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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: MARCH 26, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

APR 3 2007

APPEARANCES:

CLERK OF CIRCUIT COURT

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

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

NORMAN A. GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

MARK R. FREMGEN
Attorney at Law
On behalf of the Defendant.

RAYMOND L. EDELSTEIN
Attorney at Law
On behalf of the Defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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I N D E X

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1 THE COURT: This is the matter of the State
2 of Wisconsin vs. Brendan Dassey, Case No. 06 CF 88.
3 Appearances, please.

4 ATTORNEY KRATZ: The State appears by
5 Calumet County District Attorney Ken Kratz,
6 Assistant Attorney General Tom Fallon, Assistant
7 District Attorney Norm Gahn, all appearing as
8 special prosecutors.

9 THE COURT: We are here this afternoon on a
10 motion in limine --

11 ATTORNEY FREMGEN: Judge, uh, Attorneys
12 Mark Fremgen --

13 THE COURT: Oh, I'm sorry.

14 ATTORNEY FREMGEN: That's fine. We're very
15 forgettable. Attorneys Mark Fremgen and Raymond
16 Edelstein on behalf of Brendan Dassey, who also
17 appears in person.

18 THE COURT: You're not forgettable, you
19 just have to be faster.

20 ATTORNEY FREMGEN: I'll remember that.

21 THE COURT: All right. We're here this
22 afternoon on a -- a motion in limine, uh, brought
23 by the defense seeking to ultimately have
24 admitted, uh, expert testimony on the statements
25 made by the defendant, Brendan Dassey, and

1 previously found by this Court to be voluntary.

2 Specifically, the defendant seeks to
3 call a clinical psychologist, Dr. Robert Gordon,
4 to offer an opinion on the psychological
5 characteristics of the defendant as well as his
6 age and intellectual development and whether
7 these factors put him in an increased risk to
8 potentially make a false confession.

9 The defendant has asked the Court to
10 permit this testimony. He has done this by
11 making an offer of proof. In this case, because
12 of the limited availability of the special
13 prosecutor, who was trying the Avery matter, and
14 Dr. Gordon, who will be out of the state for
15 several weeks, the defense provided the Court and
16 the special prosecutor with a five-page written
17 report and an approximate three-hour direct
18 examination of Dr. Gordon on DVD in which
19 Dr. Gordon discusses the methods he used and the
20 findings he made in this case.

21 Today, the special prosecutor has an
22 opportunity to examine Dr. Gordon. The Court
23 will determine whether Dr. Gordon's
24 qualifications in conjunction with his proposed
25 testimony, will assist the jury in trying this

1 case.

2 Under Wisconsin law, expert testimony is
3 admissible if, number one, the witness is
4 qualified. That is, he is possessed of
5 specialized knowledge, skilled training or
6 education.

7 Two, the witness's testimony will assist
8 the trier of fact.

9 And, three, the testimony is relevant.

10 These preliminary questions of
11 competence and relevancy must be decided by this
12 Court. With that said, uh, Mr. Kratz, you wish
13 to examine Dr. Gordon?

14 ATTORNEY KRATZ: I do.

15 ATTORNEY FREMGEN: Judge, just a few
16 procedural issues --

17 THE COURT: Sure.

18 ATTORNEY FREMGEN: -- if I may. Uh, we
19 did provide to the Court and Mr. Kratz two DVDs
20 of our direct or our offer of proof and we'd ask
21 the Court consider or mark those as Exhibits 1
22 and 2 or Exhibit 1-A, 1-B for purposes of the
23 record.

24 Um, and then we have -- In that DVD,
25 there were some demonstrative exhibits we've

1 condensed to more of a computer generi --
2 generated exhibit and Mr. -- uh, Dr. Gordon will
3 be testifying as to those, if Mr. Kratz has
4 questions of those. And he'll bring to those to
5 the stand as well, and I suppose we'll mark those
6 as exhibits if need be.

7 THE COURT: It -- the DVDs will be marked
8 for purposes of this hearing as Exhibits 1 and 2.
9 I'd ask you, Mr. Kratz -- I -- I can't tell you,
10 obviously to -- to, uh -- with any great
11 specificity -- to limit your examination, but I
12 would hope you could do it within an hour. You may
13 proceed.

14 ATTORNEY FREMGEN: Judge, we're the
15 moving party. I suppose we'll be -- I'll move
16 that Dr. Gordon testify at this time and, then,
17 we'll waive any further direct at this point.

18 THE COURT: All right.

19 ATTORNEY FREMGEN: Dr. Gordon?

20 THE COURT: Come up here, Doctor, to be
21 sworn, please.

22 THE CLERK: Please raise your right
23 hand.

24 **DR. ROBERT GORDON,**
25 called as a witness herein, having been first duly

1 sworn, was examined and testified as follows:

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

4 THE WITNESS: Please bear with me just a
5 minute, please. My name is Robert H. Gordon,
6 G-o-r-d-o-n.

7 **CROSS-EXAMINATION**

8 BY ATTORNEY KRATZ:

9 Q Dr. Gordon, good afternoon. My name is Ken
10 Kratz. I'm special prosecutor in this case. I
11 had the pleasure of watching your direct
12 examination on DVD which, as I understand was,
13 uh, taken sometime in March. I think it was
14 March 12. Is that your recollection?

15 A I recall it was close in time to that. I don't have
16 the exact date, Mr. Kratz. I could look on my, uh,
17 palm pilot if you like --

18 Q That's fine. I --

19 A -- to verify.

20 Q -- I -- I've seen the direct. The first series
21 of questions I have of you, Doctor, is your
22 experience in this particular area. That is,
23 providing testimony regarding suggestibility or
24 vulnerability to suggestibility. Let me ask you,
25 in the state of Wisconsin, on how many occasions

1 have you testified in a trial setting that is
2 before either a judge or a jury in a trial, uh,
3 as to this particular issue? That is,
4 vulnerability to suggestibility?
5 A In a trial or an offer of proof as well?
6 Q I think -- Was my question not clear?
7 A No.
8 Q I asked in -- in a trial, how many times have you
9 testified?
10 A One time. Well, I -- one time to be exact. There
11 may be more. I -- I don't keep record of that. I --
12 I should.
13 Q Well, if it was more than one, would that be
14 something that you'd remember?
15 A Probably not, considering the number of cases I see
16 in given year. And I've been doing this since 1976.
17 Q You've been testifying about suggestibility since
18 1976?
19 A No, that -- I cannot say. Probably, uh, since 1985,
20 1995. I really can't say, Counsel, with any --
21 Q So sometime within that ten-year period, you've
22 been testifying about suggestibility. Is that
23 your testimony?
24 A I -- sometime within that period of time I have
25 testified once in a trial. I have conducted

1 evaluations and also attended and -- presentations
2 and given presentations regarding this. That's very
3 much true.

