We're on your side."

3 Clip 15.

4 "One of the best ways to -- to -- to
5 prove to us or, more importantly, you know, the
6 court and stuff, is that you tell the whole
7 truth. Don't leave anything out. Don't make
8 anything up because you're trying to cover
9 something up a little, um, and even if those
10 statements are against your own interest -- know
11 what I mean? That that makes you -- might -- it
12 might make you look a little bad or make you look
13 like you were more involved than you want to be
14 looked at, um, it's hard to do.

15 But it's good from that...

16 (unintelligible) to say, hey, they hope to hell
17 you're telling the truth because now you're given
18 the whole story, you're getting -- given points
19 where it didn't look real good for you either."

20 Clip 16.

21 "As Mark and I looked at -- looked at
22 the tapes, looked at the notes, and it's real
23 obvious there's some places where some things
24 were left out, or maybe changed just a bit to --
25 to maybe -- looking at yourself, to protect

1 yourself a little.

2 Um, from what I'm seeing, even if I fill
3 those in, I'm thinking you're all right. Okay?
4 You don't have to worry about things. Um, we're
5 there for ya.

6 Um, and -- and -- and we know what
7 Steven did. And -- and -- and we know kind of
8 what happened to you and what he did. We just
9 need to hear the whole story from you. As soon
10 as we get that, we're comfortable with that, I
11 think you're going to be a lot more comfortable
12 with that. It's going to be a lot easier on you
13 down the road if this goes to trial and stuff
14 like that."

15 Q (By Attorney Drizin) Okay. Dr. Leo, what's the
16 significance of these statements?

17 A Well, number 14, um, they say that -- that both of
18 them -- one of them says they're both in his corner.
19 Again, suggesting they're his advocates. They want
20 to help him, um, in this situation, and in implying
21 eliminate or reduce his culpability.

22 Um, in number 15 they, um, link this to
23 the courts. Right? The -- the -- Fassbender,
24 um, talks about how the courts want the whole
25 truth. Again, implying that there's a benefit at

1 that stage of a proceeding, uh, for him giving an
2 account that they regard as truthful.

3 Um, 16, in my opinion, is, um -- has the
4 most here, um, in terms of inducement. Um, they
5 talk about protecting himself, implying that
6 he'll avoid harm, um --

7 Q Okay.

8 A They also talk about, again, reinforcing the message
9 that they are there for him. Right? That they're
10 going to be his advocates. Um, this idea that
11 they're on his side.

12 They also, I think, make more explicit
13 reference, than in the prior two ones, to the
14 long term consequence. It'll be easier down the
15 road, um, suggesting, again, lesser or no
16 liability or culpability especially when they
17 link it to if this goes to trial. The image of a
18 trial being that that's where somebody might get
19 charged with a crime or avoid getting charged if
20 -- if -- if he's not the one who goes to trial.

21 So, again, these are all inducements
22 that convey, um, benefit and help. Uh, and
23 they're on his side to -- to help him achieve
24 reduced culpability or liability.

25 Q And do you think that telling a teenager, uh,

1 like Brendan, that he will be all right, even if
2 he implicates himself further in the crime, is a
3 tactic that increases the risk of an unreliable
4 confession?

5 A Yes.

6 Q Why?

7 A Because, um, if somebody is being repeatedly accused
8 and pressured to say something, I keep saying no, no,
9 no, no, and then they are told that that's not the
10 truth, um, and they're not being honest, and -- and
11 so truth and honesty become code words for what the
12 interrogator wants to hear, and then they are told
13 there's no consequence for you telling us what we
14 want to hear, especially in the context of something
15 as serious as a murder interrogation, and the
16 incentive, after a while, can easily become, I'll
17 tell them what they want to hear. They'll stop
18 badgering me or accusing me. There's no consequence.
19 I'm not liable for any criminal activity.

20 Q In clip number 16 Investigator Fassbender says:

21 "Um -- um, from what I'm seeing, even if
22 I filled those in..."

23 ATTORNEY DRIZIN: And that refers to
24 some blanks.

25 Um, "...I'm thinking you're all right.

1 Okay? You don't have to worry about things."

2 Q (By Attorney Drizin) Do you see that --

3 A Yes.

4 Q -- statement in the context of clip 16?

5 A Yes.

6 Q Um, what is problematic, if anything, about that?

7 A Um, the idea that you'll be all right, and that you

8 won't have to worry anything, I think, conveys,

9 reasonably -- through any reasonable interpretation

10 it conveys that you're not going to be -- or you may

11 not be criminally charged for this.

12 Um, you're going to be okay suggests

13 you're out of it. And you don't need to worry

14 about it suggests you don't need to worry about

15 being charged, or prosecuted, or convicted.

16 Q Okay. Um, I'd like to play, um, clips 33, 35,

17 and 36. These are on -- page five is clip 33,

18 page six is clip 35, and page six is clip 36.

19 ATTORNEY DRIZIN: Alex, please play.

20 "Honesty here, Brendan, is the thing

21 that's going to help you. Okay? No matter what

22 you did, we can work through that. Okay? We

23 can't make any promises, but --

24 This is clip 33, Alex.

25 "I have a question."

1 "Sure."
2 "How long is this going to take?"
3 "It shouldn't take a whole lot longer."
4 "You think I can get there before 1:29?"
5 "Um, probably not."
6 "Well" --
7 "What's at 1:29?"
8 "Well, I had a project due in sixth
9 hour."
10 (Unintelligible.)
11 Clip 35.
12 (Unintelligible.)
13 "Okay?"
14 "Am I going to be at school before
15 school ends?"
16 "Probably not. We're at 2:30 already.
17 School's over at what? Three? Three..."
18 (Unintelligible.)
19 "What time will this be done?"
20 "Well, we're pretty -- we're pretty much
21 done. We have a couple followup things to ask
22 you. But it's pretty much done."
23 Okay. Clip 36.
24 "You do understand that you're under
25 arrest now?"

1 "So could I call my girlfriend and tell
2 her that..." (unintelligible).

3 "We'll give you an opportunity to -- to
4 do that. Okay? Did you kind of..."
5 (unintelligible) "... after telling us what you
6 told us kind of figured this was coming?"

7 "Yeah."

8 (Unintelligible.)

9 "We don't know that at this time."

10 Q (By Attorney Drizin) Dr. Leo, Brendan Dassey has
11 just confessed to raping and murdering Teresa
12 Halbach, and he's asking his interrogators if he
13 can go back to school to do a school project.

14 What, if any, significance did you
15 attach to this request?

16 ATTORNEY FALLON: Objection. Speculation.

17 THE COURT: Sustained.

18 Q (By Attorney Drizin) Did you rely on this
19 passage in any way in forming any of your
20 opinions in this case?

21 A Yes. I relied on this and many other passages.

22 Q Okay. Um, how did you rely on this passage?

23 A Well, in my opinion, um, he didn't understand that he
24 was confess --

25 ATTORNEY FALLON: Renew the objection.

1 THE COURT: Well, I think it's -- it's
2 expert opinion. It's his opinion. He can give it.
3 Go ahead.

4 THE WITNESS: In my opinion, um, he
5 doesn't understand that he confessed to a rape
6 and a murder, or the consequences of that, and,
7 in my opinion, that's a product of the
8 interrogation techniques that were used to elicit
9 those confessions.

10 Q (By Attorney Drizin) Dr. Leo, I want to focus
11 now on a brief clip that occurs when Brendan
12 Dassey's mother, Barb, is brought into the room.
13 And the investigators, Wiegert and Fassbender,
14 leave the room for the first time.

15 This would be page six, clip 37.

16 (Unintelligible.)

17 "You're going to juvie. That's where
18 you're going. To juvie jail. About 45 minutes
19 away."

20 (Unintelligible.) "What happens if he
21 says, like, his story's different but he says
22 he -- he admits to doing it?"

23 "What do you mean?"

24 "Like, if he says it different, like, I
25 never did nothing or something?"

1 "Did you?"
2 (Unintelligible.)
3 "Huh?"
4 "Not really."
5 "What do you mean, 'Not really.'?"
6 "They got into my head."
7 "Huh?"
8 "I didn't say anything."
9 (Unintelligible.)
10 "What do you mean by that? What do you
11 mean by that, Brendan?"
12 Q (By Attorney Drizin) What significance do you
13 attach to Brendan's statements in this clip,
14 Dr. Leo?
15 A Well, he's -- he's saying that he wasn't really
16 involved. And when pressed about that, they got to
17 my head, suggests to me that they influenced him in
18 how they interrogated him. Got to my head makes it
19 sound like he was manipulated and not really makes it
20 sound like he's denying that he did this.
21 Q Does the fact that Brendan chooses this moment,
22 when there are no officers in the room, to make
23 these statements have any significance to you?
24 A Yes, in that it -- once removed from the pressure of
25 interrogators and interrogation it's easier to make

1 these kinds of statements.

2 Q Have you seen other cases and situations where
3 children recant their statements to their mothers
4 when left alone with their parents?

5 A Yes.

6 Q Okay. When Brendan is asked to explain by his
7 mother what me meant by the words, "Not really,"
8 he tells his mother, quote, they got to my head.
9 Okay? In your experience, do suspects often have
10 a difficult time explaining the reasons why they
11 confessed falsely to climb -- crimes?

12 A Yes, some suspects do.

13 Q And what is that based on?

14 A Well, it's -- it's based on my observations of cases
15 in which they've been asked, after the fact, in
16 interviews by me, or others, um, or a relative, or
17 guardian, uh, or friend comes in, and they talk to
18 them, and they're being recorded, and asked what they
19 said and why they said it.

20 Q Now, Dr. Leo, you know, based on your training,
21 and your experience, your research, your studies
22 into police interrogations and psychological
23 coercion, do you have an opinion as to whether
24 the techniques that we've shown you here today
25 used by the officers in the case on February 27

1 and on March 1 were psychologically coercive?

2 A Yes. It's my opinion that they were for the reasons
3 that I have stated.

4 Q Okay. Um, before we turn to the question of the
5 reliability of these statements, Dr. Leo, um, did
6 you also review a videotape and a transcript of a
7 conversation between Mr. Michael O'Kelly and
8 Brendan Dassey on May 12?

9 A I did.

10 Q Okay. And without showing you this entire
11 conversation, would you call this an interview or
12 an interrogation?

13 ATTORNEY FALLON: Objection. Relevance,
14 and materiality, and it's relationship, if at all,
15 to a statement that occurred six weeks before.

16 ATTORNEY DRIZIN: It is -- I'm sorry.

17 THE COURT: Go ahead.

18 ATTORNEY DRIZIN: It is our position, as
19 we've made clear over and over again, that it is
20 directly relevant to the voluntariness and the
21 reliability of statements that Brendan made
22 following that May 12 interview, including the
23 telephone confessions of May 13.

24 And Your Honor was deprived of seeing
25 the Michael O'Kelly video when you ruled on the

1 voluntariness of those statements.

2 And Dr. Leo should be entitled to weigh
3 in on whether or not, um, those statements were
4 the product of Mr. O'Kelly's interrogation.

5 THE COURT: Court'll overrule the
6 objection.

7 THE WITNESS: Okay. So the question --

8 Q (By Attorney Drizin) The question is, um --

9 ATTORNEY DRIZIN: Actually, um, may I
10 have a moment, please, Your Honor?

11 (No verbal response.)

12 Q (By Attorney Drizin) Um, I'd like you to turn to
13 page 3-6 -- Exhibit 316, page 17, please? I'm
14 sorry. Page 16.

15 THE COURT: You mean Exhibit 315?

16 ATTORNEY DRIZIN: I apologize. Having a
17 mental block about that number. Three fifteen, Your
18 Honor.

19 Q (By Attorney Drizin) Okay. Dr. Leo, did you
20 answer my last question? Did you believe that
21 the -- the questioning of Brendan Dassey on 5-12,
22 May 12, with Michael O'Kelly was an interview or
23 an interrogation?

24 A Interrogation.

25 Q Okay. Mr. --

1 ATTORNEY DRIZIN: Alex, if you would,
2 I'd like you to play clip two.

3 ATTORNEY FALLON: Your Honor, I'm going
4 to renew the objection because they're attempting
5 to tie all this in to a ten-second,
6 fifteen-second clip played on a cross-examination
7 after the defendant had taken the stand and
8 waived his rights.

9 And the interesting thing here is that
10 that was a phone call with his mother. It was
11 not in response to, um, police interrogation, or
12 questioning, or comments. There's no state
13 action there as it relates to his conversation
14 with his mother on the suggestion that, well, if
15 you're going to plead guilty, you better tell her
16 that you're going to do that.

17 That was the context of that as the
18 Court recalls the trial.

19 So this is all a -- a -- a charade, as
20 it were, to tie in -- tie in all this irrelevant,
21 immaterial evidence to something that did not
22 have state action attached to it.

23 THE COURT: Yeah. I'm -- I'm getting very
24 skeptical here, Mr. Drizin. This -- this seems to
25 me to be -- be pushing it beyond the grounds of any

1 relevance that I can see in this. I'm -- I'm going
2 to sustain Counsel's objection at this point.

3 ATTORNEY DRIZIN: Okay.

4 Q (By Attorney Drizin) Um, at the beginning of the
5 interview, Dr. Leo, without playing the tape,
6 Mr. O'Kelly tells Brendan that he failed the
7 polygraph exam and that the results were a score
8 of 98 percent deception indicated. Do you
9 remember that?

10 A Yes.

11 Q Okay. Now, in your experience have you seen
12 cases in which confronting a suspect with
13 polygraph results leads a suspect to falsely
14 confess?

15 A Yes.

16 Q In your stud --

17 ATTORNEY FALLON: Objection. Relevance.
18 Mr. O'Kelly was not an agent of the State..

19 ATTORNEY DRIZIN: It doesn't matter, Your
20 Honor. We are -- okay. Your Honor, it's our --

21 ATTORNEY FALLON: There's no evidence --

22 THE COURT: Here. One at a time.

23 ATTORNEY DRIZIN: It doesn't matter whether
24 he was an agent of the State. The State knew about
25 this interview. They knew it was happening.

1 They -- they knew that it resulted in a second
2 interview the next day.

3 Mr. Kachinsky testified earlier today
4 that it was his understanding that the deal
5 with -- with the State was that anything that
6 came out of that weekend was pursuant to a
7 proffer, and, therefore, not going to be used
8 against Mr. Dassey at trial.

9 The State specifically took advantage of
10 Mr. Kachinsky's absence by getting him to make
11 phone calls that were then used against him at
12 trial.

13 Now, Counsel can talk about the fact
14 that it was only used on impeachment. Brendan
15 Dassey. But the fact of the matter it wasn't
16 mentioned in impeachment of Mr. Dassey,
17 impeachment of Dr. Gordon, had also referenced in
18 closing argument.

19 That means that it was more prejudicial
20 than Counsel would like to say it is.

21 Um, I think Dr. Leo's entitled to talk
22 about the tactics that were used that led to
23 those statements.

24 THE COURT: I don't know that your argument
25 has a whole lot to do with why you're asking Dr. Leo

1 that question. I'm going to sustain the State's
2 objection.

3 Q (By Attorney Drizin) Dr. Leo, what is a prop
4 room?

5 A A prop room is a room that sometimes interrogators
6 will take suspects that has artifacts of the crime.
7 Sometimes newspaper articles, or folders, uh, of the
8 particular crime that the person's being interrogated
9 about.

10 Q And is the use of such props, um, typically
11 associated with interrogations?

12 A Yes.

13 Q As opposed to interviews?

14 A Yes.

15 Q In your experience, um, analyzing thousands of
16 interrogations have you ever seen a video of a
17 defense investigator interrogating his own
18 suspect? His own -- excuse me. His own client?

19 A I can't think of one off the top of my head.

20 Q Okay.

21 ATTORNEY DRIZIN: Your Honor, if -- if
22 it's okay, can we take a break as we go to
23 reliability?

24 THE COURT: Any objection?

25 ATTORNEY FALLON: No.

1 THE COURT: Take ten minutes.

2 (Recess had at 2:10 p.m.)

3 (Reconvened at 2:30 p.m.)

4 THE COURT: Proceed, Mr. Drizin.

5 Q (By Attorney Drizin) Dr. Leo, is the process of
6 a psychological interrogation complete when a
7 person makes his first admission?

8 A No.

9 Q Okay. What happens next?

10 A Well, this -- this is the post-admission phase that I
11 referred you earlier where detectives --

12 Q Okay. I don't need you to define it right now.

13 But -- but you're referring now to the
14 post-admission narrative about which you
15 testified earlier?

16 A Correct.

17 Q Okay. Why is a narrative important in the
18 process of psychological interrogation?

19 A To get an account of how and why the suspect
20 committed the crime, and to also see if there's
21 indicia of reliability or unreliability as I
22 described earlier.

23 Q Do police officers receive specific training on
24 how to create a persuasive post-admission
25 narrative?

1 A Yes.

2 Q And what kind of training do they receive?

3 A Training about hold-back information. Not giving a
4 suspect non-public details that the true -- only the
5 true perpetrator would know. Direct -- direct --
6 telling police interrogators to elicit a full
7 account. Not to stop with the admission, but to try
8 to get the full details. Telling interrogators to
9 look for corroboration and ways of objectively
10 verifying and strengthening the admission.

11 Q How about -- are they trained to also seek an
12 apology from the suspect?

13 A Yeah. That -- I -- I -- I think of that as an
14 interrogation technique. Yes, they often, um --
15 they're -- they're -- sometimes they're taught, and
16 sometimes you see, increasingly, um, getting apology
17 notes from suspects.

18 Q How about, um, eliciting some type of a motive?

19 A Yes.

20 Q Okay. Are there any other details of the
21 confession that police officers are trained to
22 elicit through the post-admission narrative
23 process?

24 A Well, the details, again, of how and why the suspect
25 committed the crime. And, um, sometimes you also

1 see, in addition to motives, a plaus -- trying to get
2 a story of what happened. And, um, sometimes in
3 post-admission interrogation they also will ask them
4 legal questions. You know, I didn't make you any
5 threats. This is voluntary.

6 Q Okay. Now, how does the post-admission narrative
7 relate to the reliability of the confession?

8 A The post-admission narrative can potentially tell you
9 a great deal about the reliability of the confession
10 if the person is not contaminated by the police or
11 other influences, but can't give the non-public
12 facts. Guesses, and gets things wrong. Can't lead
13 police to missing evidence. Can't explain aspects of
14 the crime.

15 If the post-admission narrative doesn't
16 fit with the existing physical, medical, or other
17 credible evidence, all of that is indicia of
18 unreliability.

19 Conversely, uh, if all of that were not
20 true, it would be indicia of reliability. If
21 they know non-public details that were -- that
22 they're not likely guessed by chance, and were
23 not the product of contamination.

24 And almost certainly you have to have
25 participated in or been present for the crime.

1 If their statements lead to new or missing
2 evidence, match the physical or other credible
3 evidence, that post-admission narrative that
4 follows the admission could -- can become
5 excellent evidence of reliable -- or indicia of
6 reliability.

7 Q Are you aware, Dr. Leo, that the prosecution in
8 Brendan Dassey's case argued to the jury that
9 there were 19 facts in Brendan's confession that
10 were corroborated?

11 A Um, I -- I -- I -- I thought there were 17. I must
12 have been mistaken. So I was aware they made that
13 argument, whether it was 17 or 19, yes.

14 Q You're referring to the 17 in -- in Mr. Buckley's
15 report?

16 A Correct.

17 Q Okay. But in either event, whether it was
18 Mr. Buckley or the prosecution, you understood
19 that they argued that this was a highly
20 corroborated confession?

21 A Correct.

22 Q And you're -- are you aware that they argued that
23 Brendan's statement was reliable because it led
24 the police to the discovery of evidence that had
25 been unknown to them prior to the confession?

1 A Yes.

2 Q And that would have been a bullet in -- or the
3 fragment of a bullet that was in the -- the Avery
4 garage?

5 A Yes.

6 Q Okay. And that it contained a description of
7 some unusual and some mundane elements of the
8 crime?

9 A Yes.

10 Q How can a confession that is so rich in detail,
11 that appears to be corroborated, and which leads
12 the police to be -- to unknown evidence, be
13 unreliable?

14 A Well, perhaps counterintuitively, most false
15 confessions are very detailed. The fact that a
16 confession is detailed does not make -- make it true,
17 necessarily, or false. Um, both true and false
18 confessions can be detailed.

19 The question becomes where did this
20 information come from?

21 Did it come from the media? Did it come
22 from community gossip? Was it publicly known?
23 Did the police explicitly feed the suspect? Or
24 did they ask force choice questions where the
25 answer was implied? Uh, or did the suspect

1 independently volunteer this information?

2 So I guess to answer your question, a --
3 an unreliable or false confession can be detailed
4 with these kinds of facts, um, false confession,
5 um, because the person was contaminated because
6 they learned the information from either the
7 police, or the media, or some other source.

8 Q And, in fact, aren't there studies of proven
9 false confessions where suspects have given what
10 appear to be highly corroborated detailed
11 accounts of a heinous crime?

12 A Yes.

13 Q And what studies are those?

14 A Um, I've written about this in my book.

15 Professor Brandon Garrett of the
16 University of Virginia has written about that.
17 He has unique access to the DNA exonerations, of
18 which 40 or 50 involve false confessions.

19 He's looked at the trial transcripts of
20 those cases, and in all but one there was --
21 there was contamination. These are people proven
22 innocent by DNA who were, nevertheless,
23 convicted.

24 And at their trials the argument was
25 always made, it's a detailed confession. The

1 person supplied details that only the true
2 perpetrator would know, um, and so it's
3 corroborated.

4 And, in fact, these were false
5 confessions. Provably false through DNA.

6 Um, a professor in England, Gisli
7 Gudjonsson, G-u-d-j-o-n-n-s-o-n (sic), I think
8 was the first to really document and study this
9 in English cases.

10 So this is a phenomena. And I've
11 written elsewhere about it with my colleague,
12 Richard Ofshe. This is a phenomena that's
13 well-known to confession researchers, especially,
14 um, with these DNA cases.

15 Q Now, contamination that you're referring to can
16 come from a variety of sources?

17 A Correct.

18 Q Can come from the police?

19 A Correct.

20 Q It can come from the media?

21 A Correct.

22 Q It can come from the suspect's general knowledge
23 of a crime scene?

24 A Correct.

25 Q Um, and in many cases, for example, suspects

1 will -- will, um, come upon a dead body and that
2 will give them information that could contaminate
3 their final confession?

4 A Correct.

5 Q Okay. So is contamination that you've described
6 confined to the post-admission narrative process?

7 A No. You could have -- first of all, you could have
8 pre-existing knowledge. Somebody has been to the
9 crime scene, or was a witness to a crime. That's
10 before the interrogation.

11 You can also have contamination, um,
12 through media sources, or community gossip,
13 overheard conversations prior to the
14 interrogation.

15 And then in the interrogation you can
16 have contamination in the pre-admission portion
17 of the interrogation even before the words -- the
18 suspect says the words, I did it. They're being
19 educated about the crime facts by the
20 interrogators even if it's not the interrogator's
21 intent or the interrogator's --

22 Q That's --

23 A -- not aware of it.

24 Q I'm sorry. That's what I want to focus on. But
25 you're not saying that these are cases where

1 interrogators deliberately contaminated the
2 suspect's confession are you?

3 A Correct. Correct. No, I'm not saying that.

4 Q Okay. Now, um, if it's not deliberate, how --
5 how would -- how do police contaminate
6 confessions?

7 A Well, um, the -- the in -- the interrogations are
8 guilt presumptive, which means that they presume the
9 guilt of the person they're interrogating, and so
10 they assume the person knows the details.

11 And sometimes in the pre-admission
12 interrogation techniques, like the evidence ploy,
13 for example, or through accusations, they will
14 tell the suspect details, thinking the suspect
15 knows them, to get more details, or try to cue
16 the suspect in their attempt to pressure the
17 suspect, or persuade the suspect to give a true
18 confession.

19 So they don't realize -- if they are
20 interrogating an innocent person, because they
21 presume that person to be guilty, who has
22 knowledge, they don't always realize that they
23 are feeding the facts, um, or that they are
24 cueing them to particular answers, or directing
25 them to particular answers.

1 Um, and the same process sometimes
2 happens post-admission where their focus is not
3 so much on getting the "I did it" statement but
4 on getting a -- a story, a narrative, with
5 details, and where, in their frustration, they --
6 they pressure and persuade the suspect, and
7 inadvertently direct them, or cue them, or ask
8 questions that suggest the correct answers.

9 Q Contamination. Can contamination from one
10 interrogation later infect other interrogations?

11 A Yes. Because if you're educating the suspect about
12 particular details at time one, and then at time two
13 the person's interrogated and confessons
14 (phonetic) -- confesses, he or she is likely to know
15 the details from time one. Um, the cat's out of the
16 bag.

17 Unless the person didn't hear them, or
18 didn't remember them, the contamination from the
19 prior interrogation, um, will carry over to the
20 subsequent interrogation.

21 And you see that in some of the DNA
22 cases.

23 Q As an expert, when you're looking at the
24 reliability of a -- of a confession, how do you
25 know whether contamination exists?

1 A Well, um, if you have a recording of the
2 interrogation, then, um, your job is much easier
3 because you don't have to rely on anybody's account
4 for that piece of it.

5 You go to the interrogation, and you
6 have to carefully go through the statements to
7 see whether or not, um, police are feeding facts,
8 educating the def -- the suspect, correcting
9 details, cueing the -- the suspect to the right
10 answer, giving the suspect fifty/fifty guess
11 options.

12 Um, so that's one thing you'd have to
13 do. Um, in a high profile case that's received
14 media coverage, um, it would be important to know
15 what's been reported out there, and whether or
16 not the suspect could have learned that. Um --

17 Q Does the problem of contamination, um, lead to
18 wrongful convictions?

19 A Um, it does, but I think it's important to say how it
20 leads to wrongful convictions. It's -- it's -- it's
21 a big part of the story. It's not the whole story.

22 It leads to wrongful convictions because
23 it makes false confessions detailed and look very
24 persuasive so that the trier of fact -- first of
25 all, so that the prosecutor argues that the

1 confession is corroborated by the details and by
2 the, quote, unquote, inside knowledge, and that's
3 very persuasive.

4 We find in our studies to triers of
5 fact, um, because the -- the -- the -- the fact
6 of details, and if the prosecutor's argument of
7 inside knowledge is believed, again appears to
8 corroborate, confirm, drive home the validity and
9 veracity of the confession.

10 Q And does the problem of contamination make it
11 more difficult to overturn wrongful convictions?

12 A This is very clear from the DNA studies, um, where
13 Brandon Garrett looked at the history of these cases
14 in appellate and post-conviction, and these arguments
15 were repeated. Um, when error was found, it was
16 harmless error.

17 But, perhaps, the most, um, disturbing
18 thing about Brandon Garret's findings --

19 ATTORNEY FALLON: I'm going to object to
20 the relevance of Mr. Garrett's soon-to-be
21 published law review article and it's application
22 to the particular proceedings as to whether or
23 not trial counsel were ineffective, which is
24 really the focus here.

25 THE COURT: I understand the objection.

1 This is an expert. He can tell us what he relies on
2 in forming his opinion. I would appreciate it if
3 you could do that succinctly.

4 THE WITNESS: Okay. Um, even after the
5 DNA established the innocence, um, trial
6 prosecutors continue to refuse to release
7 individuals who had confessed, repeating the same
8 arguments. They gave details only the true
9 perpetrator could know.

10 Q (By Attorney Drizin) Now, in your experience and
11 your research, is contamination a phenomenon that
12 jurors can typically spot?

13 A No.

14 Q How do you know that?

15 A Well, through the studies and the research is how we
16 know that. Um, you really have to break it down to
17 see contamination. I think jurors tend to get
18 focused on the confession process itself.

19 Q Okay. And by "break it down" you mean show them
20 precisely on the interrogation tape where
21 contamination occurs?

22 A Right. Step by step.

23 Q Okay. Did you look at the State's 19 -- or I'm
24 sorry -- Mr. Buckley's 17 corroborated facts in
25 this case?

1 A I did.

2 Q And in doing so, were you able to make any
3 assessments of whether or not these facts were
4 the product of any contamination?

5 A Yes.

6 Q Um, and what did you find?

7 A I find -- found, as is -- as I went through in the
8 affidavit for all 17 statements, that all of the
9 statements that Mr. Buckley alleges were
10 corroborating the confession, or were unique,
11 non-public knowledge, um, were not that.

12 They either were fed to Mr. Dassey by
13 the police, or, um, Mr. -- the police cued
14 Mr. Dassey toward the right answer, or, um, they
15 were -- and/or they were in the public domain,
16 they had been reported in the media, either the
17 print or electronic media.

18 Um, finally, or there were some
19 statements here which, even though true, were
20 consistent with an exculpatory account and in no
21 way incriminated Mr. Dassey.

22 So none of these 17 points, um, revealed
23 unique, non-public knowledge that only the true
24 perpetrator could have known and couldn't have
25 been guessed by chance.

1 Q Now, you mentioned earlier about the police
2 training with regard to holding back some details
3 from the general public?
4 A Correct.
5 Q Do you remember that?
6 A Yes.
7 Q What are they trained in that regard, Dr. Leo?
8 A To hold back non-public case facts, unique crime
9 details, that only the true perpetrator is likely to
10 know, other than the police, um, unless they're
11 co-defendants, and then perpetrators, so that when
12 they confess, if they voluntarily, independently
13 reveal that information, you can -- you can argue
14 very persuasively it's evidence of guilt. It
15 corroborates the confession and seals the convic --
16 should seal the conviction.
17 Q So the less facts that are held back from the
18 general public, the more difficult it is to
19 assess the reliability of a confession?
20 A Correct.
21 Q Okay. I want to show you some clips with regard
22 to contamination. Actually, um, again, since we
23 have a problem with the video, I'm going to read
24 you some clips from February 27 on contamination.
25 I want to -- you to look at Exhibit 315, page

1 eight, clip one.

2 A Can you just give me a moment?

3 Q This is 315, page eight, clip one at the top of

4 the page, which is February 27.

5 A Um, okay.

6 Q Do you see where I'm referring?

7 A Yes.

8 Q It begins with the words, "Brendan, we know

9 that."

10 A No, I think I'm --

11 ATTORNEY FALLON: What page are --

12 THE WITNESS: Is it --

13 ATTORNEY FALLON: -- you on, Counsel?

14 THE WITNESS: -- Exhibit 315, page one?

15 ATTORNEY DRIZIN: Exhibit 315, page

16 eight --

17 THE WITNESS: I'm sorry.

18 ATTORNEY DRIZIN: Clip one.

19 THE WITNESS: Okay. Okay.

20 Q (By Attorney Drizin) This is Mr. Fassbender

21 speaking.

22 "Brendan, we know that that Halloween

23 and stuff you were with him, and helped him tend

24 to a fire and stuff like that, behind the garage

25 and stuff, and anything that you saw that nights

1 that's been bothering you.

2 If you built the fire, and we believe
3 that, that's where Teresa was cooked."

4 Okay? Do you -- what does this clip
5 show you about contamination?

6 A Sorry. Well, they're educating him about some of
7 the -- some of the key facts here. Um, that there
8 was a fire. That, um -- and that that's where
9 Teresa's body was, as they say, "cooked."

10 Q That would be in the fire pit?

11 A Correct. Um, and that it was behind the garage.

12 Q And that they think Brendan built the fire?

13 A Yeah. Helped tend to a fire, yes.

14 Q And that -- that Brendan may have seen something
15 in the fire pit?

16 THE COURT: Here. Just --

17 THE WITNESS: Correct.

18 THE COURT: Let me just stop this. For
19 sake of expediency, I haven't done this before, but
20 oftentimes, Mr. Drizin, you are actually testifying
21 rather than asking questions.

22 ATTORNEY DRIZIN: I'm trying to get through
23 this, Judge.

24 THE COURT: I -- I -- and that's why I
25 haven't said anything about it before.

1 ATTORNEY DRIZIN: Okay. I'll -- I'll
2 refrain.

3 THE COURT: All right.

4 ATTORNEY DRIZIN: That's fine.

5 Q (By Attorney Drizin) Um, why is this
6 contamination significant to you?

7 A Well, because the -- then when he repeats back these
8 facts that's taken by the State to -- to somehow
9 corroborate his confession, but if it's -- if he
10 first learns of it through the police, then it has no
11 probative value.

12 Q Okay. Let's look at page eight, clip two, um,
13 again on the top of the page, beginning with,
14 "Did you see a hand? A foot?" Do you see that?

15 A Yes.

16 Q Okay. This is February 27. Agent Fassbender
17 says to Brendan:

18 "Did you see a hand? A foot? Something
19 in that fire?"

20 Clip three. Agent Wiegert says:

21 "That burn pit, Brendan, was no bigger
22 than this table. Okay? You know how big it was.
23 I find it quite difficult to believe that if
24 there was a body in that, Brendan, that you
25 wouldn't have seen something like a hand, or a

1 foot, a head, hair, something. Okay? We know
2 you saw something."

3 Clip five.

4 "I find it very hard, Brendan, that you
5 didn't see a skull, or the head."

6 Why are these clips significant?

7 A Because, again, they're educating him about things
8 that they believe he saw. And so he repeats back
9 these facts in his confession. And then the State
10 says this -- this reveals unique, non-public
11 knowledge that argument would be false.

12 Um, in -- in fact, he could be repeating
13 back exactly what they told him or suggested.
14 And, therefore, his confession is contaminated,
15 and these statements have no probative value in
16 establishing corroboration of that confession.

17 Q Okay. I'm wanting to focus now on March 1, okay?
18 And I want to focus on -- I'd like you to focus
19 on clips one, two, and three on page eight at the
20 bottom of the page. This is the March 1
21 interrogation at the Manitowoc Police Department.
22 The first clip begins, "Where did he stab her?"

23 Do you see that?

24 A Yes.

25 Q Okay.

1 ATTORNEY DRIZIN: Alex, can you play
2 that clip, please?
3 "In the stomach."
4 "What else did he do to her?"
5 (Unintelligible.)
6 "Did something else. We know that."
7 (Unintelligible.)
8 "He tied her up."
9 ATTORNEY DRIZIN: Um --
10 "We know he did something else to her.
11 What else did he do to her? (unintelligible)
12 What else did he do to her? We know something
13 else was done. Tell us. What else did you do?
14 Come on. Something with the head. Brendan.
15 (Unintelligible.) "We know he made you do
16 something else. What was it? What was it? We
17 have the evidence, Brendan. We just need you
18 to -- to be honest with us."
19 "That he cut off her hair."
20 ATTORNEY DRIZIN: Alex, I'm going to ask
21 you to continue playing clips on that page through
22 clip nine.
23 "What else? What else was done to her
24 head?"
25 "That he punched her."

1 "What else? What else? He made you do
2 something to her, didn't he? He -- he would feel
3 better about not being the only person, right?

4 What did he make you do to her?

5 (Unintelligible.) What did he do, Brendan?

6 (Unintelligible) It's okay. What --

7 (Unintelligible.)

8 "Cut her."

9 "Cut her where?"

10 "On her throat."

11 ATTORNEY DRIZIN: Okay. Why don't we
12 stop there for now. Okay? Alex, you want to --
13 okay.

14 Q (By Attorney Drizin) Um, the clips that you just
15 viewed, um, what did they say to you about
16 contamination?

17 A It's my interpretation here is there -- I'm sorry.
18 My interpretation here is that he's giving the wrong
19 answers and they're trying to direct him to the right
20 answers. And that's why they keep pressing him
21 despite everything that he says.

22 Um, and at one point, I guess, on clip
23 three, um, they suggest that something happened
24 to the head.

25 Q Okay. And that's the first time that there's any

1 reference in these interrogations to something
2 happening to -- happening to her head; is that
3 correct?

4 A That's my recollection, yeah.

5 Q Okay. Um, now, I -- I --

6 ATTORNEY DRIZIN: Alex, will you
7 continue to play the clips? This would be, I
8 believe, from where you left off.

9 "Extremely, extremely...
10 (unintelligible) ... tell us this for us to
11 believe you. (Unintelligible.) Come on, Brendan.
12 We know. We just need you to tell us."

13 "That's all I can remember."

14 "All right. I'll come out and ask you,
15 who shot her in the head?"

16 "He did."

17 "Why didn't you tell us that?"

18 "Because I didn't think of it."

19 Q (By Attorney Drizin) Okay. Again, Dr. Leo, what
20 does this clip suggest to you about
21 contamination?

22 A They're feeding him. They're -- they're -- they're
23 directing him.

24 Uh, the statement, um, when he says he
25 doesn't remember, and they haven't

1 successfully -- I mean, five begins with what
2 happens to her in the head. He's not giving the
3 right answer. So, finally, they just come out
4 and tell him the right answer.

5 Q And that answer is that she was -- what -- that
6 what?

7 A Who shot her in the head. So, um, read in the
8 context of the earlier clips that you played, he's
9 now guessed wrongly several times. They've hinted at
10 what the right answer is several times. And then
11 they just give up.

12 He says he can't remember. They just
13 give up and basically tell him by saying, who
14 shot her in the head. So they are disclosing
15 that she was shot in the head, which he doesn't
16 appear to know.

17 Q Okay. Now, um, uh, Agent Wiegert late -- later
18 asks Brendan in clip, I believe, 11, um, what --
19 "Do you know what side of the head?" Do you
20 recall that? That's on page nine?

21 A Yeah.

22 Q It's marked as -- I'm sorry. It's marked as clip
23 six.

24 A Right. Yeah. That's following the end of clip five.

25 Q Is this an example of contamination?

1 A Yes.

2 Q How so?

3 A Well, again, um, they're affirming the answer.
4 Unlike the other ones, where they keep pressing him,
5 um, to go on, they accept this answer, and then they
6 imply that it was one or the other side, and then ask
7 him.

8 Q Okay. And so why he's telling him that she was
9 shot in the side of the head contamination?

10 A Well, it's also the location of the head, as well,
11 that they're suggesting.

12 Q Okay. Um, now, in his arguments to the jury, the
13 prosecution play -- placed great weight on the
14 fact that Brendan was able to say that she was
15 shot, that she was shot in the head, and that she
16 was shot in the side of the head.

17 In your opinion, after reviewing these
18 clips, do you think that these facts are
19 corroborated?

20 A No, because they come from the interrogator, as --
21 these clips show, not from Brendan. So because they
22 didn't come from Brendan, they have no probative
23 value in corroborating the confession.

24 He didn't independently volunteer them.
25 In fact, exactly op -- exactly the opposite. He

1 doesn't appear to know where they came from and
2 guesses incorrectly, despite their initial cues,
3 until they -- until they literally feed it to
4 him.

5 ATTORNEY DRIZIN: Alex, I'd like you to
6 play, um, clip 21, and this is on page 12, um,
7 where Mr. Fassbender says, "Tell me where in the
8 head."

9 THE COURT: Page 21.

10 THE WITNESS: Oh, sorry.

11 ATTORNEY FALLON: Oh, page 21. I thought
12 he --

13 ATTORNEY DRIZIN: I think it's page 12.

14 ATTORNEY FALLON: Page 12. Well, there's
15 only 15 --

16 ATTORNEY DRIZIN: Clip 15, but --

17 ATTORNEY FALLON: Okay.

18 ATTORNEY DRIZIN: On Alex's -- do you
19 have it, Alex?

20 "Tell me where in the head. What
21 sides?"

22 "To the left side I think it was."

23 Q (By Attorney Drizin) Um, Dr. Leo, does the fact
24 that Brendan stated that she was shot in the left
25 side of the head carry any significance?

1 A Um, to me, no. This is, um, an example of one of
2 those facts that could be guessed by chance. There's
3 only two sides. Fifty/fifty likelihood of guessing
4 it.

5 So it -- it -- it -- it has no probative
6 value in terms of corroborating the confession
7 since it so easily can be guessed by chance, and,
8 therefore, we don't know whether he provided that
9 independently, um, or whether he just guessed it.

10 And, of course, since he was directed,
11 and couldn't get the answer right in the first
12 place, um, there -- there's multiple reasons why
13 this is not corroborative.

14 Q Okay. Um, I want to focus your attention, now,
15 on page nine again, and I want to show you some
16 clips, um, relating to where Teresa was shot.

17 Brendan talks about that. Um, we'll
18 begin with what is listed on Exhibit No. 315 as
19 clip number seven.

20 ATTORNEY DRIZIN: And I want Alex to
21 play clip number seven and clip number eight.

22 (Unintelligible.)

23 I'm sorry. Alex --

24 (Unintelligible.)

25 "And we know there's some -- some things

1 that you're -- you're not telling us. We need to
2 get the accuracy about the garage, and stuff like
3 that, and the car. Again, we have -- we know
4 that some things happened in that garage and in
5 that car. We know that. You need to tell us
6 about that so we know you're telling us the
7 truth."

8 ATTORNEY DRIZIN: Okay. Um, would you
9 keep playing what's marked on your exhibit as
10 clip nine.

11 (Wherein clip is played while Attorney
12 Drizin is talking.)

13 (Unintelligible.)

14 "Took her in the garage."

15 ATTORNEY DRIZIN: Again with ten.

16 "Tell us where she was shot."

17 "In the head."

18 "No. I mean where? In the garage?
19 Outside? In the house?"

20 "In the garage."

21 "Okay. Was she on the garage floor or
22 was she in the truck?"

23 (Unintelligible) "... the truck."

24 "Come on. Where was she shot? Be
25 honest here. The truth."

1 "In the garage."

2 Okay. Let's stop there.

3 Q (By Attorney Drizin) Um, Dr. Leo, um, the fact
4 that Teresa was shot in the garage was argued to
5 the jury as a corroborated fact. In your
6 opinion, is that a corroborated fact?

7 A Well, again, they're -- they're directing him to
8 where the crime took place by repeatedly telling them
9 the garage and the car.

10 Q And, in fact --

11 A And, in fact, they say, um, tell us where she was
12 shot. And -- and he says, in the head, and then
13 Fassbender says -- this is clip ten -- "No. I mean
14 where in the garage?" So, in effect, they're telling
15 him.

16 Q Now, after Brendan's interrogation, Dr. Leo,
17 you're aware that the police went into the garage
18 and they actually found some evidence that she
19 had been shot there; correct?

20 A Yes.

21 Q Um, isn't this an example of the most valuable
22 kind of corroboration? Evidence which the police
23 did not even know about prior to a confession?

24 A Correct.

25 Q But what is the significance of this evidence in

1 light of the tape that you just reviewed?

2 A It -- it loses all its probative value as a means of
3 corroborating the confession, establishing its
4 reliability, when the police educate the suspect
5 about the fact, and then the suspect repeats back the
6 fact, and then they discover something new related to
7 that fact.

8 So it violates their training, and it
9 makes it more difficult to establish the
10 reliability of the statement they elicited
11 because it -- it -- its corroborative value is
12 completely undermined by the police,
13 unnecessarily, providing him that information in
14 their interrogation.

15 Q Okay. Um, now, Dr. Leo, um, I want to focus your
16 attention on page ten of this exhibit, and what's
17 marked on your exhibit as 13, beginning with the
18 words, "Okay. What else did he do?" Do you
19 see --

20 A Yes.

21 Q -- where that is?

22 A Yes.

23 ATTORNEY DRIZIN: Alex, can you play the
24 tape?

25 "Okay. What else did he do? He did

1 something else. You need to tell us what he did.
2 After the car is parked there. Extremely
3 important. Before you guys moved that car."

4 "That he left the -- the gun in the
5 car."

6 "That's not what I'm thinking about.
7 You did something to that car. To the plates. I
8 believe you did something else to that car."

9 "I don't know."

10 "Okay. Did he -- did he -- did he go
11 and look at the engine? Did he raise the hood at
12 all or anything like that? Do something to that
13 car?"

14 "Yeah."

15 "What was that?" What did he do,
16 Brendan? It's okay. What did he do? What did
17 he do under the hood if that's what he did?"

18 "I don't know what he did. But I know
19 he... (unintelligible).

20 Q (By Attorney Drizin) Dr. Leo, in light of these
21 questions, what, um, value ought to be placed on
22 the fact that Brendan stated that he saw Steven
23 go under the hood of the car?

24 A Again, I don't think there's any probative value
25 because Fassbender says, prior to Brendan saying

1 that -- in the middle of this -- did he raise the
2 hood at all or anything like that, and then all
3 Brendan can say is he doesn't know. The end of the
4 clip. But he knows that Steven Avery went under.

5 So this is a classic example of just
6 feeding back a detail that was first suggested by
7 the interrogator and, therefore, it's not inside
8 knowledge. It has no probative value. It does
9 not corroborate the confession.

10 Q But this fact, again, led the police to discover
11 Steven Avery's DNA on the hood latch of the car.
12 Doesn't that provide precisely the kind of
13 corroboration you want a confession to provide?

14 A Yes. Maybe a different way of answering the prior
15 question. And this question would be to say that
16 this would have been something very valuable to hold
17 back. That had they held that back, and had he then
18 independently supplied it, um, this would have been
19 very probative, um, if that had happened, and it
20 would have been corroboration. If he could not have
21 provided it, it would have suggested the opposite.
22 And here it doesn't appear that he could provide it
23 until he was told.

24 Q Okay. I want to show you one more series of
25 clips. Okay? This is a little bit longer so,

1 um, this is going to be on the bottom of page
2 ten, and also --
3 (Wherein tapes starts to play.)
4 ATTORNEY DRIZIN: One second, Alex.
5 Okay. Can you bring that back if possible?
6 This is going to be on the bottom of
7 page ten, um, it's clip 14, and it's going to go
8 all the way through the top of page 12. Okay?
9 "Did you place some things in that burn
10 barrel that night?"
11 "No."
12 "What happened to Teresa's other
13 personal effects? I mean, a woman usually has a
14 purse; right? Tell us what happened to that."
15 "I don't know..." (Unintelligible.)
16 "What happened to her -- her cell
17 phone?" Don't try to -- to..." (Unintelligible.)
18 "... think of something. Just..."
19 "I don't know."
20 "Did Steven -- did you see whether -- a
21 cell phone of hers?"
22 "No."
23 "Do you know whether she had a camera?"
24 "No."
25 "Steven tell you what he did with those

1 things?"

2 "No."

3 "Did you tell us the truth?"

4 "Yeah."

5 "What did he do with her -- her

6 possessions?"

7 "I don't know."

8 "Brendan, it's okay to tell us. Okay?

9 It's really important that you continue being

10 honest with us. Don't start lying now. If you

11 know what happened to a cell phone, or a camera,

12 or her purse, you need to tell us. Okay? The

13 hard part's over. Do you know what happened to

14 those items?"

15 (Unintelligible.)

16 "Because when I passed it, there was,

17 like -- like a purse in there and stuff."

18 "When you passed what?"

19 "The burn barrel."

20 "Did you look inside?" Why did you look

21 inside?"

22 "Because it was full."

23 "What else was in there?"

24 "Like garbage bags and..."

25 "Did you put those things in the burn

1 barrel?"

2 "No."

3 "Did you actually see those items in the

4 burn barrel?"

5 "Yeah."

6 "Tell me what you saw in there exactly."

7 "Like they were buried underneath the

8 garbage -- garbage bag that was" --

9 "How do you know -- how could you see if

10 they were underneath the garbage bag?"

11 "'Cause the garbage bag was, like, on

12 top of it..." (unintelligible) "...the top."

13 "Okay. So we have the barrel. Okay?

14 (Unintelligible.) You got the barrel. Okay?

15 Here's the top of the barrel, and the garbage bag

16 is on top?"

17 "Yeah."

18 "Where were those items you said you

19 saw?"

20 (Unintelligible) "Like underneath it."

21 "Underneath the bag?"

22 (Unintelligible.)

23 "How would you see that?"

24 "Well, if the bag's, like, that far off

25 the -- the top of the thing..." (unintelligible).

1 (Unintelligible) "... you would see
2 underneath there..." (unintelligible).

3 "What did you see?"

4 "Like a cell phone, a camera, purse."

5 Q (By Attorney Drizin) Beginning with the -- the
6 question, "Did you put some things in the burn
7 barrel that night?" Where Brendan shook his
8 head, no, and following through with the clip
9 that you just saw, is this an example of
10 contamination?

11 A Yes. Yes, because, again, they're educating him
12 about what was in the burn barrel. What they believe
13 was in the burn barrel. The purse, the cell phone,
14 and the camera.

15 And when he says -- he says at the end
16 of the quote, cell phone, camera, purse. The
17 very bottom of 14.

18 So, again, that has no probative value
19 because they gave him that fact, um, before he
20 gave it back to them. So it can't be said that
21 he independently volunteered these unique
22 non-public facts. This is a classic example of
23 contamination.

24 Q Okay. And the only way to see this contamination
25 is by doing what, Dr. Leo?

1 A Well, you have to break it down. I mean,
2 contamination in a complicated case, or case with a
3 lot of facts, um, you -- you've -- you've got to
4 break down the record.

5 You've got to go through, parse out the
6 recorded interrogation. You also have to do some
7 investigation, you know, of other sources of
8 contamination if they exist.

9 Q Dr. Leo, I want to talk to you about what, um,
10 Joseph Buckley, in his report, refers to as
11 resistance?

12 A Okay.

13 Q Do you know what I'm referring to?

14 A I believe so, yes.

15 Q Okay. Um, in Dr. -- in, um, Mr. Buckley's report
16 he cites a number of facts that Brendan
17 supposedly resisted. Okay? Do you place any
18 weight on this so-called resistance?

19 A No. Um, some of the things that Mr. Buckley is
20 calling resistance, I think are not really called
21 resis -- shouldn't be called resistance. They don't
22 imply active resistance. Um, he's just not adopting
23 them.

24 But, more generally, in proven false
25 confession cases where there may be, or is, a lot

1 of contamination and suggestion, um, you don't
2 see the -- the person mechanically adopts or
3 repeats back every single fact that's suggested
4 to them as if they were an automaton or simply a
5 sponge.

6 So you're also going to get some
7 suggestions or statements that are not fed back
8 to the suspects. So, no, I don't put weight on
9 that.

10 Um, the most important thing is to do,
11 again, this post-admission narrative analysis, an
12 analysis of contamination.

13 Q And, um, some of the examples of resistance cited
14 by Dr. -- by Mr. Buckley include examples where
15 Brendan denies doing things, but says that Steven
16 did them?

17 A Correct.

18 Q Do you recall that?

19 A Yes.

20 Q Um, what's the significance of that?

21 A I'm not sure why you would call that resistance or
22 why you would say that that somehow corroborates his
23 confession since they were encouraging him to blame.

24 It's -- it's in fitting with the theme
25 of the interrogation. A part of it. They were

1 encouraging him to shift the blame onto Steven.
2 That was part of their strategy. In particular,
3 their inducements to communicate he was less at
4 fault or -- or wouldn't get punished, as we
5 described earlier.

6 Q Now, Dr. Leo, you've attended the retraining;
7 correct?

8 A Correct.

9 Q You've read, um, *Criminal Interrogations and*
10 *Confessions*?

11 A Every, um, edition of it going back to 1942, yes.

12 Q Okay. Does the Reid -- do -- do the Reid
13 training materials talk about contamination?

14 A They do. Yes.

15 ATTORNEY FALLON: I'm going to object.
16 There's no relevance about the Reid training
17 materials as it relates to this case.

18 THE COURT: Where are we going?

19 ATTORNEY DRIZIN: Dr. -- um, Mr. Buckley
20 testifies in -- excuse me -- Mr. Buckley, in his
21 report, states that Agents Wiegert and
22 Fassbender, um, were, in their questioning in
23 Brendan's interrogations were following standard
24 accepticle (phonetic) standards of accepted
25 practice in the interrogation of Brendan Dassey.

1 And I believe Dr. Leo can say that they weren't
2 even following Mr. Buckley's standards of
3 accepted practice.

4 THE COURT: I don't think that report's
5 been offered into evidence at this stage, has it?

6 ATTORNEY DRIZIN: It hasn't, but I'm -- I
7 mean, he's reviewed it. He's relied upon it in
8 his -- in his opinion. Um, it's going to be offered
9 into evidence.

10 THE COURT: Well, until it is, uh, the
11 objection's sustained.

12 ATTORNEY DRIZIN: Can I make an offer of
13 proof on this one point, Your Honor?

14 THE COURT: Narrative offer of proof.

15 ATTORNEY DRIZIN: Um, Dr. Leo, if allowed
16 to testify, would testify that it is in his opinion
17 that investors (sic) Wiegert and Fassbender in their
18 extensive use of contamination in this case did not
19 follow standards of accepted practice in the
20 interrogation of Brendan Dassey.

21 ATTORNEY FALLON: There's been no testimony
22 that they employed this technique, nor was there any
23 testimony at the trial from Mr. Buckley.

24 THE COURT: Well, uh, he's made the offer
25 of proof. So that's on the record. Go on.

1 Q (By Attorney Drizin) Dr. Leo, um, there was a
2 confession expert called as a witness in this
3 case. Are you aware of that?

4 A Are you talking about Mr. Gor -- Dr. Gordon?

5 Q I'm sorry. Um, yes. Dr. Gordon. Um, is he
6 in -- is he -- what kind of expert would you call
7 Dr. Gordon?

8 A Dr. Gordon is not a confession expert. Dr. Gordon is
9 a clinical psychologist. He may be an expert on
10 personality factors that are associated with somebody
11 being more vulnerable to giving or making a -- a
12 confession. Though I'm not even sure of that.

13 Q Okay. And have you worked on cases where there
14 have been suggestibility experts?

15 A Yes.

16 Q And so there's a division of labor between the
17 two of you in these cases?

18 A Correct.

19 Q What does the suggestibility expert focus on and
20 what do you focus on?

21 A Suggestibility experts focus on factors related to a
22 suspect's personality that may predispose them to be
23 more vulnerable or susceptible to suggestion, and
24 influence, and interrogation techniques. And,
25 therefore, more likely to agree with, repeat back, or

1 make a false confession.

2 An expert like me, a social
3 psychologist, who knows about police
4 interrogation techniques and false confessions,
5 will testify about the psychology of
6 interrogation, coercion, and how -- and the
7 literature on false confessions. How and why
8 these techniques can lead to false confessions,
9 and issues about pre- and post-admission
10 interrogation, including contamination and
11 reliability.

12 Q Do you believe that a suggestibility expert alone
13 can adequately educate a jury about the
14 reliability, how to assess the reliability of a
15 confession?

16 ATTORNEY FALLON: Objection. Um, as for
17 speculation on this witness as to what the
18 capabilities or abilities of another expert in
19 another discipline may or may not accomplish in a
20 court of law.

21 THE COURT: I'm going to overrule the
22 objection. He can give his opinion.

23 ATTORNEY DRIZIN: Thank you, Your Honor.

24 THE WITNESS: Not unless the
25 suggestibility expert is also an expert on the

1 psych -- soc -- psychology of interrogation and
2 the phenomena of false confessions.

3 Q And are you aware that Dr. Gordon in this case
4 specifically said he was not an expert in those
5 areas?

6 A Yes.

7 Q Okay. Now, do you believe that the topics about
8 which you discussed -- you talked today,
9 psychological coercion and contamination, can be
10 effectively demonstrated through
11 cross-examination alone?

12 A Um, you're talking about cross-examination of whom?

13 Q Of investigating officers. Thank you.

14 A No.

15 Q Why not?

16 A Because these -- the -- the social science research
17 on these topics are not areas that investigators are
18 familiar with, typically. They don't read the
19 research. They're not familiar with it. They may
20 have expertise in their particular training on how to
21 use particular techniques.

22 So to educate the jury about these
23 counter-intuitive and not popularly known
24 phenomena and their effects and why they're
25 significant in understanding how false

1 confessions come about is not something the
2 average police interrogator is going to know
3 about.

4 Q And is there evidence or research that suggests
5 that juries need to be educated about these
6 topics?

7 A There is evidence suggesting that juries are not
8 aware of this. These counter-intuitive phenomena.
9 Um, they're not aware of the main findings in the
10 research literature on interrogation, the psychology
11 of interrogation, coercion.

12 Um, and that, in addition to their --
13 their lack of knowledge, that they are strongly
14 influenced by confession evidence. That -- that
15 they tend to assume, if somebody confesses, it's
16 a true confession because they don't understand
17 why somebody would falsely confess. They don't
18 believe that they would falsely confess. And so
19 they're highly skeptical of any claim of a false
20 confession.

21 Q I just want to -- one final question, Dr. Leo.
22 Are you saying that in every confession case,
23 every unreliable confession case, that an
24 interrogation expert like yourself must be
25 called?

1 A No. Um, I mean, there are many cases where attorneys
2 may argue it's an unreliable confession case, even if
3 there's indicia of reliability.

4 What I'm saying is that, um, in a case
5 like this, where, as we've -- as we've seen,
6 there's -- there's evidence of coercive
7 inducements. There's evidence of contamination.
8 There's other risk factors associated with false
9 confession. Low -- low IQ. Um, youthful, um,
10 uh, suspect.

11 In cases like this, um, a false
12 confession expert, police interrogation expert,
13 can be uniquely helpful to the jury.

14 ATTORNEY DRIZIN: One minute, Your Honor.

15 Q (By Attorney Drizin) Dr. Leo, as part of your
16 opinion today, did you review extensive newspaper
17 articles and -- and print -- printed -- printed
18 out transcripts of television news coverage?

19 A Yes.

20 Q Okay. And when you reviewed those what did you
21 find?

22 A That many of the facts that Mr. Buckley lists in his
23 report that were corroborating of the, um -- Brendan
24 Dassey's confession, because they allegedly revealed
25 unique or non-public details not likely guessed by

1 chance, were, in fact, reported in the print and
2 electronic media.

3 Q Okay. And --

4 A And reported prior to his confession.

5 Q Okay. Can you take a look at Exhibit 312,
6 please? Which is a group exhibit. A summary
7 exhibit. And, also, if you would take a look at
8 313 and 314?

9 A Okay.

10 Q And are -- does this exhibit reflect the universe
11 of media coverage that you reviewed in connection
12 with rendering your opinion?

13 A Yes.

14 Q Okay. Um, okay.

15 ATTORNEY DRIZIN: At this time, Your
16 Honor, we would ask for a number of exhibits to
17 be moved into evidence.

18 THE COURT: All right. Give me the numbers
19 that you're offering.

20 ATTORNEY DRIZIN: Exhibit No. 212, which is
21 the video exhibit with the clips that we showed
22 Dr. Leo.

23 Exhibit No. 315, which are the
24 transcript portions of the video. That is, 212,
25 of the clips that we were showing.

1 Exhibits No. 312 through 314, which are
2 the universive media exhibits that Dr. Leo
3 reviewed prior to rendering his opinion.

4 Exhibit No. 87, which is a group
5 exhibit. Which is a chart that we prepared that
6 demonstrates the contamination.

7 Exhibit No. 100, which is Dr. Leo's CV.

8 Exhibit No. 316, which are -- which is a
9 summary of information relating to the number of
10 times he's testified, um, and in what courts and
11 under what circumstances.

12 And, Your Honor, the -- the underlying
13 documents under which he based his opinion, which
14 would be Exhibit No. 69, which is the transcript
15 of May -- no. Sorry. I'm sorry. Exhibit No.
16 206, which is the transcript of the February 27
17 interview at Mishicot High School.

18 Exhibit No. 205, which is the audio CD
19 of that interview.

20 Um, Exhibit No. 90, which is the
21 official transcript of the Two Rivers, um,
22 interrogation.

23 Exhibit No. 207, which is the video of
24 the Two Rivers interrogation.

25 Exhibit No. 209, which is the transcript

1 of the March 1 interrogation.

2 And Exhibit No. 10, which is the March 1
3 video. Exhibit No. 210. I'm sorry. Exhibit No.
4 210.

5 And I believe those are all the
6 documents that we seek admission of at this time.

7 THE COURT: Three-fifteen has previously
8 been received. Uh, I have a question about one.
9 But before we'll get -- before we get to that,
10 Mr. Fallon?

11 ATTORNEY FALLON: Yes. I have several
12 questions. I think 315 was previously admitted to
13 the extent that it was discussed with Mr. Kachinsky,
14 I think.

15 THE COURT: Correct.

16 ATTORNEY FALLON: All right. Um, let me
17 go in reverse order because that's easier. 210,
18 the complete video of the March 1 interview, we
19 have no objection.

20 Two-o-nine, the transcripts associated
21 with the March 1 objection. Um, as I understand
22 it, that's the complete transcription of all the
23 video. We have no objection.

24 Two-o-seven, a video of the Two Rivers
25 questioning, and 90, the transcript of the Two

1 Rivers questioning, we have no objection to
2 either of those.

3 With respect to the questioning at the
4 high school on February 27, Exhibit 205, audio or
5 the transcript associated with it, which would be
6 206, I believe, we have no objection.

7 Um, with respect to the add -- the
8 additional descriptions provided in Exhibit 315
9 as discussed with Dr. Leo to the extent that the
10 portions of 315, which were discussed, we have no
11 objection.

12 And I assume that the video clips, 212,
13 to the extent that only those clips which match
14 up with the transcript portions that we talked
15 about, um, if the video that it goes with them, I
16 have no objection to that. But there were other
17 factors contained in both the video and 315 that
18 we still have a standing objection to.

19 Now, um, I do have, however, objections
20 to 312, 313, 314 and 87.

21 With respect to 312 through 314, and
22 again to 87, um, they haven't been conditionally
23 tied up in this particular case. And right now
24 there's still a question of their relevance and
25 materiality as it relates to these issues.

1 THE COURT: Yeah. My question was to those
2 as well. You had Dr. Leo testify, very briefly,
3 from 87, as, in effect, a chart that replicates or
4 supplements his -- actually, it replicates some of
5 his testimony, but nobody has testified to the
6 preparation of the exhibits. The summary exhibits
7 under 910. Are you intending to call a witness to
8 do that?

9 ATTORNEY DRIZIN: Those exhibits -- Exhibit
10 No. 87 in particular -- is -- is essentially just a
11 demonstrative exhibit. Um --

12 THE COURT: Okay.

13 ATTORNEY DRIZIN: -- Your Honor.

14 ATTORNEY FALLON: Well, it -- it's more
15 than a demonstrative exhibit. I just took a close
16 look at 87, and it states -- there's several
17 additional opinions which are offered here.

18 For instance, column two, did the
19 State's physical evidence actually corroborate
20 this detail?

21 Um, well, one, that's a questionable as
22 to whether that's an appropriate question for
23 this particular witness under -- in the context
24 in which it's being offered.

25 So it does contain additional opinion

1 evidence, some of which hasn't been discussed,
2 and some of which is, um, questionable
3 admissibility.

4 Um, so -- and -- but that's not the
5 primary objective. The primary objective, it
6 still has to be tied into this particular case.

7 ATTORNEY DRIZIN: Well, I believe it was
8 tied into this particular case. But I will accept
9 that -- that, um, at least that particular column is
10 probably, uh -- you know, requires, um, a knowledge
11 than Dr. Leo may not be the best witness to --

12 THE COURT: In any case, it has to be --
13 it -- it has to be validated by whoever prepared the
14 exhibit.

15 ATTORNEY DRIZIN: Okay.

16 THE COURT: And with respect to Exhibits
17 312 through 314, uh, you're -- you objected to
18 those, did you?

19 ATTORNEY FALLON: Um, to the extent that
20 I just say, again, um, the impact of the media
21 coverage in this case is yet to be established.

22 ATTORNEY DRIZIN: Judge, the point that we
23 used Dr. Leo for, and I think that we can hopefully
24 agree to admit these documents for this limited
25 purpose at this time, is that these were facts that

1 were in the public domain. Um, and I don't think
2 there's any disputing that.

3 ATTORNEY FALLON: We don't dispute that.
4 They clearly were in the public domain. But the
5 fact that they were in the public domains,
6 importance and significance has yet to be
7 established.

8 THE COURT: Well, Dr. Leo has testified
9 the -- that the fact that they were in the public
10 domain, in his opinion, meant that the defendant
11 could have had access to them. I don't see the
12 exhibits as -- as going one way or another on that.
13 They simply -- if -- if the State is acknowledging
14 that these were facts in the public domain, that's
15 what I'm going to receive the exhibits for.

16 ATTORNEY FALLON: Well, for that limited
17 purpose, then, I'm not going to object.

18 THE COURT: All right. Exhibits 312
19 through 314 are received for that purpose.

20 Um, 212 and 315, those portions of it
21 that were testified to here today, with respect
22 to 212, will be received. Three-fifteen, the
23 additional portions that were testified here
24 today, will be received.

25 Eighty-seven. The Court will withhold

1 ruling on that until some testimony tying that up
2 is -- is had.

3 As for the remainder of the exhibits,
4 and I believe that would be Exhibit 100, 316,
5 206, 205, 90, 207, 209, and 210, they're offered
6 and received.

7 ATTORNEY DRIZIN: Judge, there's just one
8 other exhibit, and that would be Dr. Leo's
9 affidavit, which is Exhibit 3. Um --

10 ATTORNEY FALLON: I would object to that.

11 THE COURT: Yeah. I -- I'm not going to
12 admit that. He's testified here today.

13 ATTORNEY DRIZIN: Okay.

14 THE COURT: That -- that is -- that trumps
15 the affidavit.

16 ATTORNEY DRIZIN: Thank you.

17 THE COURT: Any further --

18 ATTORNEY DRIZIN: No further questions.

19 THE COURT: Your final one question was
20 about 15 minutes ago, so...

21 ATTORNEY DRIZIN: There's a lot of exhibits
22 in this case.

23 THE COURT: All right. All right.
24 Mr. Fallon?

25 ATTORNEY FALLON: Yes. Could I have

1 about just five minutes to put out my stuff for
2 cross here?

3 THE COURT: Sure.

4 ATTORNEY FALLON: Thank you.

5 THE COURT: We'll recess for five minutes.
6 Before we do that, how long do you envision this
7 as -- as taking?

8 ATTORNEY FALLON: I won't be done in an
9 hour. I can assure you of that.

10 THE COURT: Well, that's good, but can you
11 give me any estimate?

12 ATTORNEY FALLON: Hopefully, by mid-morning
13 tomorrow.

14 THE COURT: Okay.

15 (Recess had at 3:35 p.m.)

16 (Reconvened at 3:42 p.m.)

17 THE COURT: Go ahead.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY FALLON:

20 Q Good, afternoon, Doctor.

21 A Good afternoon.

22 Q I just want to be clear what exactly you are.
23 Are you a -- an attorney? A -- a JD? Or are you
24 a social psychologist? How do you -- how do you
25 see yourself?

1 A Um, I'm a social psychologist and a criminologist by
2 training. I also have a law degree. And I'm a
3 professor of law. But I've never taken a bar exam or
4 practiced law. So I don't consider myself an
5 attorney. And if somebody did, I would be a
6 non-practicing attorney.

7 Q So then your emphasis is -- is more as a social
8 psychologist, criminologist?

9 A Correct. As a social scientist.

10 Q As a social scientist. Okay. So in terms of --
11 of codes of responsibility or behavior, you would
12 find yourself required, for instance, to follow
13 the Code of the American Psychological
14 Association --

15 A Correct.

16 Q -- for instance. Or the California Psychologist
17 Association?

18 A I don't belong to that organization.

19 Q You don't. Okay. All right. Um, now there's a
20 difference between a social psychologist and a
21 clinical psychologist?

22 A Correct.

23 Q In your understanding, tell us what the
24 difference is.

25 A Well, a -- a clinical psychologist is somebody who

1 studies personality factors. Um, a clinical
2 psychologist is typically a practicing psychologist
3 and would be a licensed psychologist.

4 A social psychologist, uh -- social
5 psychologists are typically academic
6 psychologists. They don't do therapy. They
7 don't practice. Um, they're not required to get
8 licenses. And their subject matter is different,
9 as I described on direct, what social
10 psychologists study.

11 Q All right. And so in this particular case, then,
12 you don't have any other experience in medicine
13 as a clinical psychiatrist, and you don't consult
14 with clinical psychiatrists to assist you in your
15 work?

16 A Um, well, I am not a clinical psychologist or a
17 clinical psychiatrist. I don't typically consult
18 with psychologists or psychiatrists. But there are
19 cases that I've worked on where there will be a -- a
20 psychologist and, occasionally, a psychiatrist
21 usually as a suggestibility expert and, um -- and I
22 do rely on their opinions sometimes.

23 Q But you -- those aren't opinions that you
24 normally form yourself?

25 A Correct.

1 Q Okay. And although you've watched many
2 interrogations -- in fact, I think you -- your
3 original dissertation, um, was -- was that on
4 *Inside the Interrogation Room*?

5 A That's an article that was published from the
6 interrogation --

7 Q Right.

8 A -- from the dissertation.

9 Q Right. And that's from your study in the Oakland
10 Police Department?

11 A Correct. And --

12 Q Hundred and eighty-two confessions observed?

13 A Interrogations and --

14 Q Interrogations.

15 A Yeah.

16 Q All right. And so although you've studied them
17 and been allowed to monitor them, you've never
18 actually conducted any interrogations yourself?

19 A Correct.

20 Q Okay. Um, is that something that a criminologist
21 would do?

22 A No.

23 Q And in your view they wouldn't, um -- they --
24 their role would be limited observing,
25 monitoring, and critiquing interrogations?

1 A Well, I wouldn't put it that. But maybe we could
2 agree, um, studying, analyzing, researching,
3 publishing about, um, there may be some academic
4 interrogation experts who, prior to starting, were
5 cops, but most were not.

6 Q All right. Now, from your, um, curriculum vitae,
7 you are now currently a professor of law. Is
8 that your sole responsibilities?

9 A Correct.

10 Q All right. So as we say, that would be your day
11 job?

12 A Correct.

13 Q All right. And prior to that, you did what kind
14 of work?

15 A Prior to that I was a professor of criminology and a
16 professor of psychology at UC-Irvine. Prior to that,
17 I was a professor of sociology, an adjunct professor
18 of law at the University of Colorado, Boulder.

19 Q Okay. Now, in this particular case I want to go
20 over some of the things that I believe you
21 reviewed in preparation for your testimony; all
22 right?

23 Now, as I understand it, you reviewed
24 the materials, and by that I mean the transcripts
25 and the DVDs regarding the February 27, 2006,

1 statement at the Two Rivers Police Department;
2 correct?

3 A Yes. Um --

4 Q And I believe you indicated, and -- and gave us
5 your thoughts, that you also listened to the
6 audio interview and reviewed the transcript of
7 the interview which occurred at Mishicot High
8 School preceding the Two Rivers questioning?

9 A Correct.

10 Q Okay. You, likewise, reviewed, um, the
11 transcripts and DVDs surrounding the March 1,
12 2006, statement?

13 A Correct.

14 Q And you reviewed the transcripts and DVDs
15 surrounding the May 13 statement?

16 A Correct.

17 Q Did you review any other materials or statements
18 made by Mr. Dassey that assisted you in rendering
19 the opinions that you've rendered today?

20 A Well, Mr. O'Kelly's polygraph interrogations
21 (unintelligible) on May 12 that were mentioned
22 earlier.

23 Q Anything else?

24 A Not that I recall.

25 Q All right. I see, also, interestingly enough,

1 you reviewed a memorandum filed by Attorneys
2 Buting and Strang in preparation for the
3 sentencing of the Steven Avery case; is that
4 correct?

5 A Um, are -- are you referring to my affidavit?

6 Q Yes, I'm referring to your affidavit.

7 A Yes.

8 Q I believe it would be one, two, three -- I think
9 that's the fourth bullet point?

10 A Correct. On page two.

11 Q Page two; right?

12 A Correct.

13 Q Why did you review that?

14 A Because it was provided to me.

15 Q Um, I'll come back to that point in a minute.
16 Did you review any of the police reports or audio
17 clips regarding Mr. Dassey's questioning by
18 authorities in Marinette County on Sunday,
19 November 6, or later that week, November 10,
20 2005?

21 A I don't believe so.

22 Q You were aware that he gave statements to law
23 enforcement on those days, were you not?

24 A Yes. Now, I -- looks like I -- I reviewed some
25 reports from the Wisconsin Division of Criminal

1 Investigation or Department of Justice, uh, dated
2 November of 2005, as well as the Marionette -- I'm
3 sorry -- Marinette County Sheriff's Department. So
4 some reports, yeah.

5 Q So you may have seen the reports? Do you
6 remember seeing if there were any transcripts
7 associated with those reports or did you just
8 review the police reports?

9 A I believe I just reviewed the police reports.

10 Q All right. And the authors -- if I were to throw
11 the names of the officers involved in tho -- in
12 tho -- in that questioning period, would you
13 recognize their names so that you and I can be
14 sure you looked at what I think you looked at?

15 A No. I'd have to look at the materials that I looked
16 at.

17 Q All right. We may very well come to that.

18 Um, I believe, also, you indicate in
19 your affidavit that you reviewed Calumet County
20 Sheriff's reports associated with the
21 February 27 -- I take it February 27 -- interview
22 of Mr. Dassey? Or were those interviews or
23 investigative reports regarding other subject
24 matter?

25 A I believe they related to Mr. Dassey.

1 Q All right. I see, also, you reviewed the final
2 report of Dr. Lawrence White, dated May 11?
3 A Correct.
4 Q And that's 'cause that was provided to you along
5 with the defense attorney's filing in the
6 co-defendant's case, Steven Avery; correct?
7 A Yes.
8 Q All right. You also received and reviewed a
9 report of -- of Mr. Buckley; correct?
10 A Yes.
11 Q All right. And in this particular case you
12 reviewed the transcripts?
13 A Correct.
14 Q And those were the trial transcripts?
15 A Well, that's what it says on my affidavit so that's
16 what I believe I did review.
17 Q Did you review any transcripts from the motion
18 hearing to admit the testimony of Dr. Gordon?
19 A Not that I recall.
20 Q Did you review the suppression hearing
21 transcripts?
22 A Not that I recall.
23 Q Any particular reason why?
24 A I -- I reviewed the materials that were provided to
25 me.

1 Q Did you ask for any additional materials?

2 A No.

3 Q So you were relying entirely on what defense

4 counsel figured you would need to render the

5 opinions you rendered?

6 A Correct.

7 Q And is there any question in your mind if you

8 would ask for any additional information it would

9 have been provided?

10 A I assume it would have been, yeah.

11 Q You also report reviewing a -- an Investigator

12 Skorlinski's report from November 13, 2005?

13 A Yeah. This is the Wisconsin Department of Justice --

14 Q Yes. Division of Criminal Investigation report.

15 Investigator Skorlinski?

16 A Correct.

17 Q Okay. Again, you don't recall seeing any

18 transcript that may or may not have been

19 associated with that report?

20 A I'd have to review the report, correct.

21 Q Now, also, in your affidavit, primarily beginning

22 on page three, you list reviewing 11 different

23 media reports on this case?

24 A Correct.

25 Q But, yet, in the affidavit that we just talked

1 and media summaries, the number escapes me at the
2 moment, but there were significantly more media
3 reports than what you've listed here?

4 A Yeah. Additional materials were recently provided to
5 me --

6 Q And --

7 A -- after the affidavit was prepared.

8 Q After the affidavit was --

9 A Right.

10 Q -- prepared? What additional materials have you
11 reviewed after you prepared this affidavit which
12 is dated, looks like, March 5, 2009?

13 A Um, additional newspaper stories, the DVDs and
14 transcripts of Mr. O'Kelly's May 12 interrogation of
15 Brendan Dassey, and Mr. Gordon's -- Dr. Gordon's
16 report.

17 Q When did you review those?

18 A I reviewed Dr. Gordon's report last night. I
19 reviewed the media stories, and the DVD interrogation
20 tapes and transcripts of Mr. O'Kelly's interrogation,
21 I believe, either toward the end of last month or the
22 beginning of this month.

23 Q All right. So that would be -- just so the
24 record is clear, that would be December of '09 or
25 early January, 2010?

1 A Correct.

2 Q Okay. Anything else that you --

3 A Not -- not that I recall, no.

4 Q Okay. All right. So let me be clear, then, you
5 examined no other materials or investigative
6 reports relative to the prosecution of Brendan
7 Dassey than those which we've just discussed?

8 A Yes. Unless I'm not recalling something. But I
9 believe I'm recalling everything.

10 Q And by that, primarily I'm asking you, you didn't
11 review any of the, uh, investigative reports
12 prepared by the officers?

13 A Uh, other than --

14 Q Other than those that --

15 A -- other than those that are listed here, correct.

16 Q Right.

17 A Yeah.

18 Q Okay.

19 A Yeah.

20 Q And so you are aware that there was a
21 substantial, um, investigation in this particular
22 case because of the co-defendant, Mr. Avery?

23 A Correct.

24 Q And you were aware in this particular case that,
25 initially, the police believed that they had,

1 quote, gotten their man, closed quote, with the
2 arrest of Steven Avery in November of 2000- --
3 uh, 2005; right?

4 A Yes.

5 Q All right. So there wasn't a lot of media
6 attention directed to this case with the focus
7 being in on Steven Avery from -- literally from
8 November through January and February of '06;
9 right?

10 A Yes.

11 Q In fact, all of the media reports that you
12 reviewed, the focus was almost exclusively, if
13 not exclusively, on Steven Avery?

14 A Correct.

15 Q Yet, with respect to those media reports, you
16 made no determination as to their accuracy;
17 correct?

18 A Correct.

19 Q All right. And that's because you didn't review
20 any of the investigative reports regarding, um,
21 Steven Avery; correct?

22 A No. It's because I wasn't asked to make any
23 determination about their accuracy.

24 Q You were not asked to make any determination
25 about their accuracy. Why not?

1 A Well, you'd have to ask Counsel that.

2 Q All right. Their accuracy would have no bearing

3 on whether or not the contamination was real or

4 imagined?

5 A Well, if they were -- no. No. I don't. Yeah. I

6 don't think it would. If the information is out

7 there, then it's still contamination even if it's

8 inaccurate information.

9 Q Even if it's inaccurate?

10 A Correct.

11 Q We'll come back to that. May not get to it

12 today, but... all right. Um, you reviewed no

13 school records of Brendan Dassey? Such as any

14 behavioral records? Individual Education Plans?

15 Academic performance records? You reviewed none

16 of that information; correct?

17 A Correct.

18 Q Um, you did not review any statements or reports

19 of -- of a Ms. Susan Brandt?

20 A Correct. Not that I recall.

21 Q All right. Did you review any materials or

22 information regarding a woman by the name of Kris

23 Schoenenberger-Gross?

24 A Not that I recall.

25 Q I'm going to assume, and please correct me if I'm

1 wrong, but I'm -- I believe you've never
2 interviewed Brendan Dassey; correct?

3 A Correct.

4 Q In fact, you may not ever have even met him until
5 today; correct?

6 A Correct.

7 Q And as part of your assessment, since you are a
8 social psychologist, I'm going to assume that you
9 conducted no psychological tests or had anyone
10 conduct them on your behalf involving Mr. Dassey?

11 A Correct.

12 Q So no MMPI, no Gudjonsson suggestibility scale,
13 etc.?

14 A Correct.

15 Q Okay. You, yourself, did not perform, nor did
16 you ask anyone to, conduct any intelligence tests
17 on Mr. Dassey; correct?

18 A Correct.

19 Q And so I believe then -- so you -- you did,
20 however, indicate that you reviewed Dr. Gordon's
21 report? Or what? Or not?

22 A Correct. I did last night, yes.

23 Q Okay. Last night.

24 A Correct.

25 Q You didn't review his testimony?

1 A Correct.

2 Q Okay. Anything else of what -- what Dr. Gordon

3 did in this case that you might have reviewed?

4 A Not that I recall, no.

5 Q Okay. And in this particular case you reviewed

6 all the materials that were submitted to you by

7 counsel for the defense?

8 A Correct.

9 Q Did you make any additional requests for

10 information?

11 A Dr. Gordon's report, I think, was the only one.

12 Q All right. Um, you didn't ask for additional

13 media reports? They were just given to you?

14 A Correct.

15 Q Okay. So it's fair to say that the only

16 materials you examined outside of those directly

17 relating to the Dassey interviews conducted in

18 November, February, March, and May, were the

19 trial transcript, the report of Dr. Gordon, and

20 the media reports?

21 A Um, I -- I'm not sure I understand your question

22 because there's also reports by White and Buckley,

23 and then there's also these police reports. And I'm

24 not sure. Maybe --

25 Q All right.

1 A -- I just didn't understand your question.

2 Q Well, that's fair. You, um -- you looked at

3 those in a -- but that's pretty much the -- the

4 focus, as it were, of your examination?

5 A Yes. In --

6 Q Okay. All right. Now, in Exhibit 316, you --

7 A Would you like me to turn to it?

8 Q If you wish.

9 A Okay. And what binder is that in?

10 Q I believe it would be binder five. I believe

11 that's the one that summarizes your testimonial

12 experience or professional consultation

13 experience?

14 A Okay.

15 Q I'd like to talk to you a little bit about that.

16 A You said 316; right? Okay.

17 Q Do you have it?

18 A I do, yes. Thank you.

19 Q Okay. Now, as I understand it, um -- well, let

20 me ask this: In the past two years,

21 approximately how many times would you say you

22 have testified in a court of law regarding this

23 subject matter?

24 A Two years. Uh, January, '08 to January, '10.

25 Q Right.

1 A I'm -- my estimate would be 25 to 30 times. That'd
2 be my guess. Maybe a little less, maybe a little
3 more. .

4 Q And since August of 1997 through December, 2009,
5 which I would cover a little bit more than
6 12-and-a-half years, you tell us you've
7 testi -- testified approximately 187 times in a
8 court of law?

9 A Correct.

10 Q All right. So that's about 15-and-a --
11 15-and-a-half times per year?

12 A I think that's roughly right.

13 Q All right. So, in other words, you're testifying
14 in a court of law on this material on the average
15 of more than once a month?

16 A Correct.

17 Q As a matter of fact, you indicated you were just
18 here in Wisconsin a month ago?

19 A Correct.

20 Q In Chippewa Falls?

21 A Correct.

22 Q That did not go too well for you; right?

23 A Well, for me it went fine. It didn't go so well for
24 the defendant.

25 Q You also indicated that you testified in 111

1 trials?

2 A Correct.

3 Q So that means you're testifying at least -- over

4 nine times a year in a -- in a trial where the

5 issue of a -- of whether or not a statement is a

6 false confession or not has become an issue?

7 A Mathematically averaged out, I think that's right.

8 Q Um, and 65 motions to suppress where you've

9 offered testimony?

10 A Correct.

11 Q And 11 post-conviction hearings?

12 A Correct.

13 Q Now, um, I'm assuming that the vast majority of

14 this testimonial experience comes from the state

15 of California. Would that be accurate?

16 A Yes.

17 Q And I believe you indicated on direct examination

18 that for you to consider a -- a -- a

19 consultation, you don't consider it a

20 consultation unless you actually review materials

21 and are compensated for your work?

22 A Or I've agreed to do pro bono. But, yes.

23 Q Okay. Now, in this particular case you advised

24 us you're compensated at \$250 an hour. How long

25 have you been compensated at that rate for your

1 advice or consultation in cases such as this?

2 A Since 2001.

3 Q Okay. All right. Now, as I understand it,

4 you've consulted in 48 -- 47 states and the

5 District of Columbia?

6 A Correct.

7 Q In the 12 years -- almost 12-and-a-half years,

8 now -- that we've, uh -- examining this material,

9 you've consulted, as you said, 1,132 times or --

10 does that consultation include testimony or is

11 that consultation in addition to testimony?

12 A No, that -- that's all the cases that I've reviewed.

13 The 100, um --

14 Q That includes the testimony?

15 A Yeah. Yeah. The 187 cases are subset of the 1,132

16 cases.

17 Q All right. So then that's about 80 to a hundred

18 case consultations a year.

19 A Correct. If you mathematically average it out, yes.

20 Q Right. Now, when you're asked to evaluate a

21 case, your role is primarily that of interpreting

22 facts and offering opinions based on those facts;

23 correct?

24 A Um, well, I think about it as consulting and offering

25 opinions. So some sort of professional assessment

1 and evaluation as well, yes.

2 Q Well, that can only come from a review of
3 whatever are believed to be the known facts in a
4 given case?

5 A Correct. Or the facts that I'm being told, yes.

6 Q All right. And, thus, you're offering an
7 opinion, based on your training and skill, which
8 interprets what you think the meaning of those
9 facts may be?

10 A Correct.

11 Q Okay. All right. Now, unless one can actually
12 demonstrable -- demonstrably prove that a
13 confession is false, then what your role is in a
14 given case is simply to interpret those --
15 interpret the facts and, in essence, give us an
16 opinion or a judgment as to whether certain
17 police techniques were coercive and could have
18 led to a false confession; correct?

19 A Yes. But sometimes there's more than that, because
20 cases have idiosyncratic facts and there may be some
21 nuanced aspect of this research or this area of
22 expertise that a particular attorney is -- is asking
23 for an opinion about, um, or -- or possibly expert
24 testimony about.

25 Q All right. But if you're -- if you're not

1 allowed to offer an opinion, for instance, that
2 certain police tactics could have led, or were,
3 in fact, coercive, and could have led to a false
4 confession, there would be no role for you
5 otherwise; right?

6 A No. I would disagree. And much of the testimony
7 could be general, it could be about frameworks for
8 understanding how interrogation works, or what we
9 know about the phenomena of false confessions.

10 So I -- I don't think your
11 characterization is inclusive of all possible
12 applications of this kind of expertise.

13 Q All right. In your testimonial experience, do
14 you, um, charge more for the testimonial
15 experience or is it the same fee for time
16 invested?

17 A No. I charge one rate for -- for -- for my time.

18 Q All right. One rate?

19 A Meaning the 250 an hour is my standard rate. I
20 don't --

21 Q And then --

22 A -- change the rate for testimony. Yeah. Correct.

23 Q Very good. All right. Well, let me ask this,
24 generally: Would you agree that cases of
25 psychological coercion by the police constitute a

1 minority of the cases in the criminal justice
2 system?

3 A Yes.

4 Q Would -- would also be fair to say, would it not,
5 that the frequency of interrogation-induced false
6 confessions is completely unknown?

7 A Correct. There's no scientific way of estimating it.

8 Q As a matter of fact, that's an -- an opinion that
9 you reached in a law review article entitled, *The*
10 *Problem with False Confessions in the Post-DNA*
11 *World*; correct?

12 A Um, I -- I don't remember if we mentioned that in
13 that article. It's certainly possible.

14 Q And, if I remember correctly, you also opined
15 that the percentage of interrogation-induced
16 false confessions leading to wrongful conviction
17 is likewise unknown?

18 A Correct.

19 Q Have you worked with the Northwestern Law School
20 innocent project prior to this case?

21 A You mean as a consultant on a case?

22 Q Yes.

23 A I don't believe so.

24 Q All right. Have you worked with other innocent
25 project staffs around the country?

1 A I have, yes.

2 Q All right. And how often?

3 A I guess I maybe worked on a dozen cases. I'd have to

4 look through my records. But maybe one -- one case

5 or two cases a year. For most years. Not all years.

6 Q As a matter of fact, you've collaborated with

7 Mr. Drizin on a number of research projects;

8 correct?

9 ATTORNEY DRIZIN: Just -- just for the

10 record, Judge, it's Drizin.

11 ATTORNEY FALLON: Very well.

12 THE WITNESS: We've --

13 Q (By Attorney Fallon) Mr. Drizin on a number of

14 projects?

15 A Yeah. We've -- we've written two articles together

16 and one chapter for an edited volume. Correct.

17 Q I'm sorry, one --

18 A One chapter for an edited volume.

19 Q All right. Uh, you wrote the North Carolina Law

20 Review article with Professor Drizin?

21 A Correct.

22 Q As I understand it, you also wrote an article

23 that was published in the University of Wisconsin

24 Law Review in 2006 with Mr. Drizin?

25 A Correct.

1 Q Um, I believe, also, that you've more recently
2 published a -- at least the online version is
3 available -- uh, *Police Induced Confessions:*
4 *Risk Factors and Recommendations*, and *Law and*
5 *Human Behavior*?
6 A Yes. Well, actually it's four. I had remembered
7 three. So that's -- that's correct. So that would
8 be three articles and one book chapter.
9 Q That's due to be actually out in print form later
10 this year?
11 A Correct.
12 Q All right. Well, I'd like to talk to you,
13 Doctor, about that research, if we could. And
14 I'm going to begin with a discussion of your
15 research that you reported in the North Carolina
16 Law Review with professor Drizin; all right?
17 A Okay.
18 Q Now, in that particular research, and I think you
19 testified to this today, you told us that there
20 were four types of cases in which one could
21 legitimately say that a confession was false;
22 correct?
23 A Yeah, but I characterized it a little bit
24 differently. That you could prove the confession
25 false to near or absolute certainty. Yeah.

1 Q And, um, I believe those four were that an
2 individual confesses to a crime and, for
3 instance, the crime confessed to had never
4 occurred?

5 A Correct.

6 Q Another example would be the evidence objectively
7 establishes the -- the suspect or defendant could
8 not have committed the crime in question?

9 A Correct.

10 Q And then a third type of case is where the true
11 perpetrator of the crime is identified and, in
12 reality, his guilt can be objectively established
13 and proved?

14 A Correct.

15 Q And then, finally, the most common form would be
16 scientific exoneration?

17 A I think that's the form, yes, that we know most
18 about. We hear most about. But, actually, I think
19 the most common would be the one where the true
20 perpetrator is identified and apprehended.

21 Q And, subsequently, people are able to prove him
22 guilty beyond a reasonable doubt?

23 A Correct.

24 Q Okay. Now, um, this is not one of those cases?

25 A Correct.

1 Q So we cannot say that this confession in this
2 case is demonstrably false?

3 A We can't characterize it as a proven false confession
4 if we were going to write about it for academic
5 purposes. Correct.

6 Q Right. Now, in the research that you conducted
7 with Professor Drizin, I believe, as you say in
8 your world, the end was 125 cases; correct?

9 A Yes.

10 Q All right. And in that research article you made
11 a number of -- or you discussed and offered a
12 number of both qualitative and quantitative
13 trends you detected?

14 A Correct.

15 Q And would it be fair to say, by the way, that
16 that research is a descriptive study, is it not?

17 A Yes.

18 Q Now, in terms of the qualitative trends, you
19 indicated that youth or one of young age was
20 over-represented?

21 A Correct.

22 Q In your sample?

23 A Correct.

24 Q Uh, I believe you said that those under age 25
25 constituted 63 percent of your sample; right?

1 A I -- I don't recall the specific number. But if
2 that's -- if that's what the article reports, then
3 that would be accurate.

4 Q All right. And in your sample, those who were
5 16- to 17-year-old constituted about 16 percent
6 of the sample? That was based on 18 out of 113
7 for whom you actually had the ages?

8 A Again, I don't -- off the top of my head I don't
9 remember the percentages.

10 Q If I were to give you a copy of the article,
11 would that help as we discuss it?

12 A Yes. If you want me to verify what's published in
13 the article.

14 Q Sure.

15 (Exhibit No. 365 marked for identification.)

16 ATTORNEY FALLON: May I approach?

17 THE COURT: Go ahead.

18 Q (By Attorney Fallon) Doctor, I show you what's
19 been marked as Exhibit 365, and give you a moment
20 or two to look at it to make sure that we're
21 talking about the same piece of research.

22 A Yes. This is the North Carolina Law Review article
23 downloaded from Westlaw.

24 Q All right. And I believe you talk about these
25 qualitative trends several pages in. How about,

1 um, beginning at page 22 and 23?

2 A Okay. You're talking about the Westlaw pagination?

3 Q Right.

4 A Okay. So 22 and 23.

5 Q So as we were discussing, the 16- to 17-year-olds

6 in your sample, um, constituted 16 percent of

7 those who had participated in a case in which

8 their confession was demonstrably false?

9 A Correct.

10 Q And that 63 percent, or 71 out 113 were under age

11 25; right?

12 A Um, no. I don't think that's right. Under age 25, I

13 think, is 63 percent.

14 Q Yeah, 63 percent.

15 A Okay. I thought you said 73. Maybe I misheard.

16 Q No, I said 71 out of 113 comes to 63 percent.

17 A Okay. I'm sorry.

18 Q Right?

19 A Yeah.

20 Q Okay. And from this you make several conclusions

21 or observations that -- that youth, or one of a

22 young age, that's a -- a risk factor that should

23 be taken into consideration in evaluating

24 statements?

25 A Yes. We describe that, yes.

1 Q All right. Well, as a social psychologist, let
2 me ask you this, Doctor, have you been to a
3 prison in America lately?

4 A Depends on your definition of lately. I think the
5 last time I went to a prison would have been December
6 of 2007.

7 Q All right. You would agree, would you not, that
8 the vast majority of offenders are young
9 offenders in American prisons?

10 ATTORNEY DRIZIN: I would object. You
11 know, what does young mean?

12 THE WITNESS: Yeah.

13 ATTORNEY FALLON: Well, all right. If
14 you want some ages, we'll get some ages on there.

15 Q (By Attorney Fallon) Let's start with the vast
16 majority of men in prison in the United States
17 are clearly under age 40; right?

18 A I mean, I believe so. But I would want to go to the
19 Department of Justice or Bureau of Justice
20 statistics.

21 Q Would it be fair to say, based on your own
22 anecdotal experience, that the -- the largest
23 amount of men in prison are probably ages 18 to
24 30? You wouldn't quibble with that generality,
25 would you?

1 A I wouldn't quibble with it. I just want to get the
2 actual statistics.

3 Q Now, so tell me then, this; what is the
4 percentage of offenders under age 25 who have
5 truly confessed to their crimes?

6 A Um, well, this is only a study of false confessions.
7 It's not a study of true confessions. And these are
8 only the numbers from the study of false confessions.
9 So that may or may not reflect, um, all false
10 confessions. I don't know the answer to your
11 question.

12 Q Right. You don't know the number of those under
13 age 25 who truly confessed to the crime?

14 A Correct. Because we don't know -- we don't -- we
15 don't know how many people have truthfully confessed.
16 There's -- the Department -- the government doesn't
17 keep records of this so we don't know at any age.
18 You -- you can't answer that question for any age.

19 Q That's correct. You could not answer it, what's
20 the percentage of offenders under age 40 who have
21 provided true confessions; correct?

22 A Correct.

23 Q You don't know that?

24 A Correct.

25 Q So, Doctor, you can't say with any degree of

1 certainty that young age necessarily
2 discriminates between those who give true
3 confessions and those who give false confessions?

4 A Correct. You can't take the fact of somebody's age
5 and say that it will tell you whether or not a
6 confession is true or false.

7 Q Because you have nothing to compare your
8 descriptive study with? In other words, there is
9 no, um -- no group of individuals known to have
10 truly confessed?

11 A Well, I agree with your conclusion, but I disagree
12 with your reasoning. Um, even if you had that
13 information, you still wouldn't be able to say,
14 because of somebody's age, uh, that the confession,
15 itself, is true or false. You'd have to do the
16 post-admission narrative analysis that I described
17 earlier.

18 What youth gives you is a -- a risk
19 factor, um, for explaining why somebody would
20 have falsely confessed, but it doesn't
21 discriminate between true or false confessions.

22 Q In your research you also talk about length of
23 interrogations; correct?

24 A Yes.

25 Q And I believe, as I understand it, you opine that

1 the average length of an interrogation leading to
2 a false confession was 16.3 hours; correct?

3 A In this study for the cases where we had that data,
4 yes.

5 Q Where you had demonstrably false confessions?

6 A No, no, no. Where -- where we had, um, information
7 about the length of interrogation because we didn't
8 have it. We couldn't get it for all the cases.

9 Q Right. So you're -- you're -- and, as it were,
10 was less than 125?

11 A Correct.

12 Q Um, now, as a matter of fact, in your recent
13 publication from this summer in *Law and Human*
14 *Behavior*, the online publication, and the
15 article, *Police Induced Confessions: Risk*
16 *Factors and Recommendations*, you, um, also,
17 again, refer to the fact that, um, most of the
18 false confessions occur in cases where there's
19 been 16 hours of interrogation on average;
20 correct?

21 A I think it references this study as part of a
22 discussion about how length is a risk factor in
23 interrogation.

24 Q Now, in this particular case, the questioning of
25 Brendan Dassey was not lengthy in any of those

1 interviews; correct?

2 A If you take them individually, no. And certainly not
3 16 hours. Um, but if you add them together, then,
4 yes.

5 Q All right. Well, let's talk about that. He was
6 questioned on November 6, 2005. Do you know how
7 long?

8 A No, I don't recall off the top of my head.

9 Q Would you quibble with 53-and-a-half minutes?

10 A Because I don't remember, I'm not going to quibble.

11 Q How about the November 10, 2005, questioning by
12 law enforcement?

13 A No, I don't recall.

14 Q I believe the reports that you read suggest that
15 the interview occurred from 12:05 to 12:30. So,
16 by my calculation, that's 25 minutes?

17 A If they're accurate, that would be my calculation
18 too.

19 Q But you didn't review the transcripts or listen
20 to the audios of those questioning sessions, did
21 you?

22 A I don't believe I did. I'd have to double-check.
23 But I don't believe I did.

24 Q So you have no idea as to how confrontational, or
25 non-confrontational, or what tactics, or

1 techniques may have been used in those
2 interviews; right?

3 A Correct, if I didn't review them.

4 Q Now, with respect to the questioning at the
5 school on February 27, do you recall how much --
6 how long the interrogation was there?

7 A I think it was around an hour-and-a-half, but I could
8 be mis-recalling.

9 Q And I believe that's exactly on an
10 hour-and-a-half. There was a break after 60
11 minutes; right? Five-minute break?

12 A I don't recall, specifically, but if it's there,
13 then -- then, yes.

14 Q And there was another break to, uh -- devoted to
15 writing a statement that was about 14, 15 minutes
16 long where they were -- after the break he was
17 writing a statement; correct?

18 A You might characterize that as part of the
19 interrogation process.

20 Q But there wasn't a lot of active questioning --

21 A Correct.

22 Q -- back and forth, was --

23 A Correct.

24 Q -- there?

25 A Yeah.

1 Q The statement at the Two Rivers Police
2 Department, um, was actually 41 minutes; right?

3 A I don't recall, specifically. Um, if -- if that's
4 what the records indicate, then, yes. I thought it
5 was a little longer but I could be mis-remembering.

6 Q Now, with respect to the March 1 statement --
7 talk a little bit about that -- before we get
8 into the details of the statement, I want to
9 talk, just generally, context and time.

10 How much time did the officers actually
11 spend with Mr. Dassey before he confessed to the
12 events which are the subject of this hearing?

13 A I, um -- well, you're talking about the March 1
14 interrogation. I'd have to look at it to give you a
15 precise answer. I don't recall, specifically, the
16 length of time off the top of my head.

17 Q Well, based on all the materials that you
18 reviewed, including the clips that were just
19 played for you during direct examination, would
20 it be fair to say that Mr. Dassey pretty much had
21 given it all up in the first 90 minutes of that
22 interview; right?

23 A I'd have to look it over to confirm that.

24 Q Well, I believe the tape begins at 10:52, and I
25 think some of the first clips that were played

1 for us today began at 10:58, and there was a
2 break at 12:28, was there not?

3 A Well, again, I don't know this information off the
4 top of my head. I'd have to look at the record to
5 confirm that.

6 Q I'm sure you'll have an opportunity tonight.
7 Will you do that for me?

8 A Sure.

9 Q Thank you. Um, and during the course of that
10 break, after the first hour-and-a-half,
11 Mr. Dassey -- there's about a half an hour break.
12 He's offered food and drink. In fact, he's
13 actually telling the investigators that he's
14 feeling pretty good; correct?

15 A Again, I'd have to review that, which I'm happy to do
16 tonight. I just don't recall it off the top of my
17 head.

18 Q All right. So a -- all right. Then I -- I guess
19 I'll wait for you to review that so we can finish
20 up with more of these detailed questions
21 tomorrow.

22 But let me ask this question: Just like
23 the, um -- the age factor, the length factor of
24 an interrogation as a risk, the length of the
25 interrogation as a risk factor, you can't tell us

1 the average length of an interrogation that leads
2 to a true confession, can you?

3 A Um, no we can't tell you that, um, but we estimate it
4 to be around an hour or so based on field studies and
5 surveys of police. But nobody really knows that.

6 Q And so you can't really say that longer
7 interrogations are over- or under-represented --
8 or over- or under-representative of a false
9 confession?

10 A Well, if -- if the surveys are accurate and if the
11 field studies are accurate, then we could say that,
12 yes. Um --

13 Q All right. Let's talk about some of the
14 qualitative findings. I believe they were
15 qualitative findings in this case. Or, excuse
16 me, in your research. In your research in that
17 article, which I think you follow up and confirm
18 in the *Law and Human Behavior* article from the
19 summer, you tell us that, um, low intelligence is
20 a risk factor?

21 A Correct.

22 Q In your sample of -- in the North Carolina -- I'm
23 going to refer to it as a study. I'm sure it's
24 not a North Carolina study. But in the study
25 referred to in the North Carolina Law Review

1 article, of that 125, or whatever the number was
2 for which you had intelligence data, what was the
3 average, um -- or how many people in the sample
4 had an IQ below 100?

5 A Um, I don't know how many have an IQ below one
6 hundred. I don't even think we asked that question.
7 I think we were interested in the question of how
8 many had an IQ of 70 or below, and were defined as
9 mentally retarded.

10 And I know that it's somewhere in the
11 article. But I'm not sure if it's -- if -- if
12 it's in a table.

13 Q How about in the back? Keep going further
14 through. There's a discussion regarding, um,
15 mentally retarded. I'm -- I'm not getting to
16 that yet, but that's coming up.

17 THE COURT: Do you have a page he can turn
18 to, Mr. Fallon?

19 ATTORNEY FALLON: I might be able to help
20 him out there, Judge.

21 THE WITNESS: I think you're talking
22 about page 35 on the Westlaw pagination.

23 Q (By Attorney Fallon) I think that sounds right.
24 Yes, I am. Exactly.

25 A Okay. Now, is there a pending question?

1 Q Yes. Um, I know you look for, um, intelligence
2 quotients or data reflecting cognitive abilities
3 for individuals who were believed to be mentally
4 retarded?

5 A Or low level cognitive functioning, yeah.

6 Q Or low level cognitive functioning.

7 A Yeah.

8 Q Well, what about individuals who aren't in that
9 category? Uh, in terms of your data for that
10 study, of those who weren't, um, mentally
11 retarded, how many of them had an IQ quotient
12 of -- of, say, 75? Or functioned at a level of
13 75 to 85?

14 A We don't know.

15 Q Okay. What is the average, um, cognitive
16 ability, or IQ quotient, to be redundant, I
17 guess, of an individual in cases who has truly
18 confessed?

19 A Well, again, we don't know, because we don't have a
20 universal cases in true confessions.

21 Q All right. And the reason is, is because there's
22 no real control sample with this study?

23 A No. The reason is because nobody's gathered that
24 data. The government doesn't keep those kinds of
25 records on true confessions.

1 Q But in research, as a researcher, as a social
2 psychologist, there are some kinds of studies in
3 which to actually have them stand for the
4 proposition that you would like them to stand
5 for, you would need to have a control sample to
6 compare data?

7 A You're saying very, very generally, yes.

8 Q All right. And in this particular case you did
9 not have a control sample.

10 A Well, I don't think in this case it's necessary to
11 have a control sample. The point that we're making
12 is that relative to their numbers in the population,
13 they're vastly disproportionate in their -- in -- in
14 the population of proven false confessions.

15 Q But -- but, Doctor, you can't distinguish, you
16 can't tell us, whether low intelligence, length
17 of interrogation, um, or age, truly discriminates
18 between leading to a -- a -- a false confession
19 or a true confession?

20 A No. I can tell you that it does not discriminate.
21 Right. The same answer as before. That these
22 explain why somebody would give a false confession.
23 They are risk factors, but that they don't tell you,
24 in and of themselves, that the confession is false.

25 Q But you still don't know if they really are a

1 risk factor, because -- only that they were
2 described and found in your study. You have
3 nothing to compare them with. You have no
4 control sample to compare them with of known true
5 confessions to -- to discern whether or not youth,
6 um, or cognitive ability, or length of
7 interrogation are -- correlate directly with
8 false confession?

9 A No. I disagree with you. I can explain my
10 disagreement, part of which I've already done. But,
11 no, I disagree with that.

12 THE COURT: Mr. Fallon, is this a good
13 point to end it for the day?

14 ATTORNEY FALLON: As good as any, Judge.

15 THE COURT: All right. Eight-thirty
16 tomorrow.

17 (Recess had at 4:30 p.m.)
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25

1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 24th day of March, 2010.
16

17
18 Jennifer K. Hau
Jennifer K. Hau, RPR
19 Official Court Reporter
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING

DAY 3

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: JANUARY 20, 2010

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

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Attorney at Law
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ROBERT J. DVORAK
Attorney at Law
On behalf of the defendant.

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On behalf of the defendant.

JOSHUA A. TEPFER
Attorney at Law
On behalf of the defendant.

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THOMAS F. GERAGHTY
Attorney at Law
On behalf of the defendant.

ALEX HESS
Law Student
On behalf of the defendant.

Adar Crosley
Law Student
On behalf of the defendant.

Brendan R. Dassey
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR
Official Court Reporter

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I N D E X

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RICHARD A. LEO

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78		206	207
79		206	207
101-204		7	8
215		206	207
216		206	207
217		206	207
218		205	207
219		205	207

	<u>EXHIBITS</u>	MARKED	MOVED	ADMITTED
1	225		206	207
2	229		205	207
3	238		158 & 159	159
4	239-305		7	8
5	340		205	207
6	366	13		
7	367		143 & 144	144
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1 THE COURT: Morning counsel, ladies and
2 gentlemen. This is State of Wisconsin vs. Brendan
3 Dassey. Manitowoc County Case No. 06 CF 88, Court
4 of Appeal No. 07 XX 1073. Appearances this morning.
5 Starting with prosecution.

6 ATTORNEY KRATZ: State by Ken Kratz and
7 Tom Fallon as special prosecutors.

8 ATTORNEY DRIZIN: For Mr. Dassey, Your
9 Honor, Steve Drizin; Joshua Tepfer; a law
10 student, Adar Crosley; Mr. Robert Dvorak, an
11 attorney from Milwaukee; Mr. Thomas Geraghty, an
12 attorney from Chicago; and Laura Nirider, an
13 attorney from Chicago.

14 THE COURT: All right.

15 ATTORNEY DRIZIN: And, I'm sorry, Mr.
16 Alex Hess, a law student, hiding behind the TV
17 screen.

18 THE COURT: Anyone else?

19 ATTORNEY DRIZIN: Uh, not yet.

20 THE COURT: Okay. Mr. Fallon.

21 ATTORNEY DRIZIN: Brendan --

22 THE COURT: Oh, I'm sorry.

23 ATTORNEY DRIZIN: Brendan is also
24 present in court, Your Honor.

25 THE COURT: Court'll acknowledge the

1 personal presence of the -- the defendant.

2 Mr. Fallon.

3 ATTORNEY FALLON: Yes. I'd like to
4 continue the cross of Dr. Leo.

5 THE COURT: Re-calling Dr. Leo?

6 ATTORNEY DRIZIN: Judge, before we call
7 Dr. Leo, there's a few housekeeping matters left
8 over from yesterday, if it's okay, I'd like to
9 deal with. It should take a minute. I hope.

10 Okay. Yesterday, you -- we discussed
11 that there were some problems with Exhibit 315,
12 which is why we needed the court reporter to take
13 them down.

14 THE COURT: Right.

15 ATTORNEY DRIZIN: Um, last night we
16 fixed those problems and renumbered the exhibits
17 so that the record will be clearer when this case
18 goes up on appeal.

19 And what I'd like to do, with counsels'
20 permission, is to just substitute pages 8, 9, 10,
21 11, and 12 of Exhibit 315, um, which reflect the
22 correct numbering sequence, um, of the videos.

23 ATTORNEY FALLON: Counsel, is that all
24 that's been changed? It's just the numbering
25 sequence?

1 ATTORNEY DRIZIN: It's just the
2 numbering. Not a single word of the clips has
3 been changed.

4 ATTORNEY FALLON: That's fine.

5 THE COURT: All right. Anything further?

6 ATTORNEY DRIZIN: Yes. Um, the -- there
7 was a -- there was a question about Exhibit No.
8 87, I believe, which was a summary of media
9 reports.

