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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
BRANCH 3

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STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING  
DAY 5

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

---

**DATE:** JANUARY 22, 2010

**BEFORE:** HON. JEROME L. FOX  
Circuit Court Judge

**APPEARANCES:**

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

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

STEVEN DRIZIN  
Attorney at Law  
On behalf of the defendant.

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

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

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

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

ALEX HESS  
Law Student  
On behalf of the defendant.

Adar Crosley  
Law Student  
On behalf of the defendant.

Brendan R. Dassey  
Defendant  
Appeared in person.

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 THE COURT: This is State of Wisconsin v.  
2 Brendan Dassey, 06 CF 88. Court of Appeals No. is  
3 07 XX 1073. Appearances, starting with the  
4 prosecution.

5 ATTORNEY KRATZ: Good morning, Judge.  
6 The State appears by Calumet County DA Ken Kratz  
7 and Assistant Attorney General Tom Fallon, acting  
8 as special prosecutors.

9 ATTORNEY TEPFER: For Brendan Dassey,  
10 who's present in court, Joshua Tepfer, um, Laura  
11 Nirider, Robert Dvorak, Steve Drizin, Tom  
12 Geraghty, and two law students, Adar Crosley and  
13 Alex Hess.

14 THE COURT: All right. We have some  
15 stipulations, I think, that were arrived at  
16 yesterday that have been reduced to writing; is that  
17 correct?

18 ATTORNEY TEPFER: That's correct, Your  
19 Honor. Um, we just seek admission of Exhibit --  
20 it's marked as Exhibit 371 and 372.

21 Exhibit 371 is the stipulation to  
22 Attorney Jerome Buting.

23 And Exhibit 372 is the stipulation of  
24 Debra Smith, assigned counsel, Division Director  
25 for the Wisconsin Public Defender's Office.

1 THE COURT: Mr. Kratz, you've seen them?

2 ATTORNEY KRATZ: I have, Judge, and the  
3 State has no objection to their receipt.

4 THE COURT: All right. The Court has  
5 examined the stipulations, 371 and 372. They are as  
6 Attorney Tepfer stated on the record. So we are set  
7 to proceed today.

8 ATTORNEY GERAGHTY: Morning, Your Honor.

9 THE COURT: Morning.

10 ATTORNEY GERAGHTY: Thomas Geraghty.

11 I'd like to call Investigator Wiegert.

12 Your Honor, I believe this is the point  
13 where, um, if Mrs. Tadych is going to testify,  
14 that she be asked to step out of the room.

15 THE COURT: That's fine. I -- is she  
16 present?

17 MS. CROSLY: She just walked out.

18 ATTORNEY NIRIDER: She just walked out,  
19 Your Honor.

20 THE COURT: All right.

21 ATTORNEY GERAGHTY: Very well.

22 **MARK WIEGERT,**  
23 called as a witness herein, having been first duly  
24 sworn, was examined and testified as follows:

25 THE CLERK: Please be seated. Please state

1 your name and spell your last name for the record.

2 THE WITNESS: Mark Wiegert,

3 W-i-e-g-e-r-t.

4 ATTORNEY GERAGHTY: May I proceed, Your  
5 Honor?

6 THE COURT: You may.

7 ATTORNEY GERAGHTY: Thank you.

8 DIRECT EXAMINATION

9 BY ATTORNEY GERAGHTY:

10 Q Um, Investigator, um, good morning.

11 A Good morning.

12 Q You, um, became involved in this case right after  
13 the disappearance of Ms. Halbach; is that con --  
14 is that correct?

15 A That's correct. Yes.

16 Q And you've worked on the case, uh, since then.  
17 Through this trial and through the Avery trial as  
18 well; is that right?

19 A Yes.

20 Q You, um, are aware of all of the steps that were  
21 taken to investigate this case; is that right?

22 A Majority of them, yes.

23 Q Because you were intimately involved in that  
24 investigation; is that correct?

25 A Yes.

1 Q As a matter of fact, you were one of the lead  
2 investigators?

3 A Yes.

4 Q And, um, I trust that -- that before testifying  
5 here today you re-read all of the reports that  
6 you could and perhaps even some of the trial  
7 transcript; is that right?

8 A As much as I could, yes.

9 Q And I saw that when you came in this morning you  
10 had a file with you; is that right?

11 A That's correct.

12 Q Um, I have no objection if you -- if you would  
13 feel more comfortable having that file with you  
14 in referring to (unintelligible) --

15 A I don't have it with me. It's in the other room  
16 so...

17 Q All right. Okay. Now, at the time, um, you  
18 became involved in the Brendan Dassey in --  
19 investigation, or the Avery investigation, you,  
20 at that time, were an experienced investigator;  
21 is that correct?

22 A Yes.

23 Q Um, with the -- with the sheriff's department; is  
24 that right?

25 A Calumet County Sheriff's Department, yes.

1 Q Um, and you had a great deal of experience in --  
2 in -- interrogating suspects; correct?

3 A I've had experience, yes.

4 Q And training; is that right?

5 A Yes.

6 Q You had been -- you had been trained in -- in the  
7 John Reid techniques, if I'm correct?

8 A Correct.

9 Q Uh, and you'd received that training at John Reid  
10 seminars; is that -- is that right?

11 A Yes.

12 Q Uh, and would it be fair to say that, um -- that  
13 you were an adherent to the John Reid technique  
14 for conducting interrogations?

15 A Some yes, some no.

16 Q All right. So there's some things about the John  
17 Reid technique that you agree with and some  
18 things that you don't; is that right?

19 A No, that's not right.

20 Q That's not right. Well, um, why don't you tell  
21 me what you meant by that answer when you said  
22 some things yes, some things no?

23 A Sometimes I use it, I guess, and sometimes I don't.  
24 And after you've done interviews for several years,  
25 um, you kind of develop your own style, I think, and



1           you incorporate some things from different trainings  
2           that you attend.

3    Q       All right.  So, um, you incorporated things  
4           from -- from other trainings as well; is that  
5           right?

6    A       Yes.

7    Q       Not just John Reid?

8    A       Correct.

9    Q       What other trainings?

10   A       Um, I've had several other one-day seminars, um, I  
11           couldn't tell you, specifically, but on interviews  
12           and interrogations.

13   Q       And, um, you also, of course, rely on your own  
14           experience; is that right?

15   A       Yes.

16   Q       As to -- you just said, um, you have to adjust --  
17           you have the techniques to the circumstances; is  
18           that correct?

19   A       Correct.

20   Q       And doing a good interrogation is a -- an  
21           information gathering process; is that correct?

22   A       Yes.

23   Q       And it involves using techniques and tactics to  
24           obtain that information; doesn't it?

25   A       Yes.

1 Q Um, and in conducting those -- those  
2 examinations, you, at some point, um, often come  
3 to the conclusion that a suspect may not be  
4 telling you the truth or telling everything that  
5 he or she knows; is that right?

6 A Yes.

7 Q And that is a matter of a judgment that you've  
8 been able to develop over a period of years; is  
9 that correct?

10 A Um, that's one of the ways, using your judgment plus,  
11 um, comparing what they're saying to evidence, things  
12 like that, yes.

13 Q But judgment plays a big part, doesn't it?

14 A It plays a part in it.

15 Q Now, prior to, um, your contacts with Brendan  
16 Dassey, which I'm going to get to in a moment,  
17 did you have any special training in  
18 interrogating juveniles?

19 A I've had some training in, um, interrogating  
20 juveniles, yes.

21 Q Is that part of the John Reid training?

22 A No.

23 Q And the training that you've had in -- in  
24 interviewing juveniles, um, in part, tells you  
25 that there are special considerations that should

1           be taken to -- into account when interviewing  
2           a -- a child or a juvenile; isn't that right?

3    A       Yes.

4    Q       All right. Um, and one of those considerations  
5           is that juveniles or children are not likely to,  
6           um, understand **Miranda** warnings as well as an  
7           adult; is that correct?

8    A       Well, that depends on a lot of things. Age of the  
9           child, um, experience, things --

10   Q       So --

11   A       -- like that.

12   Q       So one thing would be age; is that correct?

13   A       Yes.

14   Q       And you say, "experience." And when you say  
15           experience, do you mean experience in the  
16           criminal justice system?

17   A       That'd be one thing. Life experience, um, yes.

18   Q       And, for example, um, a -- a juvenile who had  
19           never been arrested before might have more  
20           difficulty understanding **Miranda** rights than a  
21           juvenile who had been arrested many times; is  
22           that right?

23   A       Yes.

24   Q       And would it also be fair to say that children  
25           and juveniles, um, the trainings that you took

1 revealed, are more susceptible to suggestion than  
2 adults?

3 A Not necessarily. Depends on the type of questions  
4 and things that are asked.

5 Q But you have to be especially careful with  
6 juveniles when you interrogate them to avoid  
7 suggesting things; isn't that correct?

8 A We generally are more careful, yes.

9 Q All right. And that's because children are  
10 more -- and juveniles are more -- suggestible  
11 than adults; isn't that right?

12 ATTORNEY FALLON: Objection. At this  
13 particular point we haven't qualified him as  
14 being an expert in the social psychology of  
15 suggestion.

16 And, second, that's not what the  
17 research says for children after age ten.

18 And, three, we're beyond the field here.  
19 This is relevance of generalizations as they  
20 pertain to this post-conviction motion.

21 THE COURT: Sustained.

22 Q (By Attorney Geraghty) Now, I want to turn to  
23 your contacts with Brendan in February of 2006,  
24 okay? Um, prior to that time, um, you did not  
25 know Brendan Dassey; is that correct?

1 A That's correct.

2 Q You had not met him before; is that right?

3 A That's correct.

4 Q And I'm talking specifically about your first  
5 contact with him on February 27, 2006.

6 A Yes.

7 Q Would that have been your first contact with him?

8 A I believe so, yes.

9 Q Before meeting Brendan, you did not know anything  
10 about his -- his social or his educational  
11 background, did you?

12 A Um, yes, I did. Um, there were interviews that were  
13 conducted from other officers who I had talked to  
14 prior to doing that interview. So I did know some  
15 things about Brendan.

16 Q All right. So you knew that he had been  
17 interviewed in November of and December of 2005;  
18 is that right?

19 A Yes.

20 Q And you spoke to those officers; is that correct?

21 A Yes.

22 Q And you reviewed their reports?

23 A At some point I did review their reports, yes.

24 Q And you knew that, um -- you knew something about  
25 his family background? Would that be fair to

1 say? That's what you gathered from those  
2 interviews?

3 A Yes.

4 Q Right. You did not know anything in February  
5 of -- of 2006 about his educational background,  
6 did you?

7 A Um, I -- you know, without reviewing reports I don't  
8 recall exactly the time that we had spoke with some  
9 of the school officials and learned some things about  
10 Brendan. I -- I couldn't put a date on it.

11 Q Do you recall whether you spoke to any school  
12 officials prior to interviewing Brendan Dassey  
13 for the first time on February 27, 2006?

14 A I don't recall the dates I spoke to them specifically  
15 about Brendan's education and things. Um, I can say  
16 that I did speak with the -- I believe it was the  
17 dean of students, briefly, prior to speaking with  
18 Brendan.

19 Q But that was to obtain permission to speak to  
20 Brendan; is that correct?

21 A Yes. And I -- from my recollection, I think there  
22 was a little bit of background given to us on  
23 Brendan.

24 Q Okay. So you knew -- and what -- what did the,  
25 um -- what did the school principal, who I think

1 is the person you spoke to, tell you about  
2 Brendan?

3 A I think it was the dean of students, I think his name  
4 was, but, uh -- his -- his title. I'm not sure about  
5 that, but I believe that's what it was. But I recall  
6 him telling us that Brendan had really never been in  
7 any trouble. He was generally a quieter kid. Things  
8 like that.

9 Q Did he tell you that -- that Brendan was in a  
10 special education class or two?

11 A Not to my recollection.

12 Q Did you ask him?

13 A I don't believe so.

14 Q Is it important to know something about the  
15 background of a interviewee or suspect -- and  
16 we'll get to that question about whether he was  
17 an interviewee or a suspect at that point -- but  
18 just for the moment let's assume an interviewee,  
19 it's important to know something about the  
20 background of a -- of an interviewee before you  
21 interview them?

22 A No, not necessarily. Um, when you go into an  
23 interview, um, and you're treating somebody like a  
24 witness, you don't always know things about them.  
25 You don't always have the opportunity to gain that

1 knowledge prior to speaking with them.

2 Q So you didn't have any background knowledge about  
3 Brendan Dassey's educational background other  
4 than what you had been given by the principal  
5 before you interviewed him on 2/27?

6 ATTORNEY FALLON: Objection. Asked and  
7 answered insofar as he says he -- I talked to the  
8 school officials at some point. I don't know  
9 when. So the question is argumentative.

10 And, second, we're now 15 minutes in  
11 and -- and all I've got is a -- leading  
12 questions. Now we're at the point where the  
13 testimony matters, so I object to the formation  
14 of the question as leading as well.

15 THE COURT: I'll overrule it.

16 ATTORNEY GERAGHTY: I'll -- I'll get to  
17 the interrogation, yes --

18 THE COURT: Let's --

19 ATTORNEY GERAGHTY: -- Judge.

20 THE COURT: -- move.

21 ATTORNEY GERAGHTY: Yes. Could you read  
22 the question back, please?

23 (Wherein reporter attempts to read the  
24 question back.)

25 ATTORNEY GERAGHTY: Maybe I can cut this



1 short. I'll just ask the question again. I'm  
2 sorry. It probably wasn't a very good question.  
3 I'm sorry.

4 Q (By Attorney Geraghty) I asked you whether it  
5 was important to know something about the person  
6 that you're interviewing or interrogating before  
7 you interview or interrogate them?

8 A I think is what I answered before is there's two  
9 different things, an interview and an interrogation.  
10 And in an interview you don't always have the  
11 opportunity. Uh, you're treating these people like a  
12 witness. And, no, not necessarily.

13 Q Okay. Now, you did, um, contact Brendan Dassey  
14 at the Mishicot High School on February 27, 2006;  
15 is that correct?

16 A Yes.

17 Q And you went to that school because you had  
18 information from one of Brendan's family members  
19 that you thought, um, was appropriate to prompt  
20 you to interview Brendan; is that correct?

21 A That would be one of the reasons.

22 Q And that information that you had placed Brendan  
23 Dassey at the Avery -- at the area in which  
24 remains of Teresa Halbach were eventually found;  
25 is that correct?

1 A Some of the information that I had learned early on  
2 was that Brendan Dassey was attending a fire where  
3 Teresa's remains were found.

4 Uh, the other information was that  
5 Brendan was crying uncontrollably at times.

6 Brendan had lost a lot of weight. He  
7 basically wasn't being himself.

8 Again, there were a lot of other things  
9 that had come up after reviewing initial  
10 interviews were reasons that we went back and  
11 talked to Brendan.

12 Q Okay. I'm not quarreling that you didn't have  
13 information. I'm -- I'm just asking you what the  
14 information was --

15 A Sure.

16 Q -- that made -- so you were focusing on a need to  
17 interview Brendan Dassey; is that correct?

18 A I wouldn't say focusing on. Um, we had learned the  
19 information. And he was one of many people that we  
20 went back and re-interviewed. Um, I don't think we  
21 were focusing on Brendan at that time. He was  
22 somebody that was, for lack of better word, on our  
23 radar screen that we needed to come back and talk to  
24 at that time.

25 Q And the interview of Brendan Dassey had -- had

1           also to do with the -- the -- the prosecution of  
2           Steven Avery; is that correct?

3    A       Yes.

4    Q       You were gathering information about -- you were  
5           hoping to gather information about Steven Avery;  
6           is that right?

7    A       Yes, at that point we were. Right.

8    Q       And information that might be useful in the  
9           prosecution of Steven Avery; is that --

10   A       Yes.

11   Q       -- correct? All right. And you thought that  
12           Brendan Dassey might be of assistance to you in  
13           that respect; is that right?

14   A       For obvious reasons, yes.

15   Q       Okay. Now, when you, um, went to the Mishicot  
16           High School, as we said, you spoke to the -- one  
17           of the officials of the school; is that correct?

18   A       Yes.

19   Q       And you asked Brendan Dassey -- you asked the --  
20           the official to bring Brendan Dassey to the room  
21           that you were in; is that right?

22   A       We asked permission to speak with him and to use a  
23           room to speak --

24   Q       All right.

25   A       -- with him, yes.

1 Q Now, prior to speaking to the principal, or the  
2 school official who eventually summoned Brendan  
3 to that room, um, had you spoken to Brendan's  
4 mother?

5 A And this is the February 27 interview --

6 Q Correct.

7 A -- correct? No, we did not.

8 Q All right. Had you spoken to any member of his  
9 family before you interviewed him at the school  
10 on February 27?

11 A About permission to interview him?

12 Q Correct.

13 A No.

14 Q Okay. Um, you knew at that time where or how to  
15 get a hold of Barb Janda; is that correct?

16 A Yes.

17 Q You had her phone number?

18 A Yes.

19 Q Okay. And you also knew how to get a hold of  
20 other Dassey family members; is that right?

21 A Yes.

22 Q 'Cause you had their phone numbers?

23 A Yes.

24 Q And you knew where they lived?

25 A Yes.

1 Q Now, when you were first -- when your -- when --  
2 when you brought -- or when Brendan was brought  
3 into that room, you introduced yourself; is that  
4 correct?

5 A That's correct. Yes.

6 Q And you were with Mr. -- I'm sorry -- Special  
7 Agent Fassbender; is that right?

8 A Yes.

9 Q And Special Agent Fassbender, uh, and you were  
10 co-responsible for the investigation of the  
11 Dassey -- of the Teresa Halbach murder; is that  
12 right?

13 A That's correct. Yes.

14 Q And at that time you were working in cooperation  
15 with Special Prosecutor Kratz; is that correct?

16 A Yes.

17 Q Because Special Prosecutor Kratz had been  
18 appointed to lead the prosecution of Steven  
19 Avery; is that right?

20 A Yes.

21 Q And Special Agent -- I'm sorry -- Special  
22 Prosecutor Kratz knew that you were going to the  
23 Mishicot High School on February 27, 2006?

24 A You know, I don't know if he knew that or not.

25 Q Okay.

1 A I don't.

2 Q At some point he did become aware of that; is --

3 A Yes --

4 Q -- that right?

5 A -- that's correct.

6 Q Okay. Well, we'll get to that in a moment. Now,  
7 let me ask you, um -- I want to ask you a couple  
8 questions about things that you said to Brendan  
9 on February 27, 2006.

10 And, uh, am I correct that the -- that  
11 the contact with Brendan at the high school was  
12 audio recorded?

13 A Yes.

14 Q And that the audio recording didn't work very  
15 well?

16 A It was intermittent. You could hear parts of it.

17 Q Because it was a cassette player that you put on  
18 a table; is that --

19 A Yeah.

20 Q -- right?

21 A Before we had digital, yes.

22 Q Okay. Uh, and so, um, instead of playing -- we  
23 actually have those on clips. But instead of  
24 playing them, because they're -- they're not  
25 audible -- very audible -- I'm going to read --

1 I'm going to read you just a portion of what you  
2 said to Brendan on February 27, 2006.

3 This is chapter one. This is Exhibit  
4 315, chapter one, clip one.

5 A This one here?

6 Q I'm sorry, I should have told you about all those  
7 binders up there.

8 A That's okay.

9 Q And I -- I'm not going to spend a lot of time  
10 with the documents, but some time.

11 A I'm there.

12 Q All right. Now, um, Investigator Wiegert, I'm  
13 going to ask you some questions about what other  
14 people said while you were in the room, and  
15 I'm -- and I'm -- and if you -- some of these --  
16 because you and Investigator Fassbender were  
17 together, uh, I'm hoping that through my  
18 questioning of you we can bring out these facts  
19 and then we won't have to go over the same  
20 information with Investigator Fassbender.

21 But if you don't remember something that  
22 Investigator Fassbender said, then we'll -- he's  
23 available, too, and we'll call him later.

24 But let -- let me ask you: Um, you were  
25 present in the room, um, with, um, Brendan on

1 2/27, 19 -- 2006; is that correct?

2 A Yes.

3 Q At the Mishicot High School?

4 A Yes.

5 Q And, um, you remember Investigator Fassbender  
6 saying, quote, you're a kid, you know, and we  
7 got -- we got people back at the sheriff's  
8 department, district attorney, district  
9 attorney's office, and they're looking at this  
10 now saying there's no way that Brendan Dassey was  
11 out there and didn't see something.

12 They're talking about trying to link  
13 Brendan Dassey to this event. They're not saying  
14 that Brendan did it. They're saying that Brendan  
15 could have had something to do with it or to  
16 cover it up of it which would mean Brendan Dassey  
17 could potentially be facing charges for that.

18 Do you recall Agent Fassbender saying  
19 that?

20 A I do now, yeah.

21 Q All right. Do you have any quarrel with the fact  
22 that that's what he said?

23 A No.

24 Q Okay. And then chapter one, Exhibit 315, clip  
25 two. And, again, Agent Fassbender saying:



1                    "We've gotten a lot of information and,  
2                    you know, some people don't care. Some people  
3                    back there and say, no, we'll just charge him.  
4                    We said no. Let us talk to him. Give him the  
5                    opportunity to come forward with the information  
6                    that he has and get it off his chest. Now, make  
7                    it look -- you can make it look however you  
8                    want."

9                    Do you recall Special Agent Fassbender  
10                    saying that to Brendan Dassey?

11                    A                    Again, after seeing this, yes.

12                    Q                    Okay. And I don't expect you to remember  
13                    everything. And that's why we're using these  
14                    notes --

15                    A                    Sure.

16                    Q                    -- to refresh recollection. Okay. And then I  
17                    want to read you clip three, chapter one, Exhibit  
18                    315. And, again, this is Special Agent  
19                    Fassbender.

20                    "Mark and I, yeah, we're cops. We're  
21                    investigators and stuff like that. But I'm not  
22                    right now. I'm a father that has a kid your age,  
23                    too. I want to be there for you. There's  
24                    nothing like more than to come over -- nothing  
25                    I'd like more than to come over and give you a

1 big hug 'cause I know you're hurting."

2 Do you remember that?

3 A Yep. And I think he meant that. Yeah.

4 Q You think he meant that?

5 A Yeah, I do.

6 Q Okay. Well, I guess that's -- that's great. Um,  
7 but that's what he said; right?

8 A That's what he said.

9 Q Okay.

10 A Yes.

11 Q Uh, now, would it be fair to characterize clip  
12 one and clip two as statements by Special Agent  
13 Fassbender that Brendan is facing some criminal  
14 liability?

15 A Uh, number one, no. Number two, yes.

16 Q So you would -- you'd agree that number two does  
17 indicate that you believe Brendan is -- is facing  
18 some criminal liability; is that right?

19 ATTORNEY FALLON: Objection. That's not  
20 what the question was. And what was intended by  
21 Agent Fassbender when he said those things can be  
22 asked of Agent Fassbender. What Mr. Wiegert  
23 believed him to mean is irrelevant.

24 And, more importantly, the key question  
25 is, what did Mr. Dassey believe?

1                   So what the officers -- the  
2                   unarticulated intent of the officers to the  
3                   suspect in an interrogation is irrelevant and  
4                   immaterial under Wisconsin law.

5                   THE COURT: The objection's sustained.  
6                   That's a correct statement of the law.

7                   ATTORNEY GERAGHTY: Okay.

8                   Q     (By Attorney Geraghty) But these -- you recall  
9                   that these were the things that were -- these  
10                   were the -- three of the things that were said to  
11                   Mr. Dassey at the beginning of the interview at  
12                   the Mishicot High School on February 27, 2006?

13                   A     There are three things that were said to him. I  
14                   don't know, 'cause they're out of context, where they  
15                   were said.

16                   Q     But they were said to him?

17                   A     Yes.

18                   Q     Now, let me turn to, again, Exhibit 315, chapter  
19                   one, clip seven, which is on page two of that  
20                   document. You see that at the top of the page?

21                   A     Yes.

22                   Q     And, again, this is Special Agent Fasgen --  
23                   Fassbender.

24                                 Quote, Mark and I can both -- can go  
25                   back...

1 I'm sorry. Let me start that again. I  
2 don't know why...

3 "Mark and I both can go back to the  
4 district attorney and say, uh, Dassey came  
5 forward and finally told us. Can imagine how  
6 this was weighing on him. They'll understand  
7 that."

8 And then you say:

9 "We'll go to bat for ya, but you have to  
10 be honest with that."

11 Do you remember saying that?

12 A I do.

13 Q And do you remember Agent Fassbender saying what  
14 he -- what's in that transcript just before you  
15 said, "But you have to be honest with us."?

16 A Again, I don't remember specifically, but it's in the  
17 transcript.

18 Q Okay. And then let me ask you about clip ten on  
19 page two of Exhibit 315. Um, and this is you, I  
20 believe.

21 "It's not your fault. Remember that."

22 Did you say that?

23 A Yes.

24 Q And then Agent -- Special Agent Fassbender said:

25 "Yeah, it's not your fault. Like I

1           said, Mark and I are not going to leave you high  
2           and dry."

3                       Do you remember that?

4    A    I do. I meant that.

5    Q    Well, that's not -- I mean, I'm -- I'm glad you  
6           meant it. But the issue is whether you said it?

7    A    I said it, yes.

8    Q    Okay. And then let me refer you to clip 11. And  
9           this is you.

10                    "Brendan, I'm going to ask you a  
11           difficult question, okay? Did you help him put  
12           that body in the fire? If you did, it's okay."

13   A    Did I say that? Yes.

14   Q    All right. And did you mean that it was okay to  
15           put a body in the fire?

16   A    What I meant -- and, again, this is all out of  
17           context. What I meant is that it was not -- I didn't  
18           think it was Brendan's idea to do this. At the time  
19           he was a witness.

20                    I thought that Brendan was, um, there  
21           with his uncle, and I thought he was a witness to  
22           this. I didn't think that he was the one -- the  
23           mastermind behind this.

24                    But, again, it's difficult for me to  
25           answer that without seeing the questions around

1 this or the statements around it.

2 Q Well, the -- the last part of that clip 11 says:

3 "Did you help put him" -- "Did you help  
4 him put that body in the fire? If you did, it's  
5 okay."

6 So did you mean that it was okay for  
7 someone to help somebody else put a body in the  
8 fire?

9 A Again, it's taken out of context. Do I mean it's  
10 okay to have somebody put a body in a fire? No.

11 Q Or it's not okay to -- for anybody to help  
12 somebody else put a body in a fire, is it?

13 A What I meant was I don't believe it was Brendan's  
14 idea to do this.

15 Q And -- and what you meant wasn't, uh, something  
16 that Brendan could have discerned, was it?

17 ATTORNEY FALLON: Objection. That's  
18 speculation. I'm going to renew my objection that  
19 the unarticulated intent of the officer doesn't  
20 matter.

21 But, again, those are just the trees.  
22 The argument -- the forest argument here is this  
23 statement was never played to the jury.

24 ATTORNEY GERAGHTY: Judge --

25 THE COURT: Your objection's sustained.

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ATTORNEY FALLON: Objection.

ATTORNEY GERAGHTY: Judge, may I just respond?

THE COURT: Go ahead.

ATTORNEY GERAGHTY: Okay? Very briefly. This is, um -- one of the issues is the question of whether Mr. Dassey was effectively represented at the motion to suppress. And one thing that didn't happen at the motion to suppress was that there was no inquiry into the circumstances that led up to the March 1 statement, which was the statement that was introduced.

And our contention is that you have to take the whole series of in -- of interrogations as one to determine whether Brendan, um, first of all, knowingly and intelligently waived his rights.

Second, whether he was coerced into making a statement.

Um, and -- and -- and when I say -- we're -- we're talking about a -- a period of time that is relatively short, 2/27 to 3/1, where our contention is that there are a series of contacts with Brendan which constitute one really single interrogation. A strategy for getting

1           Brendan to confess on 3/1 without taking the  
2           prior contacts that this officer and  
3           Investigator -- Special Agent Fassbender had with  
4           Brendan into account.

5                     You -- you -- you don't get a full  
6           picture of the, um, coercive nature, the  
7           suggestive nature, and you also don't get the  
8           question of whether Brendan did understand his  
9           **Miranda** rights at that point.

10                    ATTORNEY FALLON: Your Honor, um, well,  
11           that's an interesting argument, but one that's  
12           already been rejected by Wisconsin courts. The  
13           statements are to be taken independently although  
14           and unless there's a direct taint situation or an  
15           attenuation argument at play. This is not one of  
16           those circumstances.

17                    And under Wisconsin law, the grand  
18           inquisitor theme in theory, this is all one part  
19           of -- of the -- the great plot to undermine  
20           Mr. Dassey has been soundly rejected. **State v.**  
21           **Pischke** is the case.

22                    THE COURT: Yeah. That's my understanding  
23           as well. The -- the objection is sustained.

24           Q        (By Attorney Geraghty) Now, before interviewing  
25           Brendan on the 27th at the Mishicot High School,



1 did you discuss with Special Agent Fassbender any  
2 strategies or tactics that you would employ in  
3 interviewing Brendan Dassey on the 27th?

4 A No.

5 Q You had no discussion whatsoever?

6 A No.

7 Q All right. Now, during -- during the course of  
8 the -- the interrogation on March 27, Brendan  
9 told you some things that -- I'm sorry,  
10 February 27 -- told you some things that, um,  
11 were relevant to your quest to develop evidence  
12 that could be used in the Steven Avery trial; is  
13 that right?

14 A Yes.

15 Q Okay. And you then called Special Prosecutor  
16 Kratz to let him know that you had uncovered that  
17 evidence through your conversations with -- with  
18 Brendan; is that right?

19 A Yes.

20 Q And -- and I'm just taking you through this. I  
21 am leading, but I think I can maybe speed things  
22 up a little bit if I do it.

23 If you -- don't hesitate to quarrel with  
24 me if I ask an unfair question --

25 A Sure.

1 Q -- okay? But, um, Investigator -- Special  
2 Agent -- Special Prosecutor Kratz asked you to  
3 conduct a further interrogation of Brendan Dassey  
4 at the Two Rivers Police Station; is that right?

5 A No.

6 Q You had no contact with -- with -- with Special  
7 Prosecutor Kratz after Brendan Dassey had told  
8 you that he saw certain things in the fire?