4 Q Okay. Uh, do you remember in which county that
5 testimony occurred in?

6 A I -- I don't know the name of the county. I know the
7 city was Wausau. I -- I think that's Marathon
8 County, if I'm not mistaken.

9 Q It is. Are you aware, Dr. Gordon, of, um -- And
10 I think in your direct you talked about the, uh,
11 limitations on your opinions that -- that you
12 offer. Um, that wasn't, uh, very artfully asked.
13 Let me try again.

14 Uh, let's start with what you are not
15 offering opinions on. As I understand, that you
16 are unable or unwilling to offer an opinion as to
17 whether any statement, uh, in this case the
18 statement by Mr. Dassey, was true or whether it
19 was not true; is that correct?

20 A That's very correct. It would be unethical for me to
21 do that and I would seriously doubt whether the Judge
22 would even let me do that even if I so chose to do
23 that.

24 Q Do you know the reason for that? I mean, I
25 understand that you have a forensic background,

1 meaning the intersection of the, uh, field of,
2 uh, psychology with that of law. Uh, do you know
3 why you aren't allowed to testify or comment on
4 the credibility of any other witness?

5 A I'm not a human lie detector, and I don't invade the
6 province of the trier of fact when they need to
7 consider very weighty questions regardless of whether
8 it's this matter or a fitness trial or NGI or
9 whatever the case may be.

10 Q All right. You indicated in your direct
11 examination that you performed a battery of
12 tests, uh, pointing you to the ultimate
13 conclusion that Mr. Dassey, uh, was, uh,
14 substantially more vulnerable to suggestibility.
15 Um, do I understand your opinion to -- that that
16 was your opinion?

17 A That was one of my opinions, yes.

18 Q The other opinion had to do with the, um -- or
19 taking the next step or the next leap, if you
20 will, uh, that that somehow, necessarily, means
21 that Mr. Dassey, uh, is also more prone or more
22 apt to give a false confession rather than just a
23 confession. Was that also your opinion?

24 A He's more apt to give a confession. If one's more
25 apt to give a confession, it's, therefore, more

1 likely to give true confessions as well as false
2 confessions.

3 Q And that brings me to the point of why you might
4 be asked to testify and what the jury might gain
5 from your testimony. You understand that you'll
6 only be allowed in this case to testify if you
7 actually add something to the equation? That is,
8 if you assist the trier of fact. You understand
9 that?

10 A I -- my -- my role would be to make a confusing
11 matter less confusing. And if I'm not able to do
12 that, then my role is not in this chair.

13 Q All right. And, so, if your opinion -- And let
14 me just ask you. Is your opinion that Brendan
15 was more susceptible or more vulnerable to making
16 a -- any kind of confession in this case given
17 the constellation of not only his IQ but his
18 personality traits?

19 A Not to quibble, Mr. Kratz, but I think I said he is
20 very suggestible to do that. I used the word,
21 "very." That's the modifier.

22 Q I'm talking about confessions. Are you
23 suggesting that Brendan is more suggestible, uh,
24 or more vulnerable -- you also use the word
25 "vulnerable" -- to providing any confession to a

1 law enforcement official?

2 A True.

3 Q And whether that confession is a true confession
4 or whether that confession is a false confession,
5 I believe you've already conceded, uh, is best
6 decided -- in fact, legally, decided by the trier
7 of fact. By the jury.

8 A I need to correct your que -- your -- your statement.
9 I didn't concede anything. I'm not here to concede.
10 I'm not here to advocate. I'm here to tell what I
11 believe to be the truth based on my evaluation and
12 training. So, maybe --

13 Q Okay. What --

14 A -- if you could restate --

15 THE COURT: Here. One at a time.

16 ATTORNEY KRATZ: I'd ask that he answer
17 the question, Judge. If there's a problem with
18 that, we can --

19 THE COURT: Doctor Gordon, you're starting
20 to get somewhat argumentative in that answer.
21 Just -- just answer the question that -- that is
22 asked of you.

23 THE WITNESS: May I have the question
24 read back, please?

25 ATTORNEY KRATZ: Sure.

1 (Question read back by the reporter.)

2 THE WITNESS: I'm sorry, there -- I
3 don't hear the question --

4 Q (By Attorney Kratz) I'll ask it one more time.
5 Is it your opinion that Brendan Dassey, uh, was
6 more vulnerable than the average person to
7 providing a, um, confession to law enforcement
8 officials?

9 A Yes, sir.

10 Q Before performing your -- Or at least before --
11 I -- I understand that the -- the Gudjonsson, um,
12 Suggestibility Scale was the last, uh, test that
13 you spoke of, but, um, before administration of
14 that test of Brendan, were you able to predict
15 those results? That is, by knowing Brendan's IQ
16 and, uh, personality characteristics, were the
17 results of that test predictive for you?

18 A There's a correlation with those other factors. So
19 if I was asked to speculate about what his scores on
20 the Gudjonsson Scale would be, I could speculate but,
21 uh -- because there's a correlation. But, uh,
22 there's a -- it's not a one-to-one correlation, so
23 that everyone that has a low IQ, everyone that has
24 certain personality characteristics automatically
25 scores certain way on the Gudjonsson Scale, that's

1 not true, and so -- but I -- I can -- I would have
2 some hypotheses.

3 Q Okay. We'll get to Gudjonsson in -- in -- in
4 just a minute. But let's talk about a person's
5 actual ability to resist suggestion. Um, would
6 you agree, Doctor, that, um, an individual's, um,
7 observed ability to resist, um, suggestion would
8 be a better measuring tool or better measuring
9 stick, uh, than Gudjonsson or any of your other,
10 um, psychological testing you use in this case?

11 A Well, I'm not in a position to say what is
12 necessarily better. There are just different tools
13 and different -- it's important to rely on data from
14 a variety of sources. And -- and objective testing
15 is helpful because there are objective norms and
16 standards that you can compare a person to.

