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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
BRANCH 3

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STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING  
DAY 1

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

---

**DATE:** JANUARY 15, 2010

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

**APPEARANCES:**

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

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

STEVEN DRIZIN  
Attorney at Law  
On behalf of the defendant.

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

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

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

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

ALEX HESS  
Law Student  
On behalf of the defendant.

ADAR CROSLEY  
Law Student  
On behalf of the defendant.

BRENDAN R. DASSEY  
Defendant  
Appeared in person.

\* \* \* \* \*

**TRANSCRIPT OF PROCEEDINGS**

Reported by Jennifer K. Hau, RPR  
Official Court Reporter

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I N D E X

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<u>EXHIBITS</u>	MARKED	MOVED	ADMITTED
41		267	269
55		267	269
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2	320		267	269
3	321		267	269
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5	323		267	269
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1 THE COURT: This is State of Wisconsin v.  
2 Brendan Dassey. It's Case No. 2006 CF 88. It's  
3 also Court of Appeals No. 2007 XX 1073.  
4 Appearances. Starting with the prosecution.

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

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

12 THE COURT: Go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 THE COURT: Any objection to that?

16 ATTORNEY DRIZIN: Not at all, Judge.

17 THE COURT: All right.

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

25 THE COURT: Fine.

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

6                   THE COURT: All right.

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

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

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

14                   THE CLERK: Please raise your right hand.

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

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

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

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

25                   THE COURT: Matters not to me.

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

3                   DIRECT EXAMINATION

4 BY ATTORNEY DRIZIN:

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

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

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

11 A    Since 1992.

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

13 A    Since 1985.

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

16 A    No.

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

20 A    Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11   A            Very much so.

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

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

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



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

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

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

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

18   A       I think that's fair.

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

24   A       That's -- that's true.

25   Q       Okay. You knew that something horrible had

1           happened to her but you didn't know exactly what  
2           had happened to her after the time that she went  
3           missing and the time that her car was discovered?

4    A       Right. Obviously the physical evidence suggested  
5           various, um, theories that included some --

6    Q       Nothing hard? No -- nothing hard?

7    A       No.

8    Q       Okay. And so would it be fair to say that you  
9           did not get a narrative of Teresa Halbach's final  
10          hours, if you will, until Brendan Dassey gave his  
11          statement on March 1?

12   A       That was the first individual who was involved in the  
13          criminal enterprise to give me a narrative of what  
14          had happened.

15                 Narrative, you know, can be provided by  
16          crime lab personnel, and here's what the physical  
17          evidence suggests, and this came first and --

18   Q       But prior to the --

19   A       -- and --

20   Q       -- time -- prior --

21                 THE COURT: Hang on here. One at a  
22          time. Finish your answer.

23                 THE WITNESS: All right. And so, um, I  
24          had received, um, a narrative in -- in that  
25          respect from the forensic scientists that were

1           involved.

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

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

13   A        I think that's fair.

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

17   A        Which ones, sir?

18   Q        The ones on March 1?

19   A        No.

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

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

24   Q        Yeah, please.

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

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

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

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

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

20 Q So --

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

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

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

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

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

5   A       Oh, no, prior to.

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

11   A       Um --

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

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

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

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

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

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

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

16 A Something --

17 Q -- Steven Avery --

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

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

22 A Yes.

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

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

1 Q Yes.

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

4 Q Okay.

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

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

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

13 A Yes.

14 Q Okay. What was your relationship with him?

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

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

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



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

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

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

7 Q Okay.

8 A Appleton's in three different counties.

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

11 A I believe I have.

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

13 A Not sure.

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

17 A Most certainly.

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

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

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

25 A Yes.

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

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

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

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

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

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

1           Dassey?

2    A    Yes.

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

8    A    Yes.

9    Q    Okay.

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

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

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

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

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

8    A    I think that's fair.

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

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

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

21   Q    Okay.

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

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

9                   THE COURT: All right.

10                  ATTORNEY DRIZIN: Thank you.

11                  THE COURT: Motion is granted.

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

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

19 Q               It does.

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

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

24                   ATTORNEY FALLON: Which one, Counsel?

25                   THE WITNESS: Three-ten?

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ATTORNEY DRIZIN: Three-ten.