9 A Yes, I did have contact with him.

10 Q All right. Could you tell me when that contact  
11 occurred?

12 A Right after the interview at the high school was  
13 finished.

14 Q Okay. And what -- and that was you and -- and --  
15 and Prosecutor Kratz on the phone; is that  
16 correct?

17 A Yes.

18 Q And can you tell us what you said and what  
19 Mr. Kratz said?

20 ATTORNEY FALLON: Objection. How is this  
21 relevant? It also calls for hearsay. But, setting  
22 that aside, why is this relevant?

23 THE COURT: Where's the relevancy here?

24 ATTORNEY GERAGHTY: Well, Judge, there has  
25 been -- there's some, um, issue here about the

1 extent to which Mr. Kratz was or was not involved in  
2 the investigation of this case.

3 And I believe that there is -- it is  
4 relevant to know that, um, that -- as I think  
5 would be expected -- um, Mr. Kratz was involved  
6 in the investigation directing the officers.

7 THE COURT: I don't find it material. And  
8 it's not relevant. The objection's sustained.

9 Q (By Attorney Geraghty) After the conversation  
10 that you had with -- with Mr. Kratz, did you take  
11 Brendan Dassey to the Two Rivers Police  
12 Department?

13 A After contacting his mother, we did, yes.

14 Q All right. How long after your conversation with  
15 Mr. Kratz did you take Brendan Dassey to the Two  
16 Rivers Police Department?

17 A Well, we contacted his mother first, and, um, told  
18 her that we had talked to him at the school, and we  
19 would like to talk to him further at the Two Rivers  
20 Police Department, and asked for her permission to  
21 take him there.

22 And, as a matter of fact, she met us at  
23 the school, and she rode along in the car with us  
24 to Two Rivers Police Department with Brendan.

25 Q Okay. Did she drive to the school?

1 A No. She rode with us.

2 Q No. Um, how did she get to the school? How did  
3 she get --

4 A Oh, to the school. I'm sorry.

5 Q Yeah.

6 A Um, I assume she drove. I don't know that.

7 Q All right. And so she -- she met you at the  
8 Mishicot High School pursuant to your request; is  
9 that right?

10 A Yes.

11 Q And -- and -- and -- and at that point did -- did  
12 you -- did you tell Brendan and -- and his mother  
13 that, um, if they liked, they could -- they could  
14 drive to the Mish -- to the Two Rivers Police  
15 Station and meet you there?

16 A I don't recall what the conversation was prior to. I  
17 can tell you that they both rode with myself and  
18 Agent Fassbender.

19 Q And that's because you asked them to ride with  
20 you; is that right?

21 A I don't know. I don't recall that.

22 Q You don't recall that?

23 A Not specifically, no.

24 Q And this was in your unmarked police vehicle; is  
25 that correct?

1 A No, it was in Agent Fassbender's.  
2 Q Unmarked police vehicle?  
3 A Yes.  
4 Q All right.  
5 A That is correct.  
6 Q And the two of you rode in front and they rode in  
7 back; is that right?  
8 A Yes.  
9 Q You -- you took Brendan to the Two Rivers Police  
10 Department so that he could be further  
11 questioned; is that right?  
12 A Well, I think it was more to review what he had told  
13 us, and we were aware that the tape that we were  
14 using, the mechanism to audiotape this wasn't the  
15 best, and we thought we should have this memorial --  
16 memorialized better, and we were aware that, um, Two  
17 Rivers Police Department had the capabilities to do  
18 that.  
19 Q And the -- the idea to videotape the statement  
20 was whose idea?  
21 A Um, we had called District Attorney Kratz and  
22 informed him of what we had done so far, and he  
23 suggested that we have it on videotape.  
24 Q All right. And so that was part of your -- part  
25 of the conversation that you had with Mr. Kratz,

1           um, while you were at the Mishicot High School;  
2           is that right?

3    A       Yes.

4    Q       Now, when you got Brendan to the Two Rivers  
5           Police Station, you had more information about  
6           Brendan's possible involvement in the  
7           disappearance and death of Teresa Halbach than  
8           you had before you interviewed him at the  
9           Mishicot High School? Would that be fair to say?

10   A       That'd be a fair statement, yes.

11   Q       All right. And would it also be fair to say that  
12           as a result of interviewing Mr. Dassey at the  
13           Mishicot High School, you, um, began to suspect  
14           that Brendan might have some involvement in the  
15           actual perpetration of the crime; isn't that  
16           correct?

17   A       Um, I don't know if I would agree with that. I -- we  
18           were still looking at him as a witness. As somebody  
19           who was at that fire. Um, I guess that's -- that's  
20           all I can say about that.

21   Q       But you did think it was possible that Brendan  
22           might have been involved in the disposal of the  
23           corpse; is that correct?

24   A       Yes.

25   Q       As a matter of fact, that's one reason why you

1           wanted to interrogate him further; is that right?

2    A       Well, again, the more of, um, the interview, we

3           reviewed what we had already done at the school, um,

4           and I believed at that point that he had given us

5           everything he knew at that point, and we wanted to

6           better memorialize that. That was the reason we went

7           to Two Rivers.

8    Q       Okay. Now, when you got to the Two Rivers Police

9           Station, you Mirandized Brendan Dassey; is that

10          right?

11   A       That's correct.

12   Q       And you did that utilizing a form that had -- was

13          available at the Two Rivers Police Department; is

14          that right?

15   A       It was provided me by Two Rivers Police Department.

16   Q       Okay. Um, I'd like to play another clip, and

17          that is chapter three, clip two, on page 13. And

18          we can watch this one on videotape. So Alex...

19                        "But before we ask any questions,

20          Brendan, um, I have to read your rights. This is

21          (unintelligible) okay?

22                        Before we ask any questions, you must

23          understand your rights. You have the right to

24          remain silent. Anything you say can be used

25          against you in court.

1                   You have the right to -- you have the  
2 right to talk to a lawyer for advice before we  
3 ask you any questions and have him with you  
4 during questioning.

5                   You have this right to the advice and  
6 presence of a lawyer, even though you cannot  
7 afford to hire one. We have no way of giving you  
8 a lawyer, but one will be appointed for you if  
9 you wish, and if and when you go to court.

10                  If you wish to answer questions now  
11 without a lawyer present, you have the right to  
12 stop answering questions at any time.

13                  You also have the right to stop  
14 answering questions at any time until you talk to  
15 a lawyer.

16                  I have read the above statements of my  
17 rights. I understand what my rights are.

18                  I'm willing to answer questions and to  
19 make statements. I do not want a lawyer. I  
20 understand (unintelligible) what I am doing.

21                  No promises or threats have been made to  
22 me and no pressure of any kind has been used  
23 against me. Do you agree with that?"

24                                 (Inaudible.)

25                                 "You have to speak up a little bit."



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"Yeah."

"Yes?"

(Unintelligible)

And if you agree with making a statement, I need you to sign right there. And if you want to read it, you can read it there. Why don't you put your initials here, and put your initials here. These are the two things I read to you.

Okay. I'm just going to put the place up here. Two Rivers Police Department. And the date is 2/27/06. And time is approximately 3:21 p.m.

Okay. Put that over there for now."

ATTORNEY GERAGHTY: Okay. Let's stop there.

Q (By Attorney Geraghty) Um, by the -- Officer, at that time were you wearing a -- a sidearm? A firearm?

A I would assume I was. Yes.

Q And you said that Brendan's mother accompanied him to the police station; is that right?

A Yes.

Q And I assumed you asked -- you asked his mother whether she wanted to be present during the

1 interview; is that right?

2 A That's correct.

3 Q And you -- she declined; is that right?

4 A She did decline. Yes.

5 Q All right. Did you tell -- did -- did you tell  
6 her that, um, it might be best that she not  
7 participate in the interview because there might  
8 be some grizzly or unpleasant details?

9 A No, I don't recall that.

10 Q Okay. Did you ever hear Agent Fassbender say  
11 that to her?

12 A Not specifically, no.

13 Q Okay. Did you -- did you tell -- before  
14 Brendan's mother declined to be present in the  
15 interview, did you tell Brendan's mother exactly  
16 what the purpose of the interview was?

17 A Yes.

18 Q And what did you tell her?

19 A To memor -- better memorialize what he had told us at  
20 the school.

21 Q Okay. Did you tell her that, uh -- that -- that  
22 you had some suspicion that Brendan might have  
23 been involved in the mutilation of a corpse?

24 ATTORNEY FALLON: Objection. Relevance.

25 THE COURT: Overruled.

1 THE WITNESS: You know, I -- I don't  
2 recall exactly what we told her about the  
3 interview at the school. I don't know.

4 Q (By Attorney Geraghty) Well, I was talking about  
5 what was going to happen at the interview at the  
6 Two Rivers Police Station. Did you tell her  
7 that, um, you were going to interview Brendan, in  
8 part --

9 ATTORNEY GERAGHTY: Should I stop,  
10 Judge?

11 ATTORNEY FALLON: No, go ahead.

12 Q (By Attorney Geraghty) Okay. Uh, interview  
13 Brendan, in part, because you suspected that he  
14 might be involved in the mutilation of a corpse?  
15 Did you tell her that?

16 A Specifically that, no.

17 Q Okay. Did you tell -- ever tell her that one of  
18 the reasons that you wanted to interview Brendan  
19 on videotape was that you suspected that he might  
20 be -- that Brendan might be guilty of a crime?

21 A No.

22 Q So what Brendan's mother knew was that you were  
23 going to interview Brendan simply because he  
24 might be a witness in the Avery case?

25 A That's correct.

1 Q Okay. And, by the way, Brendan's mother did not  
2 express any reservations about the fact that you  
3 were interviewing Brendan about the Steven Avery  
4 case, did she?

5 A No.

6 Q Did you tell Ms. Janda that Brendan had, in his  
7 statement at the Mishicot High School, said that  
8 he saw things in the fire that was being -- that  
9 that was near the Avery -- Steven Avery house?

10 A Again, as I stated before, I don't recall exactly  
11 what we told her.

12 Q Would it have been at that time your preference  
13 to have Ms. Janda present during the interview or  
14 not present during the interview?

15 A It was her decision. She made the decision not to  
16 be. It didn't matter to me one way or another.

17 Q Didn't matter to you one way or the other?

18 A No.

19 Q You weren't trying to isolate Brendan at that  
20 time?

21 A Well, from my experience, if you want to know my  
22 experience with interviews with -- with people, it's  
23 better one-on-one without somebody else there. But  
24 if she chose to be there, it would have been fine.

25 Q But it would have been better if she chose not

1 to; is that right?

2 A In my experience with interviewing people it's better  
3 if it's a one-on-one thing and they don't have  
4 somebody else there.

5 Q Okay. Now, let me get to the, um -- let's go  
6 back to the video clip that we just saw you, and  
7 I think you have a transcript of it in, um,  
8 Exhibit, uh -- oh, boy. I've got it. It's 315.  
9 Um --

10 ATTORNEY FALLON: The record reflect  
11 Exhibit 315 is a series of clips. It's not the  
12 transcript of the interview.

13 ATTORNEY GERAGHTY: I stand -- I stand  
14 corrected.

15 Q (By Attorney Geraghty) But I'd like you to look  
16 at that transcript of the clip that I just showed  
17 you. Um, you say:

18 "Before we ask any questions, Brendan,  
19 um, I have to read you your rights."

20 It's --

21 A I don't know where that is. I don't have --

22 Q Okay. I'm sorry. This is clip two, page 13.  
23 Same -- I'm sorry. It's Exhibit --

24 THE COURT: Three-fifteen.

25 Q (By Attorney Geraghty) Exhibit 315.

1 A I have Exhibit 315. Page --  
2 Q Look at --  
3 A -- two --  
4 Q -- page -- look at page 13.  
5 COURT REPORTER: One at a --  
6 A Page thirteen.  
7 COURT REPORTER: -- one at a time,  
8 please.  
9 THE WITNESS: Gotcha.  
10 ATTORNEY GERAGHTY: I apologize.  
11 THE WITNESS: I have it.  
12 Q (By Attorney Geraghty) Okay. Can you look at  
13 clip two on page 13?  
14 A Yes.  
15 Q All right. You say:  
16 "Before we ask any question, Brendan,  
17 um, I have to read you your rights."  
18 Is that what you said to him?  
19 A Yes.  
20 Q Okay. And then you say:  
21 "It's just what we have to do. Steps.  
22 Okay?"  
23 A Yes.  
24 Q All right. And I take it that -- that those, um,  
25 statements you made were an effort to sort of

1 minimize the impact of having to read Brendan his  
2 rights; is that right?

3 A Well, I don't -- we didn't have to read him his  
4 rights at that point. He wasn't under arrest.

5 Q Okay.

6 A Um, we chose to do it.

7 Q All right. So you wanted to -- you wanted to let  
8 him know this was sort of a formality; is that  
9 right?

10 A Yes. And it was a formality. Again, we chose to do  
11 that. He was made aware that he was not under arrest  
12 prior to this.

13 Q Okay. If Brendan had asked to -- to walk out of  
14 that interview room and go home with his mother,  
15 you would have let him go at that point; is that  
16 right?

17 A Absolutely.

18 Q No question about it?

19 A Nope. He went home with his mom after the interview.

20 Q Okay. Well, he didn't go home --

21 A He didn't go home --

22 Q -- with his mom --

23 COURT REPORTER: One at a --

24 A -- he went with his --

25 COURT REPORTER: Stop. I didn't get the

1 question or the answer.

2 Q (By Attorney Geraghty) Okay. Let me back up. I  
3 believe you said he went home with his mother; is  
4 that right?

5 A Yes.

6 Q But he didn't go home with his mother, did he?

7 A No. What I meant to say is he left with his mother.

8 Q And -- okay. We'll get to that in a moment.

9 A Sure.

10 Q Um, so you didn't have to read him his rights,  
11 but just to be on the safe side, you did it?

12 A That's correct.

13 Q And you sort of conveyed that to Brendan, like,  
14 this wasn't really something that you had to do,  
15 but you were doing it just to -- did you explain  
16 to Brendan why you were doing it?

17 ATTORNEY FALLON: Objection. The record  
18 speaks for itself. This is irrelevant and  
19 immaterial.

20 THE COURT: You have an audio video clip of  
21 this.

22 ATTORNEY GERAGHTY: Okay.

23 THE COURT: In which he is talking these  
24 very words. I think that's sufficient.

25 ATTORNEY GERAGHTY: Thank you, Judge.



1 Q (By Attorney Geraghty) Let me just ask you a  
2 couple questions about another comment that  
3 you -- or a part of the warnings that you gave.  
4 And that's in the middle of this paragraph. And  
5 I want to refer you to the portion that says:

6 "We have no way of getting you a lawyer,  
7 but one will be appointed for you if you wish, if  
8 and when you go to court."

9 Does that strike you as a correct  
10 reading of the **Miranda** decision and the **Miranda**  
11 training that you receive as a police officer?

12 A It's not my preferred way that I would give **Miranda**.

13 It --

14 Q What's wrong with that?

15 A It was read verbatim off of the Two Rivers Police  
16 Department form that they provided me.

17 Q And what's wrong, in your opin -- you know, and  
18 based on your training, what's wrong with that  
19 phrase that I -- that sentence that I just read  
20 you?

21 A I'm not saying there's anything wrong with it. I'm  
22 saying it's not how I would deliver it.

23 Q Why not?

24 A I probably wouldn't have that sentence in there, but  
25 I'm not saying there's something wrong with it.

1 Q Okay. I -- I'm just asking you why you wouldn't  
2 have that sentence in there.

3 A Because it's not --

4 ATTORNEY FALLON: Is this relevant, Judge?

5 THE COURT: I don't think so. If that's an  
6 objection --

7 ATTORNEY FALLON: It is.

8 THE COURT: -- it's sustained.

9 Q (By Attorney Geraghty) Now, let's get to the  
10 point at which Brendan and his mother left the  
11 Two Rivers Police Station after you had done the  
12 videotape; okay?

13 A Yes.

14 Q You -- you did videotape a -- a statement from  
15 Brendan Dassey; is that right?

16 A That's correct.

17 Q In which he confirmed a lot of the things that he  
18 had said to you on the audiotape at the Mishicot  
19 High School; is that right?

20 A That's correct. Yes.

21 Q And you discussed the results of that -- or did  
22 you discuss the results of that videotaped  
23 statement with, um, Mr. Kratz?

24 A At some point, yes. I don't know when that was done.

25 Q Okay. Was it -- was it done at any time on 2/27,

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2006?

A Again, I don't know when it was done. There was a discussion with Mr. Kratz. I --

Q Okay.

A -- couldn't put a date on it.

Q Okay. You did discuss, obviously, the results of that interview with your partner, Special Agent Fassbender; is that right?

A Yes, he was there.

Q Okay. And after that interview you made a decision that Brendan and his mother should not return to the -- to their residence; is that correct?

A It was a suggestion, yes.

Q Um, are you saying that -- well, let -- let me ask you what -- what did you say to Brendan and his mother about where they should spend the night on the evening of 2/27, 2006?

A I can't tell you specifically what was said. Um, I can tell you that we suggested to them that it would not -- may not be a good idea to stay at the residence that night.

Q Okay. And you -- you did -- you made that suggestion for a couple of reasons, didn't you?

A Yes.

1 Q Um, the first reason was that you wanted to -- to  
2 protect the integrity of the investigation; is  
3 that right?  
4 A Yes.  
5 Q And so you wanted to isolate Brendan and his  
6 mother from other family members; correct?  
7 A Yes.  
8 Q You also were concerned about Brendan's safety;  
9 is that right?  
10 A That's correct.  
11 Q And so that was another reason you suggested that  
12 they not spend the night at their house?  
13 A Yes.  
14 Q Okay. And so they drove to a resort near the Two  
15 Rivers Police Station; is that correct?  
16 A Um, no. Not near Two Rivers Police Station.  
17 Q The Fox Hills Resort?  
18 A That's correct.  
19 Q And how far is that from the police station?  
20 A Oh, it's in, um, the village of Mishicot. I would  
21 estimate seven to eight miles.  
22 Q Okay. And you reserved a room for them there?  
23 A Yes.  
24 Q And I take it that the county or the -- law  
25 enforcement paid for that room; is that right?

1 A Somebody did, yes. I didn't --  
2 Q All right.  
3 A -- specifically.  
4 Q And the Dassey --  
5 A One of the counties --  
6 COURT REPORTER: Wait.  
7 A -- paid for it.  
8 COURT REPORTER: Wait.  
9 Q (By Attorney Geraghty) Okay.  
10 ATTORNEY GERAGHTY: Sorry.  
11 Q (By Attorney Geraghty) The Dasseys didn't pay  
12 for that room, did they?  
13 A No.  
14 Q Um, and you -- you monitored the -- the  
15 whereabouts of Brendan and his mother throughout  
16 the night; didn't you?  
17 A I did not.  
18 Q But somebody did?  
19 A That we had somebody there for safe -- excuse me --  
20 security purposes. We weren't monitoring them. We  
21 were -- for security, because we were concerned.  
22 Q All right. So you had a -- a squad car or police  
23 car parked out near that resort; is that correct?  
24 A Um, I did not make those arrangements. I believe  
25 that I -- I -- again, I don't know if it was Agent

1 Fassbender or who, but I know there were some  
2 arrangements made to have some extra patrol in the  
3 area.

4 Q All right. And part of that, um -- part of the  
5 reason for patrolling there was to see that they  
6 didn't leave?

7 A No.

8 Q No.

9 ATTORNEY GERAGHTY: May I have just a  
10 moment, Judge? I'm sorry. Just --

11 THE COURT: Sure.

12 Q (By Attorney Geraghty) Now, Agent Wiegert, on  
13 the -- the 28th of March, 2006, there was a -- a  
14 new development in the case with respect to the  
15 physical evidence; is that correct?

16 A I don't know.

17 Q Okay. I'll -- I'll ask you to look at Exhibit  
18 91?

19 THE COURT: That's in, I think, volume two.

20 THE WITNESS: Okay.

21 ATTORNEY FALLON: Did you say 91, Counsel?

22 ATTORNEY GERAGHTY: Yes.

23 ATTORNEY FALLON: Thank you.

24 THE WITNESS: Yes.

25 Q (By Attorney Geraghty) All right. Um, will you

1 take a look at -- at Exhibit 91, which is a  
2 Calumet County Sheriff's Department report dated  
3 2/28, 2006? Um, you are the reporting officer  
4 and it has to do with laboratory findings on  
5 charred cranial pieces.

6 A Yes.

7 Q All right. Do you remember receiving that report  
8 on -- or, I'm sorry -- actually writing that  
9 report on 2/28, 2006?

10 A Specifically remember that? No. But, I mean, it's  
11 here. I -- I would --

12 Q Okay.

13 A -- believe that was done.

14 Q And, um, that was when you learned -- I'm --  
15 on -- on February 28, 2006, that there was  
16 evidence that Teresa Halbach had been shot; is  
17 that correct?

18 A No. Um, we had evidence that there was a defect.  
19 Um, and I can read it to you if you'd like.

20 Q You can read it, sure.

21 A Sure.

22 "Item EJ had one piece of charred skull  
23 that was labeled suspected entrance" --

24 COURT REPORTER: I'm sorry. Please slow  
25 down.

1 THE WITNESS: Sure. I'm sorry.

2 -- "that was labeled suspected entrance  
3 defect. Elemental analysis was performed on the  
4 specif -- suspected entrance defect and other  
5 areas of the charred bone. Traces of lead were  
6 detected on one of them -- on one area of the  
7 exerior surface of the suspected entrance defect.  
8 The source of the lead metal would not -- could  
9 not" --

10 COURT REPORTER: Slow down.

11 THE WITNESS: "The source of the lead  
12 metal could not be determined."

13 Q (By Attorney Geraghty) All right. But that --  
14 that gave you reason to suspect that she had  
15 been --

16 A Yes.

17 Q -- shot?

18 A Yes.

19 Q Okay.

20 A That's correct.

21 Q Oh, I'm sorry, I didn't phrase that question  
22 quite correctly. Um, and this was, um, new and  
23 important information; is that right?

24 A That's correct.

25 Q And -- and it was important because not only was



1 she -- was -- was there information indicating  
2 that Ms. Halbach might have been shot, but that  
3 she was shot in the head? That was important  
4 too?

5 A Yes.

6 Q Okay. You, on March 1, decided to re-interview,  
7 re-interrogate -- and we'll get into that in a  
8 moment -- uh, Brendan Dassey; is that correct?

9 A Yes.

10 Q You -- you picked Brendan Dassey up at school?

11 A Yes.

12 Q And before picking Brendan Dassey up at school,  
13 you called his mother; is that right?

14 A We did, yes.

15 Q You told his mother that, um, you were going to  
16 pick him up; is that right?

17 A Yes.

18 Q And take her -- take Brendan to -- to be  
19 interviewed or interrogated again; is that right?

20 A We told her that we would like to take him to  
21 Manitowoc Sheriff's Department to re-interview him.

22 Q And did she give you that permission?

23 A She did.

24 Q During that conversation with Brendan's mother on  
25 March 1, 2006, did you ask his mother to come to

1 the police station as soon as possible so that  
2 she could be present during the interview or  
3 interrogation of Brendan Dassey?

4 A I don't remember the specifics of the conversation.  
5 Again, we asked permission to take him there. She  
6 granted that permission. And, eventually, she met us  
7 at the sheriff's department.

8 Q Well, she didn't meet you at the sheriff's  
9 department until quite late in the day; right?

10 A That's correct. She was here on other business and  
11 came over to the -- to the courthouse. Excuse me, to  
12 the sheriff's department. She was at the courthouse  
13 for other business.

14 Q What time did you pick up Brendan at school?

15 A I couldn't answer that without seeing a transcript  
16 or...

17 Q Um, I'll -- I'll ask you to look at Exhibit 209?

18 A Do you know what binder number?

19 Q Um --

20 ATTORNEY TEPFER: Binder four.

21 Q (By Attorney Geraghty) Want me to --

22 A Two-o-nine?

23 Q Yes.

24 A Yeah. I should have it here in a second. Yes.

25 Q All right. Um, I believe you're now looking at

1 Exhibit No. 209, which is a police report  
2 apparently authored by you. Do you recognize  
3 that?  
4 A I do.  
5 Q Is that your report?  
6 A Yes.  
7 Q All right. Um, does it indicate that you  
8 contacted Barb Janda at approximately 9:50 a.m.  
9 on March 1, 2006?  
10 A Yes.  
11 Q And does it also indicate that you arrived at the  
12 Mishicot High School at approximately 10:00 a.m.  
13 on March 1, 2006?  
14 A Yes.  
15 Q And that at 10:05 Brendan came to the area in  
16 which you were located, and you then took Brendan  
17 to, um, the Manitowoc County Sheriff's  
18 Department?  
19 A Yes.  
20 Q Okay. Now, you're looking at that report. Um,  
21 does it say anywhere in that report that you, um,  
22 offered or even discussed with -- with Barb Janda  
23 the possibility that Barb could go with Brendan  
24 to the police department?  
25 A In this report, no.

1 Q And do you recall telling Barb that, in fact, she  
2 could do that?

3 A No. As I indicated earlier, I recall asking her  
4 permission to take Brendan to the sheriff's  
5 department.

6 Q But not to -- you didn't tell her she could come  
7 with you?

8 A No. And I didn't tell her she couldn't either.

9 Q Right. Certainly didn't invite her to come  
10 along, did you?

11 A I don't recall if we did or we didn't. I don't know.

12 Q Right. And, again, um, that was because you  
13 would -- you would prefer to speak to Brendan  
14 alone; isn't that right?

15 A That's true.

16 Q Now, in the car on the way to the Manitowoc  
17 County Sheriff's Office, you Mirandized Brendan;  
18 is that right?

19 A Yes.

20 Q And I'd like to play you, uh, on page 13, clip  
21 three. That's Exhibit 315.

22 ATTORNEY FALLON: Your Honor, we have a  
23 tape, we have the transcript, um, as already  
24 identified Exhibit 209. Can we just ask the  
25 question about the point in issue? I mean, let's

1           move this along.

2                   THE COURT: Any reason, Mr. Geraghty, we  
3           couldn't do it that way?

4                   ATTORNEY GERAGHTY: Absolutely not. No  
5           reason. I'll do it.

6   Q           (By Attorney Geraghty) Um, so -- I'm sorry. If  
7           you look at, um, Exhibit 209 -- I'm sorry to get  
8           you back to another exhibit.

9   A           Um, I think that's where I'm at.

10   Q           Okay.

11   A           Two-o-nine.

12   Q           All right. The second page of that exhibit,  
13           which is your -- your page number 526?

14   A           Yes.

15   Q           Okay. Um, and I'm just going to read you what  
16           you -- could -- could -- why don't you go ahead  
17           and read what you told Brendan. Starting with  
18           when it says, "Wiegert" two-thirds of the way  
19           down on the page?

20   A           Sure.

21                   "Brendan, I'm just going to -- going  
22           to -- to read you this form. It's your **Miranda**  
23           rights. And then we'll talk about that a little  
24           bit. Okay?

25                   The law requires you to advise you have

1 the following rights:

2 You have the right to remain silent.  
3 Anything you say can and will be used against you  
4 in court.

5 You have the right to consult with a  
6 lawyer and have him present with you while you're  
7 being questioned.

8 If you cannot afford to hire an  
9 attorney, one will be appointed to represent you  
10 before any questioning.

11 You have the right to stop answering  
12 questions at any time."

13 Q Go ahead and why don't you read the next -- why  
14 don't you read all the way through?

15 A "Now you got to speak up so this thing picks up your  
16 voice, okay? I just got two questions to ask you  
17 from there. Do you know and understand each of these  
18 rights, your rights, which I have explained?"

19 Brendan's comment is:

20 "Yeah."

21 I then, again, ask:

22 "Understanding these rights, do you want  
23 to talk to us?"

24 Brendan's comment, again, is:

25 "Yeah."

1 Q Okay. Turn to the next page.

2 A Okay.

3 Q And just read what you said. I think that's the  
4 final remark that you make there.

5 A "Okay. I'm going to have -- I'm going to have -- I'm  
6 going to sign here. And I need you to sign by the  
7 "x."

8 Q Okay. And those were the warnings that, um --  
9 that you gave him in the car on the way to the  
10 Manitowoc County Sheriff's Department on March 1,  
11 2006; is that right?

12 A Yes.

13 Q Okay. And, again, you gave him those warnings  
14 because you suspected that he was involved in the  
15 mutilation of Teresa Halbach's corpse and her  
16 murder; isn't that correct?

17 A No.

18 Q No. You did not suspect that he was involved?

19 A Did I suspect at that time that he was involved in  
20 the murder? No.

21 ATTORNEY FALLON: Your Honor, I -- I want  
22 to -- I just -- it's not an objection, but for  
23 appellate record purposes, a point of clarification.

24 Uh, the Court would examine, and Counsel  
25 can examine, the ex -- the exhibit again, the

1 reference point that, um, they talked about, that  
2 is actually the second reading of **Miranda**.

3 THE COURT: Are you -- are you referring  
4 here to Exhibit 209?

5 ATTORNEY FALLON: Yes.

6 THE COURT: And you're referring to page  
7 526 on 209?

8 ATTORNEY FALLON: Uh, if the Court would  
9 back up to page 525, he was advised once on the ride  
10 there, and the portion that Counsel just read is  
11 upon arrival in the video room to memorialize what  
12 occurred in the car. So just so that the record's  
13 clear and there's no confusion.

14 THE COURT: I -- it -- it -- I  
15 understand --

16 ATTORNEY FALLON: First of all, it's all  
17 irrelevant. But just so that we're clear.

18 THE COURT: Page 525 says, at paragraph --  
19 "At approximately 10:10 a.m., I did read Brendan his  
20 Mirana -- **Miranda** rights from the warm -- warning  
21 and waiver of rights form which will be included in  
22 this report."

23 Then, if we go to page 526, uh, the  
24 third paragraph on that page notes that, quote,  
25 at approximately 10:43 a.m. we did arrive at the



1 Manitowoc County Sheriff's Department."

2 And it's after that, that Mr. Wiegert  
3 said what he read.

4 ATTORNEY FALLON: Right.

5 ATTORNEY GERAGHTY: Well, Judge, um, just  
6 to clarify, I believe that both of these -- I'm not  
7 reading this correctly, I'm happy to be corrected.  
8 But, um, the -- the warnings that we're referring to  
9 took place in the car. Um --

10 ATTORNEY FALLON: Why don't you ask him?  
11 You can ask the witness.

12 ATTORNEY GERAGHTY: Hold on.

13 THE COURT: Why don't we just ask the  
14 witness?

15 Q (By Attorney Geraghty) All right. Did you --  
16 did you provide Mr. -- Mr. Dassey with warnings  
17 in the car on the way over to the Manitowoc  
18 County Sheriff's Office?

