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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

EX PARTE MOTION

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: JUNE 30, 2009

MANITOWOC COUNTY
STATE OF WISCONSIN

FILED

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

AUG 3 2009

APPEARANCES:

CLERK OF CIRCUIT COURT

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

JOSHUA TEPFER
Attorney at Law
On behalf of the Defendant.

TRAVIS K. GLANDT
Attorney at Law
On behalf of Michael O'Kelly.

MICHAEL O'KELLY
Appearing in person

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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I N D E X

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1 THE COURT: This is in the matter of the
2 State of Wisconsin vs. Brendan R. Dassey. It's Case
3 06 CF 88. Appearances starting at counsel table to
4 my left.

5 ATTORNEY DVORAK: Good morning, Your
6 Honor. May it please the Court, Attorney Robert
7 Dvorak and Attorney Josh Tepfer appear for
8 Brendan Dassey.

9 THE COURT: And you are, sir?

10 MR. O'KELLY: Michael O'Kelly, Your
11 Honor.

12 THE COURT: All right. I'm going to just
13 spread some information on the record. This is a
14 closed ex parte hearing. This originally began with
15 a letter, I think, dated February 13 from Attorney
16 Dvorak requesting this.

17 Attorney Dvorak recited in the body of
18 his letter the fact that he wanted to get some
19 information from Mr. O'Kelly who I understand was
20 employed during the prosecution of Brendan Dassey
21 as an investigator for Attorney Leonard Kachinsky
22 who represented Mr. Dassey for a period of time.

23 Uh, Mr. Dvorak, in seeking this ex parte
24 proceeding, cited a case called ***State ex rel.***
25 ***Dressler vs. Circuit Court for Racine County,***

1 **Branch 1**, 163 Wis. 2d 622, 472 N.W. 2d 532,
2 paren, Court of Appeals, 1991.

3 It's a case from -- an appeals case from
4 this district. In it the court -- I think Judge
5 Anderson wrote the decision -- made at least a
6 reference to another case, that I'll cite in a
7 moment, and suggested that under appropriate
8 circumstances ex parte proceedings could be had
9 in criminal matters.

10 The case that was cited was -- excuse
11 me -- **United States of America v. Joselito Abreu**,
12 and that's at 202 F.2d 386. I believe it's a 19
13 -- actually, it's a 2 -- year 2000 case.

14 Uh, the point of the case cited in the
15 Federal Reporter was -- and it used I -- I
16 believe, if I recall, and I -- I didn't re-read
17 the case, I think I went through this at a prior
18 motion hearing -- was that the Public Defender --
19 the Federal Public Defender regulations included
20 the right to name experts and not necessarily
21 disclose the naming of those experts, doing it in
22 an ex parte fashion. Court read it.

23 I also consulted with James Alexander,
24 who's the executive director of the Wisconsin
25 Judicial Commission, which is a body that has

1 some jurisdiction for ethical and other matters
2 found in Supreme Court Rule Chapter 60, the
3 regulation of judges, and discussed in broad
4 outline what was proposed. And he said he didn't
5 know that there was any precedent for it nor did
6 he know that there was any reason that the Court
7 couldn't proceed.

8 With that in mind, I believe I held a
9 motion hearing -- and I don't have the date in
10 front of me -- an ex parte motion -- in which I
11 granted to Mr. Dvorak his request.

12 Since that time there have been a number
13 of subpoenas that I recall having signed. Most
14 recently last week.

15 Addition -- additionally, I believe last
16 week we had a request for an order for reasonable
17 expenses that was signed. It's my understanding
18 Mr. O'Kelly is appearing here today pursuant to
19 that subpoena which was served on him at an
20 out-of-state venue.

21 Uh, the matter was set for today for
22 this particular hearing.

23 Uh, I'll tell you, Mr. Dvorak, that
24 Mr. Kelly (sic) earlier this morning brought some
25 papers which are in the possession of my judicial

1 assistant who's acting here as the clerk.

2 This morning when I came to my office I
3 found two faxes; one from District Attorney
4 Kenneth Kratz, the Calumet County District
5 Attorney, who was the appointed special
6 prosecutor in the Dassey case.

7 I believe you, Mr. Dvorak, have a copy
8 of that fax, do --

9 ATTORNEY DVORAK: I do, Judge.

10 THE COURT: -- you not? And Mr. Fax was --
11 or excuse me. Mr. Kratz in the fax was questioning
12 what I'll characterize as the legitimacy of the
13 hearing. He cited a -- a case called **State v.**
14 **Kletzien** (phonetic) that he says discusses
15 post-conviction discovery.

16 Had a crowded calendar this morning. I
17 haven't read the case. I'm not looking on this
18 necessarily as post-conviction discovery. It
19 seems to me it's quite something else.

20 Discovery would be an attempt to get
21 some information from the other side as a -- in
22 the post-conviction setting.

23 This is simply, as I understand it, an
24 effort to get some information that Mr. Kelly may
25 or may not have generated as part of his employ

1 with Attorney Kachinsky in the defense of
2 Mr. Dassey.

3 I have no idea what is being sought.
4 What I guess is something that I had to consider
5 was if this information was inculpatory rather
6 than exculpatory, and if the appeal were granted
7 and a new trial were to be had, it strikes me
8 that it would be unfair to Mr. Dassey's defense
9 to allow this inculpatory information to become
10 part of the public record and then useful -- or
11 then used on the part of the State.

12 I also had a second fax. And I am not
13 sure, Mr. Dvorak, if you have gotten this. It is
14 from an Attorney Kenneth Rosenfeld. It -- it --
15 it copies Mr. O'Kelly but there's no suggestion
16 that you've been copied.

17 Have you seen it?

18 ATTORNEY DVORAK: What's the date of the
19 letter, Judge?

20 THE COURT: Yesterday. June 29.

21 ATTORNEY DVORAK: Um, and is -- who's it
22 addressed to?

23 THE COURT: Me.

24 ATTORNEY DVORAK: No, I have not seen
25 it.

1 THE COURT: All right. Mr. O'Kelly, have
2 you seen it?

3 MR. O'KELLY: Yes, I have, Your Honor.
4 And I have a complete package of what I gave you
5 which includes that letter I believe.

6 THE COURT: May well be. I haven't looked
7 at it.

8 MR. O'KELLY: I can give -- I can give
9 this to the -- the -- Attorney Dvorak.

10 THE COURT: Why don't you give it to
11 Attorney Dvorak and he can --

12 MR. O'KELLY: The entire packet or --

13 THE COURT: You're going to have to --
14 we both can't talk at the same time.

15 MR. O'KELLY: I'm sorry.

16 THE COURT: Why don't you give him the
17 entire packet. He can -- since that's what's going
18 to be turned over to him anyway.

19 MR. O'KELLY: Yes, Your Honor.

20 THE COURT: And he can isolate the
21 letter. I'll simply ask you to read it right
22 now, Mr. Dvorak.

23 MR. O'KELLY: And, Your Honor, while
24 he's reading that letter -- I'd like to have an
25 attorney.

1 I did call a Travis Glandt. He's a
2 local attorney. And I spoke with his secretary,
3 Debbie. And they could not be here this morning.
4 I do want to have an attorney for this
5 proceeding.

6 THE COURT: All right. We'll take that up
7 in a minute.

8 ATTORNEY O'KELLY: Thank you, Your
9 Honor.

10 ATTORNEY DVORAK: Okay. I've reviewed
11 it, Judge.

12 THE COURT: All right. The gist of the
13 letter is that -- and it'll become part of the -- at
14 least for this time -- the sealed record -- that
15 Mr. O'Kelly apparently turned over a box of
16 documents relating to the matters being sought here
17 today to this law office, the Rosenfeld law firm,
18 which apparently moved to a new -- new location.

19 And in the course of the move the writer
20 of the letter, Mr. Kenneth Rosenfeld, Esquire,
21 says it appears the documents may have been lost
22 during the course of the move. He says that his
23 office is attempting to locate those documents
24 and that Mr. O'Kelly is attempting to reconstruct
25 the record from whatever electronic resources he

1 may have.

2 The letter also points out Statute or
3 Rule 905.065 that talks about honesty testing
4 devices and privileges that relate to honesty
5 testing devices.

6 Now, before we take up Mr. O'Kelly's
7 request to have representation here, Mr. Dvorak,
8 is there anything additional that you wish to
9 spread upon the record?

10 ATTORNEY DVORAK: Um, I would just in --
11 in terms of clarifying the letter, Mr. Rosenfeld
12 e-mailed me on June 24 at 12:49 p.m.

13 And I guess the easiest thing to do is
14 just submit a copy of that. I don't have --
15 believe I have an extra copy of it.

16 Um, he base -- he essentially says
17 that -- speaks well of Mr. O'Kelly. Um, says
18 that he would not avoid anyone nor would he ever
19 attempt to circumvent any legal process.

20 Without a question he is one of the best
21 and most honorable investigators in the United
22 States.

23 Again there must be a misunderstanding.
24 I'd very much like an opportunity to discuss this
25 with you personally. I do believe this matter

1 can be resolved quickly without the need for
2 extended court process.

3 Which leads me to believe that he has
4 the stuff and just wants to turn it over and
5 maybe we can resolve it that way.

6 I was unable to get back to him.

7 The next day on June 25 I received a fax
8 from him. Um, the time of the fax is 2:15. With
9 a letter that says:

10 "This letter is on behalf of Mr. O'Kelly
11 who has served as an investigator and expert
12 consultant for our firm in several criminal
13 cases.

14 Mr. O'Kelly has informed us that you
15 have subpoenaed him together with his file in the
16 above entitle matter and that he is to appear --

17 COURT REPORTER: Please slow down.

18 ATTORNEY DVORAK: I'm sorry.

19 -- before the circuit court for
20 Manitowoc County, Wisconsin, on June 30, 2009.