THE WITNESS: All right. I found it.

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

A No.

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

A No.

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

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

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

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

1                   At the bottom it, says "Len Kachinsky,  
2                   Dassey's attorney." And there's a quote  
3                   attributed to him. Do you see that?

4    A            I don't. Um, there's a -- a bunch of different page  
5                   numbers and so if you see at the very bottom of the  
6                   page --

7                   ATTORNEY DRIZIN: May I approach the  
8                   witness?

9                   THE COURT: Sure. It's the third page one.

10                  THE WITNESS: The third page one. Okay.  
11                  This is more like that Bill than I thought,  
12                  actually.

13    Q            (By Attorney Drizin) Have you had an opportunity  
14                   to read the comment attributed to Mr. Kachinsky  
15                   there?

16    A            That -- the last comment, "We have --

17    Q            Beginning with --

18    A            -- a --

19    Q            -- "We have a 16-year-old --

20                  COURT REPORTER: One at a time, please.

21    Q            (By Attorney Drizin) The one beginning with, "We  
22                   have a 16-year-old."

23    A            I see that, yes.

24    Q            Do you recall at the time of March 7, or shortly  
25                   thereafter, hearing Mr. Kachinsky speak publicly

1 and saying:

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

6 Do you recall that?

7 A No.

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

10 A No.

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

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

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

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

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



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

3 Q I --

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

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

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

15 Q No, that's not my question.

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

17 THE WITNESS: I'm sorry.

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

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

1                   ATTORNEY FALLON: Still calls for  
2 speculation.

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

5                   ATTORNEY FALLON: That's an objection.

6                   THE COURT: -- it's sustained.

7                   ATTORNEY DRIZIN: Okay.

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

12 A           No.

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

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

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

24 A           What I know for a fact.

25 Q           Okay.

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

3 Q That was Mr. Sczygelski.

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

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

12 That was in his client's best interest.

13 Q And is --

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

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

19 A And we might.

20 Q Okay.

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

1 an uphill battle.

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

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

7 Q Same day he's been appointed counsel.

8 A Absolutely. Get on it.

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

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

18 Q Okay. Can you imagine --

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

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

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

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

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

6 THE WITNESS: -- telling the world --

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

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

14 ATTORNEY DRIZIN: I'll with --

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

16 ATTORNEY DRIZIN: I'll with --

17 ATTORNEY FALLON: -- object.

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

20 THE COURT: All right.

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

1 A That's fair.

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

4 A Absolutely.

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

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

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

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

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

3 A Quite sure had not.

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

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

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

12 A I do not.

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

16 A I don't think so.

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

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

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

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

9                   ATTORNEY DRIZIN: May I respond, please?

10                  THE COURT: Go ahead.

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

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

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



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

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

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

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

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

20 ATTORNEY DRIZIN: Okay.

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

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

3 Q Okay.

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

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

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

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

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

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

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

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

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

18      A       There are.

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

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

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

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

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

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

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

10   Q       Right.

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

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

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

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

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

2 A Yes.

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

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

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

17 Q Right.

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

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

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

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

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

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

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

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

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

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

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

24                   THE COURT: Just answer the question.

25                   THE WITNESS: I will. Thank you.



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

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

3 A All right.

4 Q Okay. Have you seen this?

5 A I have.

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

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

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

12 A It was.

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

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

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

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

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

12 A Yes.

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

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

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

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

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

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

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

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

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

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

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

3 Q (By Attorney Drizin) Okay.

4 A Unless you can point to me.

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

7 A He was.

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

11 ATTORNEY FALLON: Again --

12 THE WITNESS: Assume --

13 (Multiple persons talking at once.)