19 A I did, yes.

20 Q All right. And, um, did -- did you read those  
21 warnings from your Manitowoc County Sheriff's  
22 Department **Miranda** card?

23 A No.

24 Q Let me just -- let me just clarify this. Um, in  
25 what form, or from what source, did you -- did

1           you read Mr. Dassey his rights as you were  
2           traveling from the Two -- from the resort -- I'm  
3           sorry -- from the Mishicot High School to the  
4           Manitowoc County Sheriff's Department?

5    A       I believe they were read from the Calumet County  
6           warning waiver of rights form. Um, I -- I -- I can't  
7           be a hundred percent in certain but that's my  
8           recollection of it.

9    Q       Okay. And then when you -- your testimony is  
10           that when you arrived at the Manitowoc County  
11           Sheriff's Department, you read him his rights  
12           again; is that right?

13   A       No, I didn't say that.

14   Q       Okay. The portion of the -- the rights or the  
15           rights that I read to you from page two of  
16           Exhibit 209, where were you when you read that  
17           form?

18   A       This form was read in the vehicle on the way to  
19           Manitowoc County Sheriff's Department. And when we  
20           arrived there, um, I reminded him of his **Miranda**  
21           warnings --

22   Q       Okay. That's --

23   A       (Unintelligible)

24   Q       -- what I -- that's what I thought.

25   A       Okay.

1 Q And so you did not re-read the rights to Brendan  
2 after you arrived at the Manitowoc County  
3 Sheriff's Department; is that correct?

4 A No, I reminded him of his rights.

5 Q You just reminded him?

6 A Yes.

7 Q Okay. Now, this was the, um -- the -- the  
8 advisement of rights in -- in the auto -- in the  
9 car on the way over to the Manitowoc County  
10 Sheriff's Department was a second time during a  
11 period of two days that you had read Brendan  
12 Dassey his *Miranda* rights; is that right?

13 A He was read them on the 27th and on this date, which  
14 would have been the -- March 1.

15 Q Right. And I take it that, um -- that you read  
16 him his rights on the 1st of March again just to  
17 be on the safe side?

18 A Yes. And --

19 Q Were you advised by Mr. Kratz to read Brendan his  
20 rights in the car on the way over to the  
21 Manitowoc County Sheriff's Department?

22 A No, I don't believe he had advised us of that.

23 Q All right. Were you advised by Mr. Kratz to  
24 re-Mirandize Brendan on March 1, 2006?

25 A I -- I can't answer that. I don't know that -- if he

1           ever advised us or not.

2    Q    Okay. Can you tell us why you thought it was  
3           necessary to re-Mirandize Brendan on March 1,  
4           2006?

5    A    If you're asking for my opinion, um, my opinion is  
6           that in my way of thinking at -- at this point in the  
7           case, this was a huge case, um, with the media,  
8           with -- it was a frenzy here, obviously. And it was  
9           a large case, and I wanted to make sure it was done  
10          correctly. I wanted to make sure there were no  
11          mistakes done in it. And that's why we did what we  
12          did.

13   Q    All right. And it -- was it also because you did  
14          suspect that he had been volved -- that Brendan  
15          had been involved at least in the mutilation of a  
16          corpse?

17   A    Um, at that point we knew that he was at the fire.

18   Q    And possibly involved in the mutilation of a  
19          corpse?

20   A    Yes.

21   Q    Now, you said that you got to the Manitowoc  
22          Sheriff's Department, and I take it that you then  
23          took Brendan somewhere in that building; is that  
24          right?

25   A    Yes.

1 Q Can you tell us where you took him?

2 A To the second floor, I believe it is, in the  
3 detective area of their department.

4 Q And you put him in a room; is that right?

5 A Yes.

6 Q At that time Barb Janda was not present; was she?

7 A No.

8 Q All right. And, also, at that time, if Brendan  
9 had decided to leave, you wouldn't have let him  
10 go, would you?

11 A Yes, we would have.

12 Q If he had asked you if he could go home, you  
13 would have just let him go?

14 A At that point when we first got there, yes.

15 Q Did you tell him that?

16 A Um, I -- without reading the transcript I can't say  
17 exactly what he was told. Or without seeing it on  
18 tape, I don't know if that was said or not. But he  
19 was Mirandized earlier.

20 Q Do you remember telling him at any time before  
21 you began the interrogation or the interview on  
22 March 1 that he was free to leave?

23 A Do I recall specifically? No, I don't.

24 Q The room that you put him in, um, was a -- I  
25 think it was -- been referred to in prior

1 proceedings as a soft interrogation room?

2 A Yes.

3 Q That means that -- that there was a couch in the  
4 room?

5 A There was a couch in the room.

6 Q Carpeting on the floor?

7 A Yes.

8 Q And there was also a, um -- a TV -- a capability  
9 of recording what went on in the room; is that  
10 right?

11 A The room was recorded both audio and video.

12 Q All right. And then there was also a capability  
13 within the police department to look at a screen  
14 outside the room and see what was going on; is  
15 that right?

16 A Yes.

17 Q And while you were interrogating or interviewing  
18 Brendan, um, it was possible to watch what was  
19 going on in that room; isn't that right?

20 A Yes.

21 Q Um, you went in that room with Brendan; is that  
22 correct?

23 A I was in the room with Brendan, yes.

24 Q And I -- by "you" I mean both you and Agent  
25 Fassbender; is that correct?

1 A We were both -- all three of us were in the room,  
2 yes.

3 Q And you began to question Brendan; is that right?

4 A We did.

5 Q Um, and it was at that point that you reminded  
6 him that he had been advised of his **Miranda**  
7 rights; is that correct?

8 A I believe you're correct.

9 Q By the way, before, um, conducting this interview  
10 on March 1, you had had a fair amount of contact  
11 with Brendan at that point; right?

12 A We had contact with him, sure.

13 Q I mean, you had the interview at Mishicot High  
14 School?

15 A Yes.

16 Q And you also had the videotaped conversation with  
17 him at the Two Rivers Police Department; is that  
18 right?

19 A Yes.

20 Q You could not help but notice that Brendan was,  
21 shall we say, slow?

22 A I would disagree with that.

23 Q You would disagree with that?

24 A Yeah.

25 Q Um, would it be fair to characterize him as a

1           vivacious, outgoing person?

2    A       Outgoing? No.

3    Q       Um, so he was reserved?

4    A       Yes.

5    Q       It was difficult to communicate with him?

6    A       No. Not all the time. It depended. Not all the

7           time, no.

8    Q       All right. You had -- you had -- you had no

9           problem at either of the interrogations that

10          preceded 3/1, 2006, having a conversation with

11          Brendan?

12   A       Again, um, if you take the interviews as a whole,

13          there are parts where he was very communicative and

14          sometimes he wasn't. It just depended.

15   Q       And there was nothing that struck you as unusual

16          about his affect or his demeanor?

17   A       I don't know what you mean by "unusual." I mean, I

18          didn't know Brendan very well prior to that. Struck

19          me as -- if you want me to answer that?

20   Q       Sure.

21   A       It struck me as somebody who knew information and not

22          necessarily wanted to provide it.

23   Q       I see. So his -- you took his seeming reticence

24          as being, um, an indication that he didn't want

25          to provide you with information?



1 A Unfortunately, you'll have to explain reticence to  
2 me.

3 Q Okay. Reluctance.

4 A Thank you. Um, again, he wasn't always reluctant.  
5 There are times he was, times he wasn't.

6 Q When he wrote -- he wrote out a written -- he  
7 made a written statement on 2/27; is that  
8 correct?

9 A Yes.

10 Q He had difficulty spelling words; isn't that  
11 correct?

12 A I think some words he did, yes.

13 Q A great deal of difficulty; is that right?

14 A I know he had some difficulty spelling. I don't know  
15 how many words he misspelled. I don't know that.  
16 But he did have some difficulty, yes.

17 Q And you noticed that?

18 A Yes.

19 Q Now, you -- you then proceeded to interview  
20 Brendan for almost three hours on March 1, 2006;  
21 is that right?

22 A Um, I -- I would disagree with that. There was  
23 breaks included in there where he was not talked to,  
24 not interviewed, um, so it wouldn't -- would not have  
25 been a total of three hours I don't think.

1 Q All right. But he was in that room for about  
2 three hours?

3 A Yes.

4 Q Okay. Um, and I'm going to ask you about what  
5 went on in that room in -- in -- in a moment.  
6 But I just -- I want to take us through all these  
7 events first, and then we'll go back and we'll  
8 talk about the content of the interview. Is that  
9 okay?

10 A Certainly.

11 Q Okay. Um, at the, um -- at the end of -- or  
12 toward the end of that interview you made a  
13 decision to -- that, um, Bren -- you were going  
14 to have to arrest Brendan; is that correct?

15 A That's correct.

16 Q And, um, you informed him of that; is that right?

17 A Absolutely.

18 Q And, again, both you and Agent Fassbender were in  
19 the room when that happened; is that correct?

20 A Yes.

21 Q Do you remember approximately what time, um, that  
22 decision was made?

23 A Not without referring back to the transcript or the  
24 aud -- videotape, no.

25 Q Would -- would that have been in the -- in the

1           early -- in the, say, early or mid-afternoon  
2           of -- of March 1?  Would that be fair?

3    A       I think that's fair.

4    Q       Okay.  And had you learned at that time that --  
5           that Brendan's mother was present in the -- in  
6           the Manitowoc County Sheriff's Department?

7    A       We were made aware of it at one point, yes.

8    Q       And do you remember when you were made aware of  
9           that?

10   A       I don't.

11   Q       Do you know whether you were made aware of the  
12           fact that his mother was present during the time  
13           that you were interviewing Brendan and that  
14           interview was leading toward the eventual  
15           charging of Brendan?

16   A       I don't know when Barb got there.

17   Q       Did anybody call you to tell you when Barb got  
18           there?

19   A       Um, call me?  No.  I believe at some point somebody  
20           came to the door and we were informed that his mother  
21           had arrived.

22   Q       All right.  And did you invite her in?

23   A       No.

24   Q       Why not?

25   A       Um, I didn't see a need to have her in the room at

1           that point. It was at the end of the interview. I  
2           believe it was almost done at that point when Barb  
3           arrived.

4    Q       Did you tell Brendan that his mother was there?

5    A       Yes.

6    Q       And that was right after the knock on the door?

7    A       I don't know when, but I know Brendan was advised  
8           that his mother was here.

9    Q       Okay. Would it be fair to say that Brendan was  
10           advised that his mother was there after he --  
11           Brendan was informed that charges were going to  
12           be lodged against him?

13   A       It's possible. And it's probably about the time when  
14           his mother arrived.

15   Q       Now, there did come a time, um, during that --  
16           and -- and, um, inter -- would it be -- at some  
17           point during that, um -- that interview or  
18           interrogation of -- of Brendan, it did become an  
19           interrogation; is that correct?

20   A       I would agree with that.

21   Q       And there was a point at which Brendan was -- you  
22           determined, even before charging him, that  
23           Brendan, if he had asked to leave, he would not  
24           have been allowed to leave the police station?

25   A       At some point, yes.

1 Q And so would it be fair to say that what began as  
2 a -- you characterize it as a -- as an  
3 interview -- it -- it changed from an interview  
4 to an interrogation?

5 A Um, it did change. Um, it's not your typical  
6 interrogation, I think, that people are used to  
7 seeing, but the -- the tone changed somewhat.

8 Q How did it change?

9 A Um, it changed from him being, in my opinion, a  
10 witness, to him being more of a suspect and trying to  
11 get more detail from him.

12 Q All right. And did you tell him when that change  
13 occurred?

14 A No.

15 Q You didn't say, Brendan, up until this time we'd  
16 been interviewing you, now you're a suspect?

17 A No.

18 Q And you didn't say, Brendan, um, we've been  
19 interviewing you, now you're a suspect, and I'd  
20 like to re-read you your **Miranda** rights?

21 A No.

22 Q Did you do that?

23 A Excuse me. No. He had already been read his **Miranda**  
24 rights.

25 Q All right. But that's when he wasn't a suspect;

1 is that right?

2 A That's correct.

3 Q Okay. So when he became a suspect, you did not  
4 read him his **Miranda** rights?

5 A Um --

6 ATTORNEY FALLON: Objection.

7 THE WITNESS: Let me --

8 ATTORNEY FALLON: Not legally required.  
9 Not relevant. Not material.

10 THE COURT: Well, I'm going to overrule the  
11 objection. The -- the witness can answer.

12 THE WITNESS: Thank you. Um, if I could  
13 back up a little bit?

14 Q (By Attorney Dvorak) Sure.

15 A Um, I don't know that he was a suspect, initially,  
16 when we talked to him. It was a interview as a  
17 witness. And then he provides us more information,  
18 which led us to believe that he knew more and was  
19 more involved than he initially told us.

20 Q But what I'm saying is that when he became a  
21 suspect, you did not Mirandize him at that point,  
22 did you?

23 A As I stated, no. He was Mirandized earlier.

24 Q Okay. All right. Now, at the end of the --  
25 after you had made a decision to charge him, you,

1 um, made arrangements for his mother to come into  
2 the interrogation room; is that correct?

3 A She wished to speak with him. It was her request.

4 Q Okay. So how did you get that request?

5 A Um, one of us had left at one point. I -- I -- I  
6 think it was me, actually, who talked to Barb out --  
7 outside of the interview room. And she said she  
8 would like -- she asked if she could see him.

9 Q And what did you say?

10 A Yes. We provided -- we -- we brought her into the  
11 room.

12 ATTORNEY GERAGHTY: May I have a moment,  
13 Judge? And I -- then I just have one series of  
14 questions, and could we take a break after the --  
15 that'd be okay?

16 THE COURT: Sure.

17 Q (By Attorney Geraghty) Officer -- I'm sorry.  
18 Investigator, may I refer you to Exhibit 315,  
19 page six, clip 37.

20 A I'll have to get another book.

21 Q No. We're going to show this -- show you the --

22 A (Unintelligible.)

23 Q -- video.

24 A Okay.

25 Q You can follow it on the transcript if you want.

1 I can give him -- give you a copy. Just -- just  
2 to save time.

3 "You're going to juvie. That's where  
4 you're going. To juvie jail. About 45 minutes  
5 away."

6 (Inaudible.) "...but he says he -- he  
7 admits to doing it?"

8 "What do you mean?"

9 "Like, if his story is different, like,  
10 I never did nothing or something."

11 "Did you?"

12 (Inaudible.)

13 "Huh?"

14 "Not really."

15 "What do you mean, 'Not really.'?"

16 "They got to my head."

17 "Huh?"

18 (Inaudible).

19 "What do you mean by that? What do you  
20 mean by that, Brendan?"

21 (Inaudible.)

22 Q (By Attorney Dvorak) So you -- did -- were you  
23 able to read along?

24 A Yes.

25 Q Okay. Now, um, you -- you had mentioned before



1           that there was a -- a video screen outside the  
2           room so that you could watch what was going on  
3           during the, um -- whatever was going on in that  
4           room; is that right?

5   A       There is a video, yes.

6   Q       All right.  And before you came into the room as  
7           you've seen on -- on the clip that we just showed  
8           you, uh, Exhibit 315, clip 37, were you watching  
9           that screen?

10  A       Boy, I don't know.  Um, I really -- I -- I could not  
11           tell you if we were or not.  We made several phone  
12           calls during that time period because they were  
13           getting a search warrant ready.  Things like that.  
14           I -- I don't know if we were or not.

15  Q       Um, so it was just a -- sort of a coincidence  
16           that you happened to walk in when Brendan was  
17           telling his mother that "They got to my head."?

18  A       I assume it was, yes.

19  Q       Okay.  So you didn't -- you weren't watching the  
20           screen to see when -- what was going on between  
21           Brendan and his mother?

22  A       I'm not saying I wasn't.  I don't recall if I was or  
23           not.  There was a lot of things going on at that  
24           point.

25                           ATTORNEY DVORAK:  Judge, could we take a

1 break now?

2 THE COURT: Sure. Let's take -- are -- are  
3 you done questioning this witness?

4 ATTORNEY GERAGHTY: No, Judge. I'd -- I  
5 have a -- I have a -- I have some more. I could  
6 keep going now, if you'd want, but I --

7 THE COURT: Why -- why don't you do --  
8 how -- how much longer do you think you're --

9 ATTORNEY GERAGHTY: I think I have another  
10 20 -- 20 minutes or so.

11 THE COURT: Okay.

12 ATTORNEY GERAGHTY: Twenty, 25 minutes.

13 THE COURT: Let's do it.

14 ATTORNEY GERAGHTY: All right. Could be  
15 longer, all right? You -- you cut me off when  
16 I'm --

17 THE COURT: I will.

18 ATTORNEY GERAGHTY: -- when you're tired of  
19 me.

20 THE COURT: When I'm tired?

21 ATTORNEY GERAGHTY: When you're tired of  
22 me, I said.

23 THE COURT: Oh.

24 ATTORNEY GERAGHTY: Okay.

25 THE COURT: Don't invite.

1 Q (By Attorney Geraghty) Um, now, as of 3/1,  
2 Brendan was -- was charged, um, and he was  
3 remanded to a juvenile facility; is that correct?  
4 A Yes.  
5 Q Um, you were still interested in the possibility  
6 that Brendan might be a witness in the Avery  
7 case; is this right?  
8 A Yes.  
9 Q And, um, the investigation proceeded, um, and one  
10 of those -- one of the objectives of the  
11 investigation, and the work that you were doing,  
12 was to, um, see under what circumstances it might  
13 be possible for Brendan to testify in the Avery  
14 case?  
15 A Not my job, no.  
16 Q All right. Now, were you aware that Brendan was  
17 appointed a -- an attorney to represent him on or  
18 about March 8? And this -- this person's name  
19 was a Mr. Kachinsky?  
20 A I'm aware Mr. Kachinsky was appointed. The date I  
21 don't know.  
22 Q Okay. Um, after Mr. Kachinsky was appointed, did  
23 you have any contact with him about, um -- in  
24 connection with your investigation of this case?  
25 A There was some e-mails -- or there was an e-mail, I

1 believe, I received.

2 Q Do you remember when that was?

3 A May 5, possibly.

4 Q Okay. Exhibit 338, binder five. Could you take  
5 a look at that?

6 A Sure.

7 THE WITNESS: Thank you, Your Honor. I  
8 have it.

9 Q (By Attorney Geraghty) Okay. Would you take a  
10 moment, just read that? Or --

11 A I'm pretty familiar with it.

12 Q Okay. Is that the -- is that the first contact  
13 that you had with Mr. Kachinsky, um, during the  
14 course of, um, your investigation of the Teresa  
15 Halbach murder?

16 A I believe so.

17 Q Prior to that time you had not spoken to  
18 Mr. Kachinsky about the case?

19 A To the best of my recollection, no. I -- if there  
20 was, I forgot about it. But...

21 Q And, um, this is an e-mail that, um -- that tells  
22 you that, um, there's a Mr. O'Kelly involved in  
23 the case; is that right?

24 A Yes.

25 Q Mr. Kratz is copied on this e-mail?

1 A Yes.

2 Q And this is a -- an offer from Mr. Kachinsky to  
3 provide you with some information that might be  
4 useful in the case; is that right?

5 A Yes.

6 Q And it authorizes you to speak directly to  
7 Mr. O'Kelly about that evidence; is that right?

8 A That's correct.

9 Q It gives you his phone number? That is,  
10 Mr. Kelly's phone number?

11 A This specific e-mail doesn't, but I believe there was  
12 another one where they -- the phone number was there,  
13 yes.

14 Q Okay. And it also gives you Mr. O'Kelly's e-mail  
15 address; is that right?

16 A I believe so.

17 Q And so prior to May 5, you had not received any  
18 information about the case from Len Kachinsky; is  
19 that right?

20 A I did not.

21 Q Do you know whether anybody else working with  
22 you, specifically Agent Fassbender, had received  
23 any information from Mr. Kachinsky?

24 A I know Agent Fassbender had received e-mails, but the  
25 dates of those I could not tell you.

1 Q So you don't know if those e-mails were received  
2 before or after May 5?

3 A I do not, no.

4 Q Okay. Um, do you know whether Agent Dederling had  
5 any contact with either Mr. Kachinsky or  
6 Mr. O'Kelly around this period of time?

7 A I know I was made aware of some e-mails that  
8 Detective Dederling was copied on. Now, the dates of  
9 those, I don't know.

10 Q And how were you made aware of these e-mails?

11 A In conversations with Agent Fassbender.

12 Q Okay. Did you have any conversations with Agent  
13 Dederling about those e-mails?

14 A Yes.

15 Q And do you recall when those conversations  
16 occurred and what they were about?

17 A Well, the conversation was in preparation for  
18 testifying. We were reviewing things so that's where  
19 it came up.

20 Q So testifying in -- in this proceeding or --

21 A Yes, in this proceeding. Correct.

22 Q And was that because, um, the -- the subject of  
23 your contacts with Kach -- Mr. Kachinsky and  
24 Mr. O'Kelly, um, were a matter of -- you were  
25 told they were a matter of -- of focus in this

1 hearing?

2 A Well, certainly.

3 Q And -- and you reviewed the relevant e-mails and  
4 communications between Mr. Kachinsky,  
5 Mr. O'Kelly, and yourself, um, Investigator  
6 Fassbender, and Investigator Dederling; is that --

7 A No.

8 Q -- right?

9 A I inter -- excuse me. I reviewed the ones that were,  
10 um, copied to me. I reviewed those. I did not  
11 review the other ones --

12 Q Okay.

13 A -- specifically.

14 Q All right. So you -- you got this e-mail on --  
15 on May 5, and does it also say that -- that  
16 Mr. Kachinsky would prefer to stay unnamed in the  
17 affidavit for search warrant if at all possible?  
18 See that second to the last --

19 A I believe --

20 Q -- paragraph?

21 A -- it does, yes.

22 Q And pursuant to this e-mail, did you take any  
23 steps?

24 A In regards to the content of this?

25 Q Correct.

1 A Um, I believe it was on May 8, myself and, I want to  
2 say Detective Dederling -- Investigator Dederling --  
3 went out to the Salvage Yard where we spoke to two of  
4 the Averys on the property. They had given us  
5 permission to search these two vehicles.

6 Q And did you find anything?

7 A No.

8 Q Now, did there -- was there a next -- was there  
9 a -- a -- a time following this when you or your  
10 investigation team had contact with Mr. O'Kelly  
11 and Mr. Kachinsky?

12 A I know Agent Fassbender again had received some  
13 e-mails from him.

14 Q By the way, going back to May 5, and what  
15 followed, was Mr. Kratz aware that you went back  
16 to the crime scene?

17 A Eventually he was. At what point he was aware of it,  
18 I don't know.

19 Q Now, let me ask you to look at, um, Exhibit No.  
20 65.

21 A Which binder would that be in, sir?

22 Q Binder number two.

23 A Yes.

24 Q All right. Have you seen that, um, e-mail  
25 before?



1 A Yes.

2 Q Was that one of the e-mails that you took a  
3 lack -- look at in preparation for this hearing?

4 A I've seen it, yes.

5 Q Now, did you become aware, um, on or about May 7  
6 that Mr. Kachinsky and Mr. O'Kelly were planning  
7 to take a -- a statement from -- from Brendan  
8 Dassey?

9 A I know there were conversations that the district  
10 attorney had had with Mr. O'Kin -- O'Chinski (sic),  
11 excuse me, about speaking with Brendan. The specific  
12 dates --

13 Q Tell me about how you knew that, um,  
14 Mr. Kachinsky was having those conversations with  
15 the district attorney?

16 A Well, I know the district attorney had informed me  
17 that he had, um, in the context of plea agreements,  
18 that there were conversations going on. That's as  
19 much as I knew.

20 Q Do you know when you became aware of those  
21 conversations?

22 A I do not.

23 Q Would it have been some time, um, after May 5,  
24 2006, or around that period?

25 A It would have been around that period, but specific

1 date, I don't know.

2 Q And, again, um, were you aware that Mr. Kratz was  
3 interested in securing the testimony of -- of  
4 Mr. Dassey at Steven Avery's trial?

5 A Um, in the concept of plea agreements, I know there  
6 were those conversations, yes.

7 Q And did you know that, um, as part of that  
8 effort, um, Mr. O'Kelly was going to visit  
9 Brendan Dassey at the Sheboygan County facility  
10 to obtain a further confession from Brendan  
11 Dassey?

12 ATTORNEY FALLON: Objection to the last  
13 part. That he obtained further confession part.

14 THE COURT: Why don't you rephrase the  
15 question.

16 ATTORNEY GERAGHTY: Okay.

17 Q (By Attorney Geraghty) Did you know that  
18 Mr. O'Kelly was planning to visit Brendan at the  
19 Sheboygan County Jail in order to obtain further  
20 admissions from Brendan Dassey?

21 A No. What I knew is he was going to meet with him on  
22 the 12th to try to, um -- my understanding of it was  
23 to see if there was something or -- or way that he  
24 could get him to talk with us for the plea agreement  
25 type of thing because I know that the -- the district

1 attorney at that time wanted him to cooperate,  
2 obviously, in the premise of the plea agreements.

3 I don't know what his specific actions  
4 were going to be on the 12th. I have no idea.

5 Q So what you knew was that, um -- or what you had  
6 heard that -- was that, um, Mr. O'Kelly was going  
7 to visit Brendan to try to convince him to speak  
8 to you? And by "you" I mean yourself and Agent  
9 Fassbender. Is that correct?

10 A As a part of the plea agreement, I believe that that  
11 was what they had talked about, yes.

12 Q And -- and who mentioned that -- who -- who --  
13 who -- who mentioned the term "plea agreement"?  
14 I mean, where did that come from?

15 A In discussions with, uh, Mr. Kratz that had come up.

16 Q And do you remember when those discussions were?

17 A I would assume around this time, but pacific (sic)  
18 dates, no.

19 Q So is -- is it your testimony that Mr. Kratz was  
20 aware that Mr. O'Kelly and/or Mr. Kachinsky would  
21 be visiting Brendan at the Sheboygan facility to,  
22 um, as -- as part of the plea process, to see  
23 whether Mr. Dassey could be useful in the  
24 prosecution against Mr. Avery?

25 ATTORNEY FALLON: Objection. Calls for

1 speculation on this witness' part as to what  
2 Mr. Kratz was thinking.

3 Secondly, Exhibit 65 speaks for itself  
4 insofar as -- as we've discussed ad nauseam in  
5 this case. Several witnesses have been CC'd and  
6 asked about this, including Mr. Kratz.

7 So it's cumulative in that respect. So  
8 it's -- calls for speculation and cumulative.

9 ATTORNEY GERAGHTY: Judge, this goes  
10 directly to our -- our breach of loyalty contention,  
11 which is central to our case. And I think very  
12 relevant here.

13 THE COURT: I don't know if it's very  
14 relevant. It may be marginally so. I'll overrule  
15 the objection. If the -- off the -- the witness can  
16 answer.

17 THE WITNESS: Do I know what -- I  
18 remember the question. Do I know what Mr. Kratz  
19 knew at that time? I don't know what he knew.

20 ATTORNEY GERAGHTY: Why -- could --  
21 could we read that question? Judge, would this  
22 be a good time to take a break? Could we take a  
23 break at this point? Sorry. You want to keep  
24 going. We'll con --

25 THE COURT: Yeah, let's just --

1 ATTORNEY GERAGHTY: All right. Okay.

2 THE COURT: I think the question was: Was  
3 Mr. -- did you know if Mr. Kratz was aware that this  
4 meeting was going to take place?

5 ATTORNEY GERAGHTY: Right.

6 THE WITNESS: Prior to the meeting, I  
7 don't know if he knew or not. If that's the  
8 question.

9 Q (By Attorney Geraghty) But you knew that the  
10 meeting was part of a -- an ongoing plea  
11 negotiation process?

12 A I knew that they were continually talking to their  
13 client about a -- plea negotiations, yes.

14 Q Um, and were you also aware that, um, your  
15 Department had been asked to provide various  
16 items of evidence to Mr. O'Kelly for purposes of  
17 his May 12 conversation with Brendan Dassey?

18 A I was not on that e-mail. Um, I -- made aware of it  
19 after, but at the time, no. I did not receive that  
20 e-mail.

21 Q Okay. And you weren't involved in -- in  
22 providing any of, um, the information which is  
23 listed on Exhibit 65 to Mr. O'Kelly?

24 A I was not. No.

25 Q And before Mr. O'Kelly went to interview

1 Mr. Dassey on May 12, did you have any  
2 conversations with Mr. O'Kelly?

3 A Not to my knowledge nor -- excuse me -- my  
4 recollection, no.

5 Q Do you know whether Special Agent Fassbender had  
6 any such conversations?

7 A Um, I know that they had met. Something about  
8 getting these items, I believe. What Mr. Fassbender  
9 did, I -- I think he could testify to that better  
10 than I could. I don't --

11 Q Okay.

12 A -- know for sure.

13 Q And -- and you weren't present during, um, any  
14 conversations that Agent Fassbender had with  
15 Mr. O'Kelly about physical evidence that he would  
16 use in his conversation with Brendan Dassey on  
17 May 12?

18 A No, I was not.

19 Q Um, now, were you aware that -- that Mr. O'Kelly  
20 did go to visit Brendan Dassey on May 12 at the  
21 Sheboygan County Jail?

22 A I'm aware of it, yes.

23 Q How did you become aware of it?

24 A I don't even -- I -- I don't know. I couldn't tell  
25 you how I became aware of it. Am I aware of it now?

1 Yes. When I became aware of it? I assume it was  
2 probably on the 13th when I became aware of it. But  
3 that would be an assumption of mine.

4 Q Could you take a look at Exhibit 363?

5 A Three sixty-three.

6 Q Binder five. When you get there, why don't you  
7 take a minute and -- I've got a copy. I got a  
8 separate copy.

9 A Yes, I have it.

10 Q Would you take a look at that, um, exhibit,  
11 please?

12 A Okay.

13 Q Does that refresh your recollection at all about  
14 when you might have become aware of the May 12  
15 interview of Brendan Dassey by Mr. O'Kelly?

16 I recognize that this is not your  
17 report. I'm just asking you if it refreshes your  
18 recollection.

19 A I assume it was on the 12th from reading this.

20 Q Yeah. And then if you -- if you read -- also, if  
21 you go to, um, the fourth page of this exhibit,  
22 um, there's some further information about, um,  
23 the interview that occurred on May 12?