21 Several months ago Mr. O'Kelly forwarded
22 his file in this matter to our office via Federal
23 Express. He did not retain a copy of the
24 documents sent to us.

25 Either shortly before or soon after

1 receiving the box of documents our office moved
2 to a new location and it appears --" in
3 italicized letters -- "those documents may have
4 been lost during the move or in the organization
5 of our new offices.

6 I and my staff have searched through
7 every office and storage area in our new building
8 but as yet have not located the box.

9 We will of course notify you should we
10 locate this box of documents. You may feel free
11 to contact me regarding this matter."

12 That was the 25th.

13 Um, so that's -- that's what I got in
14 terms of correspondence with Mr. Rosenfeld.

15 I responded on the 26th to
16 Mr. Rosenfeld. I said:

17 "Thank you for your June 24 e-mail and
18 yesterday's fax. Please remind Mr. O'Kelly that
19 he needs to appear before Judge Fox next Tuesday,
20 June 30, at 10:30 a.m. in Manitowoc, Wisconsin."

21 That's the history of my contact with
22 Mr. Rosenfeld.

23 THE COURT: All right. Mr. O'Kelly has
24 just requested that he be represented by counsel in
25 this proceeding. Do you have any objection to that?

1 ATTORNEY DVORAK: Um, I -- I -- my only
2 objection, Judge, is that he had plenty of time
3 to do it. And Mr. Tepfer has driven up from
4 Chicago. I've driven up from Milwaukee. Um,
5 this is -- seems to be a pattern of conduct that
6 I have.

7 I do not intend -- and I don't think the
8 Court -- if the Court's going to allow that and
9 adjourn this hearing for another date that any
10 other witness fees should be at Mr. O'Kelly's
11 expense.

12 THE COURT: Well, if the Court --

13 ATTORNEY DVORAK: I don't know that I
14 can deny him right to counsel but I -- I -- I
15 think he's had plenty of time to -- to work that
16 out. And -- and I would add, Judge -- I'm
17 sorry -- that we have been seeking these
18 documents since February, possibly earlier, of
19 2008.

20 Um, we've had a substantial amount of
21 correspondence. He knows exactly what we're
22 looking for.

23 Uh, in March, um, he actually responded
24 and sent us some stuff. Um, that was in 2009.
25 In March of 2009 he sent us some stuff.

1 Um, it was -- appeared from the
2 numbering that some of the things were missing.

3 Um, we have asked him for an address so
4 we could serve him with process. He -- he --
5 that was -- information was not forthcoming. And
6 we have basically had to chase around the country
7 to track him down and -- and do this. And it's
8 taken us over a year and a half to get to this
9 point.

10 THE COURT: Well, look, if -- if I'm going
11 to grant him the right to have counsel I would
12 simply move this for later today.

13 MR. O'KELLY: Your Honor?

14 THE COURT: Yes.

15 MR. O'KELLY: Is it possible for your
16 office to call Attorney Travis Glandt and speak
17 with either him or Debbie?

18 THE COURT: That's fine. Our judicial
19 assistant can do it. See if you can arrange a time
20 that Mr. Glandt's available.

21 MR. O'KELLY: Thank you, Your Honor.

22 THE COURT: I -- I don't want this to
23 continue ad infinitum. I -- let's -- let's resolve
24 what needs to be resolved and move on.

25 ATTORNEY DVORAK: I agree, Judge. I

1 mean, it's -- this is the thing that's holding up
2 Mr. Dassey's appeal.

3 THE COURT: Let's just recess for five
4 minutes and see what Mary can do with --

5 MR. O'KELLY: Thank you, Your Honor.

6 THE COURT: -- Mr. Glandt.

7 (Recess had.)

8 (Reconvened.)

9 THE COURT: My judicial assistant talked to
10 Mr. Glandt. He's available at 2:30 this afternoon.
11 His office, Mr. O'Kelly, is a half a block down the
12 street. I'm expecting that you're going to go there
13 right now.

14 MR. O'KELLY: I'll go there right now.

15 THE COURT: And we will then reconvene this
16 matter at 2:30 this afternoon.

17 MR. O'KELLY: Thank you, Your Honor, for
18 your consideration.

19 ATTORNEY DVORAK: Judge, to resolve any
20 issues, I have a -- well, I have two releases
21 that I would like to file at this time for --
22 signed by Brendan Dassey concerning the release
23 of privileged information.

24 THE COURT: All right. Does Mr. O'Kelly
25 have a copy of either or both of these?

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ATTORNEY DVORAK: He does not, Judge. I don't believe he -- he does.

THE COURT: All right. Uh, Mr. O'Kelly, the first of the releases signed by Brendan Dassey says:

"I, Brendan Dassey, hereby release my former investigator, Michael O'Kelly, from the constraints of the attorney/client privilege only when accu -- when communicating with my present attorney, Steven Drizin and Robert Dvorak, and their assistants."

Uh, it says here, and probably -- it says:

"Mr. Sczygelski may disclose attorney/client confidences to Mr. Dvorak, Mr. Drizin, and their assistants, and may release any notes, any tests, or test results, and any re -- records to us."

The second release is one specifically addressed to Wisconsin Statute 905.065 (4) and 942.06 (2). Uh, it says:

"I hereby request and authorize Mr. O'Kelly to disclose only to my current attorneys the existent circumstances and results of any and all polygraphs or other truth testing

1 devices or procedure -- procedures, paren,
2 collectively, truth testing devices, end paren,
3 that may have been administered to me by
4 Mr. O'Kelly at any time.

5 I further request and authorize Mr.
6 O'Kelly to disclose any oral or written
7 communications related to the truth testing
8 devices only to my current attorneys, and to
9 produce any documents, files, photographs,
10 correspondence, polygraph results, test results,
11 notes, e-mails, electronic files, audio or visual
12 recordings, physical objects, or similar
13 materials relating to the truth testing devices
14 only to my current attorneys, including without
15 limitation the materials requested in the
16 subpoena duces tecum served upon Mr. O'Kelly on
17 June 19, 2009.

18 I do not authorize Mr. O'Kelly to engage
19 in any disclosure or communications --
20 communication related to the truth testing
21 devices other than the specified disclosures and
22 communications enumerated herein."

23 It purports to be signed by Brendan
24 Dassey. And there is a notary -- notary public
25 signature as well.

1 Do you have any questions about either
2 of the --

3 MR. O'KELLY: I've (inaudible) --

4 THE COURT: -- releases?

5 MR. O'KELLY: -- the document before,
6 Your Honor. This is my first time hearing about
7 that.

8 THE COURT: Well, that may well be. But do
9 you have any questions about the scope of those
10 releases?

11 MR. O'KELLY: I have no questions about
12 that, Your Honor. I do have a question. Could I
13 have a copy of that to take to the attorney?

14 My next question is: Am I allowed to
15 talk to Mr. Glandt about these issues? Because
16 the -- the release says I cannot. However, how
17 can I communicate with an attorney when I'm
18 barred from it?

19 THE COURT: Mr. Dvorak?

20 ATTORNEY DVORAK: Um, Judge, without --
21 Judge, I -- I think, under the circumstances, as
22 long as the Court would not be construing this as
23 somehow of a -- of a general waiver, it would be
24 appropriate for Mr. O'Kelly to disclose or to
25 talk about it with his counsel.

1 I -- but I -- I would -- I -- I don't
2 know that he needs to go into any discussions
3 about results or anything else, and -- and as
4 long, also, as Mr. O'Kelly's attorney is bound by
5 that release.

6 THE COURT: It seems to me that it would
7 all fall within the realm of the attorney/client
8 relationship. And, thus, would only be disclosed
9 under those portions of Chapter 905 that would
10 permit that.

11 How about copies of the releases? Any
12 objection to having photocopies made?

13 ATTORNEY DVORAK: No, I -- I --
14 Mr. O'Kelly should have a copy and he should
15 present that to his attorney.

16 THE COURT: Anything else we should cover
17 before Mr. O'Kelly goes over to talk to Mr. Glandt?

18 ATTORNEY DVORAK: Oh, I -- I -- I'd just
19 like a restriction that he's not to go over the
20 results of any polygraph testing. He can discuss
21 what he did. I don't know that he needs to
22 discuss results. But...

23 THE COURT: Mr. O'Kelly, are you okay with
24 that restriction?

25 MR. O'KELLY: I'm not real comfortable

1 with that because that's limiting my attorney as
2 far as making decisions. And I -- I believe in
3 the complete product, and -- and we -- he's going
4 to have a nondisclosure at any rate with respect
5 with how much information is given to him.

6 THE COURT: Yeah.

7 ATTORNEY DVORAK: Yeah. Judge, I --
8 I'll withdraw my comment. I -- I -- I agree.
9 If -- as -- as long as it's understood that the
10 attorney's bound by the terms of this release,
11 um, I think Mr. O'Kelly is entitled to get
12 whatever advice he needs to come back into court
13 and present whatever he has to present.

14 THE COURT: All right. You understand
15 that, Mr. O'Kelly?

16 MR. O'KELLY: I do. Mr. Glandt's an
17 officer of the court. So I -- I would -- he's --

18 THE COURT: All right.

19 MR. O'KELLY: -- respectable.

20 THE COURT: Anything further? I'll just
21 have Mary make photocopies, give them to
22 Mr. O'Kelly, and he can go over and see Mr. Glandt.

23 MR. O'KELLY: Thank you very much, Your
24 Honor. Again one last question. Directions to
25 his office? Because I have not been there.

1 THE COURT: Yeah. We'll give you those in
2 just a second.

3 MR. O'KELLY: Thank you.

4 THE COURT: We don't need to do that on
5 the record.

6 MR. O'KELLY: Thank you.

7 THE COURT: All right. Until 2:30,
8 we're adjourned.

9 ATTORNEY DVORAK: Thank you, Judge.

10 THE COURT: We'll see you back.

11 (Recess had at 11:05 a.m.)