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

18 Two, we're still asking for speculation.

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

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

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

1 everybody.

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

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

12 THE COURT: That's argument.

13 ATTORNEY FALLON: Right.

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

16 ATTORNEY DRIZIN: Okay.

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

22 A That's right.

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

1 case prior to March 24?

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

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

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

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

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

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

24 A That's true.

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

1 hearing, okay?

2 A All right.

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

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

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

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

20 Q Right.

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

23 Q Right.

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



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

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

11 A That's true.

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

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

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

24 A I would.

25 Q Okay.

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

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

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

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

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

13 A That's true.

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

18 A Not necessarily.

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

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

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

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

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

13   A            I think that's fair.

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

16   A            No. He called the school psychologist.

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

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

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

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

5 Q It hasn't --

6 A I haven't seen that.

7 Q It hasn't happened in your --

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

10 THE WITNESS: No.

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

14 A No.

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

21 A Yes.

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

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

1 Q (By Attorney Drizin) You also knew, after  
2 viewing the March 1 statements, that there was a  
3 third DVD of the March 1 statements; correct?  
4 A I -- (unintelligible) the last couple of hours of --  
5 of the statement? Is that --  
6 Q Yeah. I mean, there were -- there were three  
7 DVD'S --  
8 A Yes.  
9 Q -- that were presented --  
10 A Yes.  
11 Q -- right? The first two had to do with basically  
12 interrogation, or whatever you want to call it,  
13 of Mr. Dassey that led to statements that he  
14 made, and the third one was -- was primarily him  
15 eating his sandwich, drinking water, um, and the  
16 like; correct?  
17 A Yes.  
18 Q Okay. Third DVD also had on that DVD a snippet  
19 that included a conversation between Brendan  
20 Dassey and his mother, Barb; correct?  
21 A Yes.  
22 Q Okay. And that statement, that, um -- that  
23 conversation, there were parts of that  
24 conversation during which Mr. Wiegert and  
25 Mr. Fassbender were not present?

1 A That's correct.

2 Q Okay. So, um, during the conversation between  
3 Mr. -- between Barb and, um, Brendan, Brendan  
4 made some statements to his mom that could be  
5 considered -- at least we consider -- a  
6 recantation; correct?

7 ATTORNEY FALLON: Objection to the  
8 phrasing of the question. That could be  
9 considered, or we can --

10 ATTORNEY DRIZIN: I --

11 ATTORNEY FALLON: -- we can consider --

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

13 ATTORNEY FALLON: (Unintelligible.)

14 ATTORNEY DRIZIN: I'll rephrase that  
15 question.

16 THE COURT: All right.

17 Q (By Attorney Drizin) He made some statements to  
18 his mom about why he'd confessed --

19 A Yes.

20 Q -- to (Unintelligible.)

21 A Yes.

22 Q -- Wiegert and Fassbender? Yes?

23 A Yes.

24 Q And he also made -- she -- his mom asked him,  
25 point blank, did you, um -- did you do the things

1           that you confessed to, or something along the  
2           lines, and he said, "Not really." Correct?

3       A     I don't recall what his answer was to that.

4       Q     Okay. You don't recall what his answer was to  
5           that.

6       A     I -- I don't.

7       Q     Okay. Um, do you recall that he explained to his  
8           mother, when she asked him why he had made those  
9           statements, he said, "They got to my head."?

10      A     Yes.

11      Q     Okay.

12      A     Among other explanations.

13      Q     Okay. And that statement, "They got to my head,"  
14           was never introduced by Mr. Kachinsky during the  
15           motion to suppress Brendan Dassey's statements,  
16           was it?

17      A     I don't know if that's true. I -- my sense of this  
18           is that the videotape was reviewed by Judge Fox in  
19           its entirety, including Judge Fox prob -- probably  
20           watching Brendan eat a sandwich for two hours,  
21           because it was provided pre-hearing so that we  
22           wouldn't take however many hours to view it then.