17 But it's important, also, to obtain
18 observed data, interview data, collateral data.
19 Um, so I could compare it to going fishing. I
20 mean, you could -- it's good to take live bait,
21 it's good to take artificial lures, and, uh --
22 and not just rely on one or the other because you
23 never know about the day.

24 Q Well, the problem with the fishing analogy in
25 this case is the jury's going to see Brendan's

1 actual interaction with the police; isn't that
2 true?

3 A That's -- that's -- I don't know what's -- That's my
4 understanding would be the case.

5 Q Correct. That's something that you looked at.
6 That was one of the factors that you considered
7 in forming your ultimate opinion; is that true?

8 A That's true.

9 Q Are you aware, Doctor, that, in this case, not
10 from some test results, but in this case, on a
11 number of occasions, Brendan was able, uh, to
12 resist suggestions by law enforcement officers
13 when involved in, uh, his interrogation?

14 A Yes.

15 Q Is it your opinion that you considered those, um,
16 instances of, um, where Brendan resisted those
17 efforts by law enforcement?

18 A Yes, sir.

19 Q Another factor that you considered -- or at least
20 in your direct examination you indicated that you
21 considered -- was Brendan's recantation. That
22 is, that sometime after his, uh, admission, or
23 his statement of culpability, uh, he recanted
24 that statement. Is that a fair characterization
25 of your testimony?

1 A I believe so, yes.

2 Q Could you explain why it is that a recantation or
3 a retraction of a confession is an important
4 consideration for you?

5 A It's an important consideration in that there's a
6 correlation between coerced confessions and the
7 length of time that the recantation took place. The
8 sooner the recantation, the -- it's correlated
9 with -- the research shows it's correlated with more
10 likelihood that there is -- there was a -- a coerced
11 confession.

12 Q Right. And that's where we need to go back to
13 your opinion. Are you now offering an opinion
14 that this was a coerced confession? You've used
15 that term.

16 A No, that's not for me to decide. Um, I'm talking
17 about the defendant's psychological vulnerability
18 and -- and the likelihood that he was suggestible and
19 offered such a statement. So, it's a factor that I
20 considered.

21 Q Well, it's -- it -- it's a -- it's a factor if we
22 assume or if we presuppose that this was a
23 coerced confession. If it wasn't a coerced
24 confession, recantation really doesn't factor in;
25 isn't that true?

1 A True.

2 Q So assuming -- Or if we can get the Judge or a
3 jury to assume that this was a coerced
4 confession, then your placing weight on the
5 recantation would have some meaning; is that
6 right?

7 A Yes, sir.

8 Q All right.

9 A I'm sorry. I didn't -- I thought you were done with
10 the question.

11 Q Are you -- No, I was. Thank you. Are you aware
12 of the circumstances under which Brendan
13 retracted or recanted his admission or
14 confession?

15 A If I -- I don't recall at the present time.

16 Q Do you even know if that was his idea or if it
17 was the idea of another family member that he
18 change his story or change it back to his
19 original statement?

20 A I would be speculating. Although I -- about the
21 dynamics that led to his recantation. If that was
22 what -- I mean, he recanted it, and whether it was
23 false or true, um -- and I know that there was family
24 influence.

25 Q Well, would that be an important consideration?

1 Would it be important for you to know if it was
2 somebody else's idea or if the genesis of that
3 retraction or recantation was from somebody other
4 than the subject who was involved in the
5 interrogation?

6 A Well, it would be important to know because then I
7 would know -- I would have a better idea of whether
8 it was the -- the person -- the defendant making the
9 recantation. But it also would be important because
10 then it would further provide support to the
11 conclusion that he would be suggestible to other
12 people's influence as well.

13 Q I see. So either way it really supports your --

14 A It -- it's a --

15 Q -- your opinion then; right?

16 A It's a wash either way.

17 Q I see. Are you offering an opinion on the -- And
18 we may be quibbling about terms here. But I need
19 to know if this is your opinion on the -- what's
20 called the reliability of, um, Brendan's
21 statements to law enforcement officials?

22 A No, I -- I'm not offering an opinion about that.

23 Q Are you offering an opinion on whether Brendan's
24 statements ought to be believed by anybody,
25 whether it's the Judge or a jury?

1 A Absolutely not. And that -- that's even contained in
2 the first page of my report to Mr. Fremgen dated
3 November 15, 2006.

4 Q I'm -- I didn't see the words "ought to be
5 believed."

6 A Oh, I -- Okay. It's -- it's implied then. Sorry.
7 It just clarifies my role.

8 Q Let me just read you, then, Mr. Fremgen's -- And
9 so you don't feel like you're being tricked or
10 set up, I'm going to quote from Mr. Fremgen's
11 offer to this Court.

12 Doctor Gordon is expected to testify
13 that based upon the evaluation of the defendant,
14 the evaluator's specialized knowledge in the area
15 of psychology of confessions, and his review of
16 relevant research in this regard, that Brendan's
17 Dassey's statements to law enforcement are,
18 quote, not reliable and that they are the product
19 of significant suggestibility.

20 A They might not --

21 Q Just so we're sure --

22 A They might --

23 Q -- you've indicated that is not your opinion; is
24 that correct?

25 A That's not exactly my opinion.

1 Q The decision or the -- the differences between
2 admissibility of a statement, that is, whether
3 they should be considered by a jury, you
4 understand is a function of the Court. That is,
5 the Court gets to decide whether or not a
6 statement is, in fact, admissible?

7 A That's why we're having this hearing. And he will
8 make the decision, yes.

9 Q Well, the decision on admissibility has already
10 been made. Did you know that?

11 A I did. The suppression hearing took place, and there
12 was a motion to have another suppression, and that
13 was denied.

14 Q Okay. So what makes you think that this hearing
15 is about whether this statement is admissible or
16 not?

17 A That was my error. I beg your pardon.

18 Q All right. So you understand now that that's
19 already been decided?

20 A Yes.

21 Q And usually the issues of coercion or
22 suggestibility or improper influence or
23 vulnerability go to the issues of whether a jury
24 should hear the statement in the first instance.
25 That is, it goes to the issues of admissibility,

1 not the weight or the trustworthiness of the
2 statements?