12 (Reconvened at 2:30 p.m.)

13 THE COURT: This is -- we're back on the
14 record with State of Wisconsin vs. Brendan Dassey,
15 06 CF 88. Appearances, please.

16 ATTORNEY DVORAK: Good afternoon, Your
17 Honor. Attorney Robert Dvorak and Attorney Josh
18 Tepfer appear on behalf of Mr. Dassey.

19 ATTORNEY GLANDT: Your Honor, Attorney
20 Travis Glandt. I'm making a special appearance.
21 I'm appearing with Mr. Michael O'Kelly who was
22 issued a subpoena to appear here in court today
23 on a specific issue.

24 THE COURT: Right. We began this morning.
25 And the Court spread upon the record some background

1 that led up to the hearing today. We, I think,
2 convened at approximately 10:30. We were in session
3 for about a half an hour. Mr. O'Kelly requested
4 that he be permitted to have an attorney appear here
5 with him. Mr. Glandt is here this afternoon in that
6 capacity.

7 Uh, Mr. Dvorak, this is your motion.
8 How do you want to proceed?

9 ATTORNEY DVORAK: Well, Judge -- I -- I
10 think there are two issues.

11 Number one is he -- is Mr. Dassey
12 entitled to this stuff? Um, which seems to me to
13 be a legal issue.

14 And -- and the second issue is what is
15 there -- what's left? We have to deal with
16 Mr. Rosenfeld's letter which I think is a factual
17 issue for which I'd like to take testimony from
18 Mr. O'Kelly.

19 THE COURT: All right. Mr. O'Kelly, come
20 on up to the witness stand, please.

21 ATTORNEY DVORAK: Your Honor, just to --
22 just so it makes sense, it seems to me we ought
23 to deal with what it is that he should turn -- is
24 he obligated to turn over? Is there any issue
25 about the fact that Mr. O'Kelly is obligated to

1 turn over his work product in this case? I guess
2 I'd like to know that first.

3 THE COURT: Mr. O'Kelly, why don't you
4 remain seated for a moment.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Mr. Glandt, I realize you're
7 sort of thrown in the fray here well into the game.
8 Do you contend that Mr. Kelly is -- or Mr. O'Kelly,
9 excuse me -- uh, has a right not to turn over the
10 work product that was generated on the -- behalf of
11 the defense of Brendan Dassey?

12 ATTORNEY GLANDT: Um, if I could just
13 state a couple of things, Your Honor. Thank you,
14 first, for acknowledging my late appearance in
15 this matter.

16 I did want to ask the Court if the Court
17 had a chance to review the documents provided by
18 Mr. O'Kelly this morning. There's some -- some
19 statutes and some other information.

20 THE COURT: I -- I will review them right
21 now. There are -- it's a rather small bundle of
22 documents.

23 ATTORNEY GLANDT: I guess, Your Honor,
24 while the Court's taking a look at that, I just
25 wanted to say that Mr. O'Kelly was provided with

1 a release and authorization signed by Mr. Dassey
2 today. That was the very first time he has seen
3 such a release and he has requested such a
4 release in the past.

5 Um, I have reviewed that release and I
6 believe it meets the concerns. It appears to be
7 Mr. Dassey requesting that this material be given
8 to his new attorneys.

9 And I just want to state this was
10 discussed between Mr. O'Kelly and Mr. Dvorak as I
11 understand last week. I'd point out that this
12 release was -- was notarized on June 23, 2009,
13 which is a week ago.

14 There was a discussion about this on
15 June 18 and Mr. Dvorak asked Mr. O'Kelly if he
16 still wanted the authorization -- the release and
17 authorization -- and Mr. O'Kelly said, yes, he
18 does.

19 Mr. O'Kelly doesn't want to be here
20 today arguing about these issues but he was never
21 provided with this until today.

22 Um, he -- I want to state he is -- he's
23 not being uncooperative. He's been requesting
24 months that an authorization -- for months that
25 an authorization be provided. If he would have

1 been provided with that we wouldn't be sitting
2 here today.

3 The concern is this: There's a specific
4 statute that makes it a crime to release this
5 polygraph information that's being requested
6 without a written authorization.

7 942.06 (3) is where it indicates it's a
8 Class B misdemeanor. And that was part of the
9 information provided to the Court.

10 We do have such written authorization at
11 this time which -- which references, actually,
12 that statutory section as well as the polygraph
13 privilege section of the evidentiary statutes.

14 Um, we are aware that counsel for
15 Mr. Dassey has used a release in the past based
16 upon Mr. O'Kelly's contacts with another
17 colleague on a separate case that -- that had
18 been handled by Mr. Dvorak.

19 Mr. O'Kelly's here. He had to cancel a
20 class he was -- was teaching. He may have to
21 cancel another one that he's supposed to teach
22 next week.

23 Um, in terms of why we're here today, I
24 guess Mr. O'Kelly would -- would ask to reserve
25 the right to request additional reimbursement and

1 other possible sanctions for us having to be here
2 and -- and receiving an authorization on the day
3 of this hearing signed by Mr. Dassey.

4 THE COURT: Mr. Dvorak, response?

5 ATTORNEY DVORAK: Thank you, Judge.
6 It's just facu -- factually not accurate. We've
7 been requesting this stuff from Mr. O'Kelly for a
8 year and a half going back to February of 2008.

9 He has never once requested -- and I
10 don't have any e-mail, letter, or anything else
11 where he is requesting a release.

12 Um, I have -- we have left numerous
13 messages for him which he has not returned phone
14 calls for.

15 He, in any event, Judge, in March of
16 this year, when I spoke with him, sent us some
17 materials. So if there -- if -- if there were
18 any issues concerning a -- a release, he's
19 certainly waived any claim he may have had about
20 that.

21 Um, so I'm -- we have gone through all
22 of materials, we have -- we have made significant
23 requests. He has flat out told us that we --
24 he's not going to give us this stuff.

25 Um, and he -- he's just taken a -- an

1 incredibly inexplicable defensive posture about
2 this. He has said in the past that you are
3 trying to get Mr. O -- get Mr. Dassey a new trial
4 and I'm not going to stick my head on the block
5 for that. Um, he's -- he's made comments like
6 that a couple of times.

7 And I -- I -- it's factually not
8 accurate.

9 So -- but it seems to me, Judge, then --
10 but that the bottom line here, however, is that
11 there is no argument that Mr. O'Kelly is
12 obligated to turn over whatever it is that he has
13 in terms of his work product on behalf of
14 Mr. Dassey.

15 THE COURT: All right. Let's set aside for
16 a moment the -- the verbal jousting about what it is
17 that was said to whom and what. What is it
18 specifically, Mr. Dvorak, that you are looking for?

19 ATTORNEY DVORAK: We are -- it's in my
20 subpoena duces tecum, Judge, which is -- should
21 be a copy in the file.

22 We are essentially looking for
23 everything that Mr. O'Kelly has. There are re --
24 there are references and material that we have,
25 for example, where Mr. O'Kelly claims that he has

1 tape recorded all interviews with Mr. Dassey.

2 Um, we know from correspondence at --
3 with the sheriff's department that he brought
4 equipment into the jail and wanted permission to
5 bring equipment into the jail to do whatever.
6 Perform polygraph tests. It's whatever else may
7 have been involved.

8 Um, so we're -- we're certainly looking
9 for all of that information, all of that
10 material.

11 There are -- my understanding is there
12 are also photographs which he has acknowledged.
13 And back in March when we had a conversation he
14 wanted to know if I wanted the photographs in
15 color or black and white.

16 Um, and so we're looking for everything
17 that he has.

18 I -- everything that he's done on this
19 case including electronic communication with --
20 with Mr. Kachinsky. Results of any polygraph
21 testing that he has, depending on what machine he
22 used, whether it's an electronically done or if
23 he's got charts. And if he's got charts, we'd
24 like it reproduced in a -- in a continuous
25 fashion so that we are able to review it.

1 Um, whatever notes he has of interviews
2 with witnesses, we're -- we're relying on what's
3 in the subpoena. If the Court doesn't have a
4 copy of that, I can provide one.

5 THE COURT: Oh, I'm sure I do. All right.
6 So what I hear you telling me is you're looking for
7 tape recordings of all interviews with Dassey. Any
8 polygraph results. Any photos that Mr. O'Kelly may
9 have taken in the course of his employment. Any
10 e-mails between himself and Mr. Kachinsky. Notes of
11 any witness interviews. Um, Mr. Glandt, you have
12 the subpoena in front of you?

13 ATTORNEY GLANDT: I do, Your Honor.

14 THE COURT: Are you contending that there's
15 anything in that subpoena duces tecum to which
16 Mr. Dvorak is not entitled?

17 ATTORNEY GLANDT: I -- I didn't compare
18 the subpoena to the release. I'm assuming the
19 release covers all of that.

20 Um, I believe that he would be entitled
21 to whatever Mr. Dassey releases to them. And if
22 that's all covered in the release and
23 authorization signed by Mr. Dassey, and if
24 Mr. Dassey's making that request, then
25 Mr. O'Kelly does not have a problem releasing

1 that.

2 There is a concern that I believe
3 Mr. O'Kelly has expressed about inculpatory
4 evidence that -- that is in or could be in some
5 of this material.

6 THE COURT: Well, Mr. Glandt, that's why
7 we're doing this in the context of an ex parte
8 hearing so nobody is here from the other side that
9 can use that information should there be an -- a
10 successful appeal can use that information on a
11 retrial of the case.

12 So you're looking at that subpoena duces
13 tecum. I'm looking at the release and
14 authorization that was signed and notarized on
15 June 23, 2009.

16 It appears to be about as broad in its
17 reach as it can be, with specific references as
18 well, to the statutes implicated in the truth
19 testing devices.