10 THE COURT: Correct.

11 ATTORNEY DRIZIN: Um, my recollection is
12 Your Honor accepted that for the limited purpose
13 of establishing that these facts were in the
14 public domain?

15 THE COURT: Correct.

16 ATTORNEY DRIZIN: Okay. I neglected to
17 move into evidence all of the media reports, um,
18 which would be Exhibits 101 to 204, 239 to 305,
19 and 17 to 39. These are the media reports we
20 sent to Dr. Leo, and that he reviewed in
21 connection with his opinion.

22 Um, I would ask that they be moved in
23 for the same purpose as the summary exhibit.

24 THE COURT: Let me just go over that with
25 you again; 101 to 204, 209 to 305?

1 ATTORNEY DRIZIN: 101 to 204, 239 to
2 305.
3 THE COURT: And was there one after that as
4 well?
5 ATTORNEY DRIZIN: Yes, 17 to 39, Your
6 Honor.
7 THE COURT: Mr. Fallon, these are reports
8 that Dr. Leo apparently reviewed in preparing what
9 he prepared here. Do you have any objection to
10 them?
11 ATTORNEY FALLON: No. For the purpose
12 that we've discussed, that they were in the
13 public domain, no.
14 THE COURT: All right. They're
15 received.
16 ATTORNEY DRIZIN: Thank you. No
17 further --
18 THE COURT: Anything further?
19 ATTORNEY DRIZIN: Nope.
20 THE COURT: Mr. Fallon.
21 ATTORNEY FALLON: Thank you.
22 THE COURT: Dr. Leo. I'll remind you,
23 Dr. Leo, that you're still under oath.
24 THE WITNESS: Okay.
25 THE COURT: You may wish to take the

1 overcoat off.

2 THE WITNESS: Not used to this.

3 CONTINUED CROSS-EXAMINATION

4 BY ATTORNEY FALLON:

5 Q Whenever you're ready, Doctor.

6 A Are you going to be referring to witness -- uh,
7 Exhibit 316? I just want to get this off if we're
8 done with that.

9 Q No. Three-sixteen I will not be using this
10 morning.

11 A Okay. I'm ready.

12 Q All right. Good morning, Doctor.

13 A Good morning.

14 Q When we left the record yesterday I'd asked you
15 to -- to examine the March 1 statement again; is
16 that correct?

17 A Yes.

18 Q And you did have that opportunity last night?

19 A Not to read the whole thing over. I thought what you
20 asked me to do was try to figure out the times. The
21 times when it started and it ended.

22 Q That was -- but the specific question that
23 brought us to that point was is it not a fact
24 that Mr. Dassey, in effect, confessed within the
25 first 90 minutes of that interview on March 1?

1 A Okay. I apologize, then. I just didn't remember on
2 the specific instructions.

3 Q Um, well, then, let's move on to another piece of
4 research and discuss that as it may or may not
5 pertain to this case.

6 I believe, um, earlier we mentioned in
7 the examination that you co-authored an article
8 that was published online and will be published
9 in writing later this year entitled,
10 *Police-Induced Confessions: Risk Factors and*
11 *Recommendations?*

12 A Correct.

13 Q And you were one of the authors with Saul Kassin,
14 Steven Drizin, Thomas Grisso, Gisli Gudjonsson,
15 and Allison Redlich?

16 A Correct.

17 Q All right. In that article where you talk about
18 dispositional risk factors, we've already talked
19 about age. But there's also a discussion in
20 there about cognitive disabilities, mental
21 impairments, and the like; correct?

22 A Yes.

23 Q All right. And that particular part of the
24 article, in large part, was based on research
25 done by Dr. Gudjonsson and a colleague, John

1 Sigurdsson?

2 A Yes.

3 Q And in that particular resets -- uh, research
4 that's reflected in your most recent publication,
5 there is a question -- or I shouldn't say a
6 question -- you conclude in that article that
7 there is a correlation between mental retardation
8 and its relationship to false confessions;
9 correct?

10 A Yes.

11 Q Um, in that article, as well, um, Dr. Gudjonsson
12 talks about other dispositional problems such as
13 personality disorders; correct?

14 A I believe so, yes.

15 Q And the presence or absence of anti-social
16 traits; correct?

17 A I believe so.

18 Q And um, Gudjonsson's research is based on a
19 sample of individuals in Iceland who claim to
20 have falsely confessed; correct?

21 A That's not all it's based on. I think his research
22 is based on a lot things, including American
23 research.

24 Um, that paper, which was co-authored
25 with Gudjonsson and five others, or four others,

1 obviously is a summary of the entire field. So
2 it may reference some studies like that, but it's
3 based on much more than that.

4 Q So your assessment of the body of research out
5 there is that mental retardation, and these --
6 that type of cognitive disability, there is a
7 correlation to false confession?

8 A Yes.

9 Q Okay. Additionally, in that part of the research
10 article, Dr. Gudjonsson is referenced again, as
11 noted, that in these situations where you have
12 false confessions, there are other specific
13 mental disorders or mental illnesses that have a
14 propensity of showing up; correct?

15 A I'm not sure he says it quite like that, but, yes,
16 the underlying idea that there -- that people who
17 have mental illnesses are also, um, at risk for false
18 confession.

19 Q All right. I -- I believe the phrase, if this is
20 better, there is currently little research
21 available to show how different disorders, paren,
22 example, anxiety, depression, schizophrenia,
23 closed paren, potentially impair the suspect's
24 capacity to waive legal rights and navigate --
25 their way --

1 COURT REPORTER: Can you slow down,
2 please?

3 ATTORNEY FALLON: I'm sorry. Um,
4 ...impair the suspect's capacity to waive legal
5 rights and navigate his or her way to a police
6 interview.

7 A Okay.

8 Q (By Attorney Fallon) Right? Um, however, there
9 is a reference here that an important type of
10 psychopathology in relation to false confessions
11 is attention deficit hyperactivity disorder?

12 A Okay.

13 Q Right? Which consists of three primary symptoms;
14 inattention, hyperactivity, and impulsivity;
15 correct?

16 A Okay. If you're reading from the article, yeah.

17 Q I'm reading from the article. Well, would you
18 like a copy of the article?

19 A Yeah, that'd be great. Thanks.

20 Q Sure.

21 ATTORNEY DRIZIN: Counsel, when you're
22 referring to the article, do you mind citing a
23 page number?

24 (Exhibit No. 366 marked for identification.)

25 ATTORNEY FALLON: Sure. I'll try,

1 Counsel, although the pages are not numbered on
2 the publication copy that I have, but I'll --

3 ATTORNEY DRIZIN: Okay.

4 ATTORNEY FALLON: -- reference those
5 sections. May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 Q (By Attorney Fallon) Doctor, I show you what has
9 been marked for identification purposes as
10 Exhibit 366?

11 A Okay.

12 Q Doctor, if I could reference your attention to
13 about, oh, roughly halfway through the article,
14 um, there's a section that begins, I believe,
15 "Dispositional risk factors" and then two full
16 pages after that -- and these are both side
17 copied -- is the reference I was making to, um,
18 an important type of psychopathology?

19 A Okay. So there's a section called, "Personality and
20 Psychopathology." That's the section --

21 Q Yes.

22 A -- heading? Okay.

23 Q And the next page.

24 A Okay.

25 Q About two-thirds of the way down in the left-hand

1 column?

2 A Okay. Thank you.

3 Q All right?

4 A Yes. Thank you.

5 Q See where I am?

6 A I do.

7 Q Okay. Now, in this particular case it is

8 conceded that Mr. Dassey has some cognitive

9 deficits; correct?

10 A Yes.

11 Q Okay. He does, um -- he struggled more with

12 verbal abilities as well as memory ability;

13 correct?

14 A I believe I read that in Dr. Gordon's report but I'm

15 not a hundred percent sure.

16 Q He shruggles (phonetic) -- struggles with

17 short-term memory kinds of tasks? In other

18 words, the working memory?

19 A Okay.

20 Q Right?

21 A I -- I'm -- I don't know. If that's in Dr. Gordon's

22 report, yes.

23 Q All right. You didn't review the testimony from

24 the suppression hearing? Is it --

25 A I don't recall reviewing the testimony from the

1 suppression hearing, no.

2 Q But it's correct, is it not, that Mr. Dassey --

3 he's not mentally incompetent; correct?

4 A Yes.

5 Q He's not mentally retarded?

6 A Correct.

7 Q He does not suffer Attention Deficit

8 Hyperactivity Disorder?

9 A To my knowledge, no.

10 Q All right. And he doesn't suffer from ADD,

11 Attention Deficit Disorder; right?

12 A To my knowledge.

13 Q Well, have -- did you make any efforts to look

14 into that?

15 A No.

16 Q And he's certainly not -- doesn't seem to possess

17 any anti-social traits; correct?

18 A I don't know if he does.

19 Q All right. Well, as a psychologist, are you

20 familiar with a diagnosis called Conduct

21 Disorder?

22 A I've heard of it before.

23 Q All right. But you're not familiar with it?

24 A Correct.

25 Q Okay. But it's fair to say, based on everything

1 you've reviewed in this case, that Mr. Dassey was
2 not a problem child at school; right?

3 A I have -- I haven't read anything that would indicate
4 that to my knowledge.

5 Q Actually, he was a -- a student who typically
6 followed the rules as reported by the school;
7 right?

8 A I don't recall reviewing any document that indicated
9 that.

10 Q He -- he -- he doesn't tend to get into trouble?

11 A Again, I have no knowledge of whether that's true or
12 not.

13 Q All right. And just so that I'm clear, the --
14 the research that's marked in -- as Exhibit 366,
15 that's not an independent research study itself,
16 is it? It's a -- it's a collection or an
17 assessment of the current state of the research?

18 A Correct. It's a synthesis of the field.

19 Q All right. So the references in there to, um,
20 length of interrogation, age, young age, and, um,
21 lack of cognitive abilities is primarily based on
22 research which was conducted before that article
23 was published then?

24 A Correct.

25 Q All right. In fact, a large part of that is

1 based on research that you, yourself, authored
2 with Mr. Drizin?

3 A I wouldn't say a large part because there's probably
4 200 cites or more in this article and that's just one
5 article. But it is referenced there.

6 Q Well, the research you did with Mr. Drizin was,
7 at -- at the time, a -- an empirical study of 125
8 people who were dem -- proven to have
9 demonstrably -- or demonstrably proven to have
10 falsely confessed; correct?

11 A Correct.

12 Q All right. And that was the largest study at the
13 time?

14 A Of aggregated cases of false confession, correct.

15 Q And it still remains so?

16 A Correct.

17 Q All right. Okay. Now, you're not familiar with
18 the statements Mr. Dassey gave to the police in
19 November, 2005?

20 A I am, yes. I reviewed them last night.

21 Q You did?

22 A Yes.

23 Q All right.

24 A And I had reviewed them earlier. I just didn't
25 recall. They were in the materials that I had

1 mentioned that I had reviewed.

2 Q And so it was an omission in your affidavit that

3 you didn't refer to them?

4 A Correct.

5 Q All right.

6 A Actually, an omission of my testimony yesterday.

7 Q Now, um, in those November interviews,

8 Mr. Dassey -- was he or was he not in custody?

9 A Uh, he wasn't in custody for the first one, and I

10 don't believe he was in custody for the second one

11 either. Yeah.

12 Q And they were both relatively short in duration

13 interviews; right?

14 A Correct. Although one of them I couldn't figure out

15 the exact time, uh, on, but, yeah, they were

16 relatively short.

17 Q In fact, the second one was 25 minutes?

18 A Correct.

19 Q First one was -- would you quibble with about 53

20 minutes?

21 A I think that's what you said yesterday, yeah. No, I

22 wouldn't quibble.

23 Q And in those interviews he was in the back of a

24 squad car; correct?

25 A Yes.

1 Q And the back of a police car is a rather confined
2 and narrow setting; correct?

3 A Yes.

4 Q In fact, there were three officers who were
5 intermittently throwing questions at him; right?

6 A I believe so.

7 Q And in that particular, um, area, we'll take the
8 November 6 one, Mr. Dassey was steadfast in
9 denials regarding having knowledge of anything
10 that his uncle may or may not have done?

11 A Correct.

12 Q In fact, he was even, um, found to be
13 inconsistent with whether or not there was even a
14 bonfire on the night in question, October 31,
15 2005; correct?

16 A Um, I don't dispute that. I just don't recall that
17 specifically.

18 Q Well, didn't he originally tell the officers he
19 thought the fire was either Tuesday or Wednesday
20 night? The 1st or 2nd of November?

21 A I -- I don't recall specifically.

22 Q In that partic -- in those -- in both of those
23 interviews the officers were far more
24 confrontational with Mr. Dassey than they were on
25 any subsequent interviews; correct?

1 A I wouldn't agree with that, no.

2 Q You haven't listened to the tapes?

3 A Uh, well, I think I did listen to the tapes. Not

4 last night. I mean, I watched all the videos that I

5 was provided for the other interrogations, but these

6 didn't strike me as more confrontational than the

7 subsequent ones.

8 Q All right. Now, with respect to the February 27

9 interview at the high school, Mr. Dassey was not

10 in custody at that time; correct?

11 A Um, I don't recall.

12 Q Well, he -- he certainly wasn't handcuffed?

13 A Yeah. But that's not the measure of custody.

14 Q Well, its -- physical restraining is one?

15 A Right. But another measure would be whether somebody

16 perceives they're free to go.

17 Q Right.

18 A Or is free to go. And I just don't recall. Um, and,

19 of course, that would be a legal determination

20 anyway.

21 Q It would, would it not?

22 A Correct.

23 Q All right. And in that particular case, um,

24 Mr. Dassey was interviewed at the school in -- in

25 a room there; correct?

1 A Correct.

2 Q All right. He was not confronted with any
3 evidence in that interview at the high school,
4 was he?

5 A I'd have to go through and look at it. I don't
6 recall, specifically, if he was confronted with
7 evidence in that particular interrogation.

8 COURT REPORTER: Please slow down.

9 THE WITNESS: Sure.

10 Q (By Attorney Fallon) Well, there was no false
11 evidence ploys; correct?

12 A On the 27th? I'd have to go through --

13 Q At the -- at the high school.

14 A Correct. The first one, yeah.

15 Q Now -- well, I'll come back to that. Similarly,
16 with respect to the second statement at the Two
17 Rivers Police Department, which we discussed
18 yesterday, um -- well, I'll ask you. Would you
19 agree that that interview at the police
20 department was about 41 minutes long?

21 A Yes.

22 Q All right. And in preparation for that interview
23 Mr. Dassey rode to the police station with the
24 police officers, Mr. Fassbender and Mr. Wiegert?

25 A Correct. They went to get him. Right.

1 Q Well, that he rode with them; correct?

2 A Yeah. Yeah.

3 Q In fact, his mother rode with him in the car?

4 A I -- I don't recall.

5 Q That would be an important fact for you, wouldn't

6 it?

7 A No.

8 Q All right. I'll bite. Why not?

9 A That his mother rode with him to the --

10 Q Yes.

11 A -- interrogation? Um, because she wasn't part of the

12 interrogation. She wasn't present during the

13 interrogation. And that occurred prior to the

14 interrogation and the use of the interrogation

15 techniques. And that was one of several

16 interrogations, obviously.

17 Q But isn't, Doctor, one of the premises of your

18 research is that the intent of an interrogation

19 is to isolate a suspect from everyone else?

20 A Yes.

21 Q And in this particular case Mr. Dassey knew that

22 his mother was nearby; correct?

23 A Uh, when he was driven there, yes.

24 Q All right. In fact, she was outside waiting;

25 correct? During the interview?

1 A Right. And that's isolation.

2 Q All right. And, um, she was offered the

3 opportunity to sit in the interview; right?

4 A I -- I don't recall.

5 Q You don't recall?

6 A No.

7 Q All right. In the statement at the Two Rivers

8 Police Department, the second statement on

9 February 22 --

10 A Okay.

11 Q -- Mr. Dassey wasn't confronted with any

12 evidence; correct?

13 A During that interrogation?

14 Q Right.

15 A I'd have to look at the interrogation.

16 Q You don't recall?

17 A Of the top of my head, no.

18 Q Were there any false evidence ploys?

19 A Again, I don't recall in that particular

20 interrogation off the top of my head.

21 Q Now, I'm going to come back to this superior

22 knowledge thing in a -- in a few minutes. So I

23 haven't forgotten that.

24 But I guess what I'd like to do at this

25 particular point is engage you in a discussion

1 regarding coercion, if I may.

2 You would concede, Doctor, that there's
3 a difference between, in your view, what the
4 courts define as legal coercion, and what you
5 define, as a psychologist, as psychological
6 coercion?

7 A I think they're pretty close but there may be
8 differences. There may be times when courts will
9 look at inducements and say they don't rise to the
10 level of promise or a threat, um, or may interpret
11 the totality of interrogation as not overbearing
12 somebody's will. But the definitions are very close.

13 Q So the decision as to whether certain conduct is
14 actually coercive is initially for the court to
15 determine and subsequently for a jury?

16 A Well, yes, in a legal setting it's for a court.
17 Obviously in our research that's separate. It's --
18 it's -- does -- has nothing to do with courts.

19 Um, and then in states that permit that,
20 yes, it's secondly a jury issue.

21 Q All right. Would you agree that the concept of
22 coercion is sometimes expressed along a
23 continuum?

24 A Yes.

25 Q In fact, a -- a lot of the research you've done

1 on the history of coercion in this country, you
2 talk about what was formerly known in the 20's,
3 30's, and 40's as the third-degree interrogation?
4 A Correct. Yeah.
5 Q And oftentimes that involved physical force or
6 violence; correct?
7 A Correct.
8 Q So you would agree with me that on the -- the
9 extreme end of a continuum of coercion you would
10 have physical violence or bodily harm; right?
11 A Correct.
12 Q A -- a -- a threat of death, for instance, would
13 probably --
14 A Right.
15 Q -- be pretty highly coercive?
16 A Correct.
17 Q Can you think of any circumstance where such a
18 threat of death would not be highly coercive?
19 A Um, unless the person really wanted to die, no.
20 Q Right. Right. So the only possible one that
21 might trump that is if a -- a loved one of
22 somebody's life was threatened rather than your
23 own? That might be the ultimate level of threat
24 coercion; right?
25 A Correct.

1 Q Okay. And there's no doubt in your mind about
2 that?
3 A Well, I mean, I want to give it a little bit more
4 thought. But, no, I would think as a parent that
5 threatening the death of a child's probably the worse
6 thing you could be threatened with.

7 Q Okay. Now -- now, you would agree that coercion
8 can come from many places?

9 A Sure.

10 Q Many sources?

11 A Sure.

12 Q And coercion doesn't always have to come from,
13 um, a person who is conducting a questioning, or
14 an interview, or an interrogation?

15 A Right. There could be other sources of coercion,
16 correct.

17 Q Right. And, in fact, um, a -- a family could be
18 a source of coercion for somebody in making a
19 decision to provide information or not provide
20 information; correct?

21 ATTORNEY DRIZIN: Judge, I'm going to
22 object. This is beyond the scope of -- of the
23 direct. We're not here to talk about what may
24 have happened outside of the interrogation room.
25 Dr. Leo's talking about what happened during the

1 interrogation process.

2 THE COURT: Coercion was raised during the
3 direct, Counsel. And it's Wisconsin, and
4 cross-examination is wide open. So your objection
5 is overruled.

6 Q (By Attorney Fallon) So you would agree that one
7 could be, um, coerced into telling a lie as well
8 as one could be coerced into telling the truth?

9 A Correct.

10 Q Okay. One could be coerced into keeping a
11 secret?

12 A Correct.

13 Q Or not keeping a secret?

14 A Correct.

15 Q Okay. In this case, Mr. Dassey received lots of
16 information from his family that he shouldn't
17 testify against his uncle; right?

18 A Uh, I'm not disputing that, but I wasn't aware of
19 that.

20 Q All right. You didn't review any of the
21 materials associated with that?

22 A Not to my knowledge.

23 Q Okay. Were you aware of the fact that he had
24 advice from the family not to take a plea
25 agreement?

1 A No.

2 Q In fact, did Mr. Avery begin calling family
3 members within a couple of days after
4 Mr. Dassey's reportedly -- reportedly confessed
5 on March 1?

6 A No.

7 Q That Brendan received information from the
8 family, or advice from the family, that she -- he
9 should take it back and tell them that he lied?

10 ATTORNEY DRIZIN: Judge, I'm going to
11 object. He said he hasn't seen or heard any of
12 the -- the phone calls he's talking to. I mean,
13 is -- is -- is the witness testifying or is
14 Mr. Fallon testifying here?

15 THE COURT: Mr. Fallon's asking questions.
16 He can do that. If the witness has no knowledge,
17 the witness says that.

18 ATTORNEY DRIZIN: Okay.

19 THE COURT: Overruled.

20 Q (By Attorney Fallon) If those things happened,
21 they would be -- they could be coercive, could
22 they?

23 A It's certainly possible they could be coercive. I'd
24 want to know more about the circumstances under which
25 they occurred.

1 Q Well, you would -- you would probably more likely
2 agree and find them coercive if that advice was
3 accompanied by a direct threat; right?

4 A Uh, if they were accompanied by threats, one might
5 find them coercive. But it's a very different
6 context, obviously, than being threatened by a police
7 officer.

8 Q Well, Mr. Dassey received a threat in this case,
9 did he not?

10 A You're talking about outside the interrogations?

11 Q Outside the interrogation.

12 A I don't recall.

13 Q You reviewed the transcripts in this case; right?

14 A I did, yes.

15 Q All right. Um, would you turn to Exhibit 206,
16 sir?

17 A Can you tell me which binder that's in?

18 Q Sure. I'm going to guess it's in four. I
19 believe 206 is the transcript of the statement
20 taken at the high school.

21 A Okay.

22 ATTORNEY DRIZIN: Do you have a page
23 number, Tom?

24 ATTORNEY FALLON: Yes. I -- I want to
25 double-check my number before I tell you. I

1 believe the number I'm looking for is -- yes,
2 466.

3 ATTORNEY DRIZIN: Page 466?

4 ATTORNEY FALLON: Right.

5 Q (By Attorney Fallon) There's a question from,
6 um, Investigator Wiegert:

7 Question: "What did he tell you?"

8 "Brendan: That I should keep my mouth
9 shut" comma "they were hers."

10 "Wiegert: Did he threaten you?"

11 "Brendan: Sort of."

12 "Fassbender: What did he say?"

13 "Wiegert: Tell me."

14 "Pause."

15 "Stab me, too."

16 "Wiegert: Or else he would stab you
17 too?"

18 "Brendan: Yeah."

19 "Go back to the clothes," he said.

20 "Those were whose clothes?"

21 "Teresa Halbach."

22 THE WITNESS: Okay.

23 Q (By Attorney Fallon) All right? So that could
24 be taken as a -- a threat on the young man's
25 life; correct?

1 A Uh, yeah. Yes.

2 Q And especially if, um -- if Mr. Dassey had
3 actually witnessed his uncle killing Teresa
4 Halbach, and then was told that he should keep
5 his mouth shut, that could certainly be perceived
6 as coercive on his part?

7 A It could be. Um, but I -- if he was in custody,
8 obviously it couldn't be acted on.

9 Q Oh. All right. Well, then, um, let me direct
10 your attention, sir, to page 478 of the very same
11 exhibit.

12 A Okay.

13 Q The bottom of the page.

14 "Fassbender: During the last several
15 months were you afraid that Steven was going to
16 get out?"

17 "Brendan: Not really."

18 "Fassbender: No. If, uh -- now that
19 you've made this statement, are you afraid --
20 that he would get out -- for your own safety?"

21 "Brendan: I don't think he's going to
22 get out."

23 "Fassbender: I know. But if he did,
24 would -- because of what he said to you, would
25 you be afraid?"

1 "Brendan: Yeah."

2 Q (By Attorney Fallon) All right?

3 A Okay.

4 Q All right. Now -- excuse me. As a social
5 psychologist, whose task it is to assess possible
6 impact of coercion, it would be important for you
7 to know whether there were other forces exacting
8 coercion on Mr. Dassey?

9 A You're talking about during the interrogation?

10 Q Not necessarily during the interrogation, but
11 overall in assessing the reliability of the
12 information or the reliability of what's being
13 discussed in the interrogation, you would want to
14 know about the other external factors?

15 A To the extent it bears on what's going on in the
16 interrogation, yes.

17 Q So your point is you don't really particularly
18 care what other external coercive first -- forces
19 are at play, you're only concerned with what the
20 police do?

21 A Well, if the other coercive forces were to bear on
22 why the statements were given or their reliability
23 during the interrogation, yes. But if they don't
24 bear on the interrogation, and they're really outside
25 the scope of what I'm asked to evaluate...

1 Q So you don't think if somebody receives a direct
2 threat on their life, after possibly witnessing
3 such a violent act being carried out, that that
4 wouldn't have any effect on their decision to
5 tell the police something in response to their
6 questioning?

7 A It -- it could in the abstract. It doesn't appear
8 here, though, what you read, that he was afraid of
9 Mr. Avery getting out. So it's not clear to me from
10 what you read in this case that that had any impact.

11 Q Well, you did read other information in this
12 reports that most of the family members were
13 afraid of Steven Avery; right?

14 A Yes. Yes.

15 Q All right. So doesn't that give some credence to
16 the fact that it's very possible he wasn't that
17 threatened?

18 A It surely does, yes, but --

19 Q All right.

20 A -- if he's not going to get out, if they don't think
21 he's going to get out because he's locked up, then
22 that would undermine the fear of eventual
23 retaliation.

24 Q Well, Doctor, you would understand -- you would
25 agree with me that even those who are in prison

1 have means of reaching out to those in the
2 outside and doing them harm; right?

3 A Yeah, but it's not the same thing. It's --

4 Q If --

5 A -- difficult. It's remote. It's hard. It's not the
6 same thing.

7 Q So it's your assessment here that -- that the --
8 any potential coercive effect from Mr. Avery, and
9 the rest of the family, on Mr. Dassey had nothing
10 to do with his decision to tell the police what
11 he told them on February 27 or March 1?

12 A It didn't appear to me and --

13 Q All right.

14 A -- based on the materials I reviewed.

15 Q All right. I'm going to digress for one moment
16 and ask three points that I omitted to ask you
17 about in the introductory discussion we had
18 yesterday. So if I may -- and they're not
19 related.

20 Um, what would you say the average
21 amount of time is that you spend on a case -- a
22 case when you consult? I mean, is it like ten
23 hours? Twenty hours?

24 A Yeah, probably five or ten hours.

25 Q Five to ten hours on average?

1 A In many cases, we -- even less than that.

2 Q Even less than that.

3 A Yeah.

4 Q Therein case like this where you'd have a lot of

5 hours?

6 A Correct.

7 Q Okay. Um, and you said studied -- you -- you --

8 you testified -- I think you said -- you

9 testified once in Wisconsin at the Criminal

10 Justice Study Commission?

11 A Correct.

12 Q Was that the -- the commission -- the -- the

13 former Avery Commission-type thing? Were you

14 involved in legislative reform?

15 A It was, I believe, the former Avery Commission that

16 was formerly named that. And, um, and I just

17 presented testimony during a day there. So I wasn't

18 really directly involved in legislative reform.

19 Um, the -- what grew out of that might

20 have had some legislative impact. I didn't

21 really follow it very closely.

22 Q All right. Um, and just so that we're clear, I

23 know we had a lot of discussion about this

24 yesterday, but you would agree that the, um,

25 interrogation techniques employed by Fassbender

1 and Wiegert aren't really following the Reid
2 model of interrogation?

3 A I'm sorry. Are not following?

4 Q Are not. I mean, there's a couple of tactics,
5 yes --

6 A Yeah.

7 Q -- but it's not -- but they didn't follow the
8 Reid technique; right?

9 A Well, I would say they didn't do a mechanical
10 application of the Reid technique. So to explain,
11 the Reid technique says, um, there are nine steps.
12 And here's what you do in step one. And here's what
13 you do in step two. And here's what you do in step
14 three.

15 And almost nobody does a formulaic
16 following of that. There are elements of the
17 Reid technique present here.

18 Q Elements. But there are elements of other
19 interrogation techniques as well?

20 A Well, I'm -- I'm not sure I would say that. There --
21 there are, um, techniques that are, um, not part of
22 the formulaic nine steps of the Reid method, but
23 there's nothing that's part of a separate method
24 that's not the Reid method.

25 I mean, the Reid method's really an

1 umbrella of a lot of different techniques
2 emphasizing specific steps to deliver the
3 techniques.

4 Q Okay. All right. Doctor, I want to talk about
5 inducements right now.

6 In your testimony yesterday, I believe
7 you referred to one set of inducements as low-end
8 inducements; correct?

9 A Correct.

10 Q All right. Now a low-end inducement may be
11 something that appeals to one's religious
12 character or -- or one's sense of morality?

13 A Correct.

14 Q In other words, to do the right thing and tell
15 the truth --

16 A Correct.

17 Q -- type of thing. So -- or an appeal to one's
18 conscience if one may not be religiously
19 motivated?

20 A Correct.

21 Q All right. Now, um, these low-end inducements,
22 of which there are in this case; right?

23 A Correct.

24 Q All right. These low-end inducements, um, are
25 certainly permissible in your view; correct?

1 A Yes.

2 Q They're -- they've been found legal by the
3 courts; right?

4 A Correct.

5 Q All right. And -- and, in reality, they're
6 non-coercive?

7 A Correct.

8 Q All right. Now, I think you also testified that
9 there's some systemic, or I think you might have
10 used the ray -- the word "mid-range" inducements
11 which --

12 A Correct.

13 Q -- are present in this case? In fact, there were
14 several clips played by Counsel?

15 A Correct.

16 Q I think in Exhibit 315, um, I have, like, clips
17 four through ten, but I'm not sure with the
18 revised exhibit here if I've got that right.

19 A Did you want me to refer to that or not?

20 Q Yeah. Well, if you could, that would be great.

21 A Okay. So what notebook is 315 in?

22 Q Five.

23 ATTORNEY TEPFER: There's a new version
24 on the side.

25 THE WITNESS: There's a new version?

1 Okay. Okay. I think I have both parts of
2 Exhibit 315 and notebook five.

3 Q (By Attorney Fallon) Okay. Um, just so that
4 we're clear, can you identify for me just -- uh,
5 I don't know if there's been a change as a result
6 of the exhibit, but, um, my notes reflect
7 systemic inducements or mid-range inducements.
8 Um, looking at page four maybe?

9 ATTORNEY DRIZIN: Which interrogation
10 are you talking about?

11 ATTORNEY FALLON: I'm looking at --
12 well, if the pages are all in sequence, um, I
13 believe that would be the Two Rivers -- nope,
14 Manitowoc, 3/1/06, page four.

15 THE WITNESS: Okay. Beginning with --
16 Q (By Attorney Fallon) Wait, I -- I think I have
17 overshot the mark. Let me back up. I'm sorry.
18 Go back to page one. And I have clips four
19 through ten, which would be pages one and two.
20 Could you review those silently to yourself?

21 A Okay. Yeah. Yeah. Just give me a moment, please.

22 Q Sure. I -- I may have mis-noted, but I just want
23 to know what -- make sure I have my facts correct
24 here before I ask any questions.

25 A Okay.

1 Q All right. Um, in Exhibit 315, then, on pages
2 one and two, clips four through ten, are those
3 examples of systemic or mid-range inducements?

4 A I would say that they are. Um, I mean, we might want
5 to go through them individually. But to the extent
6 that they, um, were to communicate leniency or
7 impliedly threaten harm, they might shade into the,
8 what we call, "high-end inducements." But, yeah.

9 Q All right. Now, as I understand it, systemic, or
10 mid-range inducements, by themselves, are
11 certainly permissible interrogation techniques;
12 correct?

13 A I think it depends. You know, courts, um, oftentimes
14 will find them to be permissible because they're
15 considered vague enough that they don't really
16 communicate leniency or cross a line --

17 Q So -- sorry.

18 A -- in threatening harm. So I think as they shade
19 into what we call "high-end inducements," then, no.
20 But, um -- but traditional systemic inducements, or
21 mid-range as we're calling them, I think are usually,
22 but not always, found to be permissible by courts.

23 Q And that's because they're generally non-coercive
24 in and of themselves?

25 A Correct. As interpreted by courts.

1 Q Right. And in this particular case, as you said,
2 there's some -- some vagueness associated with
3 these -- with the comments in those clips; right?
4 A Correct.
5 Q In fact, if you were to say that they might shade
6 into, um, the high-end inducements, that would be
7 based on an implicit understanding of what they
8 are trying to connote to the -- to the person?
9 A Um, if I follow your question, yes. But, um -- yeah.
10 Q Okay.
11 A I -- I -- I don't know if you say, "try to connote"
12 but, yes, I -- I think I understand. I think I agree
13 with what you're saying.
14 Q In other words, these aren't clearly direct or
15 express syn -- systemic inducements? These are
16 somewhat vague or implicit?
17 A They're implicit -- they're implicit suggestions
18 about benefit. Correct.
19 Q That -- that he might have some perceived benefit
20 if he comes clean?
21 A Um, right. If he conforms to what they're -- if --
22 if he gives them an account they're asking for,
23 correct.
24 Q Or an account that they believe is the truth?
25 A Correct.

1 Q Okay.

2 A Yeah.

3 Q Now, you also talk about high-end inducements,
4 which are -- are the inducements that you believe
5 are coercive; correct?

6 A Correct.

7 Q All right. Now, are -- some high-end
8 inducements, um, can be legally permissible;
9 right?

10 A Well, you mean insofar as a court will find them to
11 be legally permissible?

12 Q At a suppression hearing, for instance.

13 A Yeah, that's correct. That some courts will find
14 sometimes these high-end inducements to be
15 permissible.

16 Q In fact, in your research, as now a law professor
17 and a social psychologist, you are aware that
18 courts imply a totality of the circumstances test
19 in assessing whether or not to suppress a
20 particular statement; right?

21 A Correct.

22 Q And in -- in balancing the equation, as it is,
23 between the tactics of the police and the
24 personality factors of a given person, they look
25 at a variety of -- of techniques employed by the

1 police; right?

2 A Correct.

3 Q Right. And so you may have one or two high-end

4 inducements, and yet the statement would be

5 determined to be legally admissible?

6 A It's certainly possible, yeah.

7 Q Certainly. And the problem is, is the more

8 high-end inducements you have, the more

9 cumulative the effects are, the less likely that

10 the court may be persuaded that it's legally

11 permissible or not?

12 A I would think so, yes.

13 Q All right. Now, in this particular case, and as

14 I understand your testimony and from your

15 affidavit, which I believe is Exhibit 3, it's

16 your contention that the high-end inducements in

17 these cases consist of both implicit promises

18 and/or implicit threats?

19 A Correct.

20 Q Right?

21 A Yes.

22 Q Okay. Now -- and the implicit promise is that he

23 would be offered lenient or favorable treatment;

24 is that right?

25 A Correct.

1 Q And the -- excuse me -- and the implicit threat
2 would be the converse. That if he didn't provide
3 information that the officers believed was true
4 and accurate, that it would go really bad for
5 him?

6 A Yeah, but --

7 Q Right?

8 A -- in -- in Exhibit 3, where I identified some of
9 these inducements, and we talked about them
10 yesterday, it would be more than just going bad for
11 him because they're talking about him potentially
12 facing charges.

13 Q Charges?

14 A Yeah. And they're going back to the district
15 attorney, and things going easier for him down the
16 road, implicit -- implying that it'll go worse for
17 him down the road. And they reference trial, and
18 going to bat for him. So it's -- it -- I think I'm
19 agreeing with what you're saying. I'm just being a
20 little bit more specific --

21 Q Okay.

22 A -- as I was yesterday.

23 Q So that would be an example, then, of one of
24 these systemic inducements, um, bleeding over, as
25 it were, into a high-end inducement, in -- in

1 your parlance?

2 A Cor -- correct. Correct. And one might call it a

3 high-end inducement. A couple of these at least.

4 Q And, um -- but, in one sense, the officers were

5 being perfectly candid and accurate because he

6 very well could be charged with an offense;

7 right? That was always a possibility?

8 A Yeah. They -- they -- it's correct. They -- they --

9 Q (Unintelligible.)

10 A -- may be truthful in their threats. I'm sorry.

11 Q All right. So that was an accurate statement?

12 They weren't misleading him?

13 A Um, well, I was looking at several statements. I --

14 I do think that there's some misleading here, um,

15 potentially, with the going to bat for you, uh, and

16 helping him out, um, but it is possible that what

17 they are saying to him, the implied promises, the

18 implied threats are truthful.

19 Um, that's independent of a coercion

20 analysis. But it's --

21 Q But it --

22 A -- possible that they are not misleading him. I -- I

23 thought they were, um, but it's --

24 Q But it --

25 A -- certainly possible they weren't.

1 Q But in your experience, um, in the 15 years, or
2 20, now, since your thesis, and having watched
3 all this, it's not uncommon for an officer, a
4 police officer, to go to the prosecutor and say,
5 hey, look, cut the guy some slack here. He
6 helped us out. That's not uncommon, is it?

7 A You mean trying to get a deal for -- for -- for a
8 suspect in --

9 Q No --

10 A -- a case?

11 Q -- just call -- just call the prosecutor and say,
12 hey, if you're going to charge the guy, you can
13 go a little lighter on him. I don't care. He
14 really helped us out. That does happen in the
15 criminal justice system.

16 A Yeah, I'm sure it does happen. Yeah. I just don't
17 know how common it is. Yeah.

18 Q Okay. Now, just so that I'm clear, your take on
19 this is that these are clearly implicit or
20 implied? There's nothing really flat out express
21 and direct here?

22 A Um, yeah. But that, too, could be on a continuum. I
23 think some of these are a little bit more direct.
24 Particularly the one about him facing charges and
25 particularly when they reference the district

1 attorney, or the trial, or the judge.

2 But, yeah, for the most part these
3 are -- these would be implied promises and
4 threats. They're not direct or express in --
5 in -- in the way I described yesterday. If --

6 Q All right.

7 A -- you do this, then this will follow. If you don't,
8 then that will follow.

9 Q Okay. So if there's an implicit promise of
10 leniency, for instance, as you see it, that had
11 an effect, for instance, on Mr. Dassey's decision
12 to inculcate himself, that would have to have
13 been understood by Mr. Dassey as either a promise
14 or a threat; correct? You -- right?

15 A I -- I think --

16 Q There's -- there's two sides --

17 THE COURT: Here.

18 ATTORNEY FALLON: I'm sorry.

19 THE COURT: Let him answer. Go ahead.

20 Q (By Attorney Fallon) Go ahead, answer.

21 A Okay. So, trying to be responsive to your question,
22 I don't think it's a yes/no question, so let me just
23 succinctly elaborate, and then you can tell me if
24 this is responsive.

25 The analysis of coercion, whether

1 there's coercion, is really an objective
2 analysis. Are these techniques coercive?

3 But I think what you're asking about is
4 a legal determination of voluntariness. I'm not
5 here -- well, I should say when I testify in
6 suppression hearings, I don't testify whether I
7 think a confession is voluntary or involuntary.

8 I think that's what you're asking about.
9 Do I think something is voluntary or involuntary?
10 Whether or not these techniques were understood
11 to be communicating leniency, they're still
12 coercive, in my opinion, even if he didn't
13 understand them to be communicating leniency.

14 But voluntariness, whether or not his
15 statements ultimately were voluntary is a
16 separate issue than coer -- it's a related issue,
17 but it's not for me to opine about.

18 Q Well, that's not quite what I had in mind,
19 although you did touch on it. Excuse me.

20 My point is, in assessing whether a
21 particular technique is coercive, there's two
22 parts to it, is there not? What is -- what the
23 question is, and then the person on the other end
24 of the question, did they take it as coercive?
25 Or did they take it, in this case, as a threat or

1 a promise?

2 A In -- in the first definition that I gave of
3 coercion, whether the techniques are inherently
4 coercive, no. In the second definition I gave of
5 coercion, yes.

6 Q All right. And in this particular case you have
7 no way of knowing what impact these implied
8 promises, for instance, that they would, quote,
9 go to bat for him, had on Mr. Dassey?

10 A Correct.

11 Q All right. You had no way of knowing whether or
12 not their discussions with him about that if he
13 didn't tell the truth, as they understood it, he
14 could be charged with a crime; right?

15 A There may be ways of knowing, but I -- I don't
16 recall, from the -- my review of the materials, a
17 discussion of that.

18 So, for example, as I mentioned
19 yesterday, sometimes suspects will verbalize the
20 reasons why they say things in the interrogation.
21 And sometimes there may be interviews by other
22 people, like clinical psychologists, where they
23 will describe why they confessed.

24 So there -- there are ways of knowing.

25 Um, I just don't recall from the materials I

1 reviewed if -- if that was in there.

2 Q Let me return to the February 27 statement again
3 in Exhibit 206. Is it still -- do you still have
4 that up there?

5 A Uh, no. I'm looking at Exhibit 215. You want
6 Exhibit 206?

7 Q Yeah. Would you go back to that? I'm going --

8 A May I ask --

9 Q -- to ask you a couple questions?

10 A -- which notebook is 206? And I'm sorry.

11 Q Um, four? Yep. Four.

12 A Okay. Two-o-six. Yes.

13 Q Okay. I'll give you a -- a page in a minute.
14 But I just want to ask you a couple of general
15 questions before we get to the --

16 A Okay.

17 Q -- the point. All right? Now, would you agree
18 with me that probably the best way to try and
19 figure out if somebody understood an implicit
20 promise is to ask them if they understood it or
21 if they were made a promise?

22 A I would agree that that would be the best way. There
23 is a problem, though, if the same people who make the
24 promises or threats are the ones asking, because the
25 person may lie, uh, or downplay it for reasons having

1 to do with the -- the encounter.

2 Q So you put no stock in asking the person
3 directly?

4 A Well, I wouldn't say that, but I've seen many
5 interrogations, many interrogations of false
6 confessions that are horrible interrogations, and the
7 interrogators say, we didn't threaten you. We didn't
8 promise you anything, did we? And the person says,
9 no. And the interrogation's replete with threats and
10 promises.

11 So there may be an incentive, when
12 somebody is threatened and promised by a police
13 interrogator, um, to downplay it. They want to
14 get out of the interrogation, put an end to it,
15 don't want to, um, engage in, um, conflict, you
16 know, challenge the authority of the
17 interrogator.

18 So that's not the best setting to gauge
19 whether or not somebody was threatened or
20 promised. But, yes, asking them whether they
21 understood something as a threat or a promise,
22 um, would be a good way of gauging, generally,
23 outside the context of interrogation, whether or
24 not they understood something's a threat or a
25 promise.

1 Q All right. Now, in your answer there, you gave
2 us an examples of -- of -- were you drawing upon
3 examples of demonstrably false confessions?
4 A Yes. I've seen that in demonstrably false
5 confessions. I believe I've also seen it in what we
6 called highly probable false confession cases. Um,
7 I've seen it in other cases as well, um, where I
8 don't know if it was a false confession.
9 Q In this particular case, on February 27 at the
10 high school, Mr. Dassey was asked by the police
11 if they made any promises to him; correct?
12 A Um, you have to refresh my recollection.
13 Q Exhibit 206, page 476.
14 A Four seventy-six. Okay. Thank you.
15 Q The officers ask him if they've made him any
16 promises; correct?
17 A Correct.
18 "Wiegert: Brendan, did we promise you
19 anything prior to writing this statement?"
20 "Answer: Yes."
21 "What did we promise you?"
22 "Answer: That I could leave whenever I
23 wanted."
24 Q (By Attorney Fallon) Or -- excuse me.
25 "That I could leave whenever" comma

1 "whenever I wanted" comma "and I didn't have to
2 answer any questions."

3 "Wiegert: Right. Did we threaten you
4 at all?"

5 "Answer: No."

6 Q (By Attorney Fallon) And then there's a -- the
7 tape turns over and they move on. Correct?

8 A Yes.

9 Q All right. Now, according to your answer, you
10 put no weight in that whatsoever?

11 A Um, well, I might put some weight on it. But the
12 question is -- what is the question about? Putting
13 weight on to -- to what end?

14 Is it whether or not threats or promises
15 were made?

16 Is it whether or not threats or promises
17 were understood?

18 Is it whether or not the statements that
19 he give were voluntary?

20 So I -- I might put weight on it, but
21 I'm not sure to what end.

22 Q Well, we -- that's very good. We have three
23 questions there, don't we? All right.

24 Let's take this one. Is it evidence of
25 the fact that Mr. Dassey understood the implicit

1 promises that the police were making?

2 A Um, to that point, um, it may be, um, unless he is
3 telling them what they want to hear because they want
4 to hear it. So since we don't really know
5 completely --

6 Q Well, you just told us there were inducements,
7 and systemic inducements, and low-end inducements
8 prior to that. Doesn't that statement reveal
9 that he didn't understand them as implicit
10 inducements or statements?

11 A Um, it depends on whether he's telling the truth or
12 not.

13 Q And you don't know that?

14 A Correct.

15 Q And it's entirely possible that that's evidence
16 that he doesn't understand implicit inducements?

17 A It's possible, sure.

18 Q All right. Similarly, it's entirely possible
19 that these threats that you've described are
20 similarly vague such that he did not understand
21 them as a threat?

22 A It's certainly possible. I'm not sure how likely it
23 is. But certainly possible.

24 Q And -- and you, yourself -- you don't know if he
25 answered that question truthfully or not when

1 they asked him if -- "Have you been threatened?"

2 A Correct.

3 Q So the bottom line is, although you've talked
4 about these high-end, low-end, and systemic
5 inducements, you have no idea whatsoever whether
6 Mr. Dassey understood them as implicit
7 inducements?

8 A Um, well, that may be the bottom line for you. I --
9 I wouldn't use "bottom line" to characterize it.
10 But, yeah, it is true that, um -- that I don't recall
11 from the materials that I read, um, and I wouldn't
12 know, if he answers questions like this to comply,
13 whether or not he understood those -- those
14 inducements as promises and threats or whether or not
15 that he's falsely -- yeah. I -- I wouldn't know.

16 Um, I mean, he does say at the end, like
17 we talked about yesterday, that they were messing
18 with his head, um, and we -- he did think he was
19 going home at the end of that interrogation.

20 So we talked about on direct where,
21 after he had confessed to participating in this
22 rape and murder, um, so that would be some
23 evidence that he understood what they were
24 saying, uh, and what he was agreeing to, in a
25 way, as leaving him not culpable.

1 Q Also reflective of the fact that he didn't
2 understand any threats or promises or inducements
3 that were made in that March 1 interview;
4 correct?

5 A I think you have to elaborate a little bit more what
6 you mean by that. The logic of him understanding
7 that he wasn't committing -- that he wasn't
8 confessing, that he'd be able to go home, is that he
9 wasn't confessing to a crime because it was suggested
10 that they would go to bat for him, they would help
11 him, and that he would be getting lenient treatment
12 or immunity, base -- if he gave them the answers they
13 were looking for.

14 So how you interpret that as the
15 opposite, I guess I need more explanation for
16 your question.

17 Q Well, um, we may come back to the end of the
18 March 1 interview, but I don't want to lose my
19 train of thought.

20 The point being is that you don't know
21 whether or not any of these implied threats or
22 promises were understood by Mr. Dassey as either
23 a promise to do something or a threat if he
24 didn't?

25 A I guess I don't know absolutely, yes, but I think

1 what I just described, uh, is, um -- is -- is -- is
2 good evidence that he likely understood the
3 inducements his promises or suggestions of leniency
4 are immune to.

5 Q But that's, again, just a matter of your opinion?

6 A Yeah. It's a matter of interpretation. I don't know
7 with any absolute certainty. Correct.

8 Q All right. All right. Let's talk about
9 contamination. You have subscribed to the theory
10 that, um, much of the rich detail in Mr. Dassey's
11 March 1 statement comes from the police
12 themselves?

13 A Yes.

14 Q All right. But you also opine that it could come
15 from other sources?

16 A Correct.

17 Q And those other sources could be his family?

18 A Correct.

19 Q Could be the media?

20 A Correct.

21 Q Could be his familiarity with the crime scene,
22 having grown up and lived there his whole life?

23 A Correct.

24 Q But you can't tell us where the information
25 really came from that he provided to the police?

1 A Right. So you mean when he repeats something back,
2 whether it's absolutely the case that it came from
3 media, or the police suggestion, or preexisting
4 knowledge, correct.

5 Q All right. As a matter of fact, you don't know
6 whether Mr. Dassey watched any news casts or
7 telecasts of the events of his uncle's arrest,
8 leading up to his own, in that three-month
9 period?

10 A Correct.

11 Q You don't know whether he read any newspapers;
12 right?

13 A Correct.

14 Q So all the exhibits that Counsel just read into
15 the record before I began my examination, all
16 those media exhibits, you don't know if
17 Mr. Dassey looked at one single solitary piece of
18 that, do you?

19 A Correct.

20 Q Okay. And even -- no. I'm going to save that
21 one.

22 And in your preparation to render the
23 opinions you've expressed here in court today,
24 you didn't think to ask Mr. Dassey; right?

25 A Well, I didn't interview Mr. Dassey, no. That's not

1 what I usually do.

2 Q Because that's the -- the clinical psychologist's

3 job? Or is that your job?

4 A Interviewing? No. If they -- if there's a recording

5 of the interrogation, I don't interview sus --

6 suspects.

7 Q And as far as you know from the review of the

8 materials, um, Dr. White never questioned on this

9 matter; right?

10 A To my knowledge, Dr. White did not interview

11 Mr. Dassey.

12 Q And Dr. Gordon did interview; right?

13 A Correct.

14 Q But he didn't look at these media accounts to see

15 if they had any effect on Mr. Dassey; right?

16 A I don't recall that being discussed in his report.

17 Q Okay. There's -- there's something you said

18 yesterday -- and this is on this superior

19 knowledge --

20 A Okay.

21 Q -- so, um, I'm going to make sure I got it right;

22 okay? I believe you used the phrase yesterday

23 that superior knowledge was a false evidence

24 ploy. Is it?

25 A Um, well, it can be. Uh, the --

1 Q Well, it's not "can be." Well, all right. Go
2 on. I'm sorry. Go ahead. Finish your -- now --
3 I'll be more specific. But tell me what you mean
4 more -- it could be?

5 A Well, these evidence ploys can either be true or
6 false; right? They -- whether it's pretending to
7 have -- whether it's stating, I have "x" piece of
8 evidence. Whether it's saying, we know all the
9 facts. Where they're saying, we know more than you;
10 right? There are instances in which those
11 representations are true and there are instances in
12 which they're false.

13 Q All right. And in this particular case they --
14 there were both?

15 A Well, I think I need you to be more specific when you
16 say, "both."

17 Q Well -- all right. Give me an example of where
18 the officers claim to have superior knowledge and
19 you -- and you characterize that as a false
20 evidence ploy?

21 A You're talking abstractly; right? An abstract
22 example?

23 Q No. On this case.

24 A Well -- okay. Well, we -- I think we went through
25 that yesterday, but it -- I don't have a photographic

1 memory. So me saying, you know, okay, this
2 transcript, this page. That's not -- I can't do
3 that.

4 Q All right. Well, let me --

5 A I'd have to --

6 Q -- see. Maybe --

7 A -- look through --

8 Q -- I can --

9 A Although we did that on --

10 COURT REPORTER: Wait a minute. One at
11 a time, please.

12 THE WITNESS: I thought we did that on
13 direct testimony yesterday.

14 ATTORNEY FALLON: If I may just have a
15 moment. See if I can find it. I can't find the
16 specific point, but...

17 Q (By Attorney Fallon) I guess we'll do it this
18 way then. Give me an abstract example of
19 superior knowledge claim being a false evidence
20 ploy.

21 A Um, well, I guess if an interrogator were to tell a
22 suspect, we know everything that happened in this
23 case, we've done the investigation, we're just here
24 for you to tell us what we already know. For
25 example, we know this, we know that, we know the

1 other, um, we know more than you think we know.

2 And they could be telling the truth or
3 they could be lying. The effect should be the
4 same if the suspect believes them. Um, it just
5 may be truthful or not truthful, um, and, of
6 course, both are permissible in terms of training
7 and law.

8 Q Both are permissible?

9 A Correct.

10 Q All right. So it's not inherently coercive to
11 use a false -- to -- to use superior knowledge?

12 A Correct.

13 Q Okay. All right. Yesterday, you were telling
14 us, in the post-narrative part of the interview
15 on March 1, that Mr. Dassey was able to, um,
16 resist certain suggested behaviors; right?

17 A I think -- yes. But I think resistance wasn't the
18 right word in many of -- in -- in many instances of
19 that.

20 Q Well, he failed to adopt the officers'
21 suggestions regarding certain details of possible
22 involvement by him?

23 A Correct.

24 Q All right. He resisted when the officers tried
25 to talk to him about what he saw of Teresa

1 Halbach. He resisted that she had been tied up
2 in the fire? He --
3 A I believe that --
4 Q -- resisted --
5 A I believe that's correct. He didn't agree. Yes. Or
6 he didn't adopt it. He didn't repeat it back.
7 Q Or that the garage door was closed at a
8 particularly critical time during the events on
9 the afternoon of October 31?
10 A Again, I -- I -- I'd have to look specifically. I
11 know much -- much of this is mentioned in one of the
12 reports.
13 Q All right. He -- he refused to adopt the --
14 the -- the premise that he saw Steven Avery
15 having sex with Teresa Halbach; right?
16 A I believe that's true.
17 Q He resisted, when the officers pressed him, as to
18 whether or not he actually participated in
19 shooting Teresa Halbach; correct?
20 A He said he didn't. Yes.
21 Q In fact, he tolds them he never even touched the
22 gun; correct?
23 A I believe that's true.
24 Q And the officers said, well, you did touch the
25 gun, didn't you? He refused to adopt that

1 suggestion?

2 A He said, no. That's right.

3 Q Um, that he kept the hair that he cut off of

4 Teresa Halbach's head. He -- he denied that;

5 correct?

6 A I believe that's right. Yes.

7 Q That he saw Teresa Halbach's underwear. Or that

8 he knew where her underwear or panties were;

9 correct?

10 A Believe that's right.

11 Q Or that during the course of the, um, assault on

12 Ms. Halbach, that the -- the wires in the garage

13 rafters were somehow used during the event;

14 correct?

15 A I don't recall specifically. But if that's in the

16 record, yes.

17 Q Well, he denied punching Teresa Halbach; right?

18 A I believe so. Yes.

19 Q And when the officers specifically tested him

20 about whether or not Ms. Halbach had a tattoo or

21 not, they said, well, you -- you saw the tattoo,

22 didn't you? And he denied that; right?

23 A I believe that's correct. Yes.

24 Q And she -- that's 'cause she didn't have a

25 tattoo? Or do you not know that?

1 A Well, I -- I don't -- I -- I bel -- I -- yeah. I
2 don't know.

3 Q Okay. Because you didn't read the case file?

4 A Well, I didn't read all the case file and I don't
5 have a photographic memory. It's possible that that
6 fact was in the -- in the materials I had read.

7 Q And he also resisted the suggestion that he
8 placed Teresa Halbach's cell phone and camera in
9 the burn barrel?

10 A I believe he said he didn't. Correct.

11 Q That he resisted a suggestion that he was shown
12 the -- the victim's jeep license plates; right?

13 A Um, I don't recall specifically. Um --

14 Q Okay. I want to go back to, um, the events of
15 February 27 again. Two days before the March 1.
16 In that in -- uh, interview with Mr. Dassey, he
17 came out of it on his own that he saw body parts
18 in the fire. That was not at the prompting of
19 the police; correct?

20 A I'd have to go back and look at that. Are you
21 talking about the one at the high school or at the
22 police department?

23 Q High school.

24 A Yeah. I'd have to go back and look at it.

25 Q (Unintelligible.)

1 A We have to -- yeah, we'd have to -- you -- if could
2 direct me to a particular place in that...
3 Q Well --
4 A -- and I have to find the transcript to --
5 Q -- I'll see if I can. Exhibit 206, page 455,
6 456.
7 A Okay. So Exhibit 206 and notebook four. And you're
8 saying page 455.
9 Q Now, admittedly, the transcript is difficult. So
10 I'm going to ask you: Did you review the tapes
11 last night? The audio tape of this?
12 A For this one? No. No.
13 Q You didn't?
14 A I had pri -- pre -- previously, but not --
15 Q Previously --
16 A -- not last night.
17 Q -- though --
18 A Yes.
19 Q -- right? They ask him, um, so after you throw
20 the seat on, what happens? When do you see the
21 body parts? Right?
22 A Okay. You're on page 4-, um --
23 Q Five --
24 A -- -55?
25 Q Right.

1 A Um, okay. So --

2 Q I think I have --

3 A It's in the middle of the page?

4 THE COURT: Here. One at a time.

5 ATTORNEY FALLON: I'm sorry.

6 Q (By Attorney Fallon) Uh, I gotta back up. I'm

7 sorry. Back up, um -- back up to page 451.

8 ATTORNEY DRIZIN: You might want to go

9 back to 447, too, while you're backing up.

10 ATTORNEY FALLON: That may be, Counsel.

11 Q (By Attorney Fallon) You're examining 447, 448,

12 449?

13 A I -- yeah. I was just looking at 451, but I will

14 start with 447. And -- and if you'd like me to read

15 it before your question, I can do that.

16 Q Well, let me give you a starting point here. You

17 could probably start at the bottom where they're

18 asking if he saw something in the fire.

19 A You're talking about the bottom of 447?

20 Q Right.

21 A Did you want me to read 451 or 455?

22 Q Four fifty-one to 455 and picked up --

23 A Oh, I'm sorry. Okay.

24 Q All right. Now, I have a question. Or two. Is

25 he giving up the information about the parts in

1 the fire or did the police suggest that to him in
2 your view?

3 A It looks like they're suggesting some things to him
4 and he's elaborating.

5 Q And he's elaborating. And he's going on about
6 that; correct?

7 A Well, I don't know what --

8 Q Well, they keep questioning --

9 A -- going on, yeah.

10 COURT REPORTER: One at a time, please.

11 ATTORNEY FALLON: Sorry.

12 THE WITNESS: Because the answers seem
13 to be terse. Um, so when you say, "going on,"
14 I'm not sure I agree with that. But he -- he
15 does answer their questions.

16 Q (By Attorney Fallon) And he does describe
17 various body parts in the fire?

18 A Correct. And they suggest them as well.

19 Q All right. Now, in this investigation -- as I
20 understand it, you read the trial transcript;
21 right?

22 A I read some of the trial transcript. And in my
23 affidavit it lists trial transcript. I don't recall
24 if I read all of the trial transcript.

25 Q Did you read the testimony of the cousin Kayla?

1 A I don't believe so.

2 Q Did you read the testimony of the school teacher

3 Susan Brandt?

4 A I don't believe so.

5 Q So you're unaware of the fact that as early as

6 December and January he had been making

7 statements to them about seeing something in the

8 fire? Body parts in the fire?

9 A No, I -- I don't recall if --

10 Q All right. Let me ask you this -- these

11 questions, Doctor, and then we're almost done.

12 In this particular case, even if

13 Mr. Dassey was exposed to media contamination

14 regarding the details of the crime, it is still

15 possible for him to provide an accurate and

16 reliable confession?

17 A Is it still possible?

18 Q Sure.

19 A It is still possible. The problem with contamination

20 is we don't know the source of the information, and

21 so we don't know if it's independently volunteered by

22 somebody who has crime scene knowledge because they

23 were present at the crime scene or whether they're

24 repeating back what was, um -- what was provided in

25 the media or by other sources of contamination.

1 Of course, it's not for me to decide the
2 ultimate issue. But that's the problem with
3 contamination. So, yes, it's possible.

4 Q It's certainly possible. And it's possible for
5 someone, who's had certain information suggested
6 to him, to, nonetheless, give a true and accurate
7 confession?

8 A It's possible. Sure.

9 Q And, similarly, it's possible for an individual
10 who, of below average intelligence, to provide an
11 accurate and reliable to -- confession to the
12 police?

13 A Yes, it's possible.

14 Q And it's possible for a spec -- suspect to
15 provide reliable and accurate information to the
16 police even when the police claimed to already
17 have all the answers?

18 A Correct.

19 Q It's possible for -- for a suspect to provide an
20 accurate and reliable confession even if the
21 police use coercive questioning techniques?

22 A Correct.

23 Q And it's -- even if those coercive techniques
24 involve high-end incentives, as you like to say,
25 it's still possible for the person to give an

1 accurate and true confession?

2 A Correct.

3 Q And the reason all those things are possible is

4 because, even if an individual, such as

5 Mr. Dassey, if, in fact, he was there, it

6 wouldn't matter that he has multiple data sources

7 because he could still provide an accurate and

8 true confession?

9 A If he was there, it's -- he could provide an accurate

10 and true confession. Again, the problem with

11 contamination is that we just don't know.

12 Q And as you sit here today, you don't know?

13 A Correct. It's -- I'm not offering any opinion about

14 whether I think this is a true or a false confession.

15 Q Right. That's what I was getting to right now.

16 In this particular case you have no idea what

17 effect the superior knowledge ploy had on

18 Mr. Dassey when they accused Mr., uh -- when they

19 accused him of helping Mr. Avery start the fire;

20 right?

21 A Um, correct. If you take -- if you just want to

22 isolate the effect of that one technique.

23 Q All right.

24 A Okay.

25 Q Or if and when they accused him of lying, or

1 appealing to a sense of morality to tell the
2 truth, you have no idea if that caused him to
3 actually give up the information he did?

4 A Correct.

5 Q Or the fact that they were minimizing his
6 involvement and blaming it all on Steve Avery,
7 you don't know if that had any effect on him and
8 his decision to provide the information he did on
9 March 1?

10 A That specific technique, no. I, mean, I assume that
11 the interrogation, cumulatively, had the effect.

12 Q But that's an assumption?

13 A Correct.

14 Q All right.

15 A I mean, he obviously was moved to say things that --
16 at the ends of these interrogations -- that he didn't
17 say at the beginning. So we presume the techniques
18 had an effect.

19 Q And in this particular case it's still physically
20 possible that the defendant was, in fact, an
21 accessory in this homicide based on the
22 statements he provided?

23 A Well, correct. I'm not here to say that this -- this
24 is not possible.

25 Q And it's certainly -- it's certainly not a

1 case -- as we've already discussed, it's not one
2 of these four cases where one can say this is the
3 demonstrably false confession?

4 A Correct. Even though -- even if it were, it wouldn't
5 be -- I -- my -- first of all, my testimony would not
6 be to say it was one of those.

7 Q So the bottom line is, as you sit here today, you
8 can't tell us whether this is a true or a false
9 confession?

10 A Well, it's true that I can't say that. But I
11 wouldn't say it's the bottom line, because that's not
12 the purpose of an expert like me at a trial or a
13 suppression hearing had someone like me been called
14 in this case.

15 Q And -- and the question is, it's still a matter
16 of your opinion, and your judgment, and your
17 interpretation of the facts as to whether this
18 could have been a false confession?

19 A I'm not sure I understand the question. Can you --

20 Q Yes. It's just a matter -- it's just your
21 opinion as to whether or not this could have been
22 a false confession?

23 A Well, of course it's my opinion based on my
24 expertise, and my research, and knowledge of -- of --
25 of a field that, um -- everything I say would be

1 based on my opinion, based on my expertise, and
2 knowledge of course.

3 ATTORNEY FALLON: That's all I have.

4 THE COURT: All right. Let's --

5 ATTORNEY DRIZIN: Can we take a little
6 break, Judge?

7 THE COURT: Yeah. Fifteen minutes.

8 (Recess had at 10:05 a.m.)

9 (Reconvened at 10:25 a.m.)

10 THE COURT: All right.

11 ATTORNEY DRIZIN: Okay. Thank you,
12 Judge.

13 **REDIRECT EXAMINATION**

14 BY ATTORNEY DRIZIN:

15 Q Dr. Leo, I just want to revisit some of the
16 points that -- that you discussed with
17 Mr. Fallon.

18 Um, at the end of Mr. Fallon's, uh,
19 questioning, he asked you a series about whether
20 or not you could opine as to whether this was a
21 true confession or not.

22 A Sure.

23 Q Do you remember that?

24 A Yes.

25 Q Isn't the problem with contamination that nobody

1 can make an opinion about whether it's true or
2 not?

3 ATTORNEY FALLON: Objection. Leading.

4 THE COURT: Sustained.

5 ATTORNEY DRIZIN: Okay.

6 Q (By Attorney Drizin) What does -- how do -- how
7 do you relate the problem of contamination to
8 your ability as to whether or not to opine about
9 their reliability of the confession?

10 A Well, I thought I answered that on the, um,
11 cross-examination. That when a confession is
12 contaminated, you can't know whether it's reliable or
13 not.

14 Q And if you were to testify at trial, that would
15 be something that you would testify to, to the
16 jury?

17 A Correct. I -- I have testified before about the
18 problems -- what contamination is and the problems of
19 contamination.

20 Q Okay.

21 A Including that.

22 Q Now, Mr. Fallon asked you a number of questions
23 about our study and other studies in the field;
24 correct?

25 A Correct.

1 Q And one of things he focused on was whether or
2 not age is a risk factor for unreliable
3 confessions?
4 A Correct.
5 Q Um, and he cited our study in particular;
6 correct?
7 A Yes.
8 Q But there are other studies that have shown
9 repeatedly that age is a ricks (sic) factor;
10 correct?
11 A Yes.
12 Q What other studies are you aware of?
13 A Well, there was a study that I did with Dr. Ofshe in
14 1998.
15 Um, and then there's a whole body of
16 literature on, um, devel -- developmental
17 psychology, and the psychology of, um,
18 adolescents and juveniles.
19 Um, there also case studies about
20 juveniles and false confessions.
21 There's a -- there -- the literature on,
22 um, youth and age as a risk factor is like the
23 broader literature in this area. You know, it --
24 there's some experimental work. There's some,
25 um, observational work. There's some case study

1 work. So it's a much bigger literature.

2 And, of course, the paper that he cited
3 that, um -- the Kassin, et al, paper, where you
4 and I are an author -- co-authors -- but there
5 are four others, is a synthesis of that
6 literature. It's not just based on one
7 particular study.

8 Q Would it be fair to say that the age as a risk
9 factor is one of the most robust findings in the
10 literature?

11 A Yes.

12 Q Okay. And that age as a risk factor for false
13 confessions has also come to be recognized by
14 several in the law enforcement community;
15 correct?

16 A Yes. It's mentioned in some of the manuals, yes.

17 Q And it's even mentioned in Mr. Buckley's book,
18 *Criminal Interrogations and Confessions*; correct?

19 A Yes.

20 ATTORNEY FALLON: Objection. This is a
21 cross-examination of his own witness. Leading.

22 THE COURT: Well, I'm not sure it's a
23 cross-examination, but it's -- every question is
24 leading. You objected to one. I sus --
25 sustained the objection. Let's just ask this in

1 more --

2 ATTORNEY DRIZIN: Okay.

3 THE COURT: -- question and answer form.

4 (Exhibit No. 367 marked for identification.)

5 Q (By Attorney Drizin) Um, I'd -- I'd like to show
6 you, um, what I'll -- marked as Exhibit 367 for
7 identification purposes only. Do you recognize
8 this document?

9 A Yes.

10 Q And -- this book? What is this book?

11 A This is the current edition of the *Invalid All*
12 *Training Manual* put out by Reid and Associates that I
13 referred to yesterday and has since been referred to
14 as well.

15 Q And is it -- so this is the manual you talked
16 about when we talked about the leading training
17 manual in the field?

18 A Correct.

19 Q Okay. Could you turn to page 429, please, at the
20 bottom?

21 A Okay.

22 Q I think there's a discussion about fictitious
23 evidence and its use with young people.

24 ATTORNEY FALLON: I'm going to object as
25 to beyond the scope. There's no discussion or

1 evidence in the record at this point that there
2 was, quote, fictitious, closed quote, evidence
3 introduced.

4 THE COURT: I don't know -- we started
5 talking here about age as a factor. I -- I'm
6 presuming that somehow this is going to be tied up.
7 Is it, Counsel?

8 ATTORNEY DRIZIN: It is, Your Honor.

9 THE COURT: All right. Your objection's
10 overruled.

11 THE WITNESS: Okay. I've read -- I --
12 the -- the portion of this manual that you refer
13 to.

14 Q (By Attorney Drizin) And by fictitious evidence,
15 Mr. Buckley means the use of false evidence
16 ploys; correct?

17 A Yes.

18 Q And what does Mr. Buckley advise other
19 interrogators about using those ploys with young
20 people?

21 A Uh, it says that it should be avoided when
22 interrogating a youthful suspect.

23 Q And what else does it say?

24 A A youthful suspect with low social maturity or a
25 suspect with diminished mental capacity. Um, do you

1 want me to continue?

2 Q Please.

3 A Um, the suspects may not have the fortitude or

4 confidence to challenge such evidence, and, depending

5 on the nature of the crime, may become confused as to

6 their own possible involvement if police tell them

7 evidence clearly indicates they committed the crime.

8 Q And, Dr. Leo, are you aware of whether, in

9 subsequent writings, Mr. Buckley has cautioned

10 interrogators about the risk of false confessions

11 with young people?

12 A I believe he has on his website.

13 Q Okay. Um, now, one other factor that was

14 discussed with you was length of the

15 interrogation. Do you recall that?

16 A Yes.

17 Q Okay. You've done observational studies --

18 A Correct.

19 Q -- correct? What is the average length of most

20 interrogations based on your research?

21 A Based on my field research, an hour or less. Maybe a

22 half hour to an hour.

23 Q Okay. And has that research been replicated in

24 other studies?

25 A Yes. Um, other field studies have replicated it.

1 Also, um, there've been surveys asking police which,
2 uh -- you know, how long is their average
3 interrogation, which is consistent with that finding.

4 Q And in our study, um, the average interrogation
5 of the proven false confessions, the average
6 length, was 16.3 hours; correct?

7 A Correct. For the cases where we could get that data,
8 yes.

9 Q Okay. And, um, there were many -- were there
10 interrogations in -- among the proven false
11 confessions where the length of the
12 interrogations were lower than 16 points?

13 A Yes. Yes. Much lower.

14 Q And in your experience have there been false
15 confessions in interrogations that are four hours
16 or less?

17 A Yes.

18 Q Does Mr. Buckley make any advisements about the
19 length of interrogations when he trains his
20 officers?

21 A Well, in the manual that you just showed me, yes,
22 there is an advisement that interrogation should not
23 go on longer than four hours, and usually should be
24 shorter than that.

25 And so that advisement, although he --

1 it -- it's qualified by saying there are
2 sometimes exceptional circumstances, certainly
3 suggests that four hours is a dividing line
4 that -- that interrogators should be very
5 cognizant of. And that most interrogations
6 should not take anywhere near that long.

7 Q Now, the 16.3-hour number, the length number, was
8 that the length of actual interrogations or was
9 that the length of time a suspect was in custody?

10 A My recollection of the article it was a -- it was
11 custody and interrogation.

12 Q Okay. Um, another finding that Mr. Fallon
13 questioned you on has to do with mental
14 retardation and false confessions.

15 A Okay.

16 Q Do you recall that?

17 A Yes.

18 Q Um, to your knowledge has the United States
19 Supreme Court ever made a connection between
20 mental retardation and the risk of falsely
21 confessing?

22 ATTORNEY FALLON: Objection. That's a
23 question of law. It's also a question of
24 argument. And it's also irrelevant. The
25 course -- the Court is the source of the law, not

1 Mr. --

2 ATTORNEY DRIZIN: The Court relies on
3 the very same studies that Dr. Leo relies on.

4 THE COURT: Well, I'm going to overrule the
5 objection. Uh, this -- this goes, again, to
6 admissibility. I don't know how much weight this
7 answer's going to get, but you can answer the
8 question.

9 THE WITNESS: I -- I believe the Court
10 has. I just can't recall off the top of my head
11 whether it's in the **Atkins** case or in a different
12 case. Yes.

13 Q (By Attorney Drizin) Okay. And that would have
14 been **Atkins v. Virginia**?

15 A Correct.

16 Q Okay. And in addition to our study, are there
17 other studies that have made the connection
18 between mental retardation and false confessions?

19 A Yes. There are many of them, actually.

20 Q Okay. And have those studies -- um, can you
21 describe some of those studies?

22 A Well, again, there's various types of studies.
23 There's studies that are case studies of false con --
24 people who falsely confessed who are mentally
25 retarded or have low level IQs.

1 There's the aggregated case studies like
2 the one you and I did.

3 Um, there's specific studies of people
4 who are mentally retarded.

5 Um, more psychologically-focused studies
6 as opposed to focused on just the legal system
7 portion of it or aggregated case studies.

8 So there's a variety of studies of
9 mentally retarded individuals and their, um --
10 their tendency toward compliance and false
11 compliance in these false confession cases.

12 Q Okay. Now, Dr. Leo, um, Mr. Fallon asked you if
13 you were aware of Mr. Dassey's personality
14 factors. Do you recall that?

15 A Yes.

16 Q Um, and he also asked you if you were aware that
17 Mr. Dassey follows rules in school. Do you
18 recall that?

19 A Yeah, I recall the question. I don't recall that he
20 asked it that specific way, but, yes.

21 Q Okay. Assuming that Mr. Dassey follows rules --
22 is a rule follower -- how might that play into
23 the question of whether or not he would be
24 vulnerable to police interrogation tactics?

25 A Well, somebody who follows rules -- I mean, to a

1 psychologist, that immediately sounds like
2 compliance. Somebody who's likely to obey. And as I
3 believe I mentioned yesterday in my testimony when we
4 were talking about indi -- individual factors, risk
5 factors for false confessions, I mentioned both
6 suggestibility and compliance.

7 So somebody who is, by nature, a rule
8 follower, obedient, is probably highly compliant,
9 and that would be something that we see in many
10 of the people who falsely confess, and that's
11 something that clinical psychologists test for,
12 and that's been studied in the false confession
13 cases.

14 Q Now, I believe it was the 2/27 interview that
15 Mr. Fallon asked this question of you. He asked
16 whether the fact that Brendan said he had not
17 been threatened was relevant to your opinion.

18 A Correct.

19 Q Okay. In your experience, is it common for
20 police officers to ask suspects whether or not
21 they were threatened?

22 A Yes.

23 Q Is it common for them to ask whether or not any
24 promises were made?

25 A Yes.

1 Q Is it common for them to ask whether a statement
2 is being given by the suspect's own free will?

3 A Yes.

4 Q Is it common for them to agree that they were
5 given food and drink?

6 A Yes.

7 Q Why is it common?

8 A Because, um, police want to get into the record that
9 all of those things were done or not done; right?
10 That -- that they were -- they were -- they were
11 given their bathroom breaks, and food breaks, and
12 that the police want there to be a record that the
13 person says it was voluntary or fair, and no threats
14 or promises were made.

15 So it's really about creating a record
16 that's going to, um, help ensure a conviction and
17 building a stronger record against suppression to
18 the extent any weight is put on those statements.

19 Q And are police officers, in fact, trained to
20 elicit those statements from suspects?

21 A Yes.

22 Q Now, you -- in your studies of false confessions,
23 proven false confessions, have there been proven
24 false confessions where a suspect has said no
25 threats were made?

1 A Yes.

2 Q No promises were made?

3 A Yes.

4 Q That he -- that he gave the confession from his
5 own free will?

6 A Yes.

7 Q And it's conceivable that suspects who were
8 tortured have -- would say that as well; correct?

9 A Yes. Yes.

10 Q And if -- do you know of cases where suspects
11 were physically abused where they said that there
12 were no threats made to them?

13 ATTORNEY FALLON: Objection. Relevance.

14 THE COURT: Sustained.

15 Q (By Attorney Drizin) In your experience, do
16 suspects, um, understand the process of a threat
17 communicated through pragmatic implication?

18 A Yes.

19 ATTORNEY FALLON: Objection. Beyond
20 the -- no. No. I'll -- I'll withdraw that
21 objection.

22 Q (By Attorney Drizin) And whether or not they
23 understand it, is it your experience that they
24 can always verbalize that understanding?

25 A No.

1 Q Um, you reviewed Dr. Gordon's report in this
2 case?
3 A Correct.
4 Q You saw that Dr. Gordon described Brendan as
5 concrete?
6 A Yes.
7 Q Um, someone who is a concrete thinker, Doctor --
8 um, I'll strike that. Do you recall the
9 questions about, um, whether or not Steven Avery
10 had threatened Brendan Dassey?
11 A Yes.
12 Q Um, I'd like you to turn to page -- this is going
13 to be Exhibit No. 206, page 466.
14 A Okay. Two-o-six, 466?
15 Q Correct. Um, focus on the top five or six lines
16 if you will.
17 A Okay.
18 Q Who first introduced the idea that Steven had
19 threatened Brendan into this interrogation?
20 A Uh, this would be Wiegert.
21 Q I'd like you turn to Exhibit 209, please. This
22 is 209, pages 661 and 662. I'd like to play you
23 the clip -- very brief clip -- of the discussion
24 of whether or not Teresa had a tattoo.

25 "We know that Teresa had a tattoo on her

1 stomach. Do you remember that?"

2 (Unintelligible.)

3 "So you disagree with me when I say
4 that?"

5 "No. I don't know where it was."

6 Q (By Attorney Drizin) Does that sound like
7 resistance to you, Dr. Leo?

8 A No, it doesn't sound like resistance.

9 Q Now, some of the facts that Mr. Fallon mentioned
10 to you when he talked to you about resistance
11 included facts that asked Brendan to accept blame
12 for certain actions that he took; correct?

13 A Yes.

14 Q And in the interrogations that you reviewed,
15 there were occasions when Brendan would blame his
16 uncle; correct?

17 A Yes.

18 Q And that was one of the themes that Officers
19 Wiegert and Fassbender introduced into the
20 interrogation; correct?

21 A Yes.

22 Q And so to the extent Brendan was blaming his
23 uncle, what does that tell us about resistance?

24 ATTORNEY FALLON: Objection. Beyond the
25 scope.

1 THE COURT: I'll -- I'll overrule it.

2 ATTORNEY FALLON: All right.

3 THE COURT: It has marginal relevance.

4 THE WITNESS: Well, it suggests that he
5 wasn't resisting so much as going along with
6 their themes or their -- their minimization by
7 shifting -- trying to shift the blame onto
8 Mr. Avery. So it's consistent with their
9 interrogation strategy.

10 Q (By Attorney Drizin) Finally, Dr. Leo, um, the
11 last series of questions about what you could or
12 could not say about the re -- reliability of this
13 confession. Do you recall those?

14 A Yes.

15 Q If you were to testify at a trial in this matter,
16 what could you educate the jury about with
17 respect to Mr. Dassey's confession?

18 ATTORNEY FALLON: I would object. That
19 is clearly beyond the scope.

20 THE COURT: It is.

21 ATTORNEY FALLON: If not, already asked
22 and answered.

23 THE COURT: It is. Objection is sustained.

24 ATTORNEY DRIZIN: One minute, Your
25 Honor. No further questions, Judge.

1 THE COURT: All right. You may step down.

2 ATTORNEY DRIZIN: At this time the
3 defense will call Mark Fremgen.

4 THE COURT: All right.

5 ATTORNEY KRATZ: For the record, Judge,
6 I'll be the attorney handling Mr. Fremgen's --

7 THE COURT: All right. Come on up here,
8 Mr. Fremgen. Remain standing while the oath is
9 administered to you, then be seated, please.

10 THE WITNESS: All right.

11 **MARK FREMGEN,**
12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 THE CLERK: Be seated. State your name and
15 spell your last name for the record, please.

16 THE WITNESS: Mark Fremgen,
17 F-r-e-m-g-e-n.

18 **DIRECT EXAMINATION**

19 BY ATTORNEY DRIZIN:

20 Q Mr. Fremgen, just to get you caught up to speed,
21 there are a number of binders that are
22 surrounding you.

23 A Okay.

24 Q They are numbered one through five. At various
25 points during this examination I may refer you to

1 an exhibit in those binders, and I'll just ask
2 that you pick it up and -- and locate it.

3 A Okay.

4 Q Okay? Where are you currently employed,
5 Mr. Fremgen?

6 A I'm currently the Family Court Commissioner for
7 Winnebago County, located in Oshkosh, Wisconsin.

8 Q Okay. Would you rather me call you Mark? Or
9 Mr. Fremgen? Does it matter to you? Or
10 Commissioner Fremgen?

11 A No. Mark is fine.

12 Q Okay. Thank you. Prior to becoming a
13 commissioner, um, so -- prior to becoming a
14 commissioner, is that -- is a commissioner like a
15 judge?

16 A Yes, to some extent. Although I'm not elected, I'm
17 appointed by the judges.

18 Q Okay. And prior to becoming com -- a
19 commissioner, where were you employed?

20 A I had been in a partner with the law firm of Kindt,
21 Phillips, Friedman and Fremgen for about five years.
22 Prior to that I was in solo practice for about --
23 little over three years. And then for ten years
24 prior to that I worked for the State Public
25 Defender's Office in Oshkosh.

1 Q And in your law firm practice with Kindt,
2 Fremgen, and the other partner, did you do
3 primarily criminal defense work?
4 A I would say about 60 percent. Fifty to 60 percent
5 was criminal.
6 Q And in your three years of solo practice, was
7 that primarily criminal work?
8 A About the same, 50 to 60 percent.
9 Q So would it be fair to say that you have -- the
10 majority of your work over the last 18 years has
11 been in criminal defense?
12 A Yes.
13 Q You did only criminal defense work at the public
14 defender's office?
15 A There was some other. I would say 90 percent of your
16 work in the public defender's office is criminal
17 defense.
18 Q Okay. Can you estimate how many criminal clients
19 you've represented in that timeframe?
20 A I have probably represented over six thousand. Or
21 had at least six thousand different cases. Sometimes
22 you have repeat clients. Um, about 50 trial -- jury
23 trials and hundreds of court trials.
24 Q And were you qualified to try serious felony
25 cases?

1 A I was on the State Public Defender's homicide list.
2 For a while I was on their 980 list, but I asked to
3 be taken off that list.
4 Q And for the ignorant like me, what's the 980
5 list?
6 A Oh, 980 is sexual predator, um, com -- commitment
7 cases.
8 Q Okay. Had you handled any serious cases
9 involving youthful offenders?
10 A Yes.
11 Q Okay. And by juvenile, I mean under the age of
12 18.
13 A Yes.
14 Q Okay. I want to focus you back to the year of
15 2006. Okay? Um, when did you first hear the
16 name "Brendan Dassey"?
17 A Well, I -- I heard on the news or on the radio that
18 he was involved in the Avery matter.
19 Q And had you been following the story of -- of the
20 disappearance of Teresa Halbach in beginning of
21 November?
22 A Not -- I wouldn't say in depth. I probably caught it
23 on the news before I switched over to Sports Center.
24 But other than that, that's probably when I heard
25 about it.

1 Q Um, did you know the arrest of Steven Avery?

2 A Yes. That was hard not to -- not to hear about.

3 Q Okay. Um, do you recall when you first became

4 aware that Brendan Dassey was being represented

5 by Mr. Len Kachinsky?

6 A Yes.

7 Q How did you become aware of that?

8 A I heard, um, an interview on the radio coming into

9 work one morning.

10 Q Okay. And do you recall, um, anything about that

11 interview?

12 A I recall him making a comment about how -- was

13 looking at -- looking at some sort of plea

14 negotiation for this case. Something like that.

15 Q So the first time you remember hearing about

16 Mr. Kachinsky was in connection with comments

17 about plea negotiations?

18 A Correct.

19 Q Okay. Did you find that odd?

20 A For me, yes, that would be odd to come out and talk

21 about pleading your client to a -- anything, having

22 just been appointed, or just retained, just hired by

23 the person. I find that odd.

24 Q Why?

25 A Well, there's a number of reasons. Number one, and

1 this isn't necessarily about Brendan Dassey, but in
2 any case --

3 ATTORNEY KRATZ: Judge, I'm sorry. If I
4 could just interpose. Is this a hypothetical
5 that doesn't have to do this case? That's what I
6 understood it to be.

7 Why something like that might be odd.
8 If it's why was Mr. Kachinsky's strategy odd,
9 then I have a specific objection.

10 THE COURT: I -- I took it to be a
11 hypothetical.

12 ATTORNEY KRATZ: Okay.

13 THE COURT: Go ahead and answer.

14 THE WITNESS: Okay. Um, the reason I
15 find -- I would find it odd, if any attorney came
16 out and, upon the eve of or subsequent to their
17 appointment or retaining, talking about plea
18 negotiations, is I -- I don't know if there's any
19 case that I've ever been involved in where I know
20 everything about the case in that 24-hour or
21 48-hour period, let alone a case where the
22 magnitude of discovery that would be involved in
23 a homicide, um, I -- I certainly thought it was
24 strange, and I would find it strange, for any
25 attorney to talk about plea negotiations

1 immediately being retained or -- or appointed.

2 Q (By Attorney Drizin) Now, you said that, um, it
3 would be odd to you, I believe you said. Um, had
4 you had any prior experience with Mr. Kachinsky
5 before you learned he was appointed on the
6 Brendan Dassey case?

7 ATTORNEY KRATZ: Objection. Irrelevant,
8 Judge.

9 THE COURT: Sustained.

10 Q (By Attorney Drizin) Did you know Mr. Kachinsky
11 before he was represented? Before he was
12 appointed to represent Brendan Dassey?

13 A Yes.

14 Q Okay. How did you know him?

15 A He'd been an attorney on the public defender list
16 when I first started at the public defender's office.
17 Public defender list is private attorneys that take
18 public defender cases.

19 Um, I'd seen him in passing in the
20 courthouse. Spoke to him at times in the
21 courthouse. Um, knew of him.

22 Q Had you ever co -- tried a case with him before?

23 A No.

24 Q Okay. Had you ever heard Mr. Kachinsky make
25 public comments about his client's guilt before?

1 ATTORNEY KRATZ: Objection. Irrelevant.

2 THE COURT: Sustained.

3 Q (By Attorney Drizin) You were appointed to
4 represent Brendan in August of 2006? Do I have
5 that right?

6 A If -- if that's what -- I don't remember the date.
7 But it was in the early fall of 2006. August or
8 September.

9 Q And what were the circumstances that led to your
10 appointment?

11 A The -- the head of the assigned counsel division at
12 the State Public Defender's Office in Madison had
13 called and asked if I would be willing to take over
14 representation.

15 Um, originally I had said no. And they
16 called back, I think, about a week later, and
17 indicated that they would like me to reconsider
18 that. And, um, I agreed to take on the
19 representation with some conditions.

20 Q And who did you replace on the Dassey defense
21 team?

22 A Len Kachinsky.

23 Q And what was your understanding of the
24 circumstances for his withdrawal from this case?

25 A I -- I guess at that time I was actually under the

1 impression he was asked to be removed.

2 Q Okay. And what was your understanding of his
3 circumstances behind that?

4 A Brendan had sent a letter to the Judge. There was
5 some hearing. Um, and I believe the -- at least I
6 was under the impression then that the Court had
7 instructed Attorney Kachinsky to withdraw.

8 Q Okay. And after you were appointed, how did
9 Mr. Edelstein get involved in the case?

10 A That was the condition upon my being appointed by the
11 State Public Defender. That they would allow me to
12 pick a co-counsel, and they would pay him as a --
13 actually, the way they set it up is they paid him as
14 an expert.

15 Q Okay. And what was his area of expertise? Why
16 did you select Mr. Edelstein?

17 A I had known Ray -- I started in 1990 at the public
18 defender's office, and he came to Oshkosh in '91.
19 And I'd known Ray for whatever that is. Fifteen, 16
20 years.

21 Um, he handles a lot of the more
22 complicated, complex, difficult cases, criminal
23 cases in Oshkosh, and I knew that he had been a
24 prosecutor before that having handled capital
25 offenses.

1 So I knew he had the -- certainly the
2 experience, um, to handle a case like this, and I
3 also knew him well enough that I could work with
4 him.

5 Q Okay. After you were appointed to represent
6 Mr. Dassey, did you contact Mr. Kachinsky for
7 some kind of a transfer of the files or --

8 A He may have actually contacted me first. I think, if
9 I recall, he contacted me about whether I would come
10 up or he would come down to drop off the file. He
11 eventually came down to my office and dropped off two
12 banker's boxes of files.

13 Q Did you have any discussions about the case at
14 that time?

15 A His -- he made -- didn't make a lot of comments about
16 the case other than, um, he told me -- he said, be --
17 beware of the family. That was his only comment to
18 me.

19 Q Okay. And -- and when he gave you these files,
20 um, what can you describe for me about what he
21 presented to you?

22 A It was essentially two boxes filled with papers.

23 Q Okay.

24 A Um, there was nothing organized about it. It took me
25 about two weeks. But I should be fair, at the same

1 time I was receiving a lot of additional discovery
2 from the DA's office.

3 So it took me about two weeks, down in
4 our basement conference room in our office,
5 putting everything into some sort of cohesive or
6 organized manner chronologically. The way I got
7 it from Attorney Kachinsky was just pretty
8 haphazard as far as -- my opinion as far as how
9 it was organized.

10 Q Now, how soon after you were appointed did you
11 receive discovery in this case?

12 A It would trickle in. But there -- but I was also --
13 I recall talking to Attorney Kratz who had indicated
14 at one point to come on over anytime I wanted to and
15 look at the file. If there's something missing,
16 they'll make copies for me. I did do that, I recall,
17 once.

18 I'd call. Um, I think I e- -- may have
19 e-mailed, and would ask for things that I thought
20 I was missing. I was missing items because of --
21 by putting it in chronological, I could see that
22 there were gaps in the chronol -- chronology of
23 the investigation. So they would just turn
24 around and send copies over to my office.

25 Q How early in the -- in the -- in your

1 representation did you receive CDs or DVDs of the
2 various interrogations of Brendan Dassey, and --
3 and the transcripts?

4 A Well, I believe that, um, there was -- the DVDs were
5 in Len's file. Not all the transcripts were in Len's
6 file.

7 Um, I recall contacting the DA's office
8 in Calumet, and at one point they sent me, um,
9 a -- a transcript -- even though I think I was
10 just missing parts of it -- they sent me a
11 transcript. And I don't recall which one.

12 Um, so if the question is how soon,
13 probably right away I did get the -- the DVD.
14 Actually, I burned -- or I had my sec -- I
15 shouldn't say I did. My secretary burned copies
16 for Attorney Edelstein as well.

17 Q And how soon after you were appointed do you
18 remember watching the DVDs of the various
19 interrogations?

20 A After I -- it took me a while -- as I said, a couple
21 weeks -- to get everything organ -- I wanted
22 everything organized before we started getting
23 involved in it.

24 Um, it was, uh -- I went out and saw
25 Brendan at the Sheboygan Detention Center, and

1 then I -- I watched the video, or the DVDs, that
2 same -- either that day or the next day.

3 Q Okay. As you -- after you watched the DVDs and
4 began reviewing discovery, did you come to some
5 assessment about what evidence the State would
6 likely use to prove Bren -- Brendan's guilt at
7 trial?

8 A Absolutely.

9 Q Is it fair to say that the statements were the
10 primary piece of evidence that they were going to
11 use?

12 A I would think so.

13 Q Okay. Prior to his withdrawal from the case,
14 Mr. Kachinsky had filed a motion to suppress
15 statements on -- in, um, February and in May --
16 in March, excuse me, of 2006; correct?

17 A Yes.

18 Q Okay. And that motion was lost?

19 A Attorney Kachinsky's motion?

20 Q Yes.

21 A Yes.

22 Q Okay. Um, so in addition to the March and the
23 February statements, were there other statements
24 that you reviewed that you had to contend with at
25 trial? That you thought you would have to

1 contend with at trial?

2 A There was a November statement in Marinette.

3 Q Okay.

4 A Um, there -- there was then, also, the May statement.

5 The videotaped statement. Um...

6 Q And were there some --

7 A And then -- oh, I'm sorry.

8 Q Sorry.

9 A I was trying to think of all the chronology first.

10 And then there was some -- anywhere between seven and

11 ten phone calls that we thought would become an

12 issue.

13 Q And some of those phone calls included telephone

14 calls from Brendan to his mother?

15 A Mother, grandmother, and cousin I think were the ones

16 that we thought would become issues.

17 Q But, in particular, phone calls from Brendan to

18 his mother, um, were problematic for Brendan?

19 A There were two. One in particular. But there were

20 two that I recall.

21 Q Okay. And why were they problematic?

22 A Well, the one in particular was what appeared to be a

23 unsolicited phone call to his mom, saying, I did some

24 of the things that they said I did.

25 Q Okay. And you said, "appeared to be

1 unsolicited." Did you later come to the opinion
2 that it was not unsolicited?

3 A Well, there was some reference in the videotaped
4 statement in May of the officers suggesting that
5 Brendan should call his mom so that she doesn't learn
6 this on the street, so to speak.

7 Q Okay. Um, so before the May statements, um --
8 nope, I'll strike that.

9 So the number of statements that you had
10 to contend with in this case grew as a result of
11 the events of May 12 through May 13?

12 A Yes.

13 Q Okay. And one of the first things that you
14 recognized in this case was you had to try to do
15 something about those statements; correct?

16 A Yes. Correct.

17 Q And that included revisiting Mr. Kachinsky's
18 motion to suppress? The February and the March
19 statements?

20 A Yes.

21 Q And you were going to take -- did you take some
22 action with respect to the May statements?

23 A Yes. We file -- I filed motions, um, in particular
24 in regards to that statement asking that the --
25 essentially asking the Court suppress it based on

1 ineffective assistance of counsel.

2 Q Okay.

3 ATTORNEY KRATZ: Can we be clear, Judge,
4 what statement we're talking about?

5 THE WITNESS: Oh, I'm sorry. The May --
6 I was talking about the May statement. The May
7 videotaped statement.

8 ATTORNEY DRIZIN: Why don't we --

9 ATTORNEY KRATZ: Which one?

10 ATTORNEY DRIZIN: -- do this. Can
11 you --

12 THE COURT: Just hang on. Can you be more
13 explicit?

14 THE WITNESS: The May 13, 2006,
15 videotaped statement.

16 Q (By Attorney Drizin) Okay. Why don't you take a
17 look at Exhibits 218 and 219 if you will. I
18 think they're in binder four.

19 A What's the number?

20 Q Two-eighteen and 219. Do you recognize these
21 documents?

22 A Yes.

23 Q And are these some of the motions that you filed,
24 um, to address the statements that Brendan had
25 made in this case?

1 A It is the -- to address the statements from
2 February 27 and March 1, and then, again, to address
3 the statement made on May 13.

4 Q Okay. Prior to filing this motion, had you
5 reviewed Mr. Kachinsky's performance at the
6 motion to suppress?

7 A I had received a transcript of that hearing and I
8 reviewed the transcript.

9 Q Okay. And, um, did you believe that
10 Mr. Kachinsky's performance at that motion to
11 suppress gave you grounds to try to reopen the
12 motion?

13 ATTORNEY KRATZ: Objection. Irrelevant,
14 Judge. Beyond the scope of this witness'
15 expertise.

16 THE COURT: I'm going to overrule that
17 objection.

18 THE WITNESS: Could you ask that again?
19 I'm sorry.

20 ATTORNEY DRIZIN: Can -- can you read
21 that back? I'm sorry.

22 (Question read back by the reporter.)

23 THE WITNESS: Yes.

24 Q (By Attorney Drizin) Can you take a look
25 specifically at paragraph four on Exhibit 219?

1 That'd be the second page.

2 A Yes.

3 Q Have you had a chance to review that?

4 A Paragraph four?

5 Q What --

6 A Yeah.

7 Q -- were some of the reasons you sought to reopen
8 that motion to suppress based on Mr. Kachinsky's
9 performance?

10 THE COURT: Wait a minute. Exhibit 219
11 concerns a motion to suppress for the May 13, 2006,
12 statements.

13 ATTORNEY DRIZIN: You're right, Judge.
14 I apologize.

15 THE WITNESS: Okay.

16 Q (By Attorney Drizin) What was your basis for
17 moving to suppress -- moving to reopen the motion
18 to suppress the February statements?

19 A Uh, the basis of the re -- of the motion was that our
20 contention was that Attorney Kachinsky had not
21 provided effective assistance of counsel as to that
22 motion by not, um, raising, at the suppression
23 hearing, the idea that this was the product of a
24 undue suggestion. So, therefore, not knowing and
25 intelligently made.

1 Q And if you look at page 218, did you also have
2 concerns about the way Mr. Kachinsky performed
3 with respect to **Miranda**-related issues?

4 A What page?

5 THE COURT: Do you -- do -- excuse me. Do
6 you mean Exhibit 218?

7 ATTORNEY DRIZIN: Exhibit 218. What did
8 I say?

9 THE COURT: Page.

10 ATTORNEY DRIZIN: Okay. Exhibit 218.
11 Thank you.

12 THE WITNESS: Yes, that's part of what
13 the arg -- well, that was part of our argument
14 for reopening the motion.

15 Q (By Attorney Drizin) What did you think of
16 Mr. Kachinsky's decision to concede that Brendan
17 was not in custody for the February interviews
18 and the March interview?

19 ATTORNEY KRATZ: Objection, Judge.
20 Calls for comment on the trial strategy with
21 another attorney.

22 THE COURT: That's sustained.

23 Q (By Attorney Drizin) Why did you want to reopen
24 the **Miranda** issues?

25 A We didn't feel that that was adequately explored by

1 Attorney Kachinsky at the original motion.

2 Q And -- and in what way was it not adequately
3 ex -- was it explored at all by Mr. Kachinsky in
4 the earlier motion?

5 ATTORNEY KRATZ: Judge, once again, if I
6 may, if this is being offered, um, as evidence of
7 Mr. Fremgen's performance, that is, whether he
8 performed deficiently or not, which is one claim
9 in this hearing, I don't have an objection. If
10 he's being asked to comment upon Mr. Kachinsky's
11 performance in the handling of the previous
12 motion, then I would renew my objection.

13 THE COURT: Counsel?

14 ATTORNEY DRIZIN: Judge, this -- this
15 relates to, um, the adverse effect of
16 Mr. Kachinsky's performance and how it affected
17 Mr. Fremgen's performance which we are going to
18 explore.

19 Um, what Mr. Kachinsky did had a direct
20 adverse and prejudicial effect on both Brendan
21 Dassey and Mr. Fremgen's performance.

22 THE COURT: Objection's sustained.
23 Besides, the motion speaks for itself --

24 ATTORNEY DRIZIN: Okay.

25 ATTORNEY KRATZ: And was --

1 THE COURT: -- as exhibits do.

2 ATTORNEY KRATZ: And wasn't it heard by
3 the Court and decided?

4 THE COURT: I think so.

5 ATTORNEY KRATZ: I suspect it was.

6 Q (By Attorney Drizin) Um, you stated that the
7 basis for reopening this motion was ineffective
8 assistance of counsel; correct?

9 A Correct.

10 Q Okay. What, in particular, was the basis for
11 that ineffectiveness claim?

12 ATTORNEY KRATZ: Objection, Judge. That
13 does call for a legal conclusion and this Court
14 did rule on that exact issue in this motion.

15 ATTORNEY DRIZIN: I understand that,
16 Your Honor, but he's allowed to tell me what his
17 thinking was when he filed a motion. It's not
18 very well spelled out in the motion.

19 THE COURT: Well, I think it is. And just
20 for the record, it's Exhibit 219. The objection's
21 sustained.

22 Q (By Attorney Drizin) Shortly after you became
23 involved in this case did you seek a -- a
24 professional evaluation of Brendan?

25 A I did.

1 Q Okay. And was that with respect to Brendan's
2 suggestibility in part?

3 A Yes. In part.

4 Q Okay. And had there been any other such
5 evaluations done prior to your involvement in the
6 case?

7 A I wasn't aware of any.

8 Q Okay. And, um, who did you retain?

9 A Dr. Robert Gordon from Janesville.

10 Q Okay. And, um, for what purpose?

11 A Well, two-fold, actually. When I -- when I spoke
12 with Dr. Gordon I wanted him to evaluate Brendan just
13 from the standpoint of basic competence. Um, but
14 also to evaluate him on the idea that the statements
15 that he gave were the product of undue suggestion.

16 Q Okay. Dr. Gordon's a forensic clinical
17 psychologist; correct?

18 A I believe so.

19 Q Okay. And what was his main focus going to be in
20 his evaluation?

21 A Well, I believe it would have been on the statements
22 themselves, and -- and I wanted to allow Dr. Gordon
23 to have a -- as much latitude, but I had indicated to
24 Dr. Gordon that one of my issues or concerns was that
25 the statements were partly due to undue

1 suggestibil -- or undue suggestion by the -- the --
2 by the officers and -- and that he might -- Brendan
3 might be open to suggestibility.

4 Q Okay. And did you contemplate Dr. Gordon also
5 opining on the way in which the police
6 interrogation tactics may have taken advantage of
7 Brendan's suggestibility?

8 A That was my understanding.

9 Q Okay. Now, um, you also filed a motion to
10 suppress the May 13 statements; correct?

11 A Yes.

12 Q And that would be Exhibit 219?

13 A That's correct.

14 Q Okay. Prior to filing this motion did you do
15 research on whether or not ineffective assistance
16 of counsel could be a basis for a motion to
17 reopen -- excuse me -- for a motion to suppress
18 statements?

19 A Maybe not in that limited context, but I did do a --
20 research on the issue of ineffective assistance of
21 counsel as a pretrial motion, yes.

22 Q Okay. And what did you find?

23 A I found that there were no cases on point in
24 Wisconsin that I could find other than some dicta
25 from a case that I cited.

1 Q Now, this was somewhat of a novel theory;
2 correct?

3 A Yes.

4 Q Okay. And at the time you filed the motion based
5 on ineffective assistance grounds did you believe
6 you had a basis to file a motion on voluntariness
7 grounds?

8 A As -- the problem that -- you know, first -- I guess,
9 first of all, I'm going to premise my answer by
10 indicating that a lot of this was done collectively.
11 Um, I -- I certainly don't want to take all the
12 credit for coming up with ideas, but when -- when
13 I -- Ray and I would talk, we would try to come up
14 with different ideas on all the different issues that
15 we were facing, and this was really the only way we
16 thought we could get into this statement, because it
17 didn't appear to either of us that there was
18 anything -- anything that would be considered
19 overreaching by the State.

20 From everything that we could tell, this
21 was, in essence, Brendan contacting the police,
22 via Attorney Kachinsky, to make a statement. It
23 wasn't as if the police came knocking on his door
24 and forced him to say this. That was our
25 impression from reviewing all of the discovery

1 that we had related to this issue.

2 Q Okay. And at the time that you made these
3 decisions with regard to how to proceed with
4 respect to the May statements, you believed you
5 had every document to describe the events or
6 every -- every piece of information that had
7 described the events that occurred on the weekend
8 of May 12?

9 A Yes.

10 Q Okay. Have you recently discovered that that's
11 not the case?

12 A Yes.

13 Q What documents and what information did you not
14 have prior to filing your motion to suppress the
15 May statements?

16 A Um, well, what you provided to us, that there was a
17 videotaped interview of Brendan by Investigator Mike
18 O'Kelly who was working for or hired by Attorney
19 Kachinsky.

20 Q Had you asked for any and all materials of the
21 defense investigator in this case?

22 A I don't know if I asked specifically to Attorney
23 Kachinsky for -- for that particular -- you know, all
24 the investigative materials. When I received
25 everything, including a packet from Attorney

1 Kachinsky that said, "investigation," I assumed
2 Attorney Kachinsky's not going to withhold anything
3 from me as Brendan's newly-appointed defender, so I
4 assumed I had everything.

5 Q And that videotaped statement on May 12 from
6 Mr. O'Kelly was not among the materials he
7 produced?

8 A No, it was not.

9 Q Okay. Were there any other documents that were
10 not produced to you that you've recently learned
11 about?

12 A Some e-mail exchanges between Mr. O'Kelly and
13 Attorney Kachinsky, and either -- I can't recall if
14 it was Attorney Kachinsky, or Mr. O'Kelly, and law
15 enforcement.

16 Q Um, and do you recall what those e-mails
17 concerned?

18 A I believe it concerned either -- well, it concerned
19 setting up an interview with Brendan at the Sheboygan
20 Detention Center where he could be allowed to bring
21 in a computer and -- a laptop and some other items.
22 A video camera.

23 And then a -- an e-mail exchange whereby
24 Attorney Kachinsky -- I believe it was with one
25 of investigators, I don't believe it was with the

1 prosecutor's office, I believe it was an
2 investigator, either Fassbender or Wiegert, I
3 don't recall which one -- about Brendan will be
4 able to provide more information to sustain
5 probable cause for a new search warrant at the
6 Avery location.

7 Q That was an e-mail of May 5 from Mr. Kachinsky to
8 Mr. Wiegert you're referring to?

9 A I don't have it in front of me but that -- that
10 sounds correct.

11 Q And Mr. Kratz was copied on that e-mail?

12 A Pard me?

13 Q Mr. Kratz was copied on that e-mail?

14 A I don't have it in front of me. If I do, I could
15 tell you. I -- I don't remember.

16 Q I'll put it in front of you.

17 A Okay.

18 Q But having reviewed these new documents that you
19 did not have before, okay, um, did they round out
20 your picture of what occurred during the weekend
21 of May 12?

22 A It changed the picture of what occurred in my mind.

23 Q How?

24 A Up until that point it was my impression and my
25 belief that Attorney Kachinsky just did a very poor

1 job. I -- I didn't -- couldn't believe any attorney
2 would, you know, for lack of a better term, sick
3 there own client on the wolves, so to speak.

4 Um, but that's the way this seemed to
5 appear, that there was really no agreement --
6 that didn't seem to be any agreement -- at least
7 nothing provided to me in the materials from
8 Attorney Kachinsky, that Mr. Dassey was going to
9 get some sort of a significant deal to provide
10 this additional videotaped statement.

11 And from all of the indication prior to
12 the -- seeing the O'Kelly tape, was that it just
13 seemed like a very ill-advised or poor choice on
14 Attorney Kachinsky's part to -- to contact law
15 enforcement to set up another video statement in
16 that it's not going to help Brendan. And, for
17 the most part, it probably's going to hurt him.

18 Q Okay.

19 ATTORNEY KRATZ: Judge, before going on
20 to the next question, uh, at this point, on
21 behalf of the State of Wisconsin, I would like to
22 renew our motion for the release of those
23 privileged logs.

24 Um, this witness has now opined that the
25 information that he did have in his possession as

1 of the time of the filing of the motion was
2 deficient, that it did not include some documents
3 in what Mr. Fremgen has now said did not include
4 some prior statements of Mr. Dassey.

5 Uh, this Court knows that we have
6 anticipated this very moment occurring in this
7 hearing, that Mr. Fremgen and others, but
8 Mr. Fremgen, specifically, would necessarily need
9 to indicate what documents and information he did
10 have in his possession in order to render the
11 opinion of not only ineffective assistance,
12 but -- of Mr. Kachinsky -- but what Mr. Fremgen
13 was going to do.

14 Um, although, Judge, we are not privy to
15 the information within the documents, within the
16 privilege log, they have been identified by
17 defense, and in their description and
18 identification, we have a reason to believe that
19 they include information that was in the
20 possession of Mr. Fremgen that includes a prior
21 statement or statements of Mr. Dassey.

22 Therefore, ask the Court to reconsider
23 its earlier ruling. We thought it was relevant
24 all along. I think it's inescapable now that
25 we're entitled to that information.

1 THE COURT: Response?

2 ATTORNEY DRIZIN: It's still not
3 relevant. I'm asking him about how it would
4 affect his decision with regard to a motion to
5 suppress statements that occurred on May 13 and
6 that followed a May 13 statement.

7 Um, what Mr. Kratz is referring to,
8 information that he should not have been entitled
9 to but was inadvertently disclosed, has nothing
10 to do with the decisions that Mr. Kachinsky
11 made -- excuse me -- Mr. Fremgen made with regard
12 to whether or not -- um, what basis he had to
13 move to suppress the May 13 statements.