3 ATTORNEY FREMGEN: Judge, I object. I
4 don't think that's necessarily accurate based upon
5 Jury Instruction 180, which deals with the jury's
6 right to decide whether to believe a statement in
7 whole or in part. And how they come about and get
8 to that point I think is up to the jury.

9 THE COURT: I'm going to sustain the
10 objection. Also, that it seems to me there's a
11 foundational objection, too. That was a compound,
12 beyond compound, question. I -- we're talking about
13 coercion and vulnerability and too many things. So
14 the objection's sustained.

15 ATTORNEY KRATZ: All right. I can -- I can
16 certainly, uh, break that into separate components.

17 Q (By Attorney Kratz) The decision of whether a
18 statement is coercive to the point of being
19 unlawfully so is a decision for the Court. You
20 understand that?

21 A Yes.

22 Q And the trustworthiness, or the reliability, or
23 whether a statement ought to be believed, do you
24 agree is a function for the jury to consider?

25 A It's the function of the -- of the judge at the time

1 of a motion to suppress and -- and at the time of a
2 trial it's the decision of the jury.

3 Q All right. Then, I guess, we've come full
4 circle, Doctor, understanding that reliability is
5 a decision for the jury and something that you're
6 not willing to offer an opinion on. And
7 understanding that, uh, admissibility is a
8 decision for the Court, how is it that you
9 believe that you can assist this jury in the
10 consideration of a fact at issue? That is, how
11 are you going to help this jury yourself?

12 A Well, the way it was stated by Mr. Fremgen, when
13 you've talked about reliability, painted it in a very
14 black and white terms, I am here to talk about
15 scientific ways to evaluate a person's psychological
16 vulnerability to respond to leading questions or
17 respond to external pressure.

18 Uh, I am not an expert regarding police
19 interrogation. That would be a Dr. Richard Leo,
20 attorney, social psychologist and -- and
21 sociologist at the University of California in
22 San Francisco. He would be much more in a
23 position to talk about external factors.

24 I'm talk -- I'm here to talk to you, or
25 to the Court, or whoever might want to listen,

1 uh, about what psychological tests, what history,
2 what research, what a person's social history has
3 to do with the likelihood that they will be
4 suggestible.

5 Q I appreciate your answer. The question, though,
6 was how is that going to help the jury? How does
7 that help them decide part of this case? What
8 are you helping them decide?

9 A I would help them decide how much weight to place on
10 Brendan Dassey's confession. Uh, they might decide
11 if I -- they find me an incredible witness, to place
12 a hundred percent weight on his confession. Or, if
13 they think that information I provide is proba -- is
14 probative, not prejudicial, assist them, then they
15 might decide to be more cautious in acc -- totally
16 or partially accepting his testimony. That's their
17 job.

18 Q If allowed to testify in this trial, Doctor, we
19 will undoubtedly go through the Wechsler -- the
20 16, uh, PF and, um, in great extent, the MMPI.
21 But for today, I'm going to limit my questions to
22 the -- the Gudjonsson Suggestibility Scale, um,
23 as that appears to be what you called the, uh --
24 the best measure or best objective test on the
25 issue of suggestibility. You still hold that

1 opinion, I assume?

2 A As long as it's understood that it's one component of
3 a comprehensive, uh, evaluation.

4 Q I do. And -- and I'll concede in -- in your
5 direct examination you talked about IQ and
6 personality characteristics as -- as well. And I
7 think --

8 A Those are very crucial as well.

9 Q And Mr. Gudjonsson, I think, uh, suggests or
10 mandates the same as well. The, um,
11 administration of the, uh, Gudjonsson Scale, the
12 GSS we'll -- we'll call it for, uh -- for short,
13 as I understand, is intended to mimmick, uh, a
14 police interrogation. Is that -- is that fair?

15 A That's barely fair. It's making -- it's a very --
16 simplifying it very much --

17 Q All right.

18 A -- but, uh --

19 Q I'm sure you're going to --

20 A -- so we can facilitate the discussion and have it
21 flow, I'll say, yes.

22 Q Why don't you, uh -- why don't you explain, as
23 best you can, how this particular test is
24 designed to replicate or to mimmick a, uh -- a
25 police interrogation?

1 A I'll be glad to do that. An individual is presented
2 a battery of tests so they don't realize that their
3 suggestibility is being tested at that particular
4 point in time. The test is presented as a memory
5 test, and they're told that I'm going to read you a
6 story. This is paraphrasing. I -- I could pull out
7 the manual and give you the exact instructions,
8 but --

9 Q Would you -- would you mind, terribly, if I
10 interrupted you as -- as -- as we go along? Is
11 there anything about a police interrogation where
12 a -- a subject is told this is a memory test and
13 not -- not an interrogation?

14 A Uh, I don't believe that -- they -- they might be
15 told different things, but I don't think they're told
16 that.

17 Q All right. I -- I'm trying to see the
18 similarities, but -- but maybe you can point
19 to -- to those things that are meant to be --

20 A Well --

21 Q -- similar to an interrogation. I know how the
22 test works. I've seen your direct. You don't
23 need to go through all that --

24 A Okay.

25 Q -- just how is it similar to an interrogation?

1 A It's similar in that a person is told a criminal act
2 that allegedly has taken place, and the outcome, and
3 details, and -- and then they are asked to first
4 report their recollection of what they've been read.

5 Q Let me stop you there. In your direct
6 examination you omitted that part of the results.
7 That is, that is the, um -- the recitation or
8 the, um, uh, the memory part of it. Tell me
9 how -- all you can remember, I think, are -- is
10 probably what Gudjonsson suggests you ask about
11 the story. Uh, how did Brendan do on that part
12 of the test since we never heard about that on
13 direct examination?

14 A I did not score that. I -- I recorded his responses
15 to -- in order to administer the test in a way that
16 was in a standardized administration. But those
17 scores are not used. The reporting is not used to
18 obtain quantifiable information designed to assess
19 for the suggestibility part.

20 Q So the ability to accurately recount, um, the
21 story or specific facts of the story, really
22 isn't something that is scored. At least, it
23 isn't scored on a -- where there's norms or where
24 you're able to -- to assign some percentiles; is
25 that correct?

1 A True.

2 Q Okay. As I understand, then, after, uh, that
3 occurs, the first, um, series of -- Well, I
4 apologize. Let me go back. The -- the kind of
5 memory, and I assume that you know about memory,
6 and -- and how it works, and -- and different
7 kinds of memory, do you know what kind of memory
8 it's called where you, uh, parrot back or, um,
9 recall a story that's been read to you?