20 So do you agree that that's what the
21 release said? The release essentially says the
22 defense team here is entitled to anything it
23 wishes to have that Mr. O'Kelly generated as part
24 of his -- as part of his work on the Dassey case.

25 ATTORNEY GLANDT: I -- I do. And, in

1 fact, that subpoena is referenced within this
2 release.

3 THE COURT: Right.

4 ATTORNEY GLANDT: Um, so if Mr. Dassey
5 is making that request, I believe he is the one
6 that we have to look to to give such a waiver and
7 release. And it looks as though Counsel has
8 provided that.

9 THE COURT: Well, I'm not sure we should
10 have had to go that far. But since we are that far,
11 it's all there right now. With that then said is
12 Mr. O'Kelly going to be resisting any of these
13 requests?

14 ATTORNEY GLANDT: No.

15 MR. O'KELLY: No.

16 ATTORNEY GLANDT: No. Can I just state
17 for the record, Your Honor, there was reference
18 by Mr. Dvorak about sending materials previously.
19 Those were -- as I understand, they're called
20 surveys, which are part of the test results. And
21 within Mr. O'Kelly's materials there is an
22 authorization signed by the person taking the
23 test that does allow the release of those
24 surveys. So that he had an authorization for.
25 The rest of all of this he had nothing for until

1 this morning.

2 THE COURT: Well, if I -- if I credit
3 Mr. Dvorak, he never requested to have anything.

4 ATTORNEY GLANDT: I understand
5 Mr. Dvorak's point on that. I don't -- I don't
6 know why the burden would be on Mr. O'Kelly to
7 request a release and not on Counsel to send a
8 release saying, my client wants this information,
9 here's a release signed by him allowing you to
10 give me everything.

11 THE COURT: Well, look, I -- I don't want
12 to spend the rest of the afternoon discussing it.
13 But I'll advert just for a moment to what I said a
14 few minutes ago.

15 I'm not sure a release was necessary
16 once they became appointed counsel to Mr. Dassey.
17 But we're beyond that point. So let's -- let's
18 not make this this side show that's going to run
19 the whole operation here.

20 Uh, when can this material be provided?

21 MR. O'KELLY: Right now. I've got it in
22 my pocket.

23 THE COURT: You have what in your pocket?

24 MR. O'KELLY: It -- well, the materials
25 I -- It's on a jump drive, Your Honor.

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THE COURT: Mr. Dvorak?

ATTORNEY DVORAK: Um, well, I'm --
I'm -- I'm puzzled I guess. I -- I thought it
was all destroyed. But I'll -- I'll take
whatever he's got and I'll look at it and -- and
see if we feel that it complies. That's the best
we can do. I don't know what he's got on this
thing.

THE COURT: Mr. Kelly, be seated, please.

MR. O'KELLY: Yes, Your Honor.

THE COURT: What is it that you tell us
that you have on the jump drive in your pocket?

MR. O'KELLY: If -- if you can put it
in -- on a computer I can read it off the screen.
If there -- there's about, I think, eight to ten
files, eleven files. I'm not sure how many there
are. And that everything that I have on the
Dassey case is there.

THE COURT: Well, my understanding was that
there are some tape recordings that Counsel is
requesting?

MR. O'KELLY: Those are gone. I -- the
attorney has lost that box. He still hasn't -- I
talked to him an hour ago and he still hasn't
found the box.

1 And I don't understand this. Ken is not
2 that kind of an attorney who would lose anything.
3 And I sent it return receipt requested. So I
4 know he got the box. He acknowledged getting the
5 box.

6 ATTORNEY DVORAK: That's what I'd like
7 to take some --

8 MR. O'KELLY: Your Honor --

9 ATTORNEY DVORAK: -- testimony about.

10 THE COURT: Let's -- let's take some
11 testimony. Come on -- come up here, Mr. O'Kelly.

12 MR. O'KELLY: Yes, Your Honor.

13 **MICHAEL O'KELLY,**

14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 THE CLERK: Be seated. State your name
17 and spell your last name for the record.

18 THE WITNESS: Michael John O'Kelly, O,
19 apostrophe, K-e-l-l-y.

20 **EXAMINATION**

21 BY ATTORNEY DVORAK:

22 Q Mr. O'Kelly, when did you deliver your stuff
23 from -- or to Attorney Rosenfeld?

24 A It was between March 9 and March 11 is my
25 recollection according to my e-mails back and forth

1 with Ken.

2 Q Okay. Where did you deliver the stuff from?

3 Where did you get it from? Where was it

4 physically?

5 A I accumulated it in -- in my different storage places

6 and I put it all in one box. Um, I was gathering

7 that earlier this year and when your e-mail became

8 threatening my concern was that there was be -- the

9 materials could be jeopardized.

10 Q What -- what was threatening about my e-mail?

11 A Not -- not your e-mail. Rather your -- your

12 conversation and the conversations I've had with the

13 Northwestern folks. It was almost a circus. And I

14 became concerned that when I was traveling that the

15 materials could be jeopardized.

16 And I talked to Ken about it and Ken

17 said, "You send me the -- all the -- all the

18 materials right now and I'll deal with

19 Mr. Dvorak."

20 Q Okay. Now -- all right. That's -- that's a

21 different issue, I guess. So the -- I asked the

22 question, though, where was the stuff delivered

23 from? Where, specifically, was it?

24 A I don't understand your question.

25 Q Where -- where did you have the stuff stored?

1 A I had it, uh, in Chicago. It was in Des Plaines and
2 also part with me.

3 Q Okay. Uh, and do you have that receipt for the
4 re -- the return receipt and the -- and -- and
5 the receipt from whoever -- whoever the delivery
6 service was? Do you have --

7 A It --

8 Q -- that?

9 A It was sent by a U.S. -- a U.S. postal as I recall.
10 And I can get the receipt.

11 Q Okay. Would you produce that for us, please?

12 A Of course. Yes.

13 Q Thank you. And was there a -- a cover letter
14 that went with it that described what was inside
15 the box?

16 A No. Um, I -- I boxed everything up.

17 Q Okay. Did you ever itemize what was in the box?

18 A No. No. Ken -- Ken gave me basically that date to
19 get the package to him. And I asked him if I can --
20 I'm going to copy it. And he says, "You're not
21 listening, Mike." He says, "I want that package --

22 COURT REPORTER: Can you slow down,
23 please?

24 THE WITNESS: I'm sorry. Ken said, "You
25 don't understand. You're not listening, Mike. I

1 want that --

2 ATTORNEY GLANDT: I want to -- I guess,
3 Your Honor, if I could enter an objection
4 anything that might be attorney/client privilege.
5 I'm not sure exactly what the relationship was
6 but conversation between him and his attorney are
7 certainly privileged.

8 THE COURT: Mr. Dvorak?

9 ATTORNEY DVORAK: I -- I -- I don't
10 understand that, Judge. Um --

11 THE COURT: I'm going to overrule the
12 objection.

13 ATTORNEY DVORAK: Thank you.

14 THE COURT: Go on.

15 THE WITNESS: Ken asked me -- Ken gave
16 me that day to get everything in -- in -- in the
17 mail to him. That day.

18 Q (By Attorney Dvorak) Okay.

19 A And so I copied as much as I could. I -- well, I
20 didn't copy. I scanned it.

21 Q Okay. So what you --

22 A And --

23 Q -- what you had -- physically describe what you
24 had that you put in the box.

25 A They were recordings. Uh, they were --

1 Q And the -- let's -- let's --

2 THE COURT: Here.

3 Q (By Attorney Dvorak) -- take them one at a time.

4 THE COURT: Here. Hang on. Let him finish
5 first.

6 ATTORNEY DVORAK: I'm sorry.

7 Q (By Attorney Dvorak) All right. Go ahead.

8 A They were recordings that existed only between
9 Mr. Dassey and I. No other recordings were ever
10 made.

11 Um, there were, I believe, photographs.
12 There were surveys, which were all -- he has all
13 the originals. Um, there were my notes, I
14 believe, and that would have been on yellow
15 tablet paper.

16 Um, I can't -- oh, the -- the polygraph
17 information was also there. I'm not sure what
18 else. If I could look at the jump drive.
19 That's -- that's what I sent basically.

20 Q Uh, are you saying that everything you sent is on
21 the jump drive?

22 A Not the recordings of course. The -- the recordings
23 can't -- can't be recorded on the jump drive. But
24 all the documentation is there.

25 Q Let's talk about the recordings for a minute.

1 How were rec -- what were the recordings recorded
2 on?

3 A They were recorded on a videotape. I don't believe
4 there were any audio tapes because I don't recall
5 using an audio tape for this.

6 Q All right. So you videotaped all of your
7 conversations with Mr. Dassey?

8 A Probably most of it I believe.

9 Q Okay.

10 A I -- I had the equipment there. I don't know if it
11 was on all the time.

12 Q All right.

13 A Because I know you're being specific.

14 Q Is this a digital video recorder?

15 A No, it's -- it's -- it's tape.

16 Q Okay. What kind of tape is it? VHS? Eight --

17 A Oh, no.

18 Q -- millimeter?

19 A No. I believe it's a high eight.

20 Q Okay. Which is a -- a digital product; right?
21 Are you familiar with that?

22 A I thought it was analogue.

23 Q Okay. Have you -- how many high eight tapes did
24 you have?

25 A There were at least -- at least four, I believe. I

1 can't recall the specific number though.

2 Q Is there -- are there multiple interviews on each
3 tape?

4 A I believe so because I would -- I would -- I would
5 use one tape continuously. Is that what you're
6 asking me?

7 Q Yes.

8 A Yes.

9 Q Okay. So there's probably several hours worth of
10 conversation?

11 A Yes and no. Uh, there -- there were times Mr. Dassey
12 is completing the survey, which is a large part of
13 the time and where there is no communication between
14 he and I whatsoever. I'm simply present in the room
15 while he's completing the survey.