23                        So from a presentation, did he present  
24           that evidence and was that included in the  
25           analysis of Judge Fox, I suspect it was.



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

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

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

17                   ATTORNEY DRIZIN: Okay.

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

22 A                I don't recall.

23 Q                Okay.

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

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

4 A He didn't question her about that.

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

8 A Yes.

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

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

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

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

25 A All right. I've done that.

1 Q Okay. Um, do you remember receiving this e-mail,  
2 Mr. Kratz?  
3 A No.  
4 Q Okay.  
5 A I -- I know I did, but I -- I don't have an  
6 independent --  
7 Q Okay.  
8 A -- memory of it. I should say, um, I've reviewed it  
9 several times before today. I realize the context in  
10 which I had been copied on this -- this e-mail. Um,  
11 but as I sit here right now I don't have a  
12 independent recollection of it.  
13 Q Do you remember the context in which this  
14 discussion was occurring?  
15 A Very much.  
16 Q Okay. And this is an e-mail dated May 5 of -- of  
17 2006; correct?  
18 A Yes.  
19 Q And this would have been the day after the motion  
20 to suppress had been argued; correct?  
21 A Yes.  
22 Q But prior to the time that it had been ruled  
23 upon?  
24 A That's correct.  
25 Q Okay. Now, um, in this e-mail, Mr. Kachinsky

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

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

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

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

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

18 A I think that's fair.

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

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

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

1 his own client?

2 ATTORNEY FALLON: Objection.

3 Speculation.

4 THE COURT: Overruled.

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

7 Q (By Attorney Drizin) Okay.

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

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

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

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

20 A I think that's true.

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

23 A Yes.

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

1 A By himself and his uncle, yes.

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

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

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

9 A Um-hmm.

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

11 A No.

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

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

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

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

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

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

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

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

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

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

1           that search warrant; correct?

2    A       That's right.

3    Q       He did not want to be known publicly as the  
4           source of information that led you to the  
5           discovery of the murder weapon?

6    A       I don't know what he wanted.

7    Q       Okay. What, if anything, did you instruct your  
8           investigators about this, um -- about trying to  
9           obtain this evidence?

10   A       Handle it. You know, seriously, I'm -- I'm, um --  
11          this, as well as any other investigative leads that  
12          will lead to the potential discovery of physical  
13          evidence, um, it's -- it's pretty much in -- in -- in  
14          my line of work, especially in such a import-type  
15          profile case, that I'm just going to rely upon their  
16          expertise and say go ahead and do it. Handle it.

17   Q       Okay. So go and try to find this evidence,  
18          essentially, is what you would have said to him?

19   A       Handle it. Now, that -- that may very well mean that  
20          the information provided by Mr. O'Kelly or any  
21          citizen isn't going to be reliable enough to raise to  
22          the level of information to be provided in a  
23          affidavit to secure a search warrant. So not  
24          necessarily go get this stuff.

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



1 know how this concludes so I have the benefit  
2 of -- of hindsight, or I guess it would be  
3 foresight from that point forward, but, anyway,  
4 um, it did not conclude with a search warrant.

5 Q Right. Do you know whether or not Mr. Wiegert or  
6 Mr. Fassbender did anything to try to secure the  
7 Suzuki and Barb's van?

8 A I think they did through consent.

9 Q Through consent. And when they did that, were  
10 they able to find the murder weapon in those  
11 cars?

12 A I believe they were not.

13 Q Okay. Um, did the fact that Mr. O'Kelly was  
14 alerting your investigators to the murder weapon  
15 in this case raise any concerns to you about  
16 Mr. Kachinsky's -- any red flags, if you will --  
17 about Mr. Kachinsky's role in this?