10 A Well, one that comes immediately to mind, there may
11 be others, is recall, or short -- very -- short-term
12 memory.

13 Q Have you ever heard of the term "semantic
14 memory?"

15 A No.

16 Q Do you know the differences between semantic
17 memory and autobiographical or event kinds of
18 memory?

19 A No.

20 Q Let me ask you, Dr., uh, Gordon, um, if a person
21 is asked to remember or recall or describe
22 something that's read to them, do they remember
23 that differently than an event which they
24 actually lived through?

25 A Yes.

1 Q Do you know individuals with Brendan's particular
2 intellectual difficulties, whether they are
3 better able -- significantly better able to
4 recall events that they've actually lived through
5 rather than something that's read to them or book
6 kind of learning?

7 A All of us would be able to better remember, unless
8 we're severely traumatized, events that we've been
9 through, uh, but especially a person who, uh, has
10 limited intellectual functioning, then they might be
11 able to better concentrate -- better remember things
12 they experienced in a multi-sensual -- very senses
13 way than if they simply heard something read to them.

14 Q Well, let -- let me just ask you if you're aware
15 of studies that suggest that, especially
16 individuals with intellectual difficulties, that
17 they are much, much better at event kinds of
18 memory? That is, they have higher accuracy, less
19 tendency to acquiesce, uh, than, um, the semantic
20 or this, um, other kind of memory that you've
21 described after hearing a story. Understand my
22 question?

23 A Yes.

24 Q Are you aware of those studies?

25 A I'm not aware of the studies, but, uh, based on my

1 knowledge of the area, that would not surprise me.

2 Q Makes sense?

3 A Sure.

4 Q And, so, the -- the replication or mimicking an
5 interrogation, would you, um, agree that,
6 especially in an individual with intellectual
7 difficulties, um, that they might be expected to,
8 um, recall in more detail, to be more accurate
9 and, in fact, less susceptible to suggestibility
10 with something that they've lived through rather
11 than a story that's read to them?

12 A If you only consider that factor and not their
13 limited intellectual functioning and limited memory,
14 then the answer would be, yes.

15 Q All right. By the way, the, um -- the raw scores
16 and everything that you've, uh, testified to, um,
17 or about here today, uh, had you heard of or did
18 you, um, comply with, the State's demand or
19 request for that raw data with the information?

20 A I was made aware of that request this morning.

21 Q Okay. Is that something you can comply with
22 before trial?

23 A Before trial, but under limited conditions. I've
24 purchased those instruments with written agreements
25 that I would not disseminate those -- that

1 information to anyone other than psychologists or to
2 psychiatrists for the Gudjonsson Inventory that don't
3 have the training in the eyes of the publisher or the
4 developer to have an adequate understanding of the
5 ways to interpret those results. And so I could
6 not -- I would be violating what I signed and
7 violating my ethics as a psychologist to reveal the
8 raw data to you.

9 If, on the other hand, and this is how
10 I've handled this before and on many occasions,
11 if you had a psychologist retained by you, I
12 could send that psychologist my entire file
13 without exception.

14 Q That information is just inappropriate or too
15 dangerous in my hands? Is that what you're --
16 what you're saying?

17 A I don't like to say too dangerous. It just might be
18 misused -- misunderstood. Not -- not doubt -- due to
19 any, uh, intention on your part.

20 Q I -- I would ask you questions based upon your
21 raw data. You understand that; right?

22 A I understand.

23 Q I would ask you questions based upon the notes
24 that you took. You understand that?

25 A You can -- Let me clarify. My notes are -- are yours

1 to have.

2 Q All right.

3 A But I'm talking about the test reports. I mean,
4 excuse me. The test answer sheets. The test
5 questions. That is what I cannot share with you. I
6 can share everything else with you, but not that.

7 Q That brings me to another, uh -- another
8 question. Did you, um, videotape the
9 administration of the Gudjonsson Suggestibility
10 Scale?

11 A No.

12 Q Can you tell us why?

13 A Well, I've testified probably -- I don't know. You
14 can -- Please don't impeach me if I get the wrong
15 number from any direct. I've probably testified a
16 thousand times or so, and -- and I've done thousands
17 of evaluations of different sorts. And it's not
18 common practice at all to videotape those
19 evaluations.

20 And, actually, it would be a deviation
21 from standardized practice to do so. And I
22 operate according to a certain protocol and --
23 and try to -- my best to have an objective
24 evaluation that is fair, straight forward,
25 honest, and the results are based on objective

1 ways of conducting the evaluation.

2 Am I distorted if that recording was --
3 I've -- if it was going? I've had attorneys ask
4 to sit in. I say, if you need to sit in, then I
5 won't do the evaluation. I can respect your need
6 to do that, but that's not how it's done.

7 Q In this case, you got a chance to watch the
8 investigators ask, um, coercive or interrogation
9 kind of questions; isn't that right?

10 A I had a chance to --

11 Q That's -- I'm sorry. Go ahead.

12 A I had a chance to watch them interrogate, uh, Brendan
13 Dassey.

14 Q Right.

15 A It's -- whether they were coercive, uh, depends on
16 the particular question.

17 Q You understand that the reasons, at least in
18 Wisconsin, that, um, courts and, in fact, the
19 legislature has mandated or required police
20 officers to videotape those kinds of, uh,
21 interrogations and so it removes any question
22 about, uh, how those questions might have been
23 asked or, uh, um, what influences might have been
24 placed upon the -- the subject of that. You
25 understand that?

1 ATTORNEY FREMGEN: Judge, I'd object to
2 that question. I don't know if there's been any
3 foundation that this witness knows that that's
4 the law in Wisconsin and whether this witness is
5 aware of the *Young* case. And I'm not even sure
6 it's necessarily relevant for the purposes of
7 this issue about the admissibility or the offer
8 of proof to allow for this person to testify at
9 trial.

10 THE COURT: I'm going to sustain the
11 objection. There -- there really hasn't been a
12 foundation laid for it. I do have some relevance
13 concerns. If you want to try to lay a foundation
14 and ask if -- Okay.

15 ATTORNEY KRATZ: I can certainly wait for
16 trial to -- to do that, Judge.

17 Q (By Attorney Kratz) I think, uh, uh, you expect
18 us to believe you as to what the answers were.
19 That's the bottom line; isn't it?