16 Q Okay. Um, and you did not make any dub of those
17 tapes?

18 A No.

19 Q Um, or download any of that stuff onto your
20 computer or hard drive or otherwise digitize that
21 information?

22 A Absolutely not. No.

23 Q Did you ever show that or hand any of that
24 information over to Mr. Kachinsky?

25 A That's where I was trying to figure out at one time

1 when you and I were talking pleasantly and I thought
2 I did. However, I don't believe that I -- that --
3 Len says I didn't do it and I'll -- I'll take Len's
4 word for that.

5 Q All right. Let's talk about photographs. Um,
6 did you -- are the photographs -- all the
7 photographs that you had on the jump drive?

8 A I believe so. I'm -- I -- I haven't looked at it so
9 I don't know. For some reason I don't think I
10 scanned those. For some reason. I might have. I
11 don't have -- I -- I don't think I did.

12 Q All right. So but what you sent to Mr. Rosenfeld
13 were the actual photographs?

14 A Perhaps we should be clear on what photographs we're
15 talking about. Uh, there's a photograph of the
16 inside of the -- the Avery trailer where the incident
17 allegedly took place.

18 Uh, there's a photograph of a stop sign
19 that says, "dead end." There was a photograph of
20 the outside of where Mr. Dassey lived and also
21 where Mr. Avery lived. They were side by side
22 mobile homes.

23 Q How many photographs are we talking about?

24 A I thought be four, five.

25 Q Okay. And -- and were these photographs taken

1 with a -- a digital camera?

2 A I have no idea. They weren't mine. They were --
3 I -- I did not take the photographs.

4 Q Where did you get them from?

5 A My recollection is I got them through Mr. Kachinsky
6 and -- and they were photographs provided through
7 discovery.

8 Q Okay. Now, the surveys that you're talking about
9 are -- are written documents -- are written
10 things that Mr. Dassey fills out; right?

11 A Correct. And I faxed those to you. And there's a
12 built-in release on page two.

13 Q You, uh -- did you -- and now you sent us --

14 A And I have those also on the jump drive.

15 Q Okay. When you sent those to us you designated
16 those, um -- designated those one, two, four, and
17 five. Was there a survey number three?

18 A I thought you asked and I answered that question and
19 I thought I told you that that was a -- either a -- a
20 misprint that I had to redo -- there was -- there was
21 some scanning issue I thought because the -- the
22 scanner will automatically go one, two, three, four.
23 And I thought there was a scanning issue and so I
24 simply restarted the scanner and that's why there's a
25 number jump. But everything was provided to you.

1 Q Are you saying that, um, you started all over
2 again?

3 A No. No. I -- I would scan one, which I have zero,
4 zero, one. Then zero, zero, two. And then zero,
5 zero, three. If there's a jump it's because one of
6 the process got -- got started and I said, no, delete
7 the process because there was a problem in the
8 scanner and you put it back through and it gives it a
9 new number.

10 Q Okay.

11 A Same item. Just --

12 Q All right.

13 A Just new sequence.

14 Q So we have numbers one, two, four, and five which
15 are four surveys?

16 A And that's all I got.

17 Q And that's all you have?

18 A Correct. And those have a built-in release as I
19 indicated to you.

20 Q Um, your notes on yellow pages, did you photocopy
21 those?

22 A I believe so.

23 Q And are those on the jump drive?

24 A Yes.

25 Q Okay. Polygraph info. What do you mean when you

1 say polygraph info?

2 A Everything to do with that polygraph test. The
3 charge, the questions, the pretest, uh, data. Ev --
4 every -- everything's on that polygraph chart.

5 Q Okay. Now, are -- are you using charts or are
6 you using a -- a digital machine that -- that --

7 A It's computerized.

8 Q It's computerized. And does that computer have a
9 camera and audio built -- built into it?

10 A It does.

11 Q Machine. And was it -- was the audio and the
12 video on at the time that you --

13 A It was -- it was --

14 Q (Unintelligible.)

15 COURT REPORTER: One at a time, please.

16 Finish your question, please.

17 THE WITNESS: I apologize.

18 Q (By Attorney Dvorak) Was it -- was it on at the
19 time that you did the polygraph test?

20 A My recollection is it was on.

21 Q Okay. Is that -- is that audio and video portion
22 on your jump drive?

23 A No, it is not.

24 Q How do you get the -- do you -- you still have
25 that machine?

1 A Oh, yes.

2 Q And does that machine store the information?

3 A No.

4 Q What happens to the audio and video portion of it
5 when you complete a polygraph?

6 A It's on the poly -- it's on the instrument. Well,
7 it's on the computer itself.

8 Q Okay. Um, it's -- it's on the computer. What's
9 on the computer?

10 A Any data created on that polygraph during -- during
11 that session.

12 Q Okay. So that would include, um, the chart?

13 A Um-hmm.

14 Q And it would include the audio?

15 A Correct.

16 Q And it would include the video?

17 A Correct.

18 Q An -- anything else?

19 A It would include the -- the pretest data such as the
20 person's full name, date of birth, um, the gender,
21 address, bio information.

22 Q All right. And is that done in a written format,
23 a verbal format, or both?

24 A Sometimes I will actually take notes from the person
25 and then manually enter it, um, while they're doing

1 something else such as filling out a survey.

2 Um, in Mr. Dassey's case I thought I
3 entered it as he and I were speaking. That's my
4 recollection.

5 Q All right. Now, when you -- how do you -- how do
6 you transfer that information to something else?
7 To a -- to -- so that you can store it. So that
8 you can have a record of what happened.

9 A I usually don't transfer it. I usually stay on the
10 computer. I -- I've now since changed that practice
11 because of the crashes I've had.

12 Q I'm sorry. You -- when you do a polygraph you're
13 saying you would never save the -- the polygraph
14 information?

15 A No, it would stay on the computer.

16 Q Okay.

17 A Unfortunately, I've had experience that I lost quite
18 a few of my polygraphs because I had one computer
19 crash and I've got no data at all.

20 Q All right. Now, let me -- let me just understand
21 we're talking about -- the computer that you're
22 talking about, is that a separate item from the
23 polygraph machine or is that part of the
24 polygraph machine?

25 A It's two different items.

1 Q Okay. So you have a -- a -- a -- a separate
2 stand alone computer that you plug into your
3 polygraph machine that records all of the data?
4 That digitizes all the data that you put into the
5 polygraph?

6 A That is correct.

7 Q Okay. And the -- the -- the forms -- the written
8 type things are put on your computer in what
9 format?

10 A They would be on the -- on the Lafayette system.

11 Q Okay.

12 A I guess --

13 Q I guess what I'm asking is it a PDF document?
14 Does it come out as a Word document? Do you --
15 do you know?

16 A It comes off as -- as -- as the document -- as the
17 software for Lafayette software.

18 Q Okay.

19 A It's not PDF or Word.

20 Q All right. And the audio and video portion, how
21 is that -- how is that -- in what format is that
22 recorded on -- on the hard drive?

23 A You're asking me questions about -- about the
24 polygraph that I don't know.

25 Q All right.

1 A You'd have to ask an engineer.

2 Q After a polygraph test have you ever gone back on
3 your computer and looked at -- at the polygraph?
4 The audio? The video? And the entire record of
5 it?

6 A Oh, no.

7 Q You've never done that?

8 A Never had a reason to.

9 Q You've -- you -- and you've never had a lawyer
10 ask to do that?

11 A No.

12 Q Okay. Um, do you have a -- a backup system for
13 your computer?

14 A I do now. I didn't --

15 Q You --

16 A -- then.

17 Q You didn't then?

18 A No.

19 Q When did you get a backup system for your
20 computer?

21 A About two weeks ago. Three weeks ago.

22 Q What happened to the hard drive or the computer
23 that you used when you were interviewing or
24 working on Mr. Dassey's case?

25 A That has crashed.

1 Q Okay. What happened to the computer?

2 A The computer has been trashed because it's an old
3 computer.

4 Q Meaning you've thrown it away?

5 A Yes. It has no value.

6 Q Okay. Did you make any effort at all to salvage
7 any of the material on that computer?

8 A Yes, I did. And that's how I was able to get most of
9 Mr. Dassey's files.

10 Q When did you do that?

11 A It would have to have been this year. Um, and I
12 believe it happened sometime between January -- I'm
13 guessing -- could have been December and -- and
14 March.

15 Q Okay. Um, and did you, um -- you were aware that
16 at that time that the -- the video and the audio
17 stuff was still on the computer; right?

18 A The answer is, no, because I don't go in the computer
19 to look for the thing -- for the items.

20 Q Okay.

21 A I don't --

22 Q You knew that we were looking for the stuff? We
23 had requested that stuff?

24 A Correct. Yes.

25 Q Okay. Did you do anything to -- when you -- when

1 you downloaded it I take it your computer was
2 working?

3 A Oh, sure.

4 Q Okay. And, um, did you do anything -- did you
5 con -- did you consult with anybody about how to
6 download this stuff?

7 A No.

8 Q Okay. And you're telling us that you've never
9 tried to do that before; right?

10 A No.

11 Q When you -- Oop. When you --

12 THE COURT: Well, hang on. Does -- does,
13 no, mean you're telling us you never tried to do it
14 before or that you did try to do it before?

