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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING

DAY 4

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: JANUARY 21, 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: 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

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are?

Q Well, I -- what I'd like you to -- to read to us were the -- the questions that, um, you were testing on as opposed to the other questions. Preliminary questions.

A When you say "preliminary questions," are you referring to the acquaintance test, or the Sym test or the --

Q Correct.

A Okay.

Q Yes.

A Okay. When you say test questions, are you referring to all ten? Or the relevant questions? Or the symptomatic questions?

Q The relevant questions.

A In the first example, there's three relevant questions and they are as follows, and they -- and they numbers -- numbers as follows: Five, seven, and ten, respectively:

Number five is: Did you help kill Teresa Marie Halbach?

Number seven: Did you help kill Teresa Marie Halbach on Monday, October 31?

And the final one was: Was the body of 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 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 aucion -- 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.)

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(Reconvened at 3:15 p.m.)

THE COURT: All right.

Q (By Attorney Drizin) Mr. Edelstein, you'll notice that you're sounded by binders. I'd like you to look on the floor behind you, and there's binder five. And turn to Exhibit 338, please. I'll help you.

A Three thirty-eight?

Q Have you found it Mr. Edelstein?

A I have.

Q Okay. Now, have you had an opportunity to see this? To read this?

A Yes.

Q Okay. Do you recognize this document?

A Yes.

Q And is this a May 5 e-mail from Len Kachinsky to Mark Wiegert?

A Yes.

Q Okay. And it's copied to Mr. Kratz; correct?

A Yes.

Q Okay. Um, had you seen this before a few weeks ago?

A No.

Q Um, and did -- had Mr. Kachinsky ever given this 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?

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ATTORNEY KRATZ: Object --

THE COURT: Wait a sec.

ATTORNEY KRATZ: Objection. Irrelevant.

By definition, closing argument is not evidence in the trial. And, therefore, what you argue to the jury, I'm suggesting to this Court, by definition, cannot include deficient performance or have contributed to a conviction or not.

THE COURT: Well --

ATTORNEY KRATZ: By definition, Judge.

THE COURT: You're -- you're correct, it's not evidence. But I -- I'm going to overrule the objection. He can answer.

ATTORNEY EDELSTEIN: Ask me the question.

Q (By Attorney Drizin) Okay. Do you have any recollection of making a concession to the mutilation charge in your closing argument to the jury?

A I don't recall coming flat-out saying there's enough evidence from which you can easily find him guilty of mutilating a corpse. I do have a clear recollection of making an argument which was intended to provide that as an option for the jury.

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 included. 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 believe -- 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)
)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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