20 A Your job is to question me. Uh, my job is to try to,
21 uh, be as objective, as fair as possible. But
22 whether you believe me, that -- Your job is not to
23 believe me. Your job is to question me. Your job is
24 to cross-examine me.

25 Q You'd like this Court to believe that those were

1 the answers that Brendan gave; is that right?

2 A My --

3 Q Without the benefit of -- of either -- either the
4 raw results or a videotape or something else?

5 A My hope is that my testimony would help the trier of
6 fact make appropriate decisions and -- and render
7 justice in this case.

8 Q Okay. Let's go to the second part of the GSS
9 where the subject is provided with, uh, many
10 times, leading questions. In fact, most of the
11 25 questions, as I understand, are leading
12 questions; is that true?

13 A That's not true. There are 20 questions total.

14 Q Twenty. You said 25 in the direct. I'm sorry.
15 There's 20 total?

16 A All right. I beg your pardon. Well, there are 20
17 total. My error.

18 Q Okay. And of the 20 questions, most of them are
19 leading; is that right?

20 A Three-fourths, yes.

21 Q And they're meant to gauge whether or not a
22 subject is willing to acquiesce or to yield to a
23 particular alternative or to a particular
24 question; is that true?

25 A Yes. They measure the extent which an individual

1 yields to leading questions.

2 Q Importantly, Doctor, in -- within this test, um,
3 some of -- and perhaps you can correct me -- most
4 of the questions that are presented are, uh, what
5 are called, uh, false alternative leading
6 questions; is that true?

7 A I believe -- There are false alternative leading
8 questions, but they're not the majority. I -- I
9 could come up with a number, if you'd like.

10 Q Well, no, if we -- We're going to probably get a
11 more detailed summary at some point. But this
12 methodology mandates that the questions don't
13 really have a true answer. In other words, it's
14 a question like, did the lady have a red hat or a
15 blue hat when she may not have had a hat at all.
16 Isn't that fair?

17 A That's fair. That's one type of question on there,
18 that's true.

19 Q All right. How -- how is this test, then,
20 similar, or that part of the test, how is it
21 similar or how does it replicate or how does it
22 mimick a police interrogation?

23 A It would mimick a police interrogation if a -- if
24 leading questions were asked.

25 Q Leading false questions; right?

1 A Leading --

2 Q Leading false alternative questions.

3 A Leading false questions or leading true questions or
4 leading false alternative questions.

5 Q Really. So, if a subject answers correctly when
6 a true answer is provided, do they get a point
7 for yielding?

8 A I want to make sure I have the -- your question.

9 Q If a leading question is provided to a subject in
10 the GSS, and if one of the answers is a correct
11 or a true answer, and the individual correctly
12 answers that leading question, are they provided
13 a point for yielding?

14 A That wouldn't be a leading question if they're asked
15 an accurate question.

16 Q Really?

17 A There are 5 of 20 questions that are not yielding.

18 Q That are not leading?

19 A I mean not leading.

20 Q If I ask you, um, my shirt's blue, isn't it?
21 That's a leading question, isn't it?

22 A It is.

23 Q And it contains a true statement. In other
24 words, if you answered, yes, you'd be answering
25 my leading question; isn't that --

1 A True.

2 Q -- true?

3 A True.

4 Q If Brendan, or anybody else who takes this test,
5 answers a leading question that has the correct
6 answer in it truthfully or correctly, do they get
7 a point for yielding?

8 A No.

9 Q When a police officer, then, asks an individual,
10 asks a suspect, whether or not they did a certain
11 act or whether or not they, um, involved
12 themselves in a crime, even if it was in a
13 leading way, how does that then replicate or
14 mimick the GSS?

15 A It would be similar to your blue shirt, and they
16 would not get a point. It would not -- it would be
17 not leading, according to Gudjonsson's definition,
18 but I could see why you're calling it leading. And
19 they would not get a point on the Gudjonsson test and
20 they would not, uh, be seen as trying to influence
21 the subject.

22 Q Which brings me to my point, then. The import of
23 the Gudjonsson leading questions are that they
24 contain false answers or false alternatives.
25 That's true; isn't it?

1 A That's true.

2 Q All right. And, so, the assumption that has to
3 be made, at least the assumption if this is to be
4 given any validity, is that the police officers
5 in an interrogation that this was meant to
6 mimick, also have to have provided false
7 alternatives or false suggestions; isn't that
8 true?

9 A That's why when you said, does it mimick, I said
10 that's simplifying it. So, um, that's true. I mean,
11 what you said is true. It -- it -- it -- it
12 doesn't -- it's not -- doesn't totally mimick a
13 police interrogation.

14 Q By the way -- I -- I'm jumping ahead, but -- but
15 I'm doing it for a point. The, um, results or
16 the opinions that are able to be drawn from the
17 GSS scores include whether an individual is
18 vulnerable to making a false confession; is that
19 true?

20 A That's true.

21 Q Okay. Doctor, are you aware of any problems with
22 the, um -- the methodology of suggesting the very
23 result within a question and then that leading to
24 an ultimate conclusion? Do you understand my
25 question?

1 A It's confirmatory bias.

2 Q Right. And, in fact, the GSS, you're providing a
3 subject with a false statement that, if they
4 adopt, you're then able to opine that the person
5 is vulnerable to making false statements or false
6 confessions; isn't that true?

7 A Compared to the norms on which the test is based,
8 yes.

9 Q And are you aware of whether the GSS has been
10 criticized for that very methodology?

11 A No.

12 Q The next part of the test that -- again, correct
13 me if I'm wrong -- is meant to mimick or
14 replicate an interrogation is use of mild
15 coercion. In fact, it's a, uh, statement of
16 disappointment or a statement of, um,
17 condemnation as to previous answers that were
18 given; is that true?

19 A Everything but the word "condemnation." I think that
20 might too strong.

21 Q All right. Something akin to folding your arms,
22 telling Brendan, or whoever the subject is, that
23 I'm disappointed in your answers, I think you can
24 do better, um, and suggest that they try harder
25 this time, and then they're asked the same series

1 of questions. Is that basically it?

2 A You're -- you're -- Yes, you've made a number of
3 errors. It is, therefore, necessary to go through
4 the questions once more, and this time try -- have
5 you try more accurate -- to be more accurate. So
6 it's -- it's not as harsh as -- as you state. But
7 it -- but it does, nonetheless, uh, express the
8 belief that they could do better the next time.