15 THE WITNESS: What -- what's the
16 question? How's that?

17 Q (By Attorney Dvorak) Have you ever tried to
18 download stuff from your polygraph-related
19 computer --

20 A Oh, no.

21 Q -- before?

22 A No.

23 Q Have you ever deleted in -- polygraph information
24 from your computer?

25 A No.

1 Q Have you ever hooked that computer up to a
2 monitor so that you can open up and see what's in
3 it and select files?
4 A I don't understand your question.
5 Q All right. Let me ask you this:
6 You -- you downloaded some of the stuff
7 from this computer onto -- what did you download
8 it onto? A disk? Another hard drive?
9 A It would have been a CD-ROM, I believe, I was trying
10 to save everything to.
11 Q Okay.
12 A That's my recollection.
13 Q All right.
14 A Because I use Sonic for that.
15 Q Okay. And is the CD-ROM built into the polygraph
16 computer?
17 A Oh, no.
18 Q Okay. So it's a peripheral?
19 A Correct.
20 Q So you plug the peripheral into your computer
21 and -- and I guess it's -- is this a laptop?
22 A Yes, it is.
23 Q Okay. So it's got a screen? You turn -- you
24 turn the computer on; right?
25 A Correct.

1 Q Okay. And there's -- how do you know where to
2 go? Is there an icon on the computer?

3 A Sure. It -- it -- it says Lafayette. It's a big red
4 "L."

5 Q Okay. And -- and you, what, double-click on
6 that? It opens up?

7 A Correct.

8 Q And within that, um -- within that folder are
9 there names of polygraphs that you've given? Are
10 there files? What -- what is --
11 (unintelligible.)

12 A Yes, there would be. Yes.

13 Q Okay. So there would be a file that says Brendan
14 Dassey or something like that referencing this
15 case?

16 A Sure. Or John Jones or whoever the -- the subject
17 is.

18 Q Okay. And were there more than one of those? Or
19 was all of his work product in one file?

20 A Oh, no, it's only in one place.

21 Q Okay. So that when you did the polygraph you
22 would set it up so that it would be saved to a
23 file to that specific file in your computer?

24 A I think Lafayette's -- has their software set that
25 way.

1 Q Okay. And when you --

2 A It's -- I don't --

3 Q I'm sorry. Go ahead.

4 A I don't manually do anything. I think it's automatic

5 because of how the engineers have the software set

6 up.

7 Q So when you open the Dassey file what do you see?

8 A Well, you actually see nothing at all because you

9 would start with creating a file and you would name

10 it a Das -- in this case it would be Dassey file.

11 Q Let me -- let me -- let me rephrase the question.

12 A Sure.

13 Q Okay. You're -- you're done with Mr. Dassey's

14 case?

15 A Sure.

16 Q And in January, February, whenever it is, you're

17 trying to replicate the file. You open up

18 Mr. Dassey's file. What do you see?

19 A I don't recall opening it up. And that's part of the

20 issue. I don't recall opening it up.

21 Q Okay. Now, when you create a -- a -- a CD, uh,

22 do you just take -- can you just take the file --

23 the folder, rather, that says "Dassey" and drag

24 it to the CD-ROM?

25 A Um, I -- no. I -- with mine, I can't. I don't know

1 how to do that.

2 Q How did you, um -- how did you -- how did you
3 select what to -- what to copy and what not to
4 copy?

5 A I would highlight the name of the file, and it would
6 be in the sonic software, and you simply say copy
7 file, and it would go ahead and make a -- make a --
8 make a data disk.

9 Q Okay.

10 A It's all automatic.

11 Q All right. And -- and did you -- are you saying
12 that you -- did you highlight everything in the
13 Dassey file?

14 A I don't know that you highlight things as far as I
15 can recall. I think -- I think it's just one item.
16 And you -- that's what you use to transfer.

17 Q Okay. I -- I mis -- I thought I heard you say
18 you highlight something and then you click
19 transfer and that -- you -- how do you select
20 what to do?

21 A You highlight the person's last name or how -- how
22 the file was listed. Whether it's Dassey or Jones,
23 whatever it is.

24 Q Okay. So you highlight Mr. Dassey, you say burn
25 this file?

1 A Correct.

2 Q All right. And that should burn everything in --
3 on your computer with respect to Mr. Dassey's
4 file?

5 A Correct. And that's what I sent to Ken.

6 Q Okay. And you sent that to Ken on the format of
7 a CD-ROM?

8 A Yes.

9 Q And you only burned one of them? Is that what
10 you're saying?

11 A Yes.

12 Q And then sometime after January or February
13 you're saying your computer crashed?

14 A I got multiple crashes. In fact, I have another hard
15 drive I have to -- that I have to buy.

16 Q When did your computer crash after you downloaded
17 this stuff?

18 A I can't give you the date because I don't recall
19 when -- when it crashed. Um, I can probably get you
20 all those dates because we had multiple times.

21 Q Okay. You didn't have any -- did you -- you
22 didn't have any problems with it from the time
23 that you gave Mr. Dassey these polygraph tests
24 'til sometime in January or February of '09?

25 A Right. But it was an old computer though.

1 Q Okay. But you didn't have any problems during
2 that period of time? Right?

3 A What period of time are you -- are we talking about?
4 I -- I'm not --

5 Q Between the time that you gave Mr. Dassey any
6 polygraph tests or recorded any of his statements
7 using this device until you downloaded it onto
8 the CD-ROM?

9 A I had problems. I didn't have any crashes.

10 Q Okay. And, um, now, when you have a crash, um,
11 did you take it to a -- a -- someplace to have it
12 fixed?

13 A No. I -- you -- you can call Toshiba and they --
14 they walk you through it.

15 Q I see. And part of what they walk you through is
16 how to restore the stuff you've lost; right?

17 A Yes.

18 Q Okay. And did you do that?

19 A Yes.

20 Q Okay. So some of the stuff that you thought you
21 lost you got restored?

22 A Uh, most -- most was not.

23 Q Okay. How do you know that?

24 A Because when we finished working on it with the
25 senior technicians a lot of things were gone.

1 Q Okay. Were the -- were the audio/video
2 recordings gone?
3 A I did not check for any of those.
4 Q Okay. Did you ever back up that hard drive?
5 A No.
6 Q Ever?
7 A No.
8 Q Um, even before or when you were doing this with
9 the senior technicians were you advised to -- to
10 back up your hard drive?
11 A No.
12 Q And this was -- this was with Toshiba?
13 A Correct.
14 Q Now, um, why did you feel a necessity to send
15 this stuff to a lawyer?
16 ATTORNEY GLANDT: Objection as to
17 relevance.
18 THE COURT: Overruled. He can answer.
19 THE WITNESS: I was uncomfortable with
20 your behavior. Um, you had lied to me.
21 Q (By Attorney Dvorak) I had lied to you?
22 A Oh, yes.
23 Q How would I --
24 A (Unintelligible) sir. I don't recall the specific
25 lie at this time. You -- you lied to me. And when

1 someone lies to me I reduce it to printed form, which
2 is why I stopped taking your calls. You went on the
3 NA -- (unintelligible) and you said --

4 COURT REPORTER: Excuse me.

5 THE WITNESS: I'm sorry.

6 COURT REPORTER: What did you say?

7 THE WITNESS: Mr. Dvorak went on the
8 NACDL, National Association for Criminal Defense
9 Lawyers, and made a posting that I was
10 referring -- I was holding myself out as a super
11 investigator when, in fact, I was simply a guest
12 speaker at a super conference. And I've never
13 held myself out as a super investigator. Never,
14 ever, ever.

15 Q Okay. Well, um, you're --

16 A I be -- I began to have a strong distrust in you and
17 that's when I called Ken Rosenfeld who I do trust.
18 He is a defense attorney. He understands your
19 thinking. And I asked Ken what to do. And I laid it
20 all out for him what was going on and the circus from
21 Northwestern that I was dealing with.

22 And Ken said, "I'm now your attorney.
23 This is work product. Get me your file today."

24 Q (By Attorney Dvorak) I see. And -- and you also
25 made that accusation -- do you recall the first

1 conversation with me on the phone?

2 A I -- I know we ended pleasantly I thought. But it
3 started off a little -- a little rough.

4 Q Right. And -- because you had accused, um,
5 Mr. Drizin -- Professor Drizin -- at Northwestern
6 and his associates there of lying to you; right?

7 A I did. And I caught them in lies. Um --

8 Q And -- and --

9 A -- they --

10 Q -- specifically, you mentioned --

11 THE COURT: Here. Whoa. Talking over each
12 other. Where's this going, Counsel?

13 ATTORNEY DVORAK: Um --

14 THE COURT: I'm not --

15 ATTORNEY DVORAK: I'll with -- I'll
16 withdraw it. I --

17 THE COURT: All right.

18 ATTORNEY DVORAK: I'll go somewhere
19 else. That's fair. And we're off track here.
20 All right.

21 Q (By Attorney Dvorak) So you felt, um, compelled
22 for whatever reason to send this to
23 Mr. Rosenfeld? Um, what was the urgency? Do you
24 know?

25 A I travel quite a bit. And Ken said, "Get me the file

1 today." And I -- I -- when you were -- hire an
2 attorney you don't second guess the attorney. You
3 follow the advice and you go with what he says.

4 Q Okay. And you -- so -- and -- and you did that
5 sometime in March; right? Early March?

6 A My e-mail to Ken was on the 9th. And I know that he
7 and I talked in those two days which is why I said
8 between the 9th and the 11th.

9 Q Okay.

10 A It may go out to the 19th. But my recollection is it
11 was either March 9, 10, or 11 when it went out in
12 U.S. postal.

13 Q All right. Why didn't you tell any of us that
14 you had a lawyer? And that you had sent this
15 stuff to the lawyer?

16 A I believe I told Mr. Vaughn (phonetic) that I
17 retained an attorney. Mr. Vaughn said that he and
18 you were going to call Mr. Kachinsky.

19 And once again Mr. Kachinsky and I had
20 been in contact both -- both e-mail and
21 telephone. And as late as yesterday -- or, no,
22 day before yesterday -- and Mr. Kachinsky once
23 again said he has had no requests from Mr. Dvorak
24 or from Mr. Vaughn. Zero requests. And he's
25 made it very clear the statute says no release

1 without Mr. Dassey's signature. Do not do it.