14 So I don't believe that it has opened
15 the door at all. I was very careful in cabining
16 his testimony.

17 THE COURT: All right. The Court has
18 previously ruled on several exhibits that were part
19 of a so-called privilege log. The Court ruled at
20 that time on a motion in limine brought by the
21 State. The motion in limine simply means, in this
22 instance, that the State wished to have these
23 documents. The privilege log had been prepared by
24 the defense.

25 Uh, in Wisconsin, the attorney/client

1 privilege, as I understand it, has to be waived
2 by the client. That is the only one that has a
3 right to waive it.

4 The Court has looked at the documents in
5 the privilege log. Two of them intimately
6 involve the attorney/client privilege. I ruled
7 at that time that that privilege had not been
8 waived and those documents would not be released.
9 That ruling remains unchanged today.

10 I see no waiver here of any privilege by
11 this client. Consequently, those documents are
12 going to remain under seal.

13 ATTORNEY KRATZ: If -- if I may, Judge,
14 although not releasing the content of those
15 documents, would the Court consider releasing the
16 nature of those documents so that as they may
17 relate to this witness' claim of, if I would have
18 had so and so, here's what I would have done,
19 that we're at least able to intelligently
20 question this witness about that.

21 I'm not looking for the words,
22 themselves, or the privileged information. I'm
23 looking for the description of what those
24 documents are so that I may perform my
25 cross-examination.

1 THE COURT: Given the nature of the
2 documents, I -- I -- I don't think that would be
3 practicable. So the short answer is, no.

4 ATTORNEY DRIZIN: I'm sorry. Can you
5 read back the question that's on the table?
6 (Wherein question is read back by the
7 reporter.)

8 ATTORNEY DRIZIN: I thought there was
9 another question after that, but -- No? Okay.
10 I'm sorry.

11 THE WITNESS: I thought I did.

12 Q (By Attorney Drizin) You can answer that
13 question, Mark.

14 A I thought I did.

15 Q Oh.

16 A I don't know. I thought I had said that it -- I --
17 well, I thought I said it -- I wouldn't necessarily
18 say it rounded out.

19 Q Okay.

20 A But it would have changed my --

21 Q Okay. How would it --

22 A -- emotion --

23 Q How would it have changed your approach with
24 respect to the May 13 statements?

25 ATTORNEY KRATZ: And now, Judge, I -- I

1 will move, um -- or excuse me -- I will object as
2 irrelevant as the May 13 statement was not into
3 evidence in this case. Although relevant for
4 Mr. Kachinsky, it is certainly not for this
5 motion or discussing the merits of the May 13
6 motion.

7 THE COURT: I'll --

8 ATTORNEY DRIZIN: I was --

9 THE COURT: -- sustain the objection.

10 ATTORNEY KRATZ: Thank you, Judge.

11 ATTORNEY DRIZIN: Judge, can I be heard
12 on that, please?

13 THE COURT: Go ahead.

14 ATTORNEY DRIZIN: Okay. The May 13
15 statements were directly relevant to this
16 situation because it was the May 13 statements
17 that led to the May 15 phone calls, and ---
18 excuse me -- May 13 phone calls, and, um, had
19 Your Honor heard the arguments that Mr. Fremgen
20 was going to make about the May 13 statements and
21 the May 13 phone calls in light of what he -- was
22 kept from him, I think Your Honor would have come
23 down with a very different decision based upon
24 what Mr. Kelly did to Brendan in that video.

25 So it's directly relevant. Just because

1 the State chooses not to use a piece of evidence
2 at trial, doesn't mean that -- that they have
3 cured a problem which is, in part, of their own
4 making.

5 That evidence affected trial strategy,
6 that evidence affected the way Mr. Fremgen
7 approached the motions to suppress, and it --
8 it -- he's going to talk about a lot of the
9 prejudicial effects of having lost that motion to
10 suppress. A motion that we believe he would have
11 won had he seen that video.

12 THE COURT: The objection is sill -- still
13 sustained.

14 Q (By Attorney Drizin) With respect to the May 13
15 phone calls, Mr. Fremgen, okay, did you
16 ultimately move to suppress those statements?

17 A I -- I don't know if it was a formal motion. I
18 think, prior to trial in a motion in limine, though,
19 we may have -- if I had the motions in limine in
20 front of me I might be able to better answer that.

21 But I -- I recall there was -- we had
22 arguments before the Court prior to testimony on
23 one of the days on that particular issue. But
24 I -- it may have been in response to the motion
25 in limine that we had filed.

1 Q Okay. Had you had the video of Mr. O'Kelly
2 interrogating Brendan Dassey on May 12 would it
3 have affected your decisions with regard to the
4 May 13 telephone confession?

5 A Yes.

6 Q How?

7 A As I indicated before, one of the issues, or one of
8 the problems, that -- that Ray and I saw in -- in
9 arguing about the May 13 video was that there was
10 nothing we saw, found, or discovered from all the
11 information that was provided to us that pointed to
12 any sort of overreaching by the State. That the
13 State was involved, whatever, you know, law
14 enforcement was involved in something that
15 essentially made that statement an involuntary or
16 unknowing statement by Brendan.

17 The phone calls were even more difficult
18 because -- well, first of all, there's a Court of
19 Appeals case in Wisconsin that essentially
20 indicates that it's relevant and it's admissible,
21 um, and there really isn't a lot to argue to keep
22 it out, um, again, because the person has
23 voluntarily picked up the phone, and made the
24 call, and -- and said whatever they said that's
25 incriminating on the -- on the -- on the phone

1 call that's being recorded by whoever. By the
2 jail staff or whoever.

3 And so I -- I think we were left with
4 just trying to argue -- making arguments of
5 general relevance or, um, arguing undue
6 prejudice, which is, I think, what we were left
7 with, again, 'cause there's no overreaching that
8 we saw with the State.

9 The case law's pretty clear. You're in
10 jail, you make a phone call, you're subject to
11 tape recording. You know, beware what you say.

12 From the -- the video -- and -- and the
13 only thing -- well, you've referenced -- you
14 refer to it as documents. The only thing that I
15 received from you, besides the motion that you
16 provided to the Court on a CD, was three DVDs of
17 interview with Mr. O'Kelly and Brendan. And
18 that's it.

19 Um -- oh, I'm sorry, and a -- a -- a
20 transcript of the -- that video.

21 So those were the only items that you
22 had provided to me. That video, at first blush,
23 one of the thoughts that crossed my mind was, at
24 this point, I would have altered my position
25 on -- on the May 13 video, and everything that

1 came out of that, including the comment at the
2 end where the officers suggest that Brendan
3 should call his mom so that she doesn't hear it
4 on the street or that it come from him language.

5 Q How? How would you have altered your motion to
6 a -- to a -- a -- to include the new information
7 about the Michael O'Kelly video?

8 A Well, I certainly would have tried to. I should
9 point out that, obviously, I'm not the one that makes
10 the call. That's up to the Judge.

11 But my, um, argument would be different,
12 and it would involve, now, some, what I believe
13 would be, State action. And that is that, at
14 that point, Attorney Kachinsky and -- and his
15 investigator, who is actually acting in his -- on
16 his behalf, and -- and is -- Brendan's actually
17 his client, no -- no different than Attorney
18 Kachinsky's client -- had, in effect, been
19 setting Brendan up to act on behalf of law
20 enforcement.

21 Basically, they were acting on their
22 behalf to try to get Brendan to make another
23 incriminating statement that could be used to --
24 I think in one of the e-mails that Len said to
25 help get a better plea agreement. But in the

1 long run is going to help law enforcement in
2 their case against Steven Avery. That's how I
3 would have approached it differently.

4 At that point I think that, in effect,
5 Attorney Kachinsky and Mike O'Kelly had violated
6 Brendan's Sixth Amendment right to counsel. And
7 that's how I would have couched it.

8 Q Would it have also --

9 ATTORNEY KRATZ: I'm sorry. I'm sorry,
10 Judge. If -- if I may, I'm at least going to
11 object, um, at -- at this point as -- um, 'cause
12 I was waiting for the legal basis to challenge a
13 phone call, um, under these circumstances, and --
14 and -- and hadn't heard that. That's what I
15 thought the question was. Certainly the answer
16 didn't include -- include it.

17 And, therefore, Judge, I believe it to
18 be nonresponsive. If there is either case law or
19 a legal basis upon which to exclude a phone call
20 on issues of either agency, voluntariness, or
21 even adopting the Sixth Amendment, uh, I want to
22 see that. And without that, Judge, then it is
23 irrelevant.

24 THE COURT: What's irrelevant? The answer?

25 ATTORNEY KRATZ: Yes. And the question

1 as it turns out. If -- if he asks how you would
2 have done this differently, that presupposes that
3 Mr. Fremgen knows of some legal basis that that
4 phone call can be excluded. I know of none. I
5 haven't seen one.

6 But if Mr. Fremgen knows of one, that
7 was the answer I was anticipating.

8 THE COURT: All right. First of all,
9 the -- the objection, nonresponsive, belongs to the
10 questioner, not to you.

11 Secondly, I understood Mr. Fremgen's
12 answer, and you are correct in the sense that it
13 certainly weaved its way far from the intent of
14 the question. But I'm not going to -- I'm going
15 to overrule your objection.

16 ATTORNEY KRATZ: All right. Thank you,
17 Judge.

18 Q (By Attorney Drizin) Having seen the video of
19 Michael O'Kelly's interrogation of Brendan on May
20 12, do you believe that that video would have
21 given you additional or grounds to challenge the
22 statements and the phone call on the basis of
23 voluntariness grounds?

24 ATTORNEY KRATZ: Object as to the
25 statement, Judge, not the phone call. That's

1 irrelevant.

2 THE COURT: Sustained.

3 ATTORNEY KRATZ: This Court's found
4 that.

5 Q (By Attorney Drizin) The phone call, then, on
6 voluntariness grounds?

7 A So the question's as to the phone call?

8 Q Yes.

9 A I don't think the two are separate.

10 Q Thank you. So would that have given you a basis
11 to challenge the phone calls, the telephone
12 confession, on voluntariness grounds?

13 A Well, I would have to answer yes. It would pro --
14 I -- maybe even the better answer is it might provide
15 a better argument.

16 Q Okay. Well, what about the phone call? When --
17 you just saw the phone call in the last -- I
18 mean -- I'm sorry. The video of Michael O'Kelly.
19 The first time you saw that was when?

20 A I'd say three weeks ago.

21 Q Okay. And what was your immediate reaction upon
22 seeing that phone call?

23 A The video?

24 Q Yes. I'm sorry. The video.

25 A I was shocked.

1 Q Why?

2 ATTORNEY KRATZ: Objection, Judge,
3 unless it relates to the anticipated motion to
4 suppress the phone call. Everything --

5 THE COURT: I --

6 ATTORNEY KRATZ: -- else about that's
7 irrelevant. They've been bootstrapping that on
8 that 15-second call for two days now. That's why
9 I'm objecting.

10 THE COURT: Well, I'm not sure they've been
11 bootstrapping. But we certainly are -- we certainly
12 have paid a lot of attention to this. I'm going to
13 sustain the objection.

14 Q (By Attorney Drizin) You discussed a motion to
15 suppress on voluntariness grounds. You discussed
16 a motion to suppress on sixth Amendment grounds.
17 Is that correct? What would the basis be of
18 moving to suppress the statement on Sixth
19 Amendment grounds?

20 A You -- you mean I had said that?

21 Q Said that.

22 A I didn't discuss that with anyone --

23 Q No.

24 A I --

25 Q You said that -- (unintelligible).

1 A (Unintelligible) -- thought.

2 COURT REPORTER: One at a time, please.

3 Q (By Attorney Drizin) What would been -- what
4 would have been the basis for moving to suppress
5 it on Sixth Amendment grounds?

6 A Again, it was just a thought of response to reviewing
7 that -- the video of the Mike O'Kelly and Brendan
8 that, in effect, Len had no longer been, in my
9 opinion, representing Brendan Dassey. Appeared to me
10 now that he was working for the State.

11 Q And the same answer would go with regard to
12 Mr. O'Kelly?

13 A Absolutely. As -- as the investigator hired by
14 Attorney Kachinsky, he's under the same obligations
15 Attorney Kachinsky is.

16 Q Would you have taken any other actions as a
17 result of viewing that video?

18 A Well, I certainly would have provided a copy of the
19 video to the Court and to counsel. Um, one other
20 possibility would be that -- and that's where, um, my
21 thought process was once I saw that video -- was that
22 anything that occurred after the video I would
23 make -- I would try to make the argument that they
24 were all interrelated and connected so that once
25 there was a violation, the violation continued until

1 such time as Attorney Kachinsky was no longer
2 representing Mr. Dassey.

3 Q Would you have hired a psychologist to evaluate
4 Brendan Dassey and to talk about how the tactics
5 used by Michael O'Kelly on May 12 might have
6 affected the voluntariness of the phone calls,
7 the telephone confessions, on May 13?

8 A I may not have hired an a -- an -- a different
9 expert, but I would likely have asked Robert Gordon
10 if -- if that's something he could look at as well.

11 Q Would you have filed any motions with respect to
12 Mr. Kratz's actions with regard to the May 12
13 video?

14 A If there were any e-mails that were exchanged, and
15 we'd -- I didn't have anything to indicate that --
16 that the State was involved in that process, again, I
17 would probably think of moving to ask the Court for
18 special prosecutor, or recusal, those types of
19 motions.

20 Q You now have a May 5 video from Mr. Kachinsky to
21 Mr. Wiegert; correct? E-mail. May 5 e-mail from
22 Mr. Kachinsky to Mr. Wiegert; correct?

23 A I -- did -- yes, I saw that.

24 Q Okay.

25 A I don't --

1 Q Let me show --
2 A -- have it, actually.
3 Q -- let me show it to you. Could you look at
4 Exhibit 338, please? Binder five. When you've
5 had a chance to review, Mark, please just signal
6 to me.
7 A Okay.
8 Q Did you have this e-mail prior to the time that
9 you filed your motions in this case?
10 A No, I did not.
11 Q This is one of the documents that I've -- I sent
12 to you when I sent along the Michael O'Kelly
13 video; correct? Or maybe --
14 A I think, subsequent, you had sent an e-mail with some
15 other attachments, including this e-mail --
16 Q Okay.
17 A -- yes.
18 Q Okay. And what is the significance of this
19 document to you?
20 A Well, as I was saying before, it appears at this
21 point that Attorney Kachinsky, in my mind, is no
22 longer working for Brendan, but working for the
23 State.
24 Q And Mr. Kratz is copied on this e-mail? In the
25 cc line?

1 A Yes.

2 Q Okay. Knowing that Mr. Kratz was aware of
3 Mr. Kachinsky and Mr. O'Kelly's activities with
4 respect to this May 5 e-mail, at least, would you
5 have filed any particular motions to the Court
6 concerning Mr. Kratz's actions?

7 ATTORNEY KRATZ: Objection. Calls --

8 THE COURT: I --

9 ATTORNEY KRATZ: -- for a legal
10 conclusion, Judge.

11 THE COURT: Well, it -- it -- it's very,
12 very speculative.

13 ATTORNEY KRATZ: You know, what --
14 what -- is he getting at prosecutorial
15 misconduct? That certainly isn't part of a
16 motion that's before this Court if he is.

17 THE COURT: I'm going to sustain the
18 objection.

19 Q (By Attorney Drizin) Having seen the May 12
20 video of Mr. O'Kelly, um -- before I go there,
21 um, I want you to take a look at document 340,
22 please. Exhibit 340.

23 A Okay. Okay.

24 Q Have you had a chance to review this, Mark?

25 A I did.

1 Q Um, this is an e-mail dated Monday, May 8, 2006,
2 at 8:37, from Michael O'Kelly to Investigators
3 Dederling and Fassbender?

4 A Yes.

5 Q And Investigators Dederling and Fassbender were
6 investigators working on the Dassey case?

7 A Yes. I -- I do recall Fassbender. I -- I don't know
8 Detective Dederling's involvement. I can't recall his
9 extent, but, um, Special Agent -- I don't know if
10 that's what they go by -- but Fassbender was involved
11 as one of the lead investigators.

12 Q Okay. And what is your understanding of what's
13 transpiring in this e-mail?

14 ATTORNEY KRATZ: Objection. Calls for
15 speculation, Judge.

16 THE COURT: Unless there's a foundation,
17 for this it -- it does call completely for
18 speculation.

19 Q (By Attorney Drizin) Did you ever receive this
20 e-mail, Mark?

21 A No.

22 Q You've never seen this before?

23 A Yes, I have seen it before.

24 Q You've never -- you never saw it before the time
25 you filed your motions in this case?

1 A Correct. I had not.

2 Q Okay. How does this document affect your

3 thinking about how you would have filed your

4 motions in this case if at all?

5 A I think it would just -- it's additional -- my

6 opinion, again, is the same as it was before.

7 Michael O'Kelly is -- has the same responsibilities

8 as the attorney does, and was essentially working

9 outside of that relationship and appeared to be

10 working more with the State than for Brendan Dassey.

11 Q And so this would have been another piece of

12 information you would have used to establish

13 State action in your motions?

14 A Correct.

15 Q You're an officer of the court; correct?

16 A Yes.

17 Q You're now a commissioner as well?

18 A Yes.

19 Q You've reviewed that May 12 video of Mr. O'Kelly?

20 A Yes.

21 Q Have you taken any steps to bring any

22 disciplinary actions against Mr. Kachinsky?

23 ATTORNEY KRATZ: Objection. Irrelevant,

24 Judge.

25 THE COURT: Sustained.

1 ATTORNEY KRATZ: Certainly beyond this
2 hearing.

3 Q (By Attorney Drizin) Mr. Fremgen, prior to the
4 beginning of the trial in the Brendan Dassey
5 case, did Mr. Kratz try to persuade you to
6 convince Brendan to take a plea in this case?

7 A I don't know if I would call it persuade me. There
8 was an offer, and it was suggested that it was a fair
9 offer, but that's -- I think all prosecutors suggest
10 that their offers are fair.

11 Q I'd like to show you, um, if I -- if you will,
12 Exhibit 229, please?

13 A Okay.

14 Q Have you had -- why don't you have -- take a
15 chance, if you would, to review it. It's a
16 lengthy -- somewhat lengthy e-mail from Mr. Kratz
17 to you. Unless you already know what it's about.
18 I'm going to focus your attention to the second
19 page of Exhibit 229.

20 A Okay.

21 Q Okay. And this is a -- an e-mail from Mr. Kratz
22 to you dated November 30, 2006?

23 A Yes.

24 Q Nine o'clock -- 9:12 in the morning?

25 A Yes.

1 Q Okay. Do you remember receiving this e-mail?
2 A Yes.
3 Q Okay. And would you consider this sort of an
4 opening salvo for plea discussions between
5 Mr. Kratz and you?
6 A Well --
7 Q How would you character -- what is the
8 significance of this e-mail to you?
9 A Well, I think Attorney Kratz wanted me to know that
10 his case against Mr. Dassey was pretty much airtight,
11 and that if we wanted to make a deal, this is the
12 time to make it. Prior to the Avery trial.
13 Q Okay. And did Mr. Kratz use the existence of the
14 May telephone confessions from Brendan to his
15 mother as part of his, you know, discussion with
16 you?
17 A Yes.
18 Q Okay. And, in fact, that's the first specific
19 piece of evidence that he cited was the phone
20 calls to the mom --
21 A Actually --
22 Q -- in this --
23 A -- I think the first was the May statement to police.
24 Q Okay.
25 A And then phone call to mom.

1 Q Then the phone call to mom. Um, and he told you
2 that it would -- his opinion that these
3 statements had no chance of being declared
4 involuntary; correct?

5 A In his opinion, yes.

6 Q Right. Now, prior to the trial in this case,
7 okay, you assessed the State's case against
8 Brendan Dassey; correct?

9 A Yes.

10 Q And one of the things that you and Mr. Edelstein
11 discussed is the effect of these phone calls
12 should they be played in Brendan's case; correct?

13 A Yes.

14 Q Okay. What was your assessment of the impact of
15 these phone calls?

16 ATTORNEY KRATZ: Judge, if he could
17 be --

18 Q (By Attorney Drizin) May 13 phone call.

19 THE COURT: All right.

20 Q (By Attorney Drizin) Telephone confession from
21 Brendan to his mother.

22 A That one, in particular, we both thought was rather
23 damning and something that we, despite putting both
24 our heads together, couldn't really come up with any
25 way to defend against. Effectively defend against.

1 Q (By Attorney Drizin) You had no answer for how
2 to deal with that phone call?
3 A No.
4 Q Had you had Mr. O'Kelly's video, had you known
5 about it, would you have had an answer for that
6 phone call?
7 A Possibly.
8 Q Now, in fact, at Brendan's trial that phone call
9 was played. The May 13 phone call was played;
10 correct?
11 A Correct.
12 Q And it was referenced first when the State tried
13 to impeach Dr. Gordon; correct?
14 A It was brought up by, I believe, with Dr. Gordon,
15 correct.
16 Q And, um, then it was used to impeach Brendan
17 Dassey; correct?
18 A Yes.
19 Q And it was also referenced by Mr. Fallon in the
20 closing argument of this case; correct?
21 A Correct.
22 Q Okay. And when Brendan was cross-examined with
23 it, the tape was actually played for the jury to
24 hear?
25 A Correct.

1 Q Now, in your pretrial assessment of this case you
2 believed that the playing of that tape would be
3 damning; correct?

4 A Yes.

5 Q When it was actually played at trial, did it have
6 that effect on the jury in your opinion?

7 THE COURT: I'm going to interpose my own
8 objection. I don't care what his opinion is. The
9 jury -- the jury gave a verdict in this case. His
10 opinion doesn't count at this stage.

11 ATTORNEY DRIZIN: Okay. Judge, would
12 now be a good time to break before I go into
13 Mr. Fremgen?

14 THE COURT: Sure.

15 ATTORNEY DRIZIN: Thanks.

16 THE COURT: Back at one.

17 ATTORNEY TEPFER: Can we take care of
18 one minor housekeeping matter? During the
19 redirect of Dr. Leo we neglected to --

20 COURT REPORTER: Can you use the mic,
21 please?

22 ATTORNEY TEPFER: Okay. I'm sorry.
23 Sorry. This is Josh Tepfer. Um, during the
24 redirect of Dr. Leo, we forgot to move in, um,
25 Exhibit 367, which is the *Reid Interrogation*

1 *Manual* he referred to. I'd like to move that
2 into evidence.

3 ATTORNEY KRATZ: That's fine.

4 THE COURT: All right. Received. Three
5 sixty-seven.

6 ATTORNEY FALLON: To the extent that it
7 was -- of the questioning.

8 THE COURT: Yeah. To the extent that --
9 yeah, I think he testified specifically from a
10 couple of pages.

11 ATTORNEY FALLON: Right.

12 ATTORNEY TEPFER: Correct. That's fine.

13 ATTORNEY FALLON: So for that purpose we
14 have no objection.

15 THE COURT: All right. It's admitted for
16 that purpose.

17 ATTORNEY TEPFER: Thank you.

18 (Recess had at 11:59 a.m.)

19 (Reconvened at 1:07 p.m.)

20 THE COURT: Good afternoon, Mr. Fremgen.
21 Why don't you resume the witness stand. Go ahead.

22 Q (By Attorney Drizin) Mr. Fremgen, I -- I want to
23 clear up, for the record, what phone calls we're
24 talking about, okay?

25 Would you take a look at Exhibit No. 70,

1 please, in binder number two. Um, have you had a
2 chance to take a look at this exhibit? I believe
3 the bottom of page five is -- is where the most
4 probative part of this is.

5 A Okay.

6 Q Okay. Is this a transcript of the phone call
7 between Brendan and his mother on May 13, 2006?

8 A It -- it -- that's what it says on the phone call.
9 Brendan to mom, 5/13/06.

10 Q Did you prepare this transcript?

11 A I don't know if this is one that I did or Ray
12 Edelstein's secretary might have done.

13 Q Okay. Um, was there --

14 A I shouldn't say what I did. Either the State did or
15 Ray Edelstein's secretary did. But they had also
16 provided us transcripts at one point of the phone
17 calls that they intended to call.

18 Q And do you know whether this transcript or the
19 State's transcript was used, um, when this was
20 introduced into evidence?

21 A I don't recall.

22 Q Okay. Do you remember after reviewing this
23 that -- that you thought this was a fair and
24 accurate recollection of what took place in that
25 phone call?

1 A It appears to be, yes.

2 Q Okay. Now, I'd like you to focus on page five,
3 please?

4 A Okay.

5 Q Um, beginning with, um, Brendan's mother saying,
6 "How many years are you going to get?" Do you
7 see that? At the top? It's page five of Exhibit
8 70. Page five on the bottom?

9 A Oh, yes. I'm sorry, yes.

10 Q Okay. And I'd like you to read from -- not out
11 loud, but read to yourself, um, from the
12 bottom -- from, "How many years are you going
13 get?" to the bottom of that transcript.

14 ATTORNEY KRATZ: Judge, I'm sorry.
15 Does -- just for clarification, does Counsel know
16 what portions of this were played at the jury
17 trial itself? Is that included in this document?

18 ATTORNEY DRIZIN: Here's the problem,
19 Judge. We got a transcript of the trial, and the
20 portions of this tape that were played at trial
21 were never transcribed by the reporter. Um, so I
22 don't know what was played at trial, and I need
23 it to be part of the record for this matter.

24 Um, I don't know that I need to play the
25 whole transcript, but I do think I'd like at

1 least the parts that were played at trial, if
2 Counsel knows, to be part of this record. It's
3 not in the trial transcript.

4 ATTORNEY FALLON: This is Mr. Fallon
5 answering. Um, I know of a very clear
6 recollection that we did not play the entire
7 15-minute phone call. And my recollection is it
8 was a very brief segment. It could have been
9 less than a minute.

10 Um, I believe our -- Counsel's
11 suggesting that it's the last exchange at the
12 bottom of page five. Um, it begins, "You
13 wouldn't have had to have been scared," and ends
14 with, uh -- right here?

15 ATTORNEY KRATZ: Yes.

16 ATTORNEY FALLON: "Yeah. So who's all
17 home," or something to that phrase, which,
18 admittedly, that's the best of my recollection.

19 THE COURT: Where are we going?

20 ATTORNEY DRIZIN: I need this in the
21 record and it's not in the record currently,
22 Judge, because it wasn't transcribed at the time
23 of trial.

24 THE COURT: Are you asking to have the
25 entire trans--- the entire transcription here in the

1 record, or that portion that was played at the
2 trial?

3 ATTORNEY DRIZIN: Well, I think I would
4 like both to be part of the record for this
5 proceeding just to have a complete record. Um,
6 and because we don't know exactly what part was
7 played, um -- but I'm not going to focus on
8 anything other than what's on page five with
9 Mr. Fremgen. So...

10 THE COURT: Which portion on page five?
11 Just that (unintelligible) --

12 ATTORNEY DRIZIN: From --

13 THE COURT: -- portion?

14 ATTORNEY DRIZIN: From the words, "how
15 many years are you going to get" down to the
16 bottom of the page.

17 THE COURT: That's basically from the top
18 of page five to -- down to the bottom. Any
19 objection, Counsel?

20 ATTORNEY KRATZ: No.

21 THE COURT: All right. Go ahead.

22 ATTORNEY DRIZIN: So I'm going to read
23 this in the record, if that's --

24 THE COURT: Go ahead.

25 ATTORNEY DRIZIN: -- okay. Um, on May

1 Q (By Attorney Drizin) Um, on May 13, Brendan's
2 mother says: "How many years are you going to
3 get?"

4 Brendan says: "I don't know."

5 Um, mom says: "Well, what did you say
6 to me? Well, what -- what did you just say to
7 me?"

8 Brendan says: "That they, Teresa's
9 family, might ask the judge to be lenient or
10 whatever. They asked me if I wanted to be out to
11 have a family later on."

12 Brendan's mother says: "I don't hate
13 you, Brendan, I hate Steven, all right?"

14 Brendan says: "Yeah."

15 Brendan's mother says: "I wish you
16 would have told me, okay?"

17 Brendan says: "Yeah."

18 Brendan's mother says: "How did you
19 answer the phone at six o'clock when Mike called
20 then?"

21 Brendan says: "They told me that they
22 looked up at the records and that he didn't
23 call."

24 Brendan's mother says: "Huh?"

25 Brendan says: "They said that they had

1 the record and --"

2 Brendan's mother says: "What about when
3 I got home at five o'clock? You were here."

4 Brendan says: "Yeah."

5 Brendan's mother says: "Yeah. When did
6 you go over there?"

7 Brendan says: "I went over there
8 earlier and then came home before you did."

9 Brendan's mother says: "Why didn't you
10 say something to me then?"

11 Brendan says: "I don't know. I was too
12 scared."

13 Brendan's mother says: "You wouldn't
14 have had to have been scared because I would have
15 called 9-1-1 and you wouldn't be going back over
16 there. If you would have been here, maybe she
17 would have been alive yet. So in those
18 statements, you did all that to her too?"

19 Brendan says: "Some of it."

20 Brendan's mom says: "Did he make you do
21 it?"

22 Brendan says: "Yeah. So who's all
23 home?"

24 Is that your recollection of the -- the
25 most relevant part that was played at trial,

1 Mr. Fremgen?

2 A I -- I thought that maybe there was some of the --
3 page four.

4 Q From where on page four do you -- do you think?

5 A That section -- my recollection was about -- that
6 part that was played involved a section where
7 Brendan's mother says, "I'm your mother. Why didn't
8 you come to me?"

9 Um, but I -- I -- again, I don't
10 remember all of this conversation. I know it
11 wasn't the full tape that was played, but there
12 was -- my recollection -- my recollection was
13 that part of that involving, "I'm your mother.
14 Why didn't you tell me," um, was brought up,
15 but...

16 ATTORNEY DRIZIN: Does Counsel have any
17 objection to me reading in from that line,
18 "Brendan, I am your mother," through where we
19 first started?

20 ATTORNEY FALLON: Counsel, I'm looking
21 at my notes and we're looking at the trial
22 transcript.

23 ATTORNEY DRIZIN: Um-hmm.

24 ATTORNEY FALLON: And there's a lots of
25 questionings regarding a statement on May 15, not

1 May 13 in the testimony of Mr. Dassey and --

2 ATTORNEY TEPFER: What page are you
3 looking at?

4 ATTORNEY FALLON: We just have an
5 excerpt, unfortunately. And there's reference to
6 a May 15 audio.

7 ATTORNEY DRIZIN: I think there's reference
8 to both.

9 ATTORNEY KRATZ: There is.

10 ATTORNEY FALLON: There might -- I
11 believe that's true.

12 ATTORNEY DRIZIN: Yeah. So on page 54, the
13 first question you asked, is about May 13. And so
14 the -- the questions in the transcript immediately
15 following the tape that was played at that portion
16 related to the May 13 phone call.

17 This is the transcript of April 23,
18 2007, on pages 50 through 54 are questions
19 relating to the first phone call.

20 I mean, if Counsel will stipulate to the
21 portions that were played at trial, because they
22 were not recorded, I think we can -- we can move
23 on to my questions for Mr. Fremgen.

24 ATTORNEY KRATZ: On page 54, Counsel, it
25 says the first tape we played -- it was on -- it

1 was a May 15 tape. So are you including excerpts
2 of that as well?

3 ATTORNEY DRIZIN: No.

4 ATTORNEY KRATZ: How come?

5 ATTORNEY DRIZIN: I'm only interested in
6 the May 13 phone call.

7 ATTORNEY KRATZ: I'm sure you are. But
8 that's not a complete record, then.

9 ATTORNEY DRIZIN: If you want to find the
10 May 15 phone call and tell me what portions were
11 played, you know, I have no problem with that.

12 ATTORNEY KRATZ: I'll direct my comments to
13 the Court. Judge, it seems like Counsel's trying to
14 recreate the record. It is what it is. If it's
15 deficient, so be it.

16 He's not going to just read some of it
17 and say, well, let's just assume that's what
18 happened at trial. If the record isn't clear
19 about that -- it's clear that the May 15 and the
20 May 13 telephone calls were played from page 54
21 of the transcript. That notwithstanding, I --
22 I'm not sure what the --

23 ATTORNEY DRIZIN: Judge, if the record's
24 deficient, I think we have to -- we have to create
25 it. We have to fix it. I -- I wasn't there.

1 ATTORNEY KRATZ: We have to create it?

2 ATTORNEY DRIZIN: We have to -- well, I'm
3 not creating it.

4 THE COURT: Just -- if it's deficient, how
5 do we know what was played?

6 ATTORNEY DRIZIN: Because we have three
7 people in this room -- four people -- who were here.
8 And one remembers on the stand how much was played.

9 THE COURT: I don't think any of -- well,
10 I -- I'm speaking only for myself as one of those
11 people. I -- I certainly don't remember with any
12 absolute particularity.

13 I was just looking at my notes here, and
14 I have some video time starts and endings, but I
15 don't know that that is going to be terribly
16 helpful.

17 ATTORNEY DRIZIN: Um, perhaps Mr. Fallon
18 and Mr. Kratz could go look at the tape that they
19 played, or the portions of the tapes, and before
20 we're done here, we can fill in the record with
21 both 5/13 and 5/15.

22 I'm not trying to hide 5/15. It was
23 played at trial. I just want the Appellate Court
24 to know what happened.

25 THE COURT: I didn't record any start and

1 stop times for -- for any other transcripts, at
2 least that I can see, that are related to this. Um,
3 Mr. Kratz, do you have a recollection of -- with any
4 specificity of what was played?

5 ATTORNEY KRATZ: I do not, Judge. But
6 Mr. -- in all candor, Mr. Fallon did the
7 examination. He has his notes. He's going over
8 them now.

9 And perhaps you can ask Mr. Fremgen,
10 which is appropriate to do that, and then at the
11 conclusion of this examination we can revisit
12 this issue. I don't have any problem with that.

13 I wouldn't have start and stop time
14 notes, Judge, 'cause Mr. Fallon did the
15 examination.

16 ATTORNEY FALLON: Would the Court want a
17 comment from me or --

18 THE COURT: Sure.

19 ATTORNEY FALLON: I -- I -- I've looked
20 at my notes and this is -- I -- I have no
21 reference in my notes to May 13, but it's obvious
22 that something was played on May 13, um, by
23 virtue of the transcript.

24 My note reflects, um, several comments
25 attributed to the May 15 phone call. But I -- I

1 have no independent note of May 13. My -- my
2 hunch is that that was a spur of the moment idea
3 for cross, and I was aware of a segment of a
4 tape, and it was played, but I don't have a
5 independent note of that. Only a note of May 15.

6 ATTORNEY DRIZIN: Do -- you know, can you
7 tell by looking at the tapes that, you know, what
8 the start and stop times were?

9 ATTORNEY FALLON: Not on the audios.
10 We -- we did that for the videos. But the audios
11 were very short, brief, um --

12 ATTORNEY DRIZIN: Well, I would ask that I
13 be allowed to enter the entirety of Exhibit No. 70
14 into evidence through Mr. Fremgen. Um, and do we
15 have -- do we have a transcript of the other May
16 15 -- I have no problem with stipulating to any
17 transcript from May 15 into the record. One
18 prepared by the State.

19 THE COURT: Any objection?

20 ATTORNEY KRATZ: No.

21 THE COURT: With the understanding that no
22 one is contending here, or at least I don't think
23 anyone is, that the entirety of Exhibit No. 70 was
24 played at trial. A portion of it was.

25 ATTORNEY DRIZIN: That's right.

1 ATTORNEY KRATZ: That's fine, Judge.

2 THE COURT: Okay.

3 ATTORNEY DRIZIN: Okay.

4 ATTORNEY KRATZ: That's appropriate.

5 ATTORNEY DRIZIN: Thank you.

6 Q (By Attorney Drizin) Now, um, having reviewed
7 the segment of the May 13 phone call,
8 Mr. Fremgen, um, beginning, um, at the top of
9 page five with the word, "How many years are you
10 going to get?" through the bottom. Okay? Do you
11 recall what portion of this section you believed
12 to be particularly damning?

13 A Well, actually, my recollection was it may not be the
14 words as much as hearing mom basically ask Brendan,
15 did you do it, or did he -- in here, did he make you
16 do it, and Brendan say, yeah.

17 And at one point I thought that they
18 played a part where she was kind of sobbing or
19 almost crying, but it's not on this page.
20 There's some reference to another page.

21 Again, I don't recall -- I know the
22 whole thing wasn't played, but there was some --
23 and I could be getting May 15 mixed up, because
24 there was some comment about, you could have been
25 a hero, Brendan. That was also played, and that

1 was pretty dramatic as well.

2 Q Um, with regard to Exhibit No. 70 and the
3 conversation, are you referring to Brendan's
4 statement where he says, "Some of it."?

5 A The last page -- the last, like, three exchanges, or
6 two exchanges:

7 "Why didn't you say something to me?"

8 "I don't know. I was scared."

9 "You wouldn't have had to be scared."

10 Um, at the end of the conversation
11 she -- Mrs. Janda says:

12 "So in those statements, you did all
13 that to her too?"

14 Brendan's answer: "Some of it."

15 "Did he make you do it?"

16 "Yeah."

17 I think that -- that -- but, again, I
18 think it's also hearing the voices, and it's
19 hearing mom say it to son, and son answering to
20 mom, which is, you get -- you don't get the
21 context from the piece of paper that you do from
22 the actual voices on the tape.

23 ATTORNEY DRIZIN: Um, I don't want to
24 play the tape for you because it's a long tape.
25 Um, but I would ask that Exhibit No. 238, which

1 is the audio of the May 13 phone call, also be
2 admitted for the purpose of completing the record
3 with the understanding that the entire audio was
4 not played.

5 THE COURT: Any objection from the State?

6 ATTORNEY KRATZ: No.

7 ATTORNEY DRIZIN: Okay.

8 THE COURT: All right. It's received.

9 ATTORNEY DRIZIN: Thank you.

10 THE COURT: What was the number again?

11 ATTORNEY KRATZ: Two thirty-eight.

12 ATTORNEY DRIZIN: The Exhibit 70, and then
13 the audio was 238.

14 THE COURT: Thank you.

15 ATTORNEY DRIZIN: Thank you, Your Honor.

16 Q (By Attorney Drizin) And you and Mr. Edelstein,
17 as you looked at Exhibit No. 70, and the audio,
18 238 -- Exhibit No. 238 -- didn't really have an
19 answer to how to deal with this phone call at
20 trial?

21 A To any of the phone calls.

22 Q To any of the phone calls. Okay. How did you
23 come to select Dr. Gordon as your expert?

24 A Shortly after I was appointed by the public
25 defender's office I attended their annual criminal

1 defense conference in Milwaukee, and noted a breakout
2 session with two doctors. Um, I don't remember the
3 person from Florida, but there was a -- a
4 psychologist from Florida and Dr. Gordon from
5 Janesville, along with an attorney from either the
6 public defenders' Madison office or Beloit office,
7 putting on a presentation about undue influence,
8 coerced statements, those types -- that type of
9 topic.

10 And just, I think, ironically it was
11 they spoke at length about suggestibility and --
12 and involuntariness of statements. So I
13 approached Dr. Gordon after the program and
14 mentioned that I have a -- a case that might be
15 right on point with this topic of their
16 presentation.

17 And -- and we began to discuss this over
18 the phone a few times, by e-mail, and then I --
19 he agreed to do an evaluation. And -- and that's
20 how I had the -- sought the appointment of
21 Dr. Gordon through the public defender's office
22 as an expert.

23 Q Now, um, after you saw this presentation, what
24 did you think, particularly, he could do to
25 assist Brendan in -- at trial?

1 A Well, the topic that they were discussing was
2 essentially -- they could have called it the Brendan
3 Dassey case for the most part, because it would --
4 talked about characteristics of -- of sophistication
5 or lack of sophistication, the age, um, and how some
6 people are easily manipulated by persons in
7 authoritative position, such as law enforcement,
8 and -- and how they can be open to suggestion.

9 And so the topic just kind of lent
10 itself to this case, and it was -- seemed like
11 the perfect place to at least begin looking for
12 an expert.

13 I knew I needed an expert. I wasn't
14 going to simply walk in with a -- a book or a
15 para -- a chapter from a book and say I want to
16 use this to cross-examine the officers.

17 Q I want you to take a look, if you will, at
18 Exhibit No. 72. And I'm going to focus on the
19 bottom paragraph of that exhibit. But you can
20 read the whole thing. Okay?

21 A Okay.

22 Q Now, would it be fair to say that this is a
23 letter dated October 10, 2006, sent by you to
24 Dr. Robert Gordon?

25 A Yes.

1 Q And would this have been essentially your re--
2 retention letter of him?

3 A Yes. Yes.

4 Q And in this letter you asked Mr. Gordon, or you
5 told Mr. Gordon, what you wanted him to focus on
6 in his -- his evaluation of Brendan?

7 A We had had -- we had had other discussions, um, and
8 phone calls, but essentially what I did was
9 memorialize what we had talked about so that it was
10 firmly in a letter explaining what I was -- wanted
11 him to do in regards to meeting with Brendan.

12 Q And you wanted him to evaluate Brendan's
13 suggestibility; correct?

14 A Yes.

15 Q You wanted him to opine about whether Brendan
16 provided a questionable confession based upon
17 improper police questioning?

18 A Correct.

19 Q And you wanted him to give this testimony both at
20 a pretrial hearing?

21 A Correct.

22 Q On voluntariness?

23 A Yes.

24 Q And also potentially at trial?

25 A Yes.

1 Q On reliability?

2 A Yes.

3 Q Okay. So it's fair to say that you wanted

4 Dr. Gordon to look at both Brendan's personal

5 characteristics as well as the tactics that the

6 police officers used during the interrogation?

7 A Yes.

8 Q I want to show you, if you will, Exhibit 215. Do

9 you recognize this document?

10 A Yes.

11 Q And is this a -- a letter from Dr. Gordon to you

12 dated November 15, 2006?

13 A It is.

14 Q And is this a report that Dr. Gordon had prepared

15 to you after he had met with and evaluated

16 Brendan Dassey?

17 A Yes.

18 Q Okay. Do you need to review this report or are

19 you fairly familiar with it?

20 A It's been a while since I last saw it, but if you

21 want to point me towards a particular area -- I think

22 it's rather long.

23 Q Yeah.

24 A Five pages long.

25 Q My question for you is, is when you received this

1 report, did you think that Dr. Gordon had
2 answered the two questions that you had posed to
3 him in your retention letter?

4 A For the most part.

5 Q Okay. Did he cite to you specific questions and
6 specific answers from any transcript that -- um,
7 any police interrogation transcript in this
8 report?

9 A Not in the report.

10 Q Okay. And did he talk at all about the
11 reliability of Brendan's confession?

12 ATTORNEY KRATZ: Objection, Judge. It was
13 a legal conclusion that this Court specifically
14 ordered would not allow into evidence. Reliability,
15 believability of the statements was not going to be
16 part of this case and so it's irrelevant.

17 THE COURT: Sustained.

18 Q (By Attorney Drizin) You had asked Dr. Gordon to
19 opine about reliability; correct?

20 A Yes.

21 Q And the Court had not yet made any rulings about
22 whether or not this was going to be an issue at
23 the time he prepared this report; correct?

24 A Correct.

25 ATTORNEY KRATZ: Objection. Irrelevant.

1 THE COURT: Well, he can answer that
2 question. Overruled.

3 THE WITNESS: Correct.

4 Q (By Attorney Drizin) The report contains a lot
5 of information about Brendan's personality?

6 A Yes.

7 Q It talks about tests that were administered to
8 him?

9 A Yes.

10 Q Those tests go to his suggestibility; correct?

11 A I think some are -- the way I was -- we discussed
12 the -- those tests. My understanding was that the
13 tests help create the foundation, not necessarily all
14 the tests relate to suggestibility.

15 For instance, I think there were a
16 character -- character assessment test, the MMPI,
17 an IQ test, or a variance of an IQ test, and when
18 I had met with Dr. Gordon after the evaluation
19 and we discussed all of these, essentially I
20 wanted him to teach me so I didn't look like I
21 didn't know what I was doing in --

22 Q Um-hmm.

23 A -- the courtroom on this topic, but so that we could
24 both have a -- during direct, it would come off being
25 smoother.

1 Um, my understanding from Dr. Gordon was
2 these all create this foundation where a person
3 might be more suggestible than a person who might
4 have a more moderately higher IQ, or a different
5 set of character traits, or different result from
6 the MMPI.

7 Q But you had hoped that Dr. Gordon would opine not
8 only about suggestibility but about the police
9 interrogation tactics and how they might have
10 taken advantage of Brendan's suggestibility;
11 correct?

12 A Correct.

13 Q And he did not do that at least in this report?

14 A Not in the report.

15 Q Okay.

16 A Not -- I shouldn't say that. Not specifically in the
17 report.

18 Q Okay. Now, I want you to turn, if you will, to
19 page 217. Exhibit 217.

20 A Okay.

21 Q Um, and I want you to focus, if you will, on page
22 two of the motion.

23 A Okay.

24 Q This is a brief you filed in support of
25 Dr. Gordon's testimony being admitted?

1 A Correct.

2 Q Okay. I apologize, Mark. I -- I actually want
3 you to focus on page -- Exhibit No. 216 first.

4 A Okay.

5 Q And this was a motion in limine that you filed
6 with respect to introducing Dr. Gordon's expert
7 testimony on suggestibility?

8 A Correct.

9 Q Okay. I'd like you to focus on page two of
10 Exhibit 216 and focus on paragraph four, please.

11 A Okay.

12 Q Based on your representations to the Court, you
13 expected Dr. Gordon to testify not only about
14 suggestibility but also about the ways in which
15 police questioning, specific questions, took
16 advantage of his suggestibility; correct?

17 A From those reviews of those two taped statements,
18 yes.

19 Q Okay. And if you look at paragraph nine;
20 correct? Have you seen it?

21 A Yes.

22 Q At least up until this point in time you -- you
23 expected Dr. Gordon to testify about the
24 reliability of Brendan's statements as well?

25 A That's what I was requesting, yes.

1 Q Yes. Now, Dr. Gordon gave a videotaped
2 deposition in this case; correct?

3 A Yes.

4 Q And that videotaped deposition was essentially,
5 um, your proffer of what his direct examination
6 would be in the motion hearing to admit his
7 testimony?

8 A Correct.

9 Q Okay. And, um, you prepared him for that, um,
10 direct examination?

11 A We did.

12 Q Okay. And you reduced that examination to
13 videotape and you gave it to Mr. Kratz; correct?

14 A Yes.

15 Q And when it was played in court, or when it came
16 to court, Dr. Gordon appeared and he was
17 cross-examined by Mr. Kratz at the beginning of
18 the hearing; correct?

19 A Correct.

20 Q Now, the video deposition of Dr. Gordon was in
21 March of 2007; correct?

22 A That -- that sounds right.

23 Q Okay. And during that videotaped deposition of
24 Dr. Gordon, he repeatedly insisted that he was
25 not an expert on police interrogation tactics;

1 correct?

2 A He did say that, yes.

3 Q More than once?

4 A Yes.

5 Q And you tried to push him, if you will, to talk
6 more about the specific questions and answers
7 that police officers -- questions the police
8 officers used in their various interrogations?

9 A In this particular case.

10 Q Yes.

11 A Yes.

12 Q And he resisted that pushing, if you will, by
13 you?

14 A I -- I don't know if he did. He might have. I just
15 don't recall that he resisted it as much as he would
16 answer it different than the way I wanted it to be
17 answered.

18 Q Okay. He never was able to cite to you, you
19 know, passages from the various interrogations,
20 um, during that videotaped deposition that
21 illustrated how the police officers may have
22 taken advantage of Brendan's suggestibility; is
23 that fair?

24 A That's my recollection.

25 Q Okay. Now, Dr. Gordon, um, during

1 cross-examination in this case by Mr. Kratz at
2 the pretrial motion, again specifically said, I
3 am not an expert in police interrogation tactics;
4 correct?

5 A He did.

6 Q And he was barred from testifying, if you will,
7 or that portion of his testimony was he was not
8 allowed to testify at trial on police
9 interrogation tactics?

10 A Correct.

11 Q So at least the second goal that you had hoped
12 Dr. Gordon would meet when you first retained him
13 back in October of 2006, Dr. Gordon was precluded
14 from testifying about; correct?

15 A Correct.

16 Q Okay. In fact, when you -- when Dr. Gordon was
17 asked by Mr. Kratz during the March 26, 2007,
18 hearing, um, questions about his expertise, on
19 page 23 he said:

20 "I am not an expert regarding police
21 interrogation. That would be a Dr. Richard Leo,
22 attorney, social psychologist, and sociologist at
23 the University of California in San Francisco.
24 He would be much more in a position to talk about
25 external factors."

1 Do you recall that testimony?

2 A I -- I recall that he said that, yes.

3 Q Okay. So as a result of the Court's rulings with
4 regard to Dr. Gordon's testimony on police
5 interrogation tactics, going into trial you did
6 not have an expert to talk about the police
7 interrogation side of the question of whether or
8 not Brendan's statements were voluntary or
9 reliable; correct?

10 A I didn't have an expert to talk about the
11 interrogation techniques.

12 Q That's right.

13 A Correct.

14 Q Okay. Now, Mr. Fremgen, I want to take you back
15 to January of 2007; okay? And I want you to
16 focus on, if you will, Exhibit 225.

17 ATTORNEY DRIZIN: Just a second, Your
18 Honor.

19 Q (By Attorney Drizin) I'd also like you to have
20 Exhibit 73 in front of you as well.

21 A Okay.

22 Q Okay. Start with Exhibit No. 73. Um, in January
23 of 2007, were you contacted by an attorney by the
24 name of Jerry Buting?

25 A I think I might have contacted him first.

1 Q Okay.

2 A Yeah.

3 Q And, um, what did you ask him when you contacted
4 him?

5 A I -- I think I had contacted him -- I -- I think it
6 actually started with contacts with Dean Strang. And
7 then I had a few e-mail back and -- exchanges back
8 and forth with Attorney Buting.

9 And, originally, I wanted to know if my
10 client was going to turn on their client. But
11 eventually it resulted in, after their trial was
12 either on -- under way or they knew there wasn't
13 going to be any witness testimony from Brendan,
14 um, there was an issue involving, if he were to
15 testify, an immunity issue, essentially.

16 So I had mentioned I was looking for a
17 federal case. I didn't know the name of it. I
18 remember it had something to do with Ollie North.
19 Jerry sent me a -- an e-mail with the case saying
20 this is the case you're looking for.

21 And that's how it started. And then,
22 um, at one point he sent me an e-mail about some
23 information on Dr. Larry White down in Beloit.

24 Q Okay. So before this e-mail with Mr. Buting on
25 the 17th of January, 2007, you had prior

1 discussions, either by e-mail or by phone,
2 with -- with Dean Strang about Dr. White?

3 A Not Dr. White, but about other --

4 Q Other --

5 A -- issues.

6 Q -- matters. Okay. And you, generally, had a
7 cooperative relationship with Dean Strang and
8 Jerry Buting throughout the course of your
9 representation?

10 A I -- I knew that -- that my client potentially was a
11 problem for them. So, certainly, I -- I -- it was an
12 arm's length-type of an arrangement.

13 But I never had a problem with either
14 one, and was willing to share information, that
15 wasn't going to hurt Brendan, with them, and when
16 they asked if -- straight out when -- on a -- on
17 a phone conference once whether, as Jerry put it,
18 is your guy going to rat on Avery, um, you know,
19 that's -- that's kind of the type of
20 conversations we --

21 Q Sure.

22 A -- had.

23 Q But you also had conversations about what kinds
24 of experts to use with respect to the false
25 confession theory in this case?

1 A Yes, we --

2 Q Good.

3 A -- we --

4 Q Okay.

5 A -- talked about that.

6 Q And at least as of January 17, 2007, Mr. Buting

7 sent you a summary of what Dr. Larry White was

8 expected to testify about in Steven Avery's

9 trial; correct?

10 A He -- he actually sent me an outline of some cases

11 and some issues that come up in false confession

12 cases that Larry White had put together for him and

13 Dean.

14 He sent it to me, I think, as an

15 attachment to one of the e-mails, um, and then

16 he -- either he sent it to me a second time or

17 Dr. Larry White sent me the same outline. But it

18 was more of an outline of cases. That's at least

19 to my recollection.

20 Q Well, take a look at Exhibit No. 73. Okay?

21 A Um-hmm.

22 Q Does this --

23 A Okay.

24 Q Does this refresh your recollection about whether

25 or not he sent you a disclosure about what he

1 anticipated Dr. White would testify to in the
2 Steven Avery case?

3 A Yeah. For them, yes.

4 Q Yes.

5 A He did say -- send an e-mail about that.

6 Q Okay.

7 A Correct.

8 Q And was the context of this along the lines of
9 you might want to consider Dr. Larry White as an
10 expert in your case?

11 A Correct.

12 Q Okay. And you knew from this report that
13 Dr. White was going to testify not just about --
14 actually, he wasn't going to testify about
15 suggestibility, was he?

16 A No.

17 Q He was going to be a expert on police
18 interrogation tactics and the effect that they
19 might have on a suspect?

20 A Assuming the Judge let it in, yes.

21 Q Correct. And Exhibit 225, if you will?

22 A Okay.

23 Q This is another e-mail you received from -- I
24 believe it's Jerry Buting? Although it's hard to
25 tell.

1 A It -- sure, it -- it looks like something I recall
2 getting from Jerry.

3 Q Okay. And -- and in addition to this summary of
4 disclosure of what Dr. White's anticipated
5 testimony would be, he began to send you an
6 outline of an argument about how to persuade the
7 Court to allow that testimony?

8 A Admissibility, correct.

9 Q Yes. Okay. And this was in January of 2007;
10 correct?

11 A Yes.

12 Q Okay. And at this time in January of 2007, you
13 still hoped that Dr. Gordon would be able to
14 fulfill the two roles that we talked about
15 earlier?

16 A Yes.

17 Q Okay. Now, on April 5, 2007, the Court
18 determined that Dr. Gordon could not testify
19 about police interrogation tactics because he was
20 not a social scientist. Do you recall that?

21 A Uh, I do recall that he wasn't allowed to testify
22 about that, but I don't remember what the basis was.
23 I'd have to look at the order.

24 Q Okay. Um, but the following day, on April 6,
25 2007, you were contacted by Jerry Buting; is that

1 correct?

2 A Possibly. I don't recall.

3 Q Would you take a look at Exhibit 78, please?

4 A Okay.

5 Q Actually, Exhibit 77 and 78. Okay?

6 A Okay.

7 Q Exhibit 77, um, do you recall receiving an e-mail
8 from Jerry Buting on April 6, 2007?

9 A Yes.

10 Q And this was an e-mail that he sent you the day
11 after the Court's ruling with regard to the scope
12 of Dr. Gordon's testimony?

13 A Yes.

14 Q Okay. And he had learned about the Court's
15 ruling by reading a newspaper article, and he
16 wanted to tell you how important it was for you
17 to have a police interrogation expert?

18 ATTORNEY KRATZ: Judge, I'm sorry. I'm
19 going to object both as to hearsay and I can't think
20 of anything less relevant than Mr. Buting's opinion
21 as to trial strategy in Brendan's case. For that
22 reason, Judge, I'm going to object.

23 ATTORNEY DRIZIN: It's --

24 THE COURT: What's it being offered for?

25 ATTORNEY DRIZIN: It's being offered for

1 Mr. Fremgen's ineffectiveness in this case. That he
2 had a particular expert that he wanted to testify
3 about something. That that expert was -- was not
4 qualified to testify about police interrogation
5 tactics. And that he was repeatedly offered an
6 expert who was willing to do so, um, at little or no
7 charge.

8 THE COURT: Well, I'm not sure at this
9 stage I accept the character -- the complete
10 characterization that you're propounding here. But
11 I'll overrule the objection and he can testify.

12 Q (By Attorney Drizin) What -- what was the
13 significance of this e-mail, Mark?

14 A The e-mail indicates from Attorney Buting that I
15 should contact Dr. White. That if a problem comes
16 down with the Court thinking this is last minute,
17 they're not going to let us use Dr. White, that we
18 should argue that we weren't allowed to do so because
19 they had -- had him retained on for Avery. Now that
20 Avery's done, he's no longer -- or they're allowing
21 us to contact Dr. White and use Dr. White.

22 Q Okay. And, um, the report underscores the
23 importance of having an expert talk about police
24 interrogation tactics as well; correct?

25 ATTORNEY KRATZ: Judge, once again, in the

1 opinion of Mr. Buting, as long as -- as long as --
2 as we understand that's what it's being offered for.

3 ATTORNEY DRIZIN: Right. In the opinion of
4 Mr. Buting.

5 THE COURT: All right.

6 THE WITNESS: In his opinion, yes.

7 ATTORNEY DRIZIN: Yes. Okay.

8 THE COURT: That's what it's being received
9 for.

10 ATTORNEY DRIZIN: Okay.

11 Q (By Attorney Drizin) Now, around this same
12 timeframe in early April of 2007, you and
13 Mr. Edelstein began to think that you might want
14 a police interrogation expert of your own;
15 correct?

16 A For another reason, but, yes.

17 Q Okay. And, um, what was the reason you wanted a
18 police interrogation expert?

19 A I think it was around the same time that Attorney
20 Kratz or Fallon had sent us a CV and, um, a summary
21 report from someone from the Reid Institute in
22 Chicago.

23 Q Okay. And in -- in -- that would have been a
24 report from Mr. Joseph Buckley?

25 A Yes.

1 Q Correct? And in response to that report from
2 Mr. Buckley, Mr. Edelstein was charged with the
3 task of trying to locate a false confession
4 expert?

5 A I wouldn't say so. He knew a -- an officer when he
6 was prosecutor in Oklahoma that might be able to help
7 him out because he'd been trained in Reid as well,
8 and was a training officer in Oklahoma for other
9 officers. So he thought maybe that officer might be
10 able to help out.

11 Q And you learned around the same time that
12 Dr. Gordon was prevented from testifying about
13 police interrogation tactics, and that you were
14 being, um -- that Jerry Buting was suggesting to
15 you Dr. White, that the friend of Ray Edelstein's
16 was not going to be able to be of assistance to
17 you?

18 A About a week-and-a-half later, yes.

19 Q Okay. Um, I want to -- you to focus, if you
20 will, on Exhibit No. 78. I want you to begin,
21 because these are in reverse order, um, with the
22 first e-mail on page two of Exhibit 78, which is
23 April 6, 2007, from you to Dr. Gordon.

24 Um, there's a response -- there's a
25 response of Dr. Gordon on April 6, 2007, to your

1 e-mail at 6:34 p.m.

2 And then the next day there's an e-mail,
3 April 7, 2007, from you to Dr. Gordon.

4 And then, finally, in the middle of the
5 page, there is a response on Sunday, April 8, at
6 7:46 in the evening from Dr. Gordon to you.

7 Those are the cluster of e-mails --

8 A Yes.

9 Q -- I'd like you to focus on.

10 A Yes.

11 Q Okay. Have you read them?

12 A Yeah.

13 Q Okay. Um, what's happening? What's going on in
14 this e-mail? In these e-mail exchange?

15 A In the first e-mail, Dr. -- well, I spoke to
16 Dr. Gordon in the e-mail about the, um, fact that he
17 was ordered to turn over his entire file on Brendan,
18 including the tests, and results of those tests, so
19 that I could provide that to the prosecutor's office.

20 Um, he responds informing me when he'll
21 be back. He was actually over, I think, in the
22 South Seas doing a program. A -- a training
23 program.

24 Um, I indicated that I was going to
25 contact Dr. White, and that I received Dr. Leo's

1 PowerPoint. Dr. Gordon had met Dr. Leo,
2 apparently, at a training program, and contacted
3 me one night, indicating that I should contact
4 Dr. Leo. He had put on a similar program about
5 suggestibility and -- and coerced or -- or forced
6 confessions.

7 So I contacted Dr. Leo, and he said he
8 had just done a program like that, and sent to me
9 a PowerPoint, and I sent the PowerPoint to Ray
10 to -- to review.

11 Um, Dr. Gordon thanked me for keeping
12 him in -- in the loop.

13 And in the last e-mail was just a
14 reminder I needed to have that, um -- those
15 documents from his file, or his entire file, at
16 the -- if he could get it FedExed or couriered
17 over to the -- the hotel we were staying at in
18 Madison to pick the jury, and I would give it to
19 the prosecutors at that time.

20 Q Okay. Um, do you know the name of the expert, or
21 the police interrogation, um, expert, that Ray
22 Edelstein was looking to hire?

23 A I -- I wouldn't call him an expert. I don't know who
24 he is. Other than he was an officer that worked with
25 Ray when Ray was prosecutor in Oklahoma City or --

1 Q But his point was --
2 A -- one of the --
3 Q -- he was going to --
4 A (Unintelligible.)
5 Q I'm sorry.
6 COURT REPORTER: One at a time.
7 ATTORNEY DRIZIN: I'm sorry.
8 THE COURT: Let -- let Mr. Fremgen finish.
9 ATTORNEY DRIZIN: Okay.
10 THE WITNESS: I -- I said Oklahoma City.
11 I think it's a county outside of Oklahoma City.
12 ATTORNEY DRIZIN: Okay. I apologize for
13 interrupting.
14 Q (By Attorney Drizin) But Ray was going to hire
15 him to talk about the police interrogation
16 tactics in this case?
17 A Even up until picking the jury, he was still talking
18 to this guy.
19 Q Okay. That was my next question. When you wrote
20 Dr. White, you told him, in April 7, 8 area, that
21 your expert had begged off; correct?
22 A Correct.
23 Q That was Dr. Gordon?
24 A Gordon, actually --
25 Q Yeah.

1 A -- yes.

2 Q Um, when did that expert first express
3 reservations about testifying?

4 A I -- my impression is he had reservations from the
5 very beginning, because he was a training officer for
6 the state of Oklahoma police. Um, so I -- I think he
7 had reservations from the beginning, but that he,
8 uh -- his comment was that if he was -- received
9 approval from the higher up, then he would be
10 inclined to do it for Ray.

11 Q Okay.

12 A That was my understanding.

13 Q But at least as of April 7, the status of this
14 expert was that he was not going to be able to
15 help you?

16 A We -- the official word was, don't consider me for
17 the trial. But Ray kept talking to him anyways
18 because there was that little opening of, unless you
19 really, really need me, give me a call. They're
20 friends --

21 Q Right.

22 A -- so I'm sure that he wanted to, you know, help out
23 his friend. And that's the reason why there was
24 always that little opening.

25 Q So you -- so, um, Mr. Edelstein was continuing to

1 court this friend of his to be an expert, or to
2 testify about police interrogation tactics up to
3 the start of the trial?

4 A I think even after the trial started, Ray was still
5 having connect -- contacts with him. Up until -- and
6 I don't remember which day it was, but at one point
7 we had a -- a -- a meeting in chambers about, um,
8 this Buckley individual. I think it was at that
9 point that either the State, or the Judge, or maybe
10 it was a little of both, said this person's not going
11 to testify, and so that issue was kind of a moot
12 point.

13 Q Okay.

14 A We were concerned about the State putting on
15 Dr. Buckley, and having someone to actually respond
16 to what Buckley was going to say. I -- I actually
17 shouldn't say -- I don't know if it's Dr. Buckley,
18 but I know it's Buckley.

19 Q Yeah, it's Mr. Buckley.

20 A Mr. Buckley.

21 Q Um, April 11, 2007, I'd like you to focus on
22 Exhibit No. 79, please?

23 A Okay.

24 Q You finally got a hold -- or you finally
25 contacted Dr. White; correct? I mean, is this --

1 is this a letter from you dated April 11, 2007,
2 to -- an -- an e-mail to Dr. Larry White?

3 A No.

4 Q I'm sorry. What is this?

5 A It's an e-mail from Dr. White to me.

6 Q Ah, you're right.

7 A In response to my e-mail dated April 10.

8 Q Okay. Um, which is on page two of Exhibit 79;
9 correct?

10 A Correct.

11 Q Okay. So on April 10, 2007, at 2:07 p.m., you
12 contacted Dr. White?

13 A Correct.

14 Q Okay. And you contacted him in the hopes that he
15 might be an expert witness for Brendan Dassey?
16 Or why did you contact him, Mark?

17 A Well, I -- I wouldn't actually say I was contacting
18 him to hire him or retain him to be an expert as much
19 as feeling him out. I certainly wanted to get
20 whatever he could offer me to help me. If he would
21 testify, that would be even better. Um, but I wanted
22 whatever information, whatever assistance, he could
23 provide me.

24 Q And in this --

25 A If that meant testifying or being an expert, that

1 would be one -- that'd be great as well.

2 Q But you talked to him specifically about paying
3 him in this first e-mail; correct?

4 A Sure. Sure.

5 Q Okay. Um --

6 A Just go down through the e-mail. I just want to
7 point out I didn't come right out to him and say, I'm
8 going to hire you, or I want to hire you. I
9 suggested that this is a public defender case, and
10 that I certainly would like to hire him, and if
11 nothing else, if he doesn't want to do this, I
12 wouldn't mind if he'd review that letter from the
13 Reid person and give me his impressions on it.

14 Q Okay.

15 A So if nothing else, I was hoping to get something
16 free out of it.

17 Q Um, and at the time of this correspondence in
18 April of 2007, the 10th and the 11th, had you
19 seen a draft of Dr. White's report that he had
20 filed in the Avery case?

21 A I don't know if it was filed, but I received
22 something from Jerry Buting, and then Dr. White sent
23 me the same thing.

24 Q Okay.

25 A Whatever that was. And it appeared to be an outline

1 of cases. The issues involving false confessions.
2 Um, some of it dealt with, I think, in broad scope,
3 what he would say if called to testify in the Avery
4 case.

5 Q And do you recall if that document had specific
6 parts of the various interrogations and Brendan's
7 answers in it?

8 A There were some, yes.

9 Q Okay. So on April 11, Dr. Gordon responded to
10 your initial e-mail; correct?

11 ATTORNEY KRATZ: Dr. White?

12 THE WITNESS: Dr. White?

13 ATTORNEY DRIZIN: Dr. White. I apologize.

14 THE WITNESS: He did.

15 Q (By Attorney Drizin) Okay. Um, and after you've
16 received the April 11 response of Dr. White, did
17 you have any further contact with Dr. White?

18 A No.

19 Q Okay. Um, ultimately, you decided not to retain
20 Dr. White to assist you in Brendan's case;
21 correct?

22 A Correct.

23 Q Okay. And Dr. White --

24 A Actually -- I'm sorry can I --

25 Q Sure.

1 A -- clarify? Not just Dr. White. We chose not to
2 retain an expert, period.

3 Q Okay.

4 A Okay.

5 Q Um, in the letter that Dr. White sent to you, uh,
6 he told you that he could be available to testify
7 in Brendan's case; correct?

8 A At \$125 an hour, correct.

9 Q Correct.

10 A Yeah.

11 Q And you had received another e-mail from -- or a
12 card -- you had -- you had contact with
13 Mr. Buting, um, about Dr. White's fees as well;
14 correct?

15 A I recall conversation that if need be, he would help
16 me smooth things out with the PD's office and get --
17 get it paid. Something like that.

18 Q And do you recall him telling you that -- that
19 much of the work that he had done in the Avery
20 case could be used already in the Dassey case?

21 A Yes, he did say that.

22 Q Okay.

23 A I don't agree, necessarily, but...

24 Q Okay. I want to ask you, um, Doctor -- excuse
25 me -- Mr. Fremgen, about, um, some of your

1 trial-related decisions in this case.

2 A Okay.

3 Q Okay?

4 A Can I put these away?

5 Q You can.

6 A Okay.

7 Q I apologize, Mark. I need one more document for

8 you to review. Document --

9 A Okay.

10 Q -- number 74. Okay. Exhibit No. 74 you're

11 looking at; correct?

12 A Yes.

13 Q Okay. Do you recall receiving this from

14 Mr. Buting?

15 A Yes.

16 Q Okay. And this is an e-mail dated March 22,

17 2007, at 7:53 in the evening?

18 A Yes.

19 Q Okay. Um, what did Mr. Buting tell you in this

20 e-mail?

21 ATTORNEY KRATZ: Objection. Irrelevant,

22 Judge.

23 THE COURT: What relevance does this

24 have?

25 ATTORNEY DRIZIN: It's just -- it just

1 closes up the conversation that Mr. Fremgen already
2 testified to about switching the tab from the
3 Dassey -- Avery case to the Dassey case.

4 THE COURT: Are you referring specifically
5 and only to the last paragraph?

6 ATTORNEY DRIZIN: That's all I care about,
7 Judge.

8 THE COURT: All right. With that
9 understanding, the objection's overruled.

10 ATTORNEY FREMGEN: The e-mail
11 essentially is that e-mail you were just
12 referencing about Dr. White not costing the
13 public defender much because most of his work had
14 been done already for Avery. And then some
15 com -- comments about areas to look into as far
16 as the questioning, their interrogation
17 techniques.

18 Q (By Attorney Drizin) And he also talks about how
19 Dr. White can probably finish a report fairly
20 quickly; correct?

21 A Yes, he says that.

22 Q Okay. Okay. I'd like you to turn to Exhibit
23 315, please.

24 A Okay.

25 Q I'd like you to focus, if you would, on page six,

1 chapter one, clip 37. So it's the 6th page. Do
2 you see that?

3 A Thirty-seven?

4 Q Number 37.

5 A Yes.

6 Q I'd like to play that clip for you and then ask
7 you some questions about it, okay?

8 A Okay.

9 ATTORNEY DRIZIN: Um, Alex, will you
10 play clip 37, please?

11 "Where do you think you're going?"

12 "I don't know."

13 "You're going to juvie. That's where
14 you're going. To the juvie jail. About 45
15 minutes away."

16 (Unintelligible.)

17 (Unintelligible.)

18 "What happens if he says..."

19 (unintelligible) "... story's different but he
20 says he -- he admits to him doing it?"

21 "What do you mean?"

22 "Like, if his story's different. Like,
23 I never did nothing or something."

24 "Did you?"

25 "Not really."

1 "What do you mean, 'not really'?"

2 "They got into my head."

3 "Huh?"

4 (Unintelligible.)

5 ATTORNEY DRIZIN: Okay. That's the extent
6 of the clip. Thank you.

7 Q (By Attorney Drizin) Um, do you recall this
8 section of the March 1 interrogation of Brendan
9 Dassey?

10 A Yes.

11 Q Okay. And do you recall discussions amongst you
12 and Mr. Edelstein about whether or not to use
13 this clip in your defense of Brendan?

14 A Yes.

15 Q Um, and was it Mr. Edelstein's opinion that you
16 should play this for the jury?

17 A Yes.

18 Q Why did he think it was important that you play
19 this for the jury?

20 ATTORNEY KRATZ: Objection, Judge.

21 We're -- it's hearsay. We can ask Mr. Edelstein. I
22 assume he's going to testify.

23 THE COURT: Sustained.

24 Q (By Attorney Drizin) Did you discuss with
25 Mr. Edelstein playing this clip for the jury?

1 A We did.

2 Q Okay. Ultimately, you decided not to play this
3 clip for the jury; correct?

4 A It was decided it would be my call.

5 Q Right.

6 A And I --

7 Q And -- and you made the decision not to play this
8 tape to the jury; correct?

9 ATTORNEY KRATZ: Judge, once again, I'm
10 going to interpose an objection. And I would like
11 to hear from Counsel, since they're also claiming
12 Mr. Edelstein is deficient, did they want to play it
13 or not? Which -- which one of the two is deficient?
14 They get to pick now.

15 THE COURT: Overruled. He can answer.

16 THE WITNESS: I don't remember the
17 question.

18 Q (By Attorney Drizin) Did you decide -- was it --
19 you made the call on whether to play this tape?

20 A I did.

21 Q And you decided not to play the tape; correct?

22 A This portion, correct.

23 Q Okay. And Mr. Edelstein had a different opinion
24 about whether or not to play this tape?

25 A He did.

1 Q Okay. Um, did you view this as a recantation of
2 his earlier confession?

3 A No, I didn't.

4 Q Okay. Why didn't you play this tape, Mark?

5 A I felt that mom coming in, and going up to Brendan,
6 and what it appear -- what it appeared to me as mom
7 realizing, my son just did something serious and now
8 he's going to jail.

9 I didn't want other jurors to see that,
10 and -- and have that same reaction that, as a
11 parent, could almost empathize that this is how I
12 would react if my son admitted a very serious
13 offense.

14 So rather than have that personalization
15 of the -- of the three-hour clip, or the
16 three-hour videotaped confession, I would
17 rather -- I wanted it just to be as sterile as
18 possible.

19 Brendan ask -- being asked the questions
20 by the officers, we could then try to
21 cross-examine the officers on the different
22 interrogation techniques, and -- and leave out
23 this idea that this is a -- you know, to
24 personalize this and make this as non-dramatic as
25 possible. I thought that there -- this made it a

1 more dramatic videotape with it in than with it
2 out.

3 Q So you didn't want to play one particular clip,
4 um, of an interrogation? Um, you rather have --
5 have the jury just see the interrogation played
6 from start to finish?

7 A I -- I didn't want the part where he's eating the
8 sandwich and drinking a soda in there either.

9 Q I understand that.

10 A But for -- not necessarily because it was boring and
11 long, but because it looked mundane.

12 Q Okay.

13 A But that -- that's the reasons why. I'd rather --
14 it's like an autopsy photo. I'd rather use the
15 autopsy photo than the actual crime scene, because
16 it's very, um -- it's almost mechanical. Photog --
17 the photographs of the autopsy versus the crime
18 scene. The crime scene brings more context, and more
19 drama, and more emotion.

20 And that's what this was bringing, was
21 emotion to the confession versus just the
22 question, answer, question, answer with the -- a
23 child who has some clear deficiencies.

24 Q This is the only time during the course of the
25 day of March 1. Is this the only time where

1 Brendan is allowed to be alone with his mother?

2 A I don't recall.

3 Q Do you recall any other times when he and his
4 mother are in the interrogation setting and the
5 police officers are not with them?

6 A No, I don't recall any other times. Other than the
7 night before when they were at the resort.

8 Q And when Brendan says, "They got to my head," or
9 that -- I think that's what he says. "They got
10 to my head." Is that the only place on the
11 entire interrogation video where he gives any
12 explanation for why he confessed?

13 ATTORNEY KRATZ: Judge, I'm going to
14 object. It's speculative and conclusory that
15 that's an explanation for why he gave his --
16 his -- his statement. I've got an equally
17 plausible explanation for that.

18 THE COURT: I understand in the past
19 it's been referred to as a recantation. I don't
20 think it's being characterized that way right
21 now.

22 I think the question is, is that the
23 only place where he said why he's implicated
24 himself in the crime. And I don't think that
25 characterizes it one way or another. So it's

1 overruled. You can answer that.

2 THE WITNESS: Up -- up to this point? I
3 can't point to any other places he would have
4 said it up to this point.

5 Q (By Attorney Drizin) Okay. Now, Mr. Fremgen,
6 we're winding down here, thankfully. Um, the
7 prosecution in its opening statement to the jury
8 laid out 19 factors that they believe were
9 corroborated in Brendan's confession. Do you
10 recall that?

11 A Nineteen facts? Yes.

12 Q Nineteen facts. And they made that in their
13 opening statement and they also made that in
14 their closing argument; correct?

15 A Yes.

16 Q And those 19 facts were sort of a blueprint, if
17 you will, for how they were going to demonstrate
18 that Brendan's confession was reliable?

19 A Correct.

20 Q Okay. You did not, at any point during the
21 trial, attempt to rebut each of those 19 facts;
22 correct?

23 A No. I don't agree.

24 Q Did you systematically address each of the 19
25 facts that they pointed out in their opening and

1 their closing?

2 ATTORNEY KRATZ: I'm going to object,
3 Judge, as irrelevant. Certainly a matter of trial
4 strategy and not one that goes to deficient
5 performance.

6 ATTORNEY DRIZIN: I would --

7 THE COURT: Overruled. He can answer.

8 THE WITNESS: I believe we did address,
9 if not all of them, the context in regards to the
10 argument that the officers' questioning of
11 Brendan was an attempt to implant in him or
12 suggest to him the answers they wanted on some of
13 those facts.

14 Q (By Attorney Drizin) So with respect to the
15 possible contamination of Brendan's statement by
16 the officers, is it your testimony that you
17 highlighted for the jury each and every instance
18 of contamination?

19 A I'd have to read the entire transcript. I don't know
20 if we approached it that way, each and every fact. I
21 know we approached just -- I -- from my recollection,
22 all the facts, and if there were some that we didn't
23 actually approach, it was in -- the argument at the
24 end was still the same. You can't believe the
25 testimony that -- the statements, because of the fact

1 that they were the product of suggestion.

2 Q Now, at trial the jury saw the interrogation
3 played from start to finish up until the point of
4 the time that -- that mom came into the room; is
5 that fair?

6 A Correct.

7 Q Okay. At no time during your examination of
8 Officers Wiegert and Fassbender did you play the
9 tape?

10 A I didn't do the cross-examination.

11 Q Okay. At no time did your co-counsel play the
12 tape?

13 A Correct.

14 Q In fact, at no time during your case did you or
15 your co-counsel ever play the tape?

16 A Correct.

17 Q Okay. And so to the extent that you attempted to
18 demonstrate contamination, it would have been by
19 reading portions of transcripts to the officers;
20 correct?

21 A Correct.

22 Q Okay. And you believed, didn't you, that there
23 were many instances where police officers had
24 suggested facts to Brendan during the course of
25 his interrogations?

1 A That was our position. Our defense.

2 Q Okay. Now, there were also, um -- the -- there

3 are other sources of potential contamination in

4 this case; correct? Besides police

5 contamination?

6 A I don't know what your -- mean by that.

7 Q This was a widely publicized case? Yes?

8 A Yes.

9 Q There were numerous newspaper articles and

10 television shows discussing the details of this

11 case?

12 A Yes.

13 Q Um, and at various --

14 A Well --

15 Q -- point --

16 A I'm sorry. Don't mean to interrupt you. Avery and

17 Dassey, yes.

18 Q So combined it was even more than it would be

19 individually?

20 A Correct.

21 Q Okay. And throughout the course of this

22 investigation many details of the police findings

23 were discussed in media coverage; correct?

24 A There was some, yes.

25 Q And, in fact, you collected, um, an extensive

1 amount of media coverage to use as an exhibit for
2 your motion to change venue; correct?

3 A Correct.

4 Q So you reviewed those media reports, and you saw
5 the extent to which details were in the public
6 domain? Is that fair?

7 A Yes.

8 Q Okay. Did you ever ask Brendan Dassey whether or
9 not he had seen any of that news coverage?

10 A I never did.

11 Q Last series of questions. Do you recall the
12 closing argument in this case?

13 A Mine or Attorney Fallon?

14 Q The defense closing argument. Do you recall it?

15 A For the most part.

16 Q Okay. You took part of the argument, and
17 co-counsel, Ray Edelstein, took part of the
18 argument; correct?

19 A Correct.

20 Q Okay. Um, during Mr. Edelstein's closing
21 argument, do you recall a portion of the argument
22 where he essentially conceded that Brendan had
23 been at the fire and had seen body parts in the
24 fire? Do you recall that?

25 A Yes.

1 Q Was that a surprise to you when Mr. Edelstein --

2 ATTORNEY KRATZ: Objection, Judge.

3 Q -- said that?

4 ATTORNEY KRATZ: I'm sorry. I'm going
5 to object as irrelevant. And at this point,
6 Judge, given the lack of specificity in the
7 defense motion, um, I'm wondering if they believe
8 that is deficient performance to, um, make that
9 concession as a matter of trial strategy.

10 ATTORNEY DRIZIN: We --

11 ATTORNEY KRATZ: Not --

12 ATTORNEY DRIZIN: -- do. We do, and
13 it's in our motion. It's clearly in our motion.

14 ATTORNEY KRATZ: And who's going to say
15 that?

16 ATTORNEY DRIZIN: Both of them can say it.

17 THE COURT: Objection overruled. You can
18 answer.

19 THE WITNESS: Was I surprised?

20 Q (By Attorney Drizin) Yes.

21 A Yes.

22 Q Had it been anything you had discussed with Ray
23 Edelstein before he went to the podium and made
24 his closing argument?

25 A No.

1 Q Okay. And you were surprised why?

2 A Because it wasn't something that came up the night

3 before when we each bounced ideas off each other for

4 our closing.

5 Q And you knew that Mr. Edelstein's concession, if

6 you will, occurred after Brendan had testified in

7 this case; correct?

8 A Well, it was closing, yes.

9 Q Okay. And -- and Brendan had made no such

10 admission during his direct, uh, or during cross,

11 did he? He -- Brendan didn't say anything about

12 being at the fire when he was questioned on

13 direct?

14 A I don't think he said anything, correct.

15 Q Well, he -- he didn't say anything about seeing

16 Teresa in the fire when he was questioned on

17 direct; correct?

18 A On -- correct. On direct of Brendan?

19 Q Correct. Or on cross. He never made that

20 admission?

21 A He didn't, no. Not at the trial.

22 Q So did you and Mr. Edelstein discuss with Brendan

23 Dassey, prior to Mr. Edelstein's closing, whether

24 it would be okay for him to deliver that

25 concession speech?

1 A No.

2 ATTORNEY DRIZIN: Just a minute, Your
3 Honor.

4 Q (By Attorney Drizin) We talked about whether or
5 not you ever asked Brendan if he had seen media
6 coverage of the case. Do you recall that?

7 A I never asked him that.

8 Q And did you ever ask him whether he and his
9 family discussed the media coverage about the
10 case?

11 A No.

12 ATTORNEY DRIZIN: No further -- yeah, I'd
13 like to move in some exhibits through this witness,
14 Your Honor.

15 Exhibits 218 and 219. These are
16 Mr. Fremgen's motions that he filed in this case.

17 Exhibits 340 and 229.

18 ATTORNEY FALLON: What are those again,
19 Counsel, just so we're clear?

20 ATTORNEY DRIZIN: Exhibit 340 is an e-mail
21 from Michael O'Kelly to John Dederling and Tom
22 Fassbender regarding an interview form.

23 ATTORNEY FALLON: All right.

24 ATTORNEY DRIZIN: Exhibit 229. Exhibit 229
25 is an e-mail from Ken Kratz to Mark Fremgen dated

1 November 30, 2006.

2 Exhibit 72 is a letter from Mark Fremgen
3 to Robert Gordon dated October 10, 2006, the
4 retention letter, if you will.

5 Exhibits 215 through 217. Exhibit 215
6 is a November 15, 2006, letter from Dr. Gordon to
7 Mark Fremgen.

8 Exhibit 216 is a motion in limine.
9 Defendant's request to introduce expert testimony
10 raise suggestibility.

11 And Exhibit 217 is Mr. Fremgen's brief
12 in support of the admissibility of an expert.

13 Exhibit 2-2-5 is an e-mail dated
14 January 17, 2007, from Jerry Buting to Mark
15 Fremgen.

16 Exhibit 73 is an e-mail from Jerry
17 Buting to Mark Fremgen dated January 17, 2007.

18 Exhibit 77 and 78. Seventy-seven is an
19 e-mail from Jerome Buting to Mark Fremgen dated
20 April 6, 2007.

21 Seventy-eight is an e-mail between Mark
22 Fremgen and Dr. Gordon. This is a cluster of
23 e-mails from April 6, 2007, through April 8,
24 2007.

25 Exhibit 79 is an e-mail chain between

1 Dr. Lawrence White and Mark Fremgen. Um,
2 April 11, 2007, is the final e-mail in that
3 chain.

4 And Exhibit 74 is an e-mail from Jerome
5 Buting to Mark Fremgen dated March 22, 2007.

6 Um, I think that's the extent of the
7 exhibits, Your Honor.

8 THE COURT: Mr. Kratz or Mr. Fallon?

9 ATTORNEY KRATZ: We've already objected to
10 Mr. Buting's opinions, Judge. But other than that
11 we have no objections.

12 THE COURT: The Court is going to receive
13 all of the offered exhibits. In some instances the
14 Court will use them for the testimony that tied up
15 the exhibit to the witness. In fact, in all
16 instances.

17 All right. Mr. Kratz?

18 ATTORNEY KRATZ: Yes. Did you want me to
19 begin now, Judge? Uh --

20 THE COURT: Your call.

21 ATTORNEY KRATZ: This might be as good a
22 time as any for our --

23 THE COURT: All right.

24 ATTORNEY KRATZ: -- afternoon break.

25 THE COURT: All right. Let's take 15

1 minutes.

2 (Recess had at 2:40 p.m.)

3 (Reconvened at 3:00 p.m.)

4 THE COURT: All right. We'll resume.

5 Mr. Fremgen, you are now Mr. Kratz's witness.

6 THE WITNESS: All right.

7 **CROSS-EXAMINATION**

8 BY ATTORNEY KRATZ:

9 Q Mr. Fremgen, good afternoon. Could you describe
10 for me, please, the extent of your trial
11 experience? I don't want to hear about just
12 handling cases. But I assume your 18 years of
13 experience has encompassed jury trials as well?

14 A Um, correct. Uh, probably handled about 50 jury
15 trials. I've done intentional -- this is not the
16 first homicide trial. I've had, um, sexual assault
17 trials, OWI trials, misdemeanor trials, number of
18 felony trials. Um --

19 Q Not your first day at the rodeo as it were?

20 A No.

21 Q Mr. Fremgen, the public defender's system in
22 Wisconsin certifies lawyers for various kinds of
23 cases; is that true?

24 A Correct.

25 Q Are you certified by that agency to handle the

1 most serious felonies in Wisconsin, including
2 Class A felonies?

3 A At the time -- since February of 2009, I'm no longer
4 practicing. But up until then, yes.

5 Q Yes. Um, that's what I meant. And as a trial
6 lawyer, perhaps, unlike an appellate lawyer, do
7 you have other considerations in what evidence to
8 present other than what you can? Do you
9 understand the question?

10 A Um, I think I understand your question. When -- and
11 I -- if I go beyond what you're asking, please stop
12 me.

13 When I take on a case that I know it's
14 going to go to trial, I try to pick a particular
15 focus or strategy and stick with it. So
16 everything I do in the case is related to what I
17 hope to accomplish in -- in -- in the trial,
18 including --

19 Q Well, let me --

20 A -- if that's --

21 Q -- let me --

22 A -- what you're asking.

23 Q I'm going to stop you there, Mr. Fremgen. The
24 suggestion is that you should have done
25 everything, instead of sticking to one strategy.

1 Or at least I'll ask you that question. Why
2 don't you just do everything in front of a jury?

3 ATTORNEY DRIZIN: I'll object to that,
4 Judge. That's not any suggestion that I made.

5 ATTORNEY KRATZ: No. I get to ask him why
6 he doesn't just do everything, Judge.

7 THE COURT: Yeah. The -- the objection's
8 overruled. If he -- if you understand the question,
9 you can answer it.

10 THE WITNESS: I think I do. Um, well,
11 there's -- actually there is a strategy where you
12 could do just about anything, um, that -- I think
13 attorneys refer to that as throwing it up against
14 the wall and hoping something sticks. And that's
15 probably the last strategy you want to choose.

16 The way I've been trained over the years
17 at -- through the public defender's office and
18 through my own experience is that it always is
19 best to have a particular focus of your case and
20 work towards that focus so everything is logical
21 and connected with what your goal is.

22 And that's how I approach just about
23 every case as a trial preparation. Pick a
24 defense. Pick a strategy, whatever it is, and
25 everything else up to that point, including how

1 you question witnesses, should all be focused and
2 trained towards that goal.

3 Q Is it possible, then -- in fact, is it desirable,
4 or had you been trained, that in furtherance of
5 that goal you may sometimes forgo the
6 introduction of some otherwise relevant evidence?

7 A There are times.

8 Q All right. Now, Mr. Fremgen, I assume the
9 development of the trial strategy, at least in
10 some respects, includes discussions with clients;
11 is that true?

12 A Yes.

13 Q And do you usually choose a, um -- not just
14 limiting it to trial strategy, but a whole case
15 disposition strategy, jointly with a client?

16 A Not all attorneys do, but I -- I do. I want the
17 client to be part of the process because, if they're
18 not, they're not going to be helping get to that
19 ultimate goal.

20 Q Is jury trial the most common disposition -- case
21 disposition of cases that you're assigned?

22 A I would say probably over 95 percent of the case --
23 criminal cases that I handled over the years were all
24 dealt with through a plea negotiation.

25 Q Plea negotiations?

1 A Correct.

2 Q Are any of those plea negotiations ever pursued

3 when your client protests their innocence?

4 A Sometimes if the client also suggests getting the

5 best deal and wants to enter an **Alford** plea for

6 instance --

7 Q Um-hmm.

8 A -- they're still saying they're innocent, but the

9 deal is too good to give up --

10 Q I don't --

11 A -- but for the most part that's the exception not the

12 rule.

13 Q I don't mean at the time of the actual entry of

14 the plea. I mean, at some early stages in the

15 handling of the case have you had the experience

16 of having a client who indicates that they're

17 innocent or not guilty, but the case eventually

18 ends up in a plea disposition?

19 A There have been.

20 Q In fact, most cases for clients that care to

21 express their opinion to you, uh, at least at

22 some point, either minimize their involvement or

23 express outright innocence; isn't that true?

24 A You said most. A lot.

25 Q All right.

1 A I would agree with that.

2 Q It's not unusual for that to happen?

3 A Well, absolutely.

4 Q Well, we've heard in this case that Mr. Dassey,
5 at least in the early stages of Mr. Kachinsky's
6 representation and in yours, um, protested his
7 innocence. Would you say that was a fair
8 characterization?

9 A He claimed he had nothing to do with this.

10 Q Yet you, like Mr. Kachinsky, pursued possible
11 plea avenues; isn't that true?

12 A I don't know if I pursued. When I was offered any
13 offer of a plea agreement, I took those to my client.

14 The one time I recall having specific
15 negotiation, as in back and forth, was just
16 probably on the eve of trial, sometime in April,
17 um, where there was a discussion of felony
18 murder, and some combination of an offense.

19 And that discussion was -- wasn't just
20 the State saying, here's our offer. We went back
21 and forth on a couple of ideas. But I did end it
22 the same way I ended every plea conversation.
23 I'll have to go talk to my client.

24 Q And on each occasion was a plea offer, whether it
25 was just general or more specific, conveyed to

1 Mr. Dassey in this case?

2 A Every offer was conveyed to Mr. Dassey.

3 Q Now, is there a point in -- I'm talking
4 generally, not in this case. Is there a point in
5 representing a client, when a plea offer is made,
6 when you evaluate the strength of the State's
7 case, and when you're asked to actually make a
8 recommendation to your client, on whether they
9 should accept the offer or not?

10 A Just about every case.

11 Q Did that happen in this case?

12 A Yes.

13 Q And on more than one occasion, did you recommend
14 to Mr. Dassey that he accept an offer for a
15 change of plea?

16 A Yes.

17 Q In fact, you, based upon your 18 years of
18 experience, suggested to Mr. Dassey that it was
19 in his interest to at least consider the State's
20 offer; is that right?

21 A Yes.

22 Q Did you do that even while Mr. Dassey was
23 claiming to still be not guilty or not involved?

24 A I think I have an obligation to present every offer
25 and my opinion of the offer, whether my client says

1 he's guilty or not.

2 Q I'm saying in this case, did that happen despite

3 Mr. Dassey's claim of innocence?

4 A Correct.

5 Q So, generally, I assume that practice, the

6 practice of pursuing plea discussions despite a

7 client's claim of innocence, is not unusual in

8 your field or in the defense field?

9 A I can't speak for other attorneys, but my experience,

10 no, it's not unusual.

11 Q All right. Certainly wouldn't rise to the level

12 of being a bad lawyer or deficient performance,

13 generally; isn't that true?

14 A To not -- to not enter into discussions about pleas

15 even if your client says he didn't do it?

16 Q Yeah. Because your guy says he didn't do it --

17 A No.

18 Q -- to not pursue a plea?

19 A I -- I agree. No, that wouldn't.

20 Q All right. By the way, Mr. Dassey, um, did his

21 version, as far as you were able to determine

22 from those -- I'm only talking about those

23 statements now that, um, are reasonably related

24 to your representation and your claim of

25 deficient performance -- did Mr. Dassey's version

1 of events change over time in speaking with you?

2 A No. He generally stuck to the same story. At times
3 there were some -- I think, some minor differences in
4 what he might have said, but for the most part,
5 throughout my representation, when I would ask him to
6 go back over the timeline again, or go back over the
7 chronology, tell me where you were from here -- from
8 when you got home off the bus to, you know, the next
9 day, was essentially the same.

10 Q Mr. Drizin asked you specific questions about
11 Mr. Dassey's claims and why he may have tried to
12 explain why he confessed or made a statement in
13 this case. Do you recall those questions?

14 A Yes.

15 Q Do you recall Mr. Dassey's answers to you and
16 were they the same throughout time?

17 A No.

18 Q They had changed over time?

19 A That had changed. Why -- if -- again, let me just
20 clarify. If your question is that -- what Brendan
21 had said to us as to why he told the police what he
22 said?

23 Q Yes.

24 A Yes, that did change.

25 Q So Brendan didn't consistently tell you, I got

1 this all off the news? Never heard that, did
2 you?

3 A He never said that.

4 Q Never heard your client say, I got this from my
5 family or some other contaminated source, did he?

6 A From another source? Yes, he did at one point.

7 Q All right. What I'm saying, did he consistently
8 explain that's how I came up with all these
9 details?

10 A No.

11 Q He had a chance to tell you that, didn't he?

12 A Yes.

13 Q He had a chance to tell the jury that, didn't he?

14 A Yes. He testified.

15 Q In fact, his explanation for why he might confess
16 to a crime that he supposedly didn't do was an
17 important matter of trial preparation between you
18 and Mr. Dassey, wasn't it?

19 A Yes.

20 Q And didn't perhaps the most important opportunity
21 to explain it, that to the jury, do you remember
22 what Mr. Dassey said to the jury?

23 A I believe he originally have said, I don't know. But
24 then I believe he, on cross-examination, indicated he
25 got it from a book.

1 Q Okay. Well, let's -- let's go through -- through
2 the "I don't knows" first, 'cause you remember,
3 at least on cross-examination, by far that was
4 Mr. Dassey's number one answer; isn't that true?
5 A And with us it was as well.
6 Q Correct.
7 A Not on direct, but in conversations.
8 Q I direct Counsel to the Dassey trial testimony --
9 A Oh.
10 Q -- bottom of page 44. I'm just going to ask if
11 you recall this, Mr. Fremgen. I'm going to talk
12 more specifics now. Do you recall Mr. Dassey
13 being asked:
14 "Why did you answer the questions to
15 them..."
16 Meaning the police.
17 "...the way you did?"
18 He answered: "I don't know."
19 "Do you have an explanation for
20 admitting this?"
21 Dassey's response was: "No."
22 Do you remember that?
23 A Yes.
24 Q Now, as far as you know, during that process,
25 during the trial process, there wasn't anything

1 preventing Mr. Dassey from explaining to the jury
2 why he may have admitted this; right?

3 A As far as I know, no.

4 Q Wasn't anything preventing him from saying, this
5 was a false confession, or this was fed to me, or
6 anything like that; isn't that true?

7 A That there wasn't anything stopping him from saying
8 that?

9 Q Yes.

10 A As far as I know, no.

11 Q In fact, if we were candid with each other, uh,
12 you would have found that easier to work with
13 than the answers that actually were provided by
14 the defendant, himself. The state of the record
15 as we sit here today; isn't that right?

16 A It would have been better, yes.

17 Q All right. Do you recall Mr. Dassey explaining
18 that he didn't just lie to the cops, but he lied
19 to his mom as well?

20 A I'm sorry. Ex -- I'm sorry. You said that, did I
21 remember him explain to the jury?

22 Q Do -- do you remember him explaining that he just
23 doesn't lie to the cops but he lied to his mom as
24 well?

25 A I don't recall. If it's in the transcript, I'll

1 concede you're right. But I don't recall it.

2 Q I'll just -- I'll -- I'll do it --

3 A Okay.

4 Q -- the easy way. Bottom of page 54:

5 "Why did you tell her you went over

6 there?"

7 "Answer: I don't know."

8 "Question: You lied to your mother as

9 well?"

10 "Answer: Yes."

11 A Okay.

12 Q Do you remember that?

13 A Okay.

14 Q And when asked why he lied to the cops,

15 specifically, on page 56, Mr. Dassey explained,

16 because I'm just like my family. I don't like

17 cops. Do you remember that --

18 A I --

19 Q -- explanation?

20 A I do recall that.

21 Q Now, so far, at least, in -- in what you recall,

22 and what I've read to you, you don't see anything

23 about promises, or inducements, or any of those

24 factors that might be consistent with a false

25 confession; is that true?

1 A That's true.

2 Q On the issue of promises, bottom of page 42,
3 Mr. Dassey, when he had a chance to explain to
4 the jury whether these cops made promises to him,
5 he said, "Sort of."

6 When being asked, specifically, "What
7 does that mean?"

8 Mr. Dassey said: "That if I told the
9 truth--" on the top of 43 -- "If I told the
10 truth, that I wouldn't go away for life."

11 Dassey was then asked: "What other
12 promises were made to you?"

13 Mr. Dassey said: "That's all I recall."

14 Recall him answering that way?

15 A That I do recall.

16 Q So when being given the opportunity to explain to
17 the jury, and once again the state of this record
18 as we sit here today, Mr. Dassey was unable to
19 indicate whether he was given any promises or
20 inducements in exchange for his statement. Is
21 that what you recall?

22 A Yes.

23 Q Now, Mr. Dassey was asked at trial if he'd ever
24 watched any news accounts, if he watched any
25 television about his or Steven's case. Do you

1 recall that question being asked of them?

2 A By me or --

3 Q By Mr. Fallon.

4 A Okay. Um, I think I vaguely do recall that, yes.

5 Q All right. Page 41, tell me if you remember
6 this, Mr. Fremgen.

7 "At some point your Uncle Steven is
8 arrested?"

9 Brendan answers: "Yes."

10 Brendan's then asked: "Did you watch
11 any TV accounts about that?"

12 Brendan's answer to the jury is: "Not
13 that I remember."

14 Do you recall those questions and
15 answers?

16 A Vaguely, yes.

17 Q So when being asked about, I guess, what Mr.
18 Drizin, and Dr. Leo, and others are calling
19 contamination from media, Brendan, at least as
20 far as your conversations, and the testimony, and
21 the state of this record today, said I didn't
22 watch any television.

23 Is that a fair statement?

24 ATTORNEY DRIZIN: Objection. That's not
25 what he said. He said, "Not that I remember."

1 THE COURT: Well, the answer speaks for
2 itself.

3 Q (By Attorney Kratz) "Not that I remember." I'm
4 sorry. Maybe it wasn't important for him to
5 remember that. At least as of the trial he
6 didn't remember watching anything; isn't that
7 true?

8 A I believe that's what he testified to.

9 Q Brendan seem like the kind of kid to you that
10 reads the *Milwaukee Journal Sentinel*?

11 A No, probably not.

12 Q Does he seem like the kind of kid that watches
13 news accounts, or CNN, or other kinds of widely
14 disseminated media reports about this case?

15 A Probably not.

16 Q Did he ever tell you he did?

17 A No, he never did.

18 Q He had a chance to do that, didn't he?

19 A Do you mean did we meet plenty of times and it could
20 have come up in conversation? Yes.

21 Q Absolutely. You asked him, didn't you?

22 A Did I ask him if he'd seen it?

23 Q Yes.

24 A No, I never asked him --

25 Q All right.

1 A -- if he'd seen it.

2 Q You'd asked him, though, for explanations about

3 why he may have confessed; is that right?

4 A Correct.

5 Q Now, Brendan also apologized in the March 1

6 statement, I believe, to the Halbach family, or

7 may have in a phone call. Do you recall if that

8 was March 1 or if it was in a -- a phone call?

9 A When he apologized to the Halbach family?

10 Q Yeah.

11 A I -- I can't recall if it was in one of the taped

12 conversations or it was, um, in the -- the aud --

13 excuse me -- the videotaped conversation in the jail

14 conversation. There was some con -- one of those

15 that did reference it.

16 Q I -- I'll just ask you, Mr. Fremgen, do you

17 recall, um, asking Mr. Dassey why he apologized

18 to the victim's family in this case?

19 A Yes, we did.

20 Q Do you remember what Brendan told you?

21 A He said, "I don't know."

22 Q How much preparation did you do with Brendan

23 prior to his decision to testify in this case?

24 A After the first meeting with Brendan, every meeting

25 with me we talked about one point or another that he

1 may have to testify and explain his statements to
2 the -- to the police, and that would have -- I'd have
3 to hazard a guess, but I'd say seven, eight, nine
4 times.

5 Q All right.

6 A Um, the night before trial, the night before his
7 testimony, we did it at the jail the last time, Ray
8 and I.

9 And I don't know about Ray. He went on
10 different times to the jail to meet with Brendan
11 as well. That was one of our -- we sometimes
12 went together, sometimes separately, um, to see
13 whether Brendan would talk to one of us more
14 openly than the other.

15 And you'll have to ask Ray, but my
16 recollection was it was the same type of
17 conversation and the same types of answers.

18 Q Do you remember at -- at one point Mr. Dassey
19 suggesting to you that maybe he had gotten these
20 ideas out of a book?

21 A He did. He did bring it up. Uh, I think it was the
22 night before, or maybe it was the Sunday -- Sunday
23 night when we went to go see him in the jail before
24 he testified.

25 Q Do you remember your and Mr. Edelstein's reaction

1 to that recent suggestion? Recent -- I mean,
2 recent to all the other times that you spoke with
3 him?

4 A I think one or both of us might have told him that
5 that was a ridiculous explanation. Something the
6 jury would likely not believe. And that might
7 actually be relatively close to a quote.

8 Q Immediately thereafter, did you recall Brendan
9 saying, well, maybe I dreamt it?

10 A On that conversation, the -- the Sunday night before
11 he testified, uh, that's the exact context. After he
12 mentioned the book, he also mentioned that he --
13 maybe he dreamt it. I -- I -- clarify. He didn't
14 say he dreamt it, he said maybe he dreamt it.

15 Q Okay. Well, and with your trial experience,
16 Mr. Fremgen, did you suggest, then, to Mr. Dassey
17 how that might be viewed by a jury?

18 A I think I actually asked him what -- does he think he
19 could convince a jury on that defense that he's not
20 guilty.

21 Q I'm going to go back just briefly to the plea
22 discussions that you had with the State. Do you,
23 um, recall whether there was a dynamic at play in
24 plea discussions with Brendan that, um, either
25 hampered or at least was a factor for you to

1 consider in those discussions? Do you know what
2 I'm asking you?

3 A It -- it never -- I know what you're asking. I don't
4 think it ever directly interfered with me, but from
5 information that we received from outside sources
6 there were times, for instance, when we went to the
7 jail to talk about an offer that occurred while the
8 trial was going on, that the next day we were told
9 there was a conversa -- Brendan must have talked to
10 his mom on the phone about it before he gave us his
11 answer.

12 So I would have to say that there were
13 times Brendan would talk to his family before he
14 would, um, get back to us with his decision.

15 And there was one particular time that I
16 actually called Brendan's mom and -- and had her
17 and -- and Brendan's father come to the jail, and
18 we met with Brendan first, and then they came in
19 as part of the discussion as well.

20 Q You don't know, do you -- and I'm talking about
21 whether you have first-hand specific knowledge of
22 whether Brendan's extended family was concerned
23 about the possibility of him testifying against
24 Uncle Steve?

25 A I received, and as part of the discovery, a -- oh,

1 gosh, maybe 30 or 40 CDs of telephone calls that were
2 intercepted at the jail between Steven Avery and
3 whoever he was calling, and there were times when he
4 was expressing his concerns to usually either his
5 mother or, um -- actually Brendan's mother at one
6 point, but there were other people that he would call
7 expressing concerns about Brendan and whether Brendan
8 was going to take a deal, and, um, concerns about
9 how -- you know, what was happening with Brendan.
10 How it was impact on his case.

11 Q How it impacted Steven Avery?

12 A Correct.

13 Q Let me ask you, Mr. Fremgen, was Brendan always
14 the individual relaying the response to the plea
15 offers to you or did he have that done in a
16 representative capacity at times?

17 A No, he always was the one who declined the offer.

18 Q Let's -- let's speak for a moment about your
19 motion to revisit the suppression ruling by the
20 Court. You had made a motion to -- basically a
21 motion to reconsider; is that right?

22 A To reopen, correct.

23 Q All right. And that was, um, argued by you; is
24 that correct?

25 A Yes.

1 Q Was that briefed as far as you recall?

2 A No, I don't believe so, other than what was on the

3 motion.

4 Q And before submitting that argument to

5 reconsider, did you ask the Court consider both

6 the voluntariness and what would be the **Miranda**

7 issues?

8 A I don't think we brought up the **Miranda** issue at that

9 time.

10 Q Let me ask you, as a defense attorney, are you

11 required to file motions that have no basis in

12 fact or law?

13 A No. Quite the opposite.

14 Q In fact, if there is a baseless -- or what we

15 sometimes called a specious -- argument to be

16 made, you're precluded from bringing that, aren't

17 you?

18 A Or face sanctions, correct.

19 Q Did you make a professional judgment before you

20 made that decision whether there was a viable

21 **Miranda** issue here?

22 A I think the discussion when -- no, quite frankly, I

23 think it was Ray that was more the proponent of that

24 motion when we discussed it.

25 My recollection was there was even a

1 conversation with the Court about the various
2 motions that we had filed, and noting that that
3 issue had been waived by Attorney Kachinsky
4 before, so that we really didn't have much of a
5 basis to pursue it now. That was my recollection
6 of our conversa -- Attorney Edelstein and my
7 conversation. So we decided we weren't going to
8 pursue it.

9 Q Well, I don't -- and if your -- if your memory
10 is -- is -- is not clear on this issue, please
11 tell me, but as you independently think back, did
12 you believe there to be a viable **Miranda** issue
13 either on the 27th or the 1st of March?

14 A At that time when we reviewed, no.

15 Q All right. I do want to talk about the phone
16 call on the 13th, since that was the only part of
17 that weekend that was ever introduced.

18 Do you recall in what part of the case
19 that -- that phone call or phone calls on 13th
20 and 15th were introduced?

21 A I recall that one or both -- well, I recall that one
22 was used in, um -- when Dr. Gordon testified. I
23 recall at least one being played by Attorney Fallon
24 during his cross-examination of Brendan. And I also
25 recall, in the closing, a reference to -- at least,

1 specifically, I refer -- I recall a -- in closing, a
2 reference to, "Brendan, you could have been a hero"
3 comment in one of those phone calls.

4 Q Right.

5 A I think there was actually an emphasis about the --
6 the hero versus where -- what he was now.

7 Q And although this is a -- a matter of law, it --
8 it goes to your decision-making, you are aware,
9 are you not, that statements used either in
10 cross-examination, or what's called "rebuttal
11 purposes," there's a different admissibility
12 standard than if you use it in what's called the
13 "State's case in chief"? You understand that?

14 A Yes.

15 Q And, in fact, even statements that are improperly
16 obtained, save voluntariness for just a moment,
17 but they're improperly obtained by the police,
18 can still, and oftentimes are, used in
19 cross-examination and rebuttal; that true?

20 A In the discretion of the court, yes.

21 Q And, in fact, in some of my correspondence to
22 you, at least one case, uh, I had referenced that
23 that phone call on the 13th, if used at all,
24 would only be used in the rebuttal part of the
25 State's case. Do you recall?

1 A I think that was part of that e-mail that was brought
2 up previously by Attorney Drizin.

3 Q All right. Now, as we sit here today,
4 Mr. Fremgen, you have opined that if you had
5 known about Mr. O'Kelly's behavior on the 12th of
6 May, you may have made some other arguments to
7 the Court regarding admissibility of some
8 statements; is that right?