9 Q All right. And this, um, series of observations
10 that you make, then, if, in fact, the subject
11 follows your suggestion and then changes their
12 answer, which is really what it is, is then
13 counted as what's called a shift; is that right?

14 A True.

15 Q This shift norm, or the normal score, or the
16 score of that population which was administered
17 this test, as I understand, is two or something
18 just above two; is that right?

19 A That is correct for adult populations. And Brendan
20 is being -- he's still a adolescent, but he's --
21 we're talking about adult court, so it could --
22 different norms could be used -- could be debated
23 that adolescent norms might be more appropriate.

24 Q And that population against which Brendan was
25 compared, that norm, if you would, do you know,

1 um, what the backgrounds of those individuals
2 were or generally what kind of, um, people were
3 used to establish these norms?

4 A Yes.

5 Q Were any of them incarcerated for first degree
6 murder? In other words, was this test
7 administered to anybody while in jail for first
8 degree intentional homicide?

9 A I don't know. I'd have to check the manual.

10 Q Let me ask you, Dr., uh, Gordon, before
11 administering this test to Brendan, did you tell
12 him that you were working on his behalf? That
13 is, that you were a defense expert?

14 A No.

15 Q Did he know who you were before you sat down and
16 spoke with him?

17 A Yes.

18 Q How did he know that?

19 A Oh, did he know in advance?

20 Q Yes.

21 A I don't know. Sometime -- In this particular case.
22 Sometimes attorneys tell their client that I'll be
23 coming and sometimes they don't tell them. Or maybe
24 even -- even if they're told, they don't remember.
25 So, I don't know.

1 Q I -- I guess what I'm getting at is, how did you
2 introduce yourself and how did Brendan know why
3 you were there to speak with him that day?

4 A I told him that I was there at the request of his
5 attorney to do a psychological evaluation, that --
6 and with -- without specific regard to suggestibility
7 was not mentioned.

8 Q I understand that. My point is, you had
9 identified yourself with being aligned with the
10 defense team? There on behalf of his defense
11 attorney?

12 A No. If you'd let me finish, I -- I could clarify
13 that.

14 ATTORNEY FREMGEN: Judge, I'd object
15 anyways. I don't know if it's, again, relevant for
16 purposes of today's hearing to determine the
17 admissibility or the use of an expert at test -- to
18 testify in -- in this particular area. I understand
19 that it might go to weight and how the weight would
20 be, uh -- how the testimony would be considered by
21 the trier of fact. But that's not the issue. The
22 issue is whether the trier of fact should even be
23 allowed to hear that. Weigh this up to the trier of
24 fact. We should leave that up to them.

25 THE COURT: Yeah. I -- I'll overrule that

1 objection. I think this -- this threshold question
2 can be asked. Beyond this, no. Go ahead, you may
3 answer if you remember the question.

4 THE WITNESS: I don't, Your Honor. I'm
5 sorry.

6 THE COURT: Can you reask that,
7 Mr. Kratz --

8 ATTORNEY KRATZ: Sure.

9 THE COURT: -- please?

10 Q (By Attorney Kratz) I think you were, um,
11 explaining how you identified yourself and why it
12 was that you were there to see Brendan.

13 A I explained my purpose of being there with Brendan as
14 no different than I do any other time. I explain who
15 requested that I do the evaluation. That I'm there
16 to do an evaluation. Sometimes, if it's for fitness
17 or some specific reason, then I might tell them, but
18 in regards to suggestibility, that I don't tell them
19 specifically.

20 I tell them that I'm going to do an
21 overall evaluation at the request of their
22 attorney. That they don't have to answer
23 questions if they don't choose to. That I do a
24 fair and objective evaluation to the best of my
25 ability. I cannot guarantee the results. If the

1 results are not pleasing or consistent with their
2 case in the eyes of their attorney, they don't
3 have to be used.

4 And I then talk to them to try to see if
5 they understand my explanation. If they don't,
6 then I try to explain some more. I tell them
7 that I'm -- might be retained by their attorney.
8 I might be paid by their attorney. But I'm there
9 to do an objective, fair, straight forward
10 assessment. And my assessment might be a waste
11 of their money.

12 Q All right. As I understand it, the subject who's
13 the -- or the subject of the -- of the test
14 changes their answer, they're given a -- a point,
15 if you will, for a shift for -- for changing that
16 answer; is that right?

17 A True.

18 Q What if they change their answer to what would
19 otherwise be the correct answer? That is, uh, if
20 they, uh, said, uh, at first that the lady had a
21 red hat on, and then later, as I gave in my
22 previous example, tells you the lady didn't have
23 any hat on, does he still get a -- a point for
24 shifting?

25 A In -- regardless if he shifts from correct to false

1 or false to correct, he gets the point for shifting.

2 Q All right. Now, in real life, which is really
3 why we're here, what is that trying to mimmick?
4 In other words, shifting from an incorrect answer
5 and then giving a correct answer? Why would that
6 be considered something of a negative or sug --
7 going to suggestibility or, uh, getting a shift
8 score?

9 A Because I'm not here to evaluate whether a person's
10 telling the truth or not. I'm evaluating whether
11 they were susceptible to suggestibility. That is
12 also measured by yielding and shifting their
13 responses.

14 Q In the real world, if a subject of a
15 interrogation -- of an interrogation -- denies a
16 fact or denies an involvement, and let's assume
17 for this question that, um -- that they did that,
18 that that's a true thing that they've been asked
19 about, and they said, no, I didn't do that,
20 officer asks them again or maybe even, um,
21 provides them with some, um, evidence that they
22 were involved in that, and the person shifts to
23 the correct answer or admits that they did it,
24 would that be an example, at least with the GSS,
25 of being a shift?

1 A It would.

2 Q Being suggestible?

3 A It could. It depends on, also, whether the
4 information supplied by the police officer to the
5 individual is -- is accurate and -- and is known.

6 Q Right. I've -- I've asked you to assume that.
7 But that would still be a shift; wouldn't it --

8 A It would.

9 Q -- in the GSS?

10 A It would. Sorry.

11 Q All right. So, the ability to measure somebody's
12 vulnerability to suggestibility, at least by this
13 instrument, is not, um, any comment upon the, uh,
14 truthfulness or, um, falsehood of that statement;
15 is that correct?