2 Q And that's not my question. My question is: Why
3 didn't you tell us that you had retained a lawyer
4 and that we should contact that lawyer?

5 A I hired Mr. Rosenfeld. Mr. Rosenfeld said that he
6 was going to take care of it.

7 Uh, to be frank with you, as I was
8 telling Mr. Glandt today when we were walking
9 over here to the courthouse, uh, Ken dropped the
10 ball. He didn't call you. That's what I told
11 Mr. Glandt. I says this -- probably wouldn't be
12 here today if -- if he had called Mr. Dvorak and
13 once again demanded the release and the letter.
14 I simply follow the law.

15 Q Um --

16 A You mentioned about our first conver --

17 THE COURT: Here. You're not asked a
18 question.

19 Q (By Attorney Dvorak) Um, you communicate by
20 e-mail? You're familiar with e-mail? You use
21 e-mail; correct?

22 A Correct.

23 Q Okay. Um, and where do you keep your e-mail
24 stored?

25 A In my computer.

1 Q Okay. Do you save your e-mail correspondence to
2 your computer?

3 A No.

4 Q Okay. But you save some of it, obviously,
5 because you gave some of it to the Court?

6 A Actually, it's -- it's not saved on my computer, um,
7 because once again the crashes. I've -- I've stopped
8 saving things because I found out that we can just
9 simply leave it on the server. And so what's on the
10 server stays on the server. You don't have to worry
11 about if your computer crashes. It's still there on
12 the server.

13 Q Okay. And so all of your e-mail correspondence
14 has been saved to your server; right?

15 A Yes.

16 Q And does that go back to your time when you
17 worked with Mr. Dassey?

18 A I didn't check but I could -- I could certainly find
19 out.

20 Q All right. Who's your -- who's your provider?

21 A It's MSN.

22 Q Okay. And would you do that for us, please?

23 A Sure.

24 Q Now --

25 A So we're clear, what exactly are -- are you asking me

1 to get you? Because that's not on the jump drive.

2 Q It's -- it's any correspondence that you had, um,
3 with anybody about this case.

4 A Okay.

5 Q Whether it's law enforcement, D.A.'s office, your
6 lawyer, um, a witness, the press, um, any
7 correspondence you had with anybody concerning
8 Mr. Dassey's case.

9 A And just so you know, Mr. Dassey's case was discussed
10 only with Mr. Kachinsky, um, and that would be it.
11 There should be no e-mails going to law enforcement,
12 certainly not the press, uh, certainly not to
13 witnesses. Um, the -- any discussions are limited to
14 Mr. Kachinsky and I.

15 Q Um, when did you -- now, when did you -- um --
16 after -- after March 12, did you have any other
17 correspondence with -- with Mr. Rosenfeld?

18 A I don't think Ken and I talked any more about this
19 once I sent the package off. There was no reason to.
20 Uh, I -- I don't recall any. And if there -- if I
21 did, I would certainly provide you that.

22 Q Okay. When did Mr. Rosenfeld tell you that he
23 had lost these items?

24 A The day I was served I think.

25 Q Um, would -- do you remember what day -- day of

1 the week that was?

2 A It's the same day I had you on the speaker phone.

3 Q Okay. That would -- the day of the hearing, I
4 think --

5 A I think that was June 18.

6 Q Right.

7 A Same day I had you on the speaker phone because I --
8 I would have called -- I should -- I believe I called
9 Ken, uh, later that day because I had to finish my
10 class.

11 Q Have you -- have you yourself looked at what's on
12 this jump drive that you're about to turn over?

13 A No.

14 Q You never did? So you never opened it up?

15 A They're -- they're in zip files.

16 Q Okay. Do you -- do you know is there any
17 software that we would need to access those
18 materials that you know about?

19 A No. It should be -- I -- I -- I know they're PDF
20 files. And as long as you have Adobe -- Adobe
21 Acrobat Reader you can open them up with -- with five
22 and better. I don't think there's any Word files.

23 Um, you're -- you're going to need the
24 Lafayette software to open it up. And I -- and I
25 can't give you a copy of Lafayette software.

1 That -- that's proprietary. You have to get that
2 from them.

3 Um, but I believe those files have been
4 converted to PDF so you can actually see the
5 Lafayette files in PDF I believe.

6 Q Okay. So -- and -- and when did you download,
7 um, this stuff from your computer to your jump
8 drive?

9 A I believe this was all March 9.

10 Q So --

11 A That's my recollection.

12 Q So in addition to making a CD-ROM that you sent
13 to Mr. -- or Attorney Rosenfeld you also
14 downloaded stuff onto the drump (phonetic)
15 drive -- jump drive.

16 A Oh, no, no, no, no. I save that to my -- my computer
17 and then I put this on the jump drive for -- for you.

18 Q You saved what on your computer?

19 A What -- what I was -- what I was sending to -- to Mr.
20 Rosenfeld, I was trying to scan things. That's what
21 I have on the jump drive. That's what I was able to
22 save because thank God I saved it.

23 Q Um, I -- I'm sorry. I'm confused. Um, you --
24 you created the jump drive around March 9?

25 A No. No. The jump -- the jump drive's been created

1 on -- on or about, I guess, June 18. I transferred
2 the data from my computer to the jump drive.

3 Q Okay. So the computer was working as of June 18?

4 A You're not understanding. When I told you that I had
5 the call with Ken -- when -- when I had the call with
6 Ken, I said, "Ken, I'm going to go ahead and start
7 scanning."

8 He says, "You're not listening to me,
9 Mike."

10 He said, "I want that file out today."

11 And at that time I started scanning and
12 that's what I have.

13 Q On March 9 you started scanning?

14 A I believe it was March 9.

15 Q All right. Somewhere between March 9 and
16 March 11 you started scanning?

17 A Correct. And by -- by the close of business day
18 before the post office closed I stopped scanning,
19 boxed everything up, and that's what Ken has, and I
20 have the results.

21 Q Okay. Now, when you say you stopped scanning,
22 were there -- was there still other things that
23 were left for you to scan?

24 A Yes. And for some reason I -- I don't think I
25 scanned the photographs because the photographs were

1 from the prosecution in -- in discovery and they were
2 things like the inside of the Avery trailer, uh, it
3 was that sign that says "dead end." Uh, it was
4 things like that.

5 And -- and I -- it wasn't anything that
6 I -- that I made for a photograph. And I'm
7 presuming, since it came from discovery, that
8 either Ken or -- Len Kachinsky has it or the
9 prosecution would still have it. That's my --
10 because it wasn't my stuff. It wasn't my
11 photographs.

12 Q All right. And, um, this was scanned onto the
13 same computer, however, as the -- the -- the
14 stuff that you had burned onto a CD-ROM?

15 A Correct.

16 Q It's the same computer?

17 A Correct.

18 Q Okay. And then you used that computer to create
19 the jump drive?

20 A Correct.

21 Q And you created the jump drive on June 18?

22 A Yes.

23 Q Okay. And you copied everything from that
24 computer onto your jump drive?

25 A Exactly.

1 Q Okay.

2 ATTORNEY GLANDT: Objection. I need to
3 clarify. Everything -- when -- Counsel, when you
4 say everything, clarifying, everything related to
5 the Dassey --

6 ATTORNEY DVORAK: Yeah. Of -- yeah, of
7 course I'm referring to Dassey. Yes.

8 Q (By Attorney Dvorak) Um, so I guess you don't
9 know for sure whether or not there's video or
10 audio recordings on this jump drive?

11 A No, I don't.

12 Q Okay.

13 ATTORNEY DVORAK: Judge -- Judge, I
14 don't -- I don't think I have any questions at
15 this time -- any other questions.

16 Uh, I -- I do have a request, uh, and
17 that is that Mr. O'Kelly designate somebody in
18 this state, perhaps is it his counsel, as an
19 agent for service of process so we don't have to
20 go through the problems, the history that we've
21 had in -- in trying to reach him and access him
22 and we have a mediary.

23 There's obviously some misunderstanding
24 between Mr. O'Kelly and -- and the lawyers for
25 Mr. Dassey, which I don't think we need to

1 resolve. I don't know that they're relevant to
2 any of this. We can certainly have that debate
3 if we needed to but I don't think we do.

4 But I think it -- it's -- I'm -- I'm
5 frankly pleased that he's retained counsel and we
6 have somebody to talk to.

7 And so I would -- I would ask that the
8 Court designate that -- that Mr. O'Kelly
9 designate somebody as -- as an agent for service
10 of process as -- as a conduit for conversations
11 with him.

12 THE COURT: Mr. O'Kelly, do you have any
13 problem with that?

14 MR. O'KELLY: Yes, I do. And can I
15 explain myself to Your -- Your Honor?

16 THE COURT: Go ahead.

17 MR. O'KELLY: When Mr. Dvorak and I were
18 pleasantly speaking at one point in time I
19 explained to I him I do travel and I would like
20 to do the same thing with him that I do with any
21 other attorney.

22 If you have anything at all to serve,
23 the simplest way to do is to e-mail in an
24 attachment with an acknowledgment of service. I
25 will then sign the acknowledgment of service,

1 photocopy it -- or rather scan it -- e-mail that
2 back to you, and then mail hard copy to you.

3 And I told them that early on that that
4 is the best way to do it. It's the most simplest
5 approach. That way it avoids any dispute and it
6 would certainly avoid this.

7 Q (By Attorney Dvorak) Mr. O'Kelly, do you recall
8 your conversation with me about that when I --
9 and -- and you made the comment that, "I will not
10 duck your service of process assuming it is
11 valid."

12 Did you qualify that, that it had to
13 make sure it was a valid service of process? Do
14 you remember qualifying that?