24 A I have three pages here and then I have this  
25 document.

1 Q Let me give you my copy.

2 THE COURT: For the record, the exhibit  
3 that was marked has only three pages.

4 ATTORNEY GERAGHTY: All right. Sorry.  
5 I had a different version. I thought it had,  
6 uh -- Let me remar -- let me mark an additional  
7 exhibit.

8 ATTORNEY FALLON: I think the remainder of  
9 this has already been marked as an exhibit.

10 ATTORNEY GERAGHTY: All right.

11 ATTORNEY FALLON: This e-mail has  
12 already been marked. And the exact number of it  
13 escapes me at the moment. But it's an e-mail  
14 dated May 12 from Mr. Kachinsky. Copied a number  
15 of individuals. If somebody's good enough to  
16 recall it, the number, we can go from there.

17 ATTORNEY GERAGHTY: Let me -- just to move  
18 on, and we'll get the exhibit number in a minute.  
19 May I, Judge?

20 THE COURT: Go ahead.

21 Q (By Attorney Geraghty) All right. Show you an  
22 e-mail dated Friday, May 12, 2006, from Len  
23 Kachinsky to you, to Mr. O'Kelly, Mr. Kratz, um,  
24 and I'll show that to you now?

25 A Sure.



1 Q Just ask you to take a look at that.

2 ATTORNEY GERAGHTY: And that, for the  
3 record, is Exhibit 356.

4 ATTORNEY FALLON: Thank you.

5 THE WITNESS: Yes, I -- I have it.

6 Q (By Attorney Geraghty) All right. And you can  
7 keep it.

8 A Okay.

9 Q Um, after reading those -- those documents,  
10 are -- is -- is your memory refreshed about  
11 the -- what you remember about the circumstances  
12 of the interview of Brendan Dassey on May 12,  
13 2006?

14 A Yes.

15 Q Okay. Do you recall that Mr. O'Kelly did conduct  
16 an interview of Brendan Dassey on May 12, 2006,  
17 at the Sheboygan County Jail?

18 A Yes.

19 Q And do you also recall that, um, Mr. Kachinsky  
20 was not present during that interview?

21 ATTORNEY FALLON: Objection. This calls  
22 for, one, speculation. Two, hearsay.

23 ATTORNEY GERAGHTY: I'll withdraw the  
24 question. I agree.

25 Q (By Attorney Geraghty) Do -- do you know whether

1 Mr. Kachinsky was present during the interview  
2 that Mr. O'Kelly conducted of Brendan Dassey on  
3 May 12?

4 ATTORNEY FALLON: Same objection. If he  
5 wasn't there, then he had to have heard it from  
6 somebody else, which is hearsay knowledge.

7 THE COURT: Sustained.

8 Q (By Attorney Geraghty) Okay. Can you tell me,  
9 Investigator Wiegert, what, um, you remember  
10 about your involvement, if any, in the interview  
11 of May 12, 2006? That is, the interview that  
12 Mr. O'Kelly conducted of Brendan Dassey?

13 A I had no involvement in that interview.

14 Q Okay.

15 A None.

16 Q Were -- were you aware of it when it -- before it  
17 happened?

18 A Not to my recollection. I think we were made aware  
19 of it after the way it looks --

20 Q Okay.

21 A -- from the e-mail.

22 Q All right. So when did you first become aware of  
23 that interview?

24 A Let me just read this real --

25 Q Sure.

1 A -- quick, if I --

2 Q Sure.

3 A -- may?

4 Q Sure.

5 A Okay. In this e-mail, it doesn't say anything about  
6 the 12th interview from what I see in it. So I don't  
7 know when I became aware of it. I know there was  
8 discussions again, but I don't know that I knew there  
9 was a specific interview being done.

10 Q But did you learn at some point on the 12th that  
11 you were going to re-interview or re-interrogate  
12 Brendan Dassey on the 13th?

13 A Yes.

14 Q And who told you that?

15 A I believe me and Agent Fassbender had phone contact.  
16 Um, as you note on the -- or as I will note on the  
17 e-mail, it -- it was sent at 9:19 p.m. on the 12th,  
18 and I would not have been in the office at that time  
19 and don't have capabilities of retrieving e-mail. So  
20 I'm assuming Tom and I -- Agent Fassbender and I had  
21 phone conversations about that.

22 Q Do you know with whom you had those phone  
23 conversations?

24 A I just -- as I indicated, I think -- I would assume  
25 that Agent Fassbender and I had phone conversations.

1 Q Do you know how Agent Fassbender learned of the  
2 interview on the 12th of May?

3 ATTORNEY FALLON: Ob -- objection. The  
4 e-mail speaks for itself. Secondly, it calls for  
5 hearsay. And, third, it's irrelevant.

6 THE COURT: Sustained.

7 Q (By Attorney Geraghty) Now, when you learned  
8 of -- you did learn that you were going to be  
9 tasked to conduct an a -- another interview or  
10 interrogation of Brendan Dassey on the 13th;  
11 isn't that right?

12 A Yes.

13 Q At the Sheboygan County Jail?

14 A That's correct.

15 Q And did you go to the Sheboygan County Jail on  
16 the 13th to conduct that interview?

17 A I did.

18 Q And that was in the early morning of -- of the  
19 13th of May, 2006?

20 A In the morning hours, yes.

21 Q All right. And when you went there, um, what was  
22 your understanding of the purpose of the  
23 interview?

24 A My understanding was that Brendan wished to speak  
25 with us.

1 Q And who told you that?

2 A I assume I learned it from Agent Fassbender. I don't  
3 know.

4 Q Did -- were you told what Brendan wanted to speak  
5 to you about?

6 A My understanding as part of a -- plea negotiations  
7 that he wanted to talk to us about the case.

8 Q Again, I don't mean to sort of be repetitive,  
9 but, I mean, who -- who mentioned the word plea  
10 negotiations?

11 A Well, I was aware that -- that there were plea  
12 negotiations going on all along. I was aware of  
13 that. And -- pard me -- during my conversations  
14 sometime with Mr. Kratz, I was aware that there were  
15 plea negotiations going on. And I knew that involved  
16 Brendan.

17 Q And did you think that this meeting with Brendan  
18 on the 13th was part of that process?

19 A Yes.

20 Q Now, when you got to -- and -- and before you  
21 went to that interview, did you know that Mr.  
22 Kachinsky would not be present?

23 A Yes.

24 Q And you knew at that time that Mr. Kachinsky was  
25 Brendan's lawyer; is this right?

1 A That's correct.

2 Q Um, did it concern you that Mr. Kachinsky would  
3 not be present?

4 A Um, did it concern me? Um, I don't know how to  
5 answer that. Was there some concern that he wasn't  
6 going to be there? Yes. However, he was giving us  
7 permission to do that.

8 Q Did you speak to him to get permission to do  
9 that?

10 A Did I speak to him directly? No. I believe it was  
11 in a -- in the e-mail if I recall.

12 Q Okay. Um, were there any, um, ground rules or  
13 procedures that were put in place by anyone about  
14 how the interview of Brendan Dassey should be  
15 conducted on the 13th of May?

16 A Just what's in the e-mail.

17 Q Okay. Nothing more?

18 A Not to my recollection, no.

19 Q When you got to the Sheboygan County Jail on  
20 May 13, 2006, was Mr. O'Kelly there?

21 A Yes.

22 Q And prior to that time, had you spoken to  
23 Mr. O'Kelly? And when I say prior to that time,  
24 I mean either in the evening hours of May 12 or  
25 the early morning of May 13?

1 A Not that I recall. First time I recall speaking was  
2 when we arrived at Sheboygan from my recollection.

3 Q Okay. Did Mr. O'Kelly ever share with you any  
4 information that he received from Brendan, um,  
5 during his interview of Brendan, on May 12?

6 A I don't believe so, no.

7 Q Did he ask you whether he could share information  
8 about that interview with you?

9 A I think the offer was there, but I don't believe he  
10 specifically asked us.

11 Q All right. And when he offered to share  
12 information, what did you say?

13 A We didn't take any information from him. We had no  
14 knowledge of what that interview on the 12th, um,  
15 included.

16 Q Was there a reason why you didn't want  
17 information from him?

18 A Well, at that point I believe it would be  
19 attorney/client privilege. I don't think we would  
20 be, um, privy to that information.

21 Q All right. But did Mr. O'Kelly offer you  
22 information?

23 A I know he offered to provide us with things. That I  
24 can tell you.

25 Q Okay.

1 A We did not accept anything from him.

2 Q Okay. And then did -- did -- did Mr. O'Kelly say  
3 that he -- he wished to monitor the  
4 interrogation?

5 A He did.

6 Q And did you make arrangements for him to monitor  
7 the interrogation?

8 A Yes.

9 Q And did he monitor the interrogation through --  
10 with a -- through a -- a video screen outside of  
11 the interrogation room?

12 A That's correct, yes.

13 Q Uh, what was your understanding about what, if  
14 anything, Mr. O'Kelly's role was there on -- on  
15 May 13?

16 A I assume he was acting as an agent of Mr. Kachinsky  
17 at that time.

18 Q All right. And -- and how was he to, if you  
19 know, um, discharge his duty as an agent for  
20 Mr. Kachinsky?

21 A I would have no idea.

22 Q Did, um -- did you ever tell Mr. Kachinsky that  
23 if need be that he could interrupt the  
24 interrogation or the interview and stop it?

25 A Did I tell Mr. Kachinsky that?



1 Q I'm sorry. Mr. O'Kelly?  
2 A No, not specifically.  
3 Q Did that subject ever come up?  
4 A Not to my recollection, no.  
5 Q Did Mr. O'Kelly ever, in fact, interrupt that  
6 interview?  
7 A There was a point where somebody handed in a picture  
8 in the room. Um, my recollection of it is I don't  
9 know who it was. After reviewing the tape, I'm  
10 assuming it was him. It was a ov -- it was a overall  
11 photo.  
12 Q So he provided some -- some piece of physical  
13 evidence that you could use during the  
14 questioning of Mr. Dassey?  
15 A I wouldn't say physical evidence, no. It was a  
16 photo -- an overall photo of the salvage yard, I  
17 believe. And if you watch the tape, I looked at it,  
18 put it down. That was it. Never used. Nothing.  
19 Q Did -- did there come a time early in that  
20 interrogation, um, of Mr. Dassey that -- that you  
21 and Investigator -- Special -- I'm sorry --  
22 Special Agent Fassbender became frustrated that  
23 you were not obtaining the information that you  
24 thought you were going to obtain?  
25 A Any time you do interviews or interrogations, um,

1           they're frustrating, um, 'cause people don't want to  
2           tell you things.

3    Q       Right.

4    A       It's against self-preservation, as you know, for them  
5           to admit things that they've done.

6    Q       Right.

7    A       And, of course, that was the case here.

8    Q       Okay. And at some point did you step out of the  
9           interrogation room because you were not getting  
10           the information you wanted?

11   A       No. We stepped out to take a break like we always  
12           do. Had nothing to do with getting information or  
13           not getting information.

14   Q       Okay. Um, didn't you express some frustration  
15           with -- with Brendan before you stepped out?

16   A       Could have. I -- I don't know.

17   Q       Um, when you stepped out, did you have a  
18           conversation with Mr. O'Kelly?

19   A       There was a very short conversation, yes.

20   Q       Did he make a suggestion about, um, perhaps you  
21           changing positions with Special Agent Fassbender?

22   A       Yes. He indicated that Brendan liked me more than he  
23           liked Agent Fassbender.

24   Q       And so what -- what else did he say?

25   A       That was it to my recollection.

1 Q And then did you take any action in response to  
2 Mr. O'Kelly's observation?  
3 A When we re-entered the interview room, we switched  
4 places. I was closer to Brendan at that time.  
5 Q Okay. Did that seem to work better?  
6 A I don't think it had any effect.

7 Q Okay. Now, um, I'd like to show you couple of  
8 clips of that 5/13 interview. And, by the way, I  
9 neglected to say before we started that we want  
10 to confine your testimony to your involvement in  
11 the investigation just through the 13th of May,  
12 okay?

13 A I understand.

14 Q Okay.

15 ATTORNEY GERAGHTY: Um, now, if I could  
16 get, um, clip ten on page 22 of Exhibit 315?

17 ATTORNEY FALLON: Your Honor, just so  
18 we're clear, is there any reason to confine this  
19 witness' testimony to the events of May 13? Is  
20 there somehow some privileged matter here that we're  
21 not aware of?

22 ATTORNEY GERAGHTY: Judge --

23 THE COURT: I have no idea.

24 ATTORNEY GERAGHTY: -- I -- it was just --  
25 just to cover the -- the -- the issues that we've

1 discussed before. Nothing more.

2 THE COURT: What page?

3 ATTORNEY GERAGHTY: I'm sorry. Page 22 of  
4 Exhibit 315.

5 Q (By Attorney Geraghty) Will you take a look at  
6 this, please?

7 (Unintelligible.)

8 ATTORNEY GERAGHTY: Wait. Could you  
9 start -- I'm sorry. We -- could you start again?  
10 Just hold on a second. I just want to make sure.

11 THE WITNESS: I mean, I can watch it.  
12 That's fine.

13 ATTORNEY GERAGHTY: Yeah. I -- I just  
14 wanted to get Josh out of the -- let's start again.  
15 We're at clip ten. I'm sorry.

16 (Unintelligible.) "...tell your mom  
17 about this."

18 (Inaudible.)

19 (Unintelligible.) "...think you should  
20 call her and tell her?"

21 "Yeah."

22 (Unintelligible.) "Do that probably  
23 tonight."

24 (Unintelligible.)

25 "Don't you think she has the right to

1 know?"

2 "Yeah."

3 "Okay. I think she'd like to hear it  
4 coming from you rather than from me."

5 "And if she has any questions..."

6 (unintelligible) "...seeing her tomorrow."

7 "She's coming here tomorrow? Then maybe  
8 it would be a good idea to call her and tell her  
9 before she gets here. That's what I would do.  
10 Otherwise, she's going to be really mad here..."

11 (unintelligible) "...get her on the phone..."

12 (unintelligible) "...suggestion."

13 ATTORNEY GERAGHTY: Okay. Could you  
14 play, um -- Alex, could you play clip 17 on page  
15 23?

16 (Unintelligible.) "...mentioned talking  
17 to your mom about this..." (unintelligible)  
18 "... okay? If you're truly sorry to the  
19 Halbachs..." (unintelligible) "...you tell your  
20 mother the truth about this, okay? Can you do  
21 that?"

22 "Yeah."

23 "When are you going to do that?"

24 "Tonight."

25 "Probably be a good idea before we tell

1 her. That'd be the right thing to do. Your mom  
2 deserves to know. Okay?"

3 (Unintelligible.)

4 Q (By Attorney Geraghty) Investigator Wiegert, do  
5 you remember, um, telling or suggesting to  
6 Brendan that -- that he call his mother about  
7 what he had just told you?

8 A I do, yes.

9 Q All right. And at the time that you told her  
10 to -- or you suggested to Brendan that he do  
11 that, you knew that the calls from the jail to  
12 non-lawyers or family members were recorded,  
13 didn't you?

14 A Yes.

15 Q Um, and you knew that if Brendan, in fact, made a  
16 call to his mother, as you had suggested, that,  
17 um -- that the content of any conversation that  
18 he had would not be protected by an  
19 attorney/client privilege; is that right?

20 A That's true.

21 Q And it also would not be subject to, so far as  
22 you knew, any claim of coercion or improper  
23 tactics by the police?

24 A No.

25 Q No, what?

1 A No, I think that would have been fine.

2 Q Okay. And you wanted, um, Brendan to call his  
3 mother and to repeat what he had told you to his  
4 mother; is that right?

5 A Yes, for several different reasons.

6 Q One of those reasons was that you knew that if he  
7 did that, um, the evidence flowing from that --  
8 or that -- that conversation could be introduced  
9 against him in court; is that right?

10 A No, it was not our thought at that time. Our thought  
11 was we were dealing with Barb constantly. Barb would  
12 go back and forth. She would be on our side. She'd  
13 be with us to help us solve this crime. And then she  
14 would be mad at us. Things like that.

15 Um, we wanted Barb's cooperation.

16 That's -- was the purpose of that.

17 Q Did you suggest to Brendan that, perhaps, if that  
18 was your objective, that he might ask his mother  
19 to come to the jail and -- and to speak to her  
20 about that?

21 A Did I ask Brendan to do that?

22 Q Yeah.

23 A No.

24 Q I mean, you suggested that there was some --  
25 basically, what you said here was that, um,

1 unless he called her that night or -- that --  
2 that you would -- that you would tell her; isn't  
3 that right?  
4 A That's true, yes.  
5 Q Okay.  
6 A And I would have.  
7 Q Okay. And you weren't willing to -- to give  
8 Brendan the time to actually call his mother in  
9 and have sit -- sit-down conversation with her  
10 about this?  
11 A Did I -- did I try to arrange that? No.  
12 Q No, I didn't ask you whether you were -- tried to  
13 arrange --  
14 A Right.  
15 Q -- it. But did you suggest to Brendan that maybe  
16 the better route would be not to call his mother  
17 but to ask his mother to come in and -- and talk  
18 about it?  
19 A No, I didn't suggest to him that.  
20 ATTORNEY GERAGHTY: Judge, I have a --  
21 Q (By Attorney Geraghty) I just want to ask you  
22 other -- one other question. Um, was anybody on  
23 the -- on the prosecution team, any -- anybody in  
24 the district attorney's office, Mr. Kratz, or  
25 anybody else, aware that you were going to ask



1           Brendan to call his mother about this?

2    A     No.

3    Q     This was your idea?

4    A     Yes.

5    Q     And Agent Fassbender's idea?

6    A     I can speak to myself. It was my idea.

7    Q     Okay.

8                    ATTORNEY GERAGHTY: Judge, I have a --  
9                    just one more section of this examination to do,  
10                   having to do with the -- with the content of  
11                   the -- the March 1 statement, which, uh, I -- I'd  
12                   like to ask you for a break, um, and then  
13                   continue on.

14                   THE COURT: We'll take a 15-minute break.

15                   (Recess had at 10:47 a.m.)

16                   (Reconvened at 11:05 a.m.)

17                   THE COURT: Back on the record.

18                   ATTORNEY GERAGHTY: May I proceed, Your  
19                   Honor?

20                   THE COURT: You may.

21                   ATTORNEY GERAGHTY: Thank you.

22    Q     (By Attorney Geraghty) Agent Wiegert, going back  
23                   to the interrogation on March 1, um, one of  
24                   things that you told Brendan Dassey before you  
25                   began to question him was one of the **Miranda**

1 warnings, and that is, "Anything you say can and  
2 will be used against you in court." Do you  
3 remember telling him that?

4 A Yes.

5 Q And there's some debate about where you said it?  
6 Whether it was in the car? In -- or at the  
7 police station? We'll get to that later. But  
8 you did say that to him; right?

9 A Yes.

10 Q Okay. Now, you are aware that, um -- also, that  
11 one of the techniques that you referred to  
12 earlier for interrogation, um, is minimization;  
13 is that correct?

14 A Yes.

15 Q Um, and also promises to help the person that  
16 you're interviewing; is that correct?

17 A Yes.

18 Q Now, it, um -- those two techniques tend to run  
19 into conflict with the notion that anything you  
20 can and -- you say can and will be used against  
21 you in court. Isn't that -- there's some --  
22 there's a -- there's a fine line there, isn't  
23 there?

24 ATTORNEY FALLON: Objection as to the  
25 theory and philosophy behind this. How is that

1 relevant to the interrogation as ef -- and its  
2 effect on Mr. Dassey?

3 THE COURT: I'll take that as an objection  
4 on grounds of --

5 ATTORNEY FALLON: Relevance and --

6 THE COURT: -- relevance.

7 ATTORNEY FALLON: -- materiality.

8 THE COURT: Sustained.

9 ATTORNEY GERAGHTY: All right.

10 Q (By Attorney Geraghty) I'd like to show you a --  
11 a few clips from your 3/1, '06 interview with  
12 Brendan Dassey.

13 ATTORNEY GERAGHTY: Um, Alex, could you  
14 play clip 14 on page three.

15 THE WITNESS: What exhibit?

16 ATTORNEY GERAGHTY: This is Exhibit 315.

17 "I think Mark and I both feel that maybe  
18 there's some -- some more that you could tell us,  
19 um, that you may have held back for whatever  
20 reasons, and I want to assure you that Mark and I  
21 both are in your corner. We're on your side."

22 Q (By Attorney Geraghty) Did -- do you recall  
23 Agent Fassbender saying that to Brendan Dassey  
24 while you were present in that room?

25 A I certainly do.

1                   ATTORNEY GERAGHTY: Um, could you play  
2 clip 16, please?

3                   THE COURT: What page is that on?

4                   ATTORNEY GERAGHTY: This is on page  
5 three, Exhibit 315.

6                   "As Mark and I looked at -- looked at  
7 the date, looked at the notes, and it's real  
8 obvious there's some places where some things  
9 were left out or maybe changed just a bit to --  
10 to maybe looking at yourself to protect yourself  
11 a little.

12                   Um, from what I'm seeing, even if I fill  
13 those in, I'm thinking you're all right. Okay?  
14 You don't have to worry about things. Um, we're  
15 there for ya, um, and -- and -- and we know what  
16 Steven did, and -- and..." (unintelligible)  
17 "...of what happened to you when you did. We  
18 just need to hear the whole story from you. As  
19 soon as we get that, and comfortable with that, I  
20 think you're going to be a lot more comfortable  
21 with that. It's going to be a lot easier on you  
22 down the road if this goes to trial and stuff  
23 like that."

24 Q                (By Attorney Geraghty) Okay. Now, you had  
25 previously told Mr. Dassey that "Anything you say

1 can and will be used against you in court." Is  
2 that right?

3 A Yes.

4 Q And -- and you have also, I think, testified  
5 that, um, Mr. Fassbender said what is portrayed  
6 in clip 14, and that you said what is portrayed  
7 in clip 17, on page three of Exhibit 315; is that  
8 right?

9 A Yes.

10 ATTORNEY GERAGHTY: Um, could you play  
11 clip 17, please?

12 ATTORNEY FALLON: Your Honor, is there a  
13 point to playing the clip? I mean, could the  
14 witness just read the transcript and then Counsel  
15 could ask a question? We could move this along.

16 THE COURT: That would help. Do you have  
17 any objection to that?

18 ATTORNEY GERAGHTY: I don't have any  
19 objection to that. I can do that.

20 Q (By Attorney Geraghty) Um, page three, Exhibit  
21 315, um, Investigator Wiegert?

22 A Yes, I'm there.

23 Q Okay. Let me refer you to -- to, um, clip No. 17  
24 on page three. You see that?

25 A I do.

1 Q Um, you say, "Honesty here, Brendan, is the only  
2 thing that's going to help you."

3 THE COURT: The word "only" -- "only" isn't  
4 in there.

5 ATTORNEY GERAGHTY: I'm sorry.

6 Q (By Attorney Geraghty) "Honesty there, Bren --  
7 here, Brendan, is the thing that's going to help  
8 you. Okay. No matter what you did, we can work  
9 through that. Okay? We can't make any promises,  
10 but we'll stand behind you no matter what you  
11 did. Okay? Because you're being the good guy  
12 here. You're the one that's saying, you know  
13 what? Maybe I made some mistake, but here's what  
14 I did.

15 The other guy involved in this doesn't  
16 want to help himself. All he wants to do is  
17 blame everybody else. Okay? And by you talking  
18 with us, it's helping you. Okay? Because the  
19 honest person is the one who's going to -- gonna  
20 get a better deal out of everything. You know  
21 how that works."

22 And that's you speaking; is that  
23 correct?

24 A Yes.

25 Q Okay. And then Brendan says, "Um-hmm." Is that

1 correct?

2 A Yes.

3 Q Okay. And then you go on and say -- this is,  
4 again, clip 17, page three, Exhibit 315:

5 "You know, honesty is the only thing  
6 that will set you free; right? And we know.  
7 Like Tom said, we know. We reviewed those tapes.  
8 We know there's some things you left out and we  
9 know there's some things that maybe weren't quite  
10 correct you told us; okay?

11 We've done -- we've been investigating  
12 this a long time. We pretty much know  
13 everything. That's why we're talking to you  
14 again today.

15 We really need to -- you to be honest  
16 this time with a -- with everything; okay? If,  
17 in fact, you did something, which we believe,  
18 some things may have happened that you don't want  
19 to tell us. It's okay. As long as you can -- as  
20 long as you can be honest with us, it's okay. If  
21 you lie, that's going to be problems."

22 Did you say that to Brendan Dassey on  
23 March 1?

24 A Absolutely. Yes.

25 Q Um, now, when you said in clip 17 at the bottom

1 of page three of Exhibit 315, "We pretty much  
2 know everything. That's why we're talking to you  
3 again today," there were some things that you  
4 didn't know; is that correct?

5 A That's correct.

6 Q So that wasn't entirely an honest statement; is  
7 that right?

8 A That is correct.

9 Q That was a -- that was not true?

10 A Parts of it were not true.

11 Q Okay.

12 A Yep.

13 Q And then going on to clip 18 on page four of  
14 Exhibit 315, you say: "Come on Brendan." You  
15 got that? I'm sorry.

16 A Yes, I do.

17 Q Okay.

18 "Come on, Brendan, be honest. I told  
19 you before that's the only thing that's going to  
20 help ya here. We already know what happened  
21 okay?"

22 You didn't already know everything that  
23 happened, did you?

24 A Nope.

25 Q So that was not true?



1 A That's correct.

2 Q And then, um, on page four of Exhibit 315, clip  
3 20, you ask Brendan:

4 "Did you help him?"

5 Brendan says: "No."

6 You say: "Let's be honest here,  
7 Brendan. If you helped him, it's okay, because  
8 he was telling you to do it. You didn't do it on  
9 your own."

10 Is that what you said to Brendan?

11 A Yes.

12 Q Okay. And, um, you don't have any problem  
13 stating in court today that that's not  
14 inconsistent with your **Miranda** warning to Brendan  
15 that anything you say can and will be used  
16 against you in court?

17 ATTORNEY FALLON: Objection. Whether it's  
18 consistent or inconsistent is not relevant to the  
19 ultimate determination here.

20 THE COURT: The Court's going to sustain  
21 the objection.

22 ATTORNEY GERAGHTY: Well, Judge, just  
23 for the record, uh, may I just reply briefly to  
24 that?

25 THE COURT: Go ahead.

1                   ATTORNEY GERAGHTY: I'm sorry. I know  
2                   you've ruled. But, um, you know, the point here, I  
3                   think, is that he's given **Miranda** warnings on the  
4                   one hand, and told that, uh, to the ex -- that  
5                   anything you say can and will be used against you,  
6                   and then he's told precisely the opposite during the  
7                   course of the interrogation.

8                   It goes to the question of whether the  
9                   officers have, um, undermined the -- the **Miranda**  
10                  warning that they give him initially by telling  
11                  him nothing that he says during this  
12                  interrogation will, in fact, be held against him.

13                  THE COURT: I understand that to be your  
14                  argument.

15                  ATTORNEY GERAGHTY: Okay. Thank you,  
16                  Judge.

17        Q        (By Attorney Geraghty) And just one further  
18                  example of this, Investigator Wiegert, um, this  
19                  is page five, Exhibit 315, clip 29. You got  
20                  that?

21        A        Yes.

22        Q        "What happens next? Remember, we already know  
23                  but we need to hear it from you. It's okay.  
24                  It's not your fault. What happened -- what  
25                  happens next?"

1                                   Did you say that to Brendan Dassey?

2    A    I did.

3    Q    Now, I believe there was some discussion about,

4           um, later on whether, you know, how we know what

5           Brendan actually perceived about the nature of

6           the interrogation and the things that you had

7           said to him with respect to what we will call or

8           that fall in the category of minimization or

9           promises. Um, I'd like to ask you to take a -- a

10          look at clip 33 on page five?

11   A    Yes.

12   Q    Okay?

13   A    Um-hmm.

14   Q    And, um, here you say to him -- or Brendan says

15          to you:

16                                "I got a question, though."

17                                And you say: "Sure."

18                                And Brendan says: "How long is this

19          going to take?"

20                                And you say: "It shouldn't take a whole

21          lot longer."

22                                And Brendan says: "Do you think I can

23          can get there before 1:29?"

24                                And do -- do you remember that he was

25          referring to get back to school?

1 A I believe that's true.

2 Q Okay.

3 And you say, um, "Probably not."

4 And Brendan says: "Oh."

5 "What's at 1:29?"

6 And Brendan says: "Well, I have a  
7 project due at sixth hour."

8 Do you recall that conversation?

9 A Yes.

10 Q And, um, did that suggest to you that Brendan  
11 understood what you had said with respect to  
12 "it's okay" to mean that he was not incriminating  
13 himself?

14 ATTORNEY FALLON: Objection as to what  
15 meaning or what effect those statements had on the  
16 defendant. That calls for speculation.

17 THE COURT: Sustained.

18 Q (By Attorney Geraghty) I'd like to direct your  
19 attention to clip 35 on page six.

20 Mr. -- Investigator Fassbender says:

21 "It's going to be just a bit; okay?"

22 And Brendan Dassey says: "Am I going to  
23 be at school before school ends?"

24 And Investigator Fassbender says:

25 "Probably not. I mean, we're at 2:30 already.

1 And school's over with at what, three?"

2 Brendan Dassey says: "Three-o-five."

3 And Investigator Fassbender says: "No."

4 And Brendan Dassey says: "What time  
5 will this be done?"

6 And Fass -- Mr. -- Investigator  
7 Fassbender says: "We're pretty -- we're pretty  
8 much done. We have a couple of follow-up things  
9 to ask ya, but we're pretty much done."

10 Did Brendan have that conversation with,  
11 um, Investigator Fassbender?

12 A Yes.

13 Q And was this after Brendan had made some  
14 incriminating statements to you and Investigator  
15 Fassbender?

16 A Taken out of context here I can't tell you when that  
17 statement exactly was, but I know there were some  
18 statements made earlier than that.

19 Q Isn't it a fact that Brendan expressed surprise  
20 that he was -- well, let's say that he -- he kept  
21 wondering whether he was going to be able to go  
22 back to school after this interrogation was over?

23 ATTORNEY FALLON: Objection as to  
24 whether he was surprised, wondering, thinking,  
25 what have you. Unless Mr. Dassey's going to tell

1 us what he was wondering, thinking, and being  
2 surprised, this would call for speculation on  
3 this witness' part.