16 A That's true.

17 Q We've come full circle again. How, then, does
18 this instrument allow you or anybody else to
19 indicate that a person is more vulnerable to
20 giving a false confession rather than any kind of
21 confession?

22 A They're more vulnerable to giving a confession,
23 including a false confession. Also, a true
24 confession, if they have increased scores on the
25 Gudjonsson. Your point's well taken.

1 THE COURT: Any additional questions,
2 Counsel?

3 ATTORNEY KRATZ: Just -- just one, uh --
4 one area, Judge.

5 Q (By Attorney Kratz) Uh, Dr. Gordon, um, your
6 experience with the administration of the GSS,
7 uh, does it include individuals, or has it ever
8 included individuals, who have been charged with
9 first degree intentional homicide?

10 A No.

11 ATTORNEY KRATZ: For purposes, then,
12 Judge, of the offer of proof and, um, for
13 purposes that, uh, we will be including in our
14 memorandum of law to the Court, that's all the
15 questions I have of this doctor. Thank you.

16 THE COURT: All right.

17 ATTORNEY FREMGEN: Judge, I'd like to
18 redirect on a few, if the Court will allow me.

19 THE COURT: We had the DVD of
20 approximately three hours plus. All right.
21 Limited amount of redirect.

22 ATTORNEY FREMGEN: Just limited. I'll
23 limit to six questions, Judge.

24 THE COURT: I'm going to hold you to that.

25 ATTORNEY FREMGEN: That's fine. I accept

1 not be measuring their intellectual functioning, or
2 if I just focused on a couple of tests, I might just
3 focus on their intellectual functioning and not their
4 personality characteristics or their suggestibility
5 on a suggestibility scale.

6 Q So, hypothetically, if one were, um -- had scores
7 that were high scores on GSS, but yet had, um,
8 test results that indicated that they are
9 socially ept and have high IQ, maybe high --

10 A So --

11 Q -- functioning, would -- would that, then, lead
12 you to a different conclusion using the GSS?

13 A It very well would lead me to a different conclusion.
14 That's hard to -- that's a hypothetical. I -- I
15 would still need to consider the entire evaluation.

16 I can tell you there's a correlation
17 between the GSS, the personality scores that --
18 the personality scores from tests I used, as well
19 as IQ scores, as well as criminal behavior, as
20 well as age, etc. So there's a correlation, but
21 it doesn't -- the correlation, again, like I said
22 on direct to Mr. Kratz, is not one-to-one. So
23 there -- there could be exceptions to that rule.

24 THE WITNESS: That's a long answer. I'm
25 sorry, Judge.

1 Q (By Attorney Fremgen) My last question, then, to
2 kind of wrap this up. So, essentially you're
3 attempting to obtain, uh, sufficient data to
4 assess all of the psychological factors in the
5 psychological environment that affects a
6 subject's potential vulnerability to suggest --
7 to suggestibility?

8 A Within a limited amount of time and limited
9 resources, I mean, uh -- Yes.

10 ATTORNEY FREMGEN: Okay. Thank you, very
11 much.

12 THE COURT: All right. Uh, you may step
13 down.

14 THE WITNESS: Thank you, Your Honor.

15 ATTORNEY KRATZ: Before Dr., uh, Gordon
16 leaves, Judge, I am going to renew my demand for
17 Dr. Gordon's file despite, uh, Dr. Gordon's, uh,
18 apprehension regarding release of that
19 information.

20 THE COURT: You may step down.

21 ATTORNEY KRATZ: Um, if, uh, in fact,
22 the Court does allow Dr. Gordon to testify, the
23 State certainly is entitled to, uh, discovery,
24 which includes the file, those raw materials,
25 notes, and whatever other information may be

1 contained in that file. I appreciate
2 Dr. Gordon's (inaudible) assure that I will be
3 sharing it with somebody other than myself.
4 Again, this is only if the Court allows that, and
5 perhaps the Court can issue a ruling at a later
6 time. But, uh, at the very least would ask the
7 Court order Dr., uh, Gordon not to destroy or,
8 um, uh, discard anything that may currently be in
9 his file so that, if, in fact, the Court, uh,
10 provides a favorable ruling to the State, uh, at
11 some point, we are able to get all that raw
12 material.

13 THE COURT: The Court will so order.
14 Dr. Gordon, you heard that, did you not? You are
15 not to destroy any of the notes or materials that
16 comprise this file. By this file, I mean the
17 file -- the complete file on the, uh, interview and
18 testing of this defendant.

19 THE WITNESS: I would never do that,
20 Your Honor, in any case, unless it was over seven
21 years old or whatever the statutory requirements
22 permits.

23 THE COURT: All right. Um, the Court has
24 scheduled April 5 at 9:00 a.m. as a time to hear the
25 remaining motions. Uh, the -- counsel are aware

1 that they have until April 2, to -- if they intend
2 to have briefs -- brief their positions -- get that
3 brief into the Court. Uh, I ask each of them to
4 prepare a proposed order reflecting their position
5 based on the testimony here, as well as the DVDs,
6 and the, uh -- the applicable case law.

7 Uh, at that time the Court -- on
8 April 5, the Court, in considering the other
9 motions, will announce a decision on this one as
10 well. Anything else, gentlemen?

11 ATTORNEY KRATZ: Not for today. Thank you,
12 Judge.

13 THE COURT: All right. Can I see you --
14 Oop.

15 THE CLERK: Exhibits 1 and 2. Do you have
16 those?

17 THE COURT: I do.

18 THE CLERK: Are -- are they received, then?

19 THE COURT: They are received. Uh, with
20 the -- with the caveat, Exhibit 2, the second
21 DVD, appears not to work all the way through.
22 Uh, I trust Counsel has no objection to me
23 substituting a workable one?

24 ATTORNEY FREMGEN: That's fine. If, uh,
25 Mr. Kratz has no objection, I'll send you my

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second --

THE COURT: All right.

ATTORNEY FREMGEN: Mr. Edelstein has a copy
already.

THE COURT: Very good. Uh, see counsel in
chambers for a brief meeting?

ATTORNEY KRATZ: Thank you, Judge.

ATTORNEY FREMGEN: Thanks.

THE COURT: We're adjourned.

(PROCEEDINGS CONCLUDED.)