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

25 The facts are what this hearing is

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

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

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

11 ATTORNEY DRIZIN: Okay.

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

16 A No.

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

19 A Yes.

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

23 A Yes.

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

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

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

6    Q       I'm sorry (unintelligible) --

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

8    Q       -- you were copied on things --

9                        THE COURT: Here. Again --

10                      ATTORNEY DRIZIN: I'm sorry.

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

13                      ATTORNEY DRIZIN: Okay. That's fair.

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

17    A       Yes.

18                      (Wherein cell phone rings.)

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

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

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

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

5 Q Okay.

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

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

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

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

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

25 A No.

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

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

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

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

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

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

25 A No.

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

4 A Not to my knowledge, no.

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

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

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

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

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

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

1 A I don't recall, but probably.

2 Q Okay. Did you receive a--

3 A Somebody -- from somebody.

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

5 anything about the information that Brendan

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

7 call?

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

9 Q Okay.

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

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

12 wasn't part of that conversation.

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

14 evening?

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

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

17 after the ruling of Judge Fox and before the

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

19 Now, there is a possibility that a

20 message was relayed between my investigators

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

22 know, was very much involved in the authorization

23 for the -- the statement.

24 And I know that I insisted upon

25 something in writing from Mr. Kachinsky, perhaps

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

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

13 A Absolutely.

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

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

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

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



1 him or through my investigator. It was certainly,  
2 um -- I wanted the correspondence from  
3 Mr. Kachinsky --

4 Q Right.

5 A -- and nobody else. And I wanted one of my  
6 investigators to receive that. So whether I had that  
7 discussion with Mr. Kachinsky, or Mr. Wiegert or  
8 Fassbender did, um, that conversation occurred.

9 Q Okay. You got that e-mail from Mr. Kachinsky;  
10 correct?

11 A I did. Either it was a copy of it or directed to me.

12 Q Okay. I'd like to focus on that e-mail now, if  
13 it's okay?

14 A Be fine. What number, please, sir?

15 Q Um, I'm going to find it for you right now. I  
16 think it's tab number 356. Binder five.

17 A All right.

18 Q Would you take your time and -- and take a look  
19 at that, please?

20 A Yes. And -- and I am very familiar with 356.

21 Q Okay. Just please tell me when you're finished  
22 reviewing it.

23 A I'm done.

24 Q Okay. This is an e-mail from Mr. Kachinsky to  
25 Mr. Fassbender; correct?

1 A Yes.

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

3 A Yes.

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

8 A Yes.

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

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

13 Q Okay. Were you out --

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

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

16 A I -- I don't.

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

20 A Probably not.

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

25 A That's right.

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

3 A Yes.

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

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

10 Q Okay. Without --

11 A Whether he's there or not.

12 Q Okay.

13 A That's unusual.

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

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

19 Q Okay.

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

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

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

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

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

13 A It was.

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

18 A That's right.

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

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

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

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

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

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

12 A Yes.

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

15 A Yes.

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

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

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

1 A I -- I know for a fact he did not.

2 Q Okay.

3 A They didn't want him to. That goes back to their  
4 personality.

5 Q Okay. Um, I'd like to show you a document, if  
6 you will, Mr. Kratz, and that document would  
7 be -- um, I'll return to this line of  
8 questioning.

9 A All right.

10 Q Um --

11 THE COURT: Here. Let me ask you, how  
12 much longer do you envision yourself -- I realize  
13 this is --

14 ATTORNEY DRIZIN: Yeah.

15 THE COURT: -- a bad question ever to  
16 ask a lawyer.

17 ATTORNEY DRIZIN: I'd like to take a  
18 break now, if that's okay, for five minutes?

19 THE COURT: Let's take 15.

20 ATTORNEY DRIZIN: Okay.

21 (Recess had at 10:25 a.m.)

22 (Reconvened at 10:45 a.m.)