4 THE COURT: Sustained.

5 ATTORNEY GERAGHTY: All right.

6 Q (By Attorney Geraghty) Well, isn't it a fact  
7 that Brendan in clip 35 says:

8 "Am I going to be at school before  
9 school ends?"

10 A Yes.

11 Q He did say that to you, didn't he?

12 A Yes.

13 Q Okay. Now, I would like to show you --

14 ATTORNEY GERAGHTY: And, then, Judge, I  
15 think this would be the quickest way to do this,  
16 um, on page eight and nine, clips seven through  
17 sixteen.

18 ATTORNEY FALLON: This is on the revised  
19 exhibit, Counsel?

20 ATTORNEY GERAGHTY: Yes. So, Alex, would  
21 you play that?

22 (Unintelligible.) "...stab..."

23 (Unintelligible) "...stomach."

24 "What else did he do to her?"

25 (Unintelligible) ...something else. We know

1           that."

2                           (Unintelligible) "...she... he tied her  
3 up..." (unintelligible.)

4                           "We know he did something else to her  
5 her. What else did he do to her?"

6                           "He... (unintelligible) ...her."

7                           "What else did he do to her? We know  
8 something else was done. Tell us. Or what else  
9 did you do? Come on. Something with the head?  
10 Brendan? What... (unintelligible) ... he...  
11 (unintelligible) do, Brendan?"

12                           "We know he made you do something else."

13                           "What was it? What was it? We have the  
14 evidence, Brendan. We just need you to be honest  
15 with us."

16                           "That he cut off her hair."

17                           "What else was done to her head?"

18                           "That he punched her."

19                           "What else? What else? He made you do  
20 something to her, didn't he? So he would feel  
21 better about not being the only person; right?"

22                           "Yeah."

23                           "What did he make you do to her? What  
24 did he make you do, Brendan? It's okay. What  
25 did he make you do?"

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"Cut her."

"Cut her where?"

"On her throat."

"What else happens to her? Extremely, extremely important for you to tell us this for us to believe you. Come on, Brendan, what else? We know. We just need you to tell us."

"That's all I can remember."

"All right. I'm just going to come out and ask you, who shot her in the head?"

"He did."

"Why didn't you tell us that?"

"Because I didn't think of it."

ATTORNEY GERAGHTY: Why don't we stop there.

Q (By Attorney Geraghty) Investigator Wiegert, were those questions that you and Agent Fassbender asked Brendan Dassey on March 1, 2006?

A Yes.

Q And were those his responses?

A Yes.

Q And at that time you -- you did have some information, or suspected, that -- that Teresa Halbach had been shot in the head; is that right?

A That's correct.



1 Q And you wanted Brendan Dassey to tell you that he  
2 knew that that had happened; is that correct?

3 A I wanted Brendan to tell us the truth.

4 Q You suggested -- you finally, at clip 11,  
5 suggested the answer to the question, didn't you?

6 A I suggested that she was shot in the head.

7 ATTORNEY GERAGHTY: Nothing further,  
8 Judge.

9 ATTORNEY FALLON: Can we --

10 ATTORNEY GERAGHTY: I guess we have some  
11 exhibits to move in, Judge. We can do that.

12 ATTORNEY TEPFER: At this time, Your  
13 Honor, we seek admission of Exhibit 91, which is  
14 a February 28 police report.

15 Um, Exhibit 363, which I believe was  
16 reserved when we tried to admit it previously  
17 until the testimony of Investigator Wiegert or --  
18 or Fassbender. We want to wait until then.

19 Um, and then we also seek admission of  
20 Exhibit 69 and Exhibit 211, which is the 5/13  
21 video and transcript.

22 Also, this might also be a good time to  
23 offer a suggestion, which was something that was  
24 not admitted yesterday, regarding Exhibit 97,  
25 which is the May 12 transcript of Mr. O'Kelly's

1           interrogation of Brendan Dassey. Um, there were  
2           some problems with the transcript. The Court  
3           refused to admit it, which, like, say have a  
4           transcript admitted, if the court reporter wants  
5           to transcribe it, and there's an agreement from  
6           Court, or if State wants to correct any of the  
7           problems that they see with it so it can be  
8           admitted as part of the these court proceedings,  
9           we're fine with that. Um, but we can handle  
10          those one at a time I guess.

11                   THE COURT: All right. Exhibit 91?

12                   ATTORNEY FALLON: That's the -- the police  
13           report showing, uh, they'd received the lab report;  
14           correct?

15                   ATTORNEY TEPFER: Correct.

16                   ATTORNEY FALLON: We have no objection to  
17           that.

18                   THE COURT: All right. That's received.

19                   ATTORNEY FALLON: Exhibit 363 is Agent  
20           Fassbender's report?

21                   THE COURT: Correct.

22                   ATTORNEY FALLON: Uh, well, all this  
23           witness was asked if that refreshed his  
24           recollection, so there's no additional foundation  
25           for its admission at this time. Agent Fassbender

1 can verify it, and then we'll have no objection,  
2 I suspect.

3 Um, with respect to 69, is the DVD of  
4 the May 13 interview?

5 ATTORNEY TEPFER: Correct.

6 ATTORNEY FALLON: And 211 is the transcript  
7 from the State's materials related to that DVD; is  
8 it that correct?

9 ATTORNEY TEPFER: Correct.

10 ATTORNEY FALLON: Subject to our -- our  
11 objection already as to its relevance and  
12 materiality, um, I don't have any additional  
13 objection beyond that. So we don't have a problem,  
14 necessarily, with that, at least with respect to the  
15 part -- the clips that were played relative to the  
16 phone call. But doesn't really matter.

17 THE COURT: I -- isn't most of 69 already  
18 in the record?

19 ATTORNEY FALLON: I -- I think it might be.  
20 So...

21 ATTORNEY TEPFER: I think so.

22 THE COURT: Not in the post-conviction  
23 record but --

24 ATTORNEY TEPFER: The trial?

25 ATTORNEY FALLON: Right. The trial

1 record.

2 THE COURT: Yeah. I think we --

3 ATTORNEY TEPFER: I don't think so. Why  
4 would it be. I don't --

5 THE COURT: Well, at the trial, we played  
6 the entirety of the March 1 --

7 ATTORNEY TEPFER: This is the May 13 --

8 ATTORNEY FALLON: Thought this was the  
9 May 13. But there was a -- a motion hearing on  
10 that. It was never played, but I believe the  
11 Court had --

12 THE COURT: Yeah.

13 ATTORNEY FALLON: -- access to that DVD.  
14 So for purposes of completing the record --

15 THE COURT: All right.

16 ATTORNEY FALLON: -- you can have it.

17 THE COURT: Those are received then.

18 ATTORNEY FALLON: All right. Now, with  
19 respect to Exhibit 97, they're the proponent of  
20 this evidence.

21 Again, we strongly object since the  
22 State never had access, knew about it, or had  
23 anything to do with it, uh, and didn't receive  
24 our copies until a few weeks ago.

25 Uh, I guess I would object to making the

1 court reporter sit and listen to a -- a DVD and  
2 come up with a transcript.

3 And we're certainly not the proponents  
4 of the evidence, so we're not required to develop  
5 a transcript.

6 And, third, consistent with the State's  
7 objections, it's all irrelevant and immaterial as  
8 it relates to the evidence which was introduced  
9 at the trial which resulted in the conviction.  
10 So...

11 THE COURT: I'll withhold ruling on 97, but  
12 I'll give the defense an opportunity to provide a  
13 clean transcript. And, uh, even in the post -- in  
14 the post-hearing phase, I'll take a look at it, and  
15 if the transcript tracks the -- tracks the video,  
16 then -- then it'll be admitted.

17 ATTORNEY FALLON: All right.

18 ATTORNEY TEPFER: Thank you, Your Honor.

19 ATTORNEY DRIZIN: Judge, just a point of  
20 clarification on 97. When we were going through  
21 that transcript, was it your understanding that  
22 the wording of the transcript was accurate but  
23 that the parentheticals were inaccurate, or -- or  
24 was it both that --

25 THE COURT: Well --

1                   ATTORNEY DRIZIN:  -- there were problems  
2                   with?

3                   THE COURT:  It was my understanding that a  
4                   number of the words either were not picked up in the  
5                   transcript or a wrong word was there in the  
6                   transcript.

7                   Mr. Fallon made the objection that the  
8                   parentheticals didn't reflect what was happening  
9                   on the screen.

10                  I -- I suppose that -- that it's a fair  
11                  objection, but if the -- if the video's in there,  
12                  the -- the -- the viewer can make that  
13                  determination.

14                  ATTORNEY FALLON:  Right.  I mean, that's --  
15                  I -- I don't mind the video coming in, because, um,  
16                  it's -- I know it's two hours and, I believe, 39  
17                  minutes.  So I'm sure there was lots of time down or  
18                  dead time eliminated, but the reality is if you want  
19                  the true meaning and understand the context of that  
20                  interview, I think you need the time space.  I think  
21                  it need -- needs to be parked there.  That's why I  
22                  have no objection to the DVD.

23                  But I do have some questions regarding  
24                  the -- the transcripts.  If they want to put in  
25                  there's a pause, or we sped up six minutes ahead

1 or something, and that turns out to be accurate,  
2 then I suppose the transcript is fine. But  
3 I'm -- I think all of that makes questions to the  
4 authenticity.

5 THE COURT: All right. Do we have an  
6 understanding on that now?

7 ATTORNEY DRIZIN: I -- I think so. Yes.

8 ATTORNEY TEPFER: I think so, yes.

9 ATTORNEY DRIZIN: We will -- we will  
10 submit a revised transcript --

11 THE COURT: Sure.

12 ATTORNEY DRIZIN: -- and we'll go from  
13 there.

14 THE COURT: Okay. Mr. Fallon.

15 ATTORNEY FALLON: Yes. Briefly. Thank  
16 you.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY FALLON:

19 Q Let's go in reverse order, um, Sergeant. Were  
20 the -- the clips that they just played, um, in  
21 Exhibit 315, did they follow, in your  
22 recollection, of strict chronological sequence,  
23 or were they actually excerpts of a much larger  
24 transcript?

25 A They're excerpts of a much larger transcript.

1 Q All right. Um, as a law enforcement officer, if  
2 a -- if an -- if a interview session starts out  
3 non-custodial, and at some point during the, um,  
4 interview, it becomes clear to you, the officer,  
5 that it's now shifting into an interrogation  
6 mode, are you required to advise the suspect of  
7 this and Mirandize them?

8 ATTORNEY GERAGHTY: Jud -- Jud -- you know,  
9 for the record, Judge, a legal conclusion.

10 THE COURT: Well, it's the practice of  
11 the -- the officer, and you raised it in your  
12 question. I'll overrule the objection. He can  
13 answer if he knows.

14 THE WITNESS: I'm not aware of any  
15 requirement to notify them of that. Not to  
16 mention he was already Mirandized prior to that.

17 Q (By Attorney Fallon) Uh, Counsel asked you  
18 about, um -- and you believed -- in his -- in  
19 response to his question that it was happenstance  
20 that you walked back into the room while the  
21 defendant was speaking with his mother, you  
22 indicated there was, I think, lots of stuff going  
23 on.

24 Could you tell us what yourself and  
25 Agent Fassbender were doing during the break, um,



1           that Counsel questioned you about?

2    A       In my recollection of it was that we were on the  
3           phone with, um, other investigators who were trying  
4           to secure a search warrant for the Avery property  
5           again. We were going to do another search warrant.  
6           We had already planned on doing another search  
7           warrant, and then this new information came out  
8           during this interview that we thought pertinent to  
9           have in that search warrant.

10                        So we were on the phone with other  
11           investigators and the district attorney staff.  
12           And they were securing that search warrant.  
13           There was no intent for us to come in at any  
14           specific time. Back into the room.

15    Q       So what type of -- what new information, if you  
16           can recall at this particular point -- and I  
17           realize it's been three-plus years -- but what --  
18           what was the new information that you were  
19           relaying to the officers as they were preparing  
20           an -- an additional search warrant?

21    A       Well, one thing that sticks out in my mind -- and,  
22           again, there were probably several of them -- the one  
23           thing that sticks out is, um, Brendan telling us --  
24           giving us the information that he was --  
25           correction -- that Teresa was shot in the garage.

1                   So we knew we had to look for some  
2                   evidence in the garage, bullet fragments, things  
3                   like that, which we didn't have yet to this point  
4                   until we secured that search warrant and were  
5                   found later.

6    Q    Any recollection as to how many phone calls that  
7           you made during that break period?

8    A    No. But if you watch the interview, itself, my phone  
9           is ringing two, three, four times, 'cause they're  
10          wanting to know what's taking us so long, 'cause  
11          they're ready to go with the search warrant.

12                 And I -- at one point, if you remember,  
13                 in the interview -- I say, don't sign it, don't  
14                 serve it, and I hang up again 'cause I don't want  
15                 to affect the interview. I don't want them not  
16                 to get that search warrant finished and signed by  
17                 a judge until they have our new information.

18                 So there's a lot of information that we  
19                 had to get to them.

20   Q    So the process was you're trying to incorporate  
21          what would -- what you believe was credible, and  
22          give that to the officers so they -- so they  
23          could incorporate it in the warrant?

24   A    That's correct. Yes.

25   Q    All right. Um, if you had believed -- I'm

1 directing your attention, briefly, to the 27th of  
2 February. If you'd believed Brendan Dassey to be  
3 a -- a murder suspect, would you allow -- would  
4 you have allowed him to ride to the police  
5 station with his mother?

6 A I don't know any murder suspect that's allowed to  
7 have their mother come along with them in the car  
8 regardless of age. I'm sorry. No.

9 Q Um, in Wisconsin, are you legally required to,  
10 um -- as they are in New York -- to advise the  
11 parents and get their permission to interview?

12 A No, we're not.

13 Q But, yet, you did that in this case. Why?

14 A We did. 'Cause we thought it was the right thing to  
15 do.

16 Q Oh. Last question. Counsel asked you, um, some  
17 questions about why you suggested to Brendan that  
18 he let his mother know that he had given you guys  
19 another statement on May 13?

20 A Yes.

21 Q You said there were lots of reasons. Tell us  
22 your reasoning or your thinking regarding that.

23 A Well, we had a lot, a lot of contact with Brendan's  
24 mother, Barb, in regards to information about this  
25 case, in regards to plea bargaining.

1                   We were aware that, basically, the  
2                   family, Barb included, and a lot of the other  
3                   Avery family members, were suggesting to Brendan  
4                   not to take a plea deal. And we thought it  
5                   pertinent that she know what he had said that  
6                   this had happened. To push that along. So they  
7                   would know the truth.

8    Q    Did you believe that she had, um, a fair amount  
9           of influence over Brendan in his ultimate  
10          decision what to do in this case?

11   A    Absolutely. I mean, we monitored phone calls where  
12          she was telling him what to do. Not to take a plea  
13          deal. Or to do this or to do that. As well as other  
14          family members.

15   Q    All right. And so was it out of some sense of  
16          fairness that -- that you thought that she should  
17          know as soon as possible as to what her son may  
18          or may not do with respect to a plea?

19   A    Yes.

20   Q    Any other reasons?

21   A    No. Nothing.

22                   ATTORNEY FALLON: That's all.

23                   THE COURT: Redirect?

24                                 REDIRECT EXAMINATION

25                   BY ATTORNEY GERAGHTY:

1 Q Investigator, present of a -- presence of a  
2 parent or guardian is -- is one factor that  
3 you're trained to take into consideration in  
4 considering how to conduct an interview of a  
5 juvenile; isn't that right?

6 A Into consideration, yes.

7 Q Okay. Um, and going to the time just prior to  
8 which you came into the interrogation room on  
9 March 1 when Brendan and his mother were there,  
10 do you recall that --

11 A Yes.

12 Q -- event? You say that you were busy with a -- a  
13 search warrant; is that correct?

14 A Yes.

15 Q But there was a monitor in the room where you  
16 were working on that search warrant; correct?

17 A No. Wrong.

18 Q All right. So you had gone to a different room?

19 A Yes.

20 Q You -- you did not recall that?

21 A I recalled speaking with other detectives and people  
22 from Mr. Kratz's office in another detective's  
23 office, which was adjacent from where we were  
24 conducting the interview.

25 Q Okay. So now -- so you -- you left that room and

1           you went to a room where you could not see the  
2           monitor? Is that your testimony?

3    A       Well, what I'm saying is, is I remember making  
4           those phone calls. Um, the exact timeframe of those  
5           phone calls and things, I -- I couldn't tell you  
6           that.

7    Q       All right. And you can't tell me now, as you sit  
8           there, whether you were watching the monitor  
9           while Brendan was with his -- with his mother or  
10          whether you weren't?

11   A       No, I couldn't tell you that. I know there was a lot  
12          of things going on.

13   Q       Okay. And one of those things could have been  
14          watching the monitor?

15   A       Could have been, but I don't believe that to be true.

16   Q       All right. Um, now, in terms of -- just back to  
17          this question of the phone call on -- or  
18          suggesting the phone call on May 13, um, you  
19          suggested a specific way that Brendan get in  
20          touch with his mother to tell his mother what he  
21          had told you; is that correct?

22   A       Yes.

23   Q       And you didn't -- and you suggested to Brendan  
24          that Brendan tell his mother what he told you; is  
25          that right?

1 A Yes.

2 Q And you didn't suggest that Brendan discuss with  
3 his mother, um, the possibility, or the  
4 desirability, or advisability of pleading guilty  
5 and testifying against Steven Avery, did you?

6 A Did I tell him to discuss that with his mother?

7 Q Yes.

8 A No, I didn't.

9 ATTORNEY GERAGHTY: Nothing further.

10 ATTORNEY FALLON: Nothing.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 ATTORNEY TEPFER: If I may, Your Honor,  
14 um, if we can make an offer of proof, um, to the  
15 extent that we were limited from -- to going into  
16 the February 27, um, on direct, the February 27  
17 circumstances of that statement, um, on the  
18 break, one of our co-counsel did some legal  
19 research.

20 We just think, um, **Jerrell J.** stands for  
21 the proposition that under the totality of the  
22 circumstances surrounding confession, the mental  
23 state of the offender, is relevant as part of the  
24 interrogation process, and it's weighed against  
25 the interrogation process as used -- the

1           interrogation tactics used by the State to the  
2           extent that the argument or the objection was  
3           sustained for the reasons that anything outside  
4           of the interrogation room is not relevant.

5                     We think it is relevant to the totality  
6           of the circumstances, especially the mental state  
7           of the offender and what he was told in previous  
8           confessions.

9                     We think **Harrell**, also --  
10          H-a-r-r-e-l-l -- 40 Wis. 2d 536, stands for that  
11          proposition where the confession is tain --  
12          obtained after the, um -- the offender viewed the  
13          corpse of a murder victim, um, that was relevant  
14          in the determination of the subsequent  
15          interrogation being found involuntary.

16                    Um, **Kiekhifer** is another case we're  
17          relying on, K-i-e-k-h-i-f-e-r, 2-1-2 Wis. 2d 460,  
18          where there was two separate interrogations and  
19          both of them were considered in the voluntariness  
20          of both the **Miranda** waiver as well as the  
21          voluntariness of the confession.

22                    Finally, we just like -- also like to  
23          point out, as we mentioned in our memorandum of  
24          law, we think the 2/27 statements -- the  
25          interrogation and the statements -- are relevant,



1 um, under the rule -- are -- are admissible under  
2 the rule of completeness. They're also  
3 admissible because we're offering them not for  
4 hearsay -- say purpose, not for the truth of the  
5 matter asserted but, rather, of the effect on  
6 Brendan and, as well, again, as the interrogation  
7 tactics used.

8 I'd just like to further supplement this  
9 offer of proof. A lot of this arguments are  
10 raised in our memorandum of law that supports our  
11 petition. So we just use that as an offer of  
12 proof.

13 THE COURT: Court receives it as an offer  
14 of proof. Any response, Mr. Fallon?

15 ATTORNEY FALLON: Well, I am familiar with  
16 the three cases cited by Counsel and the  
17 circumstances. And I'd invite the Court to look at  
18 them to refresh recollection if they don't  
19 immediately come to your mind. But the  
20 circumstances in those cases are vastly different  
21 than the circumstances here.

22 The rule of completeness has no bearing  
23 on this case whatsoever, uh, as it pertains to  
24 these statements since they're all individual  
25 segments. So they're not, uh, part of one grand

1 interview scheme that took three days to  
2 complete. So the rule of completeness doesn't  
3 apply.

4 And I -- I think the actual transcript  
5 may very well be already in evidence, I could be  
6 wrong, on the 2/27 interview.

7 And our objection remains as previously  
8 noted that --

9 THE COURT: All right.

10 ATTORNEY FALLON: -- its relevance is  
11 debatable.

12 THE COURT: Offer of proof is received.  
13 Next witness.

14 ATTORNEY NIRIDER: Your Honor, the  
15 defense would call Barb Tadych.

16 THE COURT: All right. Ms. Tadych, come on  
17 up here, please. Just remain standing while the  
18 oath is administered to you, then be seated.

19 THE CLERK: Please raise your right hand.

20 **BARBARA TADYCH,**  
21 called as a witness herein, having been first duly  
22 sworn, was examined and testified as follows:

23 THE CLERK: Please be seated. Please state  
24 your name and spell your last name for the record.

25 THE WITNESS: Barbara Tadych,

1 T-a-d-y-c-h.

2 DIRECT EXAMINATION

3 BY ATTORNEY NIRIDER:

4 Q Morning, Barb.

5 A Morning.

6 Q Can you tell us how you are related to Brendan  
7 Dassey?

8 A He's my son.

9 Q How would you describe the relationship that you  
10 have with Brendan now?

11 A We're still close as we always were.

12 Q Can you describe your son's personality for the  
13 Court?

14 A He's shy. Quiet. Likes to be by himself.

15 Q Is Brendan the kind of kid who would go along  
16 with what others say pretty easily?

17 A Oh, yes.

18 Q How would you describe his intelligence level?

19 A He's slow. He's got a learning disability.

20 Q Okay. Barb, on October 31, 2005, where were you  
21 living?

22 A In my house on the Avery property.

23 Q Who lived with you in your home there?

24 A It was me and my four kids; Brian, Bobby, Blaine, and  
25 Brendan.

1 Q And how long have the five of you lived right  
2 there near the salvage yard?

3 A Since 2001.

4 Q Do you know if Brendan spent a lot of time at the  
5 salvage yard?

6 A Lots of times.

7 Q Do you know what he'd do down there?

8 A Um, he'd smash cans for my dad. Um, ride the golf  
9 cart around the yard. Go swimming in the swimming  
10 hole.

11 Q And who else lived right there near the salvage  
12 yard?

13 A Um, my brother Chuck, my mom and dad, and Steven.

14 Q Barb, was your family close?

15 A Yes.

16 Q Would you talk often with your family member?

17 A Almost every day.

18 Q And before Steven was arrested, um, in connection  
19 with this case, had you ever been over to  
20 Steven's trailer with Brendan?

21 A Lots of times.

22 Q Okay, Barb. I'd like to talk about the time  
23 period in early November, 2005, immediately after  
24 Teresa Halbach disappeared. When did you become  
25 aware that Ms. Halbach had gone missing?

1 A It was in the beginning of November. Probably around  
2 the third or fourth.

3 Q And what did you hear?

4 ATTORNEY KRATZ: Objection. Irrelevant,  
5 Judge, what this witness heard.

6 THE COURT: Overruled.

7 Q (By Attorney Nirider) What did you hear, Barb?

8 A Just that she was missing and that they were looking  
9 for her.

10 Q And where did you hear that?

11 A The media or the news.

12 Q And was that TV? Radio? Newspaper? Can you  
13 tell us about the source?

14 A Newspaper. TV. Radio.

15 Q Um, Barb, over the next few months, from November  
16 through February, did you continue to follow news  
17 about the investigation?

18 ATTORNEY KRATZ: Objection. Irrelevant,  
19 Judge.

20 ATTORNEY NIRIDER: Your Honor, I'm going to  
21 tie this up. I've just got a few more foundational  
22 questions.

23 ATTORNEY KRATZ: I don't care how many  
24 questions she has, Judge, this is still  
25 irrelevant.

1                   THE COURT: Let her -- let her see if she  
2                   can tie it up. Overruled.

3           Q     (By Attorney Nirider) Did you continue to follow  
4                   news about the investigation from November to  
5                   February?

6           A     As much as I could, yeah.

7           Q     How did you find out information about the  
8                   investigation?

9           A     Lots of times it was through the radio at work.

10          Q     Did you ever watch TV?

11          A     When I'd get home, yeah.

12          Q     When you watched the news at home, is there any  
13                 particular station that you would watch?

14          A     Usually Channel 2 or Channel 11.

15          Q     Any other stations?

16          A     The radio stations.

17          Q     Was Brendan ever with you when you watched the  
18                 news about this investigation?

19          A     Lots of times.

20          Q     Barb, do you have any specific recollection of  
21                 actually telling Brendan to watch the news?

22          A     When I'd get out of work, um, if I'd hear it at work,  
23                 I'd call home and tell him to turn the television on  
24                 so it would be on when I got there.

25          Q     And why did you want the TV to be on when you got

1           there?

2   A        Because I wanted to know what was going on.

3   Q        Okay.  And you -- you expected there to be a -- a  
4           news story on?

5   A        Most of the times when it's on the radio, yes.

6   Q        And why were you so interested in following this  
7           particular news story, Barb?

8   A        'Cause it had to do with the area around where I live  
9           and my family.

10  Q        Barb, is the TV on a lot, in general, at your  
11           house?

12  A        Lots of times, yeah.  Most of the time I should say.

13  Q        So anyone who's home and who happened to be  
14           passing by the TV might see it?

15  A        Yes.

16                    ATTORNEY KRATZ:  Objection.  Speculation,  
17                    Judge.  If this is being offered in lieu of the  
18                    defendant's own testimony about contamination, the  
19                    State is going to interpose that objection as --

20                    THE COURT:  I'll sustain the objection as  
21                    to this question.

22  Q        (By Attorney Nirider)  Was Brendan at home a lot,  
23           Barb?

24  A        All the time.

25  Q        Barb, do you remember seeing any of your

1           siblings, or your parents, follow the news about  
2           the investigation at the salvage yard?

3    A       Lots of times they did.

4    Q       Okay. Did you talk about the facts of the  
5           investigation with any family members?

6                        ATTORNEY KRATZ: Objection, Your Honor.  
7           I'm going to ask that this be specifically  
8           related, if it can be, to the defendant.

9                        ATTORNEY NIRIDER: Your Honor, as I did  
10          before, I'm going to tie this up.

11                      THE COURT: All right. Go ahead.  
12          Overruled.

13    Q       (By Attorney Nirider) Did you talk about the  
14           fact of the investigation with any of your family  
15           members?

16    A       Sometimes. Not all the time.

17    Q       About how often, would you say, you talked about  
18           the investigation with your family?

19    A       Couple times a week.

20    Q       What kind -- what kinds of things would you talk  
21           about with your family?

22    A       Things that they found.

23    Q       And when you -- Sorry. Go ahead.

24    A       Evidence that they found, and things that they'd say.

25    Q       And when you say, "evidence that they found,"



1           who's "they"?

2    A    Whoever was down in the yard.

3    Q    Was Bren -- was Brendan ever present during some

4           of these discussions?

5    A    Plenty of times. Like I said, he never went

6           anywhere. He was always home.

7    Q    And would you talk about the investigation with

8           Brendan?

9    A    Sometimes. Sometimes he was in his room playing his

10           Nintendo games so he wasn't always right by me.

11   Q    Sure. Did you and your sons eat dinner together,

12           Barb?

13   A    Yes.

14   Q    Okay. During these family dinners, would you

15           ever talk about the investigation?

16   A    Sometimes. Not all the time.

17   Q    Barb, I'd like to move forward to the events of

18           February 27, 2006, um, which is the day that

19           Officers Wiegert and Fassbender first questioned

20           Brendan. On that day, what time did the

21           investigators first contact you?

22   A    What day?

23   Q    On February 27.

24   A    Um, it was around -- I'd have to say about two

25           o'clock.

1 Q How did they get in touch with you?

2 A They called me on my cell phone.

3 Q Do you remember which person it was? Which

4 investigator placed the call?

5 A If I think back, I'm sure it was Mark Wiegert.

6 Q And what did Mark tell you?

7 A Um, that I should come to school to pick up my son.

8 Q Did he tell you that Brendan had already given

9 them some statement having to do with Teresa

10 Halbach?

11 A Yes.

12 Q Okay. Before you got that call, Barb, did you

13 know that the officers had been questioning your

14 son already?

15 A No, I -- no, I didn't.

16 Q How old was Brendan at the time?

17 A Sixteen.

18 Q What time did you get to Brendan's school that

19 day?

20 A It was a little after three. I had to work until

21 three o'clock before I could leave.

22 Q What happened after you got to Brendan's school?

23 A We went into a room off the office, and they talked

24 to me a little bit, and then they brung Brendan in.

25 Q Okay. And then where did you go from there?

1 A From there we went to the Two Rivers Police  
2 Department.

3 Q And how did you get there?

4 A In their vehicle.

5 Q And when you say "their vehicle"?

6 A Mark and Tom's vehicle.

7 Q Okay. What happened to your vehicle?

8 A It sat at the high school.

9 Q What happened after you arrived at the police  
10 station?

11 A We went in and they took Brendan into a room down at  
12 the police station.

13 Q Did you try to join them?

14 A I tried, but they more or less told me that it was in  
15 my best interest to go wait in the waiting room  
16 because they -- that Brendan was going to give them a  
17 gruesome story.

18 Q Barb, did the officers tell you that you  
19 shouldn't be in the room with Brendan?

20 A Yes.

21 Q How did you feel about not being able to be in  
22 that room?

23 A Upset.

24 Q So where were you, exactly, while Brendan was  
25 being questioned by the police at the Two Rivers

1 station?

2 A In a waiting room.

3 Q How long were the investigators alone with  
4 Brendan?

5 A I'd say about an hour.

6 Q Could you hear or see what was happening to him?

7 A No.

8 Q Okay. Moving on to March 1, 2006, which is the  
9 day that Brendan told the police that he had been  
10 involved in Teresa's death. Um, when did you  
11 first talk to Officers Wiegert and Fassbender on  
12 that day, March 1?

13 A It was after I got out of court. Um, court for me  
14 was at one. It must have been about 1:30, 2.

15 Q Was there something that morning?

16 A Oh, yes. Um, they had called me and asked me if they  
17 could take Brendan down to the Manitowoc Police -- or  
18 the jail and question him some more.