9 A I think the question was would I have addressed it
10 differently. And my honest answer is, yes, I would
11 have probably addressed the motion differently.

12 Q All right. Um, well, you've had a chance, now,
13 to think about that issue. In other words, you
14 didn't think about it for the first time when you
15 walked into court today; is that right?

16 A No. I thought about it the minute I watched the
17 video.

18 Q And is there anything -- specifically about the
19 phone call now. Is there anything by way of case
20 law, whether it's Wisconsin or otherwise, that
21 you believe would support the, um, exclusion of
22 that phone -- phone call for rebuttal purposes?

23 A Without having researched it, I don't know of any
24 cases off the top of my head.

25 Q I'm curious, then, what you would have done

1 differently?

2 A How I would have approached it differently at
3 rebuttal you mean?

4 Q How would you have approached, as that statement
5 was, in fact, used at trial, in the rebuttal part
6 of the State's case, how would you have
7 approached the admissibility issue differently
8 given the State's concession that it would only
9 be used during rebuttal?

10 ATTORNEY DRIZIN: Judge, I'll ob --

11 THE WITNESS: Well --

12 ATTORNEY DRIZIN: Judge, I'll object
13 only to the form that -- that at the time of the
14 motion to suppress he had no -- he would have had
15 no idea how the State was planning to use that
16 statement. Whether it would be in rebuttal or
17 in -- in his case in chief.

18 ATTORNEY KRATZ: I could maybe ask it as a
19 hypothetical, Judge. Maybe that would be an --

20 THE COURT: I think --

21 ATTORNEY KRATZ: -- easier way to --

22 THE COURT: -- that would cure --

23 ATTORNEY KRATZ: -- do that.

24 THE COURT: -- the objection.

25 Q (By Attorney Kratz) Hypothetically, then,

1 Mr. Fremgen, if the State, um, intended to or, in
2 fact, did use that statement only for rebuttal
3 purposes, is there a -- a different argument or a
4 different tactic that you would have taken
5 knowing what you know now?

6 A A lot of it would probably depend upon what happened
7 with the original motion. And it's not a copout, but
8 I'm trying to explain my answer.

9 If the original motion -- if I would
10 have presented that video of -- the O'Kelly
11 video -- and if the Judge was so inclined to find
12 it so egregious to say you can't use that May
13 statement, I would have made that argument again,
14 even on rebuttal, let's assume just the phone
15 call, because if it is so egregious, the
16 connection between that phone call and that video
17 is just as equally tainted that, in the Court's
18 discretion, 'cause the Court gets to decide
19 what's admissible regardless of whether it's
20 rebuttal or -- or case in chief, that would have
21 been my argument.

22 Q Here's the 50 thousand-dollar question then.
23 Since the statement -- the same kind of call was
24 made without any State action on the 15th of May,
25 how would you have kept that one out?

1 A I -- well, you're asking how would I keep it out, or
2 how would I approach it. I'm not saying I'm keeping
3 anything out, okay? Let's be -- be fair.

4 I mean, I don't make that call. Neither
5 do you. The Judge does. And I know -- you know,
6 we might make arguments. Sometimes they're just
7 protect the record, sometimes it's because we
8 have to say something.

9 I probably would make the same argument,
10 that -- that the overreaching -- until Attorney
11 Kachinsky was officially withdrawn from the case
12 by the Court, that everything that occurred
13 between that O'Kelly video and the withdrawal, or
14 the removal of Attorney Kachinsky, is all tainted
15 by the same problem. Whether it's successful or
16 not, that would have been my argument.

17 Q All right. Mr. Drizin asked you about Exhibit
18 No. 3-4-0. It was an e-mail and an attachment
19 from Mr. O'Kelly to Mr. Fassbender, which
20 included a blank interview form. Do you recall
21 that?

22 A Yes, I do.

23 Q Now, interestingly, you had an opinion on direct
24 that you believe, as you sit here today, that
25 that showed some kind of State action -- I wrote

1 down those words -- on behalf of Mr. O'Kelly.

2 Can you explain that?

3 A I think my answer actually was this, along with the
4 previous, um, video, shows that Mr. O'Kelly wasn't
5 working on behalf of Mr. Dassey, which was his --
6 should have been his only client, but appeared that
7 he was now an arm of the State, yes. That I -- I
8 would -- with that condition, I would agree with what
9 you just said.

10 Q Would you agree that sending a blank interview
11 form --

12 ATTORNEY DRIZIN: Objection to the
13 characterization of it as blank, Your Honor.

14 THE COURT: Well --

15 ATTORNEY KRATZ: Not filled --

16 THE COURT: -- that's true.

17 ATTORNEY KRATZ: -- in?

18 THE COURT: Portions of it are filled in.
19 The heading portions. But the -- the interview
20 portions, which would form, of course, the substance
21 of the form are not filled in.

22 ATTORNEY KRATZ: I can rephrase it, Judge.

23 THE COURT: All right.

24 Q (By Attorney Kratz) As presented, uh,
25 Mr. Fremgen, as -- as 340 sits in front of you --

1 A Um-hmm.

2 Q -- would you agree that it would have little, if
3 any, utility to any investigating officer in this
4 case?

5 A Does this have any assistance to law enforcement?
6 No.

7 Q All right. Let us talk about Dr. Gordon and --
8 and Dr. White for -- for just a minute. Did you
9 and Mr. Edelstein discuss the strategy and
10 decision of retaining Dr. White?

11 A It came up, yes.

12 Q And, in fact, it came up, didn't it, under the
13 same conversation as when Mr. Buckley, as a
14 potential State witness was discussed; is that
15 right?

16 A Essentially, it was always related to Buckley.

17 Q All right.

18 A Correct.

19 Q Now, Mr. Buckley, would you agree, um, is,
20 perhaps, the -- if not "the," certainly one of a
21 number of -- the foremost expert witnesses on the
22 issue of interrogation techniques?

23 A He's prominent in that field --

24 Q All right.

25 A -- yes.

1 Q Let me ask you this, Mr. Fremgen: From your
2 years of experience, have you ever heard --
3 excuse me -- have you ever heard of a concept in
4 trial parlance called "a battle of the experts"?

5 A Yes.

6 Q What does that mean?

7 A Well, you put on yours, we'll put on ours.

8 Q And from a, um, battle of an experts, at least as
9 it -- it may influence a jury's decision, is that
10 a consideration that you, as trial counsel, make
11 in retaining an expert witness?

12 A I think, more importantly, it's when there's an issue
13 that might be uniquely suited to somebody with more
14 expertise than 12 reasonable jurors. Even smart
15 attorneys.

16 Uh, so that's when I would consider an
17 expert. When we need somebody to better explain
18 an issue or a topic. For instance, DNA. I don't
19 think any of us -- well, I'll speak for myself.
20 I couldn't explain DNA effectively to a jury. I
21 would probably want to have an expert to do so.

22 And I'm not sure that 12 reasonable
23 jurors off the street are going to walk in with a
24 working knowledge of DNA and all aspects of DNA.

25 So that would be the type of expert

1 situation where you'd want to have somebody else
2 come in and do the presentation.

3 Q In this case, however, in adopting your trial
4 strategy, did you purposely hope to make the
5 issue of this interrogation, that is the March 1
6 interrogation, something relating to common sense
7 rather than expert testimony?

8 A During our preparation, Ray -- as Ray and I talked
9 about this, Ray's focus was always on the -- the
10 statements. His -- you know, that was what he was
11 being paid, indirectly, for. His -- his focus would
12 be dealing with that topic and that issue.

13 And, all along, it was always the -- our
14 strategy to focus on what people, normal
15 individuals, your 12 normal jurors, would
16 understand.

17 Um, and we thought -- I still think --
18 that a lot of what was in those statements could
19 easily be addressed with a jury without having
20 somebody with M.D. or Ph.D after their name
21 trying to explain the same thing.

22 Q Just in arguing common sense and what would be
23 concepts that lay people could understand?

24 A Absolutely.

25 Q But there were experts available, Mr. Fremgen,

1 that could explain it. Isn't that always better?

2 A Well, not necessarily. And in this case I -- I think
3 what our -- with the expert issue, it was always
4 about, if you're going to put on yours, we,
5 hopefully, would have one that we can counter with.
6 But if you weren't going to put on one, I think it
7 would have been just as effective, and I agreed with
8 Attorney Edelstein, who, again, kind of took the lead
9 on this, as effective to do it without.

10 Q If the issue of interrogation techniques would --
11 would have or was to become an issue at this
12 trial, were you and Attorney Edelstein concerned
13 with that battle of the experts concept?

14 A To -- to some degree I never thought you'd get
15 Buckley in. With that said, yes, we were a little
16 concerned if he did -- if he was allowed to testify,
17 we'd probably have to scramble and find somebody.

18 Q Because at least -- and -- and correct me if I'm
19 wrong -- but at least in your, and probably my,
20 opinion that issue that came between Buckley and
21 Dr. White, Buckley was going to win the battle of
22 the experts; is that right?

23 ATTORNEY DRIZIN: Objection.

24 ATTORNEY KRATZ: Well, I'm asking his
25 opinion, Judge.

1 THE COURT: Overruled. If he has an
2 opinion, he can give it.

3 THE WITNESS: I'm not so sure.

4 Q (By Attorney Kratz) Fair enough. Dr. White did
5 tell you, though, um, that he wasn't eager to be
6 involved in Dassey's case; isn't that true?

7 A I think his e-mail he suggested that he didn't.
8 He -- he would prefer not to, but didn't eliminate
9 the possibility that he'd be available.

10 Q I understand. But that, at least, was a term he
11 used? He wasn't eager to be involved?

12 A Correct. Correct.

13 Q The last point on the decision to retain
14 Dr. White or not. You said Mr. Edelstein had
15 consulted a, um, colleague of his from the state
16 of Oklahoma; is that right?

17 A That's correct.

18 Q That'd be a, uh -- I think his first name is
19 Kendall. But it'd be a Mr. Ballew, B-a-l-l-e-w?

20 A I -- I can't remember his name.

21 Q All right.

22 A Sorry.

23 ATTORNEY DRIZIN: What was his first
24 name? I'm sorry.

25 ATTORNEY KRATZ: Kendall, K-e-n-d-a-l-l.

1 I'm -- I'm asking. It's the notes I have -- that
2 I've written down here.

3 Q (By Attorney Kratz) But, Mr. Fremgen, the -- the
4 question is, is it common for defense attorneys,
5 and, really, all lawyers, to contact
6 acquaintances that they might have from other
7 trials, or other areas of -- of their life, in
8 deciding whether an expert will be retained?

9 A I did in this case. I contacted a sheriff's officer,
10 who I'd known for years, and asked him just to take a
11 look at the video, and -- 'cause I knew he'd also
12 been trained in the Reid technique -- just to confirm
13 what I knew. And he said, absolutely. This is what
14 they teach you.

15 Q So on the very same issue that Mr. Edelstein, um,
16 contacted his friend in Oklahoma and on the same
17 issue for which Dr. White may have been asked to
18 testify; is that right?

19 A Well, I didn't ask him -- I -- I didn't contact this
20 person about being an expert, but I just asked him
21 about, is this your familiarity with Reid technique,
22 and his answer was -- after watching just the March
23 video, his answer was yes.

24 Q Your decision not to play the part of the clip, I
25 think it's clip number 37, from the March 1

1 statement to Brendan's mother, which included the
2 statement, "They got to my head," was there a
3 strategic -- and I know you mentioned the emotion
4 that might be involved --

5 ATTORNEY KRATZ: And, Judge, it's as
6 compound a statement as I could make -- I
7 could -- compound a question as I could ask. I'm
8 doing my best.

9 Q (By Attorney Kratz) Anyway, let me start over,
10 Mr. Fremgen. I'm -- I apologize.

11 ATTORNEY KRATZ: And Mad -- Madam Clerk.

12 Q (By Attorney Kratz) "They got to my head." Do
13 you know what Brendan meant by that?

14 A No.

15 Q As you looked at not only the words but the
16 context in which that was said, did you believe
17 that that was open to more than one potential,
18 um, explanation?

19 A As the reason why I did -- I chose to have that
20 redacted --

21 Q No.

22 A Or --

23 Q I'm --

24 A Oh.

25 Q -- just saying from your view of the video,

1 itself, do you believe that "They got to my head"
2 carries with it more than one possible
3 explanation?

4 A I suppose, yes.

5 Q Have you ever heard the term "confessor's
6 remorse"?

7 A Yes.

8 Q Do you know what that means? Just in general
9 terms and lay terms, and if --

10 A Well, in lay terms they're -- you know, some people,
11 after they've honestly made a confession to having
12 done something, often not -- I shouldn't say often --
13 will sometimes recant, and it's just because of the
14 fact that, you know, now their families have to
15 explain this to families and friends, and it can be
16 difficult for them to accept itself.

17 Q And are you familiar with sometimes that includes
18 apologies to people like parents? I'm sorry,
19 mom, they got to my head. Something like that?
20 Have you heard of something like that?

21 ATTORNEY DRIZIN: Objection. That's not
22 what he said.

23 THE COURT: Sustained.

24 ATTORNEY KRATZ: Oh.

25 Q (By Attorney Kratz) By the way, in March --

1 March 1 statement, when Brendan's mom comes in,
2 did you at all view Mr. Dassey standing up or in
3 any impassioned way saying, wait a second, I made
4 this all up?

5 A No.

6 Q You contacted a Dr. Leo in this case for, if
7 nothing else, a consultation; is that correct?

8 A Okay. I don't know if I call it consultation, but I
9 contacted Dr. Leo.

10 Q I'll ask you. Why did you contact him?

11 A Dr. Gordon said he met this guy by the name of
12 Dr. Richard Leo from San Francisco, and he might be a
13 good resource for some information on a -- this same
14 topic.

15 So I contacted Dr. Leo, and indicated
16 that I got his name from Dr. Gordon, and told him
17 a little bit about what was going on in
18 Wisconsin, and he sent me a PowerPoint of a
19 program he put on that was pretty close to the --
20 these issues. The suggestibility issues --

21 Q And --

22 A -- and police techniques.

23 Q I'm sorry. And, if for no other reason, to give
24 you a better working knowledge of the concept of
25 false confessions; is that -- is that fair?

1 A Yes, as a resource. Correct.

2 Q Back to reliability for just a moment. Did you
3 understand that, ultimately, in this case, this
4 Court, um, ruled that the issue of reliability or
5 believability of a statement was not going to be
6 a matter for expert opinion?

7 ATTORNEY DRIZIN: Judge, I -- I don't know
8 if that's what you ruled.

9 THE COURT: I don't think I ruled that.
10 And I'm not sure I equate, necessarily, reliability
11 with believability. I think the ruling was that
12 Dr. Gordon couldn't testify as to whether or not
13 this was, uh -- the confession was false.

14 ATTORNEY KRATZ: Oh, okay. I'm sorry.
15 I'll phrase it that way.

16 Q (By Attorney Kratz) You understand that the
17 ruling of this Court was that there was, at least
18 with the expert that had been offered, uh, not
19 going to be expert opinion regarding whether this
20 was a false confession?

21 ATTORNEY DRIZIN: Objection, Judge. That
22 expert was never retained for that purpose.

23 THE COURT: Well, that's correct. The
24 expert wasn't retained for that purpose. But that
25 was a portion of the ruling. So the objection's

1 overruled.

2 THE WITNESS: Yes.

3 Q (By Attorney Kratz) All right. Perhaps this
4 question is just stating the obvious, but you
5 don't know if Judge Fox's ruling would have been
6 different with Dr. Leo, or Dr. White, or
7 Mr. Drizin being asked to testify, do you?

8 ATTORNEY DRIZIN: Objection. Calls for
9 speculation.

10 THE COURT: Sustained.

11 Q (By Attorney Kratz) You mentioned that a
12 Mr. Buting, Attorney Buting, had e-mailed you, or
13 at least had provided you with some opinion early
14 on in this case; is that correct?

15 A Yes.

16 Q Well, early and late, actually. You, um --
17 wasn't shy about his opinions, or at least to
18 share them with you; isn't that right?

19 A True.

20 Q Now, you mentioned that you kept this a little
21 bit at arm's length. Did you appreciate the fact
22 that his goals may be somewhat inconsistent from
23 yours?

24 A And he was very blunt about it, yes. Yeah.

25 Q So Mr. -- or Attorney Buting's obvious goal of

1 advocating for Mr. Avery may not always be in
2 Brendan's best interest. That's fair, isn't it?

3 A That was part of what I was thinking when I -- when I
4 spoke with either Dean or Jerry.

5 Q And, finally, Mr. Fremgen, the -- um, the last
6 point I have here to talk to you about is maybe
7 more art or more style than it is science.

8 You decided in this case not to chop up
9 the videotape and to play it clip, by clip, by
10 clip, or a few seconds at a time; is that right?

11 A It never crossed our mind to do it.

12 Q All right. Let me ask it this way, then. Would
13 that presentation style have fit within your
14 overall presentation or trial strategy in this
15 case?

16 THE COURT: Which presentation or --

17 ATTORNEY KRATZ: I'm sorry, Judge.

18 Q (By Attorney Kratz) The breaking the -- the clip
19 up into little few second segments?

20 A It -- it could have -- could have been more
21 effective, yeah.

22 Q Okay.

23 ATTORNEY KRATZ: Just have one moment,
24 Judge? I think I'm done, but let me just make
25 sure. No. That's all I have. Thank you,

1 Mr. Fremgen.

2 THE COURT: Any re -- redirect?

3 ATTORNEY DRIZIN: Yes, Judge.

4 THE COURT: Go ahead.

5 ATTORNEY DRIZIN: I'm getting deluged with
6 paper here. Just a minute, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY ATTORNEY DRIZIN:

9 Q Let's start with some easy questions,
10 Mr. Fremgen. Um, Mr. Kratz asked you, um, about
11 Mr. Dassey's lack of passion when his mother came
12 into the room. Do you recall that question?

13 A Yes.

14 Q In your many contacts with Mr. Dassey, did he
15 ever demonstrate a lot of passion?

16 A No.

17 Q Okay. And we talked about what Brendan and
18 you -- when you talked to Brendan about why he
19 confessed. Do you recall that part of the
20 conversation?

21 A Yes.

22 Q And isn't it fair to say that the words, "I don't
23 know" were the explanation he gave more than any
24 other word -- explanation?

25 A At -- at the trial and oftentimes -- most of the time

1 in conversation.

2 Q Sometimes he told you, "They made me say that."

3 Correct?

4 A The first time I met with him, the first words out of

5 his mouth to me were, "They made me say that."

6 Q Okay. Um --

7 A And let me -- um, there were other times he said that

8 his -- well, I don't want to make it sound as if

9 Brendan only said it the one time, but it was

10 interesting how having never met this person, and

11 within the first five minutes of meeting him, he

12 wanted to tell me that "They made me say this," and I

13 explained to him, we'll get to that. And we did get

14 to that, and he did say, "They made me say it."

15 Q Did he say anything else besides "I don't know"

16 and "They made me say it."?

17 A Later, yes.

18 Q I'm not talking about when he testifies --

19 A No.

20 Q -- at trial.

21 A Just before trial.

22 Q I'm not talking about the book instance --

23 A No.

24 Q -- either. Were there anything else besides

25 "They made me say it" and "I don't know."?

1 A And not including the book and the dream?

2 Q Yeah.

3 A Yeah. That -- that would be it.

4 Q Okay. And he said these more than once to you;

5 right?

6 A Not the book and dream, but the "I don't know." Yes.

7 Q Yes. And the made -- and that "They made me say

8 it."?

9 A Yes.

10 Q Okay. And in your experience with Brendan, is --

11 is Brendan somebody who was prone to give

12 narrative accounts?

13 A No. He had a -- pulling teeth to get him to talk.

14 Q And -- and he wasn't someone who demonstrate a

15 lot of insight into, um, his own behavior?

16 A No. No. He wasn't -- very introspective.

17 Q And he wasn't a very verbal person?

18 A No. Unless you talked about games or *Harry Potter*.

19 Q So safe subjects. Games and *Harry Potter* he

20 might talk a little bit more about?

21 A Oh, yeah.

22 Q Okay. But when it came to talking about what

23 happened to him in this case, he shut down?

24 A Correct.

25 Q Okay. And, um, when you tried to press him for

1 more details about, "What do you mean, 'They made
2 me say it,'" what were his answers?

3 A Mostly, "I don't know." Um, he would -- he would
4 try -- there was one conversation where he talked a
5 little more detailed about what it was that they made
6 him say, but he might have had one ex -- um, example
7 and that was it. And then after that it was, "I
8 don't know."

9 Q Did he also tell you, um, "They put words in my
10 head."?

11 A I don't know if that -- I recall him ever saying that
12 as -- he might have said, "They put words in my
13 mouth."

14 Q Okay. Well --

15 A Something -- I mean --

16 Q -- maybe that's better.

17 A That same sentiment but --

18 Q Okay. But that was the extent of his ability to
19 relate to you what had happened to him?

20 ATTORNEY KRATZ: Judge, I'm going to
21 object as -- as speculation. His ability or his
22 choice, it does call for this --

23 ATTORNEY DRIZIN: I'll rephrase.

24 ATTORNEY KRATZ: -- witness to
25 speculate.

1 THE COURT: Sustained.

2 ATTORNEY DRIZIN: I'll rephrase.

3 Q (By Attorney Drizin) That was the extent of --
4 of his communications to you about, you know, why
5 he confessed to this crime? Those --

6 A Un --

7 Q -- explanations?

8 A Until the book and dream --

9 Q Until the book and dream.

10 A -- yes.

11 Q Yeah.

12 A You know, I -- can I -- I'm sorry --

13 Q Sure.

14 A -- Attorney Drizin, you didn't ask me the question,
15 but I want to just clarify, you said the book and
16 dream. There was one other.

17 Q Okay.

18 A And it just came to me. I'm trying to log my memory
19 as to different conversations that Brendan and I had.
20 He also had said on a different occasion that, uh --
21 I'm trying to remember exactly what his word -- it
22 wasn't, "I don't know." And it wasn't the book. And
23 it wasn't the dream.

24 But it was more of a question. What if
25 somebody else told me what happened? Or question

1 like that. Versus, they, the officers, made me
2 say it. What if somebody else -- there was a
3 conversation like that?

4 And that's as far as it went. He never
5 really ex -- I didn't explore it with him, and he
6 didn't go into any detail.

7 Q So there's somebody else that he referred to in
8 that comment could have been the police officers?

9 A Well, I didn't take it that way, because in the past,
10 he always talked about "they." And when I would ask
11 him who "they" -- because it -- the first con --
12 first meeting we had, we had a problem with "they."
13 And "they" was Mike, Mark, and Tom.

14 Q Tell me about that problem?

15 A I didn't know who Mike was. I knew who Mark and Tom
16 were. Tom Fassbender and Mark Wiegert. And I
17 kept -- he said -- kept saying Mike. And I said, no,
18 I -- "Mike who?" "Mike O'Kelly." I said, "No, Mike
19 O'Kelly wasn't your investigator." The invest -- so
20 he was equating those three together. And sometimes
21 when he said, "they," he was referring to those
22 three, collectively.

23 Most of the time he referred to Mark and
24 Tom, 'cause I would ask him, "What do you mean by
25 they?" Because we had that problem in the very

1 beginning. So he would then say "Mark and Tom."

2 Q Okay.

3 A Most of the time it was Mark. He'd say "Mark."

4 Sometimes "Mark and Tom."

5 So then that last comment I mentioned
6 about that other conversation, the "they" wasn't
7 the same "they," if that makes any sense to you,
8 that we'd had in prior conversations.

9 He didn't -- I could tell he wasn't
10 talking about Mark or Tom. He was talking about
11 somebody else. But it was this question, what if
12 they told me to say it?

13 Q And did you think that he was talking about
14 Michael O'Kelly?

15 A I didn't think that at the time.

16 Q But now that you've seen the video, is that what
17 you think?

18 ATTORNEY KRATZ: Objection.

19 Speculation, Judge.

20 THE COURT: He can answer. Overruled.

21 THE WITNESS: I don't know, to be honest
22 with you. I -- I don't -- I don't think I could
23 say yes on that either.

24 Q (By Attorney Drizin) Okay. So you don't know
25 what he may have --

1 A Yeah.

2 Q -- meant by that?

3 A Yeah.

4 Q Okay. Now, um, do you remember that Mr. Kratz
5 talked to you about outside pressures on Brendan
6 in this case?

7 A Yes.

8 Q And that -- that -- that with regard to plea
9 discussions, specifically, that, um, at least
10 Mr. Kratz was concerned, that his -- Brendan's
11 family may have been, you know, consulting with
12 him about those plea negotiations?

13 A That -- that's my understanding of the outside
14 pressure.

15 Q There's no problem with a family member, a
16 mother, consulting with a child about a potential
17 plea, is there?

18 A No.

19 Q Okay. It's not unusual in your experience for
20 family members to do so?

21 A No.

22 Q And, in fact, you brought Barb into the plea
23 negotiations, um -- or I -- I should say you
24 brought Barb into your discussions with Brendan
25 on occasion, um, when you presented his plea

1 options?

2 A I do recall one particular occasion, and it was
3 because it was probably at that point the best offer
4 I'd heard. Very good offer. And I knew the dynamic.
5 Just like you said. Families sometimes are involved.
6 And I knew that if this is going to be an acceptable
7 offer, Barb is going to have to be involved. And
8 that's why we call -- in fact, I think, within
9 minutes of getting off the phone with Attorney Kratz,
10 I called Barb.

11 Q It's fair to say Barb did not say, Brendan, under
12 no circumstances should you take a plea?

13 A I think she might have been even very close to
14 teetering on encouraging him to take it.

15 Q Okay. Do you recall her saying, if you did it,
16 Brendan, you should plead. But if you didn't, if
17 you're innocent, then don't plead?

18 A I think that's almost exactly what she said.

19 Q And Brendan rejected the plea offer; correct?

20 A He thought about it for a little bit, and then
21 rejected it.

22 Q Now, we've talked about the 5/13 phone call;
23 correct?

24 A Yes.

25 Q I'd like to turn your attention back to page five

1 of that exhibit, which -- if you'll give me a
2 second -- Exhibit -- Exhibit 70, I believe.

3 ATTORNEY KRATZ: I'm sorry, Judge, is this
4 something different than what we had on direct
5 examination?

6 THE COURT: Well, we're going to hear.

7 ATTORNEY KRATZ: He read the whole thing.

8 THE WITNESS: Okay.

9 Q (By Attorney Drizin) This is Exhibit 70, um --
10 one second here -- page five at the top. Okay?
11 Have you had a chance to review it?

12 A Yes.

13 Q Now, Mr. Kratz, during his questioning, and
14 throughout this case, has suggested that Barb
15 Dassey, um, was pressuring Brendan not to take a
16 plea because of some loyalty to Steven Avery.
17 Okay? Um, was that your experience in this case?

18 A That Barb was, um, pressuring --

19 Q Pressuring Brendan --

20 A -- Brendan not --

21 Q -- not --

22 A (Unintelligible.)

23 Q I apologize. To -- that Barb was pressuring
24 Brendan not to take a plea out of some loyalty to
25 Steven Avery?

1 A I didn't see it.

2 Q Did you see her express to Brendan that Brendan
3 was her primary concern?

4 A Yes.

5 Q And that she didn't care what happened to Steven
6 Avery?

7 A I don't know about that. I don't think I've ever --
8 I'd ever discussed Steven Avery with her.

9 Q Okay. And in this 5/13 phone call she says, "I
10 don't hate you, Brendan, I hate Steven. All
11 right?" Do you see that?

12 A Yes.

13 Q And on page two of this phone call, um, about a
14 third of the way down when he's talking to his
15 mother, do you see where Brendan says, "Well,
16 Mike, and Mark, and Matt came up one day and took
17 another interview with me."?

18 A Yes.

19 Q And said, "Because they think I was lying, but
20 so -- they said if I come out with it, that I
21 would have to go to jail for 90 years."?

22 A Yes.

23 Q When you referred to "they" before, um, Mike, and
24 Mark, and Matt, who is Mike?

25 A Mike O'Kelly.

1 Q And who is Mark?

2 A Mark Wiegert.

3 Q And who is Matt?

4 A Matt was never brought up.

5 Q Okay. Um --

6 ATTORNEY KRATZ: I'm -- I'm sorry,
7 Judge. Is Mr. Drizin asking, in this exhibit,
8 who are Mike, and Mark, and Matt?

9 THE COURT: He is.

10 ATTORNEY KRATZ: Then I'm going to
11 object to speculation. I thought he'd asked him
12 in prior conversations who is Mike and Mark.

13 THE COURT: Well, I -- the witness has
14 answered. Let's move on.

15 ATTORNEY DRIZIN: Sure.

16 Q (By Attorney Drizin) Would you -- you -- you
17 retained Dr. Gordon in this case to evaluate
18 Brendan; correct?

19 A Yes.

20 Q And in his report do you recall Dr. Gordon saying
21 that Brendan had some memory problems?

22 A Yes, I believe so.

23 Q Okay. And in your experience with Brendan, did
24 he have some difficulties remembering things?
25 Particularly conversations between people?

1 ATTORNEY KRATZ: I'm going to object,
2 Judge.

3 THE WITNESS: I don't know.

4 ATTORNEY KRATZ: Judge, I'm going to
5 object as irrelevant.

6 THE COURT: Well, it's -- it's -- it's
7 certainly leading. But go ahead and answer it. The
8 objection's overruled.

9 THE WITNESS: I -- I -- I don't know if
10 I could honestly say that I think he had memory
11 problems. At least not from conversations with
12 me I could deduce that. That's what his score
13 records reflected. That was Dr. Gordon's
14 opinion.

15 Um, from my experience with Brendan,
16 I -- I think it could -- anything that might be
17 attributed to a memory problem could also be
18 attributed to just not having -- lacking the
19 social skills to be able to talk to a -- an
20 attorney, or an adult, or any person.

21 Q (By Attorney Drizin) Um, we spent a fair amount
22 of time talking about what you would have done
23 had you seen the Michael O'Kelly video; correct?

24 A We did.

25 Q I just want to ask you two quick questions about

1 that that come up from what Mr. Kratz asked you.

2 Um, during your testimony earlier, you
3 said that you would have moved to re -- um, you
4 would have moved to suppress the 5/13 statements
5 and the phone calls; correct?

6 A Yes.

7 Q And you viewed them as a package; correct?

8 A Yes.

9 Q Okay. And one of the bases that you were going
10 to raise in light of the O'Kelly interrogation
11 was a voluntariness argument; correct?

12 A Yes.

13 Q And had the Court ruled that these statements
14 were all involuntary, part of a process that led
15 Brendan to believe he had no choice but to
16 confess, or to make statements to his mother, the
17 State would have been precluded from using those
18 statements even in rebuttal; correct?

19 ATTORNEY KRATZ: Well, Judge, he can ask
20 what his understanding is. I don't know that he
21 can make that legal determination.

22 THE COURT: What's your understanding?

23 THE WITNESS: My understanding is that
24 that still would be up to the Judge for purposes
25 of rebuttal.

1 Q (By Attorney Drizin) That's fair. Remember in
2 response to Mr. Kratz you said that, as a defense
3 attorney, you take a strategy and you stick with
4 it; correct?

5 A That's what I try to do, yes.

6 Q Okay. And you build your case around that
7 strategy?

8 A That's my attempt, yes.

9 Q And every witness that you question filters into
10 that strategy?

11 A Yes.

12 Q You said that to --

13 A Yes.

14 Q -- Mr. Kratz?

15 A Yes. Yes. I agree.

16 Q Okay. Um, early in this case you hired
17 Dr. Gordon; correct?

18 A I did.

19 Q And you hired him for two purposes; isn't that
20 right?

21 A I wanted to, yes.

22 Q One of those purposes was to evaluate Brendan's
23 suggestibility?

24 ATTORNEY KRATZ: Objection. Asked and
25 answered. If we aren't plowing the same field here,

1 Judge --

2 THE COURT: Sustained.

3 Q (By Attorney Drizin) You wanted Dr. Gordon to
4 opine about the police interrogation tactics and
5 their effect on Brendan Dassey; correct?

6 ATTORNEY KRATZ: Same objection, Your
7 Honor.

8 THE COURT: Sustained.

9 Q (By Attorney Drizin) That was your strategy.
10 And did you follow through on that strategy?

11 ATTORNEY KRATZ: Objection. Asked and
12 answered, Judge.

13 THE COURT: I'm going to sustain it.

14 Q (By Attorney Drizin) Mr. Kratz talked to you
15 about common sense notions for the jury. Do you
16 recall that?

17 A Yes.

18 Q Okay. Um, and we also talked about you receiving
19 a report from Dr. White at some point in this
20 case. Do you remember that?

21 A Yes.

22 Q Okay. Now, did Dr. White in his report to you
23 tell -- opine about whether or not jurors
24 understand the problem of false confessions?

25 A I'd have to look at the memo.

1 Q Did you have any basis to think that it would be
2 within the common sense of jurors that they would
3 understand the problem of false confessions?

4 A No. I don't think that would be a problem with most
5 jurors.

6 Q You think they would understand it?

7 A The concept of false confession? Concept, yes.

8 Q And that police interrogations could play a role
9 in false confessions?

10 A I think, again, the concept, yes.

11 Q Okay. How about the social psychology of police
12 interrogations? Is that something the jurors
13 understand?

14 ATTORNEY KRATZ: Objection. Speculation.
15 I don't know that that would have been allowed,
16 Judge. It really requires, um, this Court to --

17 THE COURT: We're starting to --

18 ATTORNEY KRATZ: -- re-try that.

19 THE COURT: -- wander again. The
20 objection is sustained.

21 Q (By Attorney Drizin) Did you review any research
22 prior to deciding not to call a false confession
23 expert or a police interrogation experts on what,
24 in fact, juries understand about the police
25 interrogation process?

1 A About what juries understand?

2 Q That's right.

3 A No.

4 Q You assumed that they might understand something

5 about this process? That it was within their

6 common sense?

7 A Yes, I would agree with that.

8 Q But you didn't know the -- whether there was any

9 research to dispute your assumption?

10 A Research? No.

11 Q Okay. When you sought to reopen the motion to

12 suppress, one of the bases that you sought to

13 reopen them on was that the statements by Brendan

14 were unknowing and unintelligent; correct?

15 A Yes.

16 Q And did you also believe that his understanding

17 of a **Miranda** warnings were unknowing and

18 unintelligent? Was that a concern of yours?

19 A It was brought up in our conversations more from Ray

20 than me. It was an issue that Ray looked into and

21 wanted to even look into it further. But if you're

22 asking if I thought it was an issue, no, I didn't

23 think it was an issue.

24 Q But Ray might have?

25 A Yes.

1 Q Okay. So there was a split of opinion between
2 you on the **Miranda** issue?

3 A Yes.

4 Q Okay. And would you agree with the statement
5 that a confession is among the most powerful
6 pieces of evidence in a court of law?

7 A Yeah, I -- I would agree with that.

8 Q Whether that confession is true or false, it has
9 tremendous persuasive power?

10 ATTORNEY KRATZ: Objection.
11 Speculation.

12 THE COURT: We're starting to do a direct
13 examination all over again instead of a redirect.
14 Objection --

15 ATTORNEY KRATZ: Or a closing.

16 THE COURT: -- is sustained.

17 Q (By Attorney Drizin) You talked about how that
18 you would have tried to persuade the Judge that
19 Mr. O'Kelly's phone call was so egregious that
20 everything that flowed from it would be -- should
21 be suppressed. Do you remember that?

22 A The O'Kelly video.

23 Q The O'Kelly video.

24 A Yes.

25 Q Okay. Have you ever seen an interrogation as

1 egregious like -- as that in your career?

2 ATTORNEY KRATZ: Objection. Irrelevant,
3 Judge.

4 THE COURT: Sustained.

5 Q (By Attorney Drizin) What were you going to
6 argue to the Judge about why that interrogation
7 was egregious?

8 ATTORNEY KRATZ: Objection. Asked and
9 answered, and beyond the scope of cross.

10 THE COURT: Sustained. Counsel, do you
11 have any more redirect questions?

12 ATTORNEY DRIZIN: I think all of these
13 matters were covered on Mr. Fremgen -- Mr., uh,
14 Kratz's, um, cross. But give me one minute, Your
15 Honor.

16 Q (By Attorney Drizin) I just want to focus your
17 attention on just one last matter. This is the
18 May 13 phone call, which is Exhibit 70, and page
19 three.

20 A Okay.

21 Q Okay. I want you to focus about halfway down the
22 page. Um, beginning with Brendan saying -- with
23 mom saying, "What do you mean?" and ending at,
24 um, the question "What makes a difference? He
25 ain't going nowhere now, is he?"

1 "Brendan: No."

2 Do you see that?

3 A Yes.

4 Q Okay.

5 A Okay.

6 Q Okay. We talked about how Barb -- Barb would
7 advise Brendan from time to time with regard to
8 plea deals; is that correct? She was brought in
9 to consult with --

10 A Yes. Yes. Yes.

11 Q Okay. And one of the points has been made is
12 that there were pressures being brought to bear
13 from other family members, um, out of a concern
14 for what Brendan's testimony might do for
15 Steven's case?

16 A Yes.

17 Q Okay. Um, does this phone call reflect what
18 Barb's position was with respect to Steven's
19 case?

20 ATTORNEY KRATZ: Objection. Speculation,
21 Judge.

22 THE COURT: Well, the exhibit speaks for
23 itself. If you think you know, go ahead and answer.

24 THE WITNESS: I have no reason to
25 dispute that's her opinion.

1 Q (By Attorney Drizin) And is this consistent?
2 Her position that Brendan has got to do what he's
3 going to do is consistent with what she expressed
4 to you?

5 A To me? Yes.

6 Q Throughout the course of your representation of
7 Brendan?

8 A Yes.

9 Q Okay.

10 ATTORNEY DRIZIN: No further questions.

11 THE COURT: You may step down.

12 THE WITNESS: Okay. Thank you.

13 THE COURT: You have a ten-minute witness?

14 ATTORNEY DRIZIN: I wish.

15 THE COURT:: Rather than start a new
16 witness, it makes sense to simply reconvene tomorrow
17 morning at 8:30. I'd like to see counsel in about
18 five minutes in chamber -- chambers.

19 (Recess had at 4:20 p.m.)

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1 STATE OF WISCONSIN)
2) SS.
3 COUNTY OF MANITOWOC)

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I, Jennifer K. Hau, Official Court
Reporter for Circuit Court Branch 3 and the State
of Wisconsin, do hereby certify that I reported
the foregoing matter and that the foregoing
transcript has been carefully prepared by me with
my computerized stenographic notes as taken by me
in machine shorthand, and by computer-assisted
transcription thereafter transcribed, and that it
is a true and correct transcript of the
proceedings had in said matter to the best of my
knowledge and ability.

Dated this 24th day of March, 2010.

Jennifer K. Hau
Jennifer K. Hau, RPR
Official Court Reporter

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

vs.

BRENDAN R. DASSEY,

DEFENDANT.

MOTION HEARING

DAY 4

Case No. 06 CF 88

DATE: JANUARY 21, 2010

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

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On behalf of the State of Wisconsin.

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Attorney at Law
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LAURA H. NIRIDER
Attorney at Law
On behalf of the defendant.

JOSHUA A. TEPFER
Attorney at Law
On behalf of the defendant.

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THOMAS F. GERAGHTY
Attorney at Law
On behalf of the defendant.

ALEX HESS
Law Student
On behalf of the defendant.

Adar Crosley
Law Student
On behalf of the defendant.

Brendan R. Dassey
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

I N D E X

WITNESSES

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EXHIBITS

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1 THE COURT: Morning, counsel, ladies and
2 gentlemen. We're here today on State v. Dassey,
3 06 CF 88. Appearances, please.

4 ATTORNEY FALLON: Morning, Your Honor.
5 May it please the Court, State appears by Special
6 Prosecutors Ken Kratz and Tom Fallon.

7 ATTORNEY DVORAK: Good morning, Your
8 Honor. May it please the Court, Mr. Dassey
9 appears with Attorney Robert Dvorak. Also
10 appearing is Laura Nirider, Joshua Tepfer, Adar
11 Crosley, Attorney Steven Drizin, and Attorney
12 Thomas Geraghty, and Alex Hess.

13 THE COURT: Are you set to proceed,
14 Mr. Dvorak?

15 ATTORNEY DVORAK: We are, Judge.

16 THE COURT: Go ahead.

17 ATTORNEY DVORAK: I would call Michael
18 O'Kelly, please.

19 THE COURT: Mr. O'Kelly, remain standing
20 while you take the oath and then be seated.

21 THE WITNESS: Yes, Your Honor.

22 MICHAEL O'KELLY,
23 called as a witness herein, having been first duly
24 sworn, was examined and testified as follows:

25 THE CLERK: Be seated. State your name and

1 spell your last name for the record, please.

2 THE WITNESS: Michael O'Kelly, O,
3 apostrophe, K-e-l-l-y.

4 DIRECT EXAMINATION

5 BY ATTORNEY DVORAK:

6 Q Mr. O'Kelly, do you -- what do you prefer to go
7 by? Mr. O'Kelly? Mike? Michael?

8 A Mike, Michael.

9 Q Okay. Um, you'll notice around you a number of
10 folders.

11 A Okay.

12 Q And if we will be referring to exhibits in those
13 folders, and we'll do our best to direct you
14 to -- to them as best we can.

15 A You bet.

16 Q Um, I want you understand, first off, that you
17 are to confine your answers to the events prior
18 to May 14, okay?

19 A Yes, sir.

20 Q Now, you were a -- a -- initially retained on
21 this case by Mr. Kachinsky? Leonard Kachinsky.
22 Is that correct?

23 A Yes, sir.

24 Q And you were retained to perform a polygraph
25 test?

1 A Yes, sir.

2 Q Okay. If you would look at Exhibit No. 62,
3 please? Binder two.

4 A Um, these start at 241. Unless there's something
5 else I'm missing. Oh.

6 Q Binder two.

7 A Oh. I didn't see that. I'm on 62.

8 Q Okay. Have you reviewed it?

9 A Yes, I have, sir.

10 Q Okay. Now, that -- do you recall getting that
11 e-mail?

12 A I do, yes.

13 Q All right. That's an e-mail confirming the fact
14 that the public defender's office has approved
15 you to do a polygraph in Mr. Dassey's case for
16 \$350; right?

17 A That is correct, sir.

18 Q All right. Um, did you have -- I'm sorry. And
19 the date is -- it's dated April 3 of 2006?

20 A Um, I don't see it. Oh, there it is. Yes, it is.

21 Q Okay. All right. The -- and he forwarded,
22 apparently with this, copy of the Criminal
23 Complaint? According to this e-mail?

24 A Yes. According to the e-mail, yes.

25 Q Okay. And did you have any other discussion with

1 Mr. Kachinsky about the matter on this date or
2 around this time that you recall?

3 A I don't recall without documentation.

4 Q Okay. Did -- do you recall whether or not, um,
5 at around this time, Mr. Kachinsky giving you any
6 kind of opinion or what he thought about the
7 case?

8 A No, I do not.

9 Q Okay. And I want to draw your attention to
10 Exhibit 63.

11 A I'm there.

12 Q Okay. Now, this is dated Tuesday, April 11,
13 2006?

14 A It is.

15 Q All right. Um, and this has previously been
16 identified as a message that was left for
17 Mr. Kachinsky, um, from you. Do you recall
18 leaving a message for him about the polygraph
19 test?

20 A I don't recall that, no, because it wouldn't make
21 sense.

22 Q Well, I would like you to look at the second to
23 the bottom line. It says, "Dassey wants to do it
24 Sunday morning. Easter."?

25 A That's why this thing doesn't make sense to me.

1 Q Okay. That's -- so that's -- you're saying that,
2 um --

3 ATTORNEY FALLON: Your Honor, I'm going to
4 oppose -- I'm just going to object here because
5 Mr. Kachinsky, himself, indicated with respect to
6 this particular exhibit that it could have been a
7 cut and paste thing between his secretary and
8 himself. They type up, send him an e-mail, he may
9 drop some information into it, I think he testified
10 to -- thereto, so this witness is not going to be
11 familiar with, and it's his speculation as to what
12 list -- Mr. Kachinsky meant by this.

13 ATTORNEY DVORAK: I'll withdraw that
14 question. I'm just trying to clarify what his
15 recollection might be surrounding this.

16 THE COURT: Okay.

17 Q (By Attorney Dvorak) Um, particularly with the
18 date of the polygraph, the decision was made to
19 do this on Easter. Were you part of that
20 decision?

21 A Yes, I was. Yes.

22 Q Okay. What do you recall about how the decision
23 was made to do it on Easter Sunday?

24 ATTORNEY FALLON: Objection. Relevance as
25 it pertains to this particular issue.

1 ATTORNEY DVORAK: It has to do -- I --
2 I'm -- I'm trying to get him into his conversations
3 with Mr. Kachinsky. I'm trying to bring him there.
4 What the early -- early, uh, relationship was and
5 how that relationship developed. It's --

6 THE COURT: Overruled.

7 THE WITNESS: The best I can tell you is
8 my recollection is that there was a -- a request
9 if I would do it on Easter Sunday. If I was
10 available. There seemed to be some urgency. And
11 I -- I agreed to do it Easter Sunday.

12 Q (By Attorney Dvorak) Okay. To your recollection
13 up to this point had you had any contact with
14 Brendan Dassey?

15 A No. That's why that second line didn't make sense.

16 Q Okay.

17 A The second from the bottom it is.

18 Q All right. Now, I want you to look at Exhibit
19 No. 56. And you may want to keep that one handy.

20 A You mean keep 63 handy?

21 Q Exhibit No. 56.

22 A Keep that one handy.

23 Q Yes.

24 A Okay. Should I pull it out of the binder?

25 Q That would be fine. Just don't take it with you

1 when you leave.

2 A No, sir.

3 Q All right. Can you identify that for me, please?

4 A There's eight pages to a document -- uh, Exhibit No.
5 56. It appears to be my statement of services, um,
6 dated -- I don't see a date.

7 Q Okay. Um, can you verify it for us or that this
8 was the voucher that you submitted to the public
9 defender's office?

10 A It is.

11 Q Okay. And it was -- it also records your -- your
12 daily activity regarding your work on this
13 matter; correct?

14 A That is correct, sir.

15 Q All right.

16 A Yes.

17 Q Um, if you would look at page one, um, for
18 Tuesday, April 11, the same date as Exhibit No.
19 63 that we just referred to, there's a telephone
20 conference with Attorney Kachinsky?

21 A Yes.

22 Q Do you have any recollection about what that was
23 about?

24 A It -- my recollection is the only thing we talked
25 about is the polygraph and the issue. I can't think

1 of anything else I would have talked beyond that
2 other than the location perhaps.

3 Q All right. What do you remember -- you had
4 received a copy of the Criminal Complaint by this
5 point; right?

6 A I received documentations. I have never had the --
7 an entire document that I know of.

8 Q Well, on the April 3 e-mail, Exhibit 62,
9 Mr. Kachinsky states in that e-mail that he is
10 attaching a copy of the Complaint. Do you want
11 to refer to 62? Will that help you?

12 A Sure. Give me one moment, please. It does say
13 attached is the Criminal Complaint, but my
14 recollection in this matter here is that I never had
15 all the documentation.

16 Q Well, I'm --

17 A Am I answering your question?

18 Q Well, I'd -- I guess I don't know what you mean
19 by documentation. Um, the Criminal Complaint is
20 just one single document. The charging --

21 A Oh.

22 Q -- document.

23 A Oh.

24 Q I'm not talking about the entire discovery or
25 anything.

1 A I misunderstood you.

2 Q Okay.

3 A I -- I thought you meant the -- the Complaint as
4 having details other than a piece of paper.

5 Q Well, the Complaint was rather lengthy in this
6 matter.

7 A Okay.

8 Q But it's the charging document. Do you remember
9 getting that and reviewing that?

10 A I don't specifically recall, no.

11 Q Okay. All right. Well, um, the -- I want to
12 refer you to, um -- the -- the -- the polygraph
13 test is done on Easter Sunday, which is April 16.
14 And I want you to look at Exhibit 231, please?

15 A Okay. I'm at 231.

16 Q Okay. And can you identify that for me, please?

17 A Yes. Would you like me to count the pages or just
18 identify the exhibit?

19 Q Just take a look at the exhibit. What I'm going
20 to ask you to do is authenticate it for me.

21 A This is -- this is my polygraph, yes.

22 Q Okay. That's the results of the polygraph test
23 that you gave Brendan Dassey on April 16?

24 A These -- these are the charts, yes.

25 Q The charts?

1 A Not the -- not the results.

2 Q Okay. Great.

3 A Correct.

4 Q Now, when you -- let me --

5 (Exhibit No. 368 marked for identification.)

6 Q Mr. Kachinsky, I'm showing you what's been marked

7 as Exhibit No. --

8 A I'm -- I'm Mr. O'Kelly.

9 Q O'Kelly. What did I say, Kachinsky?

10 Mr. O'Kelly. Uh, Exhibit 368, does that refresh

11 your recollection at all about the e-mail that we

12 referred to on April 3?

13 ATTORNEY FALLON: That would be --

14 excuse me, Counsel, that you're referring -- when

15 you say the e-mail April 3, you're referring back

16 to Exhibit 62?

17 ATTORNEY DVORAK: Correct.

18 ATTORNEY FALLON: Thank you.

19 THE WITNESS: Can I have a moment?

20 Q (By Attorney Dvorak) Sure.

21 A Okay.

22 Q Does that refresh your recollection of -- do you

23 recall seeing that document labeled "Criminal

24 Complaint"?

25 A I can tell you, yes, only for one reason. Because

1 there's some notes with -- with my writing.

2 Q Okay.

3 A Beyond that, I -- I didn't recognize it until then.

4 Q Okay. So we can -- do you have any argument
5 with -- with the fact that you reviewed that?

6 That's what you reviewed in preparation for the
7 polygraph test?

8 A Only because it looks like my -- it looks like my
9 writing but I'm not sure. It's -- it's -- I don't
10 know.

11 Q Okay.

12 A I -- I don't -- I don't recall the document for what
13 it's worth to you.

14 Q Let -- let me ask you this: What happened on the
15 day of the polygraph test? What -- what was the
16 order of things?

17 A I entered the facility with my equipment. I went
18 upstairs, like, third or fourth floor. I'm not sure
19 where it was. We set -- I set everything up.

20 Once my polygraph and everything else
21 was set out, I turned the video recorder on.

22 I -- I then notified the jail personnel I was
23 ready to receive Mr. Dassey.

24 He entered the -- the room where I was
25 located. I introduced myself, I believe, for the

1 first time, and I handed him a survey to
2 complete.

3 Q All right. Let's -- go ahead. Finish.

4 A After the -- after the survey, I'm not sure if we
5 broke for lunch or not. I believe we may have to
6 give him a break. And I believe I started the -- the
7 polygraph after lunch, but I'm not sure. I -- I
8 could have gone right through.

9 Q Okay. Now, you -- you said you did a survey.
10 I'd like you to look at Exhibit No. 94.

11 A Okay. Should I put the polygraph --

12 Q Yes, please. You can just leave them in the
13 binder if it -- if -- if it's possible to review
14 them that way. If you need to take them out,
15 that's fine. It just may go faster.

16 A You bet. Which number now?

17 Q Ninety-four.

18 A I'm there.

19 Q All right. Would you review that? And then I'd
20 like to ask you a -- a -- a question or two as to
21 whether or not that is the interview form that
22 you referred to a moment ago that you had
23 Mr. Dassey fill out?

24 A You bet.

25 Q On April 16?

1 A You bet. It is, but it's missing some pages.

2 Q Okay. What do -- do you know what pages are

3 missing from that?

4 A It appears page one and page two.

5 Q Okay. Other than that, that's the -- that's the

6 form; correct?

7 A That is the form, yes, sir.

8 Q All right. What instructions did you give to

9 Mr. Dassey when filling out that form?

10 ATTORNEY FALLON: Objection. Relevance.

11 THE COURT: Overruled.

12 THE WITNESS: I don't recall.

13 Q (By Attorney Dvorak) Okay. How long did it take

14 him to fill out that form? Do you recall?

15 A I would know if I knew what time he started because

16 we have an ending clock here. So the answer is I

17 don't know how long.

18 Q All right. Does the -- that's fine. Now, with

19 respect to -- after he had filled out the form,

20 you reviewed it before the polygraph -- you gave

21 the polygraph?

22 A I believe I inter -- I reviewed one page only. At

23 least -- well, I should say I know I reviewed one

24 page.

25 Q Okay. And what page would that have been?

1 A Give me a moment, please. It would have been page
2 2-3. That's -- and that's in the top right corner.
3 Q All right. All right. Now, do you recall what
4 the test questions were?
5 A Not without going back to them.
6 Q Okay. Um, if -- if you refer to Exhibit 231,
7 that would have --
8 ATTORNEY FALLON: I'm --
9 Q (By Attorney Dvorak) -- the test questions in
10 there; correct?
11 A I've got it right here, yes.
12 ATTORNEY FALLON: I'm going to object to
13 the relevance of what the test questions were as it
14 relates to these proceedings.
15 THE COURT: Overruled.
16 THE WITNESS: Was there a question, Your
17 Honor?
18 Q (By Attorney Dvorak) The question was the test
19 questions.
20 A Yes.
21 Q What the test questions were.
22 A There's actually three sets of test questions here.
23 Q Okay. Would you -- would you tell us what those
24 are, please?
25 A Would you like me to read them or tell you what they

1 are?

2 Q Well, I -- what I'd like you to -- to read to us
3 were the -- the questions that, um, you were
4 testing on as opposed to the other questions.
5 Preliminary questions.

6 A When you say "preliminary questions," are you
7 referring to the acquaintance test, or the Sym test
8 or the --

9 Q Correct.

10 A Okay.

11 Q Yes.

12 A Okay. When you say test questions, are you referring
13 to all ten? Or the relevant questions? Or the
14 symptomatic questions?

15 Q The relevant questions.

16 A In the first example, there's three relevant
17 questions and they are as follows, and they -- and
18 they numbers -- numbers as follows: Five, seven, and
19 ten, respectively:

20 Number five is: Did you help kill
21 Teresa Marie Halbach?

22 Number seven: Did you help kill Teresa
23 Marie Halbach on Monday, October 31?

24 And the final one was: Was the body of
25 Teresa Marie Halbach burned in the fire by

1 the Steve Avery house?

2 Q Okay. And the second set?

3 A Give me a moment, please.

4 The second set of three relevant
5 questions are as follows: And, once again, the
6 same order follows, five, seven, and ten:

7 Number five is: Did you see Teresa
8 Marie Halbach in the Avery house?

9 Did you see Teresa Marie Halbach in the
10 Avery house on Mon -- Monday, October 31?

11 Number ten is: Did you touch any part
12 of the body of Teresa Marie Halbach?

13 Q Okay. And what was the third set?

14 A That was --

15 Q The relevant questions?

16 A That was the third.

17 Q Okay.

18 A The third polygraph. But there's only two relevant
19 tests.

20 Q Okay. Um, now, you -- you said that you video
21 recorded this?

22 A Yes, I did.

23 Q Okay. And were you able to locate the video
24 recording?

25 A Yes. I believe I gave it to you.

1 Q The video recording? The video tape of the
2 April 16?
3 A I gave all the recordings. I don't know if this was
4 included or not. I -- I presumed it was.
5 Q Uh, I don't -- we didn't have it.
6 A Oh. Okay.
7 Q All right.
8 A And I didn't -- then I don't have it.
9 Q All right. Well, we had previously asked for
10 information from you; right?
11 A Yes, you did.
12 Q And you had sent all the information you had to
13 Attorney Rosenfeld?
14 A I did.
15 Q Yeah. And, um, some of the information you had
16 saved on a -- on a -- some kind of a jump --
17 stick drive or jump drive or something; right?
18 A That's correct.
19 Q Okay. And -- and -- and somehow the other
20 information was lost and missing; right?
21 A That's my understanding.
22 Q Okay. So whatever you had saved was the only
23 thing that was remaining; correct?
24 A That is correct.
25 Q All right. Um, now, tell me about the -- the

1 polygraph test. Did you -- um, how did you score
2 that test?

3 A Numerically scored.

4 Q Okay. Did you do it by hand or does your
5 computer do it?

6 A It's actually both.

7 Q Okay. And when -- when it -- how does it -- when
8 it gets scored on the computer, does the computer
9 show what the score is?

10 A There's a screen shot, yes.

11 Q A what?

12 A A screen shot.

13 Q Okay. Can you tell me what that is?

14 A Not without looking at it.

15 Q Well, no, I'm -- what I'm asking you is can you
16 tell me what a screen shot is? Can you describe
17 that for us?

18 A I understand the question now. The screen shot would
19 either say one of three options. Either it would
20 say -- well, if it's in poly score. In poly score
21 it's going to show deception indicated, no
22 deception --

23 COURT REPORTER: Excuse me.

24 THE WITNESS: Sorry.

25 COURT REPORTER: Slow down, please.

1 THE WITNESS: I will, yes. Sorry.
2 It'll say deception indicated, no deception, or
3 inconclusive. In poly score only.
4 Q (By Attorney Dvorak) Okay. And so that's just a
5 result that shows up on the computer screen?
6 A That's correct.
7 Q Does that -- does that give a percentage as to
8 the -- each -- either -- or any of those three
9 options?
10 A Yes, it does.
11 Q Okay. And that's -- that's part of the poly
12 score program? Is that what you're saying?
13 A It is.
14 Q Okay. Um, do you use poly score?
15 A I use poly score, yes.
16 Q Um, now, when -- when Brendan took the test, his
17 answers to the relevant questions were denials;
18 correct?
19 A I could only verify that by looking at the -- the
20 charts.
21 Q Okay. Would you do that, please?
22 A Yes. That is correct, sir. Yes.
23 Q Okay. And that was consistent with the survey
24 that he had -- you had him fill out prior to the
25 polygraph, which was Exhibit 94; correct?

1 A I would have to review the survey to get that answer.
2 Q All right. Well, the -- the survey is -- is --
3 is -- is an accurate -- is -- is what it --
4 what -- what Mr. Dassey had filled out; correct?
5 A It is --
6 Q (Unintelligible.)
7 A -- yes. Exhibit 94.
8 Q All right. Um, did you also verify the score by
9 hand?
10 A I do.
11 Q Okay. Did you verify the score by hand in this
12 case?
13 A I did.
14 Q Okay.
15 A To the best my recollection.
16 Q At -- at the time?
17 A To the best my recollection, yes.
18 Q Did you make any notes of that any place?
19 A I always do. I don't recall. Can I back up a -- a
20 moment?
21 Q Sure.
22 A I don't know when I numerically scored Mr. Dassey's
23 test. It would have been either in the facility or
24 outside.
25 Q All right. Did you, uh -- after the test, did

1 you have any discussion with Mr. Dassey?

2 A Not that I recall.

3 Q Okay. You weren't sent there at that time to --

4 to ask Mr. Dassey any questions?

5 A Other than on the polygraph?

6 Q Right.

7 A Yes.

8 Q Okay. That was your only task up to this time

9 was to do a polygraph test?

10 A Yes.

11 Q And as part of your polygraph test procedure,

12 there was -- was not to do any kind of

13 post-polygraph interview at that time?

14 A Absolutely not.

15 Q All right. Did you have any instructions about

16 what you were supposed to do with the results of

17 the polygraph test?

18 A I did.

19 Q And what were those instructions?

20 A To notify Mr. Kachinsky.

21 Q Okay. And were there -- were there any other

22 instructions? Let me ask you this: Were you

23 told whether or not you should tell Mr. Dassey

24 the results of the polygraph test?

25 A I was. I was told, yes.

1 Q And what -- what did -- what were you told?

2 A Mr. Kachinsky stated that I was not to inform his

3 client.

4 Q Okay. Now, at some point, um, your job changed

5 from -- well, let me back up a minute. After the

6 test was over with, how -- how did you inform him

7 of that? Did you go over to his office? Did you

8 have a conference with him? Did you talk to him

9 on the phone? If you recall.

10 A I don't recall. It could have been a combination. I

11 don't know.

12 Q Okay. What did you tell Mr. Kachinsky the

13 results were?

14 A My recollection is that they were deceptive.

15 Q Okay. Um, at some point your -- your job on this

16 case changed from prosecutor to an investigator;

17 right?

18 A I was never a prosecutor.

19 Q I'm -- I'm sorry. Polygraphist. To a -- I'm

20 sorry. Polygraphist to an investigator?

21 A Yes, sir.

22 Q Okay. And do you recall when about that

23 happened?

24 A It would have been after the polygraph is the best I

25 can give you.

1 Q All right. Um, you had a -- a conference -- a
2 phone conference -- I want you to refer to your
3 notes -- your, uh -- Exhibit 56?
4 A You'll have to give me a moment. I'm at 56.
5 Q All right. Here. I got -- tell you what, you
6 can -- you can put 56 back in. I will just give
7 you a copy so you don't have to keep --
8 A Okay.
9 Q -- pulling out --
10 A Back in the binder you're saying. Thank you.
11 Q The next entry on your time sheet is April 20.
12 Um, or I want you to draw your attention to
13 April 20.
14 A It covers page one and page two, yes.
15 Q Okay. And, um, at that time you have a -- a
16 telephone conference? It shows a -- a conference
17 with the attorney, and review and obtaining
18 digital discovery?
19 A Yes.
20 Q Did you, uh -- does -- so at -- at least, is it
21 fair to say, at about this point your -- your job
22 description changed from polygraphist to
23 investigator?
24 A Yes.
25 Q Okay. What discussion -- and you had a

1 discussion with Mr. Kachinsky, um, about what it
2 was that you -- he was hoping to accomplish here;
3 right?

4 A Ask your question again, please.

5 Q You had a discussion with Mr. Kachinsky about
6 what his theory of -- of the case was; correct?

7 A I don't recall.

8 Q You had a discussion with him about what it was
9 that he wanted you to do in the case?

10 ATTORNEY FALLON: Objection. This is
11 leading the witness. Just ask him the questions.

12 THE COURT: I'll overrule the objection.

13 But --

14 ATTORNEY DVORAK: I-- I --

15 THE COURT: Questions.

16 ATTORNEY DVORAK: Trying to get it
17 moving.

18 THE WITNESS: I -- unfortunately,
19 there's no notes here to say what we talked
20 about. Um, I can only assume that it would have
21 been --

22 ATTORNEY FALLON: And I'm going to object
23 to assume. If he has no recollection, he has no
24 recollection. It's speculation.

25 THE COURT: Sustained.

1 Q (By Attorney Dvorak) Mr. O' -- all right. Um, I
2 want to -- let's see. Do you recall whether or
3 not Mr. Kachinsky told you that, uh, he thought
4 the best thing for -- for Mr. Dassey in this case
5 was to try to get a plea deal?

6 A At which time? Can you give me a timeframe?

7 Q Um, from the first time that he took you on as an
8 investigator, when he hired you, and told you
9 what he was looking for you to do in the case.

10 ATTORNEY FALLON: Objection. Calls for
11 hearsay.

12 ATTORNEY DVORAK: It's --

13 ATTORNEY FALLON: Mr. Kachinsky was here.
14 Answered those questions. This witness'
15 interpretation, or understanding, recollection,
16 doesn't matter.

17 THE COURT: Sustained.

18 ATTORNEY DVORAK: It's -- it's not
19 offered for the truth of the matter asserted,
20 Judge, it's offered to -- to -- to hopefully
21 refresh his recollection about what it was that
22 he did and why he did it.

23 THE COURT: Well, I think it's offered for
24 the truth of the matter asserted and the objection's
25 sustained. Objection will stand.

1 Q (By Attorney Dvorak) Um -- okay. If, um -- I
2 want you to look at Exhibit No. 362.
3 A Did you say 3-6-2?
4 Q Yes.
5 A Okay. Give me a moment, please. Okay. I'm -- I'm
6 there. It's one page; is that correct?
7 Q That's correct. I'd like you to look at that and
8 tell me if it refreshes your recollection?
9 A It does. I read this earlier.
10 Q Okay. Before you came into court?
11 A Yes. We talked about this yesterday and today.
12 Q Okay.
13 A You and I did.
14 Q And does that refresh your recollection about
15 what Mr. Kachinsky was hoping to do with the
16 case?
17 A Okay.
18 Q I look -- uh, refer to the bottom. Strategy
19 ideas.
20 A The problem with this is that I believe these --
21 these were written in two different times, and I
22 don't know the circum -- I don't recall the
23 circumstances.
24 Q Okay. Well, let's go, um -- first of all, is
25 that your handwriting on --

1 A Yes.

2 Q -- these notes? Is --

3 A Yes.

4 Q -- there any question --

5 COURT REPORTER: One at a time, please.

6 ATTORNEY DVORAK: I'm sorry.

7 THE WITNESS: I'm sorry.

8 Q (By Attorney Dvorak) Is there any question that

9 those are your notes?

10 A No question whatsoever. They're my notes.

11 Q Okay. And the date on the top is April 22, 2006?

12 A It is.

13 Q Okay. And if you look at -- let's look at

14 number -- item number four on that list. Now,

15 let me back up a minute before you do that.

16 A Yes, sir.

17 Q Also on this it says, e-mail attorney; right?

18 A It does.

19 Q Okay. Do you know what that -- is that

20 something -- notes to yourself to e-mail the

21 attorney?

22 A It is.

23 Q All right. And so this is a list of things

24 that -- that you are eventually going to put into

25 some kind of an e-mail for Mr. Kachinsky?

1 A At least these ten, if not, more. That's correct.

2 Q Right. Okay. Would you look at item number
3 four?

4 A I am.

5 Q All right. Now, does that help you, um, refresh
6 your recollection about where you were headed
7 with this case?

8 ATTORNEY FALLON: Objection. Your Honor,
9 the witness has just testified that these were his
10 ideas that he was going to suggest to Mr. Kachinsky.
11 It has nothing -- I -- to do with Counsel's original
12 question as to what was Mr. Kachinsky hoping to do
13 and when he was hoping to do it. This is all
14 irrelevant and immaterial as to what this
15 investigator was thinking on April 22.

16 THE COURT: I'm going to overrule the
17 objection. But can we be a little less circuitous
18 in questioning and have him read what it says?

19 Q All right. Why don't you read what it says?

20 A Can I clarify one thing? These are not my ideas.

21 THE COURT: Look, you've been -- you've
22 been asked -- you've been --

23 THE WITNESS: Okay.

24 THE COURT: -- asked to read what it
25 says. Just do it.

1 THE WITNESS: Yes, Your Honor. "Number
2 one: Mom" and there's a scratch-out, "asked
3 defendant to fire you," dash "Lahuna"
4 (phonetic) -- and I --
5 Q I said item number four is --
6 A Oh, I'm sorry.
7 Q -- what I want you to read.
8 A Number four? "All agreed that if we can get
9 defendant to turn," dash, "do it."
10 Q Okay. And by getting defendant to turn, you mean
11 to turn State's evidence; correct?
12 A That is correct.
13 Q All right. In other words, to admit guilt,
14 testify against the co-defendant; correct?
15 A That is correct.
16 Q Okay. And you said that that was not your --
17 these are not your ideas?
18 A That's correct.
19 Q These are -- ideas are Mr. Kachinsky ideas?
20 A No..
21 Q Where did these ideas come from?
22 A This information came from my client, Mr. Dassey's
23 family.
24 Q Okay. So the family, you're saying, was
25 suggesting that Mr. Dassey should turn State's

1 evidence against Steven Avery?

2 A All this information, one through ten, is from the
3 family is my recollection.

4 Q Okay. Um, did you -- and -- and -- and
5 underneath that's, uh, strategy ideas. You don't
6 recall when you sent that or wrote that?

7 A I -- I -- I -- I don't -- I believe I wrote the whole
8 thing on 4 -- on 4/22/06, on Saturday. But I believe
9 I wrote it in two different settings.

10 Q Okay. And would you read, under strategy ideas,
11 what it says?

12 A There's two. And there's -- the first one is,
13 "Obtain detailed crime scene" -- C slash S, crime
14 scene -- "information from defendant."

15 Number two. "Suggest we open dialogue
16 with prosecutor how to turn" -- either how or
17 now -- "to turn State's" --

18 Q Okay. Were those -- were those your ideas?
19 Where did -- where -- where did you get the
20 strategy information from? Or strategy ideas
21 from?

22 A My best recollection is going to be, uh, from the
23 ten, from the family.

24 Q All right. So you're saying that up to this
25 point you don't have any recollection with Mr. --

1 of your conversations with Mr. Kachinsky about
2 what he wanted you to do as his investigator?

3 A If you show me some notes I can be real clear. Um --

4 Q I'm just asking you with the question right now
5 without showing you any other notes. You're
6 saying you have no independent recollection right
7 now, based on having read that, about any
8 conversation with Mr. Kachinsky about -- up to
9 April 22, about where you were going with this
10 case?

11 A I know it changed direction. I can't tell you the
12 date.

13 Q When you -- when you talk about the family, that
14 it was the family's idea that came up with this,
15 who -- who in the family were you talking about?

16 A Barb Janda, if I'm pronouncing her name correctly,
17 uh, the stepfather, Scott Tadych. I spoke with
18 Blaine, uh, the brother of -- of Brendan. And Bobby,
19 the brother of Brendan.

20 Q Okay. On, uh -- take a look at your -- your
21 voucher again for April 20?

22 A I am.

23 Q There's a notation in here that you went to the
24 DA's office to review discovery?

25 A Can you tell me what page you're on?

1 Q Page one.

2 A Oh. You said to the DA's office?

3 Q Yes. Bot -- last line on page one.

4 THE COURT: Doesn't say DA.

5 ATTORNEY DVORAK: I'm sorry. It says --
6 never mind. It's my fault.

7 Q (By Attorney Dvorak) Um, if you would look at
8 Exhibit No. 362, please?

9 A I am.

10 Q I'm sorry. It was my mistake. One of the things
11 that's mentioned in there is -- is obtain a
12 detailed confession from Brendan. And you saw
13 that as your job in this case?

14 ATTORNEY FALLON: Objec -- objection to the
15 use of the word "confession."

16 THE COURT: I -- I don't know what he's
17 referring to. Perhaps you can point to the
18 particular number and ask that the -- ask that the
19 witness read it.

20 Q (By Attorney Dvorak) In your -- under strategy
21 ideas, it says obtain detailed statement, um,
22 confession, from Mr. Dassey; right?

23 A No.

24 ATTORNEY FALLON: No.

25 Q (By Attorney Dvorak) Okay. I'm sorry. Three

1 fifty-three. I had the wrong exhibit.

2 A Okay. Give me a moment, please. I'm there.

3 Q All right. Now, this is -- this is a -- a -- can

4 you identify that?

5 A It's -- it's my handwriting. It appears I wrote it

6 on April 23, '06, Sunday. And it's titled Kachinsky,

7 dash, Dassey.

8 Q Okay. And those are your -- that's your

9 handwriting and those are your notes; right?

10 A In its entirety, yes.

11 Q Okay. I want you to look at the left-hand column

12 under -- you see where it says, to do, with an

13 arrow pointing down?

14 A I do.

15 Q All right. Could you read that, please?

16 A You bet. "E-mail attorney. Form to be used for

17 confession. Mitigation use. Barb Janda provided

18 mitigation information."

19 Q Okay. That's -- that as far as I want you to go.

20 A You bet.

21 Q Now, um, did you send an e-mail to Mr. Kachinsky

22 to that effect?

23 A I don't know.

24 Q Okay. But it says here, um, that that's --

25 was -- was something that you were to do. Did --

1 does this refresh your recollection at all about
2 whether or not you had a conversation with
3 Mr. Kachinsky about getting a confession from
4 Brendan and having him turn State's evidence?

5 A I want to say yes.

6 Q Okay. Did you have -- and what did
7 Mr. Kachinsky -- you and Mr. Kachinsky talk about
8 in terms of what Mr. Kachinsky wanted you to do?

9 A I -- I don't recall. I'm looking for the notes right
10 here if I spoke to him on this day and I don't --

11 Q I thought you just said it refreshed your
12 recollection?

13 A It -- it -- it does reflect my -- refresh my
14 recollection as to what we're going to talk about.
15 But I don't know that I talked for sure for -- with
16 him on that particular day. I'm looking for the
17 notes. As for what he would have said, I don't see
18 that here.

19 Q All right. If Mr. Kachinsky, uh, had said that
20 his assessment of the case early on was that
21 Mr. Dassey should plead and turn State's
22 evidence, would that surprise you?

23 ATTORNEY FALLON: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: Could -- could you ask

1 your question again, please?

2 Q (By Attorney Dvorak) Yes. If -- if

3 Mr. Kachinsky, um, has testified that it was his

4 position early on in the case at the time that he

5 retained you that the goal in the case -- or the

6 course of the case should take would be to have

7 Mr. Dassey turn State's evidence, would that

8 surprise you?

9 A Only if you're telling me from the day that he hired

10 me on the polygraph the answer's clearly yes.

11 Q Um, I -- I'm sorry, could you say that again?

12 A Yes. If you -- if you tell me that that was his

13 position on the day of the polygraph, when we were --

14 when he was asking me to do the polygraph test, I

15 would be completely shocked.

16 Q Okay. He hadn't discussed it -- anything like

17 that with you at the time you took the polygraph?

18 A Absolutely not.

19 Q All right. Now, my question referred to the time

20 when he retained you as an investigator?

21 A I can tell you at some point in time the direction

22 changed. I can't give you spec -- the specific date.

23 Q Um, and do you have any notes or did you make any

24 notes about any of this?

25 A I would have given you everything that I have.

1 Q Okay. What you had left?

2 A Correct.

3 Q What didn't get lost?

4 A Correct.

5 Q Or destroyed?

6 ATTORNEY FALLON: Objection.

7 ATTORNEY DVORAK: I'll withdraw it.

8 Q (By Attorney Dvorak) At some point you went out

9 and -- and starting to gather evidence; right?

10 A I did.

11 Q Okay. Um, let's go to Exhibit -- let's go to

12 Exhibit No. 64.

13 ATTORNEY FALLON: Did you say 64,

14 Counsel?

15 ATTORNEY DVORAK: Yes.

16 ATTORNEY FALLON: Thank you.

17 Q (By Attorney Dvorak) It's in binder two.

18 A Okay. And that was 6-4?

19 Q Yes.

20 A Okay. I'm there.

21 Q All right. Just review it quickly, please, so --

22 at least to the point where you can identify what

23 it is?

24 A There's four pages and I recognize them.

25 Q Okay. And is that, at least the first two pages

1 and part of the top of the third page, an e-mail
2 that you sent to Len Kachinsky?

3 A Yes, it is.

4 Q All right. I have a -- the date of the e-mail
5 is -- is April 27? If you look at the second
6 line on the top?

7 A Yes, it is.

8 Q All right. I want you to go to -- to page two?

9 A I'm there.

10 Q I want you to -- to go to the paragraph where it
11 says, I have developed inside information.

12 A May I read it? May I read it?

13 Q Just review it.

14 A Okay.

15 Q All right. That paragraph discusses information
16 that you have developed in immediate days after
17 Teresa was murdered; right?

18 A That's what it states, yes.

19 Q Okay. And it relates to the Suzuki and to a van;
20 correct?

21 A It does.

22 Q All right. You state in this that it has -- the
23 Suzuki has possible evidentiary contents and
24 you're concerned about it being lost; right?

25 A That's what it states, yes.

1 Q Okay. And does that accurately reflect what your
2 thinking was at the time?

3 A I would say yes because I typed it. When I read --
4 reviewed it yesterday, I had forgotten completely
5 about the Suzuki, and a van, and things like that.

6 Q Okay. Um, the -- what you're talking about here,
7 do you recall the significance of the Zuki
8 (phonetic)? Did you have a -- all right.
9 Does -- were you concerned about a knife, the
10 murder weapon perhaps, being in the Kazoo --
11 Suzuki? Does that refresh your recollection on
12 anything?

13 A That question does. Yes, it does.

14 Q Okay. And that, in your mind, was the
15 significance of the Suzuki?

16 A To the best my recollection now, yes.

17 Q Okay. And you were in this -- in this paragraph
18 of the e-mail, you're talking about preserving
19 that piece of evidence; right?

20 A Yes, I am.

21 Q So that the State could have that piece of
22 evidence; right?

23 A I would guess.

24 Q Okay.

25 A If -- if the attorney's going to turn it over.

1 Q Okay. Um, what you -- read the next sentence
2 after "the Suzuki and it's possible evidentiary
3 contents."
4 A And where -- where do I start at?
5 Q "If this possible linking evidence."
6 A This possible -- out loud?
7 Q Yes.
8 A "This possible linking evidence and Brendan's
9 truthful testimony may be the" --
10 THE COURT: Slow up.
11 THE WITNESS: Yes, sir. "This possible
12 linking evidence and Brendan's truthful testimony
13 may be the breakthrough that will put their case
14 more firmly on all fours." Should I continue?
15 Q Yes.
16 A "Is there a way we can secure the Suzuki and the van
17 and protect them for the prosecution in Avery's case,
18 period. Can we obtain a SDT to secure both vehicles
19 in a closed, slash, sealed container?"
20 Q And what's an SDT?
21 A Subpoena duces tecum.
22 Q Okay. Now, you're working for Mr. Kachinsky at
23 this time; right?
24 A Yes, I am.
25 Q And you're also working for Brendan Dassey at

1 this time; correct?

2 A Brendan is my client, yes.

3 Q Okay. And what you're talking about here is

4 securing evidence, uh, that would be useful to

5 the prosecution at least with respect to --

6 would -- would be useful to the prosecution in

7 prosecuting Steve Avery, and, um, would be --

8 and -- and you make reference to Brendan's

9 testimony?

10 A That is correct.

11 Q Okay. At this point Mr. Kachinsky knows that you

12 are out gathering evidence to help the State's

13 case; right?

14 A That is quite clear, yes. Yes, sir.

15 Q Okay. When you went out there, uh, on whatever

16 day it was that caused you to come to these

17 conclusions, Mr. Kachinsky knew what you were out

18 there doing and why you were doing it; correct?

19 A Yes, sir.

20 Q Okay. You were working for him?

21 A Yes.

22 Q You were working at his direction?

23 A Yes.

24 Q You were working under his instruction?

25 A Yes.

1 Q And his instructions to you were --

2 ATTORNEY FALLON: Objection. This is
3 highly leading. The witness is answering the
4 questions. Just ask the questions.

5 ATTORNEY DVORAK: I think, Judge, this
6 witness is -- I think this is a hostile witness at
7 this point. And I'd be asked to give him some -- to
8 be given some leeway in terms of, uh -- of -- of
9 addressing him. Otherwise, we're going to be here
10 for awhile.

11 THE COURT: All right. Well, you have been
12 given quite a bit of leeway so far, and -- and I
13 don't know I would necessarily declare him a hostile
14 witness. Can't you just simply ask what
15 instructions he received from Mr. Kachinsky?

16 Q (By Attorney Dvorak) What instructions did you
17 receive from Mr. Kachinsky? If you remember?

18 A I can tell you initially I was told to gather
19 defense -- defense information for Mr. Dassey. And
20 at some point, at one junction, it did change and it
21 went to securing information for a plea bargain
22 process.

23 Q Okay. Do you recall when in relation to April 27
24 it was that that happened? Best of your
25 recollection.

1 A Best rec -- rec -- best of my recollection, based
2 upon what I've seen so far, it would be before
3 April 22. Those notes.

4 Q All right.

5 A On or about that day, I should say.

6 Q All right. And what discussion do you recall
7 having with Mr. Kachinsky about going in that
8 direction? What did he want you to do?

9 A We were to gather mitigation information. We were to
10 gather anything that would further the State's case
11 against Steven Avery. We were to gather whatever we
12 could to put Brendan Dassey in the best light we
13 could.

14 The goal was to preserve as much as
15 Brendan Dassey's freedom as we could. And
16 that's --

17 Q And -- and -- you were aware -- were you aware
18 that Brendan Dassey at this point was maintaining
19 that he was not involved in the homicide of
20 Teresa Halbach?

21 A Yes.

22 Q And would you read the next paragraph, "I'm not
23 concerned."

24 A Out loud or --

25 Q Out loud, yes, please.

1 A "I am not concerned with finding connecting evidence
2 placing Brendan inside the crime scene as Brendan
3 will be State's primary witness."

4 Q Okay. Can you -- can stop there? I -- I have a
5 question just to -- to clarify the meaning of
6 that?

7 In other words, you're not concerned
8 whether or not, at this point, what's happening
9 is if you find evidence that would tend to
10 inculcate Brendan; correct?

11 A That is correct.

12 Q All right. Go ahead and read.

13 A "This will only serve to bolster the prosecution.
14 Period. It will actually benefit the State if there
15 is evidence attributed to Brendan. Period. It will
16 corroborate his testimony and color him truthful."
17 Period.

18 Q Okay. So your goal is -- is not only to get
19 Brendan to confess, but to also go out and gather
20 evidence to help the State in its prosecution;
21 correct?

22 A That is correct.

23 Q Even if that evidence tends to inculcate Brendan
24 Dassey?

25 A That is correct.

1 Q All right. And in the paragraph above that, the
2 one -- it's one, two, three, four, down. Five
3 down. "I have Barbara..."

4 A Yes.

5 Q All right. You state in there you have Barbara
6 gathering medical and other information in
7 mitigation; right?

8 A I do.

9 Q In fact, what you say is assimilating the
10 mitigating information for sentencing and penal
11 placement; correct?

12 A That is correct.

13 Q Um, and you -- you've gathered -- or you have her
14 gather -- you've looked -- gotten information
15 about the fact that Brendan had been disciplined
16 with a wooden spoon on his head; is that right?
17 Between the ages of two and seven? And you saw
18 that might be significant?

19 A I see that I wrote that, yes.

20 Q Okay. Uh, you also write that Brendan was
21 assaulted by other boys. He failed in every
22 physical altercation. And was physically,
23 psychologically, and emotionally a loser; right?

24 A I did write that, yes.

25 Q Okay. Um, you -- in the last sentence you -- you

1 state that you intend to collect the spoon as
2 evidence -- as demonstrative evidence -- at his
3 sentencing hearing and placement hearing?
4 Whatever that is?

5 A I do. I did write that.

6 Q Now, at this point you also had -- well, strike
7 that. Now, I want to go back to Exhibit 56
8 again. Um, draw your attention to your voucher?

9 A Oh. Yes. Um, can I use the one that's not marked
10 exhibit?

11 Q Yeah, sure. That -- that -- that way you don't
12 have to go back. I want to refer you to
13 April 23. Sunday, April 23.

14 A I'm there.

15 Q Okay. Um, five lines from the bottom. "Review
16 internet websites." Do you see that?

17 A I do.

18 Q You reviewed the internet website for Teresa
19 Halbach?

20 A I -- yes.

21 Q Okay. Um, did you have anything in mind at the
22 time that you did that?

23 A Not that I can specifically recall.

24 Q All right. Well, let me -- did you download that
25 website? Did you print the website is what I --

1 what I meant to ask.

2 A I don't recall.

3 Q Okay.

4 A I -- I -- I would have. I can't recall.

5 Q Okay. You -- you used, um, and -- and when you

6 ques -- or when you inter -- interrogated

7 Mr. Dassey on May 12, you had a copy of, uh,

8 Teresa Halbach's website?

9 A Okay.

10 Q Would this have been -- would you have done this

11 in an anticipation of your interview with

12 Mr. Dassey -- or your -- on May 12?

13 A I don't know if that would have been the purpose on

14 that particular day. However, reflecting back on the

15 notes that I -- that you had me read earlier, I would

16 tend to say yes.

17 Q Okay. So at least as early as April 23, you were

18 the -- the position of Mr. Kachinsky and -- and

19 the directions he had given you were that we

20 were -- you were to gather evidence favorable to

21 the State and to, at some point, obtain a

22 confession from Mr. Dassey?

23 A That is correct.

24 Q All right. And if you go to, again, Exhibit No.

25 56 and look at April 24?

1 A I'm there.

2 Q There is, um, a notation. The -- the first one,
3 photo of St. John's Church. Do you remember the
4 significance of St. John's Church?

5 A The best recollection I have is that would have been
6 either the church where Teresa Marie Halbach was
7 buried from or that she attended mass there. I'm not
8 sure.

9 Q Okay. And do you recall whether or not when you
10 photographed that church, did you also obtain
11 anything from the area?

12 A I did not.

13 Q Okay. There was a -- a -- either a ribbon or a
14 bow -- or both, actually -- um, that were
15 obtained from that church area, um, that you used
16 in your May 12 interrogation. Would this have
17 been the time that you had obtained that?

18 A That's completely incorrect.

19 Q Okay. What's incorrect?

20 A That I obtained anything from a church.

21 Q How about hanging from a tree on the outside of
22 the church?

23 A Nothing from that area whatsoever.

24 Q Okay.

25 A Can I explain?

1 Q No.

2 A Okay.

3 Q I don't want you to explain. Um, you also were

4 photographing the Avery Salvage Yard; right?

5 A Yes, I did.

6 Q All right. And do you recall whether or not, at

7 the time, you photographed a sign that said,

8 "Dead End"?

9 A I did.

10 Q Okay. And was that in anticipation of your

11 interrogation with Mr. Dassey?

12 A It was.

13 Q All right. I want to, uh -- again, your --

14 your -- you have a number of entries here during

15 this period of time, um, from Exhibit 56 about

16 reviewing discovery. Um, your -- you are now

17 reviewing discovery at this point with an eye

18 toward the goal that you have for -- that

19 Mr. Kachinsky has set out for you; right?

20 A That would be a fair assessment.

21 Q Right. And that is to -- to try and figure out

22 what evidence might be out there to prosecute

23 Mr. Avery, um, and to get Mr. Dassey to confess?

24 ATTORNEY FALLON: Objection. Leading the

25 witness.

1 THE COURT: Can you rephrase that
2 question --

3 ATTORNEY DVORAK: Sure.

4 THE COURT: -- please?

5 Q (By Attorney Dvorak) Um, and what your -- you --
6 your goal, um -- is it fair to say that your --
7 your -- the goal at this time that you were
8 trying to accomplish was to obtain evidence,
9 review the discovery with an eye toward obtaining
10 evidence against Steven Avery, even if it
11 implicated Mr. Dassey, and that would help you
12 get Mr. Dassey to confess?

13 ATTORNEY FALLON: Objection. It's a
14 leading question. It's multiple compounded
15 question. Just ask him what his goal was.

16 Q (By Attorney Dvorak) What's your --

17 THE COURT: Sustained.

18 Q (By Attorney Dvorak) What's your goal?

19 A The goal -- the primary goal was to, as you indicate,
20 to provide information for the State. Uh, the
21 secondary goal was the mitigation aspect for Brendan.

22 Q Okay. Between looking at Exhibit 56, um --
23 strike that.

24 Now, on May 4, um, was the date of
25 Mr. Dassey's suppression hearing?

1 A Yes, sir.

2 Q Do you remember May 4? Do you remember that?

3 A I do.

4 Q Okay. You attended -- did you attend that

5 hearing?

6 A I believe I was in the building. I'm not sure I was

7 in the courtroom.

8 Q Okay. Were you not in the courtroom 'cause you

9 were concerned about being a witness?

10 A I -- I don't recall if I was or was not in the

11 courtroom.

12 Q All right.

13 A It may have been direction. I don't know.

14 Q All right. Did you have any conversation or do

15 you recall any conversation with Mr. Kachinsky

16 about that hearing? Did you ever discuss that

17 hearing with him?

18 A We did.

19 Q Okay. What discussions did you have with

20 Mr. Kachinsky about that hearing?

21 A My recollection is that if the hearing did not go in

22 Brendan's favor, that we would then turn to looking

23 to obtaining admission from Brendan.

24 Q Okay. So this was a -- a key event in the case

25 for Mr. Dassey?

1 A That was pivotal.

2 Q Um, after the testimony was over, did you have a

3 conversation with Barb do you recall? Barb

4 Dassey that is. Or Barb Janda?

5 A I have a vague recollection of an interchange between

6 her and I, and I believe it was in the hallway.

7 Q Okay. Did she have -- do you recall what her

8 demeanor was at the time?

9 A Disillusioned. Dismayed. Upset. Uh, it was not --

10 I can -- I believe that.

11 Q Okay.

12 A She was very down.

13 Q Okay. Um, now, I want to draw your attention to

14 Exhibit 338.

15 A Okay. Just bear with me. May I pull it out?

16 Q All right. Have you reviewed it? No, you can

17 pull it out if it's easier for you, sure.

18 A It is. It's at an angle. Do you mind if I read it?

19 Q Please do.

20 A This is difficult to read. Just bear with me. Okay.

21 I've reviewed it.

22 Q Okay. And can -- can you identify what that is?

23 A It -- it's apparently an e-mail from Len Kachinsky to

24 Mark Wiegert.

25 Q Okay. And do you see -- were you copied on that

1 e-mail? If you look at the CC?

2 A I see the CC but I don't recall seeing this ever 'til
3 just now.

4 Q Okay. Um --

5 A I believe I -- I --

6 Q And it's -- it's dated, uh, May 5, 2006; right?

7 A I -- yes, it is.

8 Q Okay. Well, there's reference in that e-mail to
9 what was referred to in Exhibit 64 about the --
10 the vehicle?

11 A It is.

12 Q Okay. Um, so at this point it would appear that
13 Mr. Kachinsky is following up on your discovery,
14 and passing that on, and taking your suggestion,
15 and passing that on to the State?

16 ATTORNEY FALLON: Objection. Speculation.

17 THE COURT: It is. This witness has just
18 testified he doesn't recall ever seeing this before.
19 I believe this has already been admitted. I think
20 there was substantial testimony elicited from
21 Mr. Kachinsky and Mr. Kratz on this exhibit. What
22 more do we need?

23 Q (By Attorney Dvorak) Well -- well, let me do one
24 other thing, um, with respect to this exhibit,
25 the last line. Um, Mr. Kachinsky is asking --

1 asking you to obtain -- or asking the -- the --
2 the prosecution to allow you to obtain certain
3 information; right?

4 A That is correct.

5 Q Okay. And do you -- does that help refresh your
6 recollection about this?

7 A It re -- it refreshed my recollection about what we
8 were doing, but not about this e-mail.

9 Q Okay. Um, there's reference in here about
10 preferring to remain unnamed in any affidavit for
11 a search warrant?

12 A Okay.

13 Q Do you recall having a conversation with
14 Mr. Kachinsky about that?

15 A No.

16 Q Okay. The -- getting back to the last line --

17 A You bet.

18 Q -- there's a suggestion that, um -- excuse me.
19 Did you ever call the DA's office during business
20 hours to go and view the recovery (sic) as --
21 and -- and ob -- and obtain those things as it
22 suggests?

23 A On at least one occasion the answer is yes.

24 Q Okay. Um, also, Mr. Kachinsky, in this e-mail,
25 says that you are -- you, meaning Officer

1 Wiegert -- are authorized to talk to yourself.
2 If you look at, um, the third line down on the
3 first paragraph. "You are authorized to talk to
4 him directly."?

5 A Okay.

6 Q And it gives a phone number and an e -- and --
7 and refers to the CC on the e-mail address;
8 right?

9 A I see that, yes.

10 Q Okay. Had you had any conversations with
11 Officer -- strike that. You had a conversation
12 with Mr. Kachinsky at this -- or at least by this
13 point where you -- he had authorized you to share
14 whatever information you had obtained with the
15 State; correct?

16 A I -- I don't know if I was limited or not. For some
17 reason it strikes me as I was limited. But I don't
18 know if it was all the information I had.

19 Q Well, what it says here is, "you are authorized
20 to talk to him directly."

21 A Um-hmm.

22 Q Um, and your -- your goal was to provide evidence
23 for the State; right?

24 ATTORNEY FALLON: Objection. Your
25 Honor, I think the e-mail speaks for itself. The

1 witness has not a specific recollection of the
2 events.

3 And it seems to me reading the e-mail,
4 and taking at its face, it's in reference to the
5 Suzuki, or one other piece of information, or
6 whatever else is referenced in the e-mail, is
7 what he's authorized to talk to them about. At
8 least that's the common sense interpretation.

9 And this is a waste of time.

10 ATTORNEY DVORAK: I'll move --

11 THE COURT: Court --

12 ATTORNEY DVORAK: I'll --

13 THE COURT: Court agrees. I'll sustain
14 (unintelligible) --

15 ATTORNEY DVORAK: I'll move --

16 THE COURT: Move on.

17 ATTORNEY DVORAK: -- on, Judge.

18 Q (By Attorney Dvorak) If you look at Exhibit
19 56 --

20 A Give me a moment.

21 Q Before this date, May 5.

22 A Give me a moment, please.

23 Q That's your voucher?

24 A Yes. Give me one moment, please. I'm there.

25 Q I want to draw your attention to about -- little

1 more than half the way down where it says,
2 telephone conference with Detective Dederling.

3 A And you're on which page, please?

4 Q Three times.

5 A Which -- which page?

6 Q Dated May 5.

7 A May 5.

8 Q That's the third -- fourth page.

9 A I'm there.

10 Q All right. Okay. Do you recall having -- or do
11 you recall having a conversation with Detective
12 Dederling on that day?

13 A You bet.

14 Q Okay. What did you talk with Detective Dederling
15 about?

16 A I can tell you the best recollection I have is we
17 were shaking hands, and, um, Detective Dederling says,
18 "I wouldn't want to be in your shoes." He then
19 provided me documents and I think that was the
20 extent. That's my recollection.

21 Q So you're saying this was an in person interview?

22 A Oh, in person, yes.

23 Q Okay. Your -- your -- and did you also have a
24 phone conference -- well, let me back up a
25 minute. When he said that to you, "I wouldn't

1 want to be in your shoes," what did you say back?

2 A I don't recall that I had a response.

3 Q Okay. Um, did you tell him why you --

4 A I'm -- I'm sorry. I do recall having a response.

5 Q Okay.

6 A And I just said, "I have a job to get done and we're

7 going to get through this."

8 Q Okay. Did you talk with him about the Suzuki at

9 that time?

10 A Not to Detective Dederling 'cause that's a -- he --

11 that's a complete separate issue --

12 Q Okay.

13 A -- to my rec -- rec -- recollection.

14 Q Okay. What about you -- you also had a contact,

15 according to your voucher, on May 5 with Special

16 Agent Fassbender. That's the second entry from

17 the bottom.

18 A I see that.

19 Q All right. Do you recall what your conversation

20 with Special Agent Fassbender was about?

21 A It was the same material as with Detective Dederling.

22 Q Okay. Detective Fassbender or -- I'm sorry.

23 Special Agent Fassbender was the lead detective,

24 or one of the lead detectives, in this

25 investigation; right?

1 A Yes. He had information that this Mr. Dederling did
2 not have. Documents.

3 Q All right. And, um, he was freely giving that
4 information to you; right?

5 A They both were, yes.

6 Q Okay. And did you have -- do you have -- recall
7 whether or not you had a discussion about the
8 Suzuki and the information that was referred to
9 in that e-mail? The May 5 e-mail?

10 A I don't have a specific rec -- recollection, no.

11 Q Do you recall if they asked you about it?

12 A No. My best recollection is for both these
13 gentlemen, uh, is we were talking about the
14 photographs, the aerials from -- that Special Agent
15 Fassbender would have of the Avery Salvage Yard, and
16 then Detective Dederling had other photographs.

17 Q Did you have a -- a -- a conversation with him
18 about why you wanted this evidence?

19 A Yes. It was to assist me in Brendan's admission.

20 Q Okay. So you had a conversation with Special
21 Agent Fassbender, with Detective Dederling being
22 present, uh -- he wasn't present? Okay.

23 A No.

24 Q Okay. You had the conversation with Special
25 Agent Fassbender that you wanted this information

1 so that it would help you get a confession from
2 Brendan; right?

3 A That's correct.

4 Q The next day, Saturday, you have another
5 conference with -- according to Exhibit 56?

6 A I see that, yes.

7 Q And you have another conference with Special
8 Agent Fassbender and Detective Dederling?

9 A That's correct.

10 Q Um, and that was an in person meeting?

11 A Yes.

12 Q Um, do you recall what you discussed or the
13 purpose of that meeting?

14 A In looking at my notes of February -- of May 5 and
15 May 6, it appears that the request -- the verbal
16 requests were made on the 5th and the in person
17 contacts were made on the 6th.

18 Q Okay. The items that you were trying to gather
19 or -- or collect aerial photos and other
20 photographs --

21 A Yes.

22 Q -- did you use any of those photographs in your
23 May 12 interrogation of Brendan Dassey?

24 A I did.

25 Q Okay. When you met with Detective Dederling and

1 Special Agent Fassbender, um, what else --
2 what -- what did you discuss? What else did you
3 discuss other than that subject?

4 A My recollection is that I was there on an intel
5 gathering assignment to gather as much information as
6 I could from both these gentlemen that I felt would
7 assist me in working with Brendan for his admission.

8 Q Okay. And -- and -- and Mr. Kachinsky was aware
9 that you were -- you were doing that for that
10 purpose; correct?

11 A Yes. He -- he initiated all the contacts.

12 Q Okay. Now, I just want to, uh --

13 ATTORNEY DVORAK: One second, Judge.

14 Q (By Attorney Dvorak) Oh, yeah. The -- the --
15 you made -- you made -- Detective Dederling
16 made -- made the comment about "I wouldn't want
17 to be in your shoes." Um, was that related to
18 having to represent Mr. Dassey? Or was that in
19 relation to having to get a confession out of
20 him? Or something else?

21 A No, it was related to the project at hand. And that
22 was to meet with Mr. Dassey and attempt to elish --
23 elicit the -- the admission from him as to his
24 participation or knowledge of the crime scene.

25 Q Okay. Um, did -- did he offer any suggestions on

1 how to do that?

2 A I -- no. Because, once again, I was there on -- I --
3 I was intel gathering. I wasn't asking for ideas.

4 Q Okay. Did -- well, did -- did it come up at all
5 in -- in the -- he makes -- makes the comment
6 that, um, I don't envy your job. Did you have
7 any more discussion about that? About --

8 ATTORNEY FALLON: Objection. Relevance.
9 Hearsay.

10 THE COURT: Sustained.

11 ATTORNEY DVORAK: I'll with -- I'll
12 withdraw that.

13 Q (By Attorney Dvorak) Um, did you, at any time
14 during that day, provide any information
15 concerning the Suzuki or at any other time within
16 that timeframe?

17 ATTORNEY FALLON: Objection. Compound
18 question.

19 THE COURT: Sustained.

20 Q (By Attorney Dvorak) Did you, at any time around
21 May 6 -- did you, on May 6, provide any -- the
22 information regarding the Suzuki to any of the
23 officers?

24 A Not to the best my recoll -- recollection.

25 Q What about on May 5?

1 A The answer's the same. No, I do not.

2 Q At any time, do you have a recollection of
3 passing that information on?

4 A No, I do not.

5 Q Before April 13? I mean May 13?

6 A It strikes me that I did, but I don't see any notes
7 that I did.

8 Q Okay. All right. Let's go to Exhibit 65,
9 please.

10 A You bet.

11 Q While you're -- while you're doing that, um --

12 A Yes, sir.

13 Q -- you -- the recollection that you do have
14 concerning conveying any information regarding
15 the Suzuki with -- do recall whether that would
16 have been to Wiegert or Fassbender?

17 ATTORNEY FALLON: Objection. He hasn't
18 articulated any specific recollection of providing
19 the information. He says it just strikes me that I
20 may have.

21 THE COURT: Yeah. Well, then, there's no
22 foundation. The objection is sustained.

23 ATTORNEY DVORAK: Okay.

24 Q ((By Attorney Dvorak) Is it correct that you
25 have no specific recollection of conveying

1 information of your concern regarding what may be
2 in the Suzuki? Your concern about protecting it
3 to any of the detectives prior to May 13?

4 A You're entirely correct, because as -- as I stated
5 earlier, when I first saw this e-mail, or request
6 back there, I had completely forgotten the -- the --
7 there was a Suzuki in this case until yesterday when
8 I read the e-mail, and today once again. I'd
9 completely forgotten it. And I still -- I have no
10 recollection.

11 Q All right. All right. Have you looked at
12 Exhibit 65, please?

13 A No. I just -- I just got there just now.

14 Q All right.

15 A Would you like me to read it first?

16 Q Yes, please. Read it to yourself.

17 A Yes. Thank you. I -- I'm there.

18 Q Okay. There is -- is -- this is an e-mail dated
19 May 7; right?

20 A It is.

21 Q And you recognize this?

22 A It appears to be mine, yes.

23 Q Okay. And it's an e-mail that you sent to Len
24 Kachinsky; right?

25 A Yes.

1 Q And you copied Mr. Kratz?

2 A I did.

3 Q Um, Mr. Fassbender and Mr. Dederling; right?

4 A I did, yes.

5 Q By the way, do you know where you got Mr. Kratz's

6 e-mail address from?

7 A Yes.

8 Q Where'd you get it from?

9 A Mr., uh, Kachinsky.

10 Q Okay. And Mr. Kachinsky gave you Mr. Kratz's

11 e-mail address so you could communicate directly

12 with him if -- if you felt it necessary?

13 A That is correct. And that's an unusual thing for a

14 defense attorney to do. But I cover my bases first,

15 yes.

16 Q Okay. Um, these -- in this e-mail -- can you

17 tell me what's -- what's going on in the e-mail?

18 A On Sunday, May 7, it appears that I'm asking to

19 prepare for an interview with -- with Brendan. And

20 this is a mirror image of what the intel I was

21 looking for from both Detective Dederling and Special

22 Agent Fassbender. And I would be bringing these

23 items -- or that I will need these items in my

24 meeting with Brendan.

25 Q Okay. And it has the date of Friday, May 12, on

1 it as -- as the date that you're going to meet
2 with him; right?

3 A That is correct. Yes.

4 Q Okay. Um, do you recall the significance of May
5 12?

6 A I do.

7 Q What is the significance of May 12?

8 A As we talked earlier, it was the day that there was a
9 motion. I don't recall the -- what kind of motion it
10 was, but it was -- it was a pivotal point in
11 Brendan's case as to what Mr. Kachinsky was going to
12 do with this case. Whether he was going to plea
13 bargain it out, work on that direction, or if he was
14 going to continue with trial.

15 Q Okay. And does it refresh your recollection that
16 it was -- May 12 was the decision date and that's
17 why it was the pivotal date on the motion to
18 suppress?

19 A It is correct.

20 Q Okay. Why do you think it was unusual for
21 Mr. Kachinsky to allow you to have direct contact
22 with the DA?

23 ATTORNEY FALLON: Objection. Relevance.

24 THE COURT: Sustained.

25 Q (By Attorney Dvorak) Um, that is not something

1 that's been within your experience; correct?

2 A It's a rare experience.

3 Q Okay. It's not often that defense is working
4 with the prosecution concerning their client, is
5 it?

6 ATTORNEY FALLON: Objection. Relevance.
7 Materiality.

8 THE COURT: Sustained.

9 ATTORNEY FALLON: Argumentative.

10 ATTORNEY DVORAK: All right.

11 Q (By Attorney Dvorak) Um, and did you obtain
12 these items that were listed here?

13 A My recollection is I re -- I had at least half of
14 these. If not, most, but not all.

15 Q Okay. And did you get them -- the -- the stuff
16 that's listed here, did you get those from the --
17 some police source? Whether it's Fassbender, or
18 Dedering, or whoever turned it over?

19 A My recollection I received copies of these documents
20 from a combination of folks. It would have been law
21 enforcement and I believe Mr. Kachinsky had one or
22 more documents.

23 Q Okay. Um, I note one of the things you have on
24 here, item ten, is the eight-by-ten missing
25 person flyer?

1 A Yes.

2 Q That was something that you were going to use in
3 your interrogation of Mr. Dassey on the 12th?

4 A I -- yes. Yes. That's correct.

5 Q Okay. You had to get this stuff, the items that
6 were listed here, from the DA's office because
7 Mr. Kachinsky didn't have them in his office; is
8 that right?

9 A Yes. In part.

10 Q Okay. Some of the stuff he had? Some of the
11 stuff he didn't have? Is that what you mean?

12 A No. Some of the -- some of the things were not from
13 the DA's, or from Mr. Kachinsky's office, nor -- or
14 from law enforcement.

15 Q All right. Well, maybe -- can you just tell us
16 what is on here that you had to go to the DA's
17 office for because Mr. Kachinsky didn't have it?

18 A Okay.

19 ATTORNEY FALLON: Objection. Relevance.

20 THE COURT: Overruled.

21 THE WITNESS: Number one would have been
22 from, I believe, Mr. Fassbender.

23 The same with number two.

24 Um, number three, I believe, came from
25 Mr. Kachinsky or from law enforcement.

1 Uh, number four is going to be, I
2 believe, law enforcement.

3 Number five, I believe -- I'm not sure.

4 Number six, I believe, A, B -- A through
5 D came from Mr. Kachinsky.

6 I don't know what number seven is. I
7 don't have a recollection as to that document.
8 Um -- oh, yes, I do. Uh, that would have been
9 coming from Mr. Kachinsky.

10 I believe number eight is from law
11 enforcement.

12 Um, nine is a combination, I believe, of
13 both law enforcement and Mr. Kachinsky.

14 Number ten came from the agency -- the
15 local agency -- who works with missing persons,
16 and they -- they provided the photograph of
17 Teresa Halbach flyer.

18 Eleven would have been a combination --
19 most likely all from Mr. Kachinsky.

20 Q (By Attorney Dvorak) Okay. Why are you asking
21 for this stuff from -- from law enforcement, as
22 you say, if Mr. Kachinsky had it?

23 A He had some of the items but not all the items.

24 Q Okay. So, for example, photos of the interior,
25 you may have had some of them but not all of

1 them?

2 A Yes. It's -- it's my experience that when -- when
3 I'm doing defense work, that the defense doesn't
4 always have everything for a variety of reasons. And
5 vice versa, when I'm on the other side. And so I
6 always get new items if I can to make sure that I
7 have a complete package.

8 Q All right. So as -- as -- as a competent
9 investigator, it's important to make sure that
10 you have all of the discovery in hand; right?

11 A As much intel as possible, yes.

12 Q Okay.

13 THE COURT: This a good place to take a
14 break, Mr. --

15 ATTORNEY DVORAK: Sure, Judge.

16 THE COURT: -- Dvorak? All right. We'll
17 take the morning break. Be back in 15 minutes.

18 (Recess had at 10:13 a.m.)

19 (Reconvened at 10:30 a.m.)

20 THE COURT: All right. We're back on the
21 record.

22 (Exhibit No. 369 marked for identification.)

23 Q (By Attorney Dvorak) Mr. O'Kelly, I'm showing
24 you what's been marked as Exhibit 369. Would you
25 review that, please?

1 A Yes. This is the one I saw in the hallway a few
2 moments ago, yes.

3 Q Okay. So you've reviewed it and does that
4 refresh your recollection about whether or not
5 you responded to, um, the e-mail that we had --
6 or the -- yeah, the e-mail that Mr. Kachinsky had
7 sent earlier?

8 ATTORNEY FALLON: Which exhibit was
9 this?

10 ATTORNEY DVORAK: That was, I believe, 338.
11 Is that right?

12 THE COURT: That's correct.

13 ATTORNEY DVORAK: Thank you.

14 THE WITNESS: Yes, it does.

15 Q (By Attorney Dvorak) Okay. And did -- was there
16 any response -- did you make any response in --
17 in -- to that e-mail?

18 A Yes, I responded. And I sent back an e-mail at
19 11:46 a.m. on May 5. I addressed it to Mark Wiegert
20 and I copied Ken Kratz, the prosecutor, and Len
21 Kachinsky, the defense attorney.

22 Q Okay. Now, um, what else did you do in an effort
23 to achieve the goal that you had described
24 earlier of gathering evidence to assist in having
25 Mr. Dassey confess and to obtain evidence for the

1 State?

2 A When you say "evidence," are you including the items
3 that I was setting up for Brendan's admission
4 interview on May 12?