15 A I don't know if I qualified it or not. But whether
16 I -- whether I qualified it or not, if you -- I told
17 you if you simply send me the document with an
18 acknowledgment of service I will sign it and get it
19 right back to you.

20 Q Okay. And --

21 A You have twisted a lot of things I've said.

22 Q Did you -- do you recall, um, an offer -- an
23 e-mail that I sent to you where I informed you
24 that Judge -- Judge Fox gave us a return date.
25 We're happy to work with you on whatever is

1 convenient for you in terms of your return date?

2 Do you remember that e-mail?

3 A I'm not sure if I do. But I do want to point out
4 that you have lied to me and you have refused to talk
5 to Mr. Rosenfeld.

6 So when you say that you want to
7 communicate with an -- our attorney, you failed
8 to con -- communicate with Mr. Rosenfeld and
9 you've refused to.

10 Q I -- I have not had an opportunity. I've been
11 busy. But --

12 A I -- I think you've refused it, sir. His -- his
13 conversations. He sent me the e-mail.

14 THE COURT: Here. I'm not interested in
15 listening to the two of you argue. Mr. O'Kelly,
16 from my perspective --

17 MR. O'KELLY: Yes, Your Honor.

18 THE COURT: -- you certainly haven't done
19 anything to facilitate Counsel's contact with you.
20 This has been going on for a substantial period of
21 time.

22 Now, you tell me you have an objection
23 to designating Mr. Glandt as your agent of
24 service here in the state of Wisconsin.

25 I'm going to order that he be your agent

1 of service here in the state of Wisconsin and
2 that you maintain contact with him.

3 MR. O'KELLY: Yes, Your Honor, I will.

4 THE COURT: All right. Now, you're going
5 to turn this jump drive over today?

6 MR. O'KELLY: I'll do anything Your
7 Honor -- Your Honor requests.

8 THE COURT: All right. Well, I'm not going
9 to request. I'm going to order that you turn it
10 over to Counsel today before we leave the courtroom.

11 ATTORNEY DVORAK: I -- I'm -- I'm sorry.
12 I didn't hear that, Judge.

13 THE COURT: The jump drive.

14 ATTORNEY DVORAK: Yes, you're going to
15 order that --

16 THE COURT: I'm going to order that he
17 turns that over to you today before the -- before
18 we leave this courtroom.

19 MR. O'KELLY: Your Honor?

20 THE COURT: Yes.

21 MR. O'KELLY: If Mr. Dvorak or his
22 partner has a computer, all they have to do is
23 open it up and transfer the data.

24 If they don't have one with them, we can
25 certainly go to the Public Defender's Office

1 across the street and they can transfer data
2 right then.

3 THE COURT: I'm going to order that you
4 turn the jump drive over to them, Mr. O'Kelly.
5 Do --

6 MR. O'KELLY: Can I --

7 THE COURT: -- you understand?

8 MR. O'KELLY: Yes. Can I make a copy of
9 it first? Find out what I'm turning over?

10 THE COURT: Well, you haven't looked at it.

11 MR. O'KELLY: That's why I say can I
12 make -- can I make a copy? And I can go to Mr.
13 Glandt's office and make a copy?

14 THE COURT: Do you have processing
15 facilities to make a copy of -- of the jump drive?

16 ATTORNEY GLANDT: Assuming it's just a
17 straight jump drive and --

18 MR. O'KELLY: Yes.

19 ATTORNEY GLANDT: -- I can put it on
20 our --

21 MR. O'KELLY: Exactly.

22 ATTORNEY GLANDT: -- computer there.

23 THE COURT: Look, Mr. O'Kelly, stop talking
24 over the other people, all right? You do?

25 ATTORNEY GLANDT: Yes.

1 THE COURT: Okay. We'll have the lot of
2 you then go over to Mr. Glandt's office. Mr. Glandt
3 can make a copy of the jump drive. The jump drive
4 then will leave with the -- Attorneys Dvorak and
5 Tepfer. What else do we doing here today?

6 ATTORNEY DVORAK: Um, that's -- that's
7 it for -- for today, Judge.

8 We will make an effort to see what's on
9 it and -- and -- you know, I -- I don't -- I
10 can't think of anything else that we need to
11 accomplish today.

12 THE COURT: Well, as I read the record of
13 the -- the testimony, Mr. O'Kelly said that he will
14 produce any correspondence about this case with
15 anybody that exists on his server.

16 Additionally, he said that he would
17 produce the receipt that evidenced his mailing of
18 the box of documents to Mr. Rosenfeld. I'm
19 correct in stating that?

20 MR. O'KELLY: Yes, Your Honor.

21 THE COURT: How -- how long is it going to
22 take you to do these things, Mr. O'Kelly?

23 MR. O'KELLY: I will get my Visa card
24 out and I will look at the charge and then
25 contact the -- contact the postal service with

1 that date.

2 THE COURT: Can you do this within the next
3 14 days?

4 MR. O'KELLY: Yes, Your Honor, I can.

5 THE COURT: Court'll so order. Anything
6 else?

7 MR. O'KELLY: Your Honor, I have a
8 class. Could you make it 21 days?

9 THE COURT: Any objection to 21 days?

10 ATTORNEY DVORAK: We have -- we have a
11 deadline with the Court of Appeals that we've
12 extended three times. The Court of Appeals is
13 getting short with us. Um --

14 THE COURT: I think you're within -- I
15 think it was 60 days the last time.

16 ATTORNEY DVORAK: Right.

17 THE COURT: I --

18 ATTORNEY DVORAK: And that -- that built
19 in for us, Judge, time to take in what it is we
20 have absorbed, what we have and -- and put it
21 into the massive materials we have already but...

22 THE COURT: Let's do it within 14 days,
23 Mr. O'Kelly.

24 MR. O'KELLY: Yes, Your Honor.

25 THE COURT: And, Mr. Glandt, you understand

1 that you're going to be his agent for service of
2 process here in Wisconsin?

3 ATTORNEY GLANDT: I do understand, Your
4 Honor.

5 THE COURT: So you're going to have to keep
6 in -- in close touch with Mr. Glandt. You
7 understand that?

8 MR. O'KELLY: Yes, Your Honor.

9 THE COURT: And let him know where -- where
10 you are going to be? If you are conducting classes
11 in other than your -- or at other than your home
12 base?

13 MR. O'KELLY: Yes, Your Honor.

14 THE COURT: Anything else from you,
15 Mr. Dvorak?

16 ATTORNEY DVORAK: No, Judge.

17 THE COURT: Mr. Glandt?

18 ATTORNEY GLANDT: Um, Your Honor,
19 just -- I know we're running out of time here.

20 I just wanted to confirm with the Court
21 that the Court has heard enough in terms of the
22 issues about sending the box, what was in the
23 box, and those items.

24 I did have some follow-up questions on
25 that but perhaps it's for -- not -- not at the

1 moment?

2 THE COURT: I'm glad you didn't say another
3 day. Uh, I understand you may have some questions
4 and -- and, unfortunately, I have a number of other
5 things that have to be done before the end of this
6 afternoon. How many questions do you have?

7 ATTORNEY GLANDT: I don't have too many
8 questions. I just don't know how long the
9 responses are going to be.

10 THE COURT: Give you five minutes.

11 EXAMINATION

12 BY ATTORNEY GLANDT:

13 Q Mr. O'Kelly, about sending the documents and
14 other files, whatever you had, to -- to your
15 attorney in California, at the time you -- you
16 were doing that were you feeling pressured to
17 turn these items over?

18 A Exactly.

19 Q And had you ever been sent any type of
20 authorization signed by Mr. Dassey by any
21 attorney for Mr. Dassey?

22 A No.

23 Q So the only authorization you had was the one
24 that was built into one of the forms you had him
25 sign?

1 A That's correct.

2 Q And those were the survey documents you e-mailed
3 to Mr. Dvorak?

4 A Correct.

5 Q What were your concerns about turning over this
6 information without releases signed?

7 A That I'd be in violation of Wisconsin law.
8 Specifically, I believe it was 942.06. I'm guessing.

9 Q And were you aware of whether or not counsel for
10 Mr. Dassey had utilized authorizations that would
11 allow the release of this in other circumstances?

12 A Yes. He's currently attorney for Michael Fink, and
13 one of the experts he did employ has used that --
14 a -- a -- a release to obtain the information, which
15 is a smooth process.

16 And that's what Mr. Kachinsky had
17 advised me not to do until I had a release and
18 that, Mr. Kachinsky explained, complied with
19 Wisconsin law.

20 ATTORNEY DVORAK: Judge, I -- I don't
21 know what the relevance of this is.

22 THE COURT: I don't either. But I told
23 Mr. Glandt he could have five minutes worth of
24 questions. Even irrelevant ones.

25 ATTORNEY DVORAK: Okay.

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years.

Q Okay.

ATTORNEY DVORAK: Thank you.

THE COURT: All right. Mr. Dvorak -- uh, you may step down.

MR. O'KELLY: Thank you, Your Honor.

THE COURT: Mr. Dvorak, why don't you draft an order reflecting the Court's orders.

I'll remind the parties this is an ex parte. The order will be ex parte. The file will be kept under seal. Uh, anything else, Mr. Dvorak?

ATTORNEY DVORAK: Not at this time, Judge. Thank you.

THE COURT: Mr. Glandt?

ATTORNEY GLANDT: No, Your Honor.

THE COURT: All right.

ATTORNEY GLANDT: Thank you.

MR. O'KELLY: Thank you, Your Honor.

THE COURT: You're welcome.

(PROCEEDINGS CONCLUDED.)

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STATE OF WISCONSIN)
)SS.
COUNTY OF MANITOWOC)

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 8th day of August, 2009.

Jennifer K. Hau
Jennifer K. Hau, RPR
Official Court Reporter

(Per order of the Court on 1/12/10, page 79, lines 16-25, and page 80, lines 1-2, have been redacted.)