19 Q Okay. And when they asked you that, what did you  
20 say?

21 A I told them, yeah, as long as they bring him back to  
22 the high school.

23 Q Okay. Did they invite you to join them and  
24 Brendan at the sheriff's office?

25 A No.

1 Q Why did you think the investigators wanted to  
2 bring Brendan to the sheriff's office?

3 ATTORNEY KRATZ: Objection. Speculative,  
4 Judge.

5 ATTORNEY NIRIDER: Your Honor --

6 THE COURT: Sustained.

7 Q (By Attorney Nirider) Barb, did you -- at that  
8 time, did you have any idea that the police were  
9 going to accuse your son of murder?

10 ATTORNEY KRATZ: Same ob --

11 THE WITNESS: No.

12 ATTORNEY KRATZ: Same objection, Judge.

13 ATTORNEY NIRIDER: Your Honor, that's not  
14 speculation. I'm asking what was in her head at the  
15 time.

16 ATTORNEY KRATZ: Okay. How about  
17 irrelevant?

18 ATTORNEY NIRIDER: I think it's highly --

19 THE COURT: Overruled. Hang on.  
20 Overruled.

21 Q (By Attorney Nirider) I'm sorry, did you -- did  
22 you answer the question? Should I ask it again?

23 A Yeah.

24 Q Barb, did you have any idea that on March 1 the  
25 officers were going to accuse your son of murder?

1 A No.

2 Q Would you have responded differently to their  
3 request to question Brendan if you had known that  
4 they were going to accuse him of murder?

5 A Yes. I would have told them that I wanted to be  
6 there.

7 Q Barb, let's move forward now to the point in time  
8 after Brendan was arrested. After he was  
9 charged. Did you ever talk to Brendan about a  
10 plea deal?

11 A At one point in time, yes. I told him, "If you did  
12 it, take a plea deal, and if you didn't, don't."

13 Q Was that your consistent advice?

14 A Yes.

15 Q From when Brendan was -- when -- from when  
16 Brendan was arrested forward?

17 A Yes.

18 Q Finally, Barb, I just want to talk a little bit  
19 about, um, also the time when Len Kachinsky was  
20 Brendan's attorney. Uh, you testified at a  
21 hearing; is that right?

22 A Yes.

23 Q When you testified at that hearing, Barb, did you  
24 understand what the purpose of the hearing was?

25 A Not really.

1 Q Did you understand what the purpose of you  
2 testifying was?

3 A Not really.

4 Q Did Mr. Kachinsky do anything to prepare you to  
5 testify?

6 A No.

7 ATTORNEY NIRIDER: I have no further  
8 questions, Your Honor. Oh, I'm sorry. One  
9 moment. I'm sorry.

10 Q (By Attorney Nirider) Just to do a little  
11 cleanup. From March 1, Barb, was there a reason  
12 why you couldn't have been there for March 1?

13 A Because I had a court date for my divorce.

14 Q All right.

15 ATTORNEY NIRIDER: That's all.

16 THE COURT: Mr. Kratz, any questions?

17 ATTORNEY KRATZ: Yeah. I just need a  
18 second, Judge, to set up a -- a laptop. There's a  
19 couple of clips that I want to play for this  
20 witness. But I have no objection to getting this  
21 done even before the lunch hour. It'll just take a  
22 moment, Judge. I assume you want me to do that?

23 THE COURT: I do.

24 ATTORNEY KRATZ: I'll be right with you  
25 then.

1 THE COURT: Is this going to work or should  
2 we have you do this -- set it up over the lunch  
3 hour?

4 ATTORNEY FALLON: Well, that would be  
5 easier, but, um --

6 ATTORNEY KRATZ: But it -- it's a --  
7 it's a ten-minute cross, Judge, so even -- well,  
8 we can do that right after the lunch hour. It  
9 should be --

10 THE COURT: Let's do it then. We'll be  
11 back at one.

12 (Recess had at 12:00 o'clock p.m.)

13 (Reconvened at 1:04 p.m.)

14 THE COURT: Let's go back on the record  
15 with State of Wisconsin v. Brendan Dassey.  
16 Anything we need to talk about before the cross  
17 begins?

18 ATTORNEY FALLON: I don't think so,  
19 Judge. We were just making sure that my list of  
20 exhibits match theirs, and we'll confer with the  
21 clerk when we're done. That's the reason for the  
22 delay.

23 THE COURT: That's fine. Mr. Kratz.

24 ATTORNEY KRATZ: Thank you, Judge.

25 Ms. Tadych.



1 CROSS-EXAMINATION

2 BY ATTORNEY KRATZ:

3 Q Do you -- do you prefer to be called Ms. Tadych?

4 A It doesn't matter.

5 Q Well, I'll call you that, then, unless -- unless  
6 you'd like to be called something else. Mr. --  
7 or I should say, um, you sat through the entire  
8 jury trial of your son's case; is that correct?

9 A Yes.

10 Q And during that jury trial, do you remember the  
11 State having played a very small portion of the  
12 telephone call that was made between your son  
13 Brendan and you on the 13th of May?

14 A Yes.

15 Q I'm going to play that for you.

16 ATTORNEY KRATZ: And, Judge, this was a  
17 mem -- a matter of concern of the trial record  
18 earlier. Uh, we have recovered the actual, um,  
19 laptop that was used to play that particular  
20 clip. And in going through the scores, if not,  
21 hundreds, of clips that we have had set out for  
22 cross-examination purposes, we did find the clip  
23 that was played at the trial.

24 And so, uh, that will not only help the  
25 record, but I wanted to play that for Ms. Tadych

1 at this time. Remember, the Court was asking  
2 what part of the 13th was played? And we have  
3 now found that, Judge, so...

4 THE COURT: Which part of the trial was  
5 this played at?

6 ATTORNEY KRATZ: At the cross-examination.  
7 Mr. Fallon played it during cross.

8 THE COURT: All right.

9 ATTORNEY NIRIDER: Of Brendan Dassey,  
10 Counsel?

11 ATTORNEY KRATZ: Yes. I'm -- I'm -- I'm  
12 sorry. Yes.

13 Q (By Attorney Kratz) So, first of all, Barb, or  
14 Ms. Tadych, I'm going to -- I'm going to play  
15 that clip. In fact, there's several of these I'm  
16 going to play. And then I'm going to ask you  
17 questions about them. Ask you to identify the  
18 people speaking and that kind of thing, all  
19 right?

20 A Okay.

21 Q "Why did you even go over there, Brendan?"

22 "I don't know. But I -- I don't even  
23 know how I'm going to do it in court though."

24 "What do you mean?"

25 "I ain't going to face them."

1 "Face who?"

2 "Steven."

3 "You know what, Brendan?"

4 "What?"

5 "I'm going to tell you something. He  
6 did it. You do what you got to do, okay?"

7 "Well, what happens if he gets pissed  
8 off?"

9 "What makes a difference? He ain't  
10 going nowhere now, is he?"

11 "No."

12 "Okay then. Why didn't you tell me  
13 about this earlier? Huh?"

14 "I don't know."

15 Q (By Attorney Kratz) That's actually the first of  
16 two from the 13th. Let me play the second one,  
17 and then I'll ask you the foundation questions,  
18 all right?

19 "Yeah."

20 "Yeah. When did you go over there?"

21 "Well, I went over earlier and then came  
22 home before you did."

23 "Why didn't you say something to me  
24 then?"

25 "I don't know. I was too scared."

1                    "You wouldn't of had to been scared  
2                    because I would have called 9-1-1 and you  
3                    wouldn't have been going back over there. They  
4                    would have been here. Maybe she would have been  
5                    alive yet. (Unintelligible) "...those  
6                    statements, you did all of that to her too?"

7                    "Some of it."

8                    "Did he make you do it?"

9                    "Yeah."

10                   First all, Ms. Tadych, do you recall  
11                   that phone call having been played at the trial?

12                   A                    Yes.

13                   Q                    If you'd speak into the microphone, I -- I'd  
14                   appreciate it. And do you recognize the voices  
15                   on that phone call?

16                   A                    Yes.

17                   Q                    And are those the voices of you and your son  
18                   Brendan?

19                   A                    Yes, it is.

20                   Q                    And to the best of your recollection, um, if you  
21                   know, was that the phone call that was placed on  
22                   Saturday, the 13th of -- of May of 2006?

23                   A                    It could have been. I don't know what day it was.

24                   Q                    But you have a memory of that phone call; is that  
25                   right?

1 A Yes.

2 Q Now, when Brendan indicated that he made me do  
3 it, um, who were you talking about? Because you  
4 talked about a little bit earlier in the context  
5 of the call.

6 A I think he was referring to Steven. Or I was  
7 referring to Steven.

8 Q And Steven is your brother Steven Avery; is that  
9 right?

10 A Yes.

11 Q Now, also, on the -- also on the -- the day of  
12 trial, there was a clip -- a similar clip that  
13 was played from May 15, two days after this phone  
14 call to Brendan. Do you recall that at the trial  
15 as well?

16 A Not really.

17 Q It's a clip in which -- and let me just see if  
18 this refreshes your recollection -- at the end of  
19 which you express an opinion that if Brendan  
20 would have said something, Teresa would still be  
21 alive and he would have been a hero. Do you  
22 remember telling him that?

23 A I could have.

24 Q All right. I'm going to have you listen then to  
25 the clip of May 15 and then I'm going to ask you

1           some questions about that.

2    A       Okay.

3    Q       "If, um -- "

4                       "Can I ask you a question? Why did you  
5       even go over there?"

6                       "I don't know."

7                       "Why didn't you just call 9-1-1 or tell  
8       me at five o'clock when I got home? Are you  
9       afraid of him?"

10                      "Well, yeah. He's..." --

11                      (Unidentified person) "You have one  
12       minute left."

13                      "What?"

14                      "He's stronger than me."

15                      "Yeah. Well, if you would have come  
16       home and told me."

17                      "Yeah, but then I thought that I would  
18       have to go to jail, too."

19                      "No, you wouldn't have."

20                      "Yeah, for knowing about it."

21                      "You wouldn't have gotten much out of it  
22       then, Brendan, you would have been more or less a  
23       hero. She would have probably still been alive."

24                      "Yeah."

25                      "Yeah. But look at that one on TV where

1 the alligator ate this one girl."

2 "Yeah."

3 "Yeah."

4 (Unintelligible.) "...all you -- that's  
5 all you would have had to done, because I would  
6 have put you in the truck and we would have  
7 left."

8 "Yeah."

9 Ms. Tadych, do you recall that phone  
10 call?

11 A Yes.

12 Q Now, there's been considerable testimony at this  
13 hearing as to, um, either the cops making Brendan  
14 say this, or that an explanation for Brendan  
15 having, um, made admissions to the police being  
16 the product of the police making him say that.  
17 Have you heard that during this hearing?

18 A Yes.

19 Q At least in part --

20 A Yes.

21 Q -- is that right? Now, that was a theme and an  
22 idea that you spoke to Brendan about oftentimes  
23 in phone calls; isn't that right?

24 A Yes.

25 Q Do you know who first came up with the idea, or

1           who first told Brendan that he should say that  
2           the cops made him say it?

3   A       I think he did.  He's the one that told me that they  
4           made him say it.

5   Q       All right.  Do you remember when he first came up  
6           with that story?

7   A       Not really.  No.

8   Q       All right.  You recall that during May and June  
9           of 2006, that his attorney -- his then attorney,  
10          Mr. Kachinsky, had been suggesting a plea bargain  
11          to Brendan; is that right?

12  A       Yes.

13  Q       And do you remember, um, that you -- well, let me  
14          start with you.  That you had expressed the  
15          opinion that Brendan shouldn't take any plea  
16          bargain?

17  A       I more or less told my son if he did it, take the  
18          plea bargain, if not, don't.

19  Q       All right.  Do you remember you -- and I'm just  
20          first of all going to talk about you -- ever  
21          expressing the opinion for Brendan that if he  
22          took a plea bargain, that that would also hurt  
23          your brother Steven Avery?

24  A       No.

25  Q       Counsel's asked you questions about, um, family



1 members and discussions with family members. Do  
2 you recall discussing the idea of Brendan taking  
3 a plea bargain with your family members?

4 A Sometimes. But I always left it up to Brendan.

5 Q All right.

6 A Whatever he wanted to do.

7 Q Now, do you recall that various members of your  
8 family, um, render the opinion -- and first I'm  
9 going to talk about you -- render the opinion to  
10 you that Brendan's pleading guilty would hurt  
11 your brother Steven Avery? Do you recall that?

12 A I may have said it. They may have said it. But I  
13 always told Brendan it was up to his -- his doings.  
14 Whatever he wanted to do, I was satisfied with that.

15 Q And here's the, um -- the question, then. You  
16 may, then, have had other opinions about, um,  
17 either whether Brendan should take a plea bargain  
18 or who it might hurt than other members of your  
19 family; is that right?

20 A Didn't matter who it hurt. Like I said -

21 Q I'm saying, you might have had a different  
22 opinion than, let's say, your mother and father,  
23 or your brothers; is that right?

24 A I don't know what they were thinking.

25 Q All right. Do you recall, um, efforts on behalf

1 of your family -- and we're talking about  
2 coercion, now -- efforts on behalf of your family  
3 to make sure that Brendan didn't enter a plea in  
4 this case?

5 A Can you repeat that?

6 Q Sure. Do you recall efforts on behalf of your  
7 family to make sure that Brendan didn't accept  
8 any plea bargains in this case?

9 A But it wasn't up to my family.

10 Q I'm just asking the question. If you can't  
11 answer it, that's fine.

12 Do you remember efforts, though, to try  
13 to, um, dissuade or coerce Brendan not to take a  
14 plea?

15 A When it first started, yes.

16 Q I'm going to play a clip, then I'm going to ask  
17 you to identify the voices on the clip, and then  
18 I'm going to -- I just have a couple of questions  
19 about that.

20 ATTORNEY KRATZ: Um, for the record, uh,  
21 for Counsel, since you have all of these phone  
22 calls, or at least it was part of Mr. Fremgen's  
23 records, it's dated June 6, 2006, Mr. Kachinsky  
24 is the lawyer.

25 Q (By Attorney Kratz) Uh, this phone call begins

1 at 2:22 p.m. And then I'm going to ask you to  
2 identify these people, okay?

3 "They come down on you. I don't give a  
4 shit what they do. You're going to have to be  
5 man enough right now and you stick to your  
6 Goddamn guns."

7 "Yeah."

8 "And say nothing happened."

9 "Yeah."

10 "This is -- they made me say all of  
11 this. Tell them that."

12 "Yeah."

13 "And stick to your guns. 'Cause this is  
14 being monitored. I don't give a shit. But you  
15 got to understand one thing. You're a young  
16 man."

17 "Yeah."

18 "And you don't want to go to prison for  
19 the rest of your life."

20 "No."

21 "Don't go for a plea bargain or this and  
22 that."

23 "Yeah."

24 "Because you do that, then you're  
25 hurting both of you guys."

1 "Yeah."

2 "You understand that, Brendan?"

3 "Yeah."

4 "That's why I wanted to talk to you. I  
5 can't -- I don't get a chance, Brendan. I  
6 haven't talked to Steven either."

7 "Yeah."

8 "So you -- hey, I -- I -- I feel sorry  
9 for where you are."

10 "Yeah."

11 "By the -- by the way, you got the mail  
12 every day? Ha-ha-ha-ha-ha-ha. Brendan?"

13 "What?"

14 "They're -- them -- them guys are  
15 assholes. They're bastards."

16 "Yeah."

17 "Every one of them. And they're --  
18 they're bastards. And you got to keep them away  
19 from you. Don't talk to them cocksuckers at  
20 all."

21 "Yeah."

22 "'Cause their bastards. And I hope --  
23 and I hope they can play this son-of-a-bitch --  
24 they'll play it back. Don't worry about that,  
25 Brendan."

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"Yeah."

"That Goddamn Tom is a son-of-a-bitch and so is the other one."

"Yeah."

"Yeah. I'd like to take a rope and put around their balls and pecker and pull them behind my truck until I rip that fucking pepper -- pecker -- pecker and the balls right off."

"Yeah."

"Ha-ha-ha-ha-ha. That'll make their day, won't it?"

"Yeah."

THE COURT: Mr. Kratz, I think we've heard enough.

ATTORNEY NIRIDER: Your Honor, that was a very long clip. I'd object to the relevance of some of that stuff at the end there.

ATTORNEY KRATZ: I'd -- I'd be happy to -- to ask a question about that.

Q (By Attorney Kratz) First all, who -- who is that on the -- on the tape?

A My father.

Q And your father's expression of, um, what he thought of investigators, was that shared by the

1 rest of the family?

2 A I couldn't tell you if it was or not.

3 Q Well, you certainly, we've heard, were around the  
4 family talking about this case; isn't that right?

5 A It doesn't mean that we're out saying everything to  
6 everybody that other people say.

7 Q Well, you heard the very clear, um, suggestion  
8 that Brendan not take a plea bargain? You heard  
9 that; right?

10 A Yeah, I heard that.

11 Q And you heard that "That's going to hurt you and  
12 Steven." Is that right?

13 A Yeah, but it doesn't mean that he was going to do  
14 what he said.

15 Q You heard the very clear suggestion that "You  
16 should tell them that they made you say it."  
17 Remember hearing that?

18 A Yeah.

19 Q By the way, was that the first time that you or  
20 anybody in your family that you know of had  
21 suggested to your son that he come up with the  
22 story that somebody else made him say this?

23 A I don't remember. It's been how long ago?

24 Q Well, is that -- what I'm getting at is, is that  
25 the -- what's called genesis -- but is that the

1 start of this false confession claim as far as  
2 you know?

3 ATTORNEY NIRIDER: Your Honor, she said she  
4 doesn't remember.

5 THE WITNESS: Don't remember.

6 ATTORNEY KRATZ: Well, if --

7 THE COURT: Doesn't --

8 ATTORNEY KRATZ: If she doesn't,  
9 Judge --

10 THE COURT: Counsel, let me ask you: Do  
11 you have a -- a typed transcript of the clip that  
12 you played?

13 ATTORNEY KRATZ: I do not, Judge. I have  
14 hundreds of phone calls that are on my laptop that  
15 were provided to the defense. And we do have a -- a  
16 court reporter.

17 THE COURT: I -- I'm sure you do. But I  
18 would like a typed transcript of that. Part of  
19 that, I don't think, was relevant at all. A portion  
20 of it certainly is. But...

21 ATTORNEY KRATZ: The -- the family's -- the  
22 family's opinion when this witness talked about them  
23 talking to you about investigators and the like?

24 THE COURT: Part of that is relevant. I  
25 would like to see it in transcript form.

1                   ATTORNEY KRATZ: I'll provide that,  
2                   Judge. I'd be happy to. And, um, provisionally,  
3                   perhaps Madam Clerk could give us a exhibit  
4                   number and then I'll submit it under that number.  
5                   Can -- can we do that? Can we have what the next  
6                   number would be? And I'll provide a transcript.

7                   THE CLERK: Three seventy-three.

8                   ATTORNEY KRATZ: Thank you.

9                   Q           (By Attorney Kratz) Ms. Tadych, your phone calls  
10                   with Brendan, you personally, did you ever  
11                   suggest to Brendan that he go along with this  
12                   story that the investigators made him say what he  
13                   said on the 1st of March?

14                   A           I don't remember.

15                   Q           Do you remember to tell your son Brendan to blame  
16                   it on Mark? Meaning Mark Wiegert?

17                   A           I don't remember.

18                   Q           I'm going to have you listen to a phone call  
19                   between -- I'm going to have you identify, as  
20                   between you and Brendan, on May 22. It's a very  
21                   short clip, but I am going to ask you to identify  
22                   the people in this.

23                                 "Yeah. And you tell them how you gave  
24                   them statements. That's how you tell the  
25                   jurors."



1                   "Yeah. But he said that he listened to  
2 the -- the statement again and that it's really  
3 hard to believe that it was -- well..."  
4                   "What did you tell me, Brendan? You  
5 tell me they weren't taping at first."  
6                   "Yeah."  
7                   "And they told you what happened.  
8 Remember? Remember you telling me that?"  
9                   "When did I tell you that?"  
10                  "Uh --"  
11                  "I told you that I was nervous. And I  
12 had a lot of stuff on my mind. So I just said  
13 stuff."  
14                  "Yeah."  
15                  "Yeah. That's what I told you."  
16                  "No. You told me that they weren't  
17 taping at first."  
18                  "Yeah. They didn't. And --"  
19                  "And they more or less said, 'Well,  
20 isn't this what happened?'"  
21                  "Yeah."  
22                  "Remember you told me, well, blame it  
23 all on Mark?"  
24                  "Yeah."  
25                  "Yeah."

1 First of all, Ms. Tadych, who is that  
2 speaking?

3 ATTORNEY NIRIDER: Your Honor, I'm sorry.  
4 At this time I'd like to interpose an objection. I  
5 don't believe anything after May 13, any of these  
6 phone calls so far that Counsel's played, is  
7 relevant.

8 The -- the issue here is what has  
9 happened prior to May 13. I believe the State  
10 has made some contention that the family was --  
11 was attempting to influence Brendan in his  
12 decisions prior to May 13. These phone calls are  
13 not relevant to that.

14 THE COURT: Well, you have put into issue  
15 Brendan's representation after May 13 as well.  
16 Consequently, I think this is relevant and I'm going  
17 to overrule your objection.

18 Q (By Attorney Kratz) The phone call that you just  
19 heard, you suggest to Brendan that he should say  
20 that they made him say that. Or that he had told  
21 you that in the past. Did you hear that part of  
22 the tape? I mean, you heard that; right?

23 A Yes.

24 Q But Brendan didn't go along with that. And he  
25 said, "When did I say that to you?" Did you hear

1           that part?

2    A       That was in the beginning.

3                    ATTORNEY NIRIDER:  I -- I -- I got to  
4       object, Your Honor.  I think -- I don't have a  
5       transcript in front of me.  I've only heard this  
6       once.  But I think he's mischaracterizing.

7                    THE COURT:  Play it again.

8                    ATTORNEY KRATZ:  All right.

9                    THE COURT:  I'm not sure I heard that.

10   Q       (By Attorney Kratz)  Listen for you first telling  
11       Brendan, "Didn't you tell me they made you say  
12       it?"  And Brendan said, "When did I say that?"

13                    "Yeah.  And you tell them how you gave  
14       them statements.  That's how you tell the  
15       jurors."

16                    "Yeah.  But he said that he listened to  
17       the -- the statement again and that it's really  
18       hard to believe that it was -- well..."

19                    "What did you tell me, Brendan?  You  
20       tell me they weren't taping at first."

21                    "Yeah."

22                    "And they told you what happened.  
23       Remember?  Remember you telling me that?"

24                    "When did I tell you that?"

25                    Now, do you recall?  When you said to

1           Brendan, "You told me that they made you say  
2           that." And Brendan said, "When did I say that?"

3    A       Yeah. But he also corrected himself afterwards.

4    Q       Corrected himself? You told him --

5    A       Yeah.

6    Q       -- after three more times of suggesting that the  
7           cops made him say this, that he finally says,  
8           "Yeah."?

9                    ATTORNEY NIRIDER: Your Honor, he's  
10           arguing with the witness. She's answered the  
11           question.

12                   THE COURT: Yeah. I -- I'm going to  
13           sustain the objection. Why don't we move on.

14   Q       (By Attorney Kratz) My last question, then, for  
15           you, Ms. Tadych, if you know, prior to at least  
16           May 22 of 2006, do you ever recall your son  
17           suggesting to you an explanation for his  
18           confession that somebody had made him say that?

19   A       I don't remember.

20   Q       All right.

21                   ATTORNEY KRATZ: That's all I have of  
22           this witness, Judge. Thank you, ma'am.

23                   THE COURT: Any redirect?

24                   ATTORNEY NIRIDER: Yes, Your Honor.

25                                   REDIRECT EXAMINATION

1 BY ATTORNEY NIRIDER:

2 Q Um, first of all, Barb, there are a few binders  
3 around you. And I'd like you to look -- I'm not  
4 sure if it's there up in front you or if it's  
5 behind you -- but I'm looking for binder number  
6 five.

7 I'd like you to turn to Exhibit 315.  
8 Should be behind tab 315. Just let me know when  
9 you're there.

10 A I'm there.

11 Q Could you turn to page six of Exhibit 315,  
12 please?

13 A Got it.

14 Q And I'd like you to look at clip number 37 on  
15 that page?

16 A Okay.

17 Q I'm just going to read to you a few lines of that  
18 clip. This is Brendan.

19 He says: "I got a question."

20 You say: "What's that?"

21 Brendan: "What'd happen if he says  
22 something -- his story's different? What -- he  
23 says he -- he admits to doing it?"

24 Barb: "What do you mean?"

25 A Hold on a second. Which -- you told me page six?

1 Q I'm sorry. Page six of Exhibit 315. Are you  
2 there?  
3 A Yes.  
4 Q Okay. Do you see No. 37 there?  
5 A Yes.  
6 Q Right next to, "Where am I going?"  
7 A Okay.  
8 Q Okay. I'm starting a little -- a few lines down.  
9 A All right.  
10 Q Okay.  
11 Brendan: "Yeah. But I got a question."  
12 Barb: "What's that?"  
13 Brendan: "What'd happen if he says  
14 something -- his story's different? What if he  
15 says he -- he admits to doing it?"  
16 Barb: "What do you mean?"  
17 Brendan: "Like, if his story's, like,  
18 different. Like I never did nothing or  
19 something."  
20 Barb: "Did you? Huh?"  
21 Brendan: "Not really."  
22 Barb: "What do you mean, not really?"  
23 Brendan: They got to my head."  
24 Did you see what I just read there?  
25 A Yes.

1 Q Okay. And that was from the March 1 confession.  
2 I'm sorry, the March 1 recording that we viewed  
3 in court several times.

4 ATTORNEY KRATZ: Is there a question,  
5 Judge?

6 Q (By Attorney Nirider) Barb --

7 ATTORNEY KRATZ: I'm sorry.

8 Q (By Attorney Nirider) Barb, when you heard that,  
9 did you understand Brendan to be saying that what  
10 he had confessed to was not true?

11 ATTORNEY KRATZ: Objection. Speculation,  
12 Judge. Those have several different meanings and  
13 speculating as to what Brendan might have meant by  
14 it. It speaks for itself.

15 THE COURT: Well, it does that, but I think  
16 she can ask what she thought it meant. Not leading  
17 with the question. Go ahead.

18 Q (By Attorney Nirider) Barb, what did you think  
19 Brendan meant when he said those things?

20 A That he lied about his statement.

21 Q And when Brendan said, "They got to my head,"  
22 what did you think he meant there?

23 A More or less that they put stuff in his head.

24 Q And who's "they"?

25 A Mark, and Tom Wiegert.

1 Q Thank you. And, Barb, if you could just keep  
2 that open. Are you still on that page?

3 A Yep.

4 Q Can you look down at number 38 there at the  
5 bottom? You see that?

6 A Yep.

7 Q I'm just going to read you this clip.

8 Barb:

9 This is also from March 1. Um, and this  
10 is you speaking to Mark Wiegert.

11 Barb: "Were you pressuring him?"

12 Mark Wiegert: "Who are you talking  
13 about?"

14 Barb: "Him."

15 Mark: "What do you mean, 'pressuring  
16 him'?"

17 Barb: "In talking to him."

18 Mark Wiegert: "No. We told him we  
19 needed to know the truth. We've been doing this  
20 job a long time, Barb, and we can tell when  
21 people aren't telling the truth."

22 Um, what -- why did you think that --  
23 why did you ask Mark Wiegert if -- if -- if he  
24 had been pressuring Brendan?

25 A Because if Brendan is pressured, he will come out



1 with anything just to get out of something.

2 Q Okay. Barb, um, thank you. You heard Counsel,  
3 uh, refer to a telephone call that you had, um,  
4 with Brendan on May 13. He played a portion of  
5 that?

6 A Yes.

7 Q Okay. Is it correct in that call that you were  
8 advising Brendan to at least consider a plea  
9 deal?

10 A Yes.

11 Q Okay. Just a few other points. Um --

12 ATTORNEY NIRIDER: I don't have anything  
13 else, Judge.

14 THE COURT: All right. You may step down.

15 ATTORNEY GERAGHTY: Your Honor, I would  
16 call Investigator -- I'm sorry. I'm sorry.  
17 Agent Fassbender.

18 THE COURT: Mr. Fassbender. All right.

19 ATTORNEY DRIZIN: Judge, now that  
20 Ms. Tadych has testified, can she stay in the  
21 room?

22 THE COURT: Any objection?

23 (No verbal response.)

24 THE COURT: That's fine.

25 ATTORNEY DRIZIN: And one final request.

1           There were a number of phone calls that were  
2           played by Mr. Kratz and there are no transcripts  
3           for any of those phone calls. And I would hope  
4           that he would provide transcripts for each of the  
5           phone calls that he played as separate exhibit --  
6           exhibit numbers.

7                     ATTORNEY TEPFER: With one correction.  
8           There -- there is the 5/13 telephone call  
9           transcript is an exhibit.

10                    (Discussion off the record.)

11                   THE COURT: Provide -- just provide the  
12           transcripts of the expert -- of the excerpts, all  
13           right?

14                   ATTORNEY KRATZ: Can I put all of them  
15           under -- under Exhibit 373? I'll identify all  
16           the different clips, Judge. Is that all right?

17                   THE COURT: That's fine.

18                   ATTORNEY KRATZ: Okay.

19                             **THOMAS FASSBENDER,**  
20           called as a witness herein, having been first duly  
21           sworn, was examined and testified as follows:

22                   THE CLERK: Please be seated. Please state  
23           your name and spell your last name for the record.

24                   THE WITNESS: Thomas Fassbender,  
25           F-a-s-s-b-e-n-d-e-r.

1                   ATTORNEY GERAGHTY: May I proceed, Your  
2 Honor?

3                   THE COURT: You may.

4                   DIRECT EXAMINATION

5 BY ATTORNEY GERAGHTY:

6 Q     Good afternoon, Agent Fassbender.

7 A     Good afternoon.

8 Q     I want to direct your attention to, um, early May  
9 of 2006, and ask you if you were one of the lead  
10 investigators in looking into the -- the murder  
11 of Teresa Halbach?

12 A     Yes, I was.

13 Q     And were you working with Mark Wiegert?

14 A     Yes.

15 Q     And, um, were others working on that  
16 investigation with you?

17 A     Yes.

18 Q     A Detective John Dederling?

19 A     Yes.

20 Q     And were you also consulting from time to time  
21 with Prosecutor Kenneth Kratz?

22 A     Yes.

23 Q     Um, and prior to early May of 2006, um, you were  
24 involved in interviewing and interrogating  
25 Brendan Dassey; is that correct?