23 THE COURT: Proceed.

24 Q (By Attorney Drizin) Okay, Mr. Kratz, we're on  
25 the home stretch here. Um, prior to the break,

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

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

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

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

12 A That I wanted not only a --

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

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

20 THE COURT: Respond.

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



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

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

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

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

14 Q (By Attorney Drizin) The first question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Certainly not to prosecute Mr. Dassey.

2 Um, but the utility, as I mentioned  
3 before, if Mr. Dassey was to participate in  
4 Mr. Avery's case, um, there was, perhaps, more of  
5 Mr. Avery's involvement and more from a planning  
6 standpoint, that is, what may have happened  
7 before October 31, that I was interested if  
8 Mr. Dassey had that information.

9 Q Now, in the March 1 statement, um, Mr. Dassey's  
10 description of his involvement in stabbing  
11 Ms. Halbach took place in the bedroom; isn't that  
12 correct?

13 A That's what he said, yes.

14 Q Right. Did you instruct your investigators prior  
15 to the March 13 -- May 13 interview to see  
16 whether or not Brendan would tell you that that  
17 activity took place in the garage?

18 A No.

19 Q Okay. Did Mr. Wiegert and Mr. Fassbender speak  
20 to you at anytime during the interrogation?

21 A I -- I don't believe so. No. I -- I've -- I've been  
22 trying to reconstruct that and I know they spoke to  
23 me afterwards and we spoke before. Um, it'd be  
24 highly unusual during the interview process for them  
25 to seek any kind of input from me.

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

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

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

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

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

23 Q Right.

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

1 or acquiescence from Barb.

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

6 A Yeah.

7 Q -- correct?

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

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

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

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

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

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

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

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

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

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

24 A Probably.

25 Q Okay.

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

4 Q The point is, is that --

5 A Yes.

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

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

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

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

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

21 A Yes.

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

23 A That's right.

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



1 of May 13?

2 A Yes.

3 Q What was that word?

4 A Fiasco.

5 Q Okay. And why was that a fiasco?

6 A Well, that was -- that was, uh, paraphrasing  
7 Mr. Wiegert and Fassbender's characterization of  
8 their interview with Brendan. They walked into that  
9 interview very much expecting a very clear and  
10 concise and even cooperative subject. And they  
11 didn't get that.

12 Q Okay. In fact, when Brendan began that interview  
13 he had reverted back to the very first story that  
14 he had told the investigators about only being  
15 present during the fire with Steven; correct?

16 A Brendan made some inconsistent statements during that  
17 May 13 interview. That's correct.

18 Q Okay. What is your understanding -- when you use  
19 the word "proffer," Mr. Kratz, what do you mean?

20 A I'm sorry?

21 Q When you use the word "proffer," what do you mean  
22 by that term?

23 THE COURT: In what context?

24 Q (By Attorney Drizin) Did you consider the events  
25 of this weekend to be part of a proffer?

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

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

7 A I'm sorry. Which dates?

8 Q May 13 statements. Okay?

9 A All right.

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

12 A That's correct.

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

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

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

21 A They were used -- yes.

22 Q Okay.

23 A Not in my case in chief.

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

1 A Yes.

2 Q Prior to this May 12 and 13 -- prior to this  
3 May 13 fiasco, had you had any discussions with  
4 Mr. Kachinsky in which the word "proffer" was  
5 used?

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

7 Q Okay.

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

9 Q What context was he using that word?

10 A I don't know that he did. If you can point to it --  
11 to something, I'd be happy to look at it and tell you  
12 what I think he means by that.

13 Um, I -- as I mentioned, we were of the  
14 understanding that this statement was to be  
15 presented for Mr. Dassey to place himself in a  
16 positive light, or to hopefully garner from the  
17 State a reduced or positive dispositional  
18 recommendation. Mostly talking about, um, parole  
19 or extended supervision eligibility dates, not  
20 the charge itself.