5 Q Yes.

6 A Okay. One of the things that I did as to the blue
7 ribbons, is I did not go to the church and remove
8 anything from the trees or the church. I would not
9 do that. Um, what -- what I did --

10 THE COURT: You need a minute?

11 THE WITNESS: Yes.

12 THE COURT: All right.

13 THE WITNESS: What I did, is I went to
14 a -- a floral shop, or outdoor arena -- or an
15 outdoor garden shop. And I know it was somewhere
16 between Calumet County and here. Or Sheboygan,
17 that is. And I had them make up a ribbon similar
18 to the one at Teresa's church. I can't remember
19 anything else. I'm sorry.

20 Q Okay. You can't remember anything else with
21 respect to that ribbon? Do you want a minute
22 yet?

23 A Probably so.

24 Q Yeah.

25 A I'm sorry. I'm sorry. Let's go ahead.

1 Q Okay. Do you have -- what else did you do in an
2 effort to achieve the goal that you've described
3 that's in play at this point?

4 A I would have talked with -- I believe I talked with
5 Brendan's family at length, um, to understand Brendan
6 a little bit more. Talked to his brothers
7 separately.

8 I talked to a witness named Mike
9 Kornely.

10 I talked to Barb and Scott -- Barb Janda
11 and Scott Tadych at length.

12 I had brief discussions with the
13 grand -- with the grandmother, I believe. She
14 wasn't much help that I can recall. And that was
15 more to find out more about Brendan. And it's
16 how to understand Brendan a little better. I
17 think that's pretty much it.

18 Q Okay. What else did you do with respect to
19 contact with the police?

20 A For some reason I don't believe I ever gave law
21 enforcement everything that the defense had, um, and
22 the reason for that is because what we did -- I
23 didn't know myself where this case was going to end
24 up at. And I never give the other side everything.
25 I've always had a policy on that.

1 Q Okay. Um, the day after -- and forgive me if I
2 asked this question. But on May 6 -- let's go
3 back to May 6. Referring to Exhibit 56?
4 A Okay. Can I refer to the unmarked 56?
5 Q Yes.
6 A Okay.
7 Q You had a conference with Fassbender and
8 Dederling?
9 A Yes.
10 Q And do you recall --
11 A Sorry. On which day?
12 Q May 6.
13 A Yes. Go ahead.
14 Q Do you recall what that was for?
15 A That would have been the follow-up from the phone
16 calls that I had with them on the -- on the 5th.
17 Q Okay. I believe we covered that.
18 ATTORNEY DVORAK: I'm sorry, Judge.
19 Q (By Attorney Dvorak) The next day, May 7, um, do
20 you recall -- I want you -- I'm referring you to
21 Exhibit 65.
22 A Sixty-five?
23 Q Yes.
24 A I thought you said 56.
25 Q Sixty-five.

1 A Oh. We want to change exhibits.

2 THE COURT: You had originally said 56.

3 Q (By Attorney Dvorak) Sixty-five is what I'm

4 interested in. I apologize.

5 A Oh. Okay. I'm there.

6 Q Okay. Would you review that, please?

7 A Would I what now?

8 Q Would you review it?

9 A Oh, yes. This is the one -- yes, I reviewed this

10 earlier.

11 Q Okay. Um, I want you to go to the second page.

12 A I'm there.

13 Q And -- and I want to refer you to an e-mail from

14 Len Kachinsky, um, dated May 9, 2006, at 7:20.

15 THE COURT: What exhibit is that?

16 ATTORNEY DVORAK: Sixty-five.

17 THE COURT: Oh. Okay.

18 THE WITNESS: What time did you say?

19 Q (By Attorney Dvorak) The second page.

20 A Okay.

21 Q In middle it says original message from Len

22 Kachinsky?

23 A I -- I must be on the wrong -- wrong exhibit or

24 something.

25 Q I'm sorry. It's 66.

1 A Okay.

2 Q I apologize.

3 A I'm sorry. Would you like me to read this to myself

4 first or --

5 Q Yes. I'm referring you to the second page.

6 A Oh, I'm sorry. Yes. Uh, and which part of the

7 second page do you want me to go to?

8 Q Where it says original message from Len

9 Kachinsky.

10 A All right. Give me a moment, please, and I'll read

11 this. Okay. I've read that.

12 Q All right. It's dated May 9, 2006, at 7:20 p.m.;

13 right?

14 A Yes, it is.

15 Q All right. And do you remember receiving that

16 e-mail?

17 A I'm sorry. I didn't --

18 Q Do you remember receiving that e-mail?

19 A It looks familiar, yes.

20 Q Okay. There's -- there's two things I want to

21 point out about this.

22 First, there's a -- a -- Mr. Kachinsky

23 is directing you to call the DA's office directly

24 to obtain information; correct?

25 A Yes.

1 Q It gives the name Shirley and a phone number for
2 you to do that; right?

3 A Yes.

4 Q Did you ever do that? Do you recall?

5 A Oh, if I -- if I was asked to do something and that
6 was the marching order, the answer is, yes, I did
7 that.

8 Q All right. Um, do you recall having a
9 conversation with Shirley in the DA's office?

10 A My recollection is that I spoke to a female, and that
11 I asked to speak with Mr. Kratz. Kratz.

12 Q Did you speak with Mr. Kratz?

13 A Um, I believe he took the call, and he said, um, I'd
14 rather not talk to you, and he referred me to
15 somebody else. I think it may have been
16 Mr. Dederling. I think.

17 Q All right. So you were still looking for
18 information from -- from prosecutor's office?

19 A Yes.

20 Q Were they cooperative in providing you the
21 information that you were require -- requesting?

22 A Yes, but they all dealt with me at an arm's length.

23 Q Did -- did Mr. Kratz say why he didn't want to
24 talk to you?

25 A I believe he made something -- some reference to he'd

1 prefer to talk to Mr. Kachinsky. That was my
2 recollection.

3 Q All right. The -- the next -- I'm -- I'm
4 refer -- want you to look at the second paragraph
5 of this now.

6 A You bet.

7 Q Um, Mr. Kachinsky is suggesting that you go down
8 to the -- go down to the jail the next day and
9 give him a pep talk, um, in preparation for, and
10 anticipation of your going down to see him. Is
11 that how you interpreted that message?

12 A Clearly.

13 Q Okay. And, uh, do you recall what your response
14 was? And I refer you to page one of this
15 exhibit. And, um, would you read from the third
16 paragraph down? Would you read that paragraph,
17 please?

18 A Just that paragraph?

19 Q Yes.

20 A Beginning with the words "This is truly."?

21 Q No. "I think that your visit."

22 A I'm -- I'm on the wrong page then. Where?

23 Q Page one.

24 A Page one.

25 Q Third paragraph from the bottom.

1 A Oh, from the bottom. I'm sorry. It says -- out
2 loud?

3 Q "I think." Yes.

4 A "I think that your visit will be counter-productive
5 to our goals for Brendan. It could have Brendan
6 digging his heels in further. He could become more
7 entrenched in his illogical position and further
8 distort the facts.

9 He has been relying on a story that his
10 family has told him what to say about October 31,
11 2005."

12 There's two arrows. "Thus, it will take
13 me longer to undo, if I can even -- if I -- if I
14 can even, without your visit."

15 Q Okay. So what -- tell me what your -- what your
16 thinking is here about Mr. Kachinsky going to see
17 his client? And why are you suggesting that he
18 not do that?

19 A I've had a standing policy that if an attorney asks
20 me to go in and obtain admissions from -- from his or
21 her client, that I -- I prefer to do everything with
22 what I'm doing and how I'm doing it, as opposed to
23 having interference, or helpful hints, or anything at
24 all.

25 Q All right. Did you have any follow-up

1 conversation with Mr. Kachinsky about that,
2 orally, to your recollection?

3 A I can tell you there was a conversation there. The
4 exact content I don't recall.

5 Q All right. Um, at this point, um, Mr. Dassey is
6 still maintaining his -- that he was not involved
7 in this homicide; correct?

8 A My recollection is yes.

9 Q Okay. And, um, now -- and -- and read the next
10 paragraph, please.

11 A Out loud or to myself?

12 Q Read it out loud.

13 A "We need to separate him from fantasy and bring him
14 to see reality from our perspective. We need to
15 separate him from the unrealistic world that his
16 family resides within."

17 Q Okay. So you're suggesting that -- would -- can
18 you tell me what your thinking is there when
19 you -- when you wrote that?

20 A Sure. To the best of my recollection that is.
21 Although the family believed that he had some role,
22 they had always minimized -- I believe they minimized
23 the role as to observer as opposed to participant is
24 my recollection. That's my recollection at this
25 point in time. Um, and I don't want to speculate

1 beyond that.

2 Q Okay. And you say that you -- you wanted to
3 bring him to see reality from our perspective.
4 What was your perspective? Where did you want to
5 bring him to?

6 A My recollection is that Len and I, after having
7 reviewed the amount of evidence against our client
8 Brendan, is that it appeared that he had some role
9 within the crime scene, and to be a com -- to have
10 Brendan say -- say that he had no role was
11 unrealistic. Especially when he placed himself at
12 the crime scene at some point in time not knowing
13 if -- I didn't know whether the victim was alive or
14 dead at that time.

15 Q Okay. But from your perspective, uh, his
16 involvement in the offense would have been
17 participating in the homicide; right?

18 A Ask your question again, please.

19 Q Yes. When you say, see reality from our
20 perspective, you thought that Brendan was much
21 more involved than standing by the fire as he had
22 said; correct?

23 A I -- I don't -- an inclination in that area, sure.
24 In that direction, yes.

25 Q All right. And, in fact, your, uh, um -- your

1 perspective was that Brendan was involved in the
2 homicide?

3 ATTORNEY FALLON: Objection. Asked and
4 answered. He just said, I had an inclination.

5 ATTORNEY DVORAK: I --

6 THE COURT: Overruled. You can answer
7 that.

8 THE WITNESS: I -- I -- I don't know,
9 specifically. As I re -- that I re -- I don't
10 recall specifically what I thought he may or may
11 not have done, 'cause I don't recall at this time
12 if I had anything to -- for a foundation to say
13 that he did this, he did this.

14 Q (By Attorney Dvorak) What about his March 1
15 statement? Had you reviewed his March 1
16 statement?

17 A I believe I did.

18 Q Okay. And in that March 1 statement, he recounts
19 that he was involved in the homicide, involved in
20 the sexual assault, and as well as involved in
21 mutilation of the corpse? Do you remember that?

22 A No, I don't.

23 Q Okay. Um, would it be fair to say if -- if -- if
24 that were the case that that is what -- let me
25 back up.

1 Do you have a discuss -- do you recall
2 any discussion about -- with Mr. Kachinsky about
3 what role Brendan had to play in this from the
4 State's perspective?

5 ATTORNEY FALLON: Objection. Relevance and
6 hearsay.

7 THE COURT: Well, also the form of the
8 question. Sustained.

9 Q (By Attorney Dvorak) Um, what -- what -- was any
10 view from Mr. Kachinsky conveyed to you about
11 what Brendan's role in the offense was?

12 A Not that I can recall.

13 Q When you say, see reality from our perspective,
14 what did you mean?

15 A That -- that what Brendan was -- what Brendan was
16 saying was -- was unrealistic from what I recall.
17 From the words he was choosing. Um --

18 Q Your -- but your words here are to see reality
19 from our perspective, which means you have a
20 perspective --

21 A Yes.

22 Q -- of what happened here; right?

23 A No. Not exactly, no.

24 Q Okay. Well, we'll get to that later. Um, and
25 read the next paragraph, please.

1 A You bet. Out loud or to myself?

2 Q Read it out loud.

3 A "Brendan needs to be alone. When he sees me this

4 Friday, I will be a source of relief. He and I can

5 begin to bond. He needs to trust me in the direction

6 I steer him into. Brendan needs to provide an

7 explanation that coincides with the facts, slash,

8 evidence."

9 Q And what were those "facts, slash, evidence" that

10 he needed to make a statement that coincided

11 with?

12 A What I'm referring to there is that should Brendan

13 make an admission with details, that the details have

14 to have a mirror image, so to speak, of anything that

15 we were provided in discovery from law enforcement,

16 such as DNA, weapons, positions, anything at all.

17 Photographs. Fingerprints. Anything.

18 Q Had you talked about what the State's theory was

19 with any of the officers in the case when you

20 were discussing this?

21 A Not --

22 Q Do you remember?

23 A -- that I recall. That -- that's why I say earlier

24 we had an arm's length dealing.

25 Q Okay. Now, when you say, "Brendan needs to be

1 alone," um, why -- what do you -- what's the
2 significance of that?

3 A What I'm referring to there is without the outside
4 influence. Uh, I'm referring to phone calls to mom.
5 My recollection is that he was calling multiple times
6 during the day. And there'd be influence there. Len
7 Kachinsky going in, as Len wanted to go in and help
8 set this up.

9 Um, things like that.

10 Q Okay. But -- but this is specifically in the
11 context of whether or not Mr. Kachinsky ought to
12 go and see him; right?

13 A That is correct.

14 Q So when you say he needs to be alone, um, that
15 means -- is it fair to say that that means that
16 you didn't want him to have contact with his
17 lawyer in addition to any of those other people?

18 A That's correct.

19 Q All right. You didn't want -- you wanted to
20 isolate him, basically?

21 A I wanted to limit the -- the outside influence.

22 Q Okay. Um --

23 A Given -- given -- given my assignment.

24 Q And what was your assignment?

25 A To obtain the admission.

1 Q Okay.

2 A Or an admission, rather.

3 Q Um, and you say that you're going to be a source

4 of relief. Um, tell me about that.

5 A I'd be a source of relief because he hadn't had

6 contact with anybody, and it'd be somebody besides

7 the jail personnel. It'd be somebody close -- it'd

8 be as close to his family as he would get that would

9 be non-threatening.

10 Q Okay. So you -- you -- all right. Um --

11 A I'm not part of the system that was keeping him in

12 custody.

13 Q Yeah. So his perspective would be that you

14 were -- you were -- you were that. You were a

15 source of relief? You were on his side?

16 A Yes. And I was on his side.

17 Q Okay.

18 A And I am on his side, I should say.

19 Q Okay. Um, and you -- you talk about bonding and

20 I can bond?

21 A He and I can have a -- we can be on a first name

22 basis. We can talk about baseball. We can talk

23 about non-threatening issues. We talk about school

24 studies. Things about that nature that are non-issue

25 to this matter.

1 Q Okay. Uh, and -- and was that your thought going
2 in that you were going to start that -- start off
3 your relationship with him that way?

4 A That's how I usually start things. It's the same
5 with the polygraph. A person walks in, and I'll say
6 to them, oh, where'd you get that shirt? My
7 brother's got one just like it. Do you know my
8 brother?

9 Q Okay.

10 A Something like that.

11 Q All right.

12 A That's not true, though.

13 Q All right. Um, and -- and you state that "He
14 needs to trust me and -- and the direction that I
15 steer him into."?

16 A Correct.

17 Q Um, why is it important that he trust you?

18 A That he recognized that I'm on his side. That I have
19 his future at concern. Um, I have his best interest
20 from my perspective. Um, that's pretty much it.

21 Q Okay. And when you say, "I steer him in the
22 direction that I steer him into," --

23 A Yes.

24 Q -- where were you going? Where were you trying
25 to steer him?

1 A I'm trying to steer him away from his denials and
2 into whatever facts he could provide me that would
3 mirror the image that we had in discovery. Uh, when
4 I say that, I'm not referring to opinions in
5 discovery, I'm referring to only facts.

6 Q Was this the -- going to be the first time that
7 you had personally visited with Mr. Dassey other
8 than the polygraph --

9 A It could have been.

10 Q (Unintelligible) -- function?

11 A It could have been. I don't recall the dates.

12 Q And, now, was -- was all of this done pursuant to
13 your instructions from Mr. Kachinsky as you
14 understood them?

15 A Oh, yes.

16 Q Um --

17 A There's even an e-mail that I outlined that in there.
18 That I follow his lead.

19 Q Right. Um, now, I want to refer you to -- I want
20 to refer you to the -- let's see. One, two --
21 start with the second paragraph. And would you
22 read the next three paragraphs, please?

23 A And we're on what page now?

24 Q Page one. Of -- and this is a May 9, 2006,
25 e-mail; correct?

1 A Am -- am I on page -- I'm on Exhibit 66?
2 Q Yes.
3 A Okay.
4 ATTORNEY FALLON: I'm going to object to
5 the relevance of the commentary that it about to be
6 written. Or read. Excuse me.
7 ATTORNEY DVORAK: I think it's -- I think
8 it's highly relevant, Judge.
9 THE COURT: The objection's overruled.
10 THE WITNESS: And what was your
11 question, sir? Mr. Dvorak?
12 Q (By Attorney Dvorak) Um, actually start from the
13 beginning. How -- tell -- tell me how you start
14 that e-mail to Mr. Kachinsky on May 9?
15 A Are you -- are you asking me to read it out --
16 Q Yes --
17 A -- loud?
18 Q -- I am. I am.
19 A And I should continue un -- until when?
20 Q Until it says, um, "Steven Avery needs to be
21 removed from society."
22 A Should I include that paragraph that you just read?
23 Q Yes.
24 A Okay.
25 Q End -- end at "society." Fine. Start from the

1 beginning.

2 A Okay. "I am learning the Avery family history and
3 interactions with -- within and about each member of
4 the Avery family. These are criminals. There are
5 members engaged in sexual activities with nieces,
6 nephews, cousins, in-laws. Anyone else is fair game
7 to these people.

8 They have a history of stalking females
9 who have no connection to this group.

10 Customers and, slash, or their relatives
11 unwittingly become victims of their sexual
12 fantasies and, thus, are stalked.

13 The victims have no idea that they are
14 being victimized. This is truly where the devil
15 resides in comfort."

16 Q You can -- you're -- coming a little emotional?

17 A Yeah.

18 Q Okay. And is -- what -- what are your feelings
19 here? Are you feeling bad about --

20 ATTORNEY FALLON: Objection. Let the
21 witness answer.

22 ATTORNEY DVORAK: Well, I --

23 THE COURT: Okay. To be fair, you'll have
24 to let him answer if he can.

25 THE WITNESS: I apologize. I -- I just

1 keep thinking about that blue ribbon. Sorry.

2 "I can find no good in any member.

3 These people are pure evil. This is where one
4 would eat their young to satisfy, slash, justify
5 a controlled issue where none previously
6 existed."

7 A friend of mine suggested this is a one
8 branch family tree. Cut this tree down. We need
9 to end the gene pool here."

10 Q (By Attorney Dvorak) Okay. You can stop there.

11 A I'm sorry.

12 ATTORNEY FALLON: Excuse me, Coun --
13 Counsel and Judge. They previously asked him to
14 read the following paragraph for completion purposes
15 of this train of thought. Would ask that they
16 complete the --

17 ATTORNEY DVORAK: He can ask him to read it
18 again on redirect, or if we're on cross, if he
19 wants.

20 ATTORNEY FALLON: I will.

21 THE COURT: Well, no, read it now if --

22 ATTORNEY DVORAK: All right.

23 THE COURT: -- he can.

24 THE WITNESS: What should I do?

25 THE COURT: You're requesting the next

1 paragraph?

2 ATTORNEY FALLON: The next paragraph, which
3 was originally requested.

4 ATTORNEY DVORAK: This is my exam, Judge.
5 I -- he can do it on cross.

6 ATTORNEY FALLON: All right.

7 THE COURT: Well, the rule of completeness
8 says that counsel can request that it be done and
9 I've said he can do it.

10 THE WITNESS: Do I read the entire
11 paragraph? The two sentences? Or just one?

12 THE COURT: Read -- you're requesting the
13 paragraph?

14 ATTORNEY FALLON: Yes.

15 THE COURT: Go ahead.

16 THE WITNESS: "Steve Avery needs to be
17 removed from society. I believe that his male
18 siblings could have a role in Teresa's crime
19 scene."

20 I'm sorry.

21 Q (By Attorney Dvorak) Now, Mr., um -- now, I want
22 you to refer to -- and this is -- this was a
23 pretty emotional case for you, wasn't it?

24 A At points, yes.

25 Q Okay. And I -- apparently still is?

1 A Always will be.

2 Q Okay. And your emotions side with what happened
3 to Teresa Halbach?

4 A That's correct.

5 Q Okay. And you -- from the tone of this letter,
6 uh, it's fair to say that you -- you felt very
7 strongly at the time that you were investigating
8 this case and working on behalf of Mr. Kachinsky;
9 right?

10 A Yes.

11 Q And, um, I want to refer you to the second page.
12 And you -- you tell Mr. Kachinsky in this e-mail
13 that you'll do however you'll -- you'll follow
14 whatever lead he -- whatever he says.

15 A You bet.

16 Q You will follow his directions about how he wants
17 to proceed? How he wants you to proceed on this;
18 right?

19 A You bet. Yes.

20 Q Okay. Now, Mr. Kachinsky responded to your
21 e-mail; right? And I refer you to that first
22 e-mail on page one? The top of page one?

23 A Yes, that would be his response right -- right about
24 there where -- yes.

25 Q Okay. So Mr. Kachinsky at this point defers to

1 your judgment on how best to proceed here; right?

2 A Not my judgment. My request.

3 Q Okay. Had you expressed the, I guess, depths of
4 your feelings about Mr. Dassey's family to
5 Mr. Kachinsky prior to this?

6 ATTORNEY FALLON: Objection. Relevance
7 as to the feelings about Mr. Avery as it relates
8 to this post-conviction hearing.

9 THE COURT: I --

10 ATTORNEY FALLON: So I would renew my
11 objection regarding the part of the e-mail which
12 was read and move that it be stricken. It's not
13 relevant to these proceedings.

14 ATTORNEY DVORAK: Judge --

15 ATTORNEY FALLON: Who cares what we
16 think -- or he thinks of Mr. Avery and his family.
17 This is about Brendan Dassey's post-conviction
18 hearing.

19 ATTORNEY DVORAK: My -- my question,
20 Judge, related to whether or not Mr. O'Kelly had
21 conveyed the depth of sentiments expressed in
22 this e-mail to Mr. Kachinsky such that
23 Mr. Kachinsky was aware of who he -- who -- who
24 his agent was and where his -- what his agent's
25 perspective on the case was.

1 THE COURT: The objection's overruled. You
2 can answer that.

3 THE WITNESS: I -- I got lost in the
4 question.

5 Q (By Attorney Dvorak) Sure. Had you, uh, had
6 conversations with Mr. Kachinsky prior to this
7 where you have expressed -- had expressed the --
8 your -- the depths of your feelings about the
9 Dassey family?

10 ATTORNEY FALLON: Objection. Wasn't about
11 the Dassey family. It was about Mr. Avery. Object
12 to the characterization of the question. It's a
13 different question than the one I objected to so I'm
14 going to object to this one.

15 ATTORNEY DVORAK: All right. I'd ask --

16 THE COURT: That objection's sustained.

17 Q (By Attorney Dvorak) As to the Avery family, did
18 you have a prior conversation with Mr. Kachinsky
19 about the depths of your feelings of them?

20 A This probably would have been the first time that I
21 expressed something to my recollection.

22 Q Okay. With that depth of emotion you mean?

23 A Very true.

24 Q Okay. And following receipt of this e-mail,
25 then, Mr. Kachinsky gave you the -- again, said

1 that he would -- he would not go, and -- and --
2 and gave you the green light to proceed; right?

3 A That is correct, sir. Yes.

4 Q All right. Let's -- do you recall doing anything
5 else between May 9 and May 12, when the
6 interview, um -- did you -- let -- let me --
7 specifically with respect to law enforcement?

8 A My only contact -- my recollection, that is, for that
9 period of time, was limited to, once again, gathering
10 documentation, intel information, that perhaps was
11 not shared in discovery at that stage by law
12 enforcement to the defense.

13 Um, I felt that I was only going to have
14 one opportunity to visit with Brendan, um, on
15 this issue of May 12 that I eventually addressed,
16 and I wanted to be as best prepared as I could.

17 Q Okay. Did you -- when you say, wasn't shared in
18 discovery, did you find, uh -- you mean as
19 compared to what Mr. Kachinsky had? Is that what
20 you're referring to?

21 A Exactly.

22 Q Or was there other items that -- that you had
23 obtained that Mr. -- Mr. Kachinsky wasn't
24 offered, do you know?

25 ATTORNEY FALLON: Objection. Speculation.

1 THE COURT: Sustained.

2 ATTORNEY DVORAK: All right.

3 Q (By Attorney Dvorak) Um, the -- the officers
4 that -- or prosecution side of personnel that you
5 got this information from, they understood what
6 it was to be used for; correct?

7 A Yes.

8 ATTORNEY FALLON: Objection.
9 Speculation as to what they understood.

10 ATTORNEY DVORAK: I'll work on a
11 foundation.

12 THE COURT: Go ahead.

13 Q (By Attorney Dvorak) Did you discuss, or tell
14 them, or discuss with them at anytime what the
15 information was to be used for?

16 A I believe I would have made a comment, and it would
17 have been a confirming comment. Um, the --
18 Mr. Kachinsky would have already laid the groundwork
19 by talking with the prosecution and their agents, uh,
20 so that when I contacted them directly it would not
21 be a surprise phone call. Would not be a surprise
22 request.

23 Q Okay. You recalled for us a conversation you had
24 with Detective Dederling where he did not --
25 where -- where you testified that he did not envy

1 your task, which you refer to as being obtaining
2 a confession from Mr. Dassey; right?

3 A Yes.

4 Q Okay. So --

5 ATTORNEY FALLON: I'm going to object.
6 That's not how I recall the character testimony
7 being characterized. So I would object to that.

8 Q (By Attorney Dvorak) Well, let me -- did you
9 have a conversation with Detective Dederling -- do
10 you recall a conversation that I've just
11 described?

12 A Yes. And I -- I indicated earlier today what I --
13 what -- what I said -- or what he said to me when he
14 opened the door. Shaking my hand, he said, "I
15 wouldn't want to be in your shoes."

16 Q Okay. And, um, was -- and -- and why -- as I
17 recall, you also referred that to the confession
18 as opposed to just representing Mr. Dassey;
19 right?

20 A The admission, yes.

21 Q Yes. Obtaining the admission.

22 A Yes.

23 Q Right. Okay. So they knew very early on, or at
24 least at the time of that conversation, that
25 that's what the -- all of this stuff was for?

1 Because you had told them?

2 A No, I did not tell them. Uh, Mr. Kachinsky did.
3 That was my understanding.

4 Q Okay. Could I -- sorry. I -- I -- I'm sorry,
5 Mr. O'Kelly, I'm -- I thought I just heard you
6 say twice in -- in your testimony that you had a
7 conversation with Detective Dederling in which you
8 had discussed that you needed this stuff in order
9 to obtain a confession from Brendan Dassey; is
10 that right?

11 A No. They -- they knew in advance what I needed the
12 items for. But -- and Mr. Kachinsky had called
13 prosecution ahead and talked with everybody. He then
14 told me to call the individual agents and obtain the
15 data. The intel documentation.

16 Q All right. Um, now, on May 12, um, was the day
17 that Judge -- the Judge enters his decision on
18 the motion to suppress; right?

19 A Yes.

20 Q Were you in court for that?

21 A That's why I -- I -- I was asked earlier and I -- I
22 can't really remember if I was inside or not.

23 THE COURT: We went through this before.

24 ATTORNEY DVORAK: No. This is the
25 decision. This is --

1 THE COURT: (Unintelligible.)

2 ATTORNEY DVORAK: -- May 12.

3 THE COURT: May 12 decision. I'm sorry.

4 THE WITNESS: I -- I thought I was -- I
5 thought I was in the hallway, but I may have been
6 inside the courtroom. I remember speaking to Ms.
7 Janda.

8 Q (By Attorney Dvorak) Did you have a conversation
9 with Mr. Kachinsky?

10 A Oh, sure. Yes.

11 Q And did you talk about what was going to happen?

12 A As in --

13 Q In terms of your -- your interview with
14 Mr. Dassey?

15 A Probably not, because we had had conversations
16 already to that point in time. I -- it was -- I knew
17 what my assignment was after the -- the ruling came
18 down on the 12th.

19 Q Okay. Now, um, you had chosen this date because
20 of its pivotal nature; right?

21 A Correct.

22 Q And you had chosen this date because if the
23 Judge, uh, denied the motion, um, you knew that
24 Brendan would be at a low point?

25 A That's correct.

1 Q Okay. Because it had been expressed to Brendan
2 how pivotal this decision was with respect to his
3 case?

4 A I -- I wasn't there for that so I don't know.

5 Q Okay. Um, so the -- the idea was to try and get
6 him in a -- catch him at a vulnerable time?

7 A That's correct.

8 Q He had been alone for at least several days?

9 A Sure. You bet.

10 Q Um, he would be looking for someone to bond with
11 or to be able to talk to?

12 A You bet.

13 Q Okay. And you were going to do that in order to
14 obtain a confession from him?

15 A You bet.

16 Q And Mr. Kachinsky knew that?

17 A Oh, yes.

18 Q Now, do you recall having communication with any
19 law enforcement on that day?

20 A Not to my recollection. Well, yes, and that would
21 have been the DOC folks at Sheboygan, um, the county
22 folks, that is. I don't recall speaking with anybody
23 else.

24 I do. I may have talked to Detective
25 Wiegert or Special Agent Fassbender after my

1 meeting with Brendan --

2 Q (Unintelligible.)

3 A -- because I called Len Kachinsky for -- after that

4 meeting, and I believe he -- want me to stop?

5 Q Yeah, I -- I want you to stop. Prior to your

6 meeting, I'm talking about -- sorry. I didn't

7 limit it. Prior to your meeting with Brendan

8 that day, did you have contact with law

9 enforcement? Um, and I -- I want to refer you to

10 Exhibit 56.

11 A Okay.

12 Q Page six. Your entry for May 12.

13 A I'm going to refer to the non-marked exhibit for

14 expediency?

15 Q Yeah, sure.

16 A And which page are you on?

17 Q Six.

18 A I'm on page six.

19 Q All right. It says there you had a conference

20 with CCSO Agent Dederling?

21 A Oh, yeah.

22 Q Do you remember what that was about?

23 A No.

24 Q Okay. Do you remember picking up any --

25 A Well --

1 Q -- information from him perhaps?

2 A Now, bear with me. It says I -- I had that and it's
3 on that particular day. Um, there is a lunchtime.
4 And, generally speaking, in my billing, if there's a
5 lunch, then anything that happens after that lunch
6 happened before I had dinner. If you follow me.

7 Q I follow you.

8 A So whenever I had lunch, which -- which could have
9 been on time, which could have been in the afternoon,
10 but before I had dinner, I had a conference, which is
11 an in person contact, with, it says, Agent Dederling,
12 and I had a telephone conference with Special Agent
13 Fassbender, yes.

14 Q Okay. Do you remember what that conversation or
15 conference was about?

16 A No.

17 Q All right. It also indicates after the lunch
18 entry that you were picking up new discovery at
19 the -- at -- at the attorney's office?

20 A Oh, I didn't read that. Um, actually, it wouldn't --
21 I'm going to guess and say, uh, the most likely thing
22 with this is, is conference with -- with Agent
23 Dederling, and that I'm picking up the discovery from
24 his office.

25 Q Okay.

1 A That's what I would take from this.

2 Q All right.

3 A It may not necessarily be accurate but that's what I

4 believe it is.

5 Q Was that information related to your

6 interrogation of Brendan on May 12?

7 A Most likely.

8 Q Okay. And had you alerted them prior to going

9 there that there were some things that you wanted

10 and that you would come by and pick them up?

11 A It could have been that. Or it could have been I

12 won't have the items until such and such date. I --

13 I -- you're asking me to go back -- I don't -- I

14 don't know.

15 Q All right. Now, um, I want to refer you to, um,

16 Exhibit 95.

17 A Okay. Give me a moment, please. It's a CD-ROM. Or

18 more than one C -- it's --

19 Q Uh, I'm sorry.

20 A Three CD-ROMs it looks like.

21 Q Ninety-seven. I'm sorry. Ninety-seven.

22 A Okay.

23 Q Well, actually -- and 95. Did you review Exhibit

24 95?

25 A Tell me what's on it, I'll tell you --

1 Q It --

2 A -- the answer.

3 Q It's -- it's the audio and video of the May 12
4 inter -- your May 12 interrogation.

5 A Yes. Um, the attorney and I saw parts of this, yes.
6 We fast forwarded it at times, but, yes, we saw it.

7 Q Okay. And -- and you can identify that exhibit
8 as the videotape and audio portion of your
9 interview on May 12?

10 A Yes.

11 Q Okay. And does that accurately depict what
12 occurred on that day?

13 A Yes.

14 Q Okay. Um, now, you had -- let's -- let's play
15 the tape of that interview. Let's -- let's
16 start --

17 ATTORNEY FALLON: At this time, Your Honor,
18 the State's going to renew its objection as to the
19 relevance and materiality of this interview on May
20 12 to which the State was not a part of. Nor did
21 the State know about this video recording. The fact
22 that this recording was not played did not
23 contribute directly to the conviction of Brendan
24 Dassey.

25 Furthermore, the defense now -- for

1 three days they've been hanging their hat on, and
2 grasping at straws, trying to establish some kind
3 of nefarious joint venture between the State
4 agents and Mr. O'Kelly to do in Mr. Dassey.

5 And I think we've had just about enough
6 of this because they haven't established one lick
7 of relevance, materiality, or one shred of
8 evidence, other than Mr. O'Kelly indicating that
9 he was picking up data, and intel, and
10 information, to assist him in conducting an
11 interview with his client.

12 So we would object. This is all
13 irrelevant, all immaterial. There's no agency
14 established. There's no joint venture
15 established under the laws of Wisconsin.

16 And if they want to debate that on
17 the -- we'll be happy to pull the case law.

18 ATTORNEY DVORAK: Judge, it's -- it's
19 relevant, first of all, to the disloyalty argument.

20 I think it's also relevant, um, because
21 there -- I -- there -- it's been, I think, pretty
22 clearly established through Mr. O'Kelly, uh, the
23 degree and level of -- of the participation.

24 The reality is -- or put -- what -- what
25 he's testified to, and what's in the record, is

1 that Mr. -- is that the State knew, uh, early on,
2 from -- from probably mid-April -- mid to late
3 April -- uh, that the defense, uh, had intended
4 on obtaining a confession from Mr. O'Kelly, and
5 that -- from Mr. Dassey, from Brendan, and that
6 they were requesting documents for that specific
7 purpose.

8 THE COURT: I find it relevant, but only to
9 the -- only to the disloyalty argument. I -- I --
10 I -- you can make whatever argument you want on an
11 agency basis. I haven't seen anything so far that
12 would suggest that that has any viable existence.

13 Now, before we get into this, however,
14 how much of this are we going to be looking at?

15 ATTORNEY DVORAK: About 25 minutes.
16 Twenty-seven minutes, I think.

17 ATTORNEY FALLON: Your Honor, if I could be
18 heard on the relevance with respect to the loyalty
19 argument, I would appreciate that.

20 THE COURT: Go ahead.

21 ATTORNEY FALLON: With respect to the
22 loyalty argument, again, it's not relevant or
23 material. It matters not for two reasons:

24 One, the fruits of this endeavor did not
25 contribute to the conviction of Brendan Dassey.

1 It was not played. Law enforce -- the State did
2 not know of this video existence until these
3 discovery mers -- proceedings.

4 It did not contribute to the conviction.
5 And, most importantly, if there is a remedy here,
6 you've already given the defendant, Mr. Dassey,
7 his remedy. You removed Mr. Kachinsky from the
8 case for deficient performance relating to the
9 events of this weekend in August of 2007.

10 ATTORNEY DVORAK: Judge, as we have been
11 arguing throughout, and -- and I -- as we have been
12 arguing throughout, Judge, I believe that this is --
13 is relevant because of -- with respect to the
14 contra -- it's effect on the trial. Is -- it's
15 relevant -- it's directly relevant to the May 12
16 phone call from Brendan to his mother. Uh --

17 THE COURT: Look. I've ruled that it's
18 relevant on the disloyalty argument. In the end, it
19 may well be that -- that Attorney Fallon is
20 absolutely correct.

21 But for purposes of this hearing it's
22 going to be relevant on the disloyalty claim made
23 here. Now, whether that disloyalty claim, in and
24 of itself, has sufficient legs to go anywhere,
25 we'll find out later. But that's the ruling.

1 ATTORNEY DVORAK: Okay. And we're also,
2 Judge, relying on **State v. Erickson** with re -- with
3 respect to any kind of prejudice argument, um, down
4 the road. All right.

5 THE COURT: Let me ask you this,
6 Mr. Dvorak, are we going to be -- are -- are you
7 going to have concluded with this witness by noon?

8 ATTORNEY DVORAK: I doubt it, Judge.

9 THE COURT: Try.

10 ATTORNEY DVORAK: All right.

11 Q (By Attorney Dvorak) I want to refer you to
12 Exhibit 97.

13 A Okay.

14 Q Which is the transcript.

15 A I'm there.

16 Q Okay.

17 COURT REPORTER: Judge, am I to take
18 this video?

19 THE COURT: I'm sorry?

20 COURT REPORTER: Am I to take this
21 video?

22 ATTORNEY DVORAK: Judge, I think we need to
23 so we don't have the record problem that we had in
24 the trial.

25 THE COURT: Yeah.

1 ATTORNEY DVORAK: I think the law
2 requires it.

3 THE COURT: Take what you can.

4 (No audio.)

5 Q (By Attorney Dvorak) All right. Let's -- let's
6 stop there for a minute. Can you describe what
7 we're looking at here?

8 A You're looking at photographs. You're looking at the
9 photographs, um, on the left-hand side. I -- I
10 recall --

11 Q You can finish it. Sorry. Go ahead and finish
12 to -- to the end of this.

13 A You're looking at photographs on the left -- top left
14 corner. I believe that's possibly the, uh --
15 Teresa's vehicle, uh, under brush in the Avery
16 Salvage Yard.

17 And the bottom photograph, I think it's
18 a -- Teresa's vehicle un -- partially uncovered.

19 On the top center -- I'm not sure, but I
20 believe it's a photograph in the bedroom of Steve
21 Avery's residence.

22 The center photograph is a view from the
23 end of the hallway, and I think there's a chair
24 where that photograph is taken from, that looks
25 down the hallway into Steve Avery's bedroom, and

1 you can see a portion of the bed, as I recall,
2 that Teresa was tied on.

3 On the lower one, uh -- lower center,
4 that is, that is part of a wall. And I believe
5 it's in the kitchen area of Steven Avery's
6 residence.

7 At the top there's, I believe, a TV. On
8 the top left on the stand, I can't tell you what
9 that is.

10 On the bottom left corner, I can't tell
11 you what that is.

12 On the center of the photograph is
13 Teresa's flyer, um, and Teresa's picture.

14 And top right-hand side, I believe that
15 is most likely part of the route leading from the
16 main road back to the Avery residences. I think
17 there's three residences back there. I think
18 there's three.

19 Q All right.

20 ATTORNEY DVORAK: Keep playing.

21 (No audio.)

22 All right. Stop there.

23 Q (By Attorney Dvorak) Now, you were -- came a
24 little emotional again when you were describing
25 those previous parts of the clip; right?

1 A I'm sorry. Yes.

2 Q Okay. And -- and this is a picture of the ribbon
3 and a picture of a ribbon hanging on a tree?

4 A Oh, it is. Yes. Didn't -- yeah.

5 Q And what is that a picture of? Do you remember
6 that photo?

7 A Oh, sure. Yes. Um, I believe it's Teresa's church
8 in the background.

9 Q Okay.

10 A I believe it's a tree in the foreground. I think
11 it's the -- the rectory next to the church, I think,
12 on the nor -- on the south side. I think.

13 Q Okay.

14 A Or it could be a residence. I'm not sure.

15 Q All right. And -- and that has --

16 A I apologize.

17 Q It has elicited an emotional response from you;
18 right?

19 A Yes.

20 Q Okay. All right. Now, you layed those things
21 out prior to Brendan coming into the room; right?

22 A Oh, yes.

23 Q All right. And this was part of your plan to get
24 a statement from Brendan; correct?

25 A To get admission, yes.

1 Q All right. Um, did you -- the -- the photograph
2 that's with -- with the picture with a ribbon on
3 the tree --
4 A Yes.
5 Q -- is that a photo that you took?
6 A Yes.
7 Q And that's with -- the ribbon was on the tree?
8 A Oh, yes.
9 Q Okay.
10 A Yeah, there were -- I mean, I think there's, like, 20
11 trees in the area and up the banister, too.
12 Q Okay.
13 ATTORNEY DVORAK: Okay. Continue.
14 THE WITNESS: Me or --
15 ATTORNEY DVORAK: No, Al -- uh --
16 THE WITNESS: Sorry.
17 (Inaudible.)
18 "You understand what's going to happen
19 with your bail? Give me an idea what you think."
20 (Unintelligible.)
21 "Am I what?"
22 THE COURT: Why don't you stop there for a
23 second. Court's just going to note that the -- the
24 sound quality is not sufficient, I believe, for the
25 reporter to accurately hear what's being said.

1 Mr. O'Kelly's is reasonably distinct,
2 but not always. So, uh, Mr. Dassey in response,
3 is very, very, very difficult to -- to hear, or
4 to determine what it is he's saying with any
5 precision.

6 We have, apparently -- Exhibit 97 is a
7 transcript of this; is that it?

8 ATTORNEY DVORAK: Yes.

9 THE COURT: I'm going to ask the reporter
10 to do as -- as well as she can here, but this --
11 this record may have to be supplemented with the
12 transcript that's shown here at Exhibit 97. Go on.

13 ATTORNEY DVORAK: Okay. You can --

14 "Let's do this."

15 ATTORNEY DVORAK: You can stop there.

16 Q (By Attorney Dvorak) Now, Mr. O'Kelly, not only
17 was Brendan's bail -- or I'm sorry -- not only
18 was Brendan's motion denied, uh, but he also got
19 word that his bail may well be increased; right?

20 A That's my recollection, yes.

21 Q Okay. Which would -- would likely have put him
22 in an even more vulnerable position?

23 A Yes.

24 Q Okay.

25 ATTORNEY DVORAK: Let's continue.

1 "Show you some things that I've got
2 layed out for you. This is your (unintelligible)
3 can you read the number? Can't see that far? Do
4 you see what color it is?"

5 (Unintelligible.)

6 "Okay. (Unintelligible.) It says
7 deception indicated. Probably deception is .98.
8 It's 98 percent. So what do you think that
9 means?"

10 (Unintelligible.)

11 "It's deception indicator."

12 (Unintelligible.)

13 "Yes. Doesn't surprise you."

14 ATTORNEY DVORAK: Okay. You can stop
15 there, please.

16 "Let me show you some things."

17 Q (By Attorney Dvorak) Now, what -- what you
18 pointed to on your computer screen, what -- what
19 was that?

20 A That -- I'm guessing that would have been the poly
21 score or the OSS, but I'm -- it's probably the poly
22 score.

23 Q Okay. And you're saying that the -- the poly
24 score that's up there would have, uh, had a
25 percentage number on it?

1 A Yes.

2 Q Related to the deception answer?

3 A If that's what was on the screen, yes.

4 Q Okay. And you don't have that -- you don't --
5 you don't have that screen anymore, do you?

6 Or --

7 A No.

8 Q -- a copy of that screen anymore, do you?

9 A No, sir.

10 Q Okay. Um -- all right.

11 ATTORNEY DVORAK: Now, let's continue
12 on.

13 "This is the original poster for Teresa
14 Halbach. Okay? This is Teresa's website. This
15 is her family. You've seen them in court;
16 right?"

17 (Unintelligible.)

18 "This is the last thing that Teresa saw.
19 She saw this sign right here. You recognize that
20 sign? What does the sign say?"

21 "Dead End."

22 "Pretty -- it's pretty prophetic, isn't
23 it?

24 And this right here. What is that
25 picture right there?"

1 "My driveway."
2 "And where's it going to?"
3 "My mom's house and Steven's."
4 "Okay. So Teresa sees this sign right
5 here. It says, "Dead End." And she goes down
6 that road; right? And she ends up over here at
7 that red house; right? And whose red house is
8 that?

9 Okay. And she ends up in the bedroom.
10 Top picture right there. (Unintelligible.) Is
11 that right? Okay. You recognize this?"

12 ATTORNEY DVORAK: Let's -- can I stop it
13 there for a minute?

14 Q (By Attorney Dvorak) Now, uh, earlier in an
15 e-mail, you talked about to -- to seeing, uh,
16 reality from your perspective, or your -- your
17 version of -- of the events. Remember that?

18 A You bet.

19 Q Okay. Um, now at this point you've -- you've
20 shown pictures of the inside, and have des -- has
21 described Teresa walking down the hallway, uh, as
22 well as in Steven Avery's bedroom; right?

23 A That's correct.

24 Q Okay. And why did you show those pictures?

25 A Because it -- at this point in time that's my

1 recollection, looking back at that time, that that
2 was the -- part of the progression of events for
3 Teresa's last day.

4 Q Okay. And at that time did -- I'm sorry. At
5 that time did you believe that Brendan had walked
6 down -- had been in that bedroom with Teresa?
7 That was your theory?

8 ATTORNEY FALLON: Objection. Relevance as
9 to what his theory was. The record --

10 THE COURT: Sustained.

11 ATTORNEY FALLON: Thank you.

12 ATTORNEY DVORAK: He's used the term
13 "lead," Judge, in the previous e-mail.

14 THE COURT: I sustained the objection.

15 ATTORNEY DVORAK: All right. Go ahead.

16 (Inaudible.)

17 (Unintelligible) "...that might be in
18 his house?"

19 (Inaudible.)

20 "Okay. Do you recognize this right
21 here?"

22 (Inaudible.)

23 "Okay. What do you think it is?"

24 (Inaudible.)

25 "And whose car is that? Whose do you

1 think it is?"

2 "Teresa's."

3 "Why do you think it's hers?"

4 (Inaudible.) "... they said that..."

5 (Inaudible.)

6 "You recognize this blue ribbon here?"

7 (Inaudible.)

8 "Okay. Maybe it looks like something

9 like this right here?"

10 "Yeah."

11 "Do you know what building that is right

12 here? This is Teresa's church.

13 Now, let me tell you this: I know

14 everything I need to know at this stage except

15 for two things."

16 ATTORNEY DVORAK: Let --

17 "There are two things I don't know.

18 What do you think they might be?"

19 ATTORNEY DVORAK: Let's stop it here.

20 Q (By Attorney Dvorak) What is the purpose of --

21 of going through that last episode?

22 A When you say --

23 Q What were you trying to do there?

24 A Describe the last ep -- I don't -- I don't follow

25 you.

1 Q Well, why did you lay those photographs out and
2 why did you go through the presentation that you
3 did?

4 A You mean from beginning to end from the -- the -- the
5 bottom corner all the way through all the
6 photographs?

7 Q Yes. What were you trying to do there? What was
8 the purpose of that?

9 A To have him relive, if he was involved, part of the
10 events. And also to see, in the very onset, at the
11 inception of this, the part that he wasn't involved,
12 and that's when Teresa was arriving at the Avery
13 Salvage Yard.

14 Q Okay. So you're, uh -- you're trying to get
15 him -- you're -- you're getting him focused in
16 on -- on where you want him to go; right?

17 A Uh, of parts that he wasn't involved in, that he had
18 no -- no role in, and parts that he may have had a
19 role in.

20 Q Okay. And this is -- all right.

21 ATTORNEY DVORAK: Go ahead.

22 THE WITNESS: Me? Oh.

23 "Think about it."

24 (Inaudible.)

25 (Inaudible.) "...I can't hear you."

1 (Inaudible) "...if I helped him or
2 something."

3 "Continue."

4 (Inaudible) "...if I helped him with any
5 of this."

6 "Continue."

7 (Inaudible.)

8 "Okay. There's two things I don't know.
9 And the two things I don't know is, are you sorry
10 for what you did? Will you promise not to do it
11 again?

12 Those are the two things I don't know.
13 I know everything else (unintelligible) I need to
14 know about this case except for those two things.
15 What I want you to do is make a decision. I want
16 you to read this form and we're going to fill it
17 out. Well, if you mark the boxes where you think
18 the boxes should be marked."

19 ATTORNEY DVORAK: Can we stop there for a
20 minute?

21 Q (By Attorney Dvorak) I have a -- when you --
22 you -- you said to him that there are, uh, two
23 things that you didn't know, uh, and that you
24 knew everything else?

25 A That's correct.

1 Q Okay. Um, that wasn't true, was it?

2 A Absolutely not.

3 Q Meaning it was not -- it -- true?

4 A It is not true.

5 Q Okay.

6 A That's my -- that's my standard phrase I teach my law
7 enforcement students to tell somebody to obtain the
8 admission, 'cause people won't say, I did it, but
9 they were will say they're sorry and they won't do it
10 again.

11 Q And -- and that -- I'm sorry. And when you
12 showed him the ribbon and -- and the -- the
13 photograph from Teresa's church --

14 A Yes.

15 Q -- you told him that was a ribbon from Teresa's
16 church. That wasn't true either, was it?

17 A Absolute lie. I would never -- I would never do
18 that. To take something from a church.

19 Q Okay. Okay. Go ahead.

20 "Are you sorry?"

21 (Unintelligible.)

22 (Unintelligible.) "Brendan, if you're
23 not -- look at me. If you're not sorry, I can't
24 help you. What I don't want you to do is spend
25 the rest of your life in prison. Can you look at

1 me? You want to spend the rest of your life in
2 prison?"

3 (Inaudible.)

4 "Okay. You did a very bad thing."

5 ATTORNEY DVORAK: Okay. Will you stop
6 there?

7 Q (By Attorney Dvorak) Now, uh, you have, uh,
8 uh -- you are not accepting what -- the answer
9 that he's giving you; right? He says, "I don't
10 know because I didn't do anything."

11 A Oh, okay. I didn't hear the mumble. Yes.

12 Q Okay. You have the transcript in front of you,
13 don't you? You follow --

14 A I -- I wasn't following it --

15 Q Okay.

16 A -- no. If you are -- what -- what page you're on?

17 Q Two.

18 A Oh.

19 Q Midway.

20 A Okay.

21 Q And you're suggesting to him that his option at
22 this point is to either come off of that
23 position, that is, that he didn't do anything, or
24 spend the rest of his life in prison; right?

25 A Yes.

1 Q Okay. And you accused him of -- of doing a very
2 bad thing?

3 A That's correct.

4 Q Okay. Despite what he has been telling you?

5 A Yes. But I was non-specific.

6 Q Okay.

7 ATTORNEY DVORAK: Go ahead.

8 "Brendan, you haven't told me the truth
9 yet. (Unintelligible) Why don't you look at me.
10 Brendan? Brendan, look at me. This is your
11 choice. Listen very carefully. Somebody is
12 going to cooperate and tell the truth. I would
13 prefer it's going to be you. If it's not,
14 because your confession has been admitted -- you
15 heard that today.

16 Right now they're asking for life plus a
17 hundred -- plus, what, 72 years? Now, that's
18 your greatest exposure right now. If you tell
19 the complete truth, the complete truth, not just
20 part of the truth, there's a door open for you.
21 You will still have to serve some time in prison.
22 You don't get to go home now. Somebody died.

23 But this is your chance to tell the
24 truth. If Steve Avery decides to get up and lie
25 or testifies against you, then he may get an

1 offer and a deal with the prosecutor's office.

2 And that's my concern."

3 ATTORNEY DVORAK: Okay. That -- stop it
4 there.

5 Q (By Attorney Dvorak) Um, a number of things have
6 happened here. Um, um, you've -- you've first
7 pointed out the fact that his confession's been
8 ad -- admitted? That he's in a hopeless
9 situation at this point; right?

10 A I don't know about the word "hopeless" but... Okay.
11 Hopeless would work. Sure.

12 Q Okay. You've talked about life plus 72 years?
13 His exposure?

14 A That's what Len -- that's what Len Kachinsky told me.

15 Q Okay. You've more than once asked him to look at
16 you --

17 A Yes.

18 Q -- right? That's a tactic that you would use,
19 also, to try and get somebody to come around to
20 your side of thinking; right?

21 A Oh, absolutely not. No. The purpose of that is --
22 is for him to have contact with me. Uh, I believe --
23 this is my recollection -- is that whenever Brendan
24 wanted to avoid an issue, he simply wouldn't look at
25 me. Put his head down. Or he'd go like this. He

1 would -- he would do some mannerism, such as that, to
2 avoid the issue or the question.

3 Q Okay. Or because he had not, um -- he -- he was
4 being confronted with somebody who was not going
5 to believe him again?

6 ATTORNEY FALLON: Objection. Speculation
7 as to what Mr. Dassey was thinking when Mr. O'Kelly
8 asked him to look at him.

9 THE COURT: Sustained.

10 Q (By Attorney Dvorak) Now, you men -- also
11 mentioned in here about, um, obtaining the
12 complete truth -- strike that. You -- you talk
13 about decides to get up and lie. And testifies
14 against you. This is Steven Avery.

15 Um, did you have any reason to think or
16 believe that Steven Avery would -- or that --
17 that would ever happen in this case?

18 A Yes. Uh, there was also a, um -- I recall there were
19 issues of threats or violence -- potential violence
20 against -- against Brendan by Steven Avery, I
21 believe.

22 Q My -- my question, though, is what you're talking
23 about is Steven Avery turning State's evidence
24 against Brendan?

25 A My recollection is that the -- I thought it was Barb

1 Janda. I'm -- could be wrong. But that somebody in
2 the Avery family -- when I say Avery family, I'm
3 referring to, um, information coming to me either
4 from Scott Tadych, Barbara Janda, or even -- even
5 Mike Kornely, that Steve was blaming -- Steve Avery
6 was blaming Brendan for the death of Teresa.

7 Q Okay. The likelihood -- had you talked to
8 anybody, however, about the likelihood of Steven
9 Avery ever testifying against Brendan Dassey?

10 A No. But, uh, after doing this for all the time I
11 have, anything's possible in a trial. You never know
12 which -- who's going to do what.

13 Q Well, that was --

14 A I was spec -- I was speculating. Fair?

15 Q What you're engaging in here are -- are fairly
16 well established tactics to try and get someone,
17 uh, to testify, or -- or to make the statement
18 that you want them to make; right?

19 A Yes, because I believe I may have only had one bite
20 of the apple, so to speak, and that's why -- that's
21 why I would say complete truth, um, although, in
22 reality, it's been my experience that you never get
23 the complete truth in a -- in a -- in a -- one
24 setting.

25 Q Okay. Let's continue with the tape.

1 A I was trying to maximize to answer your question.
2 (Unintelligible) "...if you know what's
3 happening inside a crime scene. You know what
4 happened. You know why it happened. You know
5 what time it happened."

6 ATTORNEY DVORAK: Okay. Stop there.

7 Q (By Attorney Dvorak) And --

8 "Like I said, I don't know if you're
9 sorry."

10 ATTORNEY DVORAK: Stop.

11 Q (By Attorney Dvorak) What -- what you're doing
12 here is -- is telling him that you know that he
13 was at the scene? That he's the person that has
14 the information?

15 A I don't think I said that you're in --

16 Q Um, I'm sorry. I didn't hear the answer.

17 ATTORNEY DVORAK: Could I have it read
18 back?

19 THE WITNESS: Yeah. I -- I was giving
20 you time to -- to hear -- hear your partner. Um,
21 I don't think that I told him he was inside the
22 scene. What I was telling him is, is that he
23 didn't tell -- he hasn't told the truth yet, and
24 I'd like to have all the information --

25 Q (By Mr. Dvorak) Okay.

1 A -- whatever it may be. Either --

2 Q And when --

3 A May I finish? Would you like me to finish?

4 Q Yes.

5 A Okay. Whether he had knowledge or direct involvement
6 is what I was going to say.

7 Q All right. In -- in your answer to the previous
8 question you had said that you were -- you were
9 attempting to maximize this one opportunity that
10 you had; right?

11 A This potential one opportunity, yes.

12 Q Okay. And so you were going to -- well, strike
13 that. And that means, uh, pulling out whatever
14 your vast experience in interrogation techniques
15 had to offer for you?

16 A My experience, any ideas from Len Kachinsky, the
17 family, um, whatever -- whatever -- whatever would
18 help Brendan get over the hump, so to speak.

19 ATTORNEY DVORAK: Okay.

20 (Unintelligible) "...do this again.

21 Those are two things I don't know. Steve right
22 now is saying that you're to blame
23 (unintelligible) and so is Bobby. Were you aware
24 of that?"

25 ATTORNEY DVORAK: Okay. Stop there for

1 a minute.

2 Q (By Attorney Dvorak) I want to go back to

3 your -- your comment about things that, uh,

4 Kachin -- uh, Kachinsky, uh -- ideas that he had

5 given you. What ideas had he given you about

6 what happened?

7 A I don't --

8 Q Or what --

9 A -- specific --

10 Q Or what to do?

11 A I don't specifically re -- recall what it was. Um, I

12 know we -- Mr. Kachinsky and I talked about, uh,

13 different ways to talk with Brendan. Um, I knew

14 there were things, for some reason, to leave out, not

15 talk about, that may have been a sensitive issue. I

16 don't recall what they were. But just in general

17 terms, how to accomplish -- how to accomplish my

18 assignment from Mr. Kachinsky.

19 Q Um, and what -- what suggestions did he give you?

20 What did he tell you?

21 A I can't specifically re -- recall. I know we -- he

22 had -- he had specific knowledge about Brendan early.

23 He had-- he thought he did. Whatever it is. And I

24 did not. I had met Brendan, I think, once or twice

25 before this date. I'm --

1 Q And so --
2 A -- guessing.
3 Q -- what we're talking about is sharing ideas
4 of -- of vulnerabilities that he may have?
5 A True.
6 Q And -- and ways to get at him; right?
7 A Yes. That I wouldn't know about.
8 Q Okay. And you have no recollection, as you sit
9 here now, as to what any of those might be?
10 A No.
11 Q How often did you discuss this issue?
12 A I'm not sure.
13 Q Do you recall when you first strat -- started
14 strategizing with Mr. Kachinsky about this?
15 A The best I could tell you is if -- if you refer back
16 to my handwritten notes of April 22, Saturday. That
17 may have been the earliest. It may have been
18 earlier. I'm not sure.
19 Q Okay. Did you meet and discuss about it on any
20 regular basis?
21 A We didn't have a regular basis. I -- I know that
22 whenever I drove to Appleton I could drop in the
23 office, and if he wasn't in, I'd go get a burger and
24 he'd be there later on in the afternoon.
25 Q Okay.

1 ATTORNEY DVORAK: Go ahead.

2 "Is Bobby to blame for any of this? Did
3 you see the girl?"

4 "I seen her when he left to go..."
5 (Unintelligible.)

6 "Okay. Steve says that she and Bobby
7 were together. Is that the truth?"

8 (Inaudible.)

9 "How do you know it's not the truth?"

10 "Because I'm friends with the -- the
11 guy -- his friends' brother, and they said that
12 they go hunting together."

13 "Remember how you told Detective
14 Wiegert -- his name is Mark; right? He's a
15 pretty good guy; right?"

16 (Inaudible.)

17 "He was nice to you? Do you remember
18 telling Mark about a bullet? Remember that?"

19 (Inaudible.)

20 "Well, guess what? What you described
21 to Mark and to Special Agent Fassbender turned
22 out to be completely true, because the DNA is
23 from Teresa. It's on one of the bullets in the
24 garage on the floor. That's the bullet."

25 Q (By Attorney Dvorak) Now, um, had you watched

1 the previous videos of previous interrogations?

2 A My recollection is I tried to watch one of them and

3 it wouldn't play well. And that was -- in fact, on

4 the videos, that's part of the discovery that I never

5 got from Len that I asked for. So the answer would

6 be probably no is my recollection.

7 Q All right. So -- but you're confronting him

8 with -- with a -- a piece of evidence, um, with

9 the suggestion --

10 A Yes.

11 Q -- that it is proof that he was present; right?

12 Or that he's guilty?

13 A Is that how I phrased about the bullet?

14 Q I'm asking you.

15 A I didn't think I did, no.

16 Q Why did you present it -- well, you said, um --

17 he said, "I never seen the gun that day." And

18 what you said is, "Well, guess what? What you

19 described to Mark and Agent Fassbender turned out

20 to be completely true."

21 A I think what -- what -- what you're asking me is did

22 I -- as opposed to seeing the video, did I read

23 the -- the transcript. And I -- I read the

24 transcript. That I did. Or the -- the report.

25 Whatever it was.

1 Q All right. Well, what I'm asking you now is --
2 A Yes.
3 Q -- is that you are presenting him with a piece of
4 evidence which you are saying proves that he is
5 guilty; right?
6 A Proves that he's guilty?
7 Q It proves that -- that he had a gun that day?
8 A No. I think it's proving -- proving that he had
9 information. That's what I'm referring to, I
10 believe.
11 Q Okay. Um, but the -- and -- and -- and that's
12 information related to the -- to a previous
13 statement which he has denied; correct?
14 A Yes, but I don't recall ever saying that Brendan had
15 a gun --
16 Q All right.
17 A -- at anytime, even up until just this very moment.
18 Q You had, um -- all right.
19 ATTORNEY DVORAK: Let -- let's go ahead.
20 "What did you decide to do?"
21 (Unintelligible.) "...that I'm very
22 sorry for what I did."
23 "That's a good beginning. Continue."
24 Q (By Attorney Dvorak) So what do you --
25 ATTORNEY DVORAK: No, let's continue.

1 "Brendan, stop for a second. The last
2 time you and I were here, what you wrote was not
3 the truth. Do we agree with that?"

4 Q (By Attorney Dvorak) You're referring to the
5 polygraph survey? Is that what you're referring
6 to --

7 A Yes.

8 Q -- here? And -- and he --

9 A You bet.

10 Q -- had -- he had denied involvement in that
11 polygraph survey; right?

12 A I don't know that he denied it. I think he gave a
13 list of activities that did -- did not include it.
14 I'm -- I'm guessing only at this stage. I'm sorry
15 for that.

16 Q Okay. Well, you, um -- but -- but the reason for
17 your saying that is -- is because you're saying
18 that what he wrote was not the truth?

19 A No. What -- No. What I'm saying is, is that he
20 indicated his activities and did not include anything
21 involving Teresa.

22 Q But what you told him was, "The last time you and
23 I were here, what you wrote was not the truth."?

24 A Yes.

25 Q Okay. So at -- at this point you're refusing to

1 believe his denials?

2 A It's not that I'm refusing to believe his denials, I
3 did not believe his denials.

4 Q And you've ex -- you express that to him that you
5 did not believe his denials?

6 A That's correct.

7 Q Okay.

8 ATTORNEY DVORAK: Go ahead.

9 "Maybe some of it."

10 "Well, part of the truth was that you
11 got up that day and went to school. So, yes,
12 there was some truth; right? And everything else
13 you said wasn't the truth. And what I don't want
14 you to do now..."

15 ATTORNEY DVORAK: Okay. Stop it here.

16 Q (By Attorney Dvorak) So what you're -- what
17 you're saying here is that the only thing that
18 was truthful is that he got up and went to
19 school. The rest of what he said in there was
20 not truthful?

21 A (Unintelligible.)

22 Q (Unintelligible.)

23 A (Unintelligible.)

24 COURT REPORTER: I'm sorry. I didn't
25 hear --

1 ATTORNEY DVORAK: I apologize. Go
2 ahead.

3 COURT REPORTER: I didn't get --

4 THE COURT: Wait a minute.

5 ATTORNEY DVORAK: Stop.

6 COURT REPORTER: I didn't get his
7 answer. I didn't get your question.

8 THE COURT: Why don't you repeat your
9 question, and then, presumably, he repeats his
10 answer?

11 ATTORNEY DVORAK: Okay. Judge, could we
12 take a break?

13 THE COURT: Well, yeah. But let's get --

14 ATTORNEY DVORAK: It's noon. All right.

15 THE COURT: -- the question out here
16 first.

17 ATTORNEY DVORAK: All right.

18 Q (By Attorney Dvorak) Um, the -- the -- the
19 question was this is an instance where you are
20 rejecting his denial, and you're telling that his
21 previous denial is not -- you're -- you're not
22 going to accept that as an answer?

23 A It's not his denial, it's his information, because I
24 don't believe he denied doing anything with Teresa.
25 I thought he left that information out of the survey.

1 Q All right. Well, we'll revisit the survey in a
2 minute. Go ahead.

3 THE COURT: Uh, no. We -- we'll -- we're
4 going to break for lunch right now.

5 But before we do, I'm just going to
6 note, I've been following the -- the
7 transcript, and it isn't a complete transcript of
8 -- of what's been -- been said on -- on even the
9 audible parts of what's been said.

10 So I don't know how we're going to cure
11 that.

12 ATTORNEY FALLON: I -- I was going to make
13 the same comment, Judge, 'cause I've -- I've made a
14 notation. There's certain things which are
15 attributed to -- the Court's caught the verbal. I
16 was looking at the non-verbal conduct which is
17 described, and I -- I didn't see any shrugging, for
18 instance, as the transcript reveals.

19 So there's some issues with respect to
20 its overall accuracy.

21 THE COURT: To be fair, nothing substantive
22 was --

23 ATTORNEY FALLON: Correct.

24 THE COURT: -- missing from it. But
25 just exclamations, words here and there.

1 ATTORNEY FALLON: Right.

2 THE COURT: All right. We'll be back at
3 one.

4 (Recess had at 12:02 p.m.)

5 (Reconvened at 1:04 p.m.)

6 THE COURT: All right. Let's proceed.

7 ATTORNEY DVORAK: Thanks, Judge. We're
8 just going to play the tape through the end, please.

9 "Anything else you said wasn't the
10 truth. So what I don't want you to do now -- can
11 you look at me for a second? What I don't want
12 you to do right now is tell me any more lies,
13 okay? Because if you lie to me, guess what I
14 have to do? If I have to stand up put everything
15 away and leave, because that means you want to go
16 to prison for the rest of your life.

17 If you want to go to prison for the rest
18 of your life, because you're going to hang on to
19 some lies, then I can't help you. When you're
20 all through telling the truth tonight, then you
21 and I can talk about something else. Do you know
22 what that is? It's a good thing."

23 (Inaudible.)

24 "You get to tell me all about your
25 family history and what got you to this point

1 last October 31 that caused all these problems to
2 happen. I have to unravel all of that and ask
3 the Court to consider leniency based upon your
4 family history and what's happened to you. I can
5 only do all these things if you tell the truth.
6 If you say even one single lie, I cannot help you
7 at all.

8 So you got to make a decision before you
9 start writing anything. You're going to write
10 the complete truth, no matter what the truth is,
11 because then Mike can help you. If you write a
12 lie, then Mike can't help you at all.

13 So the first question you
14 (unintelligible) ask yourself is, do you want to
15 spend the rest of your life in prison. So is
16 that a yes or a no?"

17 (Inaudible.)

18 "I can't hear you."

19 (Inaudible.)

20 "Do you want me to try and help you?" I
21 specialize in working with folks like yourself
22 to make sure that you don't go to prison for the
23 rest of your life.

24 Do you want to get out and have a family
25 some day? That means you have to cooperate with

1 me and help me work with you. And how much you
2 cooperate and how much you help me will depend
3 upon what happens with you."

4 (Inaudible.) "...is Teresa..."

5 (Inaudible.)

6 "What's missing? You know it's not a
7 truthful statement."

8 (Inaudible.)

9 "I want you to read this right here."

10 (Inaudible.) "...sorry for what I did."

11 (Inaudible.)

12 "What does it say down here?"

13 "I promise I will never do this again."

14 "Are those the truth? Are you really
15 sorry? That's a question. If you're not sorry
16 for what you did, I can understand that, too. I
17 just need to know which one it is. If you're
18 sorry, that's one kind of person. If you're not
19 sorry, that's a different kind of person. And,
20 of course, I can't help people who aren't sorry.

21 So are you sorry? Is that a yes or a
22 no?"

23 (Inaudible.)

24 "You don't know if you're sorry or not?
25 Would you do this again?"

1 (Inaudible.)
2 "Why not?"
3 "I didn't do nothing."
4 "That's not true."
5 "I was only there for the fire."
6 "I wish that was true. (Unintelligible.)
7 "...you're also in the mobile home."
8 "Not that day though."
9 "And you were in the garage."
10 (Inaudible.)
11 "Because she was in the garage, too.
12 Brendan, I want you to understand something. Why
13 don't you look at me. I know you can hear me.
14 Look at me."
15 (Unintelligible.) "...garage was the
16 lawn mower and the -- the snowmobile."
17 "Brendan, you have the details. You
18 gave the details to the police department."
19 "Then they're false."
20 (Unintelligible.) "...out to be true."
21 (Unintelligible) "...too much stuff on
22 my mind. That's why I agreed that..."
23 (Unintelligible.)
24 "Well, you gave them details."
25 "They told me that they knew it all

1 happened already."

2 "And you gave them information that they
3 didn't already have."

4 (Unintelligible.)

5 "Well, you guessed pretty accurate..."

6 (unintelligible) "...a whole bunch of details.

7 And you couldn't guess with all those details.

8 That's why the bleach was on your pants.

9 That's why the bullet has Teresa's DNA.
10 This one right here. It's in the garage.

11 This is what you can do; you can try and
12 help yourself. You can do what's right. And
13 I'll help you through this process. And you will
14 not be doing life in prison.

15 Just so you know, just so you're
16 perfectly clear, I want you to testify against
17 Steven Avery and tell the truth.

18 And this is how I can help you. If you
19 decide not to, I want you to understand that your
20 confession's coming in, and when your confession
21 is in, no matter what it is, true, or not true,
22 or anything else, when your confession is in
23 there's nothing I can do to help you then.

24 Right now we're at the stage where I can
25 help you. And I can't help you with those words

1 that you wrote down. Those words I can't help
2 you at all.

3 If you want to stay in prison the rest
4 of your life..." (unintelligible) "...then let's
5 just take those words and say that's it.

6 Is that what you want to do? Prison the
7 rest of your life?

8 "No."

9 "Now's the chance to help yourself, but
10 you can't help yourself with those words because
11 you and I both know that that is not the truth.
12 There's missing information."

13 Q (By Attorney Dvorak) Okay. Um, so, Mr. Kelly,
14 you've succeeded in your mission? Mr. Dassey
15 begins to write a statement? Brendan begins to
16 write a statement?

17 A I believe so.

18 Q Yeah. And so at this point, um, the -- the
19 prosecution, um, did -- does not believe
20 Mr. Dassey, neither does his defense team, and
21 they've just -- are in the process of extracting
22 a confession from him; right?

23 ATTORNEY FALLON: Objection.
24 Argumentative.

25 THE COURT: Sustained.

1 Q (By Attorney Dvorak) Um, after the, uh -- you're
2 done with your interrogation of Mr. Dassey,
3 there's a -- a series of phone calls? Would you
4 tell us what you remember about those series of
5 phone calls?

6 A To the best of my knowledge I believe that I
7 telephoned Mr. Kachinsky, and I would have called him
8 either at his office, his home -- residence home --
9 he has a phone set up there for contact, and, also --
10 or his cell phone.

11 I believe I may have -- may have also
12 contacted someone from the prosecution side.
13 And, I'm not sure, but it may have been one or
14 both, Special Agent Fass -- Fassbender or
15 Detective Mark Wiegert. And I think that would
16 have been the limitation. I don't think I called
17 anyone from Brendan's family or anyone else.

18 Q What was -- what was the purpose of the phone
19 call? Explain what was going on?

20 COURT REPORTER: Would you use the mic,
21 please?

22 ATTORNEY DVORAK: Sorry.

23 THE WITNESS: My -- my best guess, it
24 would -- would have been to inform Mr. Kachinsky
25 of what information that I -- that developed. I

1 can't tell you if I would have read the
2 information to him -- the new information -- or
3 given him an overview.

4 If I did contact law enforcement, anyone
5 on the prosecution side, it would have been at
6 the direction of Mr. Kachinsky with a -- most
7 likely a limitation or a direction of what to
8 either divulge, or not divulge, or whatever it
9 may be.

10 My best recollection is going to be
11 it -- it had something to do -- the -- the
12 substance would have been to do what the meeting
13 the following day between my client Brendan and
14 law enforcement.

15 Um, as a matter of fact, I'm -- as I'm
16 speaking here, um, I have a vague recollection
17 that part of the conversation would have involved
18 Brendan. And I think Brendan would have talked
19 to Mr. Kachinsky, um, by -- by using my
20 telephone, my -- my cell phone, and that would
21 have occurred right af -- after asking permission
22 from the Sheboygan County folks to allow Brendan
23 to use the phone to talk with the attorney.

24 Um, for some reason I believe there were
25 two calls with Brendan and the attorney, but

1 there could been -- only have been one. I'm not
2 sure. And that's -- that's pretty much it.

3 Q Okay. And what did you -- what is your
4 recollection of what you told law enforcement?
5 Whoever in law enforcement that you called?

6 A I'm -- I'm going -- I'm going to be guessing only at
7 this stage.

8 ATTORNEY FALLON: All right. Then I would
9 object. I would also note that the -- the substance
10 of these calls, and whatever conversation is
11 discernible, is on disk three of Exhibit 9- --

12 ATTORNEY DVORAK: That's correct, Judge.

13 ATTORNEY FALLON: -- -5. So our -- seems
14 to me we're plowing ground that need not be plowed.

15 ATTORNEY DVORAK: Well --

16 THE COURT: The objection is sustained.

17 Q (By Attorney Dvorak) Um, did you call anybody
18 else that evening other than any phone calls that
19 you would have made that would have been on the
20 tape?

21 A The -- the answer is I've -- I've given you that
22 list. And that would have been the extent of it.
23 But, however, I'm sitting here right now, and I'm not
24 so sure that I talked with law enforcement. It --
25 that -- that may have been all Mr. Kachinsky. It may

1 have been all -- all him. I -- I'm not sure, Mr. --
2 Mr. Dvorak. I'm sorry.

3 Q All right. Well, do you -- do you remember
4 whether or not you called Agent Fassbender and --
5 and -- and told him what Brendan had said?

6 ATTORNEY FALLON: Objection. Asked and
7 answered. He said he couldn't recall. And thought
8 we --

9 THE COURT: Sustained.

10 ATTORNEY DVORAK: All right.

11 Q (By Attorney Dvorak) Take a look at Exhibit 363.

12 A You bet. Should I leave out the DVD section?

13 Q No.

14 A Okay.

15 Q Just hold on.

16 A Did you say halt?

17 Q Let me give it to you. I'm not sure it's up
18 there.

19 A Okay. Let me put this away.

20 Q I'd like you to look at page 98.

21 A Yes.

22 ATTORNEY DVORAK: Judge, I'm not sure if
23 you have a copy.

24 THE COURT: I do.

25 Q (By Attorney Dvorak) Does that refresh your

1 recollection whether or not you had a
2 conversation with Agent Fassbender that evening?
3 A Can I read it briefly?
4 Q Okay. And, um, does it refresh your recollection
5 as to what you said during that conversation?
6 A Bear with me for one moment, please.
7 Q I'm not asking for the details. I'm just asking
8 if it refreshes your recollection.
9 ATTORNEY FALLON: Proper procedure would be
10 to have the witness review the entire document.
11 ATTORNEY DVORAK: Fine. He can review
12 the entire document.
13 THE COURT: Go ahead.
14 ATTORNEY DVORAK: I'm trying to save time.
15 A You mean you want me to start from this page here?
16 Q (By Attorney Dvorak) The entire document he
17 said.
18 A Yes, sir. I presume to myself; right?
19 Q Yes.
20 A I completed it.
21 Q Does that refresh your recollection as to whether
22 or not you had a conversation with Agent
23 Fassbender that evening?
24 A It does. Clearly.
25 Q And does it refresh your recollection whether or

1 not you revealed Agent Fassbender the details of
2 what Brendan had just told you?

3 A It does.

4 Q Did you get -- did you have permission from
5 Mr. Kachinsky to reveal the content of that
6 conversation to Special Agent Fassbender?

7 A It wouldn't have been permission. It would have been
8 a directive.

9 Q Okay. So, in other words, you're saying that
10 Mr. Kachinsky directed you to call Fassbender and
11 tell him what he said? Is that what you're
12 saying?

13 A In a nutshell, yes. But I can be more explicit if
14 you like me to.

15 Q Uh, sure.

16 A Mr. Kachinsky told me to reveal what occurred during
17 the meeting with Brendan, and to give Mr. -- answer
18 Mr. Fassbender's questions if he had any. Clearly.

19 Q Okay. So you're saying the information that you
20 gave Mr. Fassbender about the content of the
21 con -- of the -- Mr. Dassey's interrogation was
22 in response to questions by Special Agent
23 Fassbender?

24 A Would you repeat that, please?

25 Q Yes. Are you saying that the information that

1 you gave Special Agent Fassbender about the
2 content of Brendan Dassey's interrogation that
3 evening was the result of -- or in response to
4 questions from Special Agent Fassbender?

5 A In part, yes.

6 Q All right. Now, the plan at this point was to
7 meet the following day; right?

8 A That's correct.

9 Q And the purpose of that meeting the following day
10 was to -- for Fassbender and Wiegert to again
11 interrogate Mr. Dassey; correct?

12 A To interview him, yes.

13 Q Okay. And Mr. -- and what -- tell me what your
14 recollection is of those arrangements?

15 A My understanding from Mr. Kachinsky is that, um,
16 Brendan would be brought down from the upper level of
17 the Sheboygan County Jail to an interview room
18 downstairs, and both Special Agent Fassbender and
19 Detective Weigert (phonetic) -- Wiegert, uh, would
20 then begin an interview with Brendan.

21 Q All right.

22 A And it would be monitored by video and audio, I
23 believe.

24 Q All right. And what was -- what instructions
25 were -- did you -- what instructions did you have

1 from Mr. Kachinsky? Do you recall?

2 A The instructions that I recall are at least that if
3 Brendan requested an attorney, or Mr. Kachinsky, that
4 is, um, I would then either knock on the door and
5 walk in with the telephone -- my cell phone -- um, or
6 the interview would be terminated at that point in
7 time.

8 Q Okay. Did you have any other instructions from
9 him about that?

10 A I'm sure there were but I can't recall what they
11 were. I -- I -- that's pretty much it what I
12 remember.

13 Q The -- this -- the circumstances here were that
14 the, uh, interrogation of Brendan Dassey the
15 following day, March 13 -- or May 13, was going
16 to take place, and that Mr. Kachinsky could not
17 be there because he had another commitment;
18 right?

19 A Yes. But I -- I just now recalled something else
20 from your last question, if you want to --

21 Q Sure.

22 A The other instruction was that I was not to interrupt
23 the interview and that I was to allow it to go
24 forward, um, unless Brendan, um, asked to either talk
25 to Mr. Kachinsky or stop the interview. But I was

1 not to interrupt anything.

2 Q Uh, and that instruction came from whom?

3 A Mr. Kachinsky.

4 Q And when did Mr. Kachinsky give you that

5 instruction?

6 A That would have been one of two times. Either after

7 the Ap -- the May 12 interview concluded, that

8 evening, uh, or the following morning prior to the

9 beginning of the interview with Brendan.

10 Q All right. What time was -- and -- and did --

11 were there any other instructions that you

12 recall?

13 A I can't remember.

14 Q Were there -- were there any other phone calls

15 that evening that come to mind? All right.

16 A No.

17 Q The next morning what time were you supposed to

18 meet?

19 A Uh, before ten. And I'm guessing be 8, 8:30.

20 Q Okay.

21 A I'm only guessing at this stage.

22 Q Okay. Did you make arrangements to meet with

23 Special Agent Wiegert and, uh -- I'm sorry --

24 Special Agent Fassbender and Mr. Wiegert, uh, on

25 that morning prior to the beginning of that

1 interrogation?

2 A I think one of the agents gave me a call when they
3 were en route to Sheboygan and we were going to meet
4 in the lobby is my recollection. I could be wrong.

5 Q Okay. Um, you do recall meeting?

6 A That's correct.

7 Q All right. And -- and the purpose of the meeting
8 was what?

9 A They would show me to the interview -- to the monitor
10 room, and, um, I would observe Brendan being brought
11 down to the interview room.

12 Q Did you talk about the ground rules of the
13 interview? Interrogation, rather?

14 A No. I -- I started to, and Special Agent Fassbender
15 made the remark, uh, please don't give us any
16 information, any ideas. We want to do everything on
17 our own. I said, okay, fine, have it.

18 Q Okay. So you tried -- you at least made an
19 effort to provide them with some information?

20 A Some ideas. Not -- not information.

21 (Exhibit No. 370 marked for identification.)

22 Q (By Attorney Dvorak) I'm going to show you
23 what's been marked as Exhibit 370.

24 A You bet.

25 Q Do you recognize that document?

1 A I can tell you that it is my handwriting. I -- give
2 me a moment to look at the words. I can recall some
3 of the things. And half of them don't make any sense
4 to me.

5 Q Okay. Um, it -- it appears to be a list, is that
6 fair?

7 A Fair.

8 Q Okay. Uh, and it would, um, appear to relate to
9 the interview that we're talking about; right?

10 ATTORNEY FALLON: Objection. Assumes a
11 fact yet to be established. And he's leading the
12 witness.

13 THE COURT: Well, I'm going to sustain the
14 objection. Ask some --

15 Q (By Attorney Dvorak) What --

16 THE COURT: -- foundational --

17 Q (By Attorney Dvorak) What's the date on -- on
18 the exhibit?

19 A It's May 13, '06. Saturday.

20 Q Okay. And that's the date that was arranged for
21 inter -- for the interrogation of Mr. Dassey by
22 Wiegert and Fassbender; right?

23 A You bet.

24 Q All right. And it's -- underneath that it says
25 what?

1 A At S-C-S-O-J-O, which been Sheboygan County Jail.

2 Q Okay. Uh, does that help connect the dots for

3 you as to whether or not these notes relate to

4 interrogation of Brendan Dassey on -- on May 13,

5 2006?

6 A I don't believe it had to do with the interview that

7 I was monitoring. Um, there's nothing in here that

8 tells me it does. These could very well have been

9 made -- if you'd like me to speculate?

10 Q I don't want you to speculate.

11 A Okay.

12 Q Um, look at item number seven.

13 A You bet.

14 Q It says, "Call with Barb."?

15 A Yep.

16 Q Does that help connect these notes with that?

17 A No.

18 Q What about item number five, "Bobby saw S-A." Is

19 that right?

20 A Um-hmm.

21 Q For Steven Avery?

22 A Yes.

23 Q "Put camera." I can't read the rest. "In B-B."

24 For burn barrel I assume?

25 A Pretty much. It's "camera" comma, "e-t-c" et cetera,

1 "in burn barrel."

2 Q Okay. Does that help you connect the dots
3 between this document and the interview and
4 interrogation with Brendan Dassey?

5 ATTORNEY FALLON: Your Honor, again, I'm
6 going to impose an objection. The witness has
7 said this list had nothing to do with the
8 interview. So if there's something relevant
9 here, perhaps Counsel should ask what the list
10 has to do with.

11 ATTORNEY DVORAK: Well, I can't ask him
12 that question. I don't think I can ask him that
13 question yet.

14 THE COURT: Why not?

15 ATTORNEY DVORAK: Bec -- we'll see what
16 he says.

17 Q (By Attorney Dvorak) What does this list have to
18 do with?

19 A I -- in its entirety, I don't have a clue.

20 Q Um, there's a date under the -- item number two
21 talks about Satan, slash, devil worship, dash,
22 Halloween. You see that?

23 A I do.

24 Q Okay. Do you recall that this offense happened
25 on Halloween; right?

1 A You bet.

2 Q Okay. And do you recall whether or not the
3 agents asked Mr., um -- or -- Dassey during this
4 interrogation about whether or not Steven Avery
5 had anything to do with Satan or devil worship?

6 A Oh. They may have. I never heard that. I can tell
7 you where that came from, though.

8 ATTORNEY FALLON: Objection. Relevance.
9 Materiality.

10 THE COURT: Sustained.

11 Q (By Attorney Dvorak) Um -- all right. Describe
12 the -- the -- the setup. Where you were and what
13 you were supposed to do?

14 A During the Brendan interview on --

15 Q Yes.

16 A We walked down the hallway. Um, they showed me a
17 room that had a -- had a video -- had -- had a, um,
18 television set there. Monitor device. And they
19 pointed out the chairs and the table that were in the
20 room. The room was empty at that point.

21 They made offers of various chairs for
22 me to sit in. Um, they showed me where the door
23 was for the interview room so if I was going to
24 knock on the door I knew right where to talk to.

25 I don't have a rec -- well, I have a

1 recollection the door was probably within 15,
2 20 feet is my recollection. The -- the entrance
3 door to the interview room.

4 Um, after that point, uh, both agents --
5 after that point, both agents exited that room
6 that I was in. Uh, they disappeared. And the
7 next thing I saw on the screen was Brendan and
8 the two agents walking into the room. They all
9 sat down in various chairs, um, and the interview
10 began at that point in time.

11 Q Okay. So you were able to monitor the
12 interrogation both visually and audially
13 (phonetic).

14 A Yes.

15 Q Okay. And, uh, as the in -- in -- interrogation
16 went on, things weren't going so well; right?

17 A My recollection is, yes, it was not going well.

18 Q Okay. Um, Brendan was giving a number of
19 inconsistent statements?

20 A At --

21 ATTORNEY FALLON: Objection. Two grounds.
22 One, he's leading the witness. Two, the --

23 ATTORNEY DVORAK: -- I'll withdraw --

24 ATTORNEY FALLON: -- exhibit --

25 ATTORNEY DVORAK: -- the question.

1 ATTORNEY FALLON: -- speaks for itself. I
2 assume it will be introduced for whatever purpose
3 yets to be remain.

4 THE COURT: Question has been withdrawn.

5 Q (By Attorney Dvorak) At some point, um, do you
6 recall Special Agent Fassbender and Wiegert
7 leaving the room?

8 A Yes.

9 Q Okay. And you had a conversation with them after
10 they left the room?

11 A Yes.

12 Q Right? And what was the discussion during that
13 conversation?

14 A My recollection is that Special Agent Fassbender was
15 the one who made the first approach, and I think
16 Detective Weigert just -- Wiegert just stood by.
17 And, um, he says, hey, I thought you said he was
18 going to confess? What's going on? As you can see,
19 he's doing this, he's doing that. I don't recall the
20 specific words. Um, what gives, as an example.

21 Um, and I said, well, I says, as you can
22 see, he's -- he's not giving you anything that
23 you had thought he was going to give you that I
24 got yesterday.

25 And he says, well, right, what's going

1 on?

2 And I says, well, would you like my
3 opinion? Would you like my idea?

4 And I -- I think Detective Weigert
5 (phonetic) chimed in, says, yes, what -- what --
6 what's your idea?

7 And I says -- I says, you know, I says,
8 Tom, I says -- Mr. Fassbender -- I said, Tom, I
9 says, he just doesn't -- plain doesn't like you.
10 I says, you ought to just take your chair and
11 just put it in the corner so it's out of his
12 eyesight. And I says, Mark, I says, he thinks
13 you walk on water. He loves you. Sit next to
14 him. Be his best friend. Take your time. Don't
15 try and rush anything. Let him talk when he
16 wants to talk. And just let things happen.

17 And I think both the guys thought I was
18 crazy. And they both went back in, and they did
19 just that, and Brendan relaxed, and Brendan gave
20 them information.

21 Q Okay. And that was as a direct result of your
22 advice to them?

23 A Well, I wouldn't call it advice. I -- well, I
24 guess -- I guess you could call it advice. But I
25 wouldn't call it advice.

1 Q Um, did you, um, at any time give them any
2 suggestions about questions for Brendan?

3 A Not that I recall. No.

4 Q Did you give them any suggestions about, um -- do
5 you recall -- did -- they walked out of the room
6 another time, didn't they?

7 A That would have been the termination of the
8 interview.

9 Q All right. Do you recall any conversation or any
10 mention about any phone calls to Barb prior to
11 the interview?

12 A No. And -- and your -- and you folks -- we all
13 addressed that ten days ago on an interview.
14 Telephone interview. And, uh, I -- I still don't
15 recall that today.

16 Q Okay.

17 A You know, you reminded me you did it on tape, and
18 it's there, and I just didn't hear it. Or at least I
19 don't recall.

20 Q All right. If you had -- if you had heard that
21 they were going to try and set up a phone
22 conversation, and record it -- a conversation
23 that you knew was going to be recorded without
24 Mr. Kachinsky there, or without you being there,
25 is that something you would have authorized?

1 ATTORNEY FALLON: Objection. Speculation.
2 It's not -- it's -- he doesn't --

3 THE COURT: Sustained.

4 Q (By Attorney Dvorak) Did you hear that -- do you
5 have -- did you hear special agent that -- did
6 you hear either one of the officers suggesting to
7 Brendan that he ought to call his mother and tell
8 his mother what they had just talked about?

9 A No. That's what you asked me ten days ago. Not you,
10 but, um, Professor Drizin did. And -- and I didn't
11 recall it then. I don't recall it today.

12 Q Okay. Let me -- is -- is it something that, um,
13 was significant enough, you think, that it would
14 have stuck in your mind?

15 ATTORNEY FALLON: Objection. He said he
16 has no recollection.

17 THE COURT: He has no recollection, he has
18 no recollection. Move on.

19 Q (By Attorney Dvorak) You were monitoring the
20 interview throughout; correct?

21 A That is correct.

22 Q And you were paying diligent attention to what
23 was going on in the room; correct?

24 A Yes.

25 Q Okay. And you did not, in any event, tell the

1 officers that you disapproved of any phone call
2 to his mother that evening?

3 ATTORNEY FALLON: Objection. He just
4 said he didn't know anything about it. Doesn't
5 remember anything about it. Didn't approve.
6 Didn't authorize.

7 THE COURT: Sustained.

8 Q (By Attorney Dvorak) Did you, um -- you don't
9 recall -- do you recall any time telling them
10 that you didn't want them doing anything that
11 they were doing or suggesting?

12 ATTORNEY FALLON: Objection.

13 THE COURT: I'll overrule that.

14 ATTORNEY FALLON: All right.

15 THE WITNESS: I wasn't allowed by
16 Mr. Kachinsky to take that role. My only
17 instruction was to, if Brendan signaled, or
18 Brendan asked for Mr. Kachinsky, I was to knock
19 on the door and -- and give him the telephone to
20 call Mr. Kachinsky.

21 That was my -- that was my -- my -- my
22 marching orders, and to let the interview proceed
23 as it proceeded.

24 Q (By Attorney Dvorak) Okay. And would you -- did
25 you -- do you recall calling Mr. Kachinsky after

1 this interview? Or -- yeah, after the interview?

2 A I don't specifically recall it. However, I would
3 expect that I would have done that.

4 Q Uh, do you recall what the conversation would
5 have been?

6 A No. I'm sitting here thinking right now. He --
7 he -- he was on military duty. And I'm just going to
8 shoot from the hip and say that I would have called
9 him if there was an urgent thing and not waited until
10 the evening hours. So I -- that's the best I can
11 tell you.

12 Q All right. Um, in any event, and I assume it's
13 safe to say, that you never -- because you didn't
14 hear it -- you never told Mr. Kachinsky anything
15 about that there -- in fact, that there was going
16 to be a phone call?

17 ATTORNEY FALLON: Objection. Asked and
18 answered.

19 THE COURT: It has been asked and answered
20 a couple of times.

21 Q (By Attorney Dvorak) Did the -- did the, uh --
22 Wiegert and/or Fassbender know that your
23 instructions were not -- that you were not
24 allowed to interrupt?

25 ATTORNEY FALLON: Objection as to what

1 Wiegert or Fassbender might have known.

2 THE COURT: Yeah. I -- with --

3 ATTORNEY DVORAK: I --

4 THE COURT: Without foundation, the
5 objection's sustained.

6 Q (By Attorney Dvorak) Did you have any discussion
7 like that with Wiegert and/or Fassbender?

8 A Absolutely not.

9 Q Okay. What were the ground rules as far as
10 Wiegert and Fassbender were concerned?

11 ATTORNEY FALLON: Objection as to what
12 Wiegert and Fassbender were concerned.
13 Apparently, we're going to hear from them later
14 at some point.

15 THE COURT: Sustained.

16 Q (By Attorney Dvorak) Did -- had you ever talked
17 to Brendan that morning?

18 A No. I don't -- when you say that morning are you
19 saying --

20 Q Before the --

21 A Prior --

22 Q Prior to the interview.

23 A Not that I recall, no.

24 Q Okay. So Brendan never saw you that morning at
25 all from the -- from the time that you got there

1 until the end of the interview; correct?

2 A That's correct.

3 Q He couldn't -- all right. Um, do you recall if
4 you talked to Brendan after?

5 A My recollection is the answer is yes to that
6 question.

7 (Long pause.)

8 THE COURT: Are we done here,
9 Mr. Dvorak?

10 ATTORNEY DVORAK: Almost, Judge. Sorry.
11 Um, forgive me, Judge, if I've asked this. It's
12 been suggested maybe I haven't.

13 Q (By Attorney Dvorak) On the 13th, after this
14 interview was over with, do you have any
15 recollection of talking to Brendan?

16 ATTORNEY FALLON: Just asked that question.

17 THE COURT: Well, he asked it in a
18 different way. The witness said he probably talked
19 to Brendan afterward. Are you going to ask what
20 they --

21 ATTORNEY DVORAK: Yes --

22 THE COURT: -- talked about?

23 ATTORNEY DVORAK: -- I would.

24 THE COURT: Why don't you do that?

25 Q (By Attorney Dvorak) What did you talk about?

1 A My recollection, in a general sense, is that when the
2 interview was over between the two agents and -- and
3 my client, is that I went upstairs and visited with
4 Brendan.

5 What I can't tell you is that if there
6 was a lunch break or not. I believe I would have
7 allowed time for Brendan to go upstairs and have
8 lunch and then gone in the afternoon.

9 Q Do you recall what you talked about?

10 A I'm trying to be careful (unintelligible) that what
11 we talked about earlier this morning.

12 Q Do -- okay.

13 A Um, trying to make --

14 Q Yes.

15 A -- sure I'm not going into some -- someplace I'm not
16 supposed to.

17 Q All right. Fair enough. Did you -- did you,
18 uh -- nevermind. Um, were you -- were you a
19 licensed investigator in Wisconsin in 2006?

20 A No, I was not.

21 Q Uh, were you a licensed polygrapher in Wisconsin
22 in 2006?

23 A No, I was not. But I don't think there's any
24 licensing laws for polygraphers here.

25 Q Okay. Would you look at Exhibit 61, please?

1 A You bet. I'm there.

2 Q All right. Can you identify that for me?

3 A That would have been my CV.

4 Q Okay. And is everything in that CV true and
5 accurate?

6 A Yes.

7 ATTORNEY DVORAK: I have nothing further.

8 THE COURT: Cross.

9 ATTORNEY FALLON: Yes.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q Mr. O'Kelly, um, do you think you could find
13 Exhibit 64 up there? I believe it would be the
14 second binder I think.

15 A You bet.

16 Q Probably the one you were just looking at?

17 A Exactly. You were right. Bear with me. I'll get it
18 out. You say 6-4, am I correct?

19 Q Yes, 64.

20 A I'm there.

21 Q Do you remember Counsel asking you some questions
22 about Exhibit 64?

23 A Yes, but would you give me a minute -- moment to
24 just...

25 Q Sure. Take a moment to look it over.

1 A Yes. This is the one that I had some infor -- had
2 some words in there that I didn't recall earlier,
3 yes.

4 Q Right. And I believe Counsel asked you to read
5 certain portions on page two of that exhibit. He
6 asked you to read, starting at the fifth
7 paragraph, "I have Barbara," and then you -- he
8 asked you to read, "I have developed inside
9 information."

10 A Okay.

11 Q And then he had you read, "I am not concerned
12 with."

13 A You bet.

14 Q All right. Would you read the first two
15 sentences of the next paragraph that they did not
16 ask you to read?

17 A Beginning -- beginning with -- so I know which one
18 you're talking, which -- what -- what are the --

19 Q "I would like."

20 A Fair. Would you like me to read the whole thing out
21 loud or just to myself?

22 Q Um, read it out loud.

23 A "I would like to salvage as much of Brendan's future
24 as possible and still have a work product that the
25 prosecution can use. The more valuable that Brendan

1 is to the prosecution, the better we can do for him
2 in a plea coupled with sentencing, slash, placement
3 mitigation."

4 Q All right. Let me ask you this question: Um,
5 Investigator O'Kelly, is it fair to say that your
6 efforts in this particular case, which re --
7 which resulted in the events of the evening of
8 May 12 and May 13, were driven by a desire to put
9 Brendan in the best favorable light for plea
10 negotiations should that be the choice of
11 Mr. Kachinsky?

12 A Of Mr. Kachinsky? That's correct.

13 Q All right. And all of your efforts in the week
14 leading up to the events of May 12 and May 13
15 were directed in that -- directed toward the
16 accomplishment of that goal?

17 A That is correct.

18 Q Would it be fair to say you were -- you believed
19 you were operating in the best interests of -- of
20 Mr. Dassey per the instructions of Attorney
21 Kachinsky?

22 A At all times.

23 Q Do you feel at any point you were betraying your
24 confidences or any loyalties to Mr. Dassey?

25 A Oh, contrary.

1 Q All right. Why?

2 A No. I say no. Sorry.

3 Q Okay.

4 ATTORNEY FALLON: That's all.

5 THE COURT: Any redirect based on that?

6 ATTORNEY DVORAK: Very short.

7 **REDIRECT EXAMINATION**

8 BY ATTORNEY DVORAK:

9 Q Um, did -- to your knowledge, did Brendan ever
10 authorize those contacts that were just referred
11 to with the State? Um --

12 ATTORNEY FALLON: Objection.

13 Q (By Attorney Dvorak) -- you had with the State?

14 ATTORNEY FALLON: Objection. Beyond the
15 scope.

16 THE COURT: I'm going to overrule it.
17 Arguably, that's within the scope. Close anyway.

18 ATTORNEY DVORAK: Thanks.

19 THE WITNESS: I'm sorry. What was your
20 exact question, please?

21 Q (By Attorney Dvorak) My -- my -- my question
22 was: To your knowledge, at any time while you
23 were operating in the capacity that was just
24 described --

25 A You bet.

1 Q -- to your knowledge, had Brendan ever authorized
2 you to disclose that any of the information that
3 you had gathered?

4 ATTORNEY FALLON: I'll renew the objection
5 as speculation unless he specifically had a
6 conversation with Mr. Dassey himself. But, then
7 again, he's already told us he wasn't authorized to
8 do that.

9 THE COURT: Overruled. He can answer the
10 question.

11 THE WITNESS: I have a vague
12 recollection that at some point on the 12th --

13 Q (By Attorney Dvorak) Let's talk about prior to
14 the 12th.

15 A Oh, prior to the 12th?

16 THE COURT: Well, wait a second. Now
17 you're changing the question. Now --

18 ATTORNEY DVORAK: I am --

19 THE COURT: (Unintelligible) ...change...

20 ATTORNEY DVORAK: -- change --

21 THE COURT: ...the answer. Go ahead.

22 THE WITNESS: I -- I'm sorry. Where am
23 I at?

24 THE COURT: You said you have a vague
25 recollection that some time on the 12th.

1 THE WITNESS: Okay. On the 12th, I have
2 a vague recollection that Brendan and I had a
3 conversation that I was going to be informing law
4 enforcement that he would see them the next
5 morning. That's a vague recollection. It should
6 be on the video recording. If it's not there, it
7 didn't happen.

8 Q Okay. That's the only recollection that you have
9 of Brendan ever authorizing you to talk to law
10 enforcement about your work on the case?

11 A That would have been the only time that I would have
12 talked to Brendan about that to my recollection.

13 ATTORNEY DVORAK: I have nothing further,
14 Judge.

15 THE COURT: All right. You may step down.

16 THE WITNESS: Thank you, Your Honor.

17 ATTORNEY FALLON: Your Honor, before we
18 call the next witness, I would like to be heard on,
19 uh, what I assume will be the motion to admit
20 several of these exhibits.

21 THE WITNESS: Excuse me.

22 THE COURT: All right. Let's see what's
23 being offered and then you can hear you.

24 ATTORNEY DVORAK: Judge, we'd move in 56,
25 62, 95, 97, 231, 353, 362, 368, 369, 370, and 61.

1 THE COURT: So I have 56, 62, 95, 97, 231,
2 357, 362, 368, 369, 370, and 61?

3 ATTORNEY DVORAK: Yes.

4 THE COURT: Okay. Mr. Fallon.

5 ATTORNEY FALLON: Yes. I'd like to go
6 through, make sure I have them, because I do have
7 some objections. I'm going to identify the ones
8 that I can recall, and then I want to look at a
9 couple.

10 Sixty-one, is CV. Um, I suppose there
11 was -- we have no objection to that.

12 Um, 56, if I recall, is the billing
13 record. We have no objection to that.

14 Sixty-two was an e-mail exchange. We
15 have no objection to 62.

16 THE COURT: Has that already been admitted?

17 ATTORNEY FALLON: It may very well have
18 already been admitted.

19 Um, I'm going to come back to 95 and 97,
20 um, because most of my comments are directed
21 at -- at those exhibits.

22 I believe 3 -- okay. That's already
23 been offered.

24 Three-seventy I'd object to as entirely
25 irrelevant and immaterial. The witness indicated

1 it had nothing to do with this case. So I would
2 object to 370 in its entirety.

3 Um, let's see. Three six -- if you can
4 help me out. I don't have it in front of me.
5 Three sixty-nine is what exhibit?

6 THE COURT: Three sixty-nine -- was that an
7 e-mail?

8 ATTORNEY FALLON: I'm sorry?

9 ATTORNEY DVORAK: May 5 e-mail.

10 ATTORNEY FALLON: Yeah. That's fine. It
11 might already be in for that matter. Okay.

12 And, um, let me double-check. Three
13 sixty-two we have no objection.

14 Three sixty-eight is -- what is 368?
15 I -- I don't know if we have a copy of 368 at the
16 moment. I know we were shown it.

17 ATTORNEY DVORAK: I think that was from
18 yesterday, Judge. We spoke in error.

19 ATTORNEY FALLON: All right. So that's
20 being withdrawn at the moment, then?

21 ATTORNEY DVORAK: Yeah, until we --

22 ATTORNEY FALLON: Figure out. All right.
23 That's fine. Three sixty-two. Yeah, that's fine.
24 Three fifty-three.

25 THE COURT: I don't -- I don't have 353

1 down here. I have 357.

2 ATTORNEY FALLON: It's 353 from the
3 notes of, looks like, April 23. Handwritten
4 notes, I believe, of Mr. O'Kelly. But I -- as I
5 recall, there was only one bit of it which was
6 discussed and relevant. So, um, I have no
7 objection to the part which was discussed, which
8 is on the left-hand column, uh, to-do list,
9 e-mail attorney, etc. That was all that was
10 discussed from my recollection of Exhibit 352. I
11 have no objection to that part. The rest of it I
12 object to.

13 ATTORNEY DVORAK: That's fine, Judge.

14 THE COURT: All right. It's admitted,
15 then, with that qualification.

16 ATTORNEY FALLON: All right. Um, 231. Two
17 thirty-one I object to entirely. Polygraph chart.
18 Um, for reasons that we were subject of the pretrial
19 motion.

20 And I believe takes us to 95 and 97,
21 which were the subject of late morning and this
22 afternoon's testimony.

23 Now, it strikes me, Judge, that we have
24 several concerns regarding these exhibits, not
25 the least of which is authentication and

1 integrity of the exhibit. Um, and our primary
2 objection is relevance and materiality.

3 I'm looking for my -- here it is, right
4 here. All right. The questions on the
5 authenticity. I note as they played, um, the
6 disk, that there were several pauses. In the
7 handwritten transcript that they prepared, it
8 would say, long pause, and then there'd be a
9 pause. I don't know how long it was. So it
10 tells me that the exhibit has been altered in
11 some form, presumably for presentation purposes.

12 So I don't know if we have the original
13 or the altered exhibit. What was deleted and
14 what's not deleted.

15 Um, secondly, I would object that -- as
16 to the comments of the defendant as being hearsay
17 and self-serving. If -- and as long as it -- if
18 its intent is to be introduced to show whatever
19 questioning techniques of Mr. O'Kelly, that's one
20 thing.

21 I would object to the responses and
22 statements of the defendant as being hearsay.
23 And because they are offered for the truth of the
24 matter asserted, which is the ultimate basis of
25 this post-conviction motion.

1 Finally, under the rule of completeness,
2 um, my objection is based on the fact that
3 they've only placed one exhibit into evidence,
4 and, um, if the Court is to receive it, absent
5 any further authentication questions, and we --
6 the Court has already noted the transcripts
7 issues, then I would ask that disks two and three
8 be also made part of the record under the rule of
9 completeness. And, plus, we have had discussion
10 as to what the, um, series of phone calls were at
11 the end of this interview.

12 So I would ask that, um, for those
13 reasons, either it's out entirely, primarily on
14 our original objection of relevance and
15 materiality -- I know the Court has made a
16 preliminary ruling on the loyalty issue -- but as
17 we continue to mention, assuming that is, in
18 fact, going to carry the day for admissibility,
19 then we ask that it only be admitted solely for
20 that purpose. And then -- and we'll continue
21 with our argument that that remedy has already
22 been accomplished.

23 So those are our concerns with respect
24 to 95 and 97. We have authentication issues both
25 with the transcript and the DVD as offered.

1 ATTORNEY DVORAK: Judge, we have the
2 original. I think he aucten -- authenticated that as
3 being what happened and a true and accurate
4 representation of what happened on that day. I
5 think the authentication is there.

6 We have the original, uh, and -- and
7 what was going on, from what I understand from
8 Alex, is, with the long pause, is that he was
9 fast forwarding, so, uh, it is -- it -- it's not
10 accurate to say that it was deleted.

11 Um, I think the tape, uh -- so I -- I --
12 I think that addresses the authentication issue.
13 I don't -- I would move into evidence disk one
14 through three. I don't have any problems with
15 that. I think that ought to happen.

16 Uh, in -- in terms of limiting the
17 content, I don't think that -- you know, I -- I
18 think that's an issue that the Court needs to
19 look at when -- when the issues are raised in the
20 brief, but I -- I -- I don't see that -- that
21 they're hearsay. They're statements of the
22 defendant in the context of an interview.

23 Uh, that, um -- and -- and that was --
24 was in response to questioning. And I just
25 don't -- I -- I guess I don't quite understand

1 the -- the hearsay argument here.

2 Um, and, in any event, the rule of
3 completeness would demand that those statements
4 come in and be made a part of the record as well.
5 It adds context for subsequent statements. It
6 adds context for what happens next, um, so I'm --

7 THE COURT: All right. Here's what I'm
8 going to do. Uh, Exhibits 56 and 62 have been
9 agreed on, as have 362, 369, and 61. Those will be
10 received.

11 Exhibit 353 is admitted -- is admitted
12 with the qualification that only that portion,
13 and Mr. Fallon identified the portion on the
14 record which had been testified to, will be
15 received.

16 Three sixty-eight no one knows about at
17 this point so we're not going to do anything with
18 it.

19 MS. CROSLY: Your Honor, it's the
20 Criminal Complaint. The original Criminal
21 Complaint that was attached to the e-mail.

22 THE COURT: That's already part of the
23 record. Although this Criminal Complaint had,
24 according to the testimony of the witness, had his
25 handwriting on, but I don't know that that adds

1 anything to this. So we won't admit it as an
2 exhibit.

3 Uh, the Court on the loyalty issue will
4 admit Exhibit 95 in its entirety. That is all
5 three disks.

6 Ninety-seven, the transcript, seems to
7 me doesn't bear the sort of evidence of
8 reliability that one expects in a transcript.
9 Specifically, there are words that were omitted
10 in the transcription, uh, and, as Mr. Fallon
11 pointed out, some of the descriptions of gestures
12 didn't appear on the screen. So that's not going
13 to be admitted.

14 Um, Exhibit -- let me look here.

15 ATTORNEY FALLON: Two thirty-one was the
16 other one.

17 THE COURT: Two thirty-one, that's the
18 polygraph. The Court is going to admit that.

19 The Court is not going to ad -- admit --
20 I think it's 370. Those were the handwritten
21 notes that Mr. O'Kelly offered some testimony of,
22 from my perspective, no value whatsoever, toward
23 the end of his examination.