1 A Yes.

2 Q And those, um, interviews and interrogations  
3 began on February 27, and were essentially  
4 concluded by March 1, 2006; is that correct?

5 A Yes.

6 Q Okay. Um, now, you were also aware, um, after  
7 the interviews, um, were concluded, and that  
8 would have been on or about March 1, 2006, that  
9 Mr. Dassey came to be represented by Leonard  
10 Kachinsky; is that correct?

11 A Yes.

12 Q And that would have been some time after the  
13 first week in May of 2006?

14 A Yes.

15 Q When Mr. Kachinsky undertook the representation  
16 of Brendan Dassey, the case was still in its --  
17 against Brendan Dassey was still in its early  
18 stages in terms of court litigation?

19 A That's correct.

20 Q All right. Um, and -- oh, I meant March 1, I'm  
21 sorry. Um, I should have said after March 1,  
22 the -- the case was in its early stages; right?

23 A Yes.

24 Q Okay. And it was March -- I'm sorry. Um,  
25 March -- in early March -- that Mr. Kachinsky

1           came on board; is that right?

2     A     Yes.

3     Q     Okay.  Now, when Mr. Kachinsky began to represent  
4           Brendan Dassey, um, you recall that he made  
5           several statements in the press; is that right?  
6           Do you recall those statements?

7     A     I don't recall them.

8     Q     Okay.  Do you recall being aware that Mr.  
9           Kachinsky, at the time that he undertook the  
10          representation, stated publicly that, um, it  
11          would be in Brendan's best interest to seek a --  
12          plea deal?

13    A     He made that statement in the press?

14    Q     Yes.

15    A     He may have.  I don't -- I don't recall.

16    Q     Okay.  At the time that Brendan Dassey was -- was  
17          arrested, and that was March 1, 2006, um, you  
18          were also involved in the investigation of the  
19          Steven Avery case; is that correct?

20    A     Yes.

21    Q     And one of the reasons why you initially  
22          contacted Brendan Dassey was to see whether he  
23          might be of use as a witness in the Steven Avery  
24          case; is that correct?

25    A     That's correct.

1 Q And even after Mr. Dassey made his statement to  
2 you and Agent Wiegert on March 1, 2006, um, you  
3 were still hopeful that Mr. Dassey could be a  
4 witness against Steven Avery; is that right?

5 A Yes.

6 Q And, um, you were working with Mr. Kratz and  
7 others in an effort to make arrangements to see  
8 that Brendan Dassey could be a witness against  
9 Steven Avery?

10 A I'm not sure I can answer that question. We were  
11 continuing to investigate, continuing to move  
12 forward, but it really wasn't my place to determine  
13 whether he was going to be a witness or agree to some  
14 plea bargain or anything like that.

15 Q Okay. But during the time that Mr. Kachinsky  
16 represented Brendan Dassey, you were aware that  
17 there were ongoing discussions, to which  
18 Mr. Kratz was a party, regarding whether Brendan  
19 Dassey might eventually become a witness in the  
20 Steven Avery case?

21 A Yes. That's true.

22 Q Now, those discussions, um -- let me ask you if  
23 those discussions became more intense, uh, right  
24 around the time of May 12, 2006, when Brendan  
25 Dassey's motion to suppress statements was

1 denied?

2 A I believe that's accurate.

3 Q Okay. Um, and around that time you had contact  
4 with Mr. Kachinsky about, um, whether -- about  
5 the question of whether Mr. Dassey could provide  
6 a statement or information which would make him a  
7 valuable witness against Mr. Avery?

8 A Yes.

9 Q And also involved in those discussions was a  
10 person by the name of Michael O'Kelly; is that  
11 correct?

12 A That's correct.

13 Q And you knew Michael O'Kelly to be an  
14 investigator hired by Mr. Kachinsky; is that  
15 correct?

16 A Yes.

17 Q And he was -- and by "he" I mean Mr. O'Kelly --  
18 Mr. O' Kelly was a defense investigator; is that  
19 right?

20 A That's correct.

21 Q Can you tell me when you -- if you have any  
22 memory -- of when you first met Mr. O'Kelly?

23 A I believe it was, um, Saturday, May 6.

24 Q Why does that date stick in your mind?

25 A I located a hard copy of an e-mail that had been

1 faxed to me reference some information that he had,  
2 or he could provide, and also a request that, um, he  
3 be allowed to look at some aerial photographs. And  
4 in looking through, or looking into that further, um,  
5 Detective -- or Investigator Dederling was able to  
6 locate some information or something on his daily  
7 logs indicating that we had met with O'Kelly on that  
8 Saturday, May 6, at my office in Appleton.

9 Q Okay. Was that, um -- was that a document that  
10 you discovered just in preparation for your  
11 testimony here today? Or was -- did -- are you  
12 saying you looked at it a long time ago?

13 A No, that was for -- in preparation for this.

14 Q Okay.

15 A About two weeks ago I found that.

16 Q Okay. Let me turn -- let me ask you to look at  
17 Exhibit No. 65. Binder two.

18 A Sixty-five.

19 Q Got it?

20 A Yes.

21 Q All right. Why don't you take a look at it just  
22 for a moment? All right. Agent Fassbender,  
23 is -- is that the e-mail or the document that you  
24 had just referred to?

25 A No, it isn't.



1 Q All right. Was there a document that you had  
2 that was -- that you were made aware of that --  
3 that came before May 7?

4 A Yes. It was a -- an e-mail from Attorney Kachinsky  
5 to, uh, Investigator Wiegert. I believe it was dated  
6 May 5 --

7 Q Okay. All right. Well, take a look at Exhibit  
8 338. Binder five. Binder five. It's a  
9 different binder.

10 A Okay.

11 Q All right. Is that the e-mail that you recently,  
12 um, discovered and used to refresh your  
13 recollection?

14 A Yes.

15 Q Now, that is a, um, e-mail from Len Kachinsky to  
16 Investigator Wiegert; is that correct?

17 A Yes. And copied to, um, I think two other people  
18 also.

19 Q Okay. Um, now, I don't see you copied on this.  
20 Am I wrong?

21 A No, you're right. I believe this -- if I look at the  
22 top of it on -- on mine, and the copies here, I  
23 believe this was faxed to me by someone. And I am  
24 not sure who.

25 Q Okay. Do you know when it was faxed to you?

1 A The date on this document shows May 5, 2006.

2 Q Okay. But you don't remember who faxed it to  
3 you?

4 A I do not.

5 Q Okay. Um, and this e-mail has to do with, um,  
6 your being notified by Mr. Kachinsky that  
7 Mr. O'Kelly had developed some information, um,  
8 in the course of talking to Brendan's relative;  
9 is that correct? Relatives.

10 A Essentially. Investigator Wiegert being notified of  
11 that fact and then, subsequently, me.

12 Q Okay. Um, and this also suggests that you or  
13 Investigator Wiegert might consider obtaining a  
14 search warrant for the -- the Avery premises; is  
15 that correct?

16 A Yes.

17 Q And it suggests that you should contact Michael  
18 O'Kelly directly about that information; is that  
19 right?

20 A Investigator Wiegert. Yes.

21 Q Okay. Did you speak to Investigator Wiegert  
22 about this e-mail of May 5? Exhibit No. 33- --  
23 3-3-8?

24 A I am assuming I did. I don't have independent  
25 recollection, but I'm assuming I did.

1 Q Did you call Mr. O'Kelly and discuss this with  
2 him?

3 A Again, I don't have independent recollection, but I'm  
4 assuming I did because I did meet with him.

5 Q Okay. Did you meet with him, um, on Friday, May  
6 5? Or I think you mentioned a Saturday?

7 A Saturday, May 6 is -- it appears that's when we met  
8 him. I think it was in the morning hours at my  
9 office in Appleton, and Investigator Dederling was  
10 also there.

11 Q All right. And what was discussed at that time?

12 A The primary purpose of that meeting was to make  
13 available to him these aerial photographs. And then  
14 these were rather large photographs. And we had, um,  
15 I would say, many of them, and he was allowed to use  
16 our conference room. And we layed them out on the  
17 table and he was allowed to look at them.

18 Q Okay. And what was the purpose of him -- or did  
19 he tell you what the purpose was for him wanting  
20 to look at the large photographs and diagrams?

21 ATTORNEY KRATZ: Objection. Calls for  
22 hearsay.

23 ATTORNEY GERAGHTY: Not offered to prove --  
24 the truth of anything, Judge.

25 ATTORNEY KRATZ: Then what relevance?

1 THE COURT: What's it offered for?

2 ATTORNEY GERAGHTY: Just offered to prove  
3 why he wanted to see the -- the diagrams. It's  
4 not --

5 THE COURT: That's the -- I -- I'm going to  
6 sustain the objection.

7 Q (By Attorney Geraghty) Well, did you know why  
8 Mr. O'Kelly wanted to see that material?

9 A I'm not positive. I could make a guess.

10 Q I don't want you to guess.

11 A I imagine it had something to do with --

12 ATTORNEY FALLON: Ob -- objection, if --  
13 it's a guess.

14 THE COURT: Yeah. If you don't know, you  
15 don't know.

16 THE WITNESS: What I'm saying is I don't  
17 know if he ever told me exactly why he wanted to  
18 look at them.

19 Q (By Attorney Geraghty) Was Investigator Wiegert  
20 with you at that time?

21 A No, he wasn't.

22 Q Was Investigator Dederling there?

23 A Yes.

24 Q And was, to your knowledge, Mr. Kratz aware of  
25 this meeting?

1 A Again, I don't have independent recollection of that,  
2 but I believe he was.

3 Q And do you recall having any discussions with  
4 Mr. Kratz about the meeting that you had with  
5 Investigator O'Kelly on Saturday, May 6, 2006?

6 ATTORNEY FALLON: Objection. Relevance.  
7 We have work product privilege as well, by the way.

8 THE COURT: Sustained.

9 ATTORNEY GERAGHTY: Judge, just for --  
10 may I just respond briefly for the record?

11 THE COURT: Go ahead.

12 ATTORNEY GERAGHTY: This goes, again, to  
13 the loyalty issue. Um, and I'll just -- I think  
14 that you know what I'm saying.

15 THE COURT: Conversation between Kratz --

16 ATTORNEY GERAGHTY: Well --

17 THE COURT: -- and -- and this witness?

18 ATTORNEY GERAGHTY: About Mr. O'Kelly's  
19 participation in this meeting and part of the  
20 defense team.

21 THE COURT: I understand. The objection's  
22 still sustained.

23 ATTORNEY GERAGHTY: Okay.

24 Q (By Attorney Geraghty) Do you recall how long  
25 that meeting lasted?

1 A Again, I do not have independent recollection. When  
2 speaking with Investigator Dederling, from his logs,  
3 or his daily log sheets, uh, it sounded like a couple  
4 hours. Two, three hours.

5 Q Okay. So, um, in preparing your testimony today,  
6 uh, or preparing to testify today, I should say,  
7 did you consult logs that were prepared by  
8 Investigator Dederling?

9 A I consulted Investigator Dederling. I didn't see  
10 these -- these logs.

11 Q And -- and it was he who told you that his logs  
12 reflected a meeting on Saturday, May 6, 2006?

13 A Yes.

14 Q And, um, those logs, um -- do you have any idea  
15 where those logs would be kept?

16 A No, I don't.

17 Q And did you take any notes yourself reflecting  
18 what happened at this meeting on March 6? I'm  
19 sorry. May 6, 2006?

20 A Not that I can find.

21 Q Okay. And were any reports generated that you  
22 know of as the result of the May 6, 2006, meeting  
23 in Appleton with Mr. O'Kelly and Mr. -- and  
24 Investigator Dederling?

25 A No.

1 Q After you had that meeting, um, in Appleton on  
2 March 6, 2006 -- May 6, 2006 -- did you have any  
3 further contact with Mr. O'Kelly?  
4 A Yes, by telephone.  
5 Q And when was that?  
6 A I believe May 12, 2006.  
7 Q And was that the -- was that the -- the -- the  
8 next time that you spoke to Mr. O'Kelly?  
9 A I believe so.  
10 Q Did you have any, um, e-mail, um, correspondence,  
11 or were you copied on any correspondence,  
12 relating to an interview to take place of Brendan  
13 Dassey at the Sheboygan County Jail?  
14 A Yes.  
15 Q Will you look at Exhibit No. 65, please?  
16 A Yes.  
17 Q And did you, um, review that e-mail before coming  
18 here to testify today?  
19 A Yes.  
20 Q Okay. Was that e-mail in your file in Appleton?  
21 A I think so. I can't remember if this one was in that  
22 particular file or not.  
23 Q Okay. Now, this is a -- an e-mail that was sent  
24 to Mr. Kachinsky by Mr. O'Kelly; is that correct?  
25 A Yes.

1 Q And you were copied on it; is that right?

2 A That's correct.

3 Q Um, Mr. Kratz was copied?

4 A Correct.

5 Q Mr. Dederling was copied?

6 A Yes.

7 Q Mr. -- Investigator Wiegert was not copied?

8 A No.

9 Q All right. Um, who was taking the lead, if  
10 anyone, in -- in your contacts with Mr. O'Kelly?

11 A It seemed to have come to me.

12 Q Okay. And was Investigator Dederling also  
13 involved?

14 A Yes.

15 Q And what -- why was he involved in this?

16 A I don't know for sure, but I think what happened was  
17 on that original Friday, May 5, Mr. Wiegert -- or  
18 Investigator Wiegert -- was unavailable to follow up  
19 on this. So Investigator Dederling took that role,  
20 and -- and I took over, too, on that role, and -- and  
21 took over this -- this issue.

22 Q And when you say "this issue," what was the  
23 issue?

24 A Number one, meeting with him to -- to make available  
25 the -- the photographs. And then beyond that, um,



1           arranging for, with Mr. Kachinsky or him, a potential  
2           additional meeting with Brendan.

3       Q     Okay.  So as of Sunday -- let me just back up  
4           again.  When -- when did it first come to your  
5           attention that, um, there was possibly going to  
6           be another interview or interrogation of Brendan  
7           Dassey?  And I'm talking now around the period of  
8           May 6, 7, 8.  During that time.

9       A     Probably around that time.  I can't give you an exact  
10          time.  There was a result of ongoing dialogue between  
11          the district attorney and Mr. Kachinsky pertaining to  
12          some sort of plea bargaining or agreement.

13      Q     Okay.  So what was your understanding about why  
14          this, um, first the interview with -- by  
15          Mr. O'Kelly and Mr. Dassey, and then, perhaps, a  
16          subsequent interview of Mr. Dassey by you and  
17          Investor Wiegert would -- would take place?  Why  
18          was that going to happen?

19      A     I believe as a part of any plea agreement, it was  
20          going to be that -- that Mr. Dassey would be willing  
21          to sit down and fill in any gaps, or connect any  
22          dots, uh, provide the whole -- the whole truth to the  
23          matter.

24      Q     Okay.  So you -- did you feel that the statement  
25          that Mr. Dassey gave on March 1 was not complete?

1 A I believe that we probably had questions related to  
2 that.

3 Q And what, in particular, was, if you recall,  
4 incomplete about the March 1 statement?

5 A I don't know that I can say at this moment in time  
6 without going through the statement and the  
7 transcript. I think in -- in any interview or  
8 interrogation I don't think you ever get all the  
9 facts and the whole truth.

10 Q Okay. Um, did you have any contact with  
11 Mr. Kratz the 6th, 7th, or 8th of May, 2006,  
12 regarding the planned interview of Mr. Dassey on  
13 May 13, 2006?

14 A I'm quite sure I had contacts with Mr. Kratz probably  
15 starting May 5, uh, to talk about meeting with  
16 O'Kelly on the 6th. And then some time during the --  
17 the subsequent week related to a potential interview  
18 or interrogation of -- of Brendan.

19 Q Okay. And was this, again, all with the  
20 objective of hopefully securing Brendan as a  
21 credible witness in the Avery trial?

22 A I'm sure that was part of it.

23 Q Now, um, you mentioned, I think, a planned  
24 meeting between Brendan and his defense team on  
25 May 12, 2006? Recall that?

1 A Yes, it's in the -- the e-mail, Exhibit 65.

2 Q Okay. What understanding did you have about who

3 would be conducting that interview at the

4 Sheboygan County Jail?

5 A My understanding was Investigator O'Kelly.

6 Q All right. And did you have any understanding

7 about what the purpose of that interview was?

8 A My understanding the primary purpose of that

9 interview was to see if Brendan Dassey would get --

10 was going to be willing to speak with us again.

11 Q Did -- were you aware that, um -- well, let me

12 strike that question. Did -- did Mr. Kachinsky

13 or Mr. O'Kelly tell you that they were having

14 difficulty securing an admission from Brendan

15 that he had been involved in this -- in the

16 murder?

17 A I specifically don't recall that, but I -- I do

18 recall that he -- and I don't know if it was at this

19 time or not -- but that he was now denying

20 involvement.

21 Q All right. And was one of the purposes of

22 Mr. O'Kelly's meeting with Brendan Dassey on May

23 12, 2006, to attempt to convince Brendan to

24 retract his denial?

25 ATTORNEY FALLON: Objection: Calls for

1 speculation as to what the defense was intending to  
2 do with Mr. Dassey.

3 THE COURT: I'll overrule it, if this -- if  
4 this witness knows.

5 THE WITNESS: I was going to answer that  
6 I could only assume.

7 Q (By Attorney Geraghty) You could only -- you  
8 could only assume. Okay. So Mr. -- Mr. O'Kelly  
9 never told you what the purpose of the May 12,  
10 2006, meeting was?

11 A The only thing I really remember about that was to  
12 see if Brendan was going to be, or would be, willing  
13 to sit down with us and speak with us again.

14 Q Were you aware that -- that Mr. O'Kelly was going  
15 to take certain equipment and items of evidence  
16 to the interview with Brendan Dassey at the  
17 Sheboygan County Jail on May 12, 2006?

18 A Yes. Per -- per that e-mail, Exhibit 65, again, he  
19 makes indications of such.

20 Q And did you provide him with some of that  
21 material?

22 A I don't believe I did. Um, I believe he -- I believe  
23 he got it through the district attorney's office or  
24 through Mr. Kachinsky, but I don't believe I provided  
25 any of this stuff.

1 Q So you don't recall, um, Mr. O' Kelly coming  
2 to -- to your office, uh, and having a  
3 conversation with him about, um, obtaining some  
4 of this material from law enforcement?

5 A He came to our office -- DCI office in Appleton --  
6 and my memory of that is he primarily looked at those  
7 photos on May 6.

8 Now, this e-mail on Exhibit 65 was May  
9 7, and my memory of that is that he obtained, if  
10 any of this stuff, elsewhere, 'cause I didn't  
11 meet him again in my office.

12 Q Okay. Do you -- do you know where he obtained  
13 this information?

14 A No, I don't.

15 Q When you met with Mr. O'Kelly in your office on  
16 May 6, did you have any discussions with  
17 Mr. O'Kelly about what tactics might implead --  
18 be employed, or the best way to get Brendan to  
19 retract his denials?

20 A Not that I recall.

21 Q Do you know whether anybody else had such  
22 conversation with Mr. O'Kelly?

23 A No, I don't.

24 Q Do you recall saying, um, to Mr. O'Kelly, or did  
25 you overhear Investigator Dederling say, um,

1 something to the effect, "Boy, you've got your  
2 work cut out for you."?

3 A No, I don't recall that.

4 Q Okay. Now, were you made aware that, in fact,  
5 um, an interview had been conducted by  
6 Mr. O'Kelly of Mis -- Mr. Dassey on May 12, 2006?  
7 Were you notified that that had happened at some  
8 point?

9 A Yes.

10 Q And do you recall when you were notified?

11 A Probably, um, a phone call that I had with  
12 Mr. O'Kelly. Or one of the phone calls I had with  
13 him on the evening of the 12th. May 12.

14 Q Will you look at Exhibit 363, please?

15 A What -- what book --

16 THE COURT: It's not -- it's not in the  
17 book. Just a second. Right there.

18 THE WITNESS: Oop, I got it. Yes.

19 Q (By Attorney Geraghty) And is that another  
20 document that you reviewed, um, a short while ago  
21 to prepare your -- your testimony here today?

22 A Yes.

23 ATTORNEY FALLON: Excuse me, Your Honor. I  
24 noticed as the witness paged through the exhibit --  
25 uh, how many pages are in that? I want to make sure

1 that I have the same copy the defense does.

2 THE WITNESS: Six.

3 ATTORNEY FALLON: Okay.

4 ATTORNEY GERAGHTY: Is -- Tom, is that  
5 correct?

6 THE WITNESS: Um --

7 THE COURT: No, it should be three.

8 THE WITNESS: -- one --

9 ATTORNEY GERAGHTY: Judge, we -- I  
10 thought --

11 ATTORNEY FALLON: You may have replaced it  
12 it, and I'm looking for -- because it was -- the  
13 last document you handed me was a combination of  
14 Exhibit 356 and 363, if I remember. But I believe,  
15 as originally marked, 363 was a three-page document.  
16 Unless I'm mistaken.

17 ATTORNEY GERAGHTY: That's correct, Judge.  
18 We did, um, label the last three pages of this  
19 document as Exhibit No. 356.

20 THE COURT: Okay.

21 ATTORNEY GERAGHTY: So you have a six-page  
22 document before you?

23 THE WITNESS: I have a six-page  
24 document. The first three pages appear to be  
25 363, and the next three pages I show as no

1 exhibit number. Apparently report number 277.  
2 My report.

3 ATTORNEY GERAGHTY: All right. So  
4 that's the document that we're referring to.  
5 Okay.

6 THE COURT: The first three pages.

7 ATTORNEY GERAGHTY: The first three  
8 pages for now, yes, Judge.

9 ATTORNEY FALLON: Okay.

10 Q (By Attorney Geraghty) Now, this document shows  
11 that you received a telephone call from  
12 Mr. O'Kelly at approximately 8:33 p.m. on  
13 March 12, 2006; is that right?

14 A That's correct.

15 Q And you were told during that conversation that  
16 Brendan Dassey wanted to speak with -- with you,  
17 but that he wanted to watch a movie that night  
18 and that he would speak to you the following  
19 morning; is that correct?

20 A Yes.

21 Q And you told -- you told Mr. O'Kelly that you  
22 would like to speak to Mr. Kachinsky; Brendan's  
23 lawyer, before going forward with that plan; is  
24 that right?

25 A That, and I'm sure -- I don't know if I told him --



1 but I'm sure that a -- a -- well, I did make contact  
2 with the district attorney, also, relative to this.

3 Q Okay. Um, and why did you want to make sure that  
4 you spoke to Attorney Kachinsky before confirming  
5 that you would meet with Mr. Dassey the next day?

6 A Because Mr. Dassey was represented by Attorney  
7 Kachinsky.

8 Q Okay. And, what, if anything, did Mr. O'Kelly  
9 tell you about whether Mr. Kachinsky could or  
10 would be present on May 13?

11 A He said that Attorney Kachinsky was aware of  
12 Brendan's desire to speak with us and it was  
13 authorized by Attorney Kachinsky.

14 Q But you still felt that you should call the  
15 attorney -- Attorney Kachinsky -- to confirm  
16 that; is that right?

17 A Yes.

18 Q And you did that?

19 A Yes.

20 Q And what did -- what did Attorney Kachinsky tell  
21 you?

22 A I believe he called me, and he confirmed -- or told  
23 me that Mr. Dassey wanted to speak to us. That "us"  
24 being myself and Investigator Wiegert. And that he  
25 wanted to do it on Saturday morning, May 13, 2006.

1 Q Okay. And did you notify Investigator Wiegert of  
2 this?

3 A Yes. That evening I was on the phone with both  
4 Investigator Wiegert and District Attorney Kratz.

5 Q Okay. And can you, um -- can you tell us what  
6 you said to, um, District Attorney Kratz and what  
7 he said to you when you called him on Friday  
8 evening, May 12, 2006?

9 ATTORNEY FALLON: Objection. Relevance and  
10 hearsay.

11 ATTORNEY GERAGHTY: Judge, it's part of  
12 the --

13 ATTORNEY FALLON: And work product.

14 ATTORNEY GERAGHTY: -- the loyalty issue,  
15 Judge.

16 ATTORNEY FALLON: The loyalty issue is  
17 what they did when --

18 ATTORNEY GERAGHTY: This is --

19 ATTORNEY FALLON: -- they got there.

20 ATTORNEY GERAGHTY: This is the -- this is  
21 the defense and the prosecution working together to  
22 get another statement from Brendan Dassey.

23 THE COURT: I'll overrule the objection for  
24 the moment. Go on.

25 Q (By Attorney Geraghty) Um, my question had to do

1 with whether you remembered the substance of your  
2 telephone conversation with District Attorney  
3 Kratz on the evening of Friday, May 12, 2006?

4 A The substance would have had to do whether, um,  
5 District Attorney Kratz would authorize us doing  
6 that.

7 Q And what were the issues that you were concerned  
8 about when you spoke to District Attorney Kratz?

9 A At that time just that -- I imagine, just that  
10 Mr. Dassey was represented by attorney and -- I -- I  
11 can't remember if at that time it was a known -- I'm  
12 going to assume it was -- that -- that Attorney  
13 Kachinsky was not going to be present. So that may  
14 have been part of the issue.

15 Q Okay. And was there any -- was there some  
16 urgency involved in taking the statement from  
17 Brendan Dassey as far as you knew?

18 A I don't recall the details, but there may have been  
19 some urgency. I don't know if there were some  
20 hearings coming up or something, but I just -- I just  
21 don't recall.

22 Q Okay. I mean, I -- in -- in -- in deciding, you  
23 know, whether it was appropriate to interview  
24 Mr. Dassey without his -- an attorney present,  
25 um, I -- I take it that you might have discussed,

1 well, why don't we wait until he can be present?

2 A Yes. So there -- there -- again, I can't remember  
3 why, exactly, but I -- I believe there was some  
4 urgency.

5 Q And eventually, as it -- as it turned out, um,  
6 everybody seemed to be on board with, um, going  
7 forward with that interview on the 13th and  
8 having Michael O'Kelly present; is that correct?

9 A Yes.

10 Q And, by the way, did you have any contact with  
11 Mr. O'Kelly on the evening of Friday, May 12,  
12 2006?

13 A Yes, telephone contact.

14 Q Who initiated that telephone contact?

15 A Could you repeat the date again?

16 Q Uh, that was Friday, May 12, in the evening. May  
17 12, 2006, right after or during the time that  
18 Mr. O'Kelly was interviewing Brendan Dassey at  
19 the Sheboygan County Jail.

20 A According to my report, um, Mr. O'Kelly telephoned me  
21 at 8:33 p.m. And then again telephoned me at  
22 9:18 p.m. Uh, that call was dropped. And then,  
23 again, at 9:19 p.m.

24 Q In the -- in the -- in the first call, would it  
25 be fair to say -- and I don't know if you

1 remember -- that Mr. O'Kelly told you that  
2 Brendan was going to be willing to speak to you  
3 the next day?

4 A Yes.

5 Q And in the second two calls, um, did Mr. O'Kelly  
6 make an effort to provide you with information  
7 that he had obtained from Brendan Dassey that  
8 evening?

9 A Yes.

10 Q And did you listen to that information?

11 A The -- the -- as the report says, the call was a --  
12 very bad, and I would catch pieces and words, and as  
13 my report even says, I believed he made comments or  
14 said certain things. Um, eventually, either I hung  
15 up or the call was ended.

16 Q And did you -- did you end that call because  
17 you -- you -- you couldn't hear or because you  
18 didn't want to listen to what he had to say?

19 A I think it was a little of both. Note that I did not  
20 call him back. I didn't --

21 Q Yeah.

22 A -- I wasn't interested in those things. I --

23 Q And --

24 A -- didn't want to know those things.

25 Q -- did you feel uncomfortable talking to

1 Mr. O'Kelly?

2 A When he was talking about those types of things,  
3 information that he had obtained from his client, so  
4 to speak, yes.

5 Q And was -- why did you feel uncomfortable about  
6 that?

7 ATTORNEY FALLON: Objection. Relevance.  
8 It's easily -- are we going to have the witness  
9 comment on the legality of -- of the issue that  
10 you're going to decide?

11 ATTORNEY GERAGHTY: I didn't -- I didn't  
12 ask him about the legality.

13 ATTORNEY FALLON: Well, that's the  
14 import of the question.

15 THE COURT: I'll sustain the objection.

16 Q (By Attorney Geraghty) Now, you met with Brendan  
17 Dassey the next day; is that correct?

18 A That's correct.

19 Q And you were with your partner, Investigator  
20 Wiegert?

21 A Yes.

22 Q And that was the morn -- in the morning of  
23 Friday -- I'm sorry -- Saturday, May 13, 2006?

24 A Yes.

25 Q And you went to the Sheboygan County Jail to

1           conduct an interview of Brendan Dassey; is that  
2           right?

3    A    Yes.

4    Q    When you got there, um, was Mr. O'Kelly there?

5    A    Yes.

6    Q    And did you, in fact, have a conversation or  
7           encounter him before you spoke to Brendan Dassey?

8    A    Yes.

9    Q    Did you discuss, um -- did -- did Mr. O'Kelly  
10           offer, again, to provide you with information at  
11           that time?

12   A    I do not recall.

13   Q    Okay. Were both you and Investigator Wieg --  
14           Wiegert present at the time that you had that  
15           first encounter with Mr. O'Kelly?

16   A    First encounter on the 13th?

17   Q    I'm sorry, yes, on the 13th.

18   A    To my memory, yes.

19   Q    Did you tell Mr. O'Kelly anything about the  
20           procedures or the process that you intended to  
21           follow with respect to your interview of Brendan  
22           Dassey?

23   A    We told him that we preferred to -- to speak with  
24           Mr. Dassey without him present. And that had been  
25           addressed the evening before, also, with Attorney

1 Kachinsky and Mr. O'Kelly. Um, that it was going be  
2 videotaped and audio recorded. And he wanted to  
3 watch the monitor and we had no problem with that.

4 Q Was -- was there inter -- any understanding  
5 that -- that Mr. O'Kelly was -- well, let me ask  
6 you this: What was your understanding about  
7 Mr. O'Kelly's role being present at the Sheboygan  
8 County Jail that day? That is, um, Friday -- I'm  
9 sorry -- Saturday, May 13, 2006.