21 The charge that I was going to insist  
22 upon was contemplated was always first degree  
23 intentional homicide.

24 Q So--

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

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

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

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

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

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

13 Q Right.

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

17 Q Okay.

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

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

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

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

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

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

9       A     It did.

10      Q     Okay.

11      A     I think that's fair.

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

16      A     No.

17      Q     Why not?

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

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

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

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

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

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

14                  ATTORNEY DRIZIN:  Okay.

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

21    A            That's right.

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

24    A            That's right.

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

1           that you had probable cause to charge Brendan  
2           with a mutilation of a body under Wisconsin law?

3       A     No.

4       Q     Okay. Why not?

5       A     Because mutilation requires an intent, a scienter  
6           element, that he has an intent to do that, to conceal  
7           a crime.

8                   His statement, although certainly  
9           knowing that his Uncle Steve was involved in that  
10          process, uh, probably fell short of his admitting  
11          that scienter or that intent element.

12      Q     Okay. During the May -- the February 27  
13          interview of Brendan at the Two Rivers Police  
14          Station, okay, a **Miranda** form was used with  
15          Brendan, um, that was -- a -- a certain **Miranda**  
16          form was used to administer his rights; correct?

17      A     Yeah. I don't think it was our form.

18      Q     No, it wasn't.

19      A     But it was somebody's --

20      Q     It was somebody's form. Prior to the interview  
21          on May 1 did you instruct Officers Wiegert and  
22          Fassbender to administer a different **Miranda** form  
23          to Brendan?

24      A     **Miranda** warnings. I don't know if I suggested what  
25          form to use.

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

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

6 Q Okay.

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

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

16 ATTORNEY FALLON: No objection.

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

19 ATTORNEY DRIZIN: No further questions.

20 THE COURT: Clarification questions?

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

23 **CROSS-EXAMINATION**

24 BY ATTORNEY FALLON:

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



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

6 A No.

7 ATTORNEY DRIZIN: Objection, Your Honor.

8 He objected to my asking that --

9 THE COURT: Yeah.

10 ATTORNEY DRIZIN: -- very statement.

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

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

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

17 ATTORNEY FALLON: All right.

18 THE COURT: -- objection.

19 ATTORNEY FALLON: Very well.

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

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

1 Brendan Dassey to do that?

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

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

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

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

18 Q All right.

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

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

1 of Mr. Dassey?

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

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

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

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

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

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

1           **Miranda** warnings.

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

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

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

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

12                         ATTORNEY FALLON: That's all I have.

13                         THE COURT: Redirect, if any?

14   REDIRECT EXAMINATION

15         BY ATTORNEY DRIZIN:

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

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

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

24         A         I think that's true.

25         Q         And so when you advised Mr. Fassbender and

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

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

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

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

25                                    And Brendan had given a statement as to

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

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

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

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

17 A That's my opinion, yes.

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

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

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

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

1 the interview began.

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

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

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

10 A Yes.

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

13 A Yes.

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

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

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

20 Q (By Attorney Drizin) Did --

21 THE COURT: One more.

22 ATTORNEY DRIZIN: One more.

23 THE WITNESS: (Unintelligible.)

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

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

4 A No.

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

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

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

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

20 ATTORNEY FALLON: Nothing.

21 THE COURT: You may return to your seat.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: Next witness.

24 **LEONARD KACHINSKY,**

25 called as a witness herein, having been first duly



1 sworn, was examined and testified as follows:

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

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

6 DIRECT EXAMINATION

7 BY ATTORNEY DVORAK:

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

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

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

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

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

21 A March 7.

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

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

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

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

3           was?

4   A       I think it was sometime in the morning.

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

6           this time?

7   A       Sheboygan County Juvenile Detention.

8   Q       And your office is in Appleton?

9   A       Correct.

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

11           you got that call?

12  A       I believe so.

13  Q       All right. How far is that away?

14  A       From Sheboygan?

15  Q       Yeah.

16  A       Approximately 80 to 90 miles.

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

18           day? On March 7?

19  A       I don't believe I did.

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

21           press; is that right?