24 ATTORNEY FALLON: If I may, Judge, since
25 you are going to, and have, admitted the three

1 disks, uh, of the -- I take it the three -- that's
2 the May 12 statement?

3 ATTORNEY DVORAK: Yes.

4 ATTORNEY FALLON: All right. Can we have
5 a -- like a -- the full copy -- unedited copy -- go
6 into the record rather than the edited copy?

7 THE COURT: Oh, absolutely.

8 ATTORNEY DVORAK: Sure.

9 ATTORNEY FALLON: Okay.

10 THE COURT: Yeah. And that's on the
11 loyalty issue.

12 ATTORNEY FALLON: Okay. That's fine. All
13 right. Thank you.

14 THE COURT: I think that ties up all the
15 exhibits that you just offered, Mr. Dvorak, does it?
16 Okay. Next witness. No reason for Mr. O'Kelly to
17 stay around, is there?

18 ATTORNEY FALLON: I think not.

19 ATTORNEY DVORAK: Um, Judge, I'm not ready
20 to release him from his subpoena yet.

21 THE COURT: All right. Mr. O'Kelly, you're
22 not free to leave.

23 ATTORNEY FALLON: He would be excused from
24 the courtroom. He's under an exclusion order.

25 THE COURT: That's -- well, that's -- yeah.

1 ATTORNEY DVORAK: Next witness is Dr. Larry
2 White.

3 THE COURT: All right. Just come on up
4 here, please. Remain standing. The oath will be
5 administered you. Then be seated.

6 THE CLERK: Raise your right hand, please.

7 **LAWRENCE WHITE,**
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 THE CLERK: Be seated. State your name
11 and spell your last name for the record, please.

12 THE WITNESS: My name is Lawrence Todd
13 White, W-h-i-t-e.

14 ATTORNEY TEPFER: Your Honor, to speed
15 thinks along today, um, the parties have
16 stipulated that in lieu of live testimony,
17 Dr. White's direct examination will consist of
18 his affidavit, which was attached to the
19 post-conviction motion as Exhibit 6.

20 There's also an agreement that his
21 report, which was prepared for Steven Avery's
22 attorney, it's Jerry Buting, which is the --
23 lists -- it would just -- Exhibit 80, um, would
24 also constitute his -- his direct testimony.

25 And we also seek to admit his curriculum

1 vitae, which is Exhibit 235. So I'd ask to move
2 that -- with the agreement of the State, I asked
3 to move those exhibits 6, 80, and 235 into
4 evidence, and offer Dr. White up for
5 cross-examination.

6 THE COURT: Is Mr. Fallon doing --

7 ATTORNEY KRATZ: I am, Judge.

8 THE COURT: Okay.

9 ATTORNEY KRATZ: Actually, um, that's --
10 that's correct. And -- and, although, his
11 affidavit and his report, in some instances, are
12 couched in what he would testify to, um, if that
13 evidence would have been offered in direct
14 examination, uh, I just would have made the
15 comment, which I don't think is a problem at
16 trial, if the Court would have allowed, if it
17 would have been admissible, and I know that this
18 is by way of offer of proof, and I have no
19 objection to that at all, Judge.

20 THE COURT: So what we're talking about
21 here is Exhibit 6, which is an affidavit.

22 Exhibit 80, which is -- is that the
23 report?

24 ATTORNEY TEPFER: Yes.

25 THE COURT: Exhibit 80 was the report that

1 was prepared for Messrs Buting and Strang in the --
2 in the other matter, in the Avery case.

3 And Exhibit 235, Dr. White's CV.

4 The parties are stipulating that those
5 can be received, and the Court does receive them.

6 ATTORNEY KRATZ: Yes. That should move
7 things along and -- and thank you, Counsel, for --
8 for doing that.

9 CROSS-EXAMINATION

10 BY ATTORNEY KRATZ:

11 Q Dr. White, good afternoon.

12 A Good afternoon.

13 Q Um, my -- my first question to you has to do with
14 your contact in this case. That is, the Dassey
15 case. I understand that you were contacted by an
16 Attorney Fremgen; is that correct?

17 A Yes.

18 Q You can probably get rid of that binder if that's
19 in your way. I'm -- I don't think we'll be
20 referring to any -- any exhibits. Do you recall,
21 Doctor, the number of correspondence that you had
22 with Mr. Fremgen?

23 A Just one. He e-mailed me and I replied.

24 Q All right. And in your reply, as I recall,
25 Doctor, although indicating a willingness to

1 testify in this case, you also expressed some
2 reluctance to do so; is that right?

3 A I believe my words were that I was not overly eager
4 to work on the Dassey case. And I said that because
5 Mr. Fremgen, in his e-mail, had indicated that he was
6 contacting me at the last minute. I'm reluctant to
7 be involved in cases at the last minute.

8 Um, my real job, as a professor of
9 psychology at Beloit College, requires me to
10 spend a lot of time in the classroom and with
11 students. And I'm not able to set things aside,
12 drop everything, and turn my attention to an
13 important case like that.

14 Also, I had never heard of Attorney
15 Fremgen or his colleague, um, and so I was a bit
16 reluctant to agree immediately to working with
17 attorneys that I had no knowledge of or
18 experience with.

19 Q At that time, however, you had prepared, um, a --
20 a draft or an incomplete report should your
21 services have been needed in the Steven Avery
22 case; is that right?

23 A That's correct.

24 Q As I understand, Mr. Fremgen had expressed to you
25 his desire that should you be needed, it would

1 most likely be on the issues of police
2 interrogation techniques and how they may have,
3 um, impacted the reliability or voluntariness of
4 Mr. Dassey's statements; is that correct?

5 A Correct. And he'd also asked me in his e-mail that
6 if I might comment on a letter or a report that's
7 been prepared by Mr. Buckley --

8 Q Right.

9 A -- from the Reid school.

10 Q Are you familiar with Joseph Buckley?

11 A Yes, I'm familiar with his work and have seen him
12 present at a conference on one occasion.

13 Q And have you been asked, I suppose, for lack of a
14 better term, to be the expert on the other side
15 of Mr. Buckley in a case before?

16 A Never before.

17 Q Dr. White, you were familiar with the tests
18 performed and the report submitted by Dr. Gordon
19 in this case; is that correct?

20 A No, I'm not familiar with that.

21 Q All right. So any, um, specific testing of
22 Mr. Dassey, or any opinions derived therefrom,
23 would not have been something that you would have
24 commented on at this trial; is that right?

25 A Any testing done by Dr. Gordon?

1 Q Yes.

2 A Um, no one asked me to comment on Dr. Gordon's

3 report. I never read a report if he wrote one.

4 Q All right.

5 A I knew nothing about Dr. Gordon at that time.

6 Q So your testimony, just so we're clear, wouldn't

7 have overlapped, at least in theory, with

8 Dr. Gordon's testimony; is that right?

9 A When you say, "in theory," if I had worked with

10 Dassey's attorneys and -- and testified at trial, I

11 don't know what exactly they would -- documents they

12 would have asked me to review.

13 Q Well, you didn't perform any testing of

14 Mr. Dassey, did you?

15 A No, I did not.

16 Q You didn't generate any, um, reports that

17 specifically dealt with the results of any

18 testing; is that right?

19 A Correct.

20 Q Dr. White, do the concepts of vulnerability, to

21 suggestibility, and, I suppose, this overarching

22 concept of false confessions relate to each

23 other?

24 A Yes, I think that they do.

25 Q And could you tell me just very generally -- and

1 we're not going to go very deep into this because
2 you didn't testify, but how those two concepts
3 might relate?

4 A Well, some individuals are more suggestible than
5 others. And individuals who are suggestible are, all
6 other things being equal, more likely to make false
7 statements and, perhaps, to capitulate to leading
8 questions being asked by police interrogators.

9 Q Now, whether a statement is a true or a false
10 confession is something that you would not be
11 comfortable in commenting on; is that correct?

12 A Correct.

13 Q In fact, as far as you know, any reputable expert
14 in your discipline would also shy away from
15 making that ultimate --

16 ATTORNEY TEPFER: Objection.

17 Q (By Attorney Kratz) -- suggestion or opinion;
18 isn't that true?

19 ATTORNEY TEPFER: Objection to what he --
20 what other reputable experts would testify to.

21 THE COURT: Well, I think he can testify to
22 that. I'm sure there's a standard of professional
23 expertise. The objection's overruled. You can
24 answer.

25 THE WITNESS: Okay. When you ask about

1 true or false confessions, I assume you're using
2 those words separately from the concepts of
3 reliability and voluntariness?

4 Q I am very much.

5 A Okay.

6 Q Whether a confession is a false confession is
7 something that you wouldn't comment upon, nor
8 would any of your colleagues, to your knowledge?

9 A I think I would not, and I think my reputable
10 colleagues would, as you said, "shy away" from doing
11 something like that.

12 Q All right. So other than, um, perhaps explaining
13 the concept, generally, um, and if allowed, maybe
14 going into the studies or social sciences, um,
15 the ultimate question, if you will, isn't
16 something that you would render an opinion on, is
17 that fair?

18 A That's correct. I think it's, um, the responsibility
19 of the jury to make that kind of a determination.

20 Q Did you ever have that conversation with
21 Mr. Fremgen? That is, that although you could
22 talk about some general concepts and perhaps
23 educate the trier of fact on this issue, that you
24 wouldn't, um, feel comfortable rendering an
25 opinion on the ultimate issue?

1 A In our brief e-mail correspondence, I recall that I
2 said to Mr. Fremgen that I -- I would not be able or
3 willing to offer an opinion about the truthfulness of
4 the statements.

5 Q All right. And as you've pointed out, maybe
6 using a little bit different verbiage, that is
7 something that's called invading the province of
8 the jury. Is that --

9 A Yes.

10 Q -- what you understand? All right.

11 ATTORNEY KRATZ: If I could have just
12 one moment, Judge?

13 Q (By Attorney Kratz) Then, Dr. White, given the,
14 um, scope of what your testimony perhaps would
15 have been, uh, I'm just going to conclude with --
16 with a couple of questions on your report.

17 This was completed after the Dassey
18 trial, itself, was concluded; is that correct?

19 A That's correct. There was a -- a draft version of my
20 report that I prepared for Jerry Buting in late
21 January or early February of 2007.

22 I was contacted by Mr. Fremgen about the
23 Dassey matter in the first part of April of that
24 year.

25 And then, um, I had completed a -- the

1 report for Mr. Buting in early May.

2 Q I guess my only questions about that are although
3 Mr. Fremgen may have been only privy to the draft
4 report, both the draft and the final report, um,
5 excludes the ultimate opinion on whether this is
6 a false confession; is that correct?

7 A Correct.

8 Q All right.

9 ATTORNEY KRATZ: That's all I have of
10 Dr. White for this, Judge. Thank you.

11 THE COURT: Any redirect?

12 ATTORNEY TEPFER: Just very briefly.

13 **REDIRECT EXAMINATION**

14 BY ATTORNEY TEPFER:

15 Q Um, Dr. White, you said that, um, were not overly
16 eager to testify in this case; is that correct?

17 A Correct.

18 Q Are you overly eager to ever testify as an expert
19 witness?

20 A Not especially, no.

21 Q Okay. Now, you also mentioned in that same
22 e-mail that, um -- that you believed that Brendan
23 had a right to have a -- a -- a false confession
24 expert, didn't you?

25 A Yes. I don't know if I said false confession expert,

1 but an expert who could talk about the social science
2 and psychology of interrogation and confession.

3 Q Would you have test -- despite not being overly
4 eager, would you have testified if asked by
5 Mr. Fremgen?

6 A Yes, I would have. In fact, I gave Mr. Fremgen
7 information about my fees.

8 Q Mr. Kratz asked you about, um, whether you
9 performed any testing on Mr. Dassey. Do you
10 remember that?

11 A Yes.

12 Q And this is covered in -- in the stipulation in
13 the direct, but, just for foundation, you've
14 testified as a police interrogation expert in the
15 past?

16 A Yes, I have.

17 Q Have you ever performed your own testing when
18 you've testified as a police interrogation
19 expert?

20 A And when you say "testing," if you mean have I
21 examined or evaluated, in some way, the defendant,
22 uh, then the answer is no. That's not part of the
23 consulting services that I offer.

24 Q Would you rely on testing done by others, um, in
25 formulating your opinions?

1 A Yes, I would. And have.

2 Q Okay. Mr. Kratz also asked you about whether,
3 um -- whether or not you can give an ultimate
4 opinion about the truth or falsity of a, um -- of
5 a statement -- of a statement. Do you remem --
6 of a confession. Do you remember that?

7 A Yes.

8 Q Okay. And you said you -- you did not in this
9 case and you normally would not; right?

10 A Correct.

11 Q Okay. Now, does that preclude you from
12 commenting on the reliability of a statement?

13 A No.

14 ATTORNEY KRATZ: Judge, I'm going to
15 object as that does specifically ask for a legal
16 conclusion and would have certainly been the
17 subject of either, um, pretrial motion or at
18 least extensive argument outside the presence of
19 the jury in this case.

20 THE COURT: It's also beyond the -- the
21 scope of the cross-examination. The objection's
22 sustained.

23 Q (By Attorney Tepfer) Dr. White, um, false -- a
24 false confession in unreli -- um, in falsity and
25 unreliability are two different things? Would

1 you agree?

2 A Yes.

3 Q Okay. Um, you also mentioned to that, um -- one
4 last question or one last point. Did you -- you
5 mentioned, um -- again, turning back that you
6 mentioned that you had not comment on the
7 ultimate issue in -- in your expert testimony;
8 correct?

9 A If the ultimate issue is to the truthfulness or the
10 falsity of the statements, then that's correct. I
11 would not be comfortable commenting on that ultimate
12 issue.

13 Q Okay. But, um, you are aware, um -- would you
14 be -- is there -- if a confession is proven false
15 by DNA, for example, would you feel comfortable
16 referring to it as a false confession?

17 ATTORNEY KRATZ: Objection, Judge. That
18 does call for speculation and certainly beyond
19 the scope of what this trial would have included.

20 THE COURT: Sustained.

21 ATTORNEY TEPFER: Okay. Beyond the scope
22 objections. Okay. No -- nothing further.

23 ATTORNEY KRATZ: Not of this witness,
24 Judge. Thank you.

25 THE COURT: You may step down.

1 ATTORNEY TEPFER: At this time we'll call
2 Ray Edelstein.

3 THE COURT: All right.

4 ATTORNEY KRATZ: Also my witness, Judge.
5 Thank you.

6 THE COURT: Okay. Come on up here, please,
7 Mr. Edelstein. Remain standing while the oath is
8 administered to you. And be seated.

9 **RAY EDELSTEIN,**
10 called as a witness herein, having been first duly
11 sworn, was examined and testified as follows:

12 THE CLERK: Be seated. State your name and
13 spell your last name for the record, please.

14 THE WITNESS: Ray Edelstein. Last name
15 is E-d-e-l-s-t-e-i-n.

16 **DIRECT EXAMINATION**

17 BY ATTORNEY DRIZIN:

18 Q May I call you Ray?

19 A Sure.

20 Q Okay. Where are you currently employed, Ray?

21 A I'm self-employed, um, as an attorney. My office is
22 in Oshkosh.

23 Q And how long have you been, um, in your own
24 practice? In Wisconsin.

25 A Since 1991.

1 Q And has your practice since 1991 been primarily
2 criminal defense work?

3 A Yes.

4 Q Would you say exclusively criminal defense work?

5 A No.

6 Q About what percentage?

7 A Eighty.

8 Q Okay. Prior to 1991, where were you employed?

9 A Immediately bef -- before coming to Wisconsin, I was
10 in the Attorney General's Office in Oklahoma in what
11 was called Multi-county Grand Jury Division.

12 Q So you were a prosecutor?

13 A Right.

14 Q Okay. And how long were you in that role?

15 A That was between -- probably about a-year-and-a-half
16 in the AG's Office.

17 Q And prior to that, Mr. Edelstein?

18 A In 198- -- I believe '84, I'd been appointed as
19 district attorney in District 16 in Oklahoma, which
20 is a two-county district. Ran for election in --
21 must have been '86, 'cause it was a four-year term.
22 Succeeded. Ran again, I think, in '90. Did not
23 succeed.

24 Um, that's when I was in the AG's office
25 and ended up here in Wisconsin.

1 Q Had you done any criminal work prior to 1984?

2 A When I was in school -- in law school -- um, I was

3 interning with the Tulsa County Public Defender's

4 Office. And then when I got out of school, I was

5 working in the DA's office in District 16.

6 Q So be fair to say for the last 25 years your

7 practice has been mostly devoted to criminal

8 work? Whether as a prosecutor or a defense

9 attorney?

10 A Correct.

11 Q And was that mostly trial work?

12 A Well, there was a lot of trial work. I mean, I

13 wouldn't --

14 Q I mean not appellate work?

15 A Oh, right. Right.

16 Q So -- and as a criminal defense attorney in

17 Wisconsin, do you have to be certified to handle

18 serious felony cases?

19 A The State Public Defender has a certification system,

20 um, and you do have to be certified through their

21 office to be involved in different types of --

22 different levels of offenses.

23 Q Okay. And are you certified by their office to

24 handle homicide cases?

25 A I honestly don't know. They rarely -- and I say that

1 because, um, when homicides would come up, I normally
2 wouldn't get called.

3 Q Okay. Have you handled homicide cases in your
4 career?

5 A Oh, sure.

6 Q Okay. And can you estimate how many jury trials
7 you've had?

8 A Couple hundred. I -- I don't know exactly.

9 Q And have you also handled serious cases involving
10 juvenile offenders? And by "juvenile" I mean
11 youth who are under the age of 18 at the time of
12 the offense.

13 A Depends what you call serious. If you -- if you're
14 looking strictly at homicides, um, I can't think of
15 any, you know, under, say, 17, strictly on a
16 homicide. I mean...

17 Q But other serious felony cases?

18 A Yeah.

19 Q Okay. Now, have you worked in your experience as
20 a defense attorney with private investigators
21 before?

22 A Yes, but rarely.

23 Q Okay. And so in cases in which you don't use a
24 private investigator do you do the investigation
25 yourself?

1 A Well, to the extent that I can, or I try to obtain
2 information from sources without engaging a private
3 investigator. If I have access to information from
4 what we'll call governmental sources that might be
5 helpful, I will take advantage of that.

6 Q Now, I want to take you back to the year 2006;
7 okay? When did you first hear the name "Brendan
8 Dassey"?

9 A I can't tell you exactly when.

10 Q Okay. Do you remember the context?

11 A It would have been about the time that there were
12 some news reports about the waiver of the prelim.

13 Q And what do you mean by "the waiver of the
14 prelim"?

15 A It just -- I -- it -- it would -- it struck me
16 unusual that in -- with -- with this type of a charge
17 that there would have been a waiver.

18 Q So this would have been very early in
19 Mr. Dassey's case? Shortly after his arrest?

20 A I'm sure it was.

21 Q Okay. Had you known about the disappearance of
22 Teresa Halbach in the prior November?

23 A I had.

24 Q Okay. You had followed that on the news as well?

25 A Casually. It wasn't something that I, you know,

1 would necessarily check every day and check the
2 progress.

3 Q Do you recall when you first became aware that
4 Brendan Dassey was going to be represented by Len
5 Kachinsky?

6 A It would have had to have been about the time that he
7 be -- was appointed because there would have been
8 news reports.

9 Q And did you know Mr. Kachinsky prior to his
10 appointment on the case of Mr. Dassey?

11 A I did.

12 ATTORNEY KRATZ: Judge, I'm going to
13 interpose a relevance objection unless this goes
14 to Mr. Edelstein's performance in this case.

15 ATTORNEY DRIZIN: It will.

16 THE COURT: I'll allow the threshold
17 question. So I'll overrule the objection. But --
18 you may answer the question.

19 ATTORNEY EDELSTEIN: I knew -- I knew
20 Len Kachinsky.

21 Q (By Attorney Drizin) And how did you know him?

22 A He was a practicing attorney in the Appleton,
23 Outagamie County areas, as well as Winnebago County,
24 and I also would be back and forth frequently between
25 the -- mostly in Winnebago, but I'd see him up there

1 for example.

2 Q Did you ever try any cases with him?

3 A No.

4 Q Okay. Were you ever -- now, how did you become
5 associated with the Dassey defense team?

6 A Mark Fremgen had called me and indicated the State
7 Public Defender was requesting that he accept the
8 representation of Brendan.

9 He explained that he wanted co-counsel
10 or some help. He apparently told the SPD that
11 it -- it was just too big of a file to deal with
12 alone. He wanted some help. Would I help him?
13 Um, that's how I first became aware of Mark's
14 involvement.

15 Q And were you appointed co-counsel on the case?

16 A I doubt it. Um, I never actually saw any paperwork
17 from the SPD, uh, that said, you're appointed, like
18 they would typically send out.

19 As I understand it, again, from -- from
20 Mark, they -- they wouldn't appoint co-counsel,
21 but they would allocate funds for experts, at
22 which he could use to engage another attorney, if
23 he wanted to, to help on the case.

24 So I don't think it was officially an
25 appointment as counsel by the SPD.

1 Q Okay. Did you file an appearance in the case?

2 A I made lots of appearances. I was noted of record as

3 counsel. Whether I submitted anything under my

4 signature, I'm not sure, because some things that

5 were drafted, you know, I would send to Mark. And he

6 was the attorney of record, um, in lot of ways, and I

7 know he re-did a couple things. So I -- as far as I

8 was concerned, yeah, I was attorney of record just

9 like Mark.

10 Q Okay. And when Mark asked you to join the Dassey

11 defense team, did he say that he wanted you to

12 concentrate on any specific issues?

13 A Not when we first talked about it. Um, once I became

14 involved, and he got a little better feel of what was

15 involved with the file, uh, some of the issues, and

16 we'd sit down and go over it, we started dividing

17 things up a little bit, um, to give it -- each of us

18 an opportunity to try to focus on various issues and

19 evidentiary matters in -- in the case.

20 Q In this division of labor, what were you assigned

21 to do?

22 A I dealt primarily with statements. That was a large

23 portion of -- of my responsibility.

24 Q And that would assume -- that would involve, for

25 example, cross-examining the police officers who

1 took the statements in this case?

2 A Correct.

3 Q Okay. Um, and coming up with strategies with
4 regard to the suppression of the statements?

5 A Well --

6 Q Why don't you tell me what -- what your tasks
7 were besides cross-examining the cops.

8 A I dissected the statements.

9 I tried to figure out what originated --
10 what -- what statements of alleged fact
11 originated with Brendan.

12 What statements of alleged fact
13 originated from the mouth of any of the police
14 officers. Um, whether Brendan adopted those.

15 Um, how many times were they repeated?

16 What type of promises? What type of
17 reassurances? What type of goodwill gestures
18 were made toward him by any of the officers to
19 engage him, and encourage him, persuade him,
20 cajole him to answer their questions?

21 Um, comparisons of the various
22 statements. Um, that -- that was a large part of
23 what I did with those statements. And then
24 prepare for the cross of the officers as it
25 related to those statements as I thought

1 appropriate.

2 Um, we looked at -- we looked at the
3 Reid technique.

4 So we were dealing with all of those
5 issues. We were dealing with the fact that there
6 had been a suppression hearing previously, which
7 did not result in a favorable ruling for the
8 defendant. Trying to figure a way around that.

9 Q Okay. Um, just so I'm clear with regard to your
10 responsibilities, you said the statements. Would
11 that have included the November statements in
12 Marinette County?

13 A Right. I had the -- yes.

14 Q Okay. The February statements at Mishicot and
15 Two Rivers?

16 A Right.

17 Q The May -- excuse me. The March 1 statement, um,
18 that was videotaped and used at trial?

19 A Right.

20 Q The May statements? Um, the May 13 statement, if
21 you will? Okay? Did it also include
22 strategizing with respect to the May 13 phone
23 call that grew out of the May 13 statement?

24 A A little bit. Um --

25 Q Okay. So you mentioned that you looked at the

1 Reid technique. What did you do with regard to
2 the Reid technique?

3 A I was familiar with the Reid technique. I wouldn't
4 say as an expert but, you know, I -- I had a
5 reasonable familiarity with it.

6 Uh, I actually went out and got the
7 latest edition so I could go through it again,
8 see if there had been any big changes in their
9 methodology, because I wanted to see how closely
10 that was being followed, and what the police
11 officers had done, and to see whether or not
12 there was any way to attack any of those
13 statements based upon the application of that
14 particular technique.

15 Q Okay. And when you ultimately had the
16 opportunity to cross-examine the officers, did
17 you rely on any of the work you did on the Reid
18 technique in your cross-examinations?

19 A I'm certain I did. I can't tell you a specific
20 question I asked, but I'm certain, I'm confident that
21 I did.

22 Q Okay. You mentioned that you dissected the
23 statements?

24 A Um-hmm.

25 Q Okay. Um, did you look to see whether or not the

1 information in those statements came first from
2 Brendan or from the police officers?

3 A I did.

4 Q And did you note each and every instance where
5 the information came from the police officers?

6 A I don't know if I had a separate page on who
7 originated a fact or an alleged fact. Um, I don't
8 know if I -- if I did have a separate -- I don't know
9 if I had a separate sheet on that.

10 I had separate sheets when I was
11 dissecting them that covered things like
12 promises, and, you know, other improper
13 techniques. I also had a sheet that I had
14 labeled lies that were told to Brendan.

15 Q I saw that. Okay. Um, now, you recall the
16 opening statement of the prosecution in this
17 case?

18 A Refresh me.

19 Q Do you recall that they highlighted for the jury
20 19 facts that were corroborated in Mr. Dassey's
21 statement?

22 A (Unintelligible) Okay.

23 Q Yes?

24 A Yes.

25 Q Do you recall that they also highlighted those 19

1 facts in the closing?

2 A Yes.

3 Q Okay. So would it be fair to say that between
4 you and Mr. Fremgen, um, dealing with those 19
5 facts was your responsibility?

6 A Not entirely, because some of those facts, as I
7 recall, related to, um, physical evidence. And on
8 the physical evidence side of things, while we each
9 went through that, there was some division on who
10 would be handling the various witnesses that either
11 developed or testified about items of physical
12 evidence.

13 So I can't say that it was exclusively
14 my obligation to deal with each of those 19,
15 because I'm certain that some of those 19 dealt
16 with physical evidence that might not have been
17 tied particularly to a statement.

18 But it was a fact of existence that, for
19 example -- and I don't know if this was one of
20 them or not -- but, for example, um, Daisy
21 Fuentes buttons. You know, I'm not saying that
22 that was one of them, but there was this
23 division, and we both looked at a lot of the
24 forensic stuff, but it wasn't exclusively one or
25 the other.

1 Q Okay. But to the extent that, um, it was
2 anybody's responsibility to highlight to the jury
3 that these facts were not corroborated, would you
4 say that was primarily your responsibility?

5 A Uh, I would -- I would agree with that. There
6 were -- for example, in the closing there were a
7 number of things that I'd pointed out that I did not
8 believe ever were corroborated.

9 For example, in the statement there's
10 this issue of whether the decedent's hair was
11 ever cut. Um, we know, and I think it came in
12 front of the jury through cross-examination of
13 one of their forensic experts, that they never
14 examined the contents of the, um, vacuum cleaner
15 that was found at the -- the Avery trailer, uh,
16 which would have been the first place any
17 investigator would look to see if there was hair.
18 And they never looked.

19 Their argument -- the State's argument
20 was, and he cut her hair. My argument was, you
21 can't believe that. You can't believe half of
22 this because they didn't even bother to look.
23 It's not corroborated. You can't trust this.
24 Um, there were couple of other things. For
25 example, I think --

1 ATTORNEY KRATZ: Judge, as -- as refreshing
2 as it is to make hay in this case, it should
3 probably still be done with a question and answer.

4 THE COURT: Testifying now in a narrative
5 form, Mr. Edelstein. Why don't you just be
6 responsive to whatever --

7 THE WITNESS: Okay.

8 THE COURT: -- the question is.

9 THE WITNESS: I'll do my best.

10 Q (By Attorney Drizin) Uh, I'll get back to --

11 A (Unintelligible.)

12 Q -- that, Mr. -- Mr. Edelstein. Now, um, how soon
13 after you were, um -- became a member of the
14 Dassey defense team, did you review
15 Mr. Dassio's -- Mr. Dassey's various audio and
16 videotape statements in this case? If you
17 remember.

18 A I -- I -- I don't think it would have been -- I don't
19 know. I doubt it was immediate. Um, normally, and
20 what I believe I did here, was try to go through and
21 get a general idea of what was there. Separate
22 things out. And then, you know, kind of pigeonhole
23 them in the different categories, and the -- the
24 statements would have just been one of the various
25 categories.

1 Q In your division of responsibilities with
2 Mr. Wiegert -- excuse me -- with Mr. Fremgen, um,
3 is it fair to say that -- that Mark had more
4 extensive contact in this case with Brendan
5 Dassey?

6 A Yes.

7 Q Okay. You had contact with him but Mark had
8 more?

9 A True.

10 Q Okay. Um, when do you think you first met
11 Mr. Dassey?

12 A I might be able to give you a date if I look at some
13 notes. Um --

14 Q Sometime in the fall of 2006? Fair to say?

15 A Yeah.

16 Q Okay. Can you tell us what your first
17 impressions of him were?

18 A He was likeable. He was quiet. Um, I don't think he
19 understood the gravity of his situation. Um, those
20 are certainly initial impressions.

21 Q Now, as you -- when you say you don't think he
22 understood the gravity of his situation, what do
23 you mean?

24 A I say that because in attempting to discuss things
25 about his situation, including some of the procedural

1 matters that he was facing, uh, various options that
2 were available in the system, um, as well as some of
3 the evidentiary issues, it didn't seem like he really
4 absorbed everything like most individuals who I've --
5 I dealt with as defendants.

6 Q Okay. And did these limitations make you think
7 that he should get some type of professional
8 evaluation?

9 A I don't think he -- he -- he wouldn't -- in my
10 opinion, he would not have -- it wouldn't have been
11 appropriate to evaluate him to determine present
12 competency to stand trial.

13 Q Um-hmm.

14 A Um, it might have been -- it might have provided a
15 little bit of insight from another professional
16 perspective -- psychological, psychiatric -- which
17 might have been helpful to provide some type of
18 methodology to kind of increase the communications.

19 Q Okay. Given his limitations, were you surprised
20 that no prior psychological evaluation had been
21 done by either of his former attorneys?

22 ATTORNEY KRATZ: I'm going to object as
23 irrelevant, Judge.

24 THE COURT: Overruled.

25 THE WITNESS: I can't say that I was, only

1 because I don't know what their individual ability
2 was to communicate with Brendan.

3 Q That's fair. Um, you had difficulty
4 communicating with Brendan?

5 A I -- I'd say that's a fair statement. And it was
6 kind of a -- I'll say a two-way street. You know, it
7 was hard to -- it was easy for me to give him
8 information. I wasn't positive it was all being
9 absorbed, um, but it was difficult to get information
10 from Brendan.

11 Q There were some topics that were safe and that he
12 was more forthcoming with?

13 ATTORNEY KRATZ: I'm going to -- objecting,
14 Judge, as speculative. Whether he chose to or was
15 unable to, I think is a matter of speculation.

16 THE COURT: Well, I'm going to overrule the
17 objection, but we're not going too far down this
18 road. Go ahead. You can answer.

19 THE WITNESS: That's true. When we
20 would talk about some things, his, um -- his side
21 of the communication increased significantly.
22 Um, his understanding of the topic was pretty
23 clear.

24 Q (By Attorney Drizin) Can you give me some
25 examples?

1 A Two examples. Well, three. Video games, wrestling
2 shows, and Harry Potter.

3 Q Okay. What about when you talked about what
4 happened to him during the police interrogations?
5 Was he communicative about that?

6 A Some.

7 Q Okay.

8 A And I would put it at, on a percentage scale, 35 to
9 40.

10 Q Did you ask him during this timeframe, um --
11 do -- do you ask him throughout the course of
12 your representation why he had confessed to the
13 police officers?

14 A Yes.

15 Q Did he have some standard answers to that
16 question?

17 A Oftentimes it was, "I don't know." Um, sometimes it
18 was, they -- things like -- and I don't know if it's
19 verbatim -- but, um, they made me say it. Um, it
20 certainly wasn't -- the impression I took away when
21 he would describe that was that this wasn't really
22 just a spontaneous heartfelt confession.

23 Q Okay. Now, you talked about one of the first
24 things that you and Mr. Fremgen did when you took
25 over the representation of Brendan Dassey was to

1 try to move to suppress statements in this case.
2 Um, and that would include the earlier
3 statements? The February statements, and the
4 March statements; correct?

5 A Right.

6 Q And what basis did you, um, use in order to try
7 to reopen that motion to suppress?

8 A I think the -- the motion that was brought, after we
9 became involved, related -- as it applied to the, um,
10 February and March statements, um, was based upon
11 ineffectiveness.

12 Q Anything --

13 A Mark was more heavily involved with that motion than
14 I was, but that may have been -- I'm -- I'm -- to the
15 best of my memory, it was based upon ineffectiveness.

16 Q And what about with respect to the May
17 statements?

18 ATTORNEY KRATZ: I'm going to object as
19 irrelevant, Judge. And if I might just note our
20 continuing objection as to the relevance of the
21 February statement. As, um -- as performance
22 based, I understand. From a loyalty standpoint,
23 that that might be a different issue.

24 THE COURT: All right. The objections are
25 overruled. You can answer.

1 THE WITNESS: What was the question
2 again?
3 Q (By Attorney Drizin) What was your strategy with
4 respect to the May statement Brendan gave to the
5 police officers?
6 A I believe I'm --
7 THE COURT: You mean the May 13?
8 ATTORNEY DRIZIN: I apologize, Judge.
9 Q (By Attorney Drizin) May 13.
10 A As to the May 13 statements, our strategy -- I
11 don't -- I believe it was ineffective because there
12 was no counsel present. And we may have combined the
13 theory on unreliability because of the suggestibility
14 factors inherent in that -- what I thought was
15 inherent in that questioning and answering process.
16 Q Okay. Did you raise -- did you raise
17 voluntariness concerns, if you recall?
18 A I don't recall.
19 Q Okay. Now, at one point in this case, there was
20 argument on the admissibility of the May 13 phone
21 call. Do you recall that?
22 A Not specifically, but...
23 Q Did you review that portion of the transcript
24 prior to coming here today?
25 A I did.

1 Q Okay. And do you recall what you argued with
2 regard to the admissibility of the May 13 phone
3 call from Brendan to his mother?

4 A I do.

5 Q Okay. What was that?

6 ATTORNEY KRATZ: And, Judge, I -- I
7 again will interpose a -- a relevance objection,
8 only as now it seems to be talking about the
9 substantive issues about admissibility. That
10 since it wasn't offered, I think is clearly
11 beyond the scope of this hearing.

12 ATTORNEY DRIZIN: I would object. It was
13 offered. That's why I'm asking him about it.

14 THE COURT: A portion of it was. It's a
15 telephone call of May 13? Is that --

16 ATTORNEY DRIZIN: Yes.

17 THE COURT: Yeah. Objection overruled.

18 ATTORNEY KRATZ: We're limiting this to the
19 phone call; right?

20 THE COURT: Correct. That's -- that was
21 the question.

22 ATTORNEY KRATZ: Okay.

23 Q (By Attorney Drizin) I'm sorry, Mr. Edelstein.
24 What -- what arguments did you make to try to
25 keep out the May 13 phone call from Brendan to

1 his mother?

2 A The phone call, I believe we argued, was essentially,
3 in legal terms, fruit of the poisonous tree, because
4 it followed the call, the May 13 statement.

5 The argument being that even though this
6 is not a statement to a police officer, it was
7 created intentionally by the government through
8 the officers essentially insisting that he make
9 this phone call under the statement that if he
10 didn't, they would.

11 The argument, again, a little further,
12 that because the content of this phone call was
13 essentially to inform his mother that I told them
14 I did these things, that that could be considered
15 a separate event from the interview with the
16 police officers on the 13th, but because it was
17 created for evidentiary purposes, and the process
18 involved in creating the May 13 police interview,
19 contributed to the content of that, that that
20 should be viewed separately and inadmissible.

21 Q Okay. Do you recall arguing to the Court that
22 the May 13 phone call was inextricably tied to
23 the May 13 statements?

24 A Right. That's what I'm trying to explain. That --

25 Q Okay.

1 A -- it was my belief that the phone call was a product
2 intentionally created by the government to create
3 inculpatory evidence.

4 It did -- it's distinguishable in that
5 it's a -- it's a phone call from a defendant to a
6 non-government entity. His mother. Um, but
7 because it was so close in time and it only
8 resulted, I believe, because of what happened
9 immediately preceding the phone call, they
10 clearly were connected, it was a product of that,
11 and, therefore, should not have been admitted.

12 Q Now, when you argued to the Court, Mr. Kachinsky,
13 you argued that the phone call --

14 THE COURT: Mr. --

15 Q (By Attorney Drizin) Mr. Edelstein. I
16 apologize. I apologize. When you argued to the
17 Court, um, that the phone call was not -- you
18 argued to the Court about the phone call. You
19 said it was not voluntary because it was, quote,
20 promoted, encouraged, and almost insisted that he
21 make that phone call by the police officers. Do
22 you recall that?

23 A I do.

24 Q Okay. And did you recall arguing to the Court
25 that the tactics used by the police officers to

1 get Brendan to make that phone call -- and this
2 is on page 44, lines three and four, um, on
3 April 5th, 2007 -- were, quote, tantamount to the
4 coercive creation of evidence?

5 A Yes.

6 Q Okay. At the time that you made those arguments
7 to the Court, Mr. Edelstein, Ray, um, did you --
8 did you have knowledge that Mr. O'Kelly had
9 participated in an interrogation of your client
10 on May 12?

11 ATTORNEY KRATZ: Objection. Irrelevant,
12 Judge. And as this Court, I think, has previously
13 ruled, without a showing of State action on the part
14 of Mr. O'Kelly, I think that this doesn't become
15 relevant for the admissibility of that phone call.
16 The Court only allowed evidence of the May 12 action
17 for issues as to disloyalty.

18 ATTORNEY DRIZIN: Judge, I think we've
19 seen, through Mr. O'Kelly's testimony, that there
20 was State action at least on the part of Mr. Wiegert
21 and Fassbender.

22 I don't intend to ask a lot of
23 questions, but I think this is directly relevant
24 that this information was kept from him, and how
25 he would have used it, and how it prejudiced him

1 at trial. I'm not going to ask a lot of
2 questions on this.

3 ATTORNEY KRATZ: Doesn't matter how many
4 questions he's asking. Judge, this -- this is the
5 point of this hearing. So that's -- that's the --

6 THE COURT: Well --

7 ATTORNEY KRATZ: -- State's objection.

8 THE COURT: -- I -- I think, at least
9 provisionally, it's relevant. I'm going to overrule
10 your objection.

11 Q (By Attorney Drizin) Did you have any knowledge
12 of what Mr. Kelly did to your client on May --
13 Mr. O'Kelly did to your client on May 12 in the
14 Sheboygan County Detention Center?

15 A I knew O'Kelly had had contact with Brendan. I can't
16 say that I knew that it was May 12. I knew he had
17 had contact.

18 Q But you never seen the videotape; correct?

19 A No.

20 Q Okay. Or a transcript of that interrogation?

21 A Correct.

22 Q Okay.

23 THE COURT: Why don't we take the
24 afternoon recess. Let's recess for 15 minutes.

25 (Recess had at 3:00 p.m.)

1 (Reconvened at 3:15 p.m.)

2 THE COURT: All right.

3 Q (By Attorney Drizin) Mr. Edelstein, you'll
4 notice that you're sounded by binders. I'd like
5 you to look on the floor behind you, and there's
6 binder five. And turn to Exhibit 338, please.
7 I'll help you.

8 A Three thirty-eight?

9 Q Have you found it Mr. Edelstein?

10 A I have.

11 Q Okay. Now, have you had an opportunity to see
12 this? To read this?

13 A Yes.

14 Q Okay. Do you recognize this document?

15 A Yes.

16 Q And is this a May 5 e-mail from Len Kachinsky to
17 Mark Wiegert?

18 A Yes.

19 Q Okay. And it's copied to Mr. Kratz; correct?

20 A Yes.

21 Q Okay. Um, had you seen this before a few weeks
22 ago?

23 A No.

24 Q Um, and did -- had Mr. Kachinsky ever given this
25 document to you?

1 A No.

2 Q Okay. Does this document have any significance
3 to you?

4 A Yes.

5 Q What is that significance?

6 ATTORNEY KRATZ: Object, Judge. Unless
7 it has to do with, um, the issue of -- of this
8 witness' trial performance, this is what his
9 relevance is. Certainly not to comment on either
10 other persons' performance or to the issue of
11 disloyalty. That would be beyond the scope of
12 this witness.

13 THE COURT: Objection's sustained.

14 ATTORNEY DRIZIN: Judge, I'm going to ask
15 him how it relates to his trial performance.

16 THE COURT: All right. Ask him that.

17 Q (By Attorney Drizin) What is the significance of
18 this document to you?

19 THE COURT: In his trial performance?

20 Q (By Attorney Drizin) Well, how'd you -- having
21 reviewed this document, okay, how would you, um,
22 have used this document in connection with, um,
23 your argument, um, against the admissibility of
24 the May 13 phone call on April 5, 2007?

25 ATTORNEY KRATZ: And, Judge, if I may,

1 um, that certainly doesn't go to this witness'
2 actual performance in the case. What he might
3 have done if he would have known about this, uh,
4 is specifically as to issues either of another
5 counsel's performance or to the issue of
6 disloyalty.

7 THE COURT: Yeah. It -- (Unintelligible.)

8 ATTORNEY KRATZ: Nothing to do with
9 performance.

10 THE COURT: (Unintelligible.) The
11 objection is -- or as the question's currently
12 phrased, Mr. Kratz's objection is sustained.

13 Q (By Attorney Drizin) Mr. Kach -- Mr. Edelstein,
14 did you argue on April 5, 2007, that the May 13
15 phone call from your client, Brendan Dassey, to
16 his mom should be excluded from the trial?

17 A Yes.

18 Q Okay. And when you made that argument, did you
19 have any knowledge of this e-mail that is Exhibit
20 338?

21 A No.

22 Q Had you known about it, would you have made any
23 different arguments?

24 ATTORNEY KRATZ: Interpose the same
25 objection. It's the same question, Judge.

1 ATTORNEY DRIZIN: Judge, I think he's
2 entitled -- this is one of the ways in which not
3 having that document, um, may have prejudiced
4 Brendan Dassey. It's an ingredient that he would
5 have used, and I think he's entitled to argue it.

6 THE COURT: I don't. The objection's
7 sustained.

8 Q (By Attorney Drizin) Now, you talked about -- we
9 talked about the May 12 video. Do you recall
10 that?

11 A Yes.

12 Q And when you tried to view that video there were
13 some technical difficulties you experienced?

14 A Correct. I had no audio.

15 Q Okay. But you had a transcript?

16 A Yes.

17 Q Okay. Were you able to follow what was occurring
18 on that video?

19 A I did not read the transcript and view the video at
20 the same time. When I tried to open the video -- or
21 the DVD, uh, I could see things that were happening,
22 but I couldn't hear anything.

23 Q Okay.

24 A And I didn't want, quite frankly, to sit there and
25 watch a silent movie.

1 Q Did you review the transcript?

2 A I did.

3 ATTORNEY KRATZ: I'm sorry, Judge. In
4 preparation for this hearing? Or for his trial
5 performance? What are we talking about?

6 ATTORNEY DRIZIN: He already testified he
7 never seen it before a couple weeks ago. It's
8 pretty clear.

9 ATTORNEY KRATZ: (Unintelligible.)

10 THE COURT: Hang on. I allowed some
11 testimony on this yesterday with Mr. Fremgen. I
12 suspect we're going to hear the same thing. I'll
13 give you some -- some leash on this but not much.

14 ATTORNEY DRIZIN: I'm not going to ask a
15 lot of questions.

16 Q (By Attorney Drizin) Did you get, um -- did you
17 view the transcript of this?

18 A I did.

19 Q Videotape. And what was the significance of what
20 occurred on May 12 to you?

21 ATTORNEY KRATZ: Objection. Vague,
22 Judge. If we could --

23 THE COURT: Overruled.

24 THE WITNESS: As a defense attorney, it
25 was very disturbing. The potential impact of

1 this type of a -- call it what you will --
2 conversation, interview, interrogation, upon
3 Brendan Dassey I believe would have been
4 negative.

5 I'm not a psychiatrist, but I've had
6 many, many clients. I knew Brendan. I could see
7 the tenor of what has happening here.

8 If -- this could likely have contributed
9 to his failure to communicate in a -- in a more
10 functional fashion when Mark and I became
11 involved, because the nature of it is such that
12 it smacks of police work and not objective fact
13 finding inquiry by an unbiased investigator.

14 ATTORNEY KRATZ: If I could renew my
15 objection, Judge. That goes to somebody else's
16 performance, not this witness'. With all due
17 respect, we don't care what he thinks about, um,
18 the tenor of the investigative part of that case
19 if it doesn't relate to Mr. Edelstein's
20 performance. (Unintelligible.)

21 ATTORNEY DRIZIN: It does if you're -- I'm
22 sorry.

23 THE COURT: I'm overruling the objection.

24 ATTORNEY DRIZIN: Thank you.

25 THE COURT: The answer stands.

1 Q (By Attorney Drizin) You mention that you
2 believed it had -- could have had a negative
3 impact on Brendan Dassey?

4 A Yes.

5 Q What in particular were you talking about?

6 A Again, the tenor of it is such that it's an -- I -- I
7 characterize it as an attempt to extract a
8 confession.

9 If, as a result of that, Brendan became
10 untrusting of the criminal system, particularly
11 defense attorneys, that may have contributed to
12 his -- whether it was unwillingness or inability
13 because of fear, confusion, whatever, to
14 communicate with us in a more meaningful fashion,
15 um, which would have -- if we had known about
16 this, an attempt could have been made to
17 determine what was the level of trust between
18 Brendan and myself and Mr. Fremgen, because that
19 is, obviously, critical in representing someone.
20 And this could have impacted that.

21 Q Mr. Edelstein, I'd like to move on to some of the
22 trial-related decisions you made in this case.
23 Okay? Do you recall that there was a portion of
24 the March 1 interrogation, um, during which the
25 police officers left the room and Brendan was

1 left alone in the room with his mother Barb?

2 A I think it was March 1.

3 Q I think I said March 1.

4 A I'm just saying I -- I'm not positive on the date --

5 Q Oh.

6 A -- but I --

7 Q Okay.

8 A -- think that was March 1.

9 Q Okay. And do you recall what occurred during
10 that brief period of time that they were alone?

11 A Not specifically. If it's the one I'm thinking of,
12 Barb made some statements to Brendan about, um, why
13 didn't you stop him? Or -- or -- I honestly don't
14 remember the exact content of that break.

15 Q Okay.

16 A And I know she had made statements like that at
17 various times. It may have been during that. Or it
18 may have been a phone call.

19 Q Rather than show you the transcript -- I mean
20 read -- (Unintelligible.)

21 ATTORNEY KRATZ: Does this go to
22 Mr. Edelstein's performance?

23 ATTORNEY DRIZIN: It does.

24 THE COURT: I think so.

25 ATTORNEY KRATZ: Since we heard --

1 ATTORNEY DRIZIN: He --

2 ATTORNEY KRATZ: If I may, Judge. We
3 heard yesterday he was the one that wanted to
4 play that tape. And it was Mr. Fremgen who
5 didn't.

6 So as long as we're not playing one
7 against the other, that's -- that's fine. That's
8 why I asked yesterday, did they want to play it
9 or not? Whose performance was deficient?

10 THE COURT: That -- that -- that was the
11 testimony yesterday.

12 ATTORNEY DRIZIN: I -- I think we need to
13 hear Mr. Edelstein's side of that testimony. He was
14 charged with attacking the reliability of the
15 statement.

16 THE COURT: All right.

17 THE WITNESS: If this --

18 Q (By Attorney Drizin) Can I -- can I direct you a
19 little? Exhibit No. 315, please?

20 A On which -- on number five?

21 Q Under number five. Okay. This would be on page
22 six, clip number 37, please. Could you just read
23 those lines to yourself?

24 A Okay.

25 Q Okay. Does this refresh your recollection about

1 the conversation I'm talking about?

2 A It does.

3 Q Okay. And, um, did you, in your efforts to
4 attack the reliability of these statements at
5 trial, want to play this portion for the jury?

6 A I did.

7 Q Okay. In particular, what did you want to
8 demonstrate by playing this?

9 ATTORNEY KRATZ: At this time, Judge, I
10 think we're entitled for Counsel to elect if they
11 want to play it or not.

12 ATTORNEY DRIZIN: Do you want me to play
13 it?

14 ATTORNEY KRATZ: No. Did they want to play
15 at trial or not? Did they think it was deficient or
16 not? He can't have both of these attorneys being
17 deficient by one wanting to play it and one not.

18 THE COURT: Overruled. The witness can
19 answer.

20 ATTORNEY EDELSTEIN: The portion of that
21 excerpt that I wanted in front of the jury is
22 where Brendan made the statement, "They got to my
23 head."

24 Q Why did you want to play that to the jury?

25 A Because the essence of the defense was that the jury

1 should not rely upon the statements that were
2 presented by the State for a variety of reasons.

3 That statement by Brendan was a
4 spontaneous affirmation of what we were trying to
5 argue to this jury.

6 Q Okay. And you and Mr. Fremgen had some debate
7 about whether or not to play that to the jury;
8 correct?

9 A Yes.

10 Q And that debate went straight up to the time of
11 trial?

12 A Yes.

13 Q Okay. And, ultimately, what did you decide to
14 do?

15 A It was not played.

16 Q And why not?

17 A We couldn't have it both ways. Mark was the attorney
18 of record. I was there as whatever classification
19 you want to call it.

20 Q Right.

21 A But, ultimately, um, the choice was left to him. A
22 decision had to be made.

23 Q Now, Mr. Edelstein, did you have anything to do
24 with retaining Dr. Gordon in this case?

25 A No.

1 Q Okay. Do you recall that a period of time in
2 this case where Dr. Gordon testified in court
3 with regard to, um, a motion in limine?
4 A I -- I know he testified, and it may have been in
5 connection with that as far as our request to have
6 him testify.
7 Q Okay. And do you remember in this case that
8 there was a ruling by this Court that prevented
9 Dr. Gordon from testifying on the subject of
10 police interrogation tactics?
11 A Correct.
12 Q Okay. Now, in response to that ruling, did you
13 take any responsibility for trying to locate a
14 police interrogation expert?
15 A I don't know if it was before or after that. But,
16 yes.
17 Q It may have been before that?
18 A (No verbal response.)
19 Q Do you recall when you began to look for a police
20 interrogation expert in this case?
21 A I don't recall the exact date, but it would have been
22 certainly after I had gone through the statements
23 because I had concerns about the techniques and
24 procedures employed, so it would have had to have
25 been after that.

1 Q Would that have been sometime in, you know, after
2 January? Or between January and March? Or
3 earlier?

4 A Let me -- I may have something in my notes here that
5 might help --

6 Q That would be helpful.

7 A -- answer that. In April, there was an e-mail from
8 Mark to myself, April 6, where he makes the query,
9 and I quote, what about your guy? And, okay. Is he
10 in or out?

11 So certainly in that timeframe it was
12 under discussion, and I may have already talked
13 to him -- I probably did by that day. But I
14 don't know absolutely. So this is an approximate
15 timeframe when we were obviously talking about
16 this. April 6, '07.

17 Q Okay. Do you have any recollection of talking to
18 this expert friend of yours earlier than April 6?

19 A I don't know. No, I don't.

20 Q You don't have any recollection on it?

21 A About this particular case?

22 Q About police interrogation tactics and their role
23 in this case?

24 A Prior to that date?

25 Q Yeah.

1 A I don't know what -- when I first talked to him.

2 Q Okay. Do you have any recollection of when you

3 talked to him, vis-a-vis, when you looked at the

4 statements in this case?

5 A It would have been after I went through the

6 statements.

7 Q Okay. This is in April of 2007; correct?

8 A Right.

9 Q The trial was only a couple weeks away? Is that

10 fair to say?

11 A Yeah.

12 Q Okay. You had looked at these statements months

13 earlier I take it?

14 A Sure.

15 Q So do you have any way of knowing how close in

16 time to when you looked at the statements that

17 you first contacted your friend in Oklahoma?

18 A The only -- the only method I know of that would

19 provide some degree of reliability to answer that

20 question would be to look at, um, the time records I

21 was keeping, which were --

22 Q Okay. That's fair enough.

23 A -- mark stuff down there. So, you know, and that's

24 how I know I did something. I don't know if I would

25 have specifically marked that down on that or not.

1 Q Okay. Now, this expert in Oklahoma, who was he?

2 A His name's Kendall R. Ballew. He --

3 Q Can you spell Ballew for the court reporter,
4 please?

5 A B-a-l-l-e-w.

6 Q Okay. And who is he?

7 A Kendall Ballew was employed as a police officer when
8 I first started working in the district attorney's
9 office in District 16 in Oklahoma. After I became
10 district attorney -- and I don't know if it was
11 during the appointment period or following the
12 election -- um, he came to work for me.

13 He had -- he had attended the -- the
14 Reid school in Chicago. Um, he conducted many,
15 many, many interviews. Was familiar with the
16 technique. His current -- he had been -- he'd
17 been in police work, and still is, basically, in
18 police work even to this day.

19 And while I don't ask him on a weekly
20 basis or a monthly basis how many times have you
21 used Reid technique, I know he uses it. He's --

22 Q Right.

23 A I've seen the work. He's familiar with it. So he
24 was the individual that I was trying to recruit to
25 provide an analysis from a Reid perspective of the

1 techniques employed with Brendan.

2 Q Okay. And did you consult with him as you

3 prepared your cross-examinations of the cops in

4 this case?

5 A No.

6 Q Okay. Did you have him review, um, the March 1

7 interrogation in this case?

8 A No. He actually didn't review anything in this case.

9 Q Okay. Did you have conversations with him about

10 the Reid technique as you were coming up to

11 trial?

12 A When you say "up to trial," I mean, it was -- this is

13 a -- an ongoing process. I know --

14 Q Okay. I'll rephrase that question. It's a bad

15 question. Um, what was the extent of his work,

16 in a consulting fashion, if any, on this case --

17 A Very --

18 Q -- of Brendan Dassey?

19 A Very limited.

20 Q Okay.

21 A I inquired whether or not he would be in a

22 position -- because I knew at the time when I made

23 the call he was -- he's employed by the Oklahoma

24 Department of Corrections. Given that position, um,

25 it was questionable whether or not he, personally, or

1 the Department, by policy, would allow him to do any
2 outside work.

3 Um, when I talked to him, it wasn't a
4 flat no. "A" I won't do it for you, or "B" they
5 won't let me. It was, let me check around.

6 What I took away from it was that the
7 Department would not prohibit him but they
8 certainly were not encouraging it. And as a
9 result of that, um, he declined. So he did not
10 review any of the statements. I know I talked to
11 him about a couple things that -- that I didn't
12 think were proper. And he offered an opinion to
13 me on that. But as far as any formal capacity,
14 no, he was not involved.

15 Q Would you say that your negotiations, your back
16 and forth with your friend, Mr. Ballew, um,
17 continued up until, and even during, the time of
18 trial?

19 A No, I wouldn't say that.

20 Q When do you think you broke off negotiations with
21 him?

22 A I don't know. Again, this is an individual who
23 I've -- I've known professionally. He has been in
24 the state of Wisconsin and co-presented with me at --
25 on one occasion to a legal professionals group.

1 We're friends. If I go down to visit, I'll see him.
2 Um --

3 Q Okay. That's fair.

4 A -- so I can't say on any given conversation that,
5 what about this, specifically? Or that specifically.
6 It didn't get that formal.

7 He was pretty clear that the Department
8 didn't want him doing it. He didn't want to
9 upset the apple cart so to speak, and -- and
10 respecting that, his professional position, as
11 well as our -- our personal involvement, I wasn't
12 going to push it with him.

13 Q And is it fair to say that you wanted him to
14 explain to the jury what was happening during
15 these police interrogation techniques?

16 A Yes.

17 Q Okay. Now, Mr. Edelstein, you talked earlier
18 about the fact that your job, or one of your
19 jobs, on this team was to dissect the statements.
20 Recall that?

21 A Yes.

22 Q Okay. And we talked about the 19 corroborated
23 facts in Brendan's statement? In -- in Brendan's
24 statement. Yes. Um, now, I'd like you to turn
25 to Exhibit No. 87, please?

1 A Which binder is that in?

2 Q I apologize. It's in --

3 ATTORNEY KRATZ: Two.

4 Q (By Attorney Drizin) -- binder number two.

5 A I don't see two up here. Okay.

6 Q Now, um, as you look at this chart, I don't want

7 you to look at the third column from the top,

8 which reads, "Did the State's physical evidence

9 actually corroborate this detail?" Okay? So the

10 third column from the top is not part of what I

11 want you to look at in this exhibit, okay?

12 A I'm not sure which column. The third column from the

13 right? The left?

14 Q From the left. I apologize. It says, "Did the

15 State's physical evidence actually corroborate

16 this detail?" That's not the subject of my

17 questioning.

18 A All right.

19 Q What I want you to focus on is column one.

20 A Okay.

21 Q Which is the details of the March, 2006,

22 confession. And the last column, "Did the def --

23 did the -- did defense counsel raise

24 contamination at trial?" Okay?

25 A Okay.

1 Q Okay. As you were preparing for trial,
2 Mr. Edelstein, did you, um, notice that there
3 were facts in Brendan's confession that had been
4 suggested to him first by police officers?

5 A Yes.

6 Q And you planned to point that out to the jury to
7 the extent possible, I take it?

8 A Yes.

9 Q Okay. I want you to focus, if you will, on --
10 and one of the State's corroborated facts that
11 they mentioned in opening was that Teresa was
12 placed in the rear cargo area of her Toyota RAV4.
13 It's about halfway down the first page. Do you
14 see that?

15 A Yes.

16 Q Would it surprise you to know that you did not
17 highlight that fact for the jury during your
18 cross-examination of the cops?

19 A Repeat your question.

20 Q Would it surprise you to know that you did not
21 point out to the jury that the fact that Teresa's
22 car was placed in the rear cargo area -- Teresa's
23 body was placed in the rear cargo area of her
24 Toyota RAV4 was first suggested to Brendan by the
25 police?

1 A If -- if I understand your question, I think the
2 answer would be -- be no. I'm not sure I understand
3 the question.

4 Q Okay. Let me see if I can do this again.

5 ATTORNEY KRATZ: If I may, Judge. This
6 is -- the question's limited to the
7 cross-examination of the police?

8 Q (By Attorney Drizin) Right now it's limited to
9 cross-examination of the police. Okay? One of
10 the things that you were going to do in this case
11 was to highlight for the jury, through
12 cross-examination of the police officers, the
13 facts in Brendan's confession that were suggested
14 to him by police; correct?

15 A Correct. Yes.

16 Q Okay. One of the facts that was suggested to
17 Brendan by police was that Teresa's body was
18 placed in the rear cargo area of her Toyota RAV4;
19 correct?

20 A Yes.

21 ATTORNEY KRATZ: And I'm going to
22 object, Judge, as that is argumentive. That's a
23 conclusion that that was first suggested by the
24 police.

25 Q (By Attorney Drizin) Is that a conclusion that

1 you reached, Mr. Edelstein?

2 ATTORNEY KRATZ: Maybe we could have a -- a
3 an answer on -- on the objection.

4 THE COURT: No. I think I'm going to let
5 Mr. Edelstein answer this. If he can.

6 THE WITNESS: I don't recall if that
7 particular alleged fact was something that I
8 noted as being originated by police in their
9 conversations with Brendan.

10 Q (By Attorney Drizin) Okay.

11 A I don't remember.

12 Q You don't remember?

13 A No.

14 Q Would you accept, for the purposes of this
15 questioning, that you did not point that fact out
16 to the jury?

17 A Sure.

18 Q Okay. Does that surprise you?

19 ATTORNEY KRATZ: And --

20 THE COURT: That's -- that's an irrelevant
21 question.

22 ATTORNEY DRIZIN: Okay.

23 ATTORNEY KRATZ: And it's not a fact.
24 Calling it a fact is -- is a conclusion. So...

25 ATTORNEY DRIZIN: I didn't call it a fact

1 in opening argument. You did.

2 THE COURT: That's enough. Do you have
3 another question?

4 ATTORNEY DRIZIN: Yes.

5 Q (By Attorney Drizin) In its opening, the State
6 also suggested that the fact that Brendan told
7 them that Teresa's license plates were removed
8 from her RAV4 was a corroborated fact. Do you
9 recall that?

10 A Not specifically.

11 Q Okay. Do you recall ever determining whether or
12 not that was a corroborated fact that originated
13 with Brendan or with the police?

14 A I don't recall.

15 Q Would it surprise you that this was not a fact
16 that you highlighted for the jury?

17 A No. If, in fact, I didn't. I don't recall.

18 Q Okay. Do you recall that Brendan ultimately
19 agreed on March 1 that he had seen Teresa's cell
20 phone, and her purse, and her camera in a burn
21 barrel? Do you remember that?

22 A I believe that's right.

23 Q Okay. You recall whether that was as a result of
24 police prompting or not?

25 ATTORNEY KRATZ: Judge, once again, I'm

1 going to object as it does call for a conclusion.

2 THE COURT: Well, it does. And it -- it's
3 admissible. But the weight that this gets is -- is
4 debatable. So the objection's overruled. If you
5 can remember.

6 THE WITNESS: I don't remember. I had a
7 list of categories, as I explained. Now, give me
8 a second and see if I have it in this stack. I
9 know there was a separate list of things that I
10 thought were suggested to him that originated
11 with the police.

12 THE COURT: Mr. Edelstein, I'd rather you
13 didn't go through your file. Let's move on.

14 Q (By Attorney Drizin) Okay. Mr. Edelstein, would
15 you, um, concede that it's possible that you did
16 not highlight every instance of police
17 contamination to the jury in this case?

18 A Absolutely.

19 Q Okay. Did you highlight any instances of facts
20 to the jury that were in Brendan's confession
21 that were also widely available in media reports
22 throughout the course of this case?

23 ATTORNEY KRATZ: I'm going to object,
24 Judge, as irrelevant and certainly not part of
25 this record at this time.

1 THE COURT: Yeah. Sustained.

2 Q (By Attorney Drizin) Did you review any media
3 reports prior to the time that you, um,
4 presented -- prior to the time you began
5 cross-examining the police officers in this case?

6 A For purse -- purposes of cross, no.

7 Q Okay. That's fair. During your
8 cross-examination of the police officers in this
9 case, Mr. Edelstein, did you ever play any of the
10 interrogation tapes?

11 A I don't think so.

12 Q Okay. Did you ever play -- okay. That's enough.
13 In -- and in your closing argument in this case,
14 did you ever play any of the tapes?

15 A I don't think we played any of the tapes. There were
16 excerpts from them that were included in the
17 PowerPoint presentation to highlight those certain
18 areas.

19 Q So there were portions of the transcripts of
20 these tapes that may have been highlighted to the
21 jury.

22 A Right.

23 Q Okay. And when you highlighted this to the jury,
24 did the -- did the jury have a way of following
25 what those portions of the transcript were?

1 ATTORNEY KRATZ: Judge, I'm going to object
2 as to -- it certainly is speculative what the jury
3 found compelling and what they didn't. And how they
4 could follow it.

5 THE COURT: Sustained.

6 Q (By Attorney Drizin) Did they have a transcript
7 to go -- to -- to follow or did you have it on a
8 PowerPoint?

9 A It was on a PowerPoint.

10 Q That's all I'm asking. Do you recall your
11 closing argument in this case?

12 A Some of it.

13 Q Okay. In particular, do you recall telling the
14 jurors in this case that Brendan Dassey and
15 Steven spoke about Teresa as they were tossing
16 items on the fire and that Brendan must have seen
17 Teresa's body parts in the fire?

18 A Not specifically. But that wouldn't surprise me.

19 Q Okay. Do you have any recollection of making any
20 concessions with regard to the mutilation charge
21 in your closing argument?

22 A Yes.

23 ATTORNEY KRATZ: Object. Excuse me.

24 Q (By Attorney Drizin) You had a recollection of
25 that?

1 ATTORNEY KRATZ: Object --

2 THE COURT: Wait a sec.

3 ATTORNEY KRATZ: Objection. Irrelevant.

4 By definition, closing argument is not evidence in
5 the trial. And, therefore, what you argue to the
6 jury, I'm suggesting to this Court, by definition,
7 cannot include deficient performance or have
8 contributed to a conviction or not.

9 THE COURT: Well --

10 ATTORNEY KRATZ: By definition, Judge.

11 THE COURT: You're -- you're correct, it's
12 not evidence. But I -- I'm going to overrule the
13 objection. He can answer.

14 ATTORNEY EDELSTEIN: Ask me the
15 question.

16 Q (By Attorney Drizin) Okay. Do you have any
17 recollection of making a concession to the
18 mutilation charge in your closing argument to the
19 jury?

20 A I don't recall coming flat out saying there's enough
21 evidence from which you can easily find him guilty of
22 mutilating a corpse. I do have a clear recollection
23 of making an argument which was intended to provide
24 that as an option for the jury.

25 Q Okay. So you were trying to provide the jury

1 with an option to convict Brendan of one of the
2 charges that he was facing --

3 A Right.

4 Q -- correct?

5 A Right.

6 Q The least -- the charge that carried the least
7 significant penalty in this case?

8 A Correct.

9 Q The time that you did that, were you aware that
10 Brendan had testified earlier in this case --

11 A I was.

12 Q -- that he did not see Teresa in the fire?

13 A Correct.

14 Q Okay. And at the time that you made that
15 argument, did you have any authorization from
16 Mr. Dassey to make that argument to the jury?

17 ATTORNEY KRATZ: Objection. Irrelevant.
18 Unless somehow legally that's required, Judge, as a
19 matter of trial strategy.

20 THE COURT: Overruled.

21 THE WITNESS: If you're asking if I
22 requested his permission to make that type of an
23 argument, the answer is no.

24 Q (By Attorney Drizin) Okay. Did you consult with
25 co-counsel, Mr. Fremgen, before making that

1 argument to the jury?

2 A I don't recall. I know we had talked about the
3 closing. Um, I don't honestly re -- know if that was
4 an area we covered or not. We may have.

5 Q Okay.

6 ATTORNEY DRIZIN: Just one second, Your
7 Honor. No further questions.

8 THE COURT: Mr. Kratz.

9 CROSS-EXAMINATION

10 BY ATTORNEY KRATZ:

11 Q Mr. Edelstein, are there opportunities when you
12 met with Mr. Dassey jointly with Mr. Fremgen?

13 A Yes.

14 Q And were there times that you met with Mr. Dassey
15 apart or alone from Mr. Fremgen?

16 A Yes.

17 Q I'm going to ask you at this time just to limit
18 your comments to when you met without
19 Mr. Fremgen, 'cause we've already heard from him
20 in -- in this case.

21 At any time while you met with Brendan
22 Dassey, um, did Mr. Dassey ever describe for you
23 that any information provided to law enforcement
24 from him was first obtained through a media
25 account?

1 A Yes.

2 Q And in what -- what did Mr. Dassey specifically
3 tell you that he told the police that he first
4 got from a media account in this case?

5 A As to a specific fact or alleged fact --

6 Q Yes.

7 A -- that was related by Brendan to the police
8 officers, I can't point to any particular one. He
9 did indicate, in response to questions such as, where
10 did you get this, it wasn't uncommon to -- to hear,
11 um, from the news.

12 Q He also tells you he dreamt it, didn't he?

13 ATTORNEY DRIZIN: Objection. He dreamt
14 what?

15 Q (By Attorney Kratz) That that's where he got it
16 from?

17 ATTORNEY DRIZIN: What's "it"?

18 ATTORNEY KRATZ: Come on, Judge.

19 THE COURT: That's -- that's fine. Do you
20 understand --

21 THE WITNESS: I know -- I know what he's
22 talking about.

23 THE COURT: Go ahead.

24 THE WITNESS: If you res -- if the
25 que -- if, again, you're talking about those

1 times when I met with him singularly, no, he
2 never said that.

3 Q (By Attorney Kratz) When you were with
4 Mr. Fremgen? I'll break my own rule. I mean,
5 that was one of his explanations, is he dreamt
6 this all up; right?

7 A Correct.

8 Q One of his explanations was, I got it out of a
9 book?

10 A Correct.

11 Q And you and Mr. Fremgen described for this young
12 man how absurd that was, didn't you?

13 A As to the -- the dream?

14 Q Both the dream and I got this out of a book.
15 They were equally absurd you told him?

16 A I don't know if the word "absurd" was used. I -- we
17 certainly suggested and tried to persuade him that it
18 was not credible. The book, um, judgment was
19 reserved on that until such time as we had an
20 opportunity to review both the book, as well as a
21 DVD, which was a movie based upon the book.

22 Q Wait a second, Mr. Edelstein, your client told
23 you he dreamt this up. Aren't you required to
24 believe him?

25 A No.

1 Q You mean to tell me, Mr. Edelstein, that, as
2 experienced defense counsel, you don't have to
3 believe everything your client tells you?
4 A Is that a question?
5 Q That is a question.
6 A Can you ask it again?
7 Q Sure.
8 A More politely?
9 Q As exper -- no. As experienced trial counsel,
10 are you telling me that you don't have to believe
11 everything your client tells you?
12 A Yes. That's what I'm telling you.
13 Q So when your client protested his innocence, is
14 there any requirement that you know of, either in
15 your code of responsibility or as you're trained,
16 that required you to believe that?
17 A No.
18 Q Mr. Drizin talked about some contamination, or he
19 had used that term in Exhibit No. 87. You saw
20 that in that chart? Do you recall,
21 Mr. Edelstein, pointing out to the jury other
22 forms of infirmity with the questions whether it
23 was inducements, or improper techniques, or -- or
24 the like?
25 A Repeatedly, regularly, and, unfortunately,

1 unsuccessfully.

2 Q Early and often as they say; is that right?

3 A I did, because I believed it to be so. I thought
4 that's what a fair characterization of the -- of
5 those statements were. Uh, and, yes, I did. And
6 that was a large part of what was argued.

7 Q Let's talk about the -- the -- just coercion, if
8 we can use that as a -- as general category. Did
9 you believe that was a concept that the jury
10 could appreciate by either common sense or
11 through lay witnesses?

12 A I thought they would have an understanding of it, um,
13 as competent jurors.

14 Q I -- I'll break that up, then. It's something
15 that you believed that the evidence may have
16 supported and allowed you and Mr. Fremgen to
17 argue to the jury; is that right?

18 A Yes.

19 Q Without the necessity of calling an expert?

20 A The problem we had was a prior ruling, based upon the
21 Kachinsky motion, which in large part, I think,
22 estopped us from that, particularly when we revisited
23 it with the offer of proof on Dr. Gordon when the
24 Court said, you're -- you're not going to use this
25 man to talk about tactics, and coercion, and, you

1 know, suggestibility is the limit.

2 The whole idea of the repetitive nature,
3 the -- the cross-examination, um, and even in
4 closing, with highlighting so many of those
5 things, that even to a layperson it just doesn't
6 sit right. Um, it looks improper.

7 I didn't care if they concluded it was
8 coercion, um, picking on an individual with some
9 limited capacity. I didn't care what hole they
10 plugged it into, as long as they got the message.
11 And I did what I could to try to convey that
12 message.

13 And I think there were multiple
14 examples, which included telling him lies,
15 leading him falsely into a belief that they were
16 there to help him, um --

17 Q Okay.

18 A And that all contributed to that theory, which the
19 idea was they were going to pick up on that.

20 Q Who's Joseph Buckley if you know?

21 A Buckley, uh -- I think he's one of the co-authors on
22 the Reid book.

23 Q And should this case or should -- I -- I -- let
24 me rephrase that. Should the State have offered
25 evidence, whether in our case in chief or in our

1 rebuttal case, as to interrogation techniques,
2 uh, did you understand that our witness would
3 have included Joseph Buckley?

4 A I knew Buckley was a potential. I don't remember at
5 what point in time. I think -- I don't remember if
6 it was prior to trial or during trial, it was
7 determined that Buckley was not going to be called.

8 Um, so to the extent that I knew Buckley
9 was a potential witness, sure, because he had
10 authored a report.

11 Q All right. I guess what I'm -- what I'm
12 ultimately asking is, as a matter of trial
13 strategy, if the State wasn't going to get into
14 interrogation techniques, did you believe that it
15 was in your best interest as part of the defense
16 team to actually get into that or to open that
17 door?

18 A No. Not through the use of an expert. Through the
19 techniques we employed, absolutely and
20 unquestionably.

21 Q Including argument early and often?

22 A Correct. With precise examples.

23 Q Mr. Drizin asked you about the May 13 phone call
24 and some efforts that you might have made in
25 suppression. My question is about the May 15

1 phone call. Do you recall the May 15 call, at
2 least in part, having been played for the jury in
3 this case?

4 ATTORNEY DRIZIN: I would just object as
5 beyond the scope.

6 THE COURT: It's cross-examination.

7 THE WITNESS: I know there were a couple
8 calls played. I don't remember the -- if it was
9 the -- if that was the second one, I'll take your
10 word on that.

11 Q (By Attorney Kratz) Well, the May 15 call, let's
12 just assume, hypothetically, that the topic would
13 have included -- well, first of all, would have
14 included a phone call from Brendan to his mother,
15 but, um, the topic of, why didn't you tell me, or
16 words to -- to that effect. Does that refresh
17 your -- your recollection about the nature of
18 that call?

19 A A little bit. There were a lot of phone calls, um,
20 involved in this particular case. So maybe if
21 there's a transcript, if I see it, I'm sure I'll
22 recognize it.

23 Q I guess my only question is now that you sit and
24 think about Mr. O'Kelly's May 12 interview, uh,
25 even now in hindsight, do you believe that would

1 have implicated the admissibility of the May 15
2 call, one that has no law enforcement involvement
3 at all?

4 A I don't know. I would want to know the -- the
5 contents of the May 15 phone call to see if there's
6 any type of connection in content, um, particularly
7 with respect to the one of the 13th.

8 Q And actually, you'd agree with me, that that's a
9 legal conclusion anyway of admissibility of a
10 statement; is that right?

11 A Right.

12 Q When did you first heard -- hear Mr. Dassey's
13 identification of a book he read called *Kiss the*
14 *Girls*?

15 A It was during trial.

16 Q That ever come up in your trial preparation of
17 Mr. Dassey?

18 A No.

19 Q When Mr. Dassey suggested that to Mr. Fallon, uh,
20 in an answer on cross-examination, did that
21 surprise you?

22 A I'm sorry. Repeat that again.

23 Q When Mr. Dassey suggested that he had gotten some
24 of these facts from *Kiss the Girls* as a answer to
25 a cross-examination question by Mr. Fallon, did

1 that surprise you?

2 A Yes.

3 Q Mr. Edelstein, can you describe for me, or

4 explain for me, why that surprised you at trial?

5 If you can. If you can remember.

6 A Well, I hadn't heard it before. One of the obviously

7 most critical questions in this case is, what did

8 Brendan do? What did Brendan say he did? What

9 information did Brendan have or relay? And how did

10 he get this information? Was he there? Did Steve

11 Avery tell him? Did he hear it on the news?

12 There -- there -- those were all legitimate inquiries

13 for us as a defense team.

14 Q Do you think it's a -- a fair characterization

15 that Mr. Dassey had the opportunity to provide

16 you that explanation before trial?

17 A As to the book?

18 Q Yes.

19 A Sure.

20 Q You attempted to, um, deal with that as best you

21 could during trial, as I understand, by, um, at

22 least finding that book or that movie; is that

23 right?

24 A At break that day, I went to the Two Rivers Library.

25 I was able to get the book. I also stopped at the --

1 at a local video store. We got the video. We had a
2 portable DVD.

3 Um, so we essentially scanned through
4 this book, went through the DVD as best possible,
5 to see if there was any relationship between the
6 portrayal of events in either one of those two
7 media, uh, as compared to the events as
8 determined irregardless of statements of Brendan.
9 In other words, things that we believed to be so
10 and uncontroverted based upon, particularly,
11 physical evidence.

12 Q Right.

13 A So, yes, we did attempt to do that. There were --
14 well, go ahead.

15 Q Well, and since I was at the trial, we didn't --
16 we didn't hear anything about that. Your
17 attempts were unsuccessful; is that right?

18 A I wouldn't say a hundred percent, but it certainly
19 wasn't close enough that it merited, um, addressing
20 during the course of trial. There were some
21 similarities.

22 Q All right.

23 A But not significant enough or enumbered enough to
24 develop that into a -- a defense.

25 ATTORNEY KRATZ: If I can have just one

1 moment, Judge, I'm trying not to duplicate what I
2 asked Mr. Fremgen.

3 Q (By Attorney Kratz) As a matter of trial
4 strategy, Mr. Edelstein, could you describe for
5 me, please, why in Dassey's case, as you might
6 have done in prior cases, um, make a concession
7 about one or more possible charges or
8 dispositions for this hearing?

9 ATTORNEY DRIZIN: Objection to the
10 suggestion that he's done it in prior cases.

11 ATTORNEY KRATZ: I -- I can ask that
12 question. That's fair, Judge.

13 Q (By Attorney Kratz) Have you ever done that
14 before, Mr. Edelstein?

15 A I've definitely argued lesser includeds. If that's
16 comparable, then, yes. Um --

17 Q I -- I'll ask it this way then: I'll -- I'll
18 encompass that. Giving a jury an alternate
19 disposition, alternative -- it's two alternatives
20 in one sentence -- giving the jury an alternative
21 to just finding them guilty or not guilty on all
22 charges, that you've done before; is that right?

23 A If there's a -- I can't think -- I -- I don't know.
24 I'm sure I have, but I -- I can't think of anything
25 specific that comes to mind in a multi-count

1 Information.

2 Q Mr. Edelstein, are you familiar with a
3 Dr. Lawrence White?

4 A No.

5 Q Are you, or were you at the time, familiar, other
6 than your friend from Oklahoma, with any
7 available interrogation experts or interrogation
8 techniques experts?

9 A Personally familiar?

10 Q Yes.

11 A I wouldn't say personally familiar, no.

12 Q After the State had named Joseph Buckley, um, was
13 there a strategic reason why you didn't believe
14 having your own expert in that regard standing by
15 was a good idea?

16 ATTORNEY DRIZIN: Objection. Asked and
17 answered.

18 THE COURT: Sustained.

19 Q (By Attorney Kratz) Why didn't you call an -- an
20 interrogation expert?

21 ATTORNEY DRIZIN: Objection. Asked and
22 answered.

23 THE COURT: Overruled. He can answer that.

24 THE WITNESS: We had an expert who we
25 best believed was appropriate for the defense in

1 this case. The establishment, through the
2 evidence, that Brendan was not your typical
3 teenager, that he had some cognitive limitations,
4 combined with the testimony of Dr. Gordon as to
5 the suggestibility, combined with the early and
6 often recitations on the part of the defense
7 through both cross and otherwise of the specific
8 phrases utilized by the police, we believed would
9 be consistent with the Gordon testimony and lead
10 the jury in the direction that we wanted them to
11 go, and that is that this -- that these
12 statements were not original thoughts of Brendan
13 Dassey. That they, at best, it was adoption
14 through suggestion.

15 To muddy the waters with another expert,
16 irregardless of whether the State presented one,
17 sometimes, and can, I believe, in the eyes of
18 jurors, look like a desperate attempt by an
19 accused to turn it into a battle of the experts
20 without focusing on both the facts and, most
21 importantly in this case in the defense of
22 Brendan, the humanization of Brendan as a young,
23 easily manipulated individual.

24 That was consistent even though it
25 wasn't a topic before the jury. But I believed

1 that this jury was not ignorant of the Steve
2 Avery case. They were not ignorant of the
3 background of Steve Avery. And, again, it was
4 consistent -- the suggestibility and the easily
5 manipulated argument would be consistent with a
6 jury believing that he may have helped put a body
7 in the fire because Steven Avery said he would do
8 this.

9 Um, beyond that, it -- it didn't make a
10 lot of sense to muddy the waters with another
11 expert.

12 Q This --

13 A That would have created, I think, somewhat of a side
14 issue for the jury that we didn't want to go to.
15 That I was satisfied they had enough sense, as human
16 beings, to understand what a leading question is, to
17 understand what a -- an oppressive environment is, to
18 understand what a limited individual is, and how
19 easily they can be influenced.

20 Q If I understand you correctly then,
21 Mr. Edelstein, um, those arguments, together with
22 the expert opinion on suggestibility, you
23 believed, in combination, were sufficient to
24 lead, um -- at least you thought were the best
25 chance to lead to a not guilty verdict; is that

1 right?

2 A Yes.

3 Q Now, would you say that more, um, rifle shot
4 approach from a defense standpoint is usually a
5 better trial strategy than a shotgun approach or
6 at least sometimes it is?

7 ATTORNEY DRIZIN: Objection.

8 THE COURT: Well, it's a fair question.
9 Answer it if you can.

10 THE WITNESS: Sometimes. Sometimes a
11 shotgun is better. It depends upon the
12 individual case.

13 Q (By Attorney Kratz) Certainly easier
14 two-and-a-half years later to pick a different
15 one, isn't it?

16 A I don't know if it's easier. Uh, if you have more
17 information over time, certainly more information
18 might cause one to re-evaluate strategy.

19 Q One of your strategies, you and Mr. Fremgen, was
20 to explore the possibility of a plea arrangement;
21 is that right?

22 A It was explored.

23 Q And is that a common defense goal not just in
24 this case but in almost all cases you work on?

25 A I wouldn't say it's a goal, necessarily, to resolve

1 it through negotiations.

2 Um, we know statistically that the --
3 the vast majority are. There's nothing even in
4 a -- in this type of a case improper about making
5 those inquiries. I think counsel would be remiss
6 if they didn't.

7 Um, if you come to an agreement that has
8 merit, um, and a client accepts it, and there's a
9 factual basis to support it, as a defense
10 attorney, I have no issue resolving a case that
11 way.

12 Q And, finally, it -- it -- ultimately, that's a
13 decision for the client and the client alone?

14 A Sure.

15 Q Is that right? All right. That's all I have,
16 Mr. Edelstein.

17 ATTORNEY KRATZ: Thank you, Judge.

18 THE COURT: Any redirect, Counsel?

19 ATTORNEY DRIZIN: Yes, Your Honor. I'll
20 try to be brief.

21 REDIRECT EXAMINATION

22 BY ATTORNEY DRIZIN:

23 Q Um, you testified that in your experience, um,
24 you have often explored plea arrangements on
25 behalf of clients; correct?

1 A Yes.

2 Q Have you ever hired a defense investigator to try
3 to coerce a client into a plea?

4 A Never.

5 Q Have you ever had a defense investigator lie to a
6 client in order to get him to plead guilty?

7 A No.

8 ATTORNEY KRATZ: Objection, Judge.
9 Unless it's commenting on Mr. Edelstein, himself,
10 that is beyond the scope. Of what he's allowed
11 to testify --

12 THE COURT: He's answered it. The
13 objection's overruled.

14 Q (By Attorney Drizin) Did you answer that
15 question about lying, sir?

16 A I did answer it. The answer was no.

17 Q Okay. Are there other aspects of what
18 Mr. Kachinsky and Mr. O'Kelly did in this case
19 that you have never seen before in your years of
20 representing a client in plea negotiations?

21 ATTORNEY KRATZ: Objection. It's
22 absolutely improper and Counsel knows it.

23 THE COURT: Well, it goes well beyond the
24 scope of the cross-examination. The objection is
25 sustained.

1 Q (By Attorney Drizin) Now, you spo -- you spoke
2 about, um, how you had believed that Mr. Gordon
3 was a sufficient expert in Brendan Dassey's case.
4 Do you remember that?

5 A Yes.

6 Q Okay. Now, when Mr. Gordon was first retained,
7 he was retained to do more than just analyze the
8 suggestibility of Brendan Dassey; isn't that
9 correct?

10 A He may have been. I didn't really deal with Gordon
11 directly. I was -- he wasn't my witness. That
12 wasn't my main emphasis. Um, I think he -- I think
13 he did do some other testing on -- on Brendan. Maybe
14 an MMPI, and some IQ tests, things like that.

15 Q Do you recall whether you had also hoped
16 Mr. Gordon would testify about the effect of
17 police interrogation tactics on Brendan Dassey?

18 ATTORNEY KRATZ: Judge, I'm just going
19 to interpose a -- a cumulative objection. We
20 certainly have heard all this from Mr. Fremgen.
21 I don't know if his testimony would be any
22 different.

23 THE COURT: Well, I'll overrule the
24 objection. And I'll note that we've referred to him
25 as Dr. Gordon.

1 ATTORNEY DRIZIN: I apologize.

2 THE COURT: Just so the record is clear.

3 THE WITNESS: If Gordon would have been
4 in a position to testify on suggestibility,
5 coercive police tactics, um, any other area that
6 he may have been qualified to testify in, um, I
7 wouldn't have had a problem with that because,
8 again, it's one witness. It's not a collection
9 of what the jury might perceive as hired guns.
10 Uh, it's one person.

11 But at the same time I'd certainly want
12 to be careful about balancing that in relation to
13 his credibility. Most jurors, I don't think, are
14 going to accept that one witness may be qualified
15 in a half a dozen areas that might otherwise be
16 so specialized that it -- it would then become
17 incredible.

18 Q (By Attorney Drizin) My question to you,
19 Mr. Edelstein, was, were you aware, prior to the
20 time that this Court ruled that Mr. -- Dr. Gordon
21 could not testify about police interrogation
22 tactics, that he was retained to cover that topic
23 as well?

24 A I honestly don't remember.

25 Q Fair enough. Did you relieve -- did you believe

1 that the decision by this Court with respect to
2 Dr. Gordon, um, limiting his testimony about
3 police interrogation tactics, barred you from
4 calling a police interrogation expert?

5 A No, because I think the finding was that he was
6 qualified on -- in the area of suggestibility, uh,
7 not necessarily on police tactics.

8 Um, and that went back to the earlier
9 ruling, I think, in early May, uh, where
10 Kachinsky had litigated on the motion to
11 suppress. And I think that was part of that
12 motion to suppress, uh, and I think that's part
13 of the reason the Court said, you're not going
14 there again. The Court had already ruled.

15 Q So it was a ruling on the motion to suppress the
16 February and the March statements, while
17 Mr. Kachinsky was the lawyer of record, that you
18 believed foreclosed you from calling a police
19 interrogation expert?

20 ATTORNEY KRATZ: I didn't hear him
21 saying --

22 THE WITNESS: I -- I don't know that
23 I --

24 ATTORNEY KRATZ: -- he was foreclosed from
25 calling anyone, Judge.

1 THE COURT: I take it that's a question.
2 So, if you can answer the question, go ahead.

3 THE WITNESS: I -- I don't know the
4 answer to that today. I mean, I can't remember
5 my exact thinking back on the day of the motion
6 hearing with Gordon. I'd have to -- I would
7 really have to look at the transcript from the
8 Kachinsky ruling and the motion that we filed.

9 I just don't -- I don't honestly
10 remember. If that -- to say that that was the
11 only reason we didn't look at it, I'm going to
12 say no, because, you know, we knew we had
13 Buckley, potentially, out there. I had talked
14 with Ballew. So it wasn't exactly a dead issue.

15 Q (By Attorney Drizin) And you talked to your
16 friend Mr. Ballew, even before you were notified
17 of Mr. Buckley; correct?

18 A Oh, yeah.

19 Q Now, Mr. Kratz asked you about cases in which
20 you've argued lesser includeds to a jury. Do you
21 recall that?

22 A Um-hmm. Yes.

23 Q Um, have you ever argued a lesser included in a
24 case where your client has testified that he was
25 innocent of the charges?

1 A I don't know. I may have argued a lesser included
2 where my client hadn't even testified.

3 Q I'm asking you when your client has testified and
4 protested his innocence, have you ever argued a
5 lesser included to a jury?

6 A Not that I can recall.

7 Q You testified that your strategy was to make the
8 police interrogation tactics look improper to the
9 jury; correct?

10 A Right.

11 Q Yet you never showed those interrogation tactics
12 to the jury, did you?

13 A I adamantly disagree with that assertion.

14 Q You never played the video to show them the
15 tactics to the jury; correct?

16 A Which video?

17 Q Did you ever play any videos to show the improper
18 nature of the police interrogation tactics to the
19 jury?

20 A I don't think there were any videos.

21 Q Thank you.

22 ATTORNEY DRIZIN: No further questions.

23 ATTORNEY KRATZ: I've got nothing, Judge.

24 Thank you.

25 THE COURT: You may step down. Do we have

1 any exhibits that -- fresh exhibits that are being
2 offered at this time?

3 ATTORNEY DRIZIN: It's -- it's my
4 understanding that Exhibit 87 was -- exhibit was
5 admitted for the limited purpose, and -- and with
6 respect to that third column not being part of it.

7 THE COURT: Yeah. It was admitted on
8 January 19.

9 ATTORNEY DRIZIN: Thank you.

10 THE COURT: I don't think we had any new
11 ones with Mr. Edelstein?

12 ATTORNEY KRATZ: No.

13 THE COURT: All right. That will conclude
14 the hearing for today. If you want -- unless
15 there's some housekeeping things that --

16 ATTORNEY TEPFER: If we could read a
17 couple stipulations into evidence. If you want
18 to do that today, or we could wait. I just --

19 ATTORNEY KRATZ: Are they written?

20 ATTORNEY TEPFER: Yeah, their written.
21 I could have --

22 ATTORNEY KRATZ: We're not reading any
23 more, are we? Things that are already in writing?

24 ATTORNEY TEPFER: I --

25 ATTORNEY KRATZ: Just provide them to the

1 jury -- to the Judge.

2 ATTORNEY DRIZIN: Sure, we could do that,
3 too. I have no --

4 THE COURT: Yeah. Let's -- we'll just do
5 that. It's easier.

6 ATTORNEY TEPFER: Okay. Mark it as --

7 THE COURT: Good --

8 ATTORNEY TEPFER: -- an exhibit?

9 THE COURT: -- suggestion, but we don't
10 have to do it. Yeah. Have them marked. And
11 you -- Mr. Kratz, you and Mr. Fallon, or
12 Mr. Fallon, have reviewed the stipulations that
13 Mr. Tepfer (unintelligible) --

14 ATTORNEY KRATZ: Certainly if they're
15 the ones that -- that we think, Judge.

16 THE COURT: And -- and the State --

17 ATTORNEY KRATZ: I'm sure Counsel will
18 check with me before he gives them to the Court.
19 That's fine.

20 THE COURT: That's fine.

21 ATTORNEY KRATZ: Do you want to meet for
22 a minute or two?

23 THE COURT: Uh, in five minutes, we'll meet
24 in chambers.

25 ATTORNEY TEPFER: Thank you, Judge.

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(Recess had at 4:30 p.m.)

1 STATE OF WISCONSIN)
2)SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 24th day of March, 2010.

16
17
18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
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22
23
24
25

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

vs.

MOTION HEARING

DAY 5

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: JANUARY 22, 2010

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

STEVEN DRIZIN
Attorney at Law
On behalf of the defendant.

ROBERT J. DVORAK
Attorney at Law
On behalf of the defendant.

LAURA H. NIRIDER
Attorney at Law
On behalf of the defendant.

JOSHUA A. TEPFER
Attorney at Law
On behalf of the defendant.

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THOMAS F. GERAGHTY
Attorney at Law
On behalf of the defendant.

ALEX HESS
Law Student
On behalf of the defendant.

Adar Crosley
Law Student
On behalf of the defendant.

Brendan R. Dassey
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR
Official Court Reporter

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1 THE COURT: This is State of Wisconsin v.
2 Brendan Dassey, 06 CF 88. Court of Appeals No. is
3 07 XX 1073. Appearances, starting with the
4 prosecution.

5 ATTORNEY KRATZ: Good morning, Judge.
6 The State appears by Calumet County DA Ken Kratz
7 and Assistant Attorney General Tom Fallon, acting
8 as special prosecutors.

9 ATTORNEY TEPFER: For Brendan Dassey,
10 who's present in court, Joshua Tepfer, um, Laura
11 Nirider, Robert Dvorak, Steve Drizin, Tom
12 Geraghty, and two law students, Adar Crosley and
13 Alex Hess.

14 THE COURT: All right. We have some
15 stipulations, I think, that were arrived at
16 yesterday that have been reduced to writing; is that
17 correct?

18 ATTORNEY TEPFER: That's correct, Your
19 Honor. Um, we just seek admission of Exhibit --
20 it's marked as Exhibit 371 and 372.

21 Exhibit 371 is the stipulation to
22 Attorney Jerome Buting.

23 And Exhibit 372 is the stipulation of
24 Debra Smith, assigned counsel, Division Director
25 for the Wisconsin Public Defender's Office.

1 THE COURT: Mr. Kratz, you've seen them?

2 ATTORNEY KRATZ: I have, Judge, and the
3 State has no objection to their receipt.

4 THE COURT: All right. The Court has
5 examined the stipulations, 371 and 372. They are as
6 Attorney Tepfer stated on the record. So we are set
7 to proceed today.

8 ATTORNEY GERAGHTY: Morning, Your Honor.

9 THE COURT: Morning.

10 ATTORNEY GERAGHTY: Thomas Geraghty.
11 I'd like to call Investigator Wiegert.

12 Your Honor, I believe this is the point
13 where, um, if Mrs. Tadych is going to testify,
14 that she be asked to step out of the room.

15 THE COURT: That's fine. I -- is she
16 present?

17 MS. CROSLY: She just walked out.

18 ATTORNEY NIRIDER: She just walked out,
19 Your Honor.

20 THE COURT: All right.

21 ATTORNEY GERAGHTY: Very well.

22 **MARK WIEGERT,**
23 called as a witness herein, having been first duly
24 sworn, was examined and testified as follows:

25 THE CLERK: Please be seated. Please state

1 your name and spell your last name for the record.

2 THE WITNESS: Mark Wiegert,

3 W-i-e-g-e-r-t.

4 ATTORNEY GERAGHTY: May I proceed, Your
5 Honor?

6 THE COURT: You may.

7 ATTORNEY GERAGHTY: Thank you.

8 DIRECT EXAMINATION

9 BY ATTORNEY GERAGHTY:

10 Q Um, Investigator, um, good morning.

11 A Good morning.

12 Q You, um, became involved in this case right after
13 the disappearance of Ms. Halbach; is that con --
14 is that correct?

15 A That's correct. Yes.

16 Q And you've worked on the case, uh, since then.
17 Through this trial and through the Avery trial as
18 well; is that right?

19 A Yes.

20 Q You, um, are aware of all of the steps that were
21 taken to investigate this case; is that right?

22 A Majority of them, yes.

23 Q Because you were intimately involved in that
24 investigation; is that correct?

25 A Yes.

1 Q As a matter of fact, you were one of the lead
2 investigators?
3 A Yes.
4 Q And, um, I trust that -- that before testifying
5 here today you re-read all of the reports that
6 you could and perhaps even some of the trial
7 transcript; is that right?
8 A As much as I could, yes.
9 Q And I saw that when you came in this morning you
10 had a file with you; is that right?
11 A That's correct.
12 Q Um, I have no objection if you -- if you would
13 feel more comfortable having that file with you
14 in referring to (unintelligible) --
15 A I don't have it with me. It's in the other room
16 so...
17 Q All right. Okay. Now, at the time, um, you
18 became involved in the Brendan Dassey in --
19 investigation, or the Avery investigation, you,
20 at that time, were an experienced investigator;
21 is that correct?
22 A Yes.
23 Q Um, with the -- with the sheriff's department; is
24 that right?
25 A Calumet County Sheriff's Department, yes.

1 Q Um, and you had a great deal of experience in --
2 in -- interrogating suspects; correct?
3 A I've had experience, yes.
4 Q And training; is that right?
5 A Yes.
6 Q You had been -- you had been trained in -- in the
7 John Reid techniques, if I'm correct?
8 A Correct.
9 Q Uh, and you'd received that training at John Reid
10 seminars; is that -- is that right?
11 A Yes.
12 Q Uh, and would it be fair to say that, um -- that
13 you were an adherent to the John Reid technique
14 for conducting interrogations?
15 A Some yes, some no.
16 Q All right. So there's some things about the John
17 Reid technique that you agree with and some
18 things that you don't; is that right?
19 A No, that's not right.
20 Q That's not right. Well, um, why don't you tell
21 me what you meant by that answer when you said
22 some things yes, some things no?
23 A Sometimes I use it, I guess, and sometimes I don't.
24 And after you've done interviews for several years,
25 um, you kind of develop your own style, I think, and

1 you incorporate some things from different trainings
2 that you attend.

3 Q All right. So, um, you incorporated things
4 from -- from other trainings as well; is that
5 right?

6 A Yes.

7 Q Not just John Reid?

8 A Correct.

9 Q What other trainings?

10 A Um, I've had several other one-day seminars, um, I
11 couldn't tell you, specifically, but on interviews
12 and interrogations.

13 Q And, um, you also, of course, rely on your own
14 experience; is that right?

15 A Yes.

16 Q As to -- you just said, um, you have to adjust --
17 you have the techniques to the circumstances; is
18 that correct?

19 A Correct.

20 Q And doing a good interrogation is a -- an
21 information gathering process; is that correct?

22 A Yes.

23 Q And it involves using techniques and tactics to
24 obtain that information; doesn't it?

25 A Yes.

1 Q Um, and in conducting those -- those
2 examinations, you, at some point, um, often come
3 to the conclusion that a suspect may not be
4 telling you the truth or telling everything that
5 he or she knows; is that right?

6 A Yes.

7 Q And that is a matter of a judgment that you've
8 been able to develop over a period of years; is
9 that correct?

10 A Um, that's one of the ways, using your judgment plus,
11 um, comparing what they're saying to evidence, things
12 like that, yes.

13 Q But judgment plays a big part, doesn't it?

14 A It plays a part in it.

15 Q Now, prior to, um, your contacts with Brendan
16 Dassey, which I'm going to get to in a moment,
17 did you have any special training in
18 interrogating juveniles?

19 A I've had some training in, um, interrogating
20 juveniles, yes.

21 Q Is that part of the John Reid training?

22 A No.

23 Q And the training that you've had in -- in
24 interviewing juveniles, um, in part, tells you
25 that there are special considerations that should

1 be taken to -- into account when interviewing
2 a -- a child or a juvenile; isn't that right?

3 A Yes.

4 Q All right. Um, and one of those considerations
5 is that juveniles or children are not likely to,
6 um, understand **Miranda** warnings as well as an
7 adult; is that correct?

8 A Well, that depends on a lot of things. Age of the
9 child, um, experience, things --

10 Q So --

11 A -- like that.

12 Q So one thing would be age; is that correct?

13 A Yes.

14 Q And you say, "experience." And when you say
15 experience, do you mean experience in the
16 criminal justice system?

17 A That'd be one thing. Life experience, um, yes.

18 Q And, for example, um, a -- a juvenile who had
19 never been arrested before might have more
20 difficulty understanding **Miranda** rights than a
21 juvenile who had been arrested many times; is
22 that right?

23 A Yes.

24 Q And would it also be fair to say that children
25 and juveniles, um, the trainings that you took

1 revealed, are more susceptible to suggestion than
2 adults?

3 A Not necessarily. Depends on the type of questions
4 and things that are asked.

5 Q But you have to be especially careful with
6 juveniles when you interrogate them to avoid
7 suggesting things; isn't that correct?

8 A We generally are more careful, yes.

9 Q All right. And that's because children are
10 more -- and juveniles are more -- suggestible
11 than adults; isn't that right?

12 ATTORNEY FALLON: Objection. At this
13 particular point we haven't qualified him as
14 being an expert in the social psychology of
15 suggestion.

16 And, second, that's not what the
17 research says for children after age ten.

18 And, three, we're beyond the field here.
19 This is relevance of generalizations as they
20 pertain to this post-conviction motion.

21 THE COURT: Sustained.

22 Q (By Attorney Geraghty) Now, I want to turn to
23 your contacts with Brendan in February of 2006,
24 okay? Um, prior to that time, um, you did not
25 know Brendan Dassey; is that correct?

1 A That's correct.

2 Q You had not met him before; is that right?

3 A That's correct.

4 Q And I'm talking specifically about your first
5 contact with him on February 27, 2006.

6 A Yes.

7 Q Would that have been your first contact with him?

8 A I believe so, yes.

9 Q Before meeting Brendan, you did not know anything
10 about his -- his social or his educational
11 background, did you?

12 A Um, yes, I did. Um, there were interviews that were
13 conducted from other officers who I had talked to
14 prior to doing that interview. So I did know some
15 things about Brendan.

16 Q All right. So you knew that he had been
17 interviewed in November of and December of 2005;
18 is that right?

19 A Yes.

20 Q And you spoke to those officers; is that correct?

21 A Yes.

22 Q And you reviewed their reports?

23 A At some point I did review their reports, yes.

24 Q And you knew that, um -- you knew something about
25 his family background? Would that be fair to

1 say? That's what you gathered from those
2 interviews?

3 A Yes.

4 Q Right. You did not know anything in February
5 of -- of 2006 about his educational background,
6 did you?

7 A Um, I -- you know, without reviewing reports I don't
8 recall exactly the time that we had spoke with some
9 of the school officials and learned some things about
10 Brendan. I -- I couldn't put a date on it.

11 Q Do you recall whether you spoke to any school
12 officials prior to interviewing Brendan Dassey
13 for the first time on February 27, 2006?

14 A I don't recall the dates I spoke to them specifically
15 about Brendan's education and things. Um, I can say
16 that I did speak with the -- I believe it was the
17 dean of students, briefly, prior to speaking with
18 Brendan.

19 Q But that was to obtain permission to speak to
20 Brendan; is that correct?

21 A Yes. And I -- from my recollection, I think there
22 was a little bit of background given to us on
23 Brendan.

24 Q Okay. So you knew -- and what -- what did the,
25 um -- what did the school principal, who I think

1 is the person you spoke to, tell you about
2 Brendan?

3 A I think it was the dean of students, I think his name
4 was, but, uh -- his -- his title. I'm not sure about
5 that, but I believe that's what it was. But I recall
6 him telling us that Brendan had really never been in
7 any trouble. He was generally a quieter kid. Things
8 like that.

9 Q Did he tell you that -- that Brendan was in a
10 special education class or two?

11 A Not to my recollection.

12 Q Did you ask him?

13 A I don't believe so.

14 Q Is it important to know something about the
15 background of a interviewee or suspect -- and
16 we'll get to that question about whether he was
17 an interviewee or a suspect at that point -- but
18 just for the moment let's assume an interviewee,
19 it's important to know something about the
20 background of a -- of an interviewee before you
21 interview them?

22 A No, not necessarily. Um, when you go into an
23 interview, um, and you're treating somebody like a
24 witness, you don't always know things about them.
25 You don't always have the opportunity to gain that

1 knowledge prior to speaking with them.

2 Q So you didn't have any background knowledge about
3 Brendan Dassey's educational background other
4 than what you had been given by the principal
5 before you interviewed him on 2/27?

6 ATTORNEY FALLON: Objection. Asked and
7 answered insofar as he says he -- I talked to the
8 school officials at some point. I don't know
9 when. So the question is argumentative.

10 And, second, we're now 15 minutes in
11 and -- and all I've got is a -- leading
12 questions. Now we're at the point where the
13 testimony matters, so I object to the formation
14 of the question as leading as well.

15 THE COURT: I'll overrule it.

16 ATTORNEY GERAGHTY: I'll -- I'll get to
17 the interrogation, yes --

18 THE COURT: Let's --

19 ATTORNEY GERAGHTY: -- Judge.

20 THE COURT: -- move.

21 ATTORNEY GERAGHTY: Yes. Could you read
22 the question back, please?

23 (Wherein reporter attempts to read the
24 question back.)

25 ATTORNEY GERAGHTY: Maybe I can cut this

1 short. I'll just ask the question again. I'm
2 sorry. It probably wasn't a very good question.
3 I'm sorry.

4 Q (By Attorney Geraghty) I asked you whether it
5 was important to know something about the person
6 that you're interviewing or interrogating before
7 you interview or interrogate them?

8 A I think is what I answered before is there's two
9 different things, an interview and an interrogation.
10 And in an interview you don't always have the
11 opportunity. Uh, you're treating these people like a
12 witness. And, no, not necessarily.

13 Q Okay. Now, you did, um, contact Brendan Dassey
14 at the Mishicot High School on February 27, 2006;
15 is that correct?

16 A Yes.

17 Q And you went to that school because you had
18 information from one of Brendan's family members
19 that you thought, um, was appropriate to prompt
20 you to interview Brendan; is that correct?

21 A That would be one of the reasons.

22 Q And that information that you had placed Brendan
23 Dassey at the Avery -- at the area in which
24 remains of Teresa Halbach were eventually found;
25 is that correct?

1 A Some of the information that I had learned early on
2 was that Brendan Dassey was attending a fire where
3 Teresa's remains were found.

4 Uh, the other information was that
5 Brendan was crying uncontrollably at times.

6 Brendan had lost a lot of weight. He
7 basically wasn't being himself.

8 Again, there were a lot of other things
9 that had come up after reviewing initial
10 interviews were reasons that we went back and
11 talked to Brendan.

12 Q Okay. I'm not quarreling that you didn't have
13 information. I'm -- I'm just asking you what the
14 information was --

15 A Sure.

16 Q -- that made -- so you were focusing on a need to
17 interview Brendan Dassey; is that correct?

18 A I wouldn't say focusing on. Um, we had learned the
19 information. And he was one of many people that we
20 went back and re-interviewed. Um, I don't think we
21 were focusing on Brendan at that time. He was
22 somebody that was, for lack of better word, on our
23 radar screen that we needed to come back and talk to
24 at that time.

25 Q And the interview of Brendan Dassey had -- had

1 also to do with the -- the -- the prosecution of
2 Steven Avery; is that correct?

3 A Yes.

4 Q You were gathering information about -- you were
5 hoping to gather information about Steven Avery;
6 is that right?

7 A Yes, at that point we were. Right.

8 Q And information that might be useful in the
9 prosecution of Steven Avery; is that --

10 A Yes.

11 Q -- correct? All right. And you thought that
12 Brendan Dassey might be of assistance to you in
13 that respect; is that right?

14 A For obvious reasons, yes.

15 Q Okay. Now, when you, um, went to the Mishicot
16 High School, as we said, you spoke to the -- one
17 of the officials of the school; is that correct?

18 A Yes.

19 Q And you asked Brendan Dassey -- you asked the --
20 the official to bring Brendan Dassey to the room
21 that you were in; is that right?

22 A We asked permission to speak with him and to use a
23 room to speak --

24 Q All right.

25 A -- with him, yes.

1 Q Now, prior to speaking to the principal, or the
2 school official who eventually summoned Brendan
3 to that room, um, had you spoken to Brendan's
4 mother?

5 A And this is the February 27 interview --

6 Q Correct.

7 A -- correct? No, we did not.

8 Q All right. Had you spoken to any member of his
9 family before you interviewed him at the school
10 on February 27?

11 A About permission to interview him?

12 Q Correct.

13 A No.

14 Q Okay. Um, you knew at that time where or how to
15 get a hold of Barb Janda; is that correct?

16 A Yes.

17 Q You had her phone number?

18 A Yes.

19 Q Okay. And you also knew how to get a hold of
20 other Dassey family members; is that right?

21 A Yes.

22 Q 'Cause you had their phone numbers?

23 A Yes.

24 Q And you knew where they lived?

25 A Yes.

1 Q Now, when you were first -- when your -- when --
2 when you brought -- or when Brendan was brought
3 into that room, you introduced yourself; is that
4 correct?