10 A All I can say is that Mr. Kachinsky had advised he  
11 was not going to be present but that his private  
12 investigator would be.

13 Q And was there any understanding about whether  
14 Mr. O'Kelly, um, was there to protect Brendan's  
15 rights in any way?

16 A Not -- I don't know anything about that.

17 Q Okay. Did you have any discussions with  
18 Mr. O'Kelly about circumstances under which he  
19 should feel free to -- to interrupt the  
20 interview?

21 A I don't know that that was discussed.

22 Q Now, just taking you back briefly to the evening  
23 of Friday, May 12, 2006, um, did, um, you receive  
24 an e-mail from Mr. Kachinsky in which he  
25 confirmed that you could re-interview Brendan?



1 A Yes.

2 Q And did that e-mail also authorize you to --  
3 authorize Mr. O'Kelly to brief you and  
4 Investigator Wiegert before the interview?

5 A Yes.

6 Q And also to provide any copies of Mr. O'Kelly's  
7 work product?

8 A Yes.

9 Q And did, in fact, Mr. O'Kelly brief you before  
10 you went into that interview with Mr. -- with --  
11 with -- with Brendan?

12 A I don't believe so.

13 Q Okay. Did he provide you with any copies of his  
14 work product before you interviewed Brendan?

15 A No.

16 Q Now, I take it that you did, in fact, um, conduct  
17 another interview or interrogation of Brendan  
18 Dassey; is that correct?

19 A On the 13th?

20 Q Yes.

21 A Yes.

22 Q And that interview took most of the morning?

23 A Yes.

24 Q Did there come a time when you and Investigator  
25 Wiegert left the interview room and left Brendan

1 in the interview room?

2 A Yes.

3 Q And was that because Brendan was not providing  
4 you with the information that you had understood  
5 you would receive?

6 A I don't know. It probably was to go out and talk  
7 about what was transpiring in the interview. I know  
8 we wanted to check and make sure the video was  
9 working properly, also. But I'm sure it was to go  
10 out of the room and discuss where we were going to go  
11 next.

12 Q Right. But you were having trouble getting the  
13 information that you thought you were going to  
14 get from Brendan? Was that -- would that be a  
15 fair statement?

16 A I believe that's a fair statement.

17 Q And so you thought it might be a good idea to  
18 take a break, and regroup, and try to strategize  
19 about how to go back at it?

20 A If at all, yes.

21 Q So there even was some discussion at that time of  
22 maybe terminating the interview?

23 A Oh, yes.

24 Q Okay. And did you discuss this with  
25 Mr. O'Kelly?

1 A I don't know if we did. He was in the room when we  
2 went to check the video to make sure it was working,  
3 confirm with him that it was, and I don't -- I would  
4 say probably not that we had much of a discussion  
5 with him or I'd probably recall it.

6 Q All right. Did -- did -- did -- do you recall  
7 whether Mr. O'Kelly said that he had been  
8 watching the video?

9 A He probably did. He was in there. It was playing.

10 Q Did he give you any suggestions about tactics  
11 that you might employ or things you might do to  
12 get information from Brendan?

13 A The only thing I recall was a suggestion that  
14 Investigator Wiegert talk to Brendan or question  
15 Brendan, you know, because he believed that Brendan  
16 was more comfortable with him.

17 Q Okay. Did -- did Mr. O'Kelly also suggest that  
18 Investigator Wiegert, um -- that you change seats  
19 with Investigator Wiegert in the room?

20 A He may have. I'm not sure.

21 Q All right. Now, I'd like you to refer you to  
22 Exhibit 315.

23 A Three-fifteen is --

24 Q Three-fifteen is in binder -- binder five.

25 A Okay.

1 Q Okay. Could you turn to, please, to page 22 of  
2 Exhibit 315 and look at clip ten? That would be  
3 number ten on page 22?

4 A Yes.

5 Q All right. I'm going to read this to you and  
6 just ask you whether, in fact, it is what  
7 transpired during a -- a portion of the in --  
8 interview of the -- Brendan Dassen -- Dassey on  
9 May 13, 2006, at the Sheboygan County Jail.

10 Investigator Wiegert: "Okay. When are  
11 you going to tell your mom about this?"

12 Brendan Dassey: "Probably the next time  
13 I see her."

14 Investigator Wiegert: "'Cause your lied  
15 to her so far; right? Don't you think you should  
16 call her and tell her?"

17 Brendan Dassey: "Yeah."

18 Investigator Wiegert: "When are you  
19 going to do that?"

20 Brendan Dassey: "Probably tonight."

21 Investigator Wiegert: "Don't you think  
22 she has the right to know?"

23 Brendan Dassey: "Yeah."

24 Investigator Wiegert: "Yeah. I think  
25 she'd like to hear it coming from you rather than

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from me."

Brendan Dassey: "And if she has any questions, 'cause I'm seeing her tomorrow."

Mr. -- Investigator Wiegert: "Okay. She's coming here tomorrow?"

Brendan Dassey: "Uh-huh."

Mr. -- Investigator Wiegert: "Maybe it would be a good idea to call her and tell her before she gets here tonight. That's what I would do. 'Cause otherwise she's really going to be mad here tomorrow. Better in -- better on the phone, isn't it?"

"Uh-huh."

Mr. -- Investigator Wiegert: "That's up to you, though. That's your decision whether you want to do that or not. It's just a suggestion."

Do you recall Investigator Wiegert, um, making those suggestions to Brendan Dassey on May 13, 2006, at the Sheboygan County Jail?

A Yes, I recall that being discussed.

Q And could you turn, please, to page 23 of the same exhibit? That's Exhibit 315. And we'll -- I'm -- I'm going to read paragraph 17 to you. Do you have it?

A Yes.

1 Q Um, and this is you, I believe, Investigator --  
2 or Special Agent Fassbender.

3 "Mark mentioned talking to your mom  
4 about this and being truthful with her now.  
5 Okay? If you are truly sorry for the Halbachs,  
6 you'll be -- you'll tell your mother the truth  
7 about this. Okay?"

8 And then Investigator Wiegert: "Are you  
9 going to do that?"

10 Brendan Dassey: "Yeah."

11 Investigator Wiegert: "When are you  
12 going to do that?"

13 Brendan Dassey: "Tonight."

14 Investigator Wiegert: "Probably be a  
15 good idea before we tell her. That would be the  
16 right thing to do. Your mom deserves to know.  
17 Okay?"

18 "Um-hmm. Um-huh. All right."

19 Is that, um -- do you recall having that  
20 conversation with Brendan Dassey on May 13, 2006,  
21 at the Sheboygan County Jail?

22 A Yes.

23 Q Now, during those two -- two portions of the  
24 interview with Brendan, Brendan told you that  
25 her moth -- his mother was coming the next day;

1 is that right?

2 A Yes.

3 Q Um, and that -- the next day would have been a  
4 Sunday; is that right?

5 A Yes.

6 Q And -- okay. Now, one final question about  
7 the -- the interview on May 13 at the Sheboygan  
8 County Jail. Did Mr. O'Kelly ever knock on the  
9 door of that interview room and hand you any  
10 documents for use during the interrogation?

11 A Someone did. And I remember that from reviewing  
12 the video. And I believe it was probably him. I  
13 don't know who else it would have been.

14 Q Okay.

15 ATTORNEY GERAGHTY: I guess, Judge, I  
16 have a cup -- couple more questions, then I'll be  
17 done. I said I promised one, but I've got two  
18 more.

19 Q (By Attorney Geraghty) Uh, do you recall --  
20 well, do you recall what that document was?

21 A It looked like a photograph. Probably an aerial  
22 photograph. And he handed it in. I gave it to  
23 Investigator Wiegert, and to my knowledge we never  
24 used it for anything.

25 Q Did Brendan Dassey ever speak to, um,

1 Michael O'Kelly during the time that you were  
2 interviewing Brendan Dassey? In other words, did  
3 you ever take a break to allow Brendan to talk  
4 to Mr. O'Kelly?

5 A I don't believe so.

6 Q Did Brendan, to your knowledge, know that  
7 Mr. O'Kelly was there?

8 A I don't know.

9 Q Did you ever tell Brendan that Mr. O'Kelly was  
10 there?

11 A I don't remember. Uh, the transcripts or the video  
12 would probably show that if we did.

13 Q Okay.

14 ATTORNEY GERAGHTY: Nothing further, Judge.

15 THE COURT: All right. We'll break for 15  
16 minutes.

17 (Recess had at 2:30 p.m.)

18 (Reconvened at 2:50 p.m.)

19 THE COURT: All right. Let's go back on  
20 the record. Mr. Kratz? Or Mr. Fallon?

21 ATTORNEY FALLON: No questions.

22 THE COURT: Can't ask you to redirect on  
23 no questions.

24 ATTORNEY GERAGHTY: No. Sorry, Judge.

25 THE COURT: Further witnesses?



1                   ATTORNEY TEPFER: Oh. We just want to  
2 seek admission of Exhibit 363 at this point.  
3 It's been conditionally admitted, I think, twice  
4 now, and I think it can be admitted now.

5                   ATTORNEY FALLON: No objection.

6                   THE COURT: All right. Three sixty-three  
7 is received. Now, when I say 363, we're talking  
8 about the three pages?

9                   ATTORNEY TEPFER: Correct.

10                  ATTORNEY FALLON: Right.

11                  ATTORNEY TEPFER: The other pages have  
12 already been admitted. Um, at this time there's  
13 a -- I believe there's a stipulation to a  
14 March 7, 2006, videotape that, um, corresponds  
15 with Exhibit 317, which is the transcript of the  
16 videotape that, um, I think there's a stipulation  
17 to the authenticity of that, um, videotape,  
18 and -- and we'd like to play that in open court.

19                  ATTORNEY DRIZIN: Just for the record,  
20 Your Honor -- just for the record, this exhibit  
21 is being introduced as, um, impeachment evidence  
22 of Mr. Kachinsky.

23                  Mr. Kachinsky testified on his first day  
24 of testimony that, um, with respect to Exhibit  
25 317, which was an exhibit that talked about him

1 making comments about Brendan being morally and  
2 legally responsible for this crime, and that, um,  
3 Steven Avery was evil incarnate.

4 Mr. Kachinsky testified that he did not  
5 make those comments and -- and they may have been  
6 made by Ralph Sczygelski. And this is used to  
7 demonstrate that, in fact, Mr. Kachinsky made  
8 those comments.

9 THE COURT: You're referring to what is  
10 page three of unpaginated Exhibit 317; is that  
11 correct?

12 ATTORNEY TEPFER: Um, if I could just  
13 double-check that for a second and then I will --

14 ATTORNEY FALLON: And, Counsel, this  
15 exhibit is marked 3-7-4?

16 ATTORNEY TEPFER: Three-seven-four.  
17 Right.

18 THE COURT: Oh, I'm sorry.

19 ATTORNEY TEPFER: Well, this -- the  
20 video is marked 3-7-4, the transcript of this  
21 video is marked 317 --

22 THE COURT: Right.

23 ATTORNEY TEPFER: -- which has  
24 previously been admitted. So it corresponds with  
25 317 and -- yes. That is page three -- well, I

1 think the whole exhibit is -- or the whole  
2 exhibit will be played. The whole transcript of  
3 the exhibit will be played. But the part that  
4 Mr. Drizin mentioned is the --

5 COURT REPORTER: Excuse me. I'm sorry.  
6 I'm having a hard time hearing you.

7 ATTORNEY TEPFER: I'm sorry. The part  
8 that Mr. Drizin referenced is on -- found on page  
9 three of Exhibit 317.

10 THE COURT: All right. So let me -- let me  
11 get this straight. You're -- you're going to play  
12 the entirety of this Exhibit? That is to say  
13 everything that I see in Exhibit 317?

14 ATTORNEY DRIZIN: Yes. It's only a  
15 couple minutes long, Judge.

16 ATTORNEY FALLON: Actually, if it's what  
17 I was -- viewed last night, it's, uh, 90 seconds.

18 THE COURT: Let's play it.

19 ATTORNEY TEPFER: Can I just make one  
20 other point about this? This is our only copy.  
21 I'm wondering if we could not have it received  
22 today so that we could burn a copy and send it to  
23 the Court?

24 THE COURT: Sure.

25 ATTORNEY FALLON: I do have a comment once

1 it's moved in, though. But -- but it's better that  
2 you see it first.

3 THE COURT: Okay.

4 "I look forward to meeting with him.  
5 "Attorney Len Kachinsky says he accepted the  
6 Dassey case knowing it would be his greatest  
7 professional challenge.

8 He immediately lashed out at Steven  
9 Avery."

10 "We have a 16-year-old who, while  
11 morally and legally responsible, was, uh, heavily  
12 influenced by someone that can only be described  
13 as, uh, something close to evil incarnate."

14 "Kachinsky joined Dassey's former  
15 attorney in criticizing Special Prosecutor Ken  
16 Kratz. They say Kratz went too far when he gave  
17 graphic details of what supposedly happened  
18 during the murder."

19 "The district attorney is a tough one.  
20 Um, Ken Kratz is not somebody that is, um, going  
21 to be tremendously easy to work with."

22 "Kratz responded tonight saying, 'I  
23 apologize to individuals who believe there's too  
24 much in the Complaint. The information in the  
25 Complaint is what was developed during the

1 investigation. If they think there was too much  
2 evidence against his client, I'm sorry about  
3 that.'

4 Attorney David Weber of Green Bay, who  
5 is not involved in the Avery case, says 'Kratz  
6 may have had reason to include the details.'"

7 "He's got to drop a Complaint, a legal  
8 document, that's going to satisfy a judge that  
9 there's probable cause to initiate the criminal  
10 proceedings against somebody."

11 "The greater the detail, the easier to  
12 convince a judge that a 16-year-old deserves  
13 adult charges."

14 ATTORNEY DRIZIN: Your Honor, um, we  
15 would have no objection to anything beyond the  
16 introductory part of this being admitted into  
17 evidence. Um, it's up to the State if -- if they  
18 want the whole thing to provide greater context.  
19 We don't care either way.

20 THE COURT: Mr. Fallon?

21 ATTORNEY FALLON: Yes. Our only concern is  
22 that it's quite apparent that on one level, yes,  
23 Mr. Kachinsky uttered the words at issue.

24 The problem with that tape is that when  
25 you pay close attention to it, and I did watch it

1 five times last night, it's quite apparent that  
2 that is an excerpt right out of a statement. So  
3 what was said immediately before the "morally  
4 responsible" language and what was said  
5 immediately thereafter is not reported on the  
6 tape.

7 So, in a way, how do we know what was  
8 said beforehand? Which may have been as a  
9 condition precedent to making those comments,  
10 which is I think what Mr. Kachinsky was trying to  
11 say on the stand.

12 If I -- and so -- so, anyways, the point  
13 being it has limited relevance because it's not  
14 the whole statement so we can't really assess it  
15 as true impeachment. But that's your call to  
16 make.

17 So with that understanding, it is what  
18 it is.

19 THE COURT: The Court understands what  
20 you're saying, Mr. Fallon. I -- I'm going to  
21 receive that portion of this exhibit that -- by  
22 "that portion" I mean, Mr. Kachinsky's remarks.

23 Whether those represent the entirety of  
24 what Mr. Kachinsky said to the person that was  
25 interviewing him, I certainly don't know. Nobody

1           else here knows. But perhaps someone does. But  
2           we don't have that of the record. So there --  
3           there -- there is, we'll call, tangential  
4           relevance here.

5                        So the -- the Court will receive it with  
6           that in mind.

7                        Now, any other witnesses?

8                        ATTORNEY TEPFER: Um, there's just one  
9           final matter, Your Honor. Um, on the Thursday,  
10          the day before this hearing starts, the State  
11          filed a mo -- or we had a hearing on motion in  
12          limine on -- concerning the exclusion of  
13          Dr. Honts' testimony.

14                       We offer Dr. Honts to, uh -- as an  
15          expert in polygraphy, who would have testified  
16          that he reviewed what's been admitted as Exhibit  
17          231, which are the polygraph charts prepared by  
18          Michael O'Kelly.

19                       And he's an expert. We offered him as  
20          an expert in polygraphy. And his analysis of the  
21          charts demonstrated that Brendan Dassey passed  
22          the polygraph given to him, which I believe was  
23          on April 16, 2006.

24                       The Court excluded this testimony on  
25          relevance. We'd just like a -- to reconsider

1           that motion. Um, we believe the testimony is  
2           relevant to our argument that Len Kachinsky and  
3           his agent, Michael O'Kelly, were disloyal to  
4           Brendan Dassey.

5                     Michael O'Kelly testified that Brendan  
6           Dailey -- Brendan Dassey failed the polygraph  
7           test in his analysis, and Len Kachinsky testified  
8           that Michael O'Kelly informed him that the  
9           results were inconclusive.

10                    Doctor's tem -- Honts' testimony would  
11           be further impeachment on the question of whether  
12           Michael O'Kelly told Brendan a truth or a lie  
13           when he interrogated him on May 12 regarding his  
14           results of the polygraph.

15                    Think it's relevant to the matter of  
16           loyalty in his own investigator lying to him in  
17           an effort to get a statement.

18                    THE COURT: Go ahead.

19                    ATTORNEY FALLON: I had another argument as  
20           to why that's inadmissible in addition to the ones I  
21           already made.

22                    Um, the real issue in determination is  
23           of the voluntariness question. And it comes in  
24           the context under Wisconsin law as to when an  
25           individual is confronted with the results.



1                   And it doesn't matter, for purposes of  
2                   legal discussion, whether somebody's claimed to  
3                   have passed, or whether if somebody's claimed to  
4                   have failed. It's what was told to the suspect  
5                   and did that have any relevance or any  
6                   justification whatsoever.

7                   So in addition to the -- the fact that  
8                   an official polygrapher's certification of the  
9                   results being inadmissible under *State v. Dean*, I  
10                  renew my objection that it's inadmissible as it  
11                  relates to, um, the original argument in the  
12                  motion.

13                  And for that reason in -- it doesn't  
14                  matter what the result is for the Court to make  
15                  the analysis required under Wisconsin law.

16                  ATTORNEY TEPFER: Can I make one quick  
17                  response?

18                  THE COURT: Go ahead.

19                  ATTORNEY TEPFER: As a -- we're not --  
20                  we're not talking about voluntariness, we were  
21                  talking about the loyalty matter on this. And I  
22                  think it's relevant to the loyalty of whether or  
23                  not he lied. Whether or not he told him the  
24                  truth about the polygraph.

25                  ATTORNEY FALLON: Well, if we're not

1 talking about voluntariness, then we've just wasted  
2 three days.

3 ATTORNEY TEPFER: Well, we're talking --

4 THE COURT: Here. Look, I made a ruling  
5 when this was brought up. I put the -- I put my  
6 reasons on the record. I see nothing that has  
7 been produced in these days of hearings that  
8 would cause me to change that ruling. So it  
9 stands.

10 ATTORNEY DRIZIN: Okay.

11 THE COURT: All right. Further witnesses?

12 ATTORNEY DRIZIN: Your Honor, subject to  
13 our discussion in chambers with regard to the  
14 production of documents by Mr. Dederling to the  
15 Court, um, the defense rests.

16 THE COURT: Well, before the defense rests,  
17 I'm going to have a colloquy with the defendant. So  
18 if would you pass the microphone over there?

19 Which of you are going to be acting as  
20 his attorney for purposes of this colloquy?

21 ATTORNEY DRIZIN: I can, Judge.

22 THE COURT: All right. Mr. Dassey, do you  
23 understand that you have a constitutional right to  
24 testify at this matter?

25 THE DEFENDANT: Yes.

1 THE COURT: You also have a constitutional  
2 right not to testify. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And that decision whether to  
5 testify or not to testify is yours and yours alone  
6 to make?

7 THE DEFENDANT: Yes.

8 THE COURT: Has anyone made any threats or  
9 promises in an attempt to influence you in making a  
10 decision?

11 THE DEFENDANT: No.

12 THE COURT: Have you discussed your  
13 decision whether or not to testify with your lawyer?

14 THE DEFENDANT: Yes.

15 ATTORNEY DRIZIN: Uh --

16 THE COURT: Mr. Drizin.

17 ATTORNEY DRIZIN: Yes, we discussed it,  
18 Your Honor.

19 THE COURT: And, Mr. Dassey, have you made  
20 a decision?

21 THE DEFENDANT: Yes.

22 THE COURT: What is that decision?

23 THE DEFENDANT: That I'm not going to  
24 testify.

25 THE COURT: Mr. Drizin, you believe that is

1 a decision that's been freely, voluntarily, and  
2 intelligently arrived at?

3 ATTORNEY DRIZIN: I do.

4 THE COURT: The Court will so find and that  
5 will be part of this record.

6 Now -- now, you're resting? Subject to  
7 a discussion that was had in chambers?

8 ATTORNEY DRIZIN: That's right, Your  
9 Honor. The defense rests on behalf of  
10 Mr. Dassey.

11 THE COURT: All right. It's the State's  
12 turn. Mr. Kratz.

13 ATTORNEY KRATZ: The State has no  
14 rebuttal witnesses, Judge, but we would ask the  
15 Court entertain a -- a motion by the State.  
16 Specifically, a motion to dismiss a portion of  
17 the, um, defense post-conviction motion at this  
18 time, but I'll allow the Court to do whatever  
19 housekeeping it needs to do, and then I'd like to  
20 state that motion for the record, please.

21 THE COURT: Go ahead.

22 ATTORNEY KRATZ: Thank you, Judge. The  
23 State at this time is moving to dismiss that  
24 portion of the post-conviction motion which  
25 suggests either ineffective assistance of counsel

1 from any of the attorneys, or any related matter  
2 that dealt with the issue of false confession.

3 We would also ask the Court to exclude  
4 any testimony offered by any witness in this  
5 case, including Dr. White, including Dr. Leo, and  
6 any other witness as to the issue of false  
7 confession.

8 To be entitled to a hearing in a  
9 post-conviction motion, the defense has a burden  
10 to establish a -- a prima facie case to the  
11 Court, uh, including specificity and relevant  
12 evidence. That's done by way of affidavit or  
13 offer of proof.

14 In this case an affidavit, or several  
15 affidavits, were provided to the Court, which  
16 necessarily included explanations by Brendan  
17 Dassey as to why he made the confession that he  
18 did.

19 The suggestion in affidavit form is  
20 wholly insufficient for hearing purposes,  
21 although it does -- it is considered by the Court  
22 to decide whether a hearing on that issue is  
23 appropriate or not.

24 Quite frankly, Judge, should the defense  
25 have indicated to the Court, uh, that they did

1 not intend to call Brendan Dassey, or another  
2 witness to indicate that the confession was, in  
3 fact, false, uh, then the State would have argued  
4 prior to the commencement of this hearing that  
5 the defense was not even entitled to a hearing.

6 Uh, the affidavit of Mr. Dassey is not  
7 evidence. It's not to be received as evidence.  
8 Um, and the State would reiterate some of the  
9 points made in examination of witnesses that the  
10 state of the record at this particular time  
11 includes Mr. Dassey's trial testimony.

12 When asked why he confessed, his answer  
13 was, "I don't know."

14 I pointed out at specific, um, passages  
15 in the trial transcript from Mr. Dassey, uh, that  
16 he specifically indicated, "I don't know why I  
17 confessed."

18 That "I lied to my mom."

19 That "I lied to the police because my  
20 family doesn't like cops."

21 That "I never watched TV accounts of  
22 Mr. Avery's arrest or around that time."

23 "That I apologized to the Halbach family  
24 without any prompting from the police and that no  
25 promises or other inducements were given me by

1 the police in exchange for my statement to them."

2 Therefore, Judge, the state of the  
3 record at this time is the defendant has  
4 indicated there was no contamination, um, nothing  
5 suggested or coerced by media, friends, or  
6 family, as the affidavit might have promised was  
7 going to be elicited at this trial.

8 Mr. Fremgen and others testified as to  
9 the trial testimony.

10 I also want to direct the Court,  
11 specifically, to **State v. Ernst**, E-r-n-s-t, 2005  
12 Supreme Court case, which is cited at 298 Wis. 2d  
13 300, 699 N.W. 2d 92, which indicates in pertinent  
14 part that a defendant has no right to set forth  
15 facts in his favor during a direct examination or  
16 otherwise at a hearing without laying himself  
17 open to cross-examination.

18 Quite frankly, Judge, to, uh, shield  
19 oneself by the Fifth Amendment and not make  
20 oneself subject to either impeachment or  
21 cross-examination, uh, is not allowed in  
22 Wisconsin by Wisconsin law.

23 It is also reiterated in **Brown v. United**  
24 **States**, 356 U.S. 148. That's a 1957 case that  
25 deals with shielding oneself from

1 cross-examination after a decision to put  
2 evidence before the Court.

3 So with that, Judge, with a -- a  
4 defendant, like any other witness, not being  
5 subject to the rigors of cross-examination or  
6 impeachment, uh, I will ask this Court not accept  
7 self-serving statements of Mr. Dassey in any form  
8 in which they were received, including, um,  
9 testimony which necessarily included some  
10 indication by Mr. Dassey that the statements, in  
11 fact, were false given to the police.

12 Lastly, Judge, this Court may recall  
13 that in the trial in this case, when Dr. Gordon  
14 and his testimony was contemplated, the State had  
15 noted that somebody had to say that the statement  
16 was false for this issue to be relevant.

17 And even though Mr. Dassey didn't do it  
18 at trial, ostensibly that was his reason for  
19 testifying, or at least for Dr. Gordon's  
20 conditional, um -- admissibility of his  
21 statement, the exact same issue applies in  
22 post-conviction fashion, that if any of the  
23 defense is going to rely on the issue of false  
24 confession, somebody has to say it's false. Only  
25 the defendant can do that.



1                   And to shield himself, again, by the  
2 Fifth Amendment, not allowing cross-examination,  
3 is wholly improper.

4                   We would ask that those portions, then,  
5 of the defense motion for post-conviction relief  
6 be denied at this time.

7                   I think there is a basis for the Court  
8 to consider the, um, ineffective assistance  
9 claim. That does not include that particular  
10 issue. More specifically, I guess, the  
11 disloyalty claim. But that the defense motion  
12 and our briefing responsibilities in this regard  
13 be limited to those issues, and that the Court  
14 not require briefing on an issue for which the  
15 proof, that is, the promise of the provision of  
16 testimony, has not been satisfied by the defense.  
17 Thank you, Judge.

18                   ATTORNEY DRIZIN: Judge, do you want to  
19 hear argument on this? Or do you want to just  
20 wait 'til we brief the issue after we've all had  
21 a chance to look at the transcript?

22                   THE COURT: Right. I -- I'm not prepared  
23 at this point to rule on an oral motion given at the  
24 conclusion of a -- a five-day hearing.

25                   Much, or all, of what Mr. Kratz said may

1 be true. I don't know. Uh, I would prefer that  
2 we set a briefing schedule after the transcripts  
3 have been prepared. And -- well, actually, uh,  
4 we'll set a briefing schedule, and it will be a  
5 while before the transcripts are going to be  
6 ready.

7 Uh, my sense is we can do this either in  
8 open court or we can do it in chambers at the  
9 briefing schedule since we're talking about it  
10 now.

11 Uh, since you're the movant, how many  
12 days is it going to take you to brief this matter  
13 after the transcripts are prepared?

14 ATTORNEY DRIZIN: Can I have a minute,  
15 Your Honor?

16 THE COURT: You have.

17 ATTORNEY DRIZIN: We would like 60 days,  
18 Your Honor, after the transcripts are prepared.

19 THE COURT: All right. And I'm going to  
20 limit the length of the briefs to 40 pages.

21 ATTORNEY DRIZIN: Okay, Judge.

22 THE COURT: Uh, Attorney Fallon, response?

23 ATTORNEY KRATZ: Judge, if we could have  
24 45 days to respond, I think that'd be  
25 appropriate.

1 THE COURT: Fair enough.

2 ATTORNEY DRIZIN: Same limits apply with  
3 regard to length I take it?

4 THE COURT: Yes.

5 ATTORNEY DRIZIN: Okay. Do we get a  
6 reply or no? I don't know what the procedure is,  
7 Judge.

8 THE COURT: Well, oftentimes I allow a  
9 reply. All right.

10 ATTORNEY DRIZIN: How about --

11 ATTORNEY FALLON: They're the moving  
12 party.

13 ATTORNEY DRIZIN: How about -- how  
14 about, um --

15 THE COURT: Fifteen days would be typical.

16 ATTORNEY DRIZIN: That's fine, Judge.

17 THE COURT: I cannot, at this point, give  
18 you any -- any time as to when the transcript will  
19 be done. It's going to be pretty busy around here  
20 for awhile. But when it's done, that's when the --  
21 that's when the time limits start.

22 ATTORNEY KRATZ: I -- I hate to ask,  
23 Judge, are you going to limit the reply to a  
24 certain amount of pages? Less than 40? Or do  
25 they get 40 and 40?

1                   ATTORNEY DRIZIN: We're not going to  
2 take 40 pages. How about 20 pages on the reply?

3                   THE COURT: That's fine.

4                   ATTORNEY DRIZIN: Okay. Your Honor,  
5 before these proceedings are brought to a halt, I  
6 just want to say, on behalf of the entire team  
7 from Northwestern and Milwaukee, I want to thank  
8 everybody in your courtroom for the tremendous  
9 hospitality they've shown us.

10                   I also want to thank the sheriff's  
11 department for the hospitality they have shown us  
12 and shown Brendan Dassey over the last week.  
13 Thank you very much.

14                   THE COURT: Very good. You're welcome,  
15 certainly, for -- on behalf of the Court and -- and  
16 staff. Uh, the matter has been abely presented by  
17 both sides. I await the briefs.

18                   ATTORNEY KRATZ: Thank you, Judge.

19                   THE COURT: Stick around. There might be  
20 some exhibit -- things we have to go through.

21                   (PROCEEDINGS CONCLUDED.)

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1 STATE OF WISCONSIN )  
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2 COUNTY OF MANITOWOC )  
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I, Jennifer K. Hau, Official Court  
Reporter for Circuit Court Branch 3 and the State  
of Wisconsin, do hereby certify that I reported  
the foregoing matter and that the foregoing  
transcript has been carefully prepared by me with  
my computerized stenographic notes as taken by me  
in machine shorthand, and by computer-assisted  
transcription thereafter transcribed, and that it  
is a true and correct transcript of the  
proceedings had in said matter to the best of my  
knowledge and ability.

Dated this 24<sup>th</sup> day of March, 2010.

Jennifer K. Hau  
Jennifer K. Hau, RPR  
Official Court Reporter