5 A That's correct. Yes.

6 Q And you were with Mr. -- I'm sorry -- Special
7 Agent Fassbender; is that right?

8 A Yes.

9 Q And Special Agent Fassbender, uh, and you were
10 co-responsible for the investigation of the
11 Dassey -- of the Teresa Halbach murder; is that
12 right?

13 A That's correct. Yes.

14 Q And at that time you were working in cooperation
15 with Special Prosecutor Kratz; is that correct?

16 A Yes.

17 Q Because Special Prosecutor Kratz had been
18 appointed to lead the prosecution of Steven
19 Avery; is that right?

20 A Yes.

21 Q And Special Agent -- I'm sorry -- Special
22 Prosecutor Kratz knew that you were going to the
23 Mishicot High School on February 27, 2006?

24 A You know, I don't know if he knew that or not.

25 Q Okay.

1 A I don't.

2 Q At some point he did become aware of that; is --

3 A Yes --

4 Q -- that right?

5 A -- that's correct.

6 Q Okay. Well, we'll get to that in a moment. Now,

7 let me ask you, um -- I want to ask you a couple

8 questions about things that you said to Brendan

9 on February 27, 2006.

10 And, uh, am I correct that the -- that

11 the contact with Brendan at the high school was

12 audio recorded?

13 A Yes.

14 Q And that the audio recording didn't work very

15 well?

16 A It was intermittent. You could hear parts of it.

17 Q Because it was a cassette player that you put on

18 a table; is that --

19 A Yeah.

20 Q -- right?

21 A Before we had digital, yes.

22 Q Okay. Uh, and so, um, instead of playing -- we

23 actually have those on clips. But instead of

24 playing them, because they're -- they're not

25 audible -- very audible -- I'm going to read --

1 I'm going to read you just a portion of what you
2 said to Brendan on February 27, 2006.

3 This is chapter one. This is Exhibit
4 315, chapter one, clip one.

5 A This one here?

6 Q I'm sorry, I should have told you about all those
7 binders up there.

8 A That's okay.

9 Q And I -- I'm not going to spend a lot of time
10 with the documents, but some time.

11 A I'm there.

12 Q All right. Now, um, Investigator Wiegert, I'm
13 going to ask you some questions about what other
14 people said while you were in the room, and
15 I'm -- and I'm -- and if you -- some of these --
16 because you and Investigator Fassbender were
17 together, uh, I'm hoping that through my
18 questioning of you we can bring out these facts
19 and then we won't have to go over the same
20 information with Investigator Fassbender.

21 But if you don't remember something that
22 Investigator Fassbender said, then we'll -- he's
23 available, too, and we'll call him later.

24 But let -- let me ask you: Um, you were
25 present in the room, um, with, um, Brendan on

1 2/27, 19 -- 2006; is that correct?

2 A Yes.

3 Q At the Mishicot High School?

4 A Yes.

5 Q And, um, you remember Investigator Fassbender
6 saying, quote, you're a kid, you know, and we
7 got -- we got people back at the sheriff's
8 department, district attorney, district
9 attorney's office, and they're looking at this
10 now saying there's no way that Brendan Dassey was
11 out there and didn't see something.

12 They're talking about trying to link
13 Brendan Dassey to this event. They're not saying
14 that Brendan did it. They're saying that Brendan
15 could have had something to do with it or to
16 cover it up of it which would mean Brendan Dassey
17 could potentially be facing charges for that.

18 Do you recall Agent Fassbender saying
19 that?

20 A I do now, yeah.

21 Q All right. Do you have any quarrel with the fact
22 that that's what he said?

23 A No.

24 Q Okay. And then chapter one, Exhibit 315, clip
25 two. And, again, Agent Fassbender saying:

1 "We've gotten a lot of information and,
2 you know, some people don't care. Some people
3 back there and say, no, we'll just charge him.
4 We said no. Let us talk to him. Give him the
5 opportunity to come forward with the information
6 that he has and get it off his chest. Now, make
7 it look -- you can make it look however you
8 want."

9 Do you recall Special Agent Fassbender
10 saying that to Brendan Dassey?

11 A Again, after seeing this, yes.

12 Q Okay. And I don't expect you to remember
13 everything. And that's why we're using these
14 notes --

15 A Sure.

16 Q -- to refresh recollection. Okay. And then I
17 want to read you clip three, chapter one, Exhibit
18 315. And, again, this is Special Agent
19 Fassbender.

20 "Mark and I, yeah, we're cops. We're
21 investigators and stuff like that. But I'm not
22 right now. I'm a father that has a kid your age,
23 too. I want to be there for you. There's
24 nothing like more than to come over -- nothing
25 I'd like more than to come over and give you a

1 big hug 'cause I know you're hurting."

2 Do you remember that?

3 A Yep. And I think he meant that. Yeah.

4 Q You think he meant that?

5 A Yeah, I do.

6 Q Okay. Well, I guess that's -- that's great. Um,
7 but that's what he said; right?

8 A That's what he said.

9 Q Okay.

10 A Yes.

11 Q Uh, now, would it be fair to characterize clip
12 one and clip two as statements by Special Agent
13 Fassbender that Brendan is facing some criminal
14 liability?

15 A Uh, number one, no. Number two, yes.

16 Q So you would -- you'd agree that number two does
17 indicate that you believe Brendan is -- is facing
18 some criminal liability; is that right?

19 ATTORNEY FALLON: Objection. That's not
20 what the question was. And what was intended by
21 Agent Fassbender when he said those things can be
22 asked of Agent Fassbender. What Mr. Wiegert
23 believed him to mean is irrelevant.

24 And, more importantly, the key question
25 is, what did Mr. Dassey believe?

1 So what the officers -- the
2 unarticulated intent of the officers to the
3 suspect in an interrogation is irrelevant and
4 immaterial under Wisconsin law.

5 THE COURT: The objection's sustained.
6 That's a correct statement of the law.

7 ATTORNEY GERAGHTY: Okay.

8 Q (By Attorney Geraghty) But these -- you recall
9 that these were the things that were -- these
10 were the -- three of the things that were said to
11 Mr. Dassey at the beginning of the interview at
12 the Mishicot High School on February 27, 2006?

13 A There are three things that were said to him. I
14 don't know, 'cause they're out of context, where they
15 were said.

16 Q But they were said to him?

17 A Yes.

18 Q Now, let me turn to, again, Exhibit 315, chapter
19 one, clip seven, which is on page two of that
20 document. You see that at the top of the page?

21 A Yes.

22 Q And, again, this is Special Agent Fasgen --
23 Fassbender.

24 Quote, Mark and I can both -- can go
25 back...

1 I'm sorry. Let me start that again. I
2 don't know why...

3 "Mark and I both can go back to the
4 district attorney and say, uh, Dassey came
5 forward and finally told us. Can imagine how
6 this was weighing on him. They'll understand
7 that."

8 And then you say:

9 "We'll go to bat for ya, but you have to
10 be honest with that."

11 Do you remember saying that?

12 A I do.

13 Q And do you remember Agent Fassbender saying what
14 he -- what's in that transcript just before you
15 said, "But you have to be honest with us."?

16 A Again, I don't remember specifically, but it's in the
17 transcript.

18 Q Okay. And then let me ask you about clip ten on
19 page two of Exhibit 315. Um, and this is you, I
20 believe.

21 "It's not your fault. Remember that."

22 Did you say that?

23 A Yes.

24 Q And then Agent -- Special Agent Fassbender said:

25 "Yeah, it's not your fault. Like I

1 said, Mark and I are not going to leave you high
2 and dry."

3 Do you remember that?

4 A I do. I meant that.

5 Q Well, that's not -- I mean, I'm -- I'm glad you
6 meant it. But the issue is whether you said it?

7 A I said it, yes.

8 Q Okay. And then let me refer you to clip 11. And
9 this is you.

10 "Brendan, I'm going to ask you a
11 difficult question, okay? Did you help him put
12 that body in the fire? If you did, it's okay."

13 A Did I say that? Yes.

14 Q All right. And did you mean that it was okay to
15 put a body in the fire?

16 A What I meant -- and, again, this is all out of
17 context. What I meant is that it was not -- I didn't
18 think it was Brendan's idea to do this. At the time
19 he was a witness.

20 I thought that Brendan was, um, there
21 with his uncle, and I thought he was a witness to
22 this. I didn't think that he was the one -- the
23 mastermind behind this.

24 But, again, it's difficult for me to
25 answer that without seeing the questions around

1 this or the statements around it.

2 Q Well, the -- the last part of that clip 11 says:

3 "Did you help put him" -- "Did you help
4 him put that body in the fire? If you did, it's
5 okay."

6 So did you mean that it was okay for
7 someone to help somebody else put a body in the
8 fire?

9 A Again, it's taken out of context. Do I mean it's
10 okay to have somebody put a body in a fire? No.

11 Q Or it's not okay to -- for anybody to help
12 somebody else put a body in a fire, is it?

13 A What I meant was I don't believe it was Brendan's
14 idea to do this.

15 Q And -- and what you meant wasn't, uh, something
16 that Brendan could have discerned, was it?

17 ATTORNEY FALLON: Objection. That's
18 speculation. I'm going to renew my objection that
19 the unarticulated intent of the officer doesn't
20 matter.

21 But, again, those are just the trees.
22 The argument -- the forest argument here is this
23 statement was never played to the jury.

24 ATTORNEY GERAGHTY: Judge --

25 THE COURT: Your objection's sustained.

1 ATTORNEY FALLON: Objection.

2 ATTORNEY GERAGHTY: Judge, may I just
3 respond?

4 THE COURT: Go ahead.

5 ATTORNEY GERAGHTY: Okay? Very briefly.
6 This is, um -- one of the issues is the question of
7 whether Mr. Dassey was effectively represented at
8 the motion to suppress. And one thing that didn't
9 happen at the motion to suppress was that there was
10 no inquiry into the circumstances that led up to the
11 March 1 statement, which was the statement that was
12 introduced.

13 And our contention is that you have to
14 take the whole series of in -- of interrogations
15 as one to determine whether Brendan, um, first of
16 all, knowingly and intelligently waived his
17 rights.

18 Second, whether he was coerced into
19 making a statement.

20 Um, and -- and -- and when I say --
21 we're -- we're talking about a -- a period of
22 time that is relatively short, 2/27 to 3/1, where
23 our contention is that there are a series of
24 contacts with Brendan which constitute one really
25 single interrogation. A strategy for getting

1 Brendan to confess on 3/1 without taking the
2 prior contacts that this officer and
3 Investigator -- Special Agent Fassbender had with
4 Brendan into account.

5 You -- you -- you don't get a full
6 picture of the, um, coercive nature, the
7 suggestive nature, and you also don't get the
8 question of whether Brendan did understand his
9 **Miranda** rights at that point.

10 ATTORNEY FALLON: Your Honor, um, well,
11 that's an interesting argument, but one that's
12 already been rejected by Wisconsin courts. The
13 statements are to be taken independently although
14 and unless there's a direct taint situation or an
15 attenuation argument at play. This is not one of
16 those circumstances.

17 And under Wisconsin law, the grand
18 inquisitor theme in theory, this is all one part
19 of -- of the -- the great plot to undermine
20 Mr. Dassey has been soundly rejected. **State v.**
21 **Pischke** is the case.

22 THE COURT: Yeah. That's my understahding
23 as well. The -- the objection is sustained.

24 Q (By Attorney Geraghty) Now, before interviewing
25 Brendan on the 27th at the Mishicot High School,

1 did you discuss with Special Agent Fassbender any
2 strategies or tactics that you would employ in
3 interviewing Brendan Dassey on the 27th?

4 A No.

5 Q You had no discussion whatsoever?

6 A No.

7 Q All right. Now, during -- during the course of
8 the -- the interrogation on March 27, Brendan
9 told you some things that -- I'm sorry,
10 February 27 -- told you some things that, um,
11 were relevant to your quest to develop evidence
12 that could be used in the Steven Avery trial; is
13 that right?

14 A Yes.

15 Q Okay. And you then called Special Prosecutor
16 Kratz to let him know that you had uncovered that
17 evidence through your conversations with -- with
18 Brendan; is that right?

19 A Yes.

20 Q And -- and I'm just taking you through this. I
21 am leading, but I think I can maybe speed things
22 up a little bit if I do it.

23 If you -- don't hesitate to quarrel with
24 me if I ask an unfair question --

25 A Sure.

1 Q -- okay? But, um, Investigator -- Special
2 Agent -- Special Prosecutor Kratz asked you to
3 conduct a further interrogation of Brendan Dassey
4 at the Two Rivers Police Station; is that right?

5 A No.

6 Q You had no contact with -- with -- with Special
7 Prosecutor Kratz after Brendan Dassey had told
8 you that he saw certain things in the fire?

9 A Yes, I did have contact with him.

10 Q All right. Could you tell me when that contact
11 occurred?

12 A Right after the interview at the high school was
13 finished.

14 Q Okay. And what -- and that was you and -- and --
15 and Prosecutor Kratz on the phone; is that
16 correct?

17 A Yes.

18 Q And can you tell us what you said and what
19 Mr. Kratz said?

20 ATTORNEY FALLON: Objection. How is this
21 relevant? It also calls for hearsay. But, setting
22 that aside, why is this relevant?

23 THE COURT: Where's the relevancy here?

24 ATTORNEY GERAGHTY: Well, Judge, there has
25 been -- there's some, um, issue here about the

1 extent to which Mr. Kratz was or was not involved in
2 the investigation of this case.

3 And I believe that there is -- it is
4 relevant to know that, um, that -- as I think
5 would be expected -- um, Mr. Kratz was involved
6 in the investigation directing the officers.

7 THE COURT: I don't find it material. And
8 it's not relevant. The objection's sustained.

9 Q (By Attorney Geraghty) After the conversation
10 that you had with -- with Mr. Kratz, did you take
11 Brendan Dassey to the Two Rivers Police
12 Department?

13 A After contacting his mother, we did, yes.

14 Q All right. How long after your conversation with
15 Mr. Kratz did you take Brendan Dassey to the Two
16 Rivers Police Department?

17 A Well, we contacted his mother first, and, um, told
18 her that we had talked to him at the school, and we
19 would like to talk to him further at the Two Rivers
20 Police Department, and asked for her permission to
21 take him there.

22 And, as a matter of fact, she met us at
23 the school, and she rode along in the car with us
24 to Two Rivers Police Department with Brendan.

25 Q Okay. Did she drive to the school?

1 A No. She rode with us.

2 Q No. Um, how did she get to the school? How did

3 she get --

4 A Oh, to the school. I'm sorry.

5 Q Yeah.

6 A Um, I assume she drove. I don't know that.

7 Q All right. And so she -- she met you at the

8 Mishicot High School pursuant to your request; is

9 that right?

10 A Yes.

11 Q And -- and -- and -- and at that point did -- did

12 you -- did you tell Brendan and -- and his mother

13 that, um, if they liked, they could -- they could

14 drive to the Mish -- to the Two Rivers Police

15 Station and meet you there?

16 A I don't recall what the conversation was prior to. I

17 can tell you that they both rode with myself and

18 Agent Fassbender.

19 Q And that's because you asked them to ride with

20 you; is that right?

21 A I don't know. I don't recall that.

22 Q You don't recall that?

23 A Not specifically, no.

24 Q And this was in your unmarked police vehicle; is

25 that correct?

1 A No, it was in Agent Fassbender's.
2 Q Unmarked police vehicle?
3 A Yes.
4 Q All right.
5 A That is correct.
6 Q And the two of you rode in front and they rode in
7 back; is that right?
8 A Yes.
9 Q You -- you took Brendan to the Two Rivers Police
10 Department so that he could be further
11 questioned; is that right?
12 A Well, I think it was more to review what he had told
13 us, and we were aware that the tape that we were
14 using, the mechanism to audiotape this wasn't the
15 best, and we thought we should have this memorial --
16 memorialized better, and we were aware that, um, Two
17 Rivers Police Department had the capabilities to do
18 that.
19 Q And the -- the idea to videotape the statement
20 was whose idea?
21 A Um, we had called District Attorney Kratz and
22 informed him of what we had done so far, and he
23 suggested that we have it on videotape.
24 Q All right. And so that was part of your -- part
25 of the conversation that you had with Mr. Kratz,

1 um, while you were at the Mishicot High School;
2 is that right?

3 A Yes.

4 Q Now, when you got Brendan to the Two Rivers
5 Police Station, you had more information about
6 Brendan's possible involvement in the
7 disappearance and death of Teresa Halbach than
8 you had before you interviewed him at the
9 Mishicot High School? Would that be fair to say?

10 A That'd be a fair statement, yes.

11 Q All right. And would it also be fair to say that
12 as a result of interviewing Mr. Dassey at the
13 Mishicot High School, you, um, began to suspect
14 that Brendan might have some involvement in the
15 actual perpetration of the crime; isn't that
16 correct?

17 A Um, I don't know if I would agree with that. I -- we
18 were still looking at him as a witness. As somebody
19 who was at that fire. Um, I guess that's -- that's
20 all I can say about that.

21 Q But you did think it was possible that Brendan
22 might have been involved in the disposal of the
23 corpse; is that correct?

24 A Yes.

25 Q As a matter of fact, that's one reason why you

1 wanted to interrogate him further; is that right?

2 A Well, again, the more of, um, the interview, we
3 reviewed what we had already done at the school, um,
4 and I believed at that point that he had given us
5 everything he knew at that point, and we wanted to
6 better memorialize that. That was the reason we went
7 to Two Rivers.

8 Q Okay. Now, when you got to the Two Rivers Police
9 Station, you Mirandized Brendan Dassey; is that
10 right?

11 A That's correct.

12 Q And you did that utilizing a form that had -- was
13 available at the Two Rivers Police Department; is
14 that right?

15 A It was provided me by Two Rivers Police Department.

16 Q Okay. Um, I'd like to play another clip, and
17 that is chapter three, clip two, on page 13. And
18 we can watch this one on videotape. So Alex...

19 "But before we ask any questions,
20 Brendan, um, I have to read your rights. This is
21 (unintelligible) okay?

22 Before we ask any questions, you must
23 understand your rights. You have the right to
24 remain silent. Anything you say can be used
25 against you in court.

1 You have the right to -- you have the
2 right to talk to a lawyer for advice before we
3 ask you any questions and have him with you
4 during questioning.

5 You have this right to the advice and
6 presence of a lawyer, even though you cannot
7 afford to hire one. We have no way of giving you
8 a lawyer, but one will be appointed for you if
9 you wish, and if and when you go to court.

10 If you wish to answer questions now
11 without a lawyer present, you have the right to
12 stop answering questions at any time.

13 You also have the right to stop
14 answering questions at any time until you talk to
15 a lawyer.

16 I have read the above statements of my
17 rights. I understand what my rights are.

18 I'm willing to answer questions and to
19 make statements. I do not want a lawyer. I
20 understand (unintelligible) what I am doing.

21 No promises or threats have been made to
22 me and no pressure of any kind has been used
23 against me. Do you agree with that?"

24 (Inaudible.)

25 "You have to speak up a little bit."

1 "Yeah."

2 "Yes?"

3 (Unintelligible)

4 And if you agree with making a
5 statement, I need you to sign right there. And
6 if you want to read it, you can read it there.
7 Why don't you put your initials here, and put
8 your initials here. These are the two things I
9 read to you.

10 Okay. I'm just going to put the place
11 up here. Two Rivers Police Department. And the
12 date is 2/27/06. And time is approximately
13 3:21 p.m.

14 Okay. Put that over there for now."

15 ATTORNEY GERAGHTY: Okay. Let's stop
16 there.

17 Q (By Attorney Geraghty) Um, by the -- Officer, at
18 that time were you wearing a -- a sidearm? A
19 firearm?

20 A I would assume I was. Yes.

21 Q And you said that Brendan's mother accompanied
22 him to the police station; is that right?

23 A Yes.

24 Q And I assumed you asked -- you asked his mother
25 whether she wanted to be present during the

1 interview; is that right?

2 A That's correct.

3 Q And you -- she declined; is that right?

4 A She did decline. Yes.

5 Q All right. Did you tell -- did -- did you tell
6 her that, um, it might be best that she not
7 participate in the interview because there might
8 be some grizzly or unpleasant details?

9 A No, I don't recall that.

10 Q Okay. Did you ever hear Agent Fassbender say
11 that to her?

12 A Not specifically, no.

13 Q Okay. Did you -- did you tell -- before
14 Brendan's mother declined to be present in the
15 interview, did you tell Brendan's mother exactly
16 what the purpose of the interview was?

17 A Yes.

18 Q And what did you tell her?

19 A To memor -- better memorialize what he had told us at
20 the school.

21 Q Okay. Did you tell her that, uh -- that -- that
22 you had some suspicion that Brendan might have
23 been involved in the mutilation of a corpse?

24 ATTORNEY FALLON: Objection. Relevance.

25 THE COURT: Overruled.

1 THE WITNESS: You know, I -- I don't
2 recall exactly what we told her about the
3 interview at the school. I don't know.

4 Q (By Attorney Geraghty) Well, I was talking about
5 what was going to happen at the interview at the
6 Two Rivers Police Station. Did you tell her
7 that, um, you were going to interview Brendan, in
8 part --

9 ATTORNEY GERAGHTY: Should I stop,
10 Judge?

11 ATTORNEY FALLON: No, go ahead.

12 Q (By Attorney Geraghty) Okay. Uh, interview
13 Brendan, in part, because you suspected that he
14 might be involved in the mutilation of a corpse?
15 Did you tell her that?

16 A Specifically that, no.

17 Q Okay. Did you tell -- ever tell her that one of
18 the reasons that you wanted to interview Brendan
19 on videotape was that you suspected that he might
20 be -- that Brendan might be guilty of a crime?

21 A No.

22 Q So what Brendan's mother knew was that you were
23 going to interview Brendan simply because he
24 might be a witness in the Avery case?

25 A That's correct.

1 Q Okay. And, by the way, Brendan's mother did not
2 express any reservations about the fact that you
3 were interviewing Brendan about the Steven Avery
4 case, did she?

5 A No.

6 Q Did you tell Ms. Janda that Brendan had, in his
7 statement at the Mishicot High School, said that
8 he saw things in the fire that was being -- that
9 that was near the Avery -- Steven Avery house?

10 A Again, as I stated before, I don't recall exactly
11 what we told her.

12 Q Would it have been at that time your preference
13 to have Ms. Janda present during the interview or
14 not present during the interview?

15 A It was her decision. She made the decision not to
16 be. It didn't matter to me one way or another.

17 Q Didn't matter to you one way or the other?

18 A No.

19 Q You weren't trying to isolate Brendan at that
20 time?

21 A Well, from my experience, if you want to know my
22 experience with interviews with -- with people, it's
23 better one-on-one without somebody else there. But
24 if she chose to be there, it would have been fine.

25 Q But it would have been better if she chose not

1 to; is that right?

2 A In my experience with interviewing people it's better
3 if it's a one-on-one thing and they don't have
4 somebody else there.

5 Q Okay. Now, let me get to the, um -- let's go
6 back to the video clip that we just saw you, and
7 I think you have a transcript of it in, um,
8 Exhibit, uh -- oh, boy. I've got it. It's 315.
9 Um --

10 ATTORNEY FALLON: The record reflect
11 Exhibit 315 is a series of clips. It's not the
12 transcript of the interview.

13 ATTORNEY GERAGHTY: I stand -- I stand
14 corrected.

15 Q (By Attorney Geraghty) But I'd like you to look
16 at that transcript of the clip that I just showed
17 you. Um, you say:

18 "Before we ask any questions, Brendan,
19 um, I have to read you your rights."

20 It's --

21 A I don't know where that is. I don't have --

22 Q Okay. I'm sorry. This is clip two, page 13.
23 Same -- I'm sorry. It's Exhibit --

24 THE COURT: Three-fifteen.

25 Q (By Attorney Geraghty) Exhibit 315.

1 A I have Exhibit 315. Page --
2 Q Look at --
3 A -- two --
4 Q -- page -- look at page 13.
5 COURT REPORTER: One at a --
6 A Page thirteen.
7 COURT REPORTER: -- one at a time,
8 please.
9 THE WITNESS: Gotcha.
10 ATTORNEY GERAGHTY: I apologize.
11 THE WITNESS: I have it.
12 Q (By Attorney Geraghty) Okay. Can you look at
13 clip two on page 13?
14 A Yes.
15 Q All right. You say:
16 "Before we ask any question, Brendan,
17 um, I have to read you your rights."
18 Is that what you said to him?
19 A Yes.
20 Q Okay. And then you say:
21 "It's just what we have to do. Steps.
22 Okay?"
23 A Yes.
24 Q All right. And I take it that -- that those, um,
25 statements you made were an effort to sort of

1 minimize the impact of having to read Brendan his
2 rights; is that right?

3 A Well, I don't -- we didn't have to read him his
4 rights at that point. He wasn't under arrest.

5 Q Okay.

6 A Um, we chose to do it.

7 Q All right. So you wanted to -- you wanted to let
8 him know this was sort of a formality; is that
9 right?

10 A Yes. And it was a formality. Again, we chose to do
11 that. He was made aware that he was not under arrest
12 prior to this.

13 Q Okay. If Brendan had asked to -- to walk out of
14 that interview room and go home with his mother,
15 you would have let him go at that point; is that
16 right?

17 A Absolutely.

18 Q No question about it?

19 A Nope. He went home with his mom after the interview.

20 Q Okay. Well, he didn't go home --

21 A He didn't go home --

22 Q -- with his mom --

23 COURT REPORTER: One at a --

24 A -- he went with his --

25 COURT REPORTER: Stop. I didn't get the

1 question or the answer.

2 Q (By Attorney Geraghty) Okay. Let me back up. I
3 believe you said he went home with his mother; is
4 that right?

5 A Yes.

6 Q But he didn't go home with his mother, did he?

7 A No. What I meant to say is he left with his mother.

8 Q And -- okay. We'll get to that in a moment.

9 A Sure.

10 Q Um, so you didn't have to read him his rights,
11 but just to be on the safe side, you did it?

12 A That's correct.

13 Q And you sort of conveyed that to Brendan, like,
14 this wasn't really something that you had to do,
15 but you were doing it just to -- did you explain
16 to Brendan why you were doing it?

17 ATTORNEY FALLON: Objection. The record
18 speaks for itself. This is irrelevant and
19 immaterial.

20 THE COURT: You have an audio video clip of
21 this.

22 ATTORNEY GERAGHTY: Okay.

23 THE COURT: In which he is talking these
24 very words. I think that's sufficient.

25 ATTORNEY GERAGHTY: Thank you, Judge.

1 Q (By Attorney Geraghty) Let me just ask you a
2 couple questions about another comment that
3 you -- or a part of the warnings that you gave.
4 And that's in the middle of this paragraph. And
5 I want to refer you to the portion that says:

6 "We have no way of getting you a lawyer,
7 but one will be appointed for you if you wish, if
8 and when you go to court."

9 Does that strike you as a correct
10 reading of the **Miranda** decision and the **Miranda**
11 training that you receive as a police officer?

12 A It's not my preferred way that I would give **Miranda**.
13 It --

14 Q What's wrong with that?

15 A It was read verbatim off of the Two Rivers Police
16 Department form that they provided me.

17 Q And what's wrong, in your opin -- you know, and
18 based on your training, what's wrong with that
19 phrase that I -- that sentence that I just read
20 you?

21 A I'm not saying there's anything wrong with it. I'm
22 saying it's not how I would deliver it.

23 Q Why not?

24 A I probably wouldn't have that sentence in there, but
25 I'm not saying there's something wrong with it.

1 Q Okay. I -- I'm just asking you why you wouldn't
2 have that sentence in there.

3 A Because it's not --

4 ATTORNEY FALLON: Is this relevant, Judge?

5 THE COURT: I don't think so. If that's an
6 objection --

7 ATTORNEY FALLON: It is.

8 THE COURT: -- it's sustained.

9 Q (By Attorney Geraghty) Now, let's get to the
10 point at which Brendan and his mother left the
11 Two Rivers Police Station after you had done the
12 videotape; okay?

13 A Yes.

14 Q You -- you did videotape a -- a statement from
15 Brendan Dassey; is that right?

16 A That's correct.

17 Q In which he confirmed a lot of the things that he
18 had said to you on the audiotape at the Mishicot
19 High School; is that right?

20 A That's correct. Yes.

21 Q And you discussed the results of that -- or did
22 you discuss the results of that videotaped
23 statement with, um, Mr. Kratz?

24 A At some point, yes. I don't know when that was done.

25 Q Okay. Was it -- was it done at any time on 2/27,

1 2006?

2 A Again, I don't know when it was done. There was a
3 discussion with Mr. Kratz. I --

4 Q Okay.

5 A -- couldn't put a date on it.

6 Q Okay. You did discuss, obviously, the results of
7 that interview with your partner, Special Agent
8 Fassbender; is that right?

9 A Yes, he was there.

10 Q Okay. And after that interview you made a
11 decision that Brendan and his mother should not
12 return to the -- to their residence; is that
13 correct?

14 A It was a suggestion, yes.

15 Q Um, are you saying that -- well, let -- let me
16 ask you what -- what did you say to Brendan and
17 his mother about where they should spend the
18 night on the evening of 2/27, 2006?

19 A I can't tell you specifically what was said. Um, I
20 can tell you that we suggested to them that it would
21 not -- may not be a good idea to stay at the
22 residence that night.

23 Q Okay. And you -- you did -- you made that
24 suggestion for a couple of reasons, didn't you?

25 A Yes.

1 Q Um, the first reason was that you wanted to -- to
2 protect the integrity of the investigation; is
3 that right?

4 A Yes.

5 Q And so you wanted to isolate Brendan and his
6 mother from other family members; correct?

7 A Yes.

8 Q You also were concerned about Brendan's safety;
9 is that right?

10 A That's correct.

11 Q And so that was another reason you suggested that
12 they not spend the night at their house?

13 A Yes.

14 Q Okay. And so they drove to a resort near the Two
15 Rivers Police Station; is that correct?

16 A Um, no. Not near Two Rivers Police Station.

17 Q The Fox Hills Resort?

18 A That's correct.

19 Q And how far is that from the police station?

20 A Oh, it's in, um, the village of Mishicot. I would
21 estimate seven to eight miles.

22 Q Okay. And you reserved a room for them there?

23 A Yes.

24 Q And I take it that the county or the -- law
25 enforcement paid for that room; is that right?

1 A Somebody did, yes. I didn't --
2 Q All right.
3 A -- specifically.
4 Q And the Dassey --
5 A One of the counties --
6 COURT REPORTER: Wait.
7 A -- paid for it.
8 COURT REPORTER: Wait.
9 Q (By Attorney Geraghty) Okay.
10 ATTORNEY GERAGHTY: Sorry.
11 Q (By Attorney Geraghty) The Dasseys didn't pay
12 for that room, did they?
13 A No.
14 Q Um, and you -- you monitored the -- the
15 whereabouts of Brendan and his mother throughout
16 the night; didn't you?
17 A I did not.
18 Q But somebody did?
19 A That we had somebody there for safe -- excuse me --
20 security purposes. We weren't monitoring them. We
21 were -- for security, because we were concerned.
22 Q All right. So you had a -- a squad car or police
23 car parked out near that resort; is that correct?
24 A Um, I did not make those arrangements. I believe
25 that I -- I -- again, I don't know if it was Agent

1 Fassbender or who, but I know there were some
2 arrangements made to have some extra patrol in the
3 area.

4 Q All right. And part of that, um -- part of the
5 reason for patrolling there was to see that they
6 didn't leave?

7 A No.

8 Q No.

9 ATTORNEY GERAGHTY: May I have just a
10 moment, Judge? I'm sorry. Just --

11 THE COURT: Sure.

12 Q (By Attorney Geraghty) Now, Agent Wiegert, on
13 the -- the 28th of March, 2006, there was a -- a
14 new development in the case with respect to the
15 physical evidence; is that correct?

16 A I don't know.

17 Q Okay. I'll -- I'll ask you to look at Exhibit
18 91?

19 THE COURT: That's in, I think, volume two.

20 THE WITNESS: Okay.

21 ATTORNEY FALLON: Did you say 91, Counsel?

22 ATTORNEY GERAGHTY: Yes.

23 ATTORNEY FALLON: Thank you.

24 THE WITNESS: Yes.

25 Q (By Attorney Geraghty) All right. Um, will you

1 take a look at -- at Exhibit 91, which is a
2 Calumet County Sheriff's Department report dated
3 2/28, 2006? Um, you are the reporting officer
4 and it has to do with laboratory findings on
5 charred cranial pieces.

6 A Yes.

7 Q All right. Do you remember receiving that report
8 on -- or, I'm sorry -- actually writing that
9 report on 2/28, 2006?

10 A Specifically remember that? No. But, I mean, it's
11 here. I -- I would --

12 Q Okay.

13 A -- believe that was done.

14 Q And, um, that was when you learned -- I'm --
15 on -- on February 28, 2006, that there was
16 evidence that Teresa Halbach had been shot; is
17 that correct?

18 A No. Um, we had evidence that there was a defect.
19 Um, and I can read it to you if you'd like.

20 Q You can read it, sure.

21 A Sure.

22 "Item EJ had one piece of charred skull
23 that was labeled suspected entrance" --

24 COURT REPORTER: I'm sorry. Please slow
25 down.

1 THE WITNESS: Sure. I'm sorry.

2 -- "that was labeled suspected entrance
3 defect. Elemental analysis was performed on the
4 specif -- suspected entrance defect and other
5 areas of the charred bone. Traces of lead were
6 detected on one of them -- on one area of the
7 exterior surface of the suspected entrance defect.
8 The source of the lead metal would not -- could
9 not" --

10 COURT REPORTER: Slow down.

11 THE WITNESS: "The source of the lead
12 metal could not be determined."

13 Q (By Attorney Geraghty) All right. But that --
14 that gave you reason to suspect that she had
15 been --

16 A Yes.

17 Q -- shot?

18 A Yes.

19 Q Okay.

20 A That's correct.

21 Q Oh, I'm sorry, I didn't phrase that question
22 quite correctly. Um, and this was, um, new and
23 important information; is that right?

24 A That's correct.

25 Q And -- and it was important because not only was

1 she -- was -- was there information indicating
2 that Ms. Halbach might have been shot, but that
3 she was shot in the head? That was important
4 too?

5 A Yes.

6 Q Okay. You, on March 1, decided to re-interview,
7 re-interrogate -- and we'll get into that in a
8 moment -- uh, Brendan Dassey; is that correct?

9 A Yes.

10 Q You -- you picked Brendan Dassey up at school?

11 A Yes.

12 Q And before picking Brendan Dassey up at school,
13 you called his mother; is that right?

14 A We did, yes.

15 Q You told his mother that, um, you were going to
16 pick him up; is that right?

17 A Yes.

18 Q And take her -- take Brendan to -- to be
19 interviewed or interrogated again; is that right?

20 A We told her that we would like to take him to
21 Manitowoc Sheriff's Department to re-interview him.

22 Q And did she give you that permission?

23 A She did.

24 Q During that conversation with Brendan's mother on
25 March 1, 2006, did you ask his mother to come to

1 the police station as soon as possible so that
2 she could be present during the interview or
3 interrogation of Brendan Dassey?

4 A I don't remember the specifics of the conversation.
5 Again, we asked permission to take him there. She
6 granted that permission. And, eventually, she met us
7 at the sheriff's department.

8 Q Well, she didn't meet you at the sheriff's
9 department until quite late in the day; right?

10 A That's correct. She was here on other business and
11 came over to the -- to the courthouse. Excuse me, to
12 the sheriff's department. She was at the courthouse
13 for other business.

14 Q What time did you pick up Brendan at school?

15 A I couldn't answer that without seeing a transcript
16 or...

17 Q Um, I'll -- I'll ask you to look at Exhibit 209?

18 A Do you know what binder number?

19 Q Um --

20 ATTORNEY TEPFER: Binder four.

21 Q (By Attorney Geraghty) Want me to --

22 A Two-o-nine?

23 Q Yes.

24 A Yeah. I should have it here in a second. Yes.

25 Q All right. Um, I believe you're now looking at

1 Exhibit No. 209, which is a police report
2 apparently authored by you. Do you recognize
3 that?

4 A I do.

5 Q Is that your report?

6 A Yes.

7 Q All right. Um, does it indicate that you
8 contacted Barb Janda at approximately 9:50 a.m.
9 on March 1, 2006?

10 A Yes.

11 Q And does it also indicate that you arrived at the
12 Mishicot High School at approximately 10:00 a.m.
13 on March 1, 2006?

14 A Yes.

15 Q And that at 10:05 Brendan came to the area in
16 which you were located, and you then took Brendan
17 to, um, the Manitowoc County Sheriff's
18 Department?

19 A Yes.

20 Q Okay. Now, you're looking at that report. Um,
21 does it say anywhere in that report that you, um,
22 offered or even discussed with -- with Barb Janda
23 the possibility that Barb could go with Brendan
24 to the police department?

25 A In this report, no.

1 Q And do you recall telling Barb that, in fact, she
2 could do that?

3 A No. As I indicated earlier, I recall asking her
4 permission to take Brendan to the sheriff's
5 department.

6 Q But not to -- you didn't tell her she could come
7 with you?

8 A No. And I didn't tell her she couldn't either.

9 Q Right. Certainly didn't invite her to come
10 along, did you?

11 A I don't recall if we did or we didn't. I don't know.

12 Q Right. And, again, um, that was because you
13 would -- you would prefer to speak to Brendan
14 alone; isn't that right?

15 A That's true.

16 Q Now, in the car on the way to the Manitowoc
17 County Sheriff's Office, you Mirandized Brendan;
18 is that right?

19 A Yes.

20 Q And I'd like to play you, uh, on page 13, clip
21 three. That's Exhibit 315.

22 ATTORNEY FALLON: Your Honor, we have a
23 tape, we have the transcript, um, as already
24 identified Exhibit 209. Can we just ask the
25 question about the point in issue? I mean, let's

1 move this along.

2 THE COURT: Any reason, Mr. Geraghty, we
3 couldn't do it that way?

4 ATTORNEY GERAGHTY: Absolutely not. No
5 reason. I'll do it.

6 Q (By Attorney Geraghty) Um, so -- I'm sorry. If
7 you look at, um, Exhibit 209 -- I'm sorry to get
8 you back to another exhibit.

9 A Um, I think that's where I'm at.

10 Q Okay.

11 A Two-o-nine.

12 Q All right. The second page of that exhibit,
13 which is your -- your page number 526?

14 A Yes.

15 Q Okay. Um, and I'm just going to read you what
16 you -- could -- could -- why don't you go ahead
17 and read what you told Brendan. Starting with
18 when it says, "Wiegert" two-thirds of the way
19 down on the page?

20 A Sure.

21 "Brendan, I'm just going to -- going
22 to -- to read you this form. It's your **Miranda**
23 rights. And then we'll talk about that a little
24 bit. Okay?

25 The law requires you to advise you have

1 the following rights:

2 You have the right to remain silent.
3 Anything you say can and will be used against you
4 in court.

5 You have the right to consult with a
6 lawyer and have him present with you while you're
7 being questioned.

8 If you cannot afford to hire an
9 attorney, one will be appointed to represent you
10 before any questioning.

11 You have the right to stop answering
12 questions at any time."

13 Q Go ahead and why don't you read the next -- why
14 don't you read all the way through?

15 A "Now you got to speak up so this thing picks up your
16 voice, okay? I just got two questions to ask you
17 from there. Do you know and understand each of these
18 rights, your rights, which I have explained?"

19 Brendan's comment is:

20 "Yeah."

21 I then, again, ask:

22 "Understanding these rights, do you want
23 to talk to us?"

24 Brendan's comment, again, is:

25 "Yeah."

1 Q Okay. Turn to the next page.

2 A Okay.

3 Q And just read what you said. I think that's the
4 final remark that you make there.

5 A "Okay. I'm going to have -- I'm going to have -- I'm
6 going to sign here. And I need you to sign by the
7 "x."

8 Q Okay. And those were the warnings that, um --
9 that you gave him in the car on the way to the
10 Manitowoc County Sheriff's Department on March 1,
11 2006; is that right?

12 A Yes.

13 Q Okay. And, again, you gave him those warnings
14 because you suspected that he was involved in the
15 mutilation of Teresa Halbach's corpse and her
16 murder; isn't that correct?

17 A No.

18 Q No. You did not suspect that he was involved?

19 A Did I suspect at that time that he was involved in
20 the murder? No.

21 ATTORNEY FALLON: Your Honor, I -- I want
22 to -- I just -- it's not an objection, but for
23 appellate record purposes, a point of clarification.

24 Uh, the Court would examine, and Counsel
25 can examine, the ex -- the exhibit again, the

1 reference point that, um, they talked about, that
2 is actually the second reading of **Miranda**.

3 THE COURT: Are you -- are you referring
4 here to Exhibit 209?

5 ATTORNEY FALLON: Yes.

6 THE COURT: And you're referring to page
7 526 on 209?

8 ATTORNEY FALLON: Uh, if the Court would
9 back up to page 525, he was advised once on the ride
10 there, and the portion that Counsel just read is
11 upon arrival in the video room to memorialize what
12 occurred in the car. So just so that the record's
13 clear and there's no confusion.

14 THE COURT: I -- it -- it -- I
15 understand --

16 ATTORNEY FALLON: First of all, it's all
17 irrelevant. But just so that we're clear.

18 THE COURT: Page 525 says, at paragraph --
19 "At approximately 10:10 a.m., I did read Brendan his
20 Mirana -- **Miranda** rights from the warm -- warning
21 and waiver of rights form which will be included in
22 this report."

23 Then, if we go to page 526, uh, the
24 third paragraph on that page notes that, quote,
25 at approximately 10:43 a.m. we did arrive at the

1 Manitowoc County Sheriff's Department."

2 And it's after that, that Mr. Wiegert
3 said what he read.

4 ATTORNEY FALLON: Right.

5 ATTORNEY GERAGHTY: Well, Judge, um, just
6 to clarify, I believe that both of these -- I'm not
7 reading this correctly, I'm happy to be corrected.
8 But, um, the -- the warnings that we're referring to
9 took place in the car. Um --

10 ATTORNEY FALLON: Why don't you ask him?
11 You can ask the witness.

12 ATTORNEY GERAGHTY: Hold on.

13 THE COURT: Why don't we just ask the
14 witness?

15 Q (By Attorney Geraghty) All right. Did you --
16 did you provide Mr. -- Mr. Dassey with warnings
17 in the car on the way over to the Manitowoc
18 County Sheriff's Office?

19 A I did, yes.

20 Q All right. And, um, did -- did you read those
21 warnings from your Manitowoc County Sheriff's
22 Department **Miranda** card?

23 A No.

24 Q Let me just -- let me just clarify this. Um, in
25 what form, or from what source, did you -- did

1 you read Mr. Dassey his rights as you were
2 traveling from the Two -- from the resort -- I'm
3 sorry -- from the Mishicot High School to the
4 Manitowoc County Sheriff's Department?

5 A I believe they were read from the Calumet County
6 warning waiver of rights form. Um, I -- I -- I can't
7 be a hundred percent in certain but that's my
8 recollection of it.

9 Q Okay. And then when you -- your testimony is
10 that when you arrived at the Manitowoc County
11 Sheriff's Department, you read him his rights
12 again; is that right?

13 A No, I didn't say that.

14 Q Okay. The portion of the -- the rights or the
15 rights that I read to you from page two of
16 Exhibit 209, where were you when you read that
17 form?

18 A This form was read in the vehicle on the way to
19 Manitowoc County Sheriff's Department. And when we
20 arrived there, um, I reminded him of his **Miranda**
21 warnings --

22 Q Okay. That's --

23 A (Unintelligible)

24 Q -- what I -- that's what I thought.

25 A Okay.

1 Q And so you did not re-read the rights to Brendan
2 after you arrived at the Manitowoc County
3 Sheriff's Department; is that correct?
4 A No, I reminded him of his rights.
5 Q You just reminded him?
6 A Yes.
7 Q Okay. Now, this was the, um -- the -- the
8 advisement of rights in -- in the auto -- in the
9 car on the way over to the Manitowoc County
10 Sheriff's Department was a second time during a
11 period of two days that you had read Brendan
12 Dassey his **Miranda** rights; is that right?
13 A He was read them on the 27th and on this date, which
14 would have been the -- March 1.
15 Q Right. And I take it that, um -- that you read
16 him his rights on the 1st of March again just to
17 be on the safe side?
18 A Yes. And --
19 Q Were you advised by Mr. Kratz to read Brendan his
20 rights in the car on the way over to the
21 Manitowoc County Sheriff's Department?
22 A No, I don't believe he had advised us of that.
23 Q All right. Were you advised by Mr. Kratz to
24 re-Mirandize Brendan on March 1, 2006?
25 A I -- I can't answer that. I don't know that -- if he

1 ever advised us or not.

2 Q Okay. Can you tell us why you thought it was
3 necessary to re-Mirandize Brendan on March 1,
4 2006?

5 A If you're asking for my opinion, um, my opinion is
6 that in my way of thinking at -- at this point in the
7 case, this was a huge case, um, with the media,
8 with -- it was a frenzy here, obviously. And it was
9 a large case, and I wanted to make sure it was done
10 correctly. I wanted to make sure there were no
11 mistakes done in it. And that's why we did what we
12 did.

13 Q All right. And it -- was it also because you did
14 suspect that he had been volved -- that Brendan
15 had been involved at least in the mutilation of a
16 corpse?

17 A Um, at that point we knew that he was at the fire.

18 Q And possibly involved in the mutilation of a
19 corpse?

20 A Yes.

21 Q Now, you said that you got to the Manitowoc
22 Sheriff's Department, and I take it that you then
23 took Brendan somewhere in that building; is that
24 right?

25 A Yes.

1 Q Can you tell us where you took him?

2 A To the second floor, I believe it is, in the

3 detective area of their department.

4 Q And you put him in a room; is that right?

5 A Yes.

6 Q At that time Barb Janda was not present; was she?

7 A No.

8 Q All right. And, also, at that time, if Brendan

9 had decided to leave, you wouldn't have let him

10 go, would you?

11 A Yes, we would have.

12 Q If he had asked you if he could go home, you

13 would have just let him go?

14 A At that point when we first got there, yes.

15 Q Did you tell him that?

16 A Um, I -- without reading the transcript I can't say

17 exactly what he was told. Or without seeing it on

18 tape, I don't know if that was said or not. But he

19 was Mirandized earlier.

20 Q Do you remember telling him at any time before

21 you began the interrogation or the interview on

22 March 1 that he was free to leave?

23 A Do I recall specifically? No, I don't.

24 Q The room that you put him in, um, was a -- I

25 think it was -- been referred to in prior

1 proceedings as a soft interrogation room?

2 A Yes.

3 Q That means that -- that there was a couch in the

4 room?

5 A There was a couch in the room.

6 Q Carpeting on the floor?

7 A Yes.

8 Q And there was also a, um -- a TV -- a capability

9 of recording what went on in the room; is that

10 right?

11 A The room was recorded both audio and video.

12 Q All right. And then there was also a capability

13 within the police department to look at a screen

14 outside the room and see what was going on; is

15 that right?

16 A Yes.

17 Q And while you were interrogating or interviewing

18 Brendan, um, it was possible to watch what was

19 going on in that room; isn't that right?

20 A Yes.

21 Q Um, you went in that room with Brendan; is that

22 correct?

23 A I was in the room with Brendan, yes.

24 Q And I -- by "you" I mean both you and Agent

25 Fassbender; is that correct?

1 A We were both -- all three of us were in the room,
2 yes.

3 Q And you began to question Brendan; is that right?

4 A We did.

5 Q Um, and it was at that point that you reminded
6 him that he had been advised of his **Miranda**
7 rights; is that correct?

8 A I believe you're correct.

9 Q By the way, before, um, conducting this interview
10 on March 1, you had had a fair amount of contact
11 with Brendan at that point; right?

12 A We had contact with him, sure.

13 Q I mean, you had the interview at Mishicot High
14 School?

15 A Yes.

16 Q And you also had the videotaped conversation with
17 him at the Two Rivers Police Department; is that
18 right?

19 A Yes.

20 Q You could not help but notice that Brendan was,
21 shall we say, slow?

22 A I would disagree with that.

23 Q You would disagree with that?

24 A Yeah.

25 Q Um, would it be fair to characterize him as a

1 vivacious, outgoing person?

2 A Outgoing? No.

3 Q Um, so he was reserved?

4 A Yes.

5 Q It was difficult to communicate with him?

6 A No. Not all the time. It depended. Not all the

7 time, no.

8 Q All right. You had -- you had -- you had no

9 problem at either of the interrogations that

10 preceded 3/1, 2006, having a conversation with

11 Brendan?

12 A Again, um, if you take the interviews as a whole,

13 there are parts where he was very communicative and

14 sometimes he wasn't. It just depended.

15 Q And there was nothing that struck you as unusual

16 about his affect or his demeanor?

17 A I don't know what you mean by "unusual." I mean, I

18 didn't know Brendan very well prior to that. Struck

19 me as -- if you want me to answer that?

20 Q Sure.

21 A It struck me as somebody who knew information and not

22 necessarily wanted to provide it.

23 Q I see. So his -- you took his seeming reticence

24 as being, um, an indication that he didn't want

25 to provide you with information?

1 A Unfortunately, you'll have to explain reticence to
2 me.

3 Q Okay. Reluctance.

4 A Thank you. Um, again, he wasn't always reluctant.
5 There are times he was, times he wasn't.

6 Q When he wrote -- he wrote out a written -- he
7 made a written statement on 2/27; is that
8 correct?

9 A Yes.

10 Q He had difficulty spelling words; isn't that
11 correct?

12 A I think some words he did, yes.

13 Q A great deal of difficulty; is that right?

14 A I know he had some difficulty spelling. I don't know
15 how many words he misspelled. I don't know that.
16 But he did have some difficulty, yes.

17 Q And you noticed that?

18 A Yes.

19 Q Now, you -- you then proceeded to interview
20 Brendan for almost three hours on March 1, 2006;
21 is that right?

22 A Um, I -- I would disagree with that. There was
23 breaks included in there where he was not talked to,
24 not interviewed, um, so it wouldn't -- would not have
25 been a total of three hours I don't think.

1 Q All right. But he was in that room for about
2 three hours?

3 A Yes.

4 Q Okay. Um, and I'm going to ask you about what
5 went on in that room in -- in -- in a moment.
6 But I just -- I want to take us through all these
7 events first, and then we'll go back and we'll
8 talk about the content of the interview. Is that
9 okay?

10 A Certainly.

11 Q Okay. Um, at the, um -- at the end of -- or
12 toward the end of that interview you made a
13 decision to -- that, um, Bren -- you were going
14 to have to arrest Brendan; is that correct?

15 A That's correct.

16 Q And, um, you informed him of that; is that right?

17 A Absolutely.

18 Q And, again, both you and Agent Fassbender were in
19 the room when that happened; is that correct?

20 A Yes.

21 Q Do you remember approximately what time, um, that
22 decision was made?

23 A Not without referring back to the transcript or the
24 aud -- videotape, no.

25 Q Would -- would that have been in the -- in the

1 early -- in the, say, early or mid-afternoon
2 of -- of March 1? Would that be fair?

3 A I think that's fair.

4 Q Okay. And had you learned at that time that --
5 that Brendan's mother was present in the -- in
6 the Manitowoc County Sheriff's Department?

7 A We were made aware of it at one point, yes.

8 Q And do you remember when you were made aware of
9 that?

10 A I don't.

11 Q Do you know whether you were made aware of the
12 fact that his mother was present during the time
13 that you were interviewing Brendan and that
14 interview was leading toward the eventual
15 charging of Brendan?

16 A I don't know when Barb got there.

17 Q Did anybody call you to tell you when Barb got
18 there?

19 A Um, call me? No. I believe at some point somebody
20 came to the door and we were informed that his mother
21 had arrived.

22 Q All right. And did you invite her in?

23 A No.

24 Q Why not?

25 A Um, I didn't see a need to have her in the room at

1 that point. It was at the end of the interview. I
2 believe it was almost done at that point when Barb
3 arrived.

4 Q Did you tell Brendan that his mother was there?

5 A Yes.

6 Q And that was right after the knock on the door?

7 A I don't know when, but I know Brendan was advised
8 that his mother was here.

9 Q Okay. Would it be fair to say that Brendan was
10 advised that his mother was there after he --
11 Brendan was informed that charges were going to
12 be lodged against him?

13 A It's possible. And it's probably about the time when
14 his mother arrived.

15 Q Now, there did come a time, um, during that --
16 and -- and, um, inter -- would it be -- at some
17 point during that, um -- that interview or
18 interrogation of -- of Brendan, it did become an
19 interrogation; is that correct?

20 A I would agree with that.

21 Q And there was a point at which Brendan was -- you
22 determined, even before charging him, that
23 Brendan, if he had asked to leave, he would not
24 have been allowed to leave the police station?

25 A At some point, yes.

1 Q And so would it be fair to say that what began as
2 a -- you characterize it as a -- as an
3 interview -- it -- it changed from an interview
4 to an interrogation?

5 A Um, it did change. Um, it's not your typical
6 interrogation, I think, that people are used to
7 seeing, but the -- the tone changed somewhat.

8 Q How did it change?

9 A Um, it changed from him being, in my opinion, a
10 witness, to him being more of a suspect and trying to
11 get more detail from him.

12 Q All right. And did you tell him when that change
13 occurred?

14 A No.

15 Q You didn't say, Brendan, up until this time we'd
16 been interviewing you, now you're a suspect?

17 A No.

18 Q And you didn't say, Brendan, um, we've been
19 interviewing you, now you're a suspect, and I'd
20 like to re-read you your **Miranda** rights?

21 A No.

22 Q Did you do that?

23 A Excuse me. No. He had already been read his **Miranda**
24 rights.

25 Q All right. But that's when he wasn't a suspect;

1 is that right?

2 A That's correct.

3 Q Okay. So when he became a suspect, you did not
4 read him his **Miranda** rights?

5 A Um --

6 ATTORNEY FALLON: Objection.

7 THE WITNESS: Let me --

8 ATTORNEY FALLON: Not legally required.
9 Not relevant. Not material.

10 THE COURT: Well, I'm going to overrule the
11 objection. The -- the witness can answer.

12 THE WITNESS: Thank you. Um, if I could
13 back up a little bit?

14 Q (By Attorney Dvorak) Sure.

15 A Um, I don't know that he was a suspect, initially,
16 when we talked to him. It was a interview as a
17 witness. And then he provides us more information,
18 which led us to believe that he knew more and was
19 more involved than he initially told us.

20 Q But what I'm saying is that when he became a
21 suspect, you did not Mirandize him at that point,
22 did you?

23 A As I stated, no. He was Mirandized earlier.

24 Q Okay. All right. Now, at the end of the --
25 after you had made a decision to charge him, you,

1 um, made arrangements for his mother to come into
2 the interrogation room; is that correct?

3 A She wished to speak with him. It was her request.

4 Q Okay. So how did you get that request?

5 A Um, one of us had left at one point. I -- I -- I
6 think it was me, actually, who talked to Barb out --
7 outside of the interview room. And she said she
8 would like -- she asked if she could see him.

9 Q And what did you say?

10 A Yes. We provided -- we -- we brought her into the
11 room.

12 ATTORNEY GERAGHTY: May I have a moment,
13 Judge? And I -- then I just have one series of
14 questions, and could we take a break after the --
15 that'd be okay?

16 THE COURT: Sure.

17 Q (By Attorney Geraghty) Officer -- I'm sorry.
18 Investigator, may I refer you to Exhibit 315,
19 page six, clip 37.

20 A I'll have to get another book.

21 Q No. We're going to show this -- show you the --

22 A (Unintelligible.)

23 Q -- video.

24 A Okay.

25 Q You can follow it on the transcript if you want.

1 I can give him -- give you a copy. Just -- just
2 to save time.

3 "You're going to juvie. That's where
4 you're going. To juvie jail. About 45 minutes
5 away."

6 (Inaudible.) "...but he says he -- he
7 admits to doing it?"

8 "What do you mean?"

9 "Like, if his story is different, like,
10 I never did nothing or something."

11 "Did you?"

12 (Inaudible.)

13 "Huh?"

14 "Not really."

15 "What do you mean, 'Not really.'?"

16 "They got to my head."

17 "Huh?"

18 (Inaudible).

19 "What do you mean by that? What do you
20 mean by that, Brendan?"

21 (Inaudible.)

22 Q (By Attorney Dvorak) So you -- did -- were you
23 able to read along?

24 A Yes.

25 Q Okay. Now, um, you -- you had mentioned before

1 that there was a -- a video screen outside the
2 room so that you could watch what was going on
3 during the, um -- whatever was going on in that
4 room; is that right?

5 A There is a video, yes.

6 Q All right. And before you came into the room as
7 you've seen on -- on the clip that we just showed
8 you, uh, Exhibit 315, clip 37, were you watching
9 that screen?

10 A Boy, I don't know. Um, I really -- I -- I could not
11 tell you if we were or not. We made several phone
12 calls during that time period because they were
13 getting a search warrant ready. Things like that.
14 I -- I don't know if we were or not.

15 Q Um, so it was just a -- sort of a coincidence
16 that you happened to walk in when Brendan was
17 telling his mother that "They got to my head."?

18 A I assume it was, yes.

19 Q Okay. So you didn't -- you weren't watching the
20 screen to see when -- what was going on between
21 Brendan and his mother?

22 A I'm not saying I wasn't. I don't recall if I was or
23 not. There was a lot of things going on at that
24 point.

25 ATTORNEY DVORAK: Judge, could we take a

1 break now?

2 THE COURT: Sure. Let's take -- are -- are
3 you done questioning this witness?

4 ATTORNEY GERAGHTY: No, Judge. I'd -- I
5 have a -- I have a -- I have some more. I could
6 keep going now, if you'd want, but I --

7 THE COURT: Why -- why don't you do --
8 how -- how much longer do you think you're --

9 ATTORNEY GERAGHTY: I think I have another
10 20 -- 20 minutes or so.

11 THE COURT: Okay.

12 ATTORNEY GERAGHTY: Twenty, 25 minutes.

13 THE COURT: Let's do it.

14 ATTORNEY GERAGHTY: All right. Could be
15 longer, all right? You -- you cut me off when
16 I'm --

17 THE COURT: I will.

18 ATTORNEY GERAGHTY: -- when you're tired of
19 me.

20 THE COURT: When I'm tired?

21 ATTORNEY GERAGHTY: When you're tired of
22 me, I said.

23 THE COURT: Oh.

24 ATTORNEY GERAGHTY: Okay..

25 THE COURT: Don't invite.

1 Q (By Attorney Geraghty) Um, now, as of 3/1,
2 Brendan was -- was charged, um, and he was
3 remanded to a juvenile facility; is that correct?
4 A Yes.
5 Q Um, you were still interested in the possibility
6 that Brendan might be a witness in the Avery
7 case; is this right?
8 A Yes.
9 Q And, um, the investigation proceeded, um, and one
10 of those -- one of the objectives of the
11 investigation, and the work that you were doing,
12 was to, um, see under what circumstances it might
13 be possible for Brendan to testify in the Avery
14 case?
15 A Not my job, no.
16 Q All right. Now, were you aware that Brendan was
17 appointed a -- an attorney to represent him on or
18 about March 8? And this -- this person's name
19 was a Mr. Kachinsky?
20 A I'm aware Mr. Kachinsky was appointed. The date I
21 don't know.
22 Q Okay. Um, after Mr. Kachinsky was appointed, did
23 you have any contact with him about, um -- in
24 connection with your investigation of this case?
25 A There was some e-mails -- or there was an e-mail, I

1 believe, I received.

2 Q Do you remember when that was?

3 A May 5, possibly.

4 Q Okay. Exhibit 338, binder five. Could you take

5 a look at that?

6 A Sure.

7 THE WITNESS: Thank you, Your Honor. I

8 have it.

9 Q (By Attorney Geraghty) Okay. Would you take a

10 moment, just read that? Or --

11 A I'm pretty familiar with it.

12 Q Okay. Is that the -- is that the first contact

13 that you had with Mr. Kachinsky, um, during the

14 course of, um, your investigation of the Teresa

15 Halbach murder?

16 A I believe so.

17 Q Prior to that time you had not spoken to

18 Mr. Kachinsky about the case?

19 A To the best of my recollection, no. I -- if there

20 was, I forgot about it. But...

21 Q And, um, this is an e-mail that, um -- that tells

22 you that, um, there's a Mr. O'Kelly involved in

23 the case; is that right?

24 A Yes.

25 Q Mr. Kratz is copied on this e-mail?

1 A Yes.

2 Q And this is a -- an offer from Mr. Kachinsky to
3 provide you with some information that might be
4 useful in the case; is that right?

5 A Yes.

6 Q And it authorizes you to speak directly to
7 Mr. O'Kelly about that evidence; is that right?

8 A That's correct.

9 Q It gives you his phone number? That is,
10 Mr. Kelly's phone number?

11 A This specific e-mail doesn't, but I believe there was
12 another one where they -- the phone number was there,
13 yes.

14 Q Okay. And it also gives you Mr. O'Kelly's e-mail
15 address; is that right?

16 A I believe so.

17 Q And so prior to May 5, you had not received any
18 information about the case from Len Kachinsky; is
19 that right?

20 A I did not.

21 Q Do you know whether anybody else working with
22 you, specifically Agent Fassbender, had received
23 any information from Mr. Kachinsky?

24 A I know Agent Fassbender had received e-mails, but the
25 dates of those I could not tell you.

1 Q So you don't know if those e-mails were received
2 before or after May 5?

3 A I do not, no.

4 Q Okay. Um, do you know whether Agent Dederling had
5 any contact with either Mr. Kachinsky or
6 Mr. O'Kelly around this period of time?

7 A I know I was made aware of some e-mails that
8 Detective Dederling was copied on. Now, the dates of
9 those, I don't know.

10 Q And how were you made aware of these e-mails?

11 A In conversations with Agent Fassbender.

12 Q Okay. Did you have any conversations with Agent
13 Dederling about those e-mails?

14 A Yes.

15 Q And do you recall when those conversations
16 occurred and what they were about?

17 A Well, the conversation was in preparation for
18 testifying. We were reviewing things so that's where
19 it came up.

20 Q So testifying in -- in this proceeding or --

21 A Yes, in this proceeding. Correct.

22 Q And was that because, um, the -- the subject of
23 your contacts with Kach -- Mr. Kachinsky and
24 Mr. O'Kelly, um, were a matter of -- you were
25 told they were a matter of -- of focus in this

1 hearing?

2 A Well, certainly.

3 Q And -- and you reviewed the relevant e-mails and

4 communications between Mr. Kachinsky,

5 Mr. O'Kelly, and yourself, um, Investigator

6 Fassbender, and Investigator Dederling; is that --

7 A No.

8 Q -- right?

9 A I inter -- excuse me. I reviewed the ones that were,

10 um, copied to me. I reviewed those. I did not

11 review the other ones --

12 Q Okay.

13 A -- specifically.

14 Q All right. So you -- you got this e-mail on --

15 on May 5, and does it also say that -- that

16 Mr. Kachinsky would prefer to stay unnamed in the

17 affidavit for search warrant if at all possible?

18 See that second to the last --

19 A I believe --

20 Q -- paragraph?

21 A -- it does, yes.

22 Q And pursuant to this e-mail, did you take any

23 steps?

24 A In regards to the content of this?

25 Q Correct.

1 A Um, I believe it was on May 8, myself and, I want to
2 say Detective Dederling -- Investigator Dederling --
3 went out to the Salvage Yard where we spoke to two of
4 the Averys on the property. They had given us
5 permission to search these two vehicles.

6 Q And did you find anything?

7 A No.

8 Q Now, did there -- was there a next -- was there
9 a -- a -- a time following this when you or your
10 investigation team had contact with Mr. O'Kelly
11 and Mr. Kachinsky?

12 A I know Agent Fassbender again had received some
13 e-mails from him.

14 Q By the way, going back to May 5, and what
15 followed, was Mr. Kratz aware that you went back
16 to the crime scene?

17 A Eventually he was. At what point he was aware of it,
18 I don't know.

19 Q Now, let me ask you to look at, um, Exhibit No.
20 65.

21 A Which binder would that be in, sir?

22 Q Binder number two.

23 A Yes.

24 Q All right. Have you seen that, um, e-mail
25 before?

1 A Yes.

2 Q Was that one of the e-mails that you took a
3 lack -- look at in preparation for this hearing?

4 A I've seen it, yes.

5 Q Now, did you become aware, um, on or about May 7
6 that Mr. Kachinsky and Mr. O'Kelly were planning
7 to take a -- a statement from -- from Brendan
8 Dassey?

9 A I know there were conversations that the district
10 attorney had had with Mr. O'Kin -- O'Chinski (sic),
11 excuse me, about speaking with Brendan. The specific
12 dates --

13 Q Tell me about how you knew that, um,
14 Mr. Kachinsky was having those conversations with
15 the district attorney?

16 A Well, I know the district attorney had informed me
17 that he had, um, in the context of plea agreements,
18 that there were conversations going on. That's as
19 much as I knew.

20 Q Do you know when you became aware of those
21 conversations?

22 A I do not.

23 Q Would it have been some time, um, after May 5,
24 2006, or around that period?

25 A It would have been around that period, but specific

1 date, I don't know.

2 Q And, again, um, were you aware that Mr. Kratz was
3 interested in securing the testimony of -- of
4 Mr. Dassey at Steven Avery's trial?

5 A Um, in the concept of plea agreements, I know there
6 were those conversations, yes.

7 Q And did you know that, um, as part of that
8 effort, um, Mr. O'Kelly was going to visit
9 Brendan Dassey at the Sheboygan County facility
10 to obtain a further confession from Brendan
11 Dassey?

12 ATTORNEY FALLON: Objection to the last
13 part. That he obtained further confession part.

14 THE COURT: Why don't you rephrase the
15 question.

16 ATTORNEY GERAGHTY: Okay.

17 Q (By Attorney Geraghty) Did you know that
18 Mr. O'Kelly was planning to visit Brendan at the
19 Sheboygan County Jail in order to obtain further
20 admissions from Brendan Dassey?

21 A No. What I knew is he was going to meet with him on
22 the 12th to try to, um -- my understanding of it was
23 to see if there was something or -- or way that he
24 could get him to talk with us for the plea agreement
25 type of thing because I know that the -- the district

1 attorney at that time wanted him to cooperate,
2 obviously, in the premise of the plea agreements.

3 I don't know what his specific actions
4 were going to be on the 12th. I have no idea.

5 Q So what you knew was that, um -- or what you had
6 heard that -- was that, um, Mr. O'Kelly was going
7 to visit Brendan to try to convince him to speak
8 to you? And by "you" I mean yourself and Agent
9 Fassbender. Is that correct?

10 A As a part of the plea agreement, I believe that that
11 was what they had talked about, yes.

12 Q And -- and who mentioned that -- who -- who --
13 who -- who mentioned the term "plea agreement"?
14 I mean, where did that come from?

15 A In discussions with, uh, Mr. Kratz that had come up.

16 Q And do you remember when those discussions were?

17 A I would assume around this time, but pacific (sic)
18 dates, no.

19 Q So is -- is it your testimony that Mr. Kratz was
20 aware that Mr. O'Kelly and/or Mr. Kachinsky would
21 be visiting Brendan at the Sheboygan facility to,
22 um, as -- as part of the plea process, to see
23 whether Mr. Dassey could be useful in the
24 prosecution against Mr. Avery?

25 ATTORNEY FALLON: Objection. Calls for

1 speculation on this witness' part as to what
2 Mr. Kratz was thinking.

3 Secondly, Exhibit 65 speaks for itself
4 insofar as -- as we've discussed ad nauseam in
5 this case. Several witnesses have been CC'd and
6 asked about this, including Mr. Kratz.

7 So it's cumulative in that respect. So
8 it's -- calls for speculation and cumulative.

9 ATTORNEY GERAGHTY: Judge, this goes
10 directly to our -- our breach of loyalty contention,
11 which is central to our case. And I think very
12 relevant here.

13 THE COURT: I don't know if it's very
14 relevant. It may be marginally so. I'll overrule
15 the objection. If the -- off the -- the witness can
16 answer.

17 THE WITNESS: Do I know what -- I
18 remember the question. Do I know what Mr. Kratz
19 knew at that time? I don't know what he knew.

20 ATTORNEY GERAGHTY: Why -- could --
21 could we read that question? Judge, would this
22 be a good time to take a break? Could we take a
23 break at this point? Sorry. You want to keep
24 going. We'll con --

25 THE COURT: Yeah, let's just --

1 ATTORNEY GERAGHTY: All right. Okay.

2 THE COURT: I think the question was: Was
3 Mr. -- did you know if Mr. Kratz was aware that this
4 meeting was going to take place?

5 ATTORNEY GERAGHTY: Right.

6 THE WITNESS: Prior to the meeting, I
7 don't know if he knew or not. If that's the
8 question.

9 Q (By Attorney Geraghty) But you knew that the
10 meeting was part of a -- an ongoing plea
11 negotiation process?

12 A I knew that they were continually talking to their
13 client about a -- plea negotiations, yes.

14 Q Um, and were you also aware that, um, your
15 Department had been asked to provide various
16 items of evidence to Mr. O'Kelly for purposes of
17 his May 12 conversation with Brendan Dassey?

18 A I was not on that e-mail. Um, I -- made aware of it
19 after, but at the time, no. I did not receive that
20 e-mail.

21 Q Okay. And you weren't involved in -- in
22 providing any of, um, the information which is
23 listed on Exhibit 65 to Mr. O'Kelly?

24 A I was not. No.

25 Q And before Mr. O'Kelly went to interview

1 Mr. Dassey on May 12, did you have any
2 conversations with Mr. O'Kelly?
3 A Not to my knowledge nor -- excuse me -- my
4 recollection, no.
5 Q Do you know whether Special Agent Fassbender had
6 any such conversations?
7 A Um, I know that they had met. Something about
8 getting these items, I believe. What Mr. Fassbender
9 did, I -- I think he could testify to that better
10 than I could. I don't --
11 Q Okay.
12 A -- know for sure.
13 Q And -- and you weren't present during, um, any
14 conversations that Agent Fassbender had with
15 Mr. O'Kelly about physical evidence that he would
16 use in his conversation with Brendan Dassey on
17 May 12?
18 A No, I was not.
19 Q Um, now, were you aware that -- that Mr. O'Kelly
20 did go to visit Brendan Dassey on May 12 at the
21 Sheboygan County Jail?
22 A I'm aware of it, yes.
23 Q How did you become aware of it?
24 A I don't even -- I -- I don't know. I couldn't tell
25 you how I became aware of it. Am I aware of it now?

1 Yes. When I became aware of it? I assume it was
2 probably on the 13th when I became aware of it. But
3 that would be an assumption of mine.

4 Q Could you take a look at Exhibit 363?

5 A Three sixty-three.

6 Q Binder five. When you get there, why don't you
7 take a minute and -- I've got a copy. I got a
8 separate copy.

9 A Yes, I have it.

10 Q Would you take a look at that, um, exhibit,
11 please?

12 A Okay.

13 Q Does that refresh your recollection at all about
14 when you might have become aware of the May 12
15 interview of Brendan Dassey by Mr. O'Kelly?

16 I recognize that this is not your
17 report. I'm just asking you if it refreshes your
18 recollection.

19 A I assume it was on the 12th from reading this.

20 Q Yeah. And then if you -- if you read -- also, if
21 you go to, um, the fourth page of this exhibit,
22 um, there's some further information about, um,
23 the interview that occurred on May 12?

24 A I have three pages here and then I have this
25 document.

1 Q Let me give you my copy.

2 THE COURT: For the record, the exhibit
3 that was marked has only three pages.

4 ATTORNEY GERAGHTY: All right. Sorry.
5 I had a different version. I thought it had,
6 uh -- Let me remar -- let me mark an additional
7 exhibit.

8 ATTORNEY FALLON: I think the remainder of
9 this has already been marked as an exhibit.

10 ATTORNEY GERAGHTY: All right.

11 ATTORNEY FALLON: This e-mail has
12 already been marked. And the exact number of it
13 escapes me at the moment. But it's an e-mail
14 dated May 12 from Mr. Kachinsky. Copied a number
15 of individuals. If somebody's good enough to
16 recall it, the number, we can go from there.

17 ATTORNEY GERAGHTY: Let me -- just to move
18 on, and we'll get the exhibit number in a minute.
19 May I, Judge?

20 THE COURT: Go ahead.

21 Q (By Attorney Geraghty) All right. Show you an
22 e-mail dated Friday, May 12, 2006, from Len
23 Kachinsky to you, to Mr. O'Kelly, Mr. Kratz, um,
24 and I'll show that to you now?

25 A Sure.

1 Q Just ask you to take a look at that.

2 ATTORNEY GERAGHTY: And that, for the
3 record, is Exhibit 356.

4 ATTORNEY FALLON: Thank you.

5 THE WITNESS: Yes, I -- I have it.

6 Q (By Attorney Geraghty) All right. And you can
7 keep it.

8 A Okay.

9 Q Um, after reading those -- those documents,
10 are -- is -- is your memory refreshed about
11 the -- what you remember about the circumstances
12 of the interview of Brendan Dassey on May 12,
13 2006?

14 A Yes.

15 Q Okay. Do you recall that Mr. O'Kelly did conduct
16 an interview of Brendan Dassey on May 12, 2006,
17 at the Sheboygan County Jail?

18 A Yes.

19 Q And do you also recall that, um, Mr. Kachinsky
20 was not present during that interview?

21 ATTORNEY FALLON: Objection. This calls
22 for, one, speculation. Two, hearsay.

23 ATTORNEY GERAGHTY: I'll withdraw the
24 question. I agree.

25 Q (By Attorney Geraghty) Do -- do you know whether

1 Mr. Kachinsky was present during the interview
2 that Mr. O'Kelly conducted of Brendan Dassey on
3 May 12?

4 ATTORNEY FALLON: Same objection. If he
5 wasn't there, then he had to have heard it from
6 somebody else, which is hearsay knowledge.

7 THE COURT: Sustained.

8 Q (By Attorney Geraghty) Okay. Can you tell me,
9 Investigator Wiegert, what, um, you remember
10 about your involvement, if any, in the interview
11 of May 12, 2006? That is, the interview that
12 Mr. O'Kelly conducted of Brendan Dassey?

13 A I had no involvement in that interview.

14 Q Okay.

15 A None.

16 Q Were -- were you aware of it when it -- before it
17 happened?

18 A Not to my recollection. I think we were made aware
19 of it after the way it looks --

20 Q Okay.

21 A -- from the e-mail.

22 Q All right. So when did you first become aware of
23 that interview?

24 A Let me just read this real --

25 Q Sure.

1 A -- quick, if I --
2 Q Sure.
3 A -- may?
4 Q Sure.
5 A Okay. In this e-mail, it doesn't say anything about
6 the 12th interview from what I see in it. So I don't
7 know when I became aware of it. I know there was
8 discussions again, but I don't know that I knew there
9 was a specific interview being done.
10 Q But did you learn at some point on the 12th that
11 you were going to re-interview or re-interrogate
12 Brendan Dassey on the 13th?
13 A Yes.
14 Q And who told you that?
15 A I believe me and Agent Fassbender had phone contact.
16 Um, as you note on the -- or as I will note on the
17 e-mail, it -- it was sent at 9:19 p.m. on the 12th,
18 and I would not have been in the office at that time
19 and don't have capabilities of retrieving e-mail. So
20 I'm assuming Tom and I -- Agent Fassbender and I had
21 phone conversations about that.
22 Q Do you know with whom you had those phone
23 conversations?
24 A I just -- as I indicated, I think -- I would assume
25 that Agent Fassbender and I had phone conversations.

1 Q Do you know how Agent Fassbender learned of the
2 interview on the 12th of May?

3 ATTORNEY FALLON: Ob -- objection. The
4 e-mail speaks for itself. Secondly, it calls for
5 hearsay. And, third, it's irrelevant.

6 THE COURT: Sustained.

7 Q (By Attorney Geraghty) Now, when you learned
8 of -- you did learn that you were going to be
9 tasked to conduct an a -- another interview or
10 interrogation of Brendan Dassey on the 13th;
11 isn't that right?

12 A Yes.

13 Q At the Sheboygan County Jail?

14 A That's correct.

15 Q And did you go to the Sheboygan County Jail on
16 the 13th to conduct that interview?

17 A I did.

18 Q And that was in the early morning of -- of the
19 13th of May, 2006?

20 A In the morning hours, yes.

21 Q All right. And when you went there, um, what was
22 your understanding of the purpose of the
23 interview?

24 A My understanding was that Brendan wished to speak
25 with us.

1 Q And who told you that?

2 A I assume I learned it from Agent Fassbender. I don't

3 know.

4 Q Did -- were you told what Brendan wanted to speak

5 to you about?

6 A My understanding as part of a -- plea negotiations

7 that he wanted to talk to us about the case.

8 Q Again, I don't mean to sort of be repetitive,

9 but, I mean, who -- who mentioned the word plea

10 negotiations?

11 A Well, I was aware that -- that there were plea

12 negotiations going on all along. I was aware of

13 that. And -- pard me -- during my conversations

14 sometime with Mr. Kratz, I was aware that there were

15 plea negotiations going on. And I knew that involved

16 Brendan.

17 Q And did you think that this meeting with Brendan

18 on the 13th was part of that process?

19 A Yes.

20 Q Now, when you got to -- and -- and before you

21 went to that interview, did you know that Mr.

22 Kachinsky would not be present?

23 A Yes.

24 Q And you knew at that time that Mr. Kachinsky was

25 Brendan's lawyer; is this right?

1 A That's correct.

2 Q Um, did it concern you that Mr. Kachinsky would
3 not be present?

4 A Um, did it concern me? Um, I don't know how to
5 answer that. Was there some concern that he wasn't
6 going to be there? Yes. However, he was giving us
7 permission to do that.

8 Q Did you speak to him to get permission to do
9 that?

10 A Did I speak to him directly? No. I believe it was
11 in a -- in the e-mail if I recall.

12 Q Okay. Um, were there any, um, ground rules or
13 procedures that were put in place by anyone about
14 how the interview of Brendan Dassey should be
15 conducted on the 13th of May?

16 A Just what's in the e-mail.

17 Q Okay. Nothing more?

18 A Not to my recollection, no.

19 Q When you got to the Sheboygan County Jail on
20 May 13, 2006, was Mr. O'Kelly there?

21 A Yes.

22 Q And prior to that time, had you spoken to
23 Mr. O'Kelly? And when I say prior to that time,
24 I mean either in the evening hours of May 12 or
25 the early morning of May 13?

1 A Not that I recall. First time I recall speaking was
2 when we arrived at Sheboygan from my recollection.

3 Q Okay. Did Mr. O'Kelly ever share with you any
4 information that he received from Brendan, um,
5 during his interview of Brendan, on May 12?

6 A I don't believe so, no.

7 Q Did he ask you whether he could share information
8 about that interview with you?

9 A I think the offer was there, but I don't believe he
10 specifically asked us.

11 Q All right. And when he offered to share
12 information, what did you say?

13 A We didn't take any information from him. We had no
14 knowledge of what that interview on the 12th, um,
15 included.

16 Q Was there a reason why you didn't want
17 information from him?

18 A Well, at that point I believe it would be
19 attorney/client privilege. I don't think we would
20 be, um, privy to that information.

21 Q All right. But did Mr. O'Kelly offer you
22 information?

23 A I know he offered to provide us with things. That I
24 can tell you.

25 Q Okay.

1 A We did not accept anything from him.

2 Q Okay. And then did -- did -- did Mr. O'Kelly say

3 that he -- he wished to monitor the

4 interrogation?

5 A He did.

6 Q And did you make arrangements for him to monitor

7 the interrogation?

8 A Yes.

9 Q And did he monitor the interrogation through --

10 with a -- through a -- a video screen outside of

11 the interrogation room?

12 A That's correct, yes.

13 Q Uh, what was your understanding about what, if

14 anything, Mr. O'Kelly's role was there on -- on

15 May 13?

16 A I assume he was acting as an agent of Mr. Kachinsky

17 at that time.

18 Q All right. And -- and how was he to, if you

19 know, um, discharge his duty as an agent for

20 Mr. Kachinsky?

21 A I would have no idea.

22 Q Did, um -- did you ever tell Mr. Kachinsky that

23 if need be that he could interrupt the

24 interrogation or the interview and stop it?

25 A Did I tell Mr. Kachinsky that?

1 Q I'm sorry. Mr. O'Kelly?

2 A No, not specifically.

3 Q Did that subject ever come up?

4 A Not to my recollection, no.

5 Q Did Mr. O'Kelly ever, in fact, interrupt that

6 interview?

7 A There was a point where somebody handed in a picture

8 in the room. Um, my recollection of it is I don't

9 know who it was. After reviewing the tape, I'm

10 assuming it was him. It was a ov -- it was a overall

11 photo.

12 Q So he provided some -- some piece of physical

13 evidence that you could use during the

14 questioning of Mr. Dassey?

15 A I wouldn't say physical evidence, no. It was a

16 photo -- an overall photo of the salvage yard, I

17 believe. And if you watch the tape, I looked at it,

18 put it down. That was it. Never used. Nothing.

19 Q Did -- did there come a time early in that

20 interrogation, um, of Mr. Dassey that -- that you

21 and Investigator -- Special -- I'm sorry --

22 Special Agent Fassbender became frustrated that

23 you were not obtaining the information that you

24 thought you were going to obtain?

25 A Any time you do interviews or interrogations, um,

1 they're frustrating, um, 'cause people don't want to
2 tell you things.

3 Q Right.

4 A It's against self-preservation, as you know, for them
5 to admit things that they've done.

6 Q Right.

7 A And, of course, that was the case here.

8 Q Okay. And at some point did you step out of the
9 interrogation room because you were not getting
10 the information you wanted?

11 A No. We stepped out to take a break like we always
12 do. Had nothing to do with getting information or
13 not getting information.

14 Q Okay. Um, didn't you express some frustration
15 with -- with Brendan before you stepped out?

16 A Could have. I -- I don't know.

17 Q Um, when you stepped out, did you have a
18 conversation with Mr. O'Kelly?

19 A There was a very short conversation, yes.

20 Q Did he make a suggestion about, um, perhaps you
21 changing positions with Special Agent Fassbender?

22 A Yes. He indicated that Brendan liked me more than he
23 liked Agent Fassbender.

24 Q And so what -- what else did he say?

25 A That was it to my recollection.

1 Q And then did you take any action in response to
2 Mr. O'Kelly's observation?

3 A When we re-entered the interview room, we switched
4 places. I was closer to Brendan at that time.

5 Q Okay. Did that seem to work better?

6 A I don't think it had any effect.

7 Q Okay. Now, um, I'd like to show you couple of
8 clips of that 5/13 interview. And, by the way, I
9 neglected to say before we started that we want
10 to confine your testimony to your involvement in
11 the investigation just through the 13th of May,
12 okay?

13 A I understand.

14 Q Okay.

15 ATTORNEY GERAGHTY: Um, now, if I could
16 get, um, clip ten on page 22 of Exhibit 315?

17 ATTORNEY FALLON: Your Honor, just so
18 we're clear, is there any reason to confine this
19 witness' testimony to the events of May 13? Is
20 there somehow some privileged matter here that we're
21 not aware of?

22 ATTORNEY GERAGHTY: Judge --

23 THE COURT: I have no idea.

24 ATTORNEY GERAGHTY: -- I -- it was just --
25 just to cover the -- the -- the issues that we've

1 discussed before. Nothing more.

2 THE COURT: What page?

3 ATTORNEY GERAGHTY: I'm sorry. Page 22 of
4 Exhibit 315.

5 Q (By Attorney Geraghty) Will you take a look at
6 this, please?

7 (Unintelligible.)

8 ATTORNEY GERAGHTY: Wait. Could you
9 start -- I'm sorry. We -- could you start again?
10 Just hold on a second. I just want to make sure.

11 THE WITNESS: I mean, I can watch it.
12 That's fine.

13 ATTORNEY GERAGHTY: Yeah. I -- I just
14 wanted to get Josh out of the -- let's start again.
15 We're at clip ten. I'm sorry.

16 (Unintelligible.) "...tell your mom
17 about this."

18 (Inaudible.)

19 (Unintelligible.) "...think you should
20 call her and tell her?"

21 "Yeah."

22 (Unintelligible.) "Do that probably
23 tonight."

24 (Unintelligible.)

25 "Don't you think she has the right to

1 know?"

2 "Yeah."

3 "Okay. I think she'd like to hear it

4 coming from you rather than from me."

5 "And if she has any questions..."

6 (unintelligible) "...seeing her tomorrow."

7 "She's coming here tomorrow? Then maybe

8 it would be a good idea to call her and tell her

9 before she gets here. That's what I would do.

10 Otherwise, she's going to be really mad here..."

11 (unintelligible) "...get her on the phone..."

12 (unintelligible) "...suggestion."

13 ATTORNEY GERAGHTY: Okay. Could you

14 play, um -- Alex, could you play clip 17 on page

15 23?

16 (Unintelligible.) "...mentioned talking

17 to your mom about this..." (unintelligible)

18 "... okay? If you're truly sorry to the

19 Halbachs..." (unintelligible) "...you tell your

20 mother the truth about this, okay? Can you do

21 that?"

22 "Yeah."

23 "When are you going to do that?"

24 "Tonight."

25 "Probably be a good idea before we tell

1 her. That'd be the right thing to do. Your mom
2 deserves to know. Okay?"

3 (Unintelligible.)

4 Q (By Attorney Geraghty) Investigator Wiegert, do
5 you remember, um, telling or suggesting to
6 Brendan that -- that he call his mother about
7 what he had just told you?

8 A I do, yes.

9 Q All right. And at the time that you told her
10 to -- or you suggested to Brendan that he do
11 that, you knew that the calls from the jail to
12 non-lawyers or family members were recorded,
13 didn't you?

14 A Yes.

15 Q Um, and you knew that if Brendan, in fact, made a
16 call to his mother, as you had suggested, that,
17 um -- that the content of any conversation that
18 he had would not be protected by an
19 attorney/client privilege; is that right?

20 A That's true.

21 Q And it also would not be subject to, so far as
22 you knew, any claim of coercion or improper
23 tactics by the police?

24 A No.

25 Q No, what?

1 A No, I think that would have been fine.

2 Q Okay. And you wanted, um, Brendan to call his
3 mother and to repeat what he had told you to his
4 mother; is that right?

5 A Yes, for several different reasons.

6 Q One of those reasons was that you knew that if he
7 did that, um, the evidence flowing from that --
8 or that -- that conversation could be introduced
9 against him in court; is that right?

10 A No, it was not our thought at that time. Our thought
11 was we were dealing with Barb constantly. Barb would
12 go back and forth. She would be on our side. She'd
13 be with us to help us solve this crime. And then she
14 would be mad at us. Things like that.

15 Um, we wanted Barb's cooperation.

16 That's -- was the purpose of that.

17 Q Did you suggest to Brendan that, perhaps, if that
18 was your objective, that he might ask his mother
19 to come to the jail and -- and to speak to her
20 about that?

21 A Did I ask Brendan to do that?

22 Q Yeah.

23 A No.

24 Q I mean, you suggested that there was some --
25 basically, what you said here was that, um,

1 unless he called her that night or -- that --
2 that you would -- that you would tell her; isn't
3 that right?

4 A That's true, yes.

5 Q Okay.

6 A And I would have.

7 Q Okay. And you weren't willing to -- to give
8 Brendan the time to actually call his mother in
9 and have sit -- sit-down conversation with her
10 about this?

11 A Did I -- did I try to arrange that? No.

12 Q No, I didn't ask you whether you were -- tried to
13 arrange --

14 A Right.

15 Q -- it. But did you suggest to Brendan that maybe
16 the better route would be not to call his mother
17 but to ask his mother to come in and -- and talk
18 about it?

19 A No, I didn't suggest to him that.

20 ATTORNEY GERAGHTY: Judge, I have a --

21 Q (By Attorney Geraghty) I just want to ask you
22 other -- one other question. Um, was anybody on
23 the -- on the prosecution team, any -- anybody in
24 the district attorney's office, Mr. Kratz, or
25 anybody else, aware that you were going to ask

1 Brendan to call his mother about this?

2 A No.

3 Q This was your idea?

4 A Yes.

5 Q And Agent Fassbender's idea?

6 A I can speak to myself. It was my idea.

7 Q Okay.

8 ATTORNEY GERAGHTY: Judge, I have a --
9 just one more section of this examination to do,
10 having to do with the -- with the content of
11 the -- the March 1 statement, which, uh, I -- I'd
12 like to ask you for a break, um, and then
13 continue on.

14 THE COURT: We'll take a 15-minute break.

15 (Recess had at 10:47 a.m.)

16 (Reconvened at 11:05 a.m.)

17 THE COURT: Back on the record.

18 ATTORNEY GERAGHTY: May I proceed, Your
19 Honor?

20 THE COURT: You may.

21 ATTORNEY GERAGHTY: Thank you.

22 Q (By Attorney Geraghty) Agent Wiegert, going back
23 to the interrogation on March 1, um, one of
24 things that you told Brendan Dassey before you
25 began to question him was one of the **Miranda**

1 warnings, and that is, "Anything you say can and
2 will be used against you in court." Do you
3 remember telling him that?

4 A Yes.

5 Q And there's some debate about where you said it?
6 Whether it was in the car? In -- or at the
7 police station? We'll get to that later. But
8 you did say that to him; right?

9 A Yes.

10 Q Okay. Now, you are aware that, um -- also, that
11 one of the techniques that you referred to
12 earlier for interrogation, um, is minimization;
13 is that correct?

14 A Yes.

15 Q Um, and also promises to help the person that
16 you're interviewing; is that correct?

17 A Yes.

18 Q Now, it, um -- those two techniques tend to run
19 into conflict with the notion that anything you
20 can and -- you say can and will be used against
21 you in court. Isn't that -- there's some --
22 there's a -- there's a fine line there, isn't
23 there?

24 ATTORNEY FALLON: Objection as to the
25 theory and philosophy behind this. How is that

1 relevant to the interrogation as ef -- and its
2 effect on Mr. Dassey?

3 THE COURT: I'll take that as an objection
4 on grounds of --

5 ATTORNEY FALLON: Relevance and --

6 THE COURT: -- relevance.

7 ATTORNEY FALLON: -- materiality.

8 THE COURT: Sustained.

9 ATTORNEY GERAGHTY: All right.

10 Q (By Attorney Geraghty) I'd like to show you a --
11 a few clips from your 3/1, '06 interview with
12 Brendan Dassey.

13 ATTORNEY GERAGHTY: Um, Alex, could you
14 play clip 14 on page three.

15 THE WITNESS: What exhibit?

16 ATTORNEY GERAGHTY: This is Exhibit 315.

17 "I think Mark and I both feel that maybe
18 there's some -- some more that you could tell us,
19 um, that you may have held back for whatever
20 reasons, and I want to assure you that Mark and I
21 both are in your corner. We're on your side."

22 Q (By Attorney Geraghty) Did -- do you recall
23 Agent Fassbender saying that to Brendan Dassey
24 while you were present in that room?

25 A I certainly do.

1 ATTORNEY GERAGHTY: Um, could you play
2 clip 16, please?

3 THE COURT: What page is that on?

4 ATTORNEY GERAGHTY: This is on page
5 three, Exhibit 315.

6 "As Mark and I looked at -- looked at
7 the date, looked at the notes, and it's real
8 obvious there's some places where some things
9 were left out or maybe changed just a bit to --
10 to maybe looking at yourself to protect yourself
11 a little.

12 Um, from what I'm seeing, even if I fill
13 those in, I'm thinking you're all right. Okay?
14 You don't have to worry about things. Um, we're
15 there for ya, um, and -- and -- and we know what
16 Steven did, and -- and..." (unintelligible)
17 "...of what happened to you when you did. We
18 just need to hear the whole story from you. As
19 soon as we get that, and comfortable with that, I
20 think you're going to be a lot more comfortable
21 with that. It's going to be a lot easier on you
22 down the road if this goes to trial and stuff
23 like that."

24 Q (By Attorney Geraghty) Okay. Now, you had
25 previously told Mr. Dassey that "Anything you say

1 can and will be used against you in court." Is
2 that right?

3 A Yes.

4 Q And -- and you have also, I think, testified
5 that, um, Mr. Fassbender said what is portrayed
6 in clip 14, and that you said what is portrayed
7 in clip 17, on page three of Exhibit 315; is that
8 right?

9 A Yes.

10 ATTORNEY GERAGHTY: Um, could you play
11 clip 17, please?

12 ATTORNEY FALLON: Your Honor, is there a
13 point to playing the clip? I mean, could the
14 witness just read the transcript and then Counsel
15 could ask a question? We could move this along.

16 THE COURT: That would help. Do you have
17 any objection to that?

18 ATTORNEY GERAGHTY: I don't have any
19 objection to that. I can do that.

20 Q (By Attorney Geraghty) Um, page three, Exhibit
21 315, um, Investigator Wiegert?

22 A Yes, I'm there.

23 Q Okay. Let me refer you to -- to, um, clip No. 17
24 on page three. You see that?

25 A I do.

1 Q Um, you say, "Honesty here, Brendan, is the only
2 thing that's going to help you."

3 THE COURT: The word "only" -- "only" isn't
4 in there.

5 ATTORNEY GERAGHTY: I'm sorry.

6 Q (By Attorney Geraghty) "Honesty there, Bren --
7 here, Brendan, is the thing that's going to help
8 you. Okay. No matter what you did, we can work
9 through that. Okay? We can't make any promises,
10 but we'll stand behind you no matter what you
11 did. Okay? Because you're being the good guy
12 here. You're the one that's saying, you know
13 what? Maybe I made some mistake, but here's what
14 I did.

15 The other guy involved in this doesn't
16 want to help himself. All he wants to do is
17 blame everybody else. Okay? And by you talking
18 with us, it's helping you. Okay? Because the
19 honest person is the one who's going to -- gonna
20 get a better deal out of everything. You know
21 how that works."

22 And that's you speaking; is that
23 correct?

24 A Yes.

25 Q Okay. And then Brendan says, "Um-hmm." Is that

1 correct?

2 A Yes.

3 Q Okay. And then you go on and say -- this is,
4 again, clip 17, page three, Exhibit 315:

5 "You know, honesty is the only thing
6 that will set you free; right? And we know.
7 Like Tom said, we know. We reviewed those tapes.
8 We know there's some things you left out and we
9 know there's some things that maybe weren't quite
10 correct you told us; okay?

11 We've done -- we've been investigating
12 this a long time. We pretty much know
13 everything. That's why we're talking to you
14 again today.

15 We really need to -- you to be honest
16 this time with a -- with everything; okay? If,
17 in fact, you did something, which we believe,
18 some things may have happened that you don't want
19 to tell us. It's okay. As long as you can -- as
20 long as you can be honest with us, it's okay. If
21 you lie, that's going to be problems."

22 Did you say that to Brendan Dassey on
23 March 1?

24 A Absolutely. Yes.

25 Q Um, now, when you said in clip 17 at the bottom

1 of page three of Exhibit 315, "We pretty much
2 know everything. That's why we're talking to you
3 again today," there were some things that you
4 didn't know; is that correct?

5 A That's correct.

6 Q So that wasn't entirely an honest statement; is
7 that right?

8 A That is correct.

9 Q That was a -- that was not true?

10 A Parts of it were not true.

11 Q Okay.

12 A Yep.

13 Q And then going on to clip 18 on page four of
14 Exhibit 315, you say: "Come on Brendan." You
15 got that? I'm sorry.

16 A Yes, I do.

17 Q Okay.

18 "Come on, Brendan, be honest. I told
19 you before that's the only thing that's going to
20 help ya here. We already know what happened
21 okay?"

22 You didn't already know everything that
23 happened, did you?

24 A Nope.

25 Q So that was not true?

1 A That's correct.

2 Q And then, um, on page four of Exhibit 315, clip
3 20, you ask Brendan:

4 "Did you help him?"

5 Brendan says: "No."

6 You say: "Let's be honest here,
7 Brendan. If you helped him, it's okay, because
8 he was telling you to do it. You didn't do it on
9 your own."

10 Is that what you said to Brendan?

11 A Yes.

12 Q Okay. And, um, you don't have any problem
13 stating in court today that that's not
14 inconsistent with your **Miranda** warning to Brendan
15 that anything you say can and will be used
16 against you in court?

17 ATTORNEY FALLON: Objection. Whether it's
18 consistent or inconsistent is not relevant to the
19 ultimate determination here.

20 THE COURT: The Court's going to sustain
21 the objection.

22 ATTORNEY GERAGHTY: Well, Judge, just
23 for the record, uh, may I just reply briefly to
24 that?

25 THE COURT: Go ahead.

1 ATTORNEY GERAGHTY: I'm sorry. I know
2 you've ruled. But, um, you know, the point here, I
3 think, is that he's given **Miranda** warnings on the
4 one hand, and told that, uh, to the ex -- that
5 anything you say can and will be used against you,
6 and then he's told precisely the opposite during the
7 course of the interrogation.

8 It goes to the question of whether the
9 officers have, um, undermined the -- the **Miranda**
10 warning that they give him initially by telling
11 him nothing that he says during this
12 interrogation will, in fact, be held against him.

13 THE COURT: I understand that to be your
14 argument.

15 ATTORNEY GERAGHTY: Okay. Thank you,
16 Judge.

17 Q (By Attorney Geraghty) And just one further
18 example of this, Investigator Wiegert, um, this
19 is page five, Exhibit 315, clip 29. You got
20 that?

21 A Yes.

22 Q "What happens next? Remember, we already know
23 but we need to hear it from you. It's okay.
24 It's not your fault. What happened -- what
25 happens next?"

1 Did you say that to Brendan Dassey?

2 A I did.

3 Q Now, I believe there was some discussion about,
4 um, later on whether, you know, how we know what
5 Brendan actually perceived about the nature of
6 the interrogation and the things that you had
7 said to him with respect to what we will call or
8 that fall in the category of minimization or
9 promises. Um, I'd like to ask you to take a -- a
10 look at clip 33 on page five?

11 A Yes.

12 Q Okay?

13 A Um-hmm.

14 Q And, um, here you say to him -- or Brendan says
15 to you:

16 "I got a question, though."

17 And you say: "Sure."

18 And Brendan says: "How long is this
19 going to take?"

20 And you say: "It shouldn't take a whole
21 lot longer."

22 And Brendan says: "Do you think I can
23 get there before 1:29?"

24 And do -- do you remember that he was
25 referring to get back to school?

1 A I believe that's true.

2 Q Okay.

3 And you say, um, "Probably not."

4 And Brendan says: "Oh."

5 "What's at 1:29?"

6 And Brendan says: "Well, I have a

7 project due at sixth hour."

8 Do you recall that conversation?

9 A Yes.

10 Q And, um, did that suggest to you that Brendan
11 understood what you had said with respect to
12 "it's okay" to mean that he was not incriminating
13 himself?

14 ATTORNEY FALLON: Objection as to what
15 meaning or what effect those statements had on the
16 defendant. That calls for speculation.

17 THE COURT: Sustained.

18 Q (By Attorney Geraghty) I'd like to direct your
19 attention to clip 35 on page six.

20 Mr. -- Investigator Fassbender says:

21 "It's going to be just a bit; okay?"

22 And Brendan Dassey says: "Am I going to
23 be at school before school ends?"

24 And Investigator Fassbender says:

25 "Probably not. I mean, we're at 2:30 already.

1 And school's over with at what, three?"

2 Brendan Dassey says: "Three-o-five."

3 And Investigator Fassbender says: "No."

4 And Brendan Dassey says: "What time
5 will this be done?"

6 And Fass -- Mr. -- Investigator
7 Fassbender says: "We're pretty -- we're pretty
8 much done. We have a couple of follow-up things
9 to ask ya, but we're pretty much done."

10 Did Brendan have that conversation with,
11 um, Investigator Fassbender?

12 A Yes.

13 Q And was this after Brendan had made some
14 incriminating statements to you and Investigator
15 Fassbender?

16 A Taken out of context here I can't tell you when that
17 statement exactly was, but I know there were some
18 statements made earlier than that.

19 Q Isn't it a fact that Brendan expressed surprise
20 that he was -- well, let's say that he -- he kept
21 wondering whether he was going to be able to go
22 back to school after this interrogation was over?

23 ATTORNEY FALLON: Objection as to
24 whether he was surprised, wondering, thinking,
25 what have you. Unless Mr. Dassey's going to tell

1 us what he was wondering, thinking, and being
2 surprised, this would call for speculation on
3 this witness' part.

4 THE COURT: Sustained.

5 ATTORNEY GERAGHTY: All right.

6 Q (By Attorney Geraghty) Well, isn't it a fact
7 that Brendan in clip 35 says:

8 "Am I going to be at school before
9 school ends?"

10 A Yes.

11 Q He did say that to you, didn't he?

12 A Yes.

13 Q Okay. Now, I would like to show you --

14 ATTORNEY GERAGHTY: And, then, Judge, I
15 think this would be the quickest way to do this,
16 um, on page eight and nine, clips seven through
17 sixteen.

18 ATTORNEY FALLON: This is on the revised
19 exhibit, Counsel?

20 ATTORNEY GERAGHTY: Yes. So, Alex, would
21 you play that?

22 (Unintelligible.) "...stab..."

23 (Unintelligible) "...stomach."

24 "What else did he do to her?"

25 (Unintelligible) ...something else. We know

1 that."

2 (Unintelligible) "...she... he tied her
3 up..." (unintelligible.)

4 "We know he did something else to her
5 her. What else did he do to her?"

6 "He... (unintelligible) ...her."

7 "What else did he do to her? We know
8 something else was done. Tell us. Or what else
9 did you do? Come on. Something with the head?
10 Brendan? What... (unintelligible) ... he...
11 (unintelligible) do, Brendan?"

12 "We know he made you do something else."

13 "What was it? What was it? We have the
14 evidence, Brendan. We just need you to be honest
15 with us."

16 "That he cut off her hair."

17 "What else was done to her head?"

18 "That he punched her."

19 "What else? What else? He made you do
20 something to her, didn't he? So he would feel
21 better about not being the only person; right?"

22 "Yeah."

23 "What did he make you do to her? What
24 did he make you do, Brendan? It's okay. What
25 did he make you do?"

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"Cut her."
"Cut her where?"
"On her throat."
"What else happens to her? Extremely,
extremely important for you to tell us this for
us to believe you. Come on, Brendan, what else?
We know. We just need you to tell us."
"That's all I can remember."
"All right. I'm just going to come out
and ask you, who shot her in the head?"
"He did."
"Why didn't you tell us that?"
"Because I didn't think of it."
ATTORNEY GERAGHTY: Why don't we stop
there.
Q (By Attorney Geraghty) Investigator Wiegert,
were those questions that you and Agent
Fassbender asked Brendan Dassey on March 1, 2006?
A Yes.
Q And were those his responses?
A Yes.
Q And at that time you -- you did have some
information, or suspected, that -- that Teresa
Halbach had been shot in the head; is that right?
A That's correct.

1 Q And you wanted Brendan Dassey to tell you that he
2 knew that that had happened; is that correct?

3 A I wanted Brendan to tell us the truth.

4 Q You suggested -- you finally, at clip 11,
5 suggested the answer to the question, didn't you?

6 A I suggested that she was shot in the head.

7 ATTORNEY GERAGHTY: Nothing further,
8 Judge.

9 ATTORNEY FALLON: Can we --

10 ATTORNEY GERAGHTY: I guess we have some
11 exhibits to move in, Judge. We can do that.

12 ATTORNEY TEPFER: At this time, Your
13 Honor, we seek admission of Exhibit 91, which is
14 a February 28 police report.

15 Um, Exhibit 363, which I believe was
16 reserved when we tried to admit it previously
17 until the testimony of Investigator Wiegert or --
18 or Fassbender. We want to wait until then.

19 Um, and then we also seek admission of
20 Exhibit 69 and Exhibit 211, which is the 5/13
21 video and transcript.

22 Also, this might also be a good time to
23 offer a suggestion, which was something that was
24 not admitted yesterday, regarding Exhibit 97,
25 which is the May 12 transcript of Mr. O'Kelly's

1 interrogation of Brendan Dassey. Um, there were
2 some problems with the transcript. The Court
3 refused to admit it, which, like, say have a
4 transcript admitted, if the court reporter wants
5 to transcribe it, and there's an agreement from
6 Court, or if State wants to correct any of the
7 problems that they see with it so it can be
8 admitted as part of the these court proceedings,
9 we're fine with that. Um, but we can handle
10 those one at a time I guess.

11 THE COURT: All right. Exhibit 91?

12 ATTORNEY FALLON: That's the -- the police
13 report showing, uh, they'd received the lab report;
14 correct?

15 ATTORNEY TEPFER: Correct.

16 ATTORNEY FALLON: We have no objection to
17 that.

18 THE COURT: All right. That's received.

19 ATTORNEY FALLON: Exhibit 363 is Agent
20 Fassbender's report?

21 THE COURT: Correct.

22 ATTORNEY FALLON: Uh, well, all this
23 witness was asked if that refreshed his
24 recollection, so there's no additional foundation
25 for its admission at this time. Agent Fassbender

1 can verify it, and then we'll have no objection,
2 I suspect.

3 Um, with respect to 69, is the DVD of
4 the May 13 interview?

5 ATTORNEY TEPFER: Correct.

6 ATTORNEY FALLON: And 211 is the transcript
7 from the State's materials related to that DVD; is
8 it that correct?

9 ATTORNEY TEPFER: Correct.

10 ATTORNEY FALLON: Subject to our -- our
11 objection already as to its relevance and
12 materiality, um, I don't have any additional
13 objection beyond that. So we don't have a problem,
14 necessarily, with that, at least with respect to the
15 part -- the clips that were played relative to the
16 phone call. But doesn't really matter.

17 THE COURT: I -- isn't most of 69 already
18 in the record?

19 ATTORNEY FALLON: I -- I think it might be.
20 So...

21 ATTORNEY TEPFER: I think so.

22 THE COURT: Not in the post-conviction
23 record but --

24 ATTORNEY TEPFER: The trial?

25 ATTORNEY FALLON: Right. The trial

1 record.

2 THE COURT: Yeah. I think we --

3 ATTORNEY TEPFER: I don't think so. Why
4 would it be. I don't --

5 THE COURT: Well, at the trial, we played
6 the entirety of the March 1 --

7 ATTORNEY TEPFER: This is the May 13 --

8 ATTORNEY FALLON: Thought this was the
9 May 13. But there was a -- a motion hearing on
10 that. It was never played, but I believe the
11 Court had --

12 THE COURT: Yeah.

13 ATTORNEY FALLON: -- access to that DVD.
14 So for purposes of completing the record --

15 THE COURT: All right.

16 ATTORNEY FALLON: -- you can have it.

17 THE COURT: Those are received then.

18 ATTORNEY FALLON: All right. Now, with
19 respect to Exhibit 97, they're the proponent of
20 this evidence.

21 Again, we strongly object since the
22 State never had access, knew about it, or had
23 anything to do with it, uh, and didn't receive
24 our copies until a few weeks ago.

25 Uh, I guess I would object to making the

1 court reporter sit and listen to a -- a DVD and
2 come up with a transcript.

3 And we're certainly not the proponents
4 of the evidence, so we're not required to develop
5 a transcript.

6 And, third, consistent with the State's
7 objections, it's all irrelevant and immaterial as
8 it relates to the evidence which was introduced
9 at the trial which resulted in the conviction.
10 So...

11 THE COURT: I'll withhold ruling on 97, but
12 I'll give the defense an opportunity to provide a
13 clean transcript. And, uh, even in the post -- in
14 the post-hearing phase, I'll take a look at it, and
15 if the transcript tracks the -- tracks the video,
16 then -- then it'll be admitted.

17 ATTORNEY FALLON: All right.

18 ATTORNEY TEPFER: Thank you, Your Honor.

19 ATTORNEY DRIZIN: Judge, just a point of
20 clarification on 97. When we were going through
21 that transcript, was it your understanding that
22 the wording of the transcript was accurate but
23 that the parentheticals were inaccurate, or -- or
24 was it both that --

25 THE COURT: Well --

1 ATTORNEY DRIZIN: -- there were problems
2 with?

3 THE COURT: It was my understanding that a
4 number of the words either were not picked up in the
5 transcript or a wrong word was there in the
6 transcript.

7 Mr. Fallon made the objection that the
8 parentheticals didn't reflect what was happening
9 on the screen.

10 I -- I suppose that -- that it's a fair
11 objection, but if the -- if the video's in there,
12 the -- the -- the viewer can make that
13 determination.

14 ATTORNEY FALLON: Right. I mean, that's --
15 I -- I don't mind the video coming in, because, um,
16 it's -- I know it's two hours and, I believe, 39
17 minutes. So I'm sure there was lots of time down or
18 dead time eliminated, but the reality is if you want
19 the true meaning and understand the context of that
20 interview, I think you need the time space. I think
21 it need -- needs to be parked there. That's why I
22 have no objection to the DVD.

23 But I do have some questions regarding
24 the -- the transcripts. If they want to put in
25 there's a pause, or we sped up six minutes ahead

1 or something, and that turns out to be accurate,
2 then I suppose the transcript is fine. But
3 I'm -- I think all of that makes questions to the
4 authenticity.

5 THE COURT: All right. Do we have an
6 understanding on that now?

7 ATTORNEY DRIZIN: I -- I think so. Yes.

8 ATTORNEY TEPFER: I think so, yes.

9 ATTORNEY DRIZIN: We will -- we will
10 submit a revised transcript --

11 THE COURT: Sure.

12 ATTORNEY DRIZIN: -- and we'll go from
13 there.

14 THE COURT: Okay. Mr. Fallon.

15 ATTORNEY FALLON: Yes. Briefly. Thank
16 you.

17 CROSS-EXAMINATION

18 BY ATTORNEY FALLON:

19 Q Let's go in reverse order, um, Sergeant. Were
20 the -- the clips that they just played, um, in
21 Exhibit 315, did they follow, in your
22 recollection, of strict chronological sequence,
23 or were they actually excerpts of a much larger
24 transcript?

25 A They're excerpts of a much larger transcript.

1 Q All right. Um, as a law enforcement officer, if
2 a -- if an -- if a interview session starts out
3 non-custodial, and at some point during the, um,
4 interview, it becomes clear to you, the officer,
5 that it's now shifting into an interrogation
6 mode, are you required to advise the suspect of
7 this and Mirandize them?

8 ATTORNEY GERAGHTY: Jud -- Jud -- you know,
9 for the record, Judge, a legal conclusion.

10 THE COURT: Well, it's the practice of
11 the -- the officer, and you raised it in your
12 question. I'll overrule the objection. He can
13 answer if he knows.

14 THE WITNESS: I'm not aware of any
15 requirement to notify them of that. Not to
16 mention he was already Mirandized prior to that.

17 Q (By Attorney Fallon) Uh, Counsel asked you
18 about, um -- and you believed -- in his -- in
19 response to his question that it was happenstance
20 that you walked back into the room while the
21 defendant was speaking with his mother, you
22 indicated there was, I think, lots of stuff going
23 on.

24 Could you tell us what yourself and
25 Agent Fassbender were doing during the break, um,

1 that Counsel questioned you about?

2 A In my recollection of it was that we were on the
3 phone with, um, other investigators who were trying
4 to secure a search warrant for the Avery property
5 again. We were going to do another search warrant.
6 We had already planned on doing another search
7 warrant, and then this new information came out
8 during this interview that we thought pertinent to
9 have in that search warrant.

10 So we were on the phone with other
11 investigators and the district attorney staff.
12 And they were securing that search warrant.
13 There was no intent for us to come in at any
14 specific time. Back into the room.

15 Q So what type of -- what new information, if you
16 can recall at this particular point -- and I
17 realize it's been three-plus years -- but what --
18 what was the new information that you were
19 relaying to the officers as they were preparing
20 an -- an additional search warrant?

21 A Well, one thing that sticks out in my mind -- and,
22 again, there were probably several of them -- the one
23 thing that sticks out is, um, Brendan telling us --
24 giving us the information that he was --
25 correction -- that Teresa was shot in the garage.

1 So we knew we had to look for some
2 evidence in the garage, bullet fragments, things
3 like that, which we didn't have yet to this point
4 until we secured that search warrant and were
5 found later.

6 Q Any recollection as to how many phone calls that
7 you made during that break period?

8 A No. But if you watch the interview, itself, my phone
9 is ringing two, three, four times, 'cause they're
10 wanting to know what's taking us so long, 'cause
11 they're ready to go with the search warrant.

12 And I -- at one point, if you remember,
13 in the interview -- I say, don't sign it, don't
14 serve it, and I hang up again 'cause I don't want
15 to affect the interview. I don't want them not
16 to get that search warrant finished and signed by
17 a judge until they have our new information.

18 So there's a lot of information that we
19 had to get to them.

20 Q So the process was you're trying to incorporate
21 what would -- what you believe was credible, and
22 give that to the officers so they -- so they
23 could incorporate it in the warrant?

24 A That's correct. Yes.

25 Q All right. Um, if you had believed -- I'm

1 directing your attention, briefly, to the 27th of
2 February. If you'd believed Brendan Dassey to be
3 a -- a murder suspect, would you allow -- would
4 you have allowed him to ride to the police
5 station with his mother?

6 A I don't know any murder suspect that's allowed to
7 have their mother come along with them in the car
8 regardless of age. I'm sorry. No.

9 Q Um, in Wisconsin, are you legally required to,
10 um -- as they are in New York -- to advise the
11 parents and get their permission to interview?

12 A No, we're not.

13 Q But, yet, you did that in this case. Why?

14 A We did. 'Cause we thought it was the right thing to
15 do.

16 Q Oh. Last question. Counsel asked you, um, some
17 questions about why you suggested to Brendan that
18 he let his mother know that he had given you guys
19 another statement on May 13?

20 A Yes.

21 Q You said there were lots of reasons. Tell us
22 your reasoning or your thinking regarding that.

23 A Well, we had a lot, a lot of contact with Brendan's
24 mother, Barb, in regards to information about this
25 case, in regards to plea bargaining.

1 We were aware that, basically, the
2 family, Barb included, and a lot of the other
3 Avery family members, were suggesting to Brendan
4 not to take a plea deal. And we thought it
5 pertinent that she know what he had said that
6 this had happened. To push that along. So they
7 would know the truth.

8 Q Did you believe that she had, um, a fair amount
9 of influence over Brendan in his ultimate
10 decision what to do in this case?

11 A Absolutely. I mean, we monitored phone calls where
12 she was telling him what to do. Not to take a plea
13 deal. Or to do this or to do that. As well as other
14 family members.

15 Q All right. And so was it out of some sense of
16 fairness that -- that you thought that she should
17 know as soon as possible as to what her son may
18 or may not do with respect to a plea?

19 A Yes.

20 Q Any other reasons?

21 A No. Nothing.

22 ATTORNEY FALLON: That's all.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY ATTORNEY GERAGHTY:

1 Q Investigator, present of a -- presence of a
2 parent or guardian is -- is one factor that
3 you're trained to take into consideration in
4 considering how to conduct an interview of a
5 juvenile; isn't that right?

6 A Into consideration, yes.

7 Q Okay. Um, and going to the time just prior to
8 which you came into the interrogation room on
9 March 1 when Brendan and his mother were there,
10 do you recall that --

11 A Yes.

12 Q -- event? You say that you were busy with a -- a
13 search warrant; is that correct?

14 A Yes.

15 Q But there was a monitor in the room where you
16 were working on that search warrant; correct?

17 A No. Wrong.

18 Q All right. So you had gone to a different room?

19 A Yes.

20 Q You -- you did not recall that?

21 A I recalled speaking with other detectives and people
22 from Mr. Kratz's office in another detective's
23 office, which was adjacent from where we were
24 conducting the interview.

25 Q Okay. So now -- so you -- you left that room and

1 you went to a room where you could not see the
2 monitor? Is that your testimony?

3 A Well, what I'm saying is, is I remember making
4 those phone calls. Um, the exact timeframe of those
5 phone calls and things, I -- I couldn't tell you
6 that.

7 Q All right. And you can't tell me now, as you sit
8 there, whether you were watching the monitor
9 while Brendan was with his -- with his mother or
10 whether you weren't?

11 A No, I couldn't tell you that. I know there was a lot
12 of things going on.

13 Q Okay. And one of those things could have been
14 watching the monitor?

15 A Could have been, but I don't believe that to be true.

16 Q All right. Um, now, in terms of -- just back to
17 this question of the phone call on -- or
18 suggesting the phone call on May 13, um, you
19 suggested a specific way that Brendan get in
20 touch with his mother to tell his mother what he
21 had told you; is that correct?

22 A Yes.

23 Q And you didn't -- and you suggested to Brendan
24 that Brendan tell his mother what he told you; is
25 that right?

1 A Yes.

2 Q And you didn't suggest that Brendan discuss with
3 his mother, um, the possibility, or the
4 desirability, or advisability of pleading guilty
5 and testifying against Steven Avery, did you?

6 A Did I tell him to discuss that with his mother?

7 Q Yes.

8 A No, I didn't.

9 ATTORNEY GERAGHTY: Nothing further.

10 ATTORNEY FALLON: Nothing.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 ATTORNEY TEPFER: If I may, Your Honor,
14 um, if we can make an offer of proof, um, to the
15 extent that we were limited from -- to going into
16 the February 27, um, on direct, the February 27
17 circumstances of that statement, um, on the
18 break, one of our co-counsel did some legal
19 research.

20 We just think, um, **Jerrell J.** stands for
21 the proposition that under the totality of the
22 circumstances surrounding confession, the mental
23 state of the offender, is relevant as part of the
24 interrogation process, and it's weighed against
25 the interrogation process as used -- the

1 interrogation tactics used by the State to the
2 extent that the argument or the objection was
3 sustained for the reasons that anything outside
4 of the interrogation room is not relevant.

5 We think it is relevant to the totality
6 of the circumstances, especially the mental state
7 of the offender and what he was told in previous
8 confessions.

9 We think **Harrell**, also --
10 H-a-r-r-e-l-l -- 40 Wis. 2d 536, stands for that
11 proposition where the confession is tain --
12 obtained after the, um -- the offender viewed the
13 corpse of a murder victim, um, that was relevant
14 in the determination of the subsequent
15 interrogation being found involuntary.

16 Um, **Kiekhifer** is another case we're
17 relying on, K-i-e-k-h-i-f-e-r, 2-1-2 Wis. 2d 460,
18 where there was two separate interrogations and
19 both of them were considered in the voluntariness
20 of both the **Miranda** waiver as well as the
21 voluntariness of the confession.

22 Finally, we just like -- also like to
23 point out, as we mentioned in our memorandum of
24 law, we think the 2/27 statements -- the
25 interrogation and the statements -- are relevant,

1 um, under the rule -- are -- are admissible under
2 the rule of completeness. They're also
3 admissible because we're offering them not for
4 hearpay -- say purpose, not for the truth of the
5 matter asserted but, rather, of the effect on
6 Brendan and, as well, again, as the interrogation
7 tactics used.

8 I'd just like to further supplement this
9 offer of proof. A lot of this arguments are
10 raised in our memorandum of law that supports our
11 petition. So we just use that as an offer of
12 proof.

13 THE COURT: Court receives it as an offer
14 of proof. Any response, Mr. Fallon?

15 ATTORNEY FALLON: Well, I am familiar with
16 the three cases cited by Counsel and the
17 circumstances. And I'd invite the Court to look at
18 them to refresh recollection if they don't
19 immediately come to your mind. But the
20 circumstances in those cases are vastly different
21 than the circumstances here.

22 The rule of completeness has no bearing
23 on this case whatsoever, uh, as it pertains to
24 these statements since they're all individual
25 segments. So they're not, uh, part of one grand

1 interview scheme that took three days to
2 complete. So the rule of completeness doesn't
3 apply.

4 And I -- I think the actual transcript
5 may very well be already in evidence, I could be
6 wrong, on the 2/27 interview.

7 And our objection remains as previously
8 noted that --

9 THE COURT: All right.

10 ATTORNEY FALLON: -- its relevance is
11 debatable.

12 THE COURT: Offer of proof is received.
13 Next witness.

14 ATTORNEY NIRIDER: Your Honor, the
15 defense would call Barb Tadych.

16 THE COURT: All right. Ms. Tadych, come on
17 up here, please. Just remain standing while the
18 oath is administered to you, then be seated.

19 THE CLERK: Please raise your right hand.

20 **BARBARA TADYCH,**
21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

23 THE CLERK: Please be seated. Please state
24 your name and spell your last name for the record.

25 THE WITNESS: Barbara Tadych,

1 T-a-d-y-c-h.

2 DIRECT EXAMINATION

3 BY ATTORNEY NIRIDER:

4 Q Morning, Barb.

5 A Morning.

6 Q Can you tell us how you are related to Brendan
7 Dassey?

8 A He's my son.

9 Q How would you describe the relationship that you
10 have with Brendan now?

11 A We're still close as we always were.

12 Q Can you describe your son's personality for the
13 Court?

14 A He's shy. Quiet. Likes to be by himself.

15 Q Is Brendan the kind of kid who would go along
16 with what others say pretty easily?

17 A Oh, yes.

18 Q How would you describe his intelligence level?

19 A He's slow. He's got a learning disability.

20 Q Okay. Barb, on October 31, 2005, where were you
21 living?

22 A In my house on the Avery property.

23 Q Who lived with you in your home there?

24 A It was me and my four kids; Brian, Bobby, Blaine, and
25 Brendan.

1 Q And how long have the five of you lived right
2 there near the salvage yard?
3 A Since 2001.
4 Q Do you know if Brendan spent a lot of time at the
5 salvage yard?
6 A Lots of times.
7 Q Do you know what he'd do down there?
8 A Um, he'd smash cans for my dad. Um, ride the golf
9 cart around the yard. Go swimming in the swimming
10 hole.
11 Q And who else lived right there near the salvage
12 yard?
13 A Um, my brother Chuck, my mom and dad, and Steven.
14 Q Barb, was your family close?
15 A Yes.
16 Q Would you talk often with your family member?
17 A Almost every day.
18 Q And before Steven was arrested, um, in connection
19 with this case, had you ever been over to
20 Steven's trailer with Brendan?
21 A Lots of times.
22 Q Okay, Barb. I'd like to talk about the time
23 period in early November, 2005, immediately after
24 Teresa Halbach disappeared. When did you become
25 aware that Ms. Halbach had gone missing?

1 A It was in the beginning of November. Probably around
2 the third or fourth.

3 Q And what did you hear?

4 ATTORNEY KRATZ: Objection. Irrelevant,
5 Judge, what this witness heard.

6 THE COURT: Overruled.

7 Q (By Attorney Nirider) What did you hear, Barb?

8 A Just that she was missing and that they were looking
9 for her.

10 Q And where did you hear that?

11 A The media or the news.

12 Q And was that TV? Radio? Newspaper? Can you
13 tell us about the source?

14 A Newspaper. TV. Radio.

15 Q Um, Barb, over the next few months, from November
16 through February, did you continue to follow news
17 about the investigation?

18 ATTORNEY KRATZ: Objection. Irrelevant,
19 Judge.

20 ATTORNEY NIRIDER: Your Honor, I'm going to
21 tie this up. I've just got a few more foundational
22 questions.

23 ATTORNEY KRATZ: I don't care how many
24 questions she has, Judge, this is still
25 irrelevant.

1 THE COURT: Let her -- let her see if she
2 can tie it up. Overruled.

3 Q (By Attorney Nirider) Did you continue to follow
4 news about the investigation from November to
5 February?

6 A As much as I could, yeah.

7 Q How did you find out information about the
8 investigation?

9 A Lots of times it was through the radio at work.

10 Q Did you ever watch TV?

11 A When I'd get home, yeah.

12 Q When you watched the news at home, is there any
13 particular station that you would watch?

14 A Usually Channel 2 or Channel 11.

15 Q Any other stations?

16 A The radio stations.

17 Q Was Brendan ever with you when you watched the
18 news about this investigation?

19 A Lots of times.

20 Q Barb, do you have any specific recollection of
21 actually telling Brendan to watch the news?

22 A When I'd get out of work, um, if I'd hear it at work,
23 I'd call home and tell him to turn the television on
24 so it would be on when I got there.

25 Q And why did you want the TV to be on when you got

1 there?

2 A Because I wanted to know what was going on.

3 Q Okay. And you -- you expected there to be a -- a
4 news story on?

5 A Most of the times when it's on the radio, yes.

6 Q And why were you so interested in following this
7 particular news story, Barb?

8 A 'Cause it had to do with the area around where I live
9 and my family.

10 Q Barb, is the TV on a lot, in general, at your
11 house?

12 A Lots of times, yeah. Most of the time I should say.

13 Q So anyone who's home and who happened to be
14 passing by the TV might see it?

15 A Yes.

16 ATTORNEY KRATZ: Objection. Speculation,
17 Judge. If this is being offered in lieu of the
18 defendant's own testimony about contamination, the
19 State is going to interpose that objection as --

20 THE COURT: I'll sustain the objection as
21 to this question.

22 Q (By Attorney Nirider) Was Brendan at home a lot,
23 Barb?

24 A All the time.

25 Q Barb, do you remember seeing any of your

1 siblings, or your parents, follow the news about
2 the investigation at the salvage yard?

3 A Lots of times they did.

4 Q Okay. Did you talk about the facts of the
5 investigation with any family members?

6 ATTORNEY KRATZ: Objection, Your Honor.
7 I'm going to ask that this be specifically
8 related, if it can be, to the defendant.

9 ATTORNEY NIRIDER: Your Honor, as I did
10 before, I'm going to tie this up.

11 THE COURT: All right. Go ahead.
12 Overruled.

13 Q (By Attorney Nirider) Did you talk about the
14 fact of the investigation with any of your family
15 members?

16 A Sometimes. Not all the time.

17 Q About how often, would you say, you talked about
18 the investigation with your family?

19 A Couple times a week.

20 Q What kind -- what kinds of things would you talk
21 about with your family?

22 A Things that they found.

23 Q And when you -- Sorry. Go ahead.

24 A Evidence that they found, and things that they'd say.

25 Q And when you say, "evidence that they found,"

1 who's "they"?

2 A Whoever was down in the yard.

3 Q Was Bren -- was Brendan ever present during some

4 of these discussions?

5 A Plenty of times. Like I said, he never went

6 anywhere. He was always home.

7 Q And would you talk about the investigation with

8 Brendan?

9 A Sometimes. Sometimes he was in his room playing his

10 Nintendo games so he wasn't always right by me.

11 Q Sure. Did you and your sons eat dinner together,

12 Barb?

13 A Yes.

14 Q Okay. During these family dinners, would you

15 ever talk about the investigation?

16 A Sometimes. Not all the time.

17 Q Barb, I'd like to move forward to the events of

18 February 27, 2006, um, which is the day that

19 Officers Wiegert and Fassbender first questioned

20 Brendan. On that day, what time did the

21 investigators first contact you?

22 A What day?

23 Q On February 27.

24 A Um, it was around -- I'd have to say about two

25 o'clock.

1 Q How did they get in touch with you?

2 A They called me on my cell phone.

3 Q Do you remember which person it was? Which

4 investigator placed the call?

5 A If I think back, I'm sure it was Mark Wiegert.

6 Q And what did Mark tell you?

7 A Um, that I should come to school to pick up my son.

8 Q Did he tell you that Brendan had already given

9 them some statement having to do with Teresa

10 Halbach?

11 A Yes.

12 Q Okay. Before you got that call, Barb, did you

13 know that the officers had been questioning your

14 son already?

15 A No, I -- no, I didn't.

16 Q How old was Brendan at the time?

17 A Sixteen.

18 Q What time did you get to Brendan's school that

19 day?

20 A It was a little after three. I had to work until

21 three o'clock before I could leave.

22 Q What happened after you got to Brendan's school?

23 A We went into a room off the office, and they talked

24 to me a little bit, and then they brung Brendan in.

25 Q Okay. And then where did you go from there?

1 A From there we went to the Two Rivers Police
2 Department.
3 Q And how did you get there?
4 A In their vehicle.
5 Q And when you say "their vehicle"?
6 A Mark and Tom's vehicle.
7 Q Okay. What happened to your vehicle?
8 A It sat at the high school.
9 Q What happened after you arrived at the police
10 station?
11 A We went in and they took Brendan into a room down at
12 the police station.
13 Q Did you try to join them?
14 A I tried, but they more or less told me that it was in
15 my best interest to go wait in the waiting room
16 because they -- that Brendan was going to give them a
17 gruesome story.
18 Q Barb, did the officers tell you that you
19 shouldn't be in the room with Brendan?
20 A Yes.
21 Q How did you feel about not being able to be in
22 that room?
23 A Upset.
24 Q So where were you, exactly, while Brendan was
25 being questioned by the police at the Two Rivers

1 station?

2 A In a waiting room.

3 Q How long were the investigators alone with

4 Brendan?

5 A I'd say about an hour.

6 Q Could you hear or see what was happening to him?

7 A No.

8 Q Okay. Moving on to March 1, 2006, which is the

9 day that Brendan told the police that he had been

10 involved in Teresa's death. Um, when did you

11 first talk to Officers Wiegert and Fassbender on

12 that day, March 1?

13 A It was after I got out of court. Um, court for me

14 was at one. It must have been about 1:30, 2.

15 Q Was there something that morning?

16 A Oh, yes. Um, they had called me and asked me if they

17 could take Brendan down to the Manitowoc Police -- or

18 the jail and question him some more.

19 Q Okay. And when they asked you that, what did you

20 say?

21 A I told them, yeah, as long as they bring him back to

22 the high school.

23 Q Okay. Did they invite you to join them and

24 Brendan at the sheriff's office?

25 A No.

1 Q Why did you think the investigators wanted to
2 bring Brendan to the sheriff's office?

3 ATTORNEY KRATZ: Objection. Speculative,
4 Judge.

5 ATTORNEY NIRIDER: Your Honor --

6 THE COURT: Sustained.

7 Q (By Attorney Nirider) Barb, did you -- at that
8 time, did you have any idea that the police were
9 going to accuse your son of murder?

10 ATTORNEY KRATZ: Same ob --

11 THE WITNESS: No.

12 ATTORNEY KRATZ: Same objection, Judge.

13 ATTORNEY NIRIDER: Your Honor, that's not
14 speculation. I'm asking what was in her head at the
15 time.

16 ATTORNEY KRATZ: Okay. How about
17 irrelevant?

18 ATTORNEY NIRIDER: I think it's highly --

19 THE COURT: Overruled. Hang on.

20 Overruled.

21 Q (By Attorney Nirider) I'm sorry, did you -- did
22 you answer the question? Should I ask it again?

23 A Yeah.

24 Q Barb, did you have any idea that on March 1 the
25 officers were going to accuse your son of murder?

1 A No.

2 Q Would you have responded differently to their
3 request to question Brendan if you had known that
4 they were going to accuse him of murder?

5 A Yes. I would have told them that I wanted to be
6 there.

7 Q Barb, let's move forward now to the point in time
8 after Brendan was arrested. After he was
9 charged. Did you ever talk to Brendan about a
10 plea deal?

11 A At one point in time, yes. I told him, "If you did
12 it, take a plea deal, and if you didn't, don't."

13 Q Was that your consistent advice?

14 A Yes.

15 Q From when Brendan was -- when -- from when
16 Brendan was arrested forward?

17 A Yes.

18 Q Finally, Barb, I just want to talk a little bit
19 about, um, also the time when Len Kachinsky was
20 Brendan's attorney. Uh, you testified at a
21 hearing; is that right?

22 A Yes.

23 Q When you testified at that hearing, Barb, did you
24 understand what the purpose of the hearing was?

25 A Not really.

1 Q Did you understand what the purpose of you
2 testifying was?

3 A Not really.

4 Q Did Mr. Kachinsky do anything to prepare you to
5 testify?

6 A No.

7 ATTORNEY NIRIDER: I have no further
8 questions, Your Honor. Oh, I'm sorry. One
9 moment. I'm sorry.

10 Q (By Attorney Nirider) Just to do a little
11 cleanup. From March 1, Barb, was there a reason
12 why you couldn't have been there for March 1?

13 A Because I had a court date for my divorce.

14 Q All right.

15 ATTORNEY NIRIDER: That's all.

16 THE COURT: Mr. Kratz, any questions?

17 ATTORNEY KRATZ: Yeah. I just need a
18 second, Judge, to set up a -- a laptop. There's a
19 couple of clips that I want to play for this
20 witness. But I have no objection to getting this
21 done even before the lunch hour. It'll just take a
22 moment, Judge. I assume you want me to do that?

23 THE COURT: I do.

24 ATTORNEY KRATZ: I'll be right with you
25 then.

1 THE COURT: Is this going to work or should
2 we have you do this -- set it up over the lunch
3 hour?

4 ATTORNEY FALLON: Well, that would be
5 easier, but, um --

6 ATTORNEY KRATZ: But it -- it's a --
7 it's a ten-minute cross, Judge, so even -- well,
8 we can do that right after the lunch hour. It
9 should be --

10 THE COURT: Let's do it then. We'll be
11 back at one.

12 (Recess had at 12:00 o'clock p.m.)

13 (Reconvened at 1:04 p.m.)

14 THE COURT: Let's go back on the record
15 with State of Wisconsin v. Brendan Dassey.
16 Anything we need to talk about before the cross
17 begins?

18 ATTORNEY FALLON: I don't think so,
19 Judge. We were just making sure that my list of
20 exhibits match theirs, and we'll confer with the
21 clerk when we're done. That's the reason for the
22 delay.

23 THE COURT: That's fine. Mr. Kratz.

24 ATTORNEY KRATZ: Thank you, Judge.

25 Ms. Tadych.

CROSS-EXAMINATION

BY ATTORNEY KRATZ:

Q Do you -- do you prefer to be called Ms. Tadych?

A It doesn't matter.

Q Well, I'll call you that, then, unless -- unless you'd like to be called something else. Mr. -- or I should say, um, you sat through the entire jury trial of your son's case; is that correct?

A Yes.

Q And during that jury trial, do you remember the State having played a very small portion of the telephone call that was made between your son Brendan and you on the 13th of May?

A Yes.

Q I'm going to play that for you.

ATTORNEY KRATZ: And, Judge, this was a mem -- a matter of concern of the trial record earlier. Uh, we have recovered the actual, um, laptop that was used to play that particular clip. And in going through the scores, if not, hundreds, of clips that we have had set out for cross-examination purposes, we did find the clip that was played at the trial.

And so, uh, that will not only help the record, but I wanted to play that for Ms. Tadych

1 at this time. Remember, the Court was asking
2 what part of the 13th was played? And we have
3 now found that, Judge, so...

4 THE COURT: Which part of the trial was
5 this played at?

6 ATTORNEY KRATZ: At the cross-examination.
7 Mr. Fallon played it during cross.

8 THE COURT: All right.

9 ATTORNEY NIRIDER: Of Brendan Dassey,
10 Counsel?

11 ATTORNEY KRATZ: Yes. I'm -- I'm -- I'm
12 sorry. Yes.

13 Q (By Attorney Kratz) So, first of all, Barb, or
14 Ms. Tadych, I'm going to -- I'm going to play
15 that clip. In fact, there's several of these I'm
16 going to play. And then I'm going to ask you
17 questions about them. Ask you to identify the
18 people speaking and that kind of thing, all
19 right?

20 A Okay.

21 Q "Why did you even go over there, Brendan?"

22 "I don't know. But I -- I don't even
23 know how I'm going to do it in court though."

24 "What do you mean?"

25 "I ain't going to face them."

1 "Face who?"
2 "Steven."
3 "You know what, Brendan?"
4 "What?"
5 "I'm going to tell you something. He
6 did it. You do what you got to do, okay?"
7 "Well, what happens if he gets pissed
8 off?"
9 "What makes a difference? He ain't
10 going nowhere now, is he?"
11 "No."
12 "Okay then. Why didn't you tell me
13 about this earlier? Huh?"
14 "I don't know."
15 Q (By Attorney Kratz) That's actually the first of
16 two from the 13th. Let me play the second one,
17 and then I'll ask you the foundation questions,
18 all right?
19 "Yeah."
20 "Yeah. When did you go over there?"
21 "Well, I went over earlier and then came
22 home before you did."
23 "Why didn't you say something to me
24 then?"
25 "I don't know. I was too scared."

1 "You wouldn't of had to been scared
2 because I would have called 9-1-1 and you
3 wouldn't have been going back over there. They
4 would have been here. Maybe she would have been
5 alive yet. (Unintelligible) "...those
6 statements, you did all of that to her too?"

7 "Some of it."

8 "Did he make you do it?"

9 "Yeah."

10 First all, Ms. Tadych, do you recall
11 that phone call having been played at the trial?

12 A Yes.

13 Q If you'd speak into the microphone, I -- I'd
14 appreciate it. And do you recognize the voices
15 on that phone call?

16 A Yes.

17 Q And are those the voices of you and your son
18 Brendan?

19 A Yes, it is.

20 Q And to the best of your recollection, um, if you
21 know, was that the phone call that was placed on
22 Saturday, the 13th of -- of May of 2006?

23 A It could have been. I don't know what day it was.

24 Q But you have a memory of that phone call; is that
25 right?

1 A Yes.

2 Q Now, when Brendan indicated that he made me do
3 it, um, who were you talking about? Because you
4 talked about a little bit earlier in the context
5 of the call.

6 A I think he was referring to Steven. Or I was
7 referring to Steven.

8 Q And Steven is your brother Steven Avery; is that
9 right?

10 A Yes.

11 Q Now, also, on the -- also on the -- the day of
12 trial, there was a clip -- a similar clip that
13 was played from May 15, two days after this phone
14 call to Brendan. Do you recall that at the trial
15 as well?

16 A Not really.

17 Q It's a clip in which -- and let me just see if
18 this refreshes your recollection -- at the end of
19 which you express an opinion that if Brendan
20 would have said something, Teresa would still be
21 alive and he would have been a hero. Do you
22 remember telling him that?

23 A I could have.

24 Q All right. I'm going to have you listen then to
25 the clip of May 15 and then I'm going to ask you

1 some questions about that.

2 A Okay.

3 Q "If, um -- "

4 "Can I ask you a question? Why did you
5 even go over there?"

6 "I don't know."

7 "Why didn't you just call 9-1-1 or tell
8 me at five o'clock when I got home? Are you
9 afraid of him?"

10 "Well, yeah. He's..." --

11 (Unidentified person) "You have one
12 minute left."

13 "What?"

14 "He's stronger than me."

15 "Yeah. Well, if you would have came
16 home and told me."

17 "Yeah, but then I thought that I would
18 have to go to jail, too."

19 "No, you wouldn't have."

20 "Yeah, for knowing about it."

21 "You wouldn't have gotten much out of it
22 then, Brendan, you would have been more or less a
23 hero. She would have probably still been alive."

24 "Yeah."

25 "Yeah. But look at that one on TV where

1 the alligator ate this one girl."

2 "Yeah."

3 "Yeah."

4 (Unintelligible.) "...all you -- that's
5 all you would have had to done, because I would
6 have put you in the truck and we would have
7 left."

8 "Yeah."

9 Ms. Tadych, do you recall that phone
10 call?

11 A Yes.

12 Q Now, there's been considerable testimony at this
13 hearing as to, um, either the cops making Brendan
14 say this, or that an explanation for Brendan
15 having, um, made admissions to the police being
16 the product of the police making him say that.
17 Have you heard that during this hearing?

18 A Yes.

19 Q At least in part --

20 A Yes.

21 Q -- is that right? Now, that was a theme and an
22 idea that you spoke to Brendan about oftentimes
23 in phone calls; isn't that right?

24 A Yes.

25 Q Do you know who first came up with the idea, or

1 who first told Brendan that he should say that
2 the cops made him say it?

3 A I think he did. He's the one that told me that they
4 made him say it.

5 Q All right. Do you remember when he first came up
6 with that story?

7 A Not really. No.

8 Q All right. You recall that during May and June
9 of 2006, that his attorney -- his then attorney,
10 Mr. Kachinsky, had been suggesting a plea bargain
11 to Brendan; is that right?

12 A Yes.

13 Q And do you remember, um, that you -- well, let me
14 start with you. That you had expressed the
15 opinion that Brendan shouldn't take any plea
16 bargain?

17 A I more or less told my son if he did it, take the
18 plea bargain, if not, don't.

19 Q All right. Do you remember you -- and I'm just
20 first of all going to talk about you -- ever
21 expressing the opinion for Brendan that if he
22 took a plea bargain, that that would also hurt
23 your brother Steven Avery?

24 A No.

25 Q Counsel's asked you questions about, um, family

1 members and discussions with family members. Do
2 you recall discussing the idea of Brendan taking
3 a plea bargain with your family members?

4 A Sometimes. But I always left it up to Brendan.

5 Q All right.

6 A Whatever he wanted to do.

7 Q Now, do you recall that various members of your
8 family, um, render the opinion -- and first I'm
9 going to talk about you -- render the opinion to
10 you that Brendan's pleading guilty would hurt
11 your brother Steven Avery? Do you recall that?

12 A I may have said it. They may have said it. But I
13 always told Brendan it was up to his -- his doings.
14 Whatever he wanted to do, I was satisfied with that.

15 Q And here's the, um -- the question, then. You
16 may, then, have had other opinions about, um,
17 either whether Brendan should take a plea bargain
18 or who it might hurt than other members of your
19 family; is that right?

20 A Didn't matter who it hurt. Like I said -

21 Q I'm saying, you might have had a different
22 opinion than, let's say, your mother and father,
23 or your brothers; is that right?

24 A I don't know what they were thinking.

25 Q All right. Do you recall, um, efforts on behalf

1 of your family -- and we're talking about
2 coercion, now -- efforts on behalf of your family
3 to make sure that Brendan didn't enter a plea in
4 this case?

5 A Can you repeat that?

6 Q Sure. Do you recall efforts on behalf of your
7 family to make sure that Brendan didn't accept
8 any plea bargains in this case?

9 A But it wasn't up to my family.

10 Q I'm just asking the question. If you can't
11 answer it, that's fine.

12 Do you remember efforts, though, to try
13 to, um, dissuade or coerce Brendan not to take a
14 plea?

15 A When it first started, yes.

16 Q I'm going to play a clip, then I'm going to ask
17 you to identify the voices on the clip, and then
18 I'm going to -- I just have a couple of questions
19 about that.

20 ATTORNEY KRATZ: Um, for the record, uh,
21 for Counsel, since you have all of these phone
22 calls, or at least it was part of Mr. Fremgen's
23 records, it's dated June 6, 2006, Mr. Kachinsky
24 is the lawyer.

25 Q (By Attorney Kratz) Uh, this phone call begins

1 at 2:22 p.m. And then I'm going to ask you to
2 identify these people, okay?

3 "They come down on you. I don't give a
4 shit what they do. You're going to have to be
5 man enough right now and you stick to your
6 Goddamn guns."

7 "Yeah."

8 "And say nothing happened."

9 "Yeah."

10 "This is -- they made me say all of
11 this. Tell them that."

12 "Yeah."

13 "And stick to your guns. 'Cause this is
14 being monitored. I don't give a shit. But you
15 got to understand one thing. You're a young
16 man."

17 "Yeah."

18 "And you don't want to go to prison for
19 the rest of your life."

20 "No."

21 "Don't go for a plea bargain or this and
22 that."

23 "Yeah."

24 "Because you do that, then you're
25 hurting both of you guys."

1 "Yeah."
2 "You understand that, Brendan?"
3 "Yeah."
4 "That's why I wanted to talk to you. I
5 can't -- I don't get a chance, Brendan. I
6 haven't talked to Steven either."
7 "Yeah."
8 "So you -- hey, I -- I -- I feel sorry
9 for where you are."
10 "Yeah."
11 "By the -- by the way, you got the mail
12 every day? Ha-ha-ha-ha-ha-ha. Brendan?"
13 "What?"
14 "They're -- them -- them guys are
15 assholes. They're bastards."
16 "Yeah."
17 "Every one of them. And they're --
18 they're bastards. And you got to keep them away
19 from you. Don't talk to them cocksuckers at
20 all."
21 "Yeah."
22 "'Cause their bastards. And I hope --
23 and I hope they can play this son-of-a-bitch --
24 they'll play it back. Don't worry about that,
25 Brendan."

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"Yeah."

"That Goddamn Tom is a son-of-a-bitch
and so is the other one."

"Yeah."

"Yeah. I'd like to take a rope and put
around their balls and pecker and pull them
behind my truck until I rip that fucking
pepper -- pecker -- pecker and the balls right
off."

"Yeah."

"Ha-ha-ha-ha-ha. That'll make their
day, won't it?"

"Yeah."

THE COURT: Mr. Kratz, I think we've heard
enough.

ATTORNEY NIRIDER: Your Honor, that was a
very long clip. I'd object to the relevance of some
of that stuff at the end there.

ATTORNEY KRATZ: I'd -- I'd be happy to --
to ask a question about that.

Q (By Attorney Kratz) First all, who -- who is
that on the -- on the tape?

A My father.

Q And your father's expression of, um, what he
thought of investigators, was that shared by the

1 rest of the family?

2 A I couldn't tell you if it was or not.

3 Q Well, you certainly, we've heard, were around the

4 family talking about this case; isn't that right?

5 A It doesn't mean that we're out saying everything to

6 everybody that other people say.

7 Q Well, you heard the very clear, um, suggestion

8 that Brendan not take a plea bargain? You heard

9 that; right?

10 A Yeah, I heard that.

11 Q And you heard that "That's going to hurt you and

12 Steven." Is that right?

13 A Yeah, but it doesn't mean that he was going to do

14 what he said.

15 Q You heard the very clear suggestion that "You

16 should tell them that they made you say it."

17 Remember hearing that?

18 A Yeah.

19 Q By the way, was that the first time that you or

20 anybody in your family that you know of had

21 suggested to your son that he come up with the

22 story that somebody else made him say this?

23 A I don't remember. It's been how long ago?

24 Q Well, is that -- what I'm getting at is, is that

25 the -- what's called genesis -- but is that the

1 start of this false confession claim as far as
2 you know?

3 ATTORNEY NIRIDER: Your Honor, she said she
4 doesn't remember.

5 THE WITNESS: Don't remember.

6 ATTORNEY KRATZ: Well, if --

7 THE COURT: Doesn't --

8 ATTORNEY KRATZ: If she doesn't,
9 Judge --

10 THE COURT: Counsel, let me ask you: Do
11 you have a -- a typed transcript of the clip that
12 you played?

13 ATTORNEY KRATZ: I do not, Judge. I have
14 hundreds of phone calls that are on my laptop that
15 were provided to the defense. And we do have a -- a
16 court reporter.

17 THE COURT: I -- I'm sure you do. But I
18 would like a typed transcript of that. Part of
19 that, I don't think, was relevant at all. A portion
20 of it certainly is. But...

21 ATTORNEY KRATZ: The -- the family's -- the
22 family's opinion when this witness talked about them
23 talking to you about investigators and the like?

24 THE COURT: Part of that is relevant. I
25 would like to see it in transcript form.

1 ATTORNEY KRATZ: I'll provide that,
2 Judge. I'd be happy to. And, um, provisionally,
3 perhaps Madam Clerk could give us a exhibit
4 number and then I'll submit it under that number.
5 Can -- can we do that? Can we have what the next
6 number would be? And I'll provide a transcript.

7 THE CLERK: Three seventy-three.

8 ATTORNEY KRATZ: Thank you.

9 Q (By Attorney Kratz) Ms. Tadych, your phone calls
10 with Brendan, you personally, did you ever
11 suggest to Brendan that he go along with this
12 story that the investigators made him say what he
13 said on the 1st of March?

14 A I don't remember.

15 Q Do you remember to tell your son Brendan to blame
16 it on Mark? Meaning Mark Wiegert?

17 A I don't remember.

18 Q I'm going to have you listen to a phone call
19 between -- I'm going to have you identify, as
20 between you and Brendan, on May 22. It's a very
21 short clip, but I am going to ask you to identify
22 the people in this.

23 "Yeah. And you tell them how you gave
24 them statements. That's how you tell the
25 jurors."

1 "Yeah. But he said that he listened to
2 the -- the statement again and that it's really
3 hard to believe that it was -- well..."
4 "What did you tell me, Brendan? You
5 tell me they weren't taping at first."
6 "Yeah."
7 "And they told you what happened.
8 Remember? Remember you telling me that?"
9 "When did I tell you that?"
10 "Uh --"
11 "I told you that I was nervous. And I
12 had a lot of stuff on my mind. So I just said
13 stuff."
14 "Yeah."
15 "Yeah. That's what I told you."
16 "No. You told me that they weren't
17 taping at first."
18 "Yeah. They didn't. And --"
19 "And they more or less said, 'Well,
20 isn't this what happened?'"
21 "Yeah."
22 "Remember you told me, well, blame it
23 all on Mark?"
24 "Yeah."
25 "Yeah."

1 First of all, Ms. Tadych, who is that
2 speaking?

3 ATTORNEY NIRIDER: Your Honor, I'm sorry.
4 At this time I'd like to interpose an objection. I
5 don't believe anything after May 13, any of these
6 phone calls so far that Counsel's played, is
7 relevant.

8 The -- the issue here is what has
9 happened prior to May 13. I believe the State
10 has made some contention that the family was --
11 was attempting to influence Brendan in his
12 decisions prior to May 13. These phone calls are
13 not relevant to that.

14 THE COURT: Well, you have put into issue
15 Brendan's representation after May 13 as well.
16 Consequently, I think this is relevant and I'm going
17 to overrule your objection.

18 Q (By Attorney Kratz) The phone call that you just
19 heard, you suggest to Brendan that he should say
20 that they made him say that. Or that he had told
21 you that in the past. Did you hear that part of
22 the tape? I mean, you heard that; right?

23 A Yes.

24 Q But Brendan didn't go along with that. And he
25 said, "When did I say that to you?" Did you hear

1 that part?

2 A That was in the beginning.

3 ATTORNEY NIRIDER: I -- I -- I got to
4 object, Your Honor. I think -- I don't have a
5 transcript in front of me. I've only heard this
6 once. But I think he's mischaracterizing.

7 THE COURT: Play it again.

8 ATTORNEY KRATZ: All right.

9 THE COURT: I'm not sure I heard that.

10 Q (By Attorney Kratz) Listen for you first telling
11 Brendan, "Didn't you tell me they made you say
12 it?" And Brendan said, "When did I say that?"

13 "Yeah. And you tell them how you gave
14 them statements. That's how you tell the
15 jurors."

16 "Yeah. But he said that he listened to
17 the -- the statement again and that it's really
18 hard to believe that it was -- well..."

19 "What did you tell me, Brendan? You
20 tell me they weren't taping at first."

21 "Yeah."

22 "And they told you what happened.
23 Remember? Remember you telling me that?"

24 "When did I tell you that?"

25 Now, do you recall? When you said to

1 Brendan, "You told me that they made you say
2 that." And Brendan said, "When did I say that?"
3 A Yeah. But he also corrected himself afterwards.
4 Q Corrected himself? You told him --
5 A Yeah.
6 Q -- after three more times of suggesting that the
7 cops made him say this, that he finally says,
8 "Yeah."?

9 ATTORNEY NIRIDER: Your Honor, he's
10 arguing with the witness. She's answered the
11 question.

12 THE COURT: Yeah. I -- I'm going to
13 sustain the objection. Why don't we move on.

14 Q (By Attorney Kratz) My last question, then, for
15 you, Ms. Tadych, if you know, prior to at least
16 May 22 of 2006, do you ever recall your son
17 suggesting to you an explanation for his
18 confession that somebody had made him say that?

19 A I don't remember.

20 Q All right.

21 ATTORNEY KRATZ: That's all I have of
22 this witness, Judge. Thank you, ma'am.

23 THE COURT: Any redirect?

24 ATTORNEY NIRIDER: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 BY ATTORNEY NIRIDER:

2 Q Um, first of all, Barb, there are a few binders
3 around you. And I'd like you to look -- I'm not
4 sure if it's there up in front you or if it's
5 behind you -- but I'm looking for binder number
6 five.

7 I'd like you to turn to Exhibit 315.
8 Should be behind tab 315. Just let me know when
9 you're there.

10 A I'm there.

11 Q Could you turn to page six of Exhibit 315,
12 please?

13 A Got it.

14 Q And I'd like you to look at clip number 37 on
15 that page?

16 A Okay.

17 Q I'm just going to read to you a few lines of that
18 clip. This is Brendan.

19 He says: "I got a question."

20 You say: "What's that?"

21 Brendan: "What'd happen if he says
22 something -- his story's different? What -- he
23 says he -- he admits to doing it?"

24 Barb: "What do you mean?"

25 A Hold on a second. Which -- you told me page six?

1 Q I'm sorry. Page six of Exhibit 315. Are you
2 there?
3 A Yes.
4 Q Okay. Do you see No. 37 there?
5 A Yes.
6 Q Right next to, "Where am I going?"
7 A Okay.
8 Q Okay. I'm starting a little -- a few lines down.
9 A All right.
10 Q Okay.
11 Brendan: "Yeah. But I got a question."
12 Barb: "What's that?"
13 Brendan: "What'd happen if he says
14 something -- his story's different? What if he
15 says he -- he admits to doing it?"
16 Barb: "What do you mean?"
17 Brendan: "Like, if his story's, like,
18 different. Like I never did nothing or
19 something."
20 Barb: "Did you? Huh?"
21 Brendan: "Not really."
22 Barb: "What do you mean, not really?"
23 Brendan: They got to my head."
24 Did you see what I just read there?
25 A Yes.

1 Q Okay. And that was from the March 1 confession.
2 I'm sorry, the March 1 recording that we viewed
3 in court several times.

4 ATTORNEY KRATZ: Is there a question,
5 Judge?

6 Q (By Attorney Nirider) Barb --

7 ATTORNEY KRATZ: I'm sorry.

8 Q (By Attorney Nirider) Barb, when you heard that,
9 did you understand Brendan to be saying that what
10 he had confessed to was not true?

11 ATTORNEY KRATZ: Objection. Speculation,
12 Judge. Those have several different meanings and
13 speculating as to what Brendan might have meant by
14 it. It speaks for itself.

15 THE COURT: Well, it does that, but I think
16 she can ask what she thought it meant. Not leading
17 with the question. Go ahead.

18 Q (By Attorney Nirider) Barb, what did you think
19 Brendan meant when he said those things?

20 A That he lied about his statement.

21 Q And when Brendan said, "They got to my head,"
22 what did you think he meant there?

23 A More or less that they put stuff in his head.

24 Q And who's "they"?

25 A Mark, and Tom Wiegert.

1 Q Thank you. And, Barb, if you could just keep
2 that open. Are you still on that page?
3 A Yep.
4 Q Can you look down at number 38 there at the
5 bottom? You see that?
6 A Yep.
7 Q I'm just going to read you this clip.
8 Barb:
9 This is also from March 1. Um, and this
10 is you speaking to Mark Wiegert.
11 Barb: "Were you pressuring him?"
12 Mark Wiegert: "Who are you talking
13 about?"
14 Barb: "Him."
15 Mark: "What do you mean, 'pressuring
16 him'?"
17 Barb: "In talking to him."
18 Mark Wiegert: "No. We told him we
19 needed to know the truth. We've been doing this
20 job a long time, Barb, and we can tell when
21 people aren't telling the truth."
22 Um, what -- why did you think that --
23 why did you ask Mark Wiegert if -- if -- if he
24 had been pressuring Brendan?
25 A Because if Brendan is pressured, he will come out

1 with anything just to get out of something.

2 Q Okay. Barb, um, thank you. You heard Counsel,
3 uh, refer to a telephone call that you had, um,
4 with Brendan on May 13. He played a portion of
5 that?

6 A Yes.

7 Q Okay. Is it correct in that call that you were
8 advising Brendan to at least consider a plea
9 deal?

10 A Yes.

11 Q Okay. Just a few other points. Um --

12 ATTORNEY NIRIDER: I don't have anything
13 else, Judge.

14 THE COURT: All right. You may step down.

15 ATTORNEY GERAGHTY: Your Honor, I would
16 call Investigator -- I'm sorry. I'm sorry.
17 Agent Fassbender.

18 THE COURT: Mr. Fassbender. All right.

19 ATTORNEY DRIZIN: Judge, now that
20 Ms. Tadych has testified, can she stay in the
21 room?

22 THE COURT: Any objection?

23 (No verbal response.)

24 THE COURT: That's fine.

25 ATTORNEY DRIZIN: And one final request.

1 There were a number of phone calls that were
2 played by Mr. Kratz and there are no transcripts
3 for any of those phone calls. And I would hope
4 that he would provide transcripts for each of the
5 phone calls that he played as separate exhibit --
6 exhibit numbers.

7 ATTORNEY TEPFER: With one correction.
8 There -- there is the 5/13 telephone call
9 transcript is an exhibit.

10 (Discussion off the record.)

11 THE COURT: Provide -- just provide the
12 transcripts of the expert -- of the excerpts, all
13 right?

14 ATTORNEY KRATZ: Can I put all of them
15 under -- under Exhibit 373? I'll identify all
16 the different clips, Judge. Is that all right?

17 THE COURT: That's fine.

18 ATTORNEY KRATZ: Okay.

19 **THOMAS FASSBENDER,**
20 called as a witness herein, having been first duly
21 sworn, was examined and testified as follows:

22 THE CLERK: Please be seated. Please state
23 your name and spell your last name for the record.

24 THE WITNESS: Thomas Fassbender,
25 F-a-s-s-b-e-n-d-e-r.

1 ATTORNEY GERAGHTY: May I proceed, Your
2 Honor?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY ATTORNEY GERAGHTY:

6 Q Good afternoon, Agent Fassbender.

7 A Good afternoon.

8 Q I want to direct your attention to, um, early May
9 of 2006, and ask you if you were one of the lead
10 investigators in looking into the -- the murder
11 of Teresa Halbach?

12 A Yes, I was.

13 Q And were you working with Mark Wiegert?

14 A Yes.

15 Q And, um, were others working on that
16 investigation with you?

17 A Yes.

18 Q A Detective John Dederling?

19 A Yes.

20 Q And were you also consulting from time to time
21 with Prosecutor Kenneth Kratz?

22 A Yes.

23 Q Um, and prior to early May of 2006, um, you were
24 involved in interviewing and interrogating
25 Brendan Dassey; is that correct?

1 A Yes.

2 Q And those, um, interviews and interrogations
3 began on February 27, and were essentially
4 concluded by March 1, 2006; is that correct?

5 A Yes.

6 Q Okay. Um, now, you were also aware, um, after
7 the interviews, um, were concluded, and that
8 would have been on or about March 1, 2006, that
9 Mr. Dassey came to be represented by Leonard
10 Kachinsky; is that correct?

11 A Yes.

12 Q And that would have been some time after the
13 first week in May of 2006?

14 A Yes.

15 Q When Mr. Kachinsky undertook the representation
16 of Brendan Dassey, the case was still in its --
17 against Brendan Dassey was still in its early
18 stages in terms of court litigation?

19 A That's correct.

20 Q All right. Um, and -- oh, I meant March 1, I'm
21 sorry. Um, I should have said after March 1,
22 the -- the case was in its early stages; right?

23 A Yes.

24 Q Okay. And it was March -- I'm sorry. Um,
25 March -- in early March -- that Mr. Kachinsky

1 came on board; is that right?

2 A Yes.

3 Q Okay. Now, when Mr. Kachinsky began to represent
4 Brendan Dassey, um, you recall that he made
5 several statements in the press; is that right?
6 Do you recall those statements?

7 A I don't recall them.

8 Q Okay. Do you recall being aware that Mr.
9 Kachinsky, at the time that he undertook the
10 representation, stated publicly that, um, it
11 would be in Brendan's best interest to seek a --
12 plea deal?

13 A He made that statement in the press?

14 Q Yes.

15 A He may have. I don't -- I don't recall.

16 Q Okay. At the time that Brendan Dassey was -- was
17 arrested, and that was March 1, 2006, um, you
18 were also involved in the investigation of the
19 Steven Avery case; is that correct?

20 A Yes.

21 Q And one of the reasons why you initially
22 contacted Brendan Dassey was to see whether he
23 might be of use as a witness in the Steven Avery
24 case; is that correct?

25 A That's correct.

1 Q And even after Mr. Dassey made his statement to
2 you and Agent Wiegert on March 1, 2006, um, you
3 were still hopeful that Mr. Dassey could be a
4 witness against Steven Avery; is that right?

5 A Yes.

6 Q And, um, you were working with Mr. Kratz and
7 others in an effort to make arrangements to see
8 that Brendan Dassey could be a witness against
9 Steven Avery?

10 A I'm not sure I can answer that question. We were
11 continuing to investigate, continuing to move
12 forward, but it really wasn't my place to determine
13 whether he was going to be a witness or agree to some
14 plea bargain or anything like that.

15 Q Okay. But during the time that Mr. Kachinsky
16 represented Brendan Dassey, you were aware that
17 there were ongoing discussions, to which
18 Mr. Kratz was a party, regarding whether Brendan
19 Dassey might eventually become a witness in the
20 Steven Avery case?

21 A Yes. That's true.

22 Q Now, those discussions, um -- let me ask you if
23 those discussions became more intense, uh, right
24 around the time of May 12, 2006, when Brendan
25 Dassey's motion to suppress statements was

1 denied?

2 A I believe that's accurate.

3 Q Okay. Um, and around that time you had contact

4 with Mr. Kachinsky about, um, whether -- about

5 the question of whether Mr. Dassey could provide

6 a statement or information which would make him a

7 valuable witness against Mr. Avery?

8 A Yes.

9 Q And also involved in those discussions was a

10 person by the name of Michael O'Kelly; is that

11 correct?

12 A That's correct.

13 Q And you knew Michael O'Kelly to be an

14 investigator hired by Mr. Kachinsky; is that

15 correct?

16 A Yes.

17 Q And he was -- and by "he" I mean Mr. O'Kelly --

18 Mr. O' Kelly was a defense investigator; is that

19 right?

20 A That's correct.

21 Q Can you tell me when you -- if you have any

22 memory -- of when you first met Mr. O'Kelly?

23 A I believe it was, um, Saturday, May 6.

24 Q Why does that date stick in your mind?

25 A I located a hard copy of an e-mail that had been

1 faxed to me reference some information that he had,
2 or he could provide, and also a request that, um, he
3 be allowed to look at some aerial photographs. And
4 in looking through, or looking into that further, um,
5 Detective -- or Investigator Dederling was able to
6 locate some information or something on his daily
7 logs indicating that we had met with O'Kelly on that
8 Saturday, May 6, at my office in Appleton.

9 Q Okay. Was that, um -- was that a document that
10 you discovered just in preparation for your
11 testimony here today? Or was -- did -- are you
12 saying you looked at it a long time ago?

13 A No, that was for -- in preparation for this.

14 Q Okay.

15 A About two weeks ago I found that.

16 Q Okay. Let me turn -- let me ask you to look at
17 Exhibit No. 65. Binder two.

18 A Sixty-five.

19 Q Got it?

20 A Yes.

21 Q All right. Why don't you take a look at it just
22 for a moment? All right. Agent Fassbender,
23 is -- is that the e-mail or the document that you
24 had just referred to?

25 A No, it isn't.

1 Q All right. Was there a document that you had
2 that was -- that you were made aware of that --
3 that came before May 7?
4 A Yes. It was a -- an e-mail from Attorney Kachinsky
5 to, uh, Investigator Wiegert. I believe it was dated
6 May 5 --
7 Q Okay. All right. Well, take a look at Exhibit
8 338. Binder five. Binder five. It's a
9 different binder.
10 A Okay.
11 Q All right. Is that the e-mail that you recently,
12 um, discovered and used to refresh your
13 recollection?
14 A Yes.
15 Q Now, that is a, um, e-mail from Len Kachinsky to
16 Investigator Wiegert; is that correct?
17 A Yes. And copied to, um, I think two other people
18 also.
19 Q Okay. Um, now, I don't see you copied on this.
20 Am I wrong?
21 A No, you're right. I believe this -- if I look at the
22 top of it on -- on mine, and the copies here, I
23 believe this was faxed to me by someone. And I am
24 not sure who.
25 Q Okay. Do you know when it was faxed to you?

1 A The date on this document shows May 5, 2006.

2 Q Okay. But you don't remember who faxed it to

3 you?

4 A I do not.

5 Q Okay. Um, and this e-mail has to do with, um,

6 your being notified by Mr. Kachinsky that

7 Mr. O'Kelly had developed some information, um,

8 in the course of talking to Brendan's relative;

9 is that correct? Relatives.

10 A Essentially. Investigator Wiegert being notified of

11 that fact and then, subsequently, me.

12 Q Okay. Um, and this also suggests that you or

13 Investigator Wiegert might consider obtaining a

14 search warrant for the -- the Avery premises; is

15 that correct?

16 A Yes.

17 Q And it suggests that you should contact Michael

18 O'Kelly directly about that information; is that

19 right?

20 A Investigator Wiegert. Yes.

21 Q Okay. Did you speak to Investigator Wiegert

22 about this e-mail of May 5? Exhibit No. 33- --

23 3-3-8?

24 A I am assuming I did. I don't have independent

25 recollection, but I'm assuming I did.

1 Q Did you call Mr. O'Kelly and discuss this with
2 him?

3 A Again, I don't have independent recollection, but I'm
4 assuming I did because I did meet with him.

5 Q Okay. Did you meet with him, um, on Friday, May
6 5? Or I think you mentioned a Saturday?

7 A Saturday, May 6 is -- it appears that's when we met
8 him. I think it was in the morning hours at my
9 office in Appleton, and Investigator Dederling was
10 also there.

11 Q All right. And what was discussed at that time?

12 A The primary purpose of that meeting was to make
13 available to him these aerial photographs. And then
14 these were rather large photographs. And we had, um,
15 I would say, many of them, and he was allowed to use
16 our conference room. And we layed them out on the
17 table and he was allowed to look at them.

18 Q Okay. And what was the purpose of him -- or did
19 he tell you what the purpose was for him wanting
20 to look at the large photographs and diagrams?

21 ATTORNEY KRATZ: Objection. Calls for
22 hearsay.

23 ATTORNEY GERAGHTY: Not offered to prove --
24 the truth of anything, Judge.

25 ATTORNEY KRATZ: Then what relevance?

1 THE COURT: What's it offered for?

2 ATTORNEY GERAGHTY: Just offered to prove
3 why he wanted to see the -- the diagrams. It's
4 not --

5 THE COURT: That's the -- I -- I'm going to
6 sustain the objection.

7 Q (By Attorney Geraghty) Well, did you know why
8 Mr. O'Kelly wanted to see that material?

9 A I'm not positive. I could make a guess.

10 Q I don't want you to guess.

11 A I imagine it had something to do with --

12 ATTORNEY FALLON: Ob -- objection, if --
13 it's a guess.

14 THE COURT: Yeah. If you don't know, you
15 don't know.

16 THE WITNESS: What I'm saying is I don't
17 know if he ever told me exactly why he wanted to
18 look at them.

19 Q (By Attorney Geraghty) Was Investigator Wiegert
20 with you at that time?

21 A No, he wasn't.

22 Q Was Investigator Dederling there?

23 A Yes.

24 Q And was, to your knowledge, Mr. Kratz aware of
25 this meeting?

1 A Again, I don't have independent recollection of that,
2 but I believe he was.

3 Q And do you recall having any discussions with
4 Mr. Kratz about the meeting that you had with
5 Investigator O'Kelly on Saturday, May 6, 2006?

6 ATTORNEY FALLON: Objection. Relevance.
7 We have work product privilege as well, by the way.

8 THE COURT: Sustained.

9 ATTORNEY GERAGHTY: Judge, just for --
10 may I just respond briefly for the record?

11 THE COURT: Go ahead.

12 ATTORNEY GERAGHTY: This goes, again, to
13 the loyalty issue. Um, and I'll just -- I think
14 that you know what I'm saying.

15 THE COURT: Conversation between Kratz --

16 ATTORNEY GERAGHTY: Well --

17 THE COURT: -- and -- and this witness?

18 ATTORNEY GERAGHTY: About Mr. O'Kelly's
19 participation in this meeting and part of the
20 defense team.

21 THE COURT: I understand. The objection's
22 still sustained.

23 ATTORNEY GERAGHTY: Okay.

24 Q (By Attorney Geraghty) Do you recall how long
25 that meeting lasted?

1 A Again, I do not have independent recollection. When
2 speaking with Investigator Dederling, from his logs,
3 or his daily log sheets, uh, it sounded like a couple
4 hours. Two, three hours.

5 Q Okay. So, um, in preparing your testimony today,
6 uh, or preparing to testify today, I should say,
7 did you consult logs that were prepared by
8 Investigator Dederling?

9 A I consulted Investigator Dederling. I didn't see
10 these -- these logs.

11 Q And -- and it was he who told you that his logs
12 reflected a meeting on Saturday, May 6, 2006?

13 A Yes.

14 Q And, um, those logs, um -- do you have any idea
15 where those logs would be kept?

16 A No, I don't.

17 Q And did you take any notes yourself reflecting
18 what happened at this meeting on March 6? I'm
19 sorry. May 6, 2006?

20 A Not that I can find.

21 Q Okay. And were any reports generated that you
22 know of as the result of the May 6, 2006, meeting
23 in Appleton with Mr. O'Kelly and Mr. -- and
24 Investigator Dederling?

25 A No.

1 Q After you had that meeting, um, in Appleton on
2 March 6, 2006 -- May 6, 2006 -- did you have any
3 further contact with Mr. O'Kelly?
4 A Yes, by telephone.
5 Q And when was that?
6 A I believe May 12, 2006.
7 Q And was that the -- was that the -- the -- the
8 next time that you spoke to Mr. O'Kelly?
9 A I believe so.
10 Q Did you have any, um, e-mail, um, correspondence,
11 or were you copied on any correspondence,
12 relating to an interview to take place of Brendan
13 Dassey at the Sheboygan County Jail?
14 A Yes.
15 Q Will you look at Exhibit No. 65, please?
16 A Yes.
17 Q And did you, um, review that e-mail before coming
18 here to testify today?
19 A Yes.
20 Q Okay. Was that e-mail in your file in Appleton?
21 A I think so. I can't remember if this one was in that
22 particular file or not.
23 Q Okay. Now, this is a -- an e-mail that was sent
24 to Mr. Kachinsky by Mr. O'Kelly; is that correct?
25 A Yes.

1 Q And you were copied on it; is that right?

2 A That's correct.

3 Q Um, Mr. Kratz was copied?

4 A Correct.

5 Q Mr. Dederling was copied?

6 A Yes.

7 Q Mr. -- Investigator Wiegert was not copied?

8 A No.

9 Q All right. Um, who was taking the lead, if

10 anyone, in -- in your contacts with Mr. O'Kelly?

11 A It seemed to have come to me.

12 Q Okay. And was Investigator Dederling also

13 involved?

14 A Yes.

15 Q And what -- why was he involved in this?

16 A I don't know for sure, but I think what happened was

17 on that original Friday, May 5, Mr. Wiegert -- or

18 Investigator Wiegert -- was unavailable to follow up

19 on this. So Investigator Dederling took that role,

20 and -- and I took over, too, on that role, and -- and

21 took over this -- this issue.

22 Q And when you say "this issue," what was the

23 issue?

24 A Number one, meeting with him to -- to make available

25 the -- the photographs. And then beyond that, um,

1 arranging for, with Mr. Kachinsky or him, a potential
2 additional meeting with Brendan.

3 Q Okay. So as of Sunday -- let me just back up
4 again. When -- when did it first come to your
5 attention that, um, there was possibly going to
6 be another interview or interrogation of Brendan
7 Dassey? And I'm talking now around the period of
8 May 6, 7, 8. During that time.

9 A Probably around that time. I can't give you an exact
10 time. There was a result of ongoing dialogue between
11 the district attorney and Mr. Kachinsky pertaining to
12 some sort of plea bargaining or agreement.

13 Q Okay. So what was your understanding about why
14 this, um, first the interview with -- by
15 Mr. O'Kelly and Mr. Dassey, and then, perhaps, a
16 subsequent interview of Mr. Dassey by you and
17 Investor Wiegert would -- would take place? Why
18 was that going to happen?

19 A I believe as a part of any plea agreement, it was
20 going to be that -- that Mr. Dassey would be willing
21 to sit down and fill in any gaps, or connect any
22 dots, uh, provide the whole -- the whole truth to the
23 matter.

24 Q Okay. So you -- did you feel that the statement
25 that Mr. Dassey gave on March 1 was not complete?

1 A I believe that we probably had questions related to
2 that.

3 Q And what, in particular, was, if you recall,
4 incomplete about the March 1 statement?

5 A I don't know that I can say at this moment in time
6 without going through the statement and the
7 transcript. I think in -- in any interview or
8 interrogation I don't think you ever get all the
9 facts and the whole truth.

10 Q Okay. Um, did you have any contact with
11 Mr. Kratz the 6th, 7th, or 8th of May, 2006,
12 regarding the planned interview of Mr. Dassey on
13 May 13, 2006?

14 A I'm quite sure I had contacts with Mr. Kratz probably
15 starting May 5, uh, to talk about meeting with
16 O'Kelly on the 6th. And then some time during the --
17 the subsequent week related to a potential interview
18 or interrogation of -- of Brendan.

19 Q Okay. And was this, again, all with the
20 objective of hopefully securing Brendan as a
21 credible witness in the Avery trial?

22 A I'm sure that was part of it.

23 Q Now, um, you mentioned, I think, a planned
24 meeting between Brendan and his defense team on
25 May 12, 2006? Recall that?

1 A Yes, it's in the -- the e-mail, Exhibit 65.

2 Q Okay. What understanding did you have about who
3 would be conducting that interview at the
4 Sheboygan County Jail?

5 A My understanding was Investigator O'Kelly.

6 Q All right. And did you have any understanding
7 about what the purpose of that interview was?

8 A My understanding the primary purpose of that
9 interview was to see if Brendan Dassey would get --
10 was going to be willing to speak with us again.

11 Q Did -- were you aware that, um -- well, let me
12 strike that question. Did -- did Mr. Kachinsky
13 or Mr. O'Kelly tell you that they were having
14 difficulty securing an admission from Brendan
15 that he had been involved in this -- in the
16 murder?

17 A I specifically don't recall that, but I -- I do
18 recall that he -- and I don't know if it was at this
19 time or not -- but that he was now denying
20 involvement.

21 Q All right. And was one of the purposes of
22 Mr. O'Kelly's meeting with Brendan Dassey on May
23 12, 2006, to attempt to convince Brendan to
24 retract his denial?

25 ATTORNEY FALLON: Objection. Calls for

1 speculation as to what the defense was intending to
2 do with Mr. Dassey.

3 THE COURT: I'll overrule it, if this -- if
4 this witness knows.

5 THE WITNESS: I was going to answer that
6 I could only assume.

7 Q (By Attorney Geraghty) You could only -- you
8 could only assume. Okay. So Mr. -- Mr. O'Kelly
9 never told you what the purpose of the May 12,
10 2006, meeting was?

11 A The only thing I really remember about that was to
12 see if Brendan was going to be, or would be, willing
13 to sit down with us and speak with us again.

14 Q Were you aware that -- that Mr. O'Kelly was going
15 to take certain equipment and items of evidence
16 to the interview with Brendan Dassey at the
17 Sheboygan County Jail on May 12, 2006?

18 A Yes. Per -- per that e-mail, Exhibit 65, again, he
19 makes indications of such.

20 Q And did you provide him with some of that
21 material?

22 A I don't believe I did. Um, I believe he -- I believe
23 he got it through the district attorney's office or
24 through Mr. Kachinsky, but I don't believe I provided
25 any of this stuff.

1 Q So you don't recall, um, Mr. O' Kelly coming
2 to -- to your office, uh, and having a
3 conversation with him about, um, obtaining some
4 of this material from law enforcement?

5 A He came to our office -- DCI office in Appleton --
6 and my memory of that is he primarily looked at those
7 photos on May 6.

8 Now, this e-mail on Exhibit 65 was May
9 7, and my memory of that is that he obtained, if
10 any of this stuff, elsewhere, 'cause I didn't
11 meet him again in my office.

12 Q Okay. Do you -- do you know where he obtained
13 this information?

14 A No, I don't.

15 Q When you met with Mr. O'Kelly in your office on
16 May 6, did you have any discussions with
17 Mr. O'Kelly about what tactics might implead --
18 be employed, or the best way to get Brendan to
19 retract his denials?

20 A Not that I recall.

21 Q Do you know whether anybody else had such
22 conversation with Mr. O'Kelly?

23 A No, I don't.

24 Q Do you recall saying, um, to Mr. O'Kelly, or did
25 you overhear Investigator Dederling say, um,

1 something to the effect, "Boy, you've got your
2 work cut out for you."?

3 A No, I don't recall that.

4 Q Okay. Now, were you made aware that, in fact,
5 um, an interview had been conducted by
6 Mr. O'Kelly of Mis -- Mr. Dassey on May 12, 2006?
7 Were you notified that that had happened at some
8 point?

9 A Yes.

10 Q And do you recall when you were notified?

11 A Probably, um, a phone call that I had with
12 Mr. O'Kelly. Or one of the phone calls I had with
13 him on the evening of the 12th. May 12.

14 Q Will you look at Exhibit 363, please?

15 A What -- what book --

16 THE COURT: It's not -- it's not in the
17 book. Just a second. Right there.

18 THE WITNESS: Oop, I got it. Yes.

19 Q (By Attorney Geraghty) And is that another
20 document that you reviewed, um, a short while ago
21 to prepare your -- your testimony here today?

22 A Yes.

23 ATTORNEY FALLON: Excuse me, Your Honor. I
24 noticed as the witness paged through the exhibit --
25 uh, how many pages are in that? I want to make sure

1 that I have the same copy the defense does.

2 THE WITNESS: Six.

3 ATTORNEY FALLON: Okay.

4 ATTORNEY GERAGHTY: Is -- Tom, is that
5 correct?

6 THE WITNESS: Um --

7 THE COURT: No, it should be three.

8 THE WITNESS: -- one --

9 ATTORNEY GERAGHTY: Judge, we -- I
10 thought --

11 ATTORNEY FALLON: You may have replaced it
12 it, and I'm looking for -- because it was -- the
13 last document you handed me was a combination of
14 Exhibit 356 and 363, if I remember. But I believe,
15 as originally marked, 363 was a three-page document.
16 Unless I'm mistaken.

17 ATTORNEY GERAGHTY: That's correct, Judge.
18 We did, um, label the last three pages of this
19 document as Exhibit No. 356.

20 THE COURT: Okay.

21 ATTORNEY GERAGHTY: So you have a six-page
22 document before you?

23 THE WITNESS: I have a six-page
24 document. The first three pages appear to be
25 363, and the next three pages I show as no

1 exhibit number. Apparently report number 277.
2 My report.

3 ATTORNEY GERAGHTY: All right. So
4 that's the document that we're referring to.
5 Okay.

6 THE COURT: The first three pages.

7 ATTORNEY GERAGHTY: The first three
8 pages for now, yes, Judge.

9 ATTORNEY FALLON: Okay.

10 Q (By Attorney Geraghty) Now, this document shows
11 that you received a telephone call from
12 Mr. O'Kelly at approximately 8:33 p.m. on
13 March 12, 2006; is that right?

14 A That's correct.

15 Q And you were told during that conversation that
16 Brendan Dassey wanted to speak with -- with you,
17 but that he wanted to watch a movie that night
18 and that he would speak to you the following
19 morning; is that correct?

20 A Yes.

21 Q And you told -- you told Mr. O'Kelly that you
22 would like to speak to Mr. Kachinsky, Brendan's
23 lawyer, before going forward with that plan; is
24 that right?

25 A That, and I'm sure -- I don't know if I told him --

1 but I'm sure that a -- a -- well, I did make contact
2 with the district attorney, also, relative to this.

3 Q Okay. Um, and why did you want to make sure that
4 you spoke to Attorney Kachinsky before confirming
5 that you would meet with Mr. Dassey the next day?

6 A Because Mr. Dassey was represented by Attorney
7 Kachinsky.

8 Q Okay. And, what, if anything, did Mr. O'Kelly
9 tell you about whether Mr. Kachinsky could or
10 would be present on May 13?

11 A He said that Attorney Kachinsky was aware of
12 Brendan's desire to speak with us and it was
13 authorized by Attorney Kachinsky.

14 Q But you still felt that you should call the
15 attorney -- Attorney Kachinsky -- to confirm
16 that; is that right?

17 A Yes.

18 Q And you did that?

19 A Yes.

20 Q And what did -- what did Attorney Kachinsky tell
21 you?

22 A I believe he called me, and he confirmed -- or told
23 me that Mr. Dassey wanted to speak to us. That "us"
24 being myself and Investigator Wiegert. And that he
25 wanted to do it on Saturday morning, May 13, 2006.

1 Q Okay. And did you notify Investigator Wiegert of
2 this?

3 A Yes. That evening I was on the phone with both
4 Investigator Wiegert and District Attorney Kratz.

5 Q Okay. And can you, um -- can you tell us what
6 you said to, um, District Attorney Kratz and what
7 he said to you when you called him on Friday
8 evening, May 12, 2006?

9 ATTORNEY FALLON: Objection. Relevance and
10 hearsay.

11 ATTORNEY GERAGHTY: Judge, it's part of
12 the --

13 ATTORNEY FALLON: And work product.

14 ATTORNEY GERAGHTY: -- the loyalty issue,
15 Judge.

16 ATTORNEY FALLON: The loyalty issue is
17 what they did when --

18 ATTORNEY GERAGHTY: This is --

19 ATTORNEY FALLON: -- they got there.

20 ATTORNEY GERAGHTY: This is the -- this is
21 the defense and the prosecution working together to
22 get another statement from Brendan Dassey.

23 THE COURT: I'll overrule the objection for
24 the moment. Go on.

25 Q (By Attorney Geraghty) Um, my question had to do

1 with whether you remembered the substance of your
2 telephone conversation with District Attorney
3 Kratz on the evening of Friday, May 12, 2006?

4 A The substance would have had to do whether, um,
5 District Attorney Kratz would authorize us doing
6 that.

7 Q And what were the issues that you were concerned
8 about when you spoke to District Attorney Kratz?

9 A At that time just that -- I imagine, just that
10 Mr. Dassey was represented by attorney and -- I -- I
11 can't remember if at that time it was a known -- I'm
12 going to assume it was -- that -- that Attorney
13 Kachinsky was not going to be present. So that may
14 have been part of the issue.

15 Q Okay. And was there any -- was there some
16 urgency involved in taking the statement from
17 Brendan Dassey as far as you knew?

18 A I don't recall the details, but there may have been
19 some urgency. I don't know if there were some
20 hearings coming up or something, but I just -- I just
21 don't recall.

22 Q Okay. I mean, I -- in -- in -- in deciding, you
23 know, whether it was appropriate to interview
24 Mr. Dassey without his -- an attorney present,
25 um, I -- I take it that you might have discussed,

1 well, why don't we wait until he can be present?

2 A Yes. So there -- there -- again, I can't remember

3 why, exactly, but I -- I believe there was some

4 urgency.

5 Q And eventually, as it -- as it turned out, um,

6 everybody seemed to be on board with, um, going

7 forward with that interview on the 13th and

8 having Michael O'Kelly present; is that correct?

9 A Yes.

10 Q And, by the way, did you have any contact with

11 Mr. O'Kelly on the evening of Friday, May 12,

12 2006?

13 A Yes, telephone contact.

14 Q Who initiated that telephone contact?

15 A Could you repeat the date again?

16 Q Uh, that was Friday, May 12, in the evening. May

17 12, 2006, right after or during the time that

18 Mr. O'Kelly was interviewing Brendan Dassey at

19 the Sheboygan County Jail.

20 A According to my report, um, Mr. O'Kelly telephoned me

21 at 8:33 p.m. And then again telephoned me at

22 9:18 p.m. Uh, that call was dropped. And then,

23 again, at 9:19 p.m.

24 Q In the -- in the -- in the first call, would it

25 be fair to say -- and I don't know if you

1 remember -- that Mr. O'Kelly told you that
2 Brendan was going to be willing to speak to you
3 the next day?

4 A Yes.

5 Q And in the second two calls, um, did Mr. O'Kelly
6 make an effort to provide you with information
7 that he had obtained from Brendan Dassey that
8 evening?

9 A Yes.

10 Q And did you listen to that information?

11 A The -- the -- as the report says, the call was a --
12 very bad, and I would catch pieces and words, and as
13 my report even says, I believed he made comments or
14 said certain things. Um, eventually, either I hung
15 up or the call was ended.

16 Q And did you -- did you end that call because
17 you -- you -- you couldn't hear or because you
18 didn't want to listen to what he had to say?

19 A I think it was a little of both. Note that I did not
20 call him back. I didn't --

21 Q Yeah.

22 A -- I wasn't interested in those things. I --

23 Q And --

24 A -- didn't want to know those things.

25 Q -- did you feel uncomfortable talking to

1 Mr. O'Kelly?

2 A When he was talking about those types of things,
3 information that he had obtained from his client, so
4 to speak, yes.

5 Q And was -- why did you feel uncomfortable about
6 that?

7 ATTORNEY FALLON: Objection. Relevance.
8 It's easily -- are we going to have the witness
9 comment on the legality of -- of the issue that
10 you're going to decide?

11 ATTORNEY GERAGHTY: I didn't -- I didn't
12 ask him about the legality.

13 ATTORNEY FALLON: Well, that's the
14 import of the question.

15 THE COURT: I'll sustain the objection.

16 Q (By Attorney Geraghty) Now, you met with Brendan
17 Dassey the next day; is that correct?

18 A That's correct.

19 Q And you were with your partner, Investigator
20 Wiegert?

21 A Yes.

22 Q And that was the morn -- in the morning of
23 Friday -- I'm sorry -- Saturday, May 13, 2006?

24 A Yes.

25 Q And you went to the Sheboygan County Jail to

1 conduct an interview of Brendan Dassey; is that
2 right?

3 A Yes.

4 Q When you got there, um, was Mr. O'Kelly there?

5 A Yes.

6 Q And did you, in fact, have a conversation or
7 encounter him before you spoke to Brendan Dassey?

8 A Yes.

9 Q Did you discuss, um -- did -- did Mr. O'Kelly
10 offer, again, to provide you with information at
11 that time?

12 A I do not recall.

13 Q Okay. Were both you and Investigator Wieg --
14 Wiegert present at the time that you had that
15 first encounter with Mr. O'Kelly?

16 A First encounter on the 13th?

17 Q I'm sorry, yes, on the 13th.

18 A To my memory, yes.

19 Q Did you tell Mr. O'Kelly anything about the
20 procedures or the process that you intended to
21 follow with respect to your interview of Brendan
22 Dassey?

23 A We told him that we preferred to -- to speak with
24 Mr. Dassey without him present. And that had been
25 addressed the evening before, also, with Attorney

1 Kachinsky and Mr. O'Kelly. Um, that it was going be
2 videotaped and audio recorded. And he wanted to
3 watch the monitor and we had no problem with that.

4 Q Was -- was there inter -- any understanding
5 that -- that Mr. O'Kelly was -- well, let me ask
6 you this: What was your understanding about
7 Mr. O'Kelly's role being present at the Sheboygan
8 County Jail that day? That is, um, Friday -- I'm
9 sorry -- Saturday, May 13, 2006.

10 A All I can say is that Mr. Kachinsky had advised he
11 was not going to be present but that his private
12 investigator would be.

13 Q And was there any understanding about whether
14 Mr. O'Kelly, um, was there to protect Brendan's
15 rights in any way?

16 A Not -- I don't know anything about that.

17 Q Okay. Did you have any discussions with
18 Mr. O'Kelly about circumstances under which he
19 should feel free to -- to interrupt the
20 interview?

21 A I don't know that that was discussed.

22 Q Now, just taking you back briefly to the evening
23 of Friday, May 12, 2006, um, did, um, you receive
24 an e-mail from Mr. Kachinsky in which he
25 confirmed that you could re-interview Brendan?

1 A Yes.

2 Q And did that e-mail also authorize you to --

3 authorize Mr. O'Kelly to brief you and

4 Investigator Wiegert before the interview?

5 A Yes.

6 Q And also to provide any copies of Mr. O'Kelly's

7 work product?

8 A Yes.

9 Q And did, in fact, Mr. O'Kelly brief you before

10 you went into that interview with Mr. -- with --

11 with -- with Brendan?

12 A I don't believe so.

13 Q Okay. Did he provide you with any copies of his

14 work product before you interviewed Brendan?

15 A No.

16 Q Now, I take it that you did, in fact, um, conduct

17 another interview or interrogation of Brendan

18 Dassey; is that correct?

19 A On the 13th?

20 Q Yes.

21 A Yes.

22 Q And that interview took most of the morning?

23 A Yes.

24 Q Did there come a time when you and Investigator

25 Wiegert left the interview room and left Brendan

1 in the interview room?

2 A Yes.

3 Q And was that because Brendan was not providing
4 you with the information that you had understood
5 you would receive?

6 A I don't know. It probably was to go out and talk
7 about what was transpiring in the interview. I know
8 we wanted to check and make sure the video was
9 working properly, also. But I'm sure it was to go
10 out of the room and discuss where we were going to go
11 next.

12 Q Right. But you were having trouble getting the
13 information that you thought you were going to
14 get from Brendan? Was that -- would that be a
15 fair statement?

16 A I believe that's a fair statement.

17 Q And so you thought it might be a good idea to
18 take a break, and regroup, and try to strategize
19 about how to go back at it?

20 A If at all, yes.

21 Q So there even was some discussion at that time of
22 maybe terminating the interview?

23 A Oh, yes.

24 Q Okay. And did you discuss this with
25 Mr. O'Kelly?

1 A I don't know if we did. He was in the room when we
2 went to check the video to make sure it was working,
3 confirm with him that it was, and I don't -- I would
4 say probably not that we had much of a discussion
5 with him or I'd probably recall it.

6 Q All right. Did -- did -- did -- do you recall
7 whether Mr. O'Kelly said that he had been
8 watching the video?

9 A He probably did. He was in there. It was playing.

10 Q Did he give you any suggestions about tactics
11 that you might employ or things you might do to
12 get information from Brendan?

13 A The only thing I recall was a suggestion that
14 Investigator Wiegert talk to Brendan or question
15 Brendan, you know, because he believed that Brendan
16 was more comfortable with him.

17 Q Okay. Did -- did Mr. O'Kelly also suggest that
18 Investigator Wiegert, um -- that you change seats
19 with Investigator Wiegert in the room?

20 A He may have. I'm not sure.

21 Q All right. Now, I'd like you to refer you to
22 Exhibit 315.

23 A Three-fifteen is --

24 Q Three-fifteen is in binder -- binder five.

25 A Okay.

1 Q Okay. Could you turn to, please, to page 22 of
2 Exhibit 315 and look at clip ten? That would be
3 number ten on page 22?

4 A Yes.

5 Q All right. I'm going to read this to you and
6 just ask you whether, in fact, it is what
7 transpired during a -- a portion of the in --
8 interview of the -- Brendan Dassen -- Dassey on
9 May 13, 2006, at the Sheboygan County Jail.

10 Investigator Wiegert: "Okay. When are
11 you going to tell your mom about this?"

12 Brendan Dassey: "Probably the next time
13 I see her."

14 Investigator Wiegert: "'Cause your lied
15 to her so far; right? Don't you think you should
16 call her and tell her?"

17 Brendan Dassey: "Yeah."

18 Investigator Wiegert: "When are you
19 going to do that?"

20 Brendan Dassey: "Probably tonight."

21 Investigator Wiegert: "Don't you think
22 she has the right to know?"

23 Brendan Dassey: "Yeah."

24 Investigator Wiegert: "Yeah. I think
25 she'd like to hear it coming from you rather than

1 from me."

2 Brendan Dassey: "And if she has any
3 questions, 'cause I'm seeing her tomorrow."

4 Mr. -- Investigator Wiegert: "Okay.
5 She's coming here tomorrow?"

6 Brendan Dassey: "Uh-huh."

7 Mr. -- Investigator Wiegert: "Maybe it
8 would be a good idea to call her and tell her
9 before she gets here tonight. That's what I
10 would do. 'Cause otherwise she's really going to
11 be mad here tomorrow. Better in -- better on the
12 phone, isn't it?"

13 "Uh-huh."

14 Mr. -- Investigator Wiegert: "That's up
15 to you, though. That's your decision whether you
16 want to do that or not. It's just a suggestion."

17 Do you recall Investigator Wiegert, um,
18 making those suggestions to Brendan Dassey on
19 May 13, 2006, at the Sheboygan County Jail?

20 A Yes, I recall that being discussed.

21 Q And could you turn, please, to page 23 of the
22 same exhibit? That's Exhibit 315. And we'll --
23 I'm -- I'm going to read paragraph 17 to you. Do
24 you have it?

25 A Yes.

1 Q Um, and this is you, I believe, Investigator --
2 or Special Agent Fassbender.

3 "Mark mentioned talking to your mom
4 about this and being truthful with her now.
5 Okay? If you are truly sorry for the Halbachs,
6 you'll be -- you'll tell your mother the truth
7 about this. Okay?"

8 And then Investigator Wiegert: "Are you
9 going to do that?"

10 Brendan Dassey: "Yeah."

11 Investigator Wiegert: "When are you
12 going to do that?"

13 Brendan Dassey: "Tonight."

14 Investigator Wiegert: "Probably be a
15 good idea before we tell her. That would be the
16 right thing to do. Your mom deserves to know.
17 Okay?"

18 "Um-hmm. Um-huh. All right."

19 Is that, um -- do you recall having that
20 conversation with Brendan Dassey on May 13, 2006,
21 at the Sheboygan County Jail?

22 A Yes.

23 Q Now, during those two -- two portions of the
24 interview with Brendan, Brendan told you that
25 her moth -- his mother was coming the next day;

1 is that right?

2 A Yes.

3 Q Um, and that -- the next day would have been a
4 Sunday; is that right?

5 A Yes.

6 Q And -- okay. Now, one final question about
7 the -- the interview on May 13 at the Sheboygan
8 County Jail. Did Mr. O'Kelly ever knock on the
9 door of that interview room and hand you any
10 documents for use during the interrogation?

11 A Someone did. And I remember that from reviewing
12 the video. And I believe it was probably him. I
13 don't know who else it would have been.

14 Q Okay.

15 ATTORNEY GERAGHTY: I guess, Judge, I
16 have a cup -- couple more questions, then I'll be
17 done. I said I promised one, but I've got two
18 more.

19 Q (By Attorney Geraghty) Uh, do you recall --
20 well, do you recall what that document was?

21 A It looked like a photograph. Probably an aerial
22 photograph. And he handed it in. I gave it to
23 Investigator Wiegert, and to my knowledge we never
24 used it for anything.

25 Q Did Brendan Dassey ever speak to, um,

1 Michael O'Kelly during the time that you were
2 interviewing Brendan Dassey? In other words, did
3 you ever take a break to allow Brendan to talk
4 to Mr. O'Kelly?

5 A I don't believe so.

6 Q Did Brendan, to your knowledge, know that
7 Mr. O'Kelly was there?

8 A I don't know.

9 Q Did you ever tell Brendan that Mr. O'Kelly was
10 there?

11 A I don't remember. Uh, the transcripts or the video
12 would probably show that if we did.

13 Q Okay.

14 ATTORNEY GERAGHTY: Nothing further, Judge.

15 THE COURT: All right. We'll break for 15
16 minutes.

17 (Recess had at 2:30 p.m.)

18 (Reconvened at 2:50 p.m.)

19 THE COURT: All right. Let's go back on
20 the record. Mr. Kratz? Or Mr. Fallon?

21 ATTORNEY FALLON: No questions.

22 THE COURT: Can't ask you to redirect on
23 no questions.

24 ATTORNEY GERAGHTY: No. Sorry, Judge.

25 THE COURT: Further witnesses?

1 ATTORNEY TEPFER: Oh. We just want to
2 seek admission of Exhibit 363 at this point.
3 It's been conditionally admitted, I think, twice
4 now, and I think it can be admitted now.

5 ATTORNEY FALLON: No objection.

6 THE COURT: All right. Three sixty-three
7 is received. Now, when I say 363, we're talking
8 about the three pages?

9 ATTORNEY TEPFER: Correct.

10 ATTORNEY FALLON: Right.

11 ATTORNEY TEPFER: The other pages have
12 already been admitted. Um, at this time there's
13 a -- I believe there's a stipulation to a
14 March 7, 2006, videotape that, um, corresponds
15 with Exhibit 317, which is the transcript of the
16 videotape that, um, I think there's a stipulation
17 to the authenticity of that, um, videotape,
18 and -- and we'd like to play that in open court.

19 ATTORNEY DRIZIN: Just for the record,
20 Your Honor -- just for the record, this exhibit
21 is being introduced as, um, impeachment evidence
22 of Mr. Kachinsky.

23 Mr. Kachinsky testified on his first day
24 of testimony that, um, with respect to Exhibit
25 317, which was an exhibit that talked about him

1 making comments about Brendan being morally and
2 legally responsible for this crime, and that, um,
3 Steven Avery was evil incarnate.

4 Mr. Kachinsky testified that he did not
5 make those comments and -- and they may have been
6 made by Ralph Sczygelski. And this is used to
7 demonstrate that, in fact, Mr. Kachinsky made
8 those comments.

9 THE COURT: You're referring to what is
10 page three of unpaginated Exhibit 317; is that
11 correct?

12 ATTORNEY TEPFER: Um, if I could just
13 double-check that for a second and then I will --

14 ATTORNEY FALLON: And, Counsel, this
15 exhibit is marked 3-7-4?

16 ATTORNEY TEPFER: Three-seven-four.
17 Right.

18 THE COURT: Oh, I'm sorry.

19 ATTORNEY TEPFER: Well, this -- the
20 video is marked 3-7-4, the transcript of this
21 video is marked 317 --

22 THE COURT: Right.

23 ATTORNEY TEPFER: -- which has
24 previously been admitted. So it corresponds with
25 317 and -- yes. That is page three -- well, I

1 think the whole exhibit is -- or the whole
2 exhibit will be played. The whole transcript of
3 the exhibit will be played. But the part that
4 Mr. Drizin mentioned is the --

5 COURT REPORTER: Excuse me. I'm sorry.
6 I'm having a hard time hearing you.

7 ATTORNEY TEPFER: I'm sorry. The part
8 that Mr. Drizin referenced is on -- found on page
9 three of Exhibit 317.

10 THE COURT: All right. So let me -- let me
11 get this straight. You're -- you're going to play
12 the entirety of this Exhibit? That is to say
13 everything that I see in Exhibit 317?

14 ATTORNEY DRIZIN: Yes. It's only a
15 couple minutes long, Judge.

16 ATTORNEY FALLON: Actually, if it's what
17 I was -- viewed last night, it's, uh, 90 seconds.

18 THE COURT: Let's play it.

19 ATTORNEY TEPFER: Can I just make one
20 other point about this? This is our only copy.
21 I'm wondering if we could not have it received
22 today so that we could burn a copy and send it to
23 the Court?

24 THE COURT: Sure.

25 ATTORNEY FALLON: I do have a comment once

1 it's moved in, though. But -- but it's better that
2 you see it first.

3 THE COURT: Okay.

4 "I look forward to meeting with him.

5 "Attorney Len Kachinsky says he accepted the
6 Dassey case knowing it would be his greatest
7 professional challenge.

8 He immediately lashed out at Steven
9 Avery."

10 "We have a 16-year-old who, while
11 morally and legally responsible, was, uh, heavily
12 influenced by someone that can only be described
13 as, uh, something close to evil incarnate."

14 "Kachinsky joined Dassey's former
15 attorney in criticizing Special Prosecutor Ken
16 Kratz. They say Kratz went too far when he gave
17 graphic details of what supposedly happened
18 during the murder."

19 "The district attorney is a tough one.
20 Um, Ken Kratz is not somebody that is, um, going
21 to be tremendously easy to work with."

22 "Kratz responded tonight saying, 'I
23 apologize to individuals who believe there's too
24 much in the Complaint. The information in the
25 Complaint is what was developed during the

1 investigation. If they think there was too much
2 evidence against his client, I'm sorry about
3 that.'

4 Attorney David Weber of Green Bay, who
5 is not involved in the Avery case, says 'Kratz
6 may have had reason to include the details.'"

7 "He's got to drop a Complaint, a legal
8 document, that's going to satisfy a judge that
9 there's probable cause to initiate the criminal
10 proceedings against somebody."

11 "The greater the detail, the easier to
12 convince a judge that a 16-year-old deserves
13 adult charges."

14 ATTORNEY DRIZIN: Your Honor, um, we
15 would have no objection to anything beyond the
16 introductory part of this being admitted into
17 evidence. Um, it's up to the State if -- if they
18 want the whole thing to provide greater context.
19 We don't care either way.

20 THE COURT: Mr. Fallon?

21 ATTORNEY FALLON: Yes. Our only concern is
22 that it's quite apparent that on one level, yes,
23 Mr. Kachinsky uttered the words at issue.

24 The problem with that tape is that when
25 you pay close attention to it, and I did watch it

1 five times last night, it's quite apparent that
2 that is an excerpt right out of a statement. So
3 what was said immediately before the "morally
4 responsible" language and what was said
5 immediately thereafter is not reported on the
6 tape.

7 So, in a way, how do we know what was
8 said beforehand? Which may have been as a
9 condition precedent to making those comments,
10 which is I think what Mr. Kachinsky was trying to
11 say on the stand.

12 If I -- and so -- so, anyways, the point
13 being it has limited relevance because it's not
14 the whole statement so we can't really assess it
15 as true impeachment. But that's your call to
16 make.

17 So with that understanding, it is what
18 it is.

19 THE COURT: The Court understands what
20 you're saying, Mr. Fallon. I -- I'm going to
21 receive that portion of this exhibit that -- by
22 "that portion" I mean, Mr. Kachinsky's remarks.

23 Whether those represent the entirety of
24 what Mr. Kachinsky said to the person that was
25 interviewing him, I certainly don't know. Nobody

1 else here knows. But perhaps someone does. But
2 we don't have that of the record. So there --
3 there -- there is, we'll call, tangential
4 relevance here.

5 So the -- the Court will receive it with
6 that in mind.

7 Now, any other witnesses?

8 ATTORNEY TEPFER: Um, there's just one
9 final matter, Your Honor. Um, on the Thursday,
10 the day before this hearing starts, the State
11 filed a mo -- or we had a hearing on motion in
12 limine on -- concerning the exclusion of
13 Dr. Honts' testimony.

14 We offer Dr. Honts to, uh -- as an
15 expert in polygraphy, who would have testified
16 that he reviewed what's been admitted as Exhibit
17 231, which are the polygraph charts prepared by
18 Michael O'Kelly.

19 And he's an expert. We offered him as
20 an expert in polygraphy. And his analysis of the
21 charts demonstrated that Brendan Dassey passed
22 the polygraph given to him, which I believe was
23 on April 16, 2006.

24 The Court excluded this testimony on
25 relevance. We'd just like a -- to reconsider

1 that motion. Um, we believe the testimony is
2 relevant to our argument that Len Kachinsky and
3 his agent, Michael O'Kelly, were disloyal to
4 Brendan Dassey.

5 Michael O'Kelly testified that Brendan
6 Dailey -- Brendan Dassey failed the polygraph
7 test in his analysis, and Len Kachinsky testified
8 that Michael O'Kelly informed him that the
9 results were inconclusive.

10 Doctor's tem -- Honts' testimony would
11 be further impeachment on the question of whether
12 Michael O'Kelly told Brendan a truth or a lie
13 when he interrogated him on May 12 regarding his
14 results of the polygraph.

15 Think it's relevant to the matter of
16 loyalty in his own investigator lying to him in
17 an effort to get a statement.

18 THE COURT: Go ahead.

19 ATTORNEY FALLON: I had another argument as
20 to why that's inadmissible in addition to the ones I
21 already made.

22 Um, the real issue in determination is
23 of the voluntariness question. And it comes in
24 the context under Wisconsin law as to when an
25 individual is confronted with the results.

1 And it doesn't matter, for purposes of
2 legal discussion, whether somebody's claimed to
3 have passed, or whether if somebody's claimed to
4 have failed. It's what was told to the suspect
5 and did that have any relevance or any
6 justification whatsoever.

7 So in addition to the -- the fact that
8 an official polygrapher's certification of the
9 results being inadmissible under *State v. Dean*, I
10 renew my objection that it's inadmissible as it
11 relates to, um, the original argument in the
12 motion.

13 And for that reason in -- it doesn't
14 matter what the result is for the Court to make
15 the analysis required under Wisconsin law.

16 ATTORNEY TEPFER: Can I make one quick
17 response?

18 THE COURT: Go ahead.

19 ATTORNEY TEPFER: As a -- we're not --
20 we're not talking about voluntariness, we were
21 talking about the loyalty matter on this. And I
22 think it's relevant to the loyalty of whether or
23 not he lied. Whether or not he told him the
24 truth about the polygraph.

25 ATTORNEY FALLON: Well, if we're not

1 talking about voluntariness, then we've just wasted
2 three days.

3 ATTORNEY TEPFER: Well, we're talking --

4 THE COURT: Here. Look, I made a ruling
5 when this was brought up. I put the -- I put my
6 reasons on the record. I see nothing that has
7 been produced in these days of hearings that
8 would cause me to change that ruling. So it
9 stands.

10 ATTORNEY DRIZIN: Okay.

11 THE COURT: All right. Further witnesses?

12 ATTORNEY DRIZIN: Your Honor, subject to
13 our discussion in chambers with regard to the
14 production of documents by Mr. Dederling to the
15 Court, um, the defense rests.

16 THE COURT: Well, before the defense rests,
17 I'm going to have a colloquy with the defendant. So
18 if would you pass the microphone over there?

19 Which of you are going to be acting as
20 his attorney for purposes of this colloquy?

21 ATTORNEY DRIZIN: I can, Judge.

22 THE COURT: All right. Mr. Dassey, do you
23 understand that you have a constitutional right to
24 testify at this matter?

25 THE DEFENDANT: Yes.

1 THE COURT: You also have a constitutional
2 right not to testify. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And that decision whether to
5 testify or not to testify is yours and yours alone
6 to make?

7 THE DEFENDANT: Yes.

8 THE COURT: Has anyone made any threats or
9 promises in an attempt to influence you in making a
10 decision?

11 THE DEFENDANT: No.

12 THE COURT: Have you discussed your
13 decision whether or not to testify with your lawyer?

14 THE DEFENDANT: Yes.

15 ATTORNEY DRIZIN: Uh --

16 THE COURT: Mr. Drizin.

17 ATTORNEY DRIZIN: Yes, we discussed it,
18 Your Honor.

19 THE COURT: And, Mr. Dassey, have you made
20 a decision?

21 THE DEFENDANT: Yes.

22 THE COURT: What is that decision?

23 THE DEFENDANT: That I'm not going to
24 testify.

25 THE COURT: Mr. Drizin, you believe that is

1 a decision that's been freely, voluntarily, and
2 intelligently arrived at?

3 ATTORNEY DRIZIN: I do.

4 THE COURT: The Court will so find and that
5 will be part of this record.

6 Now -- now, you're resting? Subject to
7 a discussion that was had in chambers?

8 ATTORNEY DRIZIN: That's right, Your
9 Honor. The defense rests on behalf of
10 Mr. Dassey.

11 THE COURT: All right. It's the State's
12 turn. Mr. Kratz.

13 ATTORNEY KRATZ: The State has no
14 rebuttal witnesses, Judge, but we would ask the
15 Court entertain a -- a motion by the State.
16 Specifically, a motion to dismiss a portion of
17 the, um, defense post-conviction motion at this
18 time, but I'll allow the Court to do whatever
19 housekeeping it needs to do, and then I'd like to
20 state that motion for the record, please.

21 THE COURT: Go ahead.

22 ATTORNEY KRATZ: Thank you, Judge. The
23 State at this time is moving to dismiss that
24 portion of the post-conviction motion which
25 suggests either ineffective assistance of counsel

1 from any of the attorneys, or any related matter
2 that dealt with the issue of false confession.

3 We would also ask the Court to exclude
4 any testimony offered by any witness in this
5 case, including Dr. White, including Dr. Leo, and
6 any other witness as to the issue of false
7 confession.

8 To be entitled to a hearing in a
9 post-conviction motion, the defense has a burden
10 to establish a -- a prima facie case to the
11 Court, uh, including specificity and relevant
12 evidence. That's done by way of affidavit or
13 offer of proof.

14 In this case an affidavit, or several
15 affidavits, were provided to the Court, which
16 necessarily included explanations by Brendan
17 Dassey as to why he made the confession that he
18 did.

19 The suggestion in affidavit form is
20 wholly insufficient for hearing purposes,
21 although it does -- it is considered by the Court
22 to decide whether a hearing on that issue is
23 appropriate or not.

24 Quite frankly, Judge, should the defense
25 have indicated to the Court, uh, that they did

1 not intend to call Brendan Dassey, or another
2 witness to indicate that the confession was, in
3 fact, false, uh, then the State would have argued
4 prior to the commencement of this hearing that
5 the defense was not even entitled to a hearing.

6 Uh, the affidavit of Mr. Dassey is not
7 evidence. It's not to be received as evidence.
8 Um, and the State would reiterate some of the
9 points made in examination of witnesses that the
10 state of the record at this particular time
11 includes Mr. Dassey's trial testimony.

12 When asked why he confessed, his answer
13 was, "I don't know."

14 I pointed out at specific, um, passages
15 in the trial transcript from Mr. Dassey, uh, that
16 he specifically indicated, "I don't know why I
17 confessed."

18 That "I lied to my mom."

19 That "I lied to the police because my
20 family doesn't like cops."

21 That "I never watched TV accounts of
22 Mr. Avery's arrest or around that time."

23 "That I apologized to the Halbach family
24 without any prompting from the police and that no
25 promises or other inducements were given me by

1 the police in exchange for my statement to them."

2 Therefore, Judge, the state of the
3 record at this time is the defendant has
4 indicated there was no contamination, um, nothing
5 suggested or coerced by media, friends, or
6 family, as the affidavit might have promised was
7 going to be elicited at this trial.

8 Mr. Fremgen and others testified as to
9 the trial testimony.

10 I also want to direct the Court,
11 specifically, to **State v. Ernst**, E-r-n-s-t, 2005
12 Supreme Court case, which is cited at 298 Wis. 2d
13 300, 699 N.W. 2d 92, which indicates in pertinent
14 part that a defendant has no right to set forth
15 facts in his favor during a direct examination or
16 otherwise at a hearing without laying himself
17 open to cross-examination.

18 Quite frankly, Judge, to, uh, shield
19 oneself by the Fifth Amendment and not make
20 oneself subject to either impeachment or
21 cross-examination, uh, is not allowed in
22 Wisconsin by Wisconsin law.

23 It is also reiterated in **Brown v. United**
24 **States**, 356 U.S. 148. That's a 1957 case that
25 deals with shielding oneself from

1 cross-examination after a decision to put
2 evidence before the Court.

3 So with that, Judge, with a -- a
4 defendant, like any other witness, not being
5 subject to the rigors of cross-examination or
6 impeachment, uh, I will ask this Court not accept
7 self-serving statements of Mr. Dassey in any form
8 in which they were received, including, um,
9 testimony which necessarily included some
10 indication by Mr. Dassey that the statements, in
11 fact, were false given to the police.

12 Lastly, Judge, this Court may recall
13 that in the trial in this case, when Dr. Gordon
14 and his testimony was contemplated, the State had
15 noted that somebody had to say that the statement
16 was false for this issue to be relevant.

17 And even though Mr. Dassey didn't do it
18 at trial, ostensibly that was his reason for
19 testifying, or at least for Dr. Gordon's
20 conditional, um -- admissibility of his
21 statement, the exact same issue applies in
22 post-conviction fashion, that if any of the
23 defense is going to rely on the issue of false
24 confession, somebody has to say it's false. Only
25 the defendant can do that.

1 And to shield himself, again, by the
2 Fifth Amendment, not allowing cross-examination,
3 is wholly improper.

4 We would ask that those portions, then,
5 of the defense motion for post-conviction relief
6 be denied at this time.

7 I think there is a basis for the Court
8 to consider the, um, ineffective assistance
9 claim. That does not include that particular
10 issue. More specifically, I guess, the
11 disloyalty claim. But that the defense motion
12 and our briefing responsibilities in this regard
13 be limited to those issues, and that the Court
14 not require briefing on an issue for which the
15 proof, that is, the promise of the provision of
16 testimony, has not been satisfied by the defense.
17 Thank you, Judge.

18 ATTORNEY DRIZIN: Judge, do you want to
19 hear argument on this? Or do you want to just
20 wait 'til we brief the issue after we've all had
21 a chance to look at the transcript?

22 THE COURT: Right. I -- I'm not prepared
23 at this point to rule on an oral motion given at the
24 conclusion of a -- a five-day hearing.

25 Much, or all, of what Mr. Kratz said may

1 be true. I don't know. Uh, I would prefer that
2 we set a briefing schedule after the transcripts
3 have been prepared. And -- well, actually, uh,
4 we'll set a briefing schedule, and it will be a
5 while before the transcripts are going to be
6 ready.

7 Uh, my sense is we can do this either in
8 open court or we can do it in chambers at the
9 briefing schedule since we're talking about it
10 now.

11 Uh, since you're the movant, how many
12 days is it going to take you to brief this matter
13 after the transcripts are prepared?

14 ATTORNEY DRIZIN: Can I have a minute,
15 Your Honor?

16 THE COURT: You have.

17 ATTORNEY DRIZIN: We would like 60 days,
18 Your Honor, after the transcripts are prepared.

19 THE COURT: All right. And I'm going to
20 limit the length of the briefs to 40 pages.

21 ATTORNEY DRIZIN: Okay, Judge.

22 THE COURT: Uh, Attorney Fallon, response?

23 ATTORNEY KRATZ: Judge, if we could have
24 45 days to respond, I think that'd be
25 appropriate.

1 THE COURT: Fair enough.

2 ATTORNEY DRIZIN: Same limits apply with
3 regard to length I take it?

4 THE COURT: Yes.

5 ATTORNEY DRIZIN: Okay. Do we get a
6 reply or no? I don't know what the procedure is,
7 Judge.

8 THE COURT: Well, oftentimes I allow a
9 reply. All right.

10 ATTORNEY DRIZIN: How about --

11 ATTORNEY FALLON: They're the moving
12 party.

13 ATTORNEY DRIZIN: How about -- how
14 about, um --

15 THE COURT: Fifteen days would be typical.

16 ATTORNEY DRIZIN: That's fine, Judge.

17 THE COURT: I cannot, at this point, give
18 you any -- any time as to when the transcript will
19 be done. It's going to be pretty busy around here
20 for awhile. But when it's done, that's when the --
21 that's when the time limits start.

22 ATTORNEY KRATZ: I -- I hate to ask,
23 Judge, are you going to limit the reply to a
24 certain amount of pages? Less than 40? Or do
25 they get 40 and 40?

1 ATTORNEY DRIZIN: We're not going to
2 take 40 pages. How about 20 pages on the reply?

3 THE COURT: That's fine.

4 ATTORNEY DRIZIN: Okay. Your Honor,
5 before these proceedings are brought to a halt, I
6 just want to say, on behalf of the entire team
7 from Northwestern and Milwaukee, I want to thank
8 everybody in your courtroom for the tremendous
9 hospitality they've shown us.

10 I also want to thank the sheriff's
11 department for the hospitality they have shown us
12 and shown Brendan Dassey over the last week.
13 Thank you very much.

14 THE COURT: Very good. You're welcome,
15 certainly, for -- on behalf of the Court and -- and
16 staff. Uh, the matter has been abely presented by
17 both sides. I await the briefs.

18 ATTORNEY KRATZ: Thank you, Judge.

19 THE COURT: Stick around. There might be
20 some exhibit -- things we have to go through.

21 (PROCEEDINGS CONCLUDED.)

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25

1 STATE OF WISCONSIN)
2) SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 24th day of March, 2010.

16
17
18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
21
22
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