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

23           calls starting rolling in at the office.

24  Q       Sure. Was it substantial public interest in this

25           case?

1 A Correct.

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

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

4 A Three seventeen?

5 Q Yes.

6 A Yes.

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

8 its entirety.

9 A Okay. I reviewed it.

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

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

12 that right?

13 A Right.

14 Q Okay. You recall that interview?

15 A I do.

16 Q All right.

17 A Vaguely.

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

19 recollection about --

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

21 at least one significant part that's absolutely

22 incorrect and not something I said.

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

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

25 professional challenge; is that right?

1 A That's correct.

2 Q Um, and they also quote you as having said, and  
3 it -- it is in quotes, it says:  
4 "We have a 16-year-old who, while  
5 morally and legally responsible, was heavily  
6 influenced by someone that can only be described  
7 as something close to evil incarnate."  
8 Right?

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

10 Q Okay. Um, and -- okay. Did you -- what did you  
11 say? What did you recall saying?

12 A Of the things that are in Exhibit 317, I recall  
13 saying -- I don't recall -- the thing about  
14 criticizing Avery in that fashion is not something  
15 that I said.

16 I also would -- I would guess it might  
17 have been said by Mr. Sczygelski, but I don't  
18 know. Um --

19 Q Well, did you -- did you watch the broadcast that  
20 night?

21 A No, I don't think so.

22 Q Did anybody talk to you about the broadcast?  
23 Hey, I saw you on TV?

24 A All the time in the community, and the Y, other  
25 places.

1 Q Okay.

2 A Church.

3 Q And -- and -- and why don't you think that this  
4 isn't something that you said? What do you  
5 recall saying?

6 A I don't think I even touched the topic. Uh, I  
7 certainly did not say that about Mr. Avery. It's  
8 just not something I would normally have said.

9 Q Well, do you mean Mr. Avery or do you mean  
10 Mr. Dassey?

11 A I don't -- the whole thing is just not something that  
12 I -- I made -- I was very, very careful not to be  
13 committal as to whether or not Mr. Dassey was  
14 involved in this or not.

15 Anything I would have said would have  
16 been statements conditional, you know, this is on  
17 the Complaint. If this is true, that might be.

18 But I don't use -- typically don't use  
19 words like levil (phonetic) incar -- evil  
20 incarnate. That's just not something I'd say.

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

22 A It's just not my personality. I -- I am much calmer,  
23 I think, and -- and more restrained. And I just  
24 don't say that stuff.

25 Q Okay.

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

2 Q What about -- I -- is there thing about this  
3 statement that bothers you?

4 A I think it would be bothersome to say -- to say that  
5 we have a 16-year-old who's morally and legally  
6 responsible. Um, that would, in effect, admit guilt.  
7 And that is something you should definitely not say.

8 Q And it's fair to say that you -- you really  
9 shouldn't say anything that even suggests guilt  
10 to the press; correct?

11 A I think you can go through the process of explaining  
12 the process and -- and tell people if the Complaint's  
13 accurate, this and this applies, you know, go through  
14 some hypotheticals and conditional-type statements.

15 But not something of that nature where  
16 you're -- at least if that's an out-of-court  
17 statement, uh, that would just simply -- I -- as  
18 I recall, that might be something that was said  
19 at the initial bail hearing. I don't know.

20 But...

21 Q All right. It also, later on, you say in here  
22 that -- if I can find it here. Do you recall --  
23 and on -- I want to draw your attention, because  
24 this is what I'm going to use, to Exhibit 55 --

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

1 Q In volume one, yes.

2 A Should I keep --

3 Q I'm sorry. Two.

4 A -- this other one open?

5 ATTORNEY FALLON: Volume two?

6 ATTORNEY DVORAK: Yeah. Volume two.

7 THE WITNESS: Look at 57, you said?

8 Q (By Attorney Dvorak) Fifty-five.

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

10 Q Okay. And would you just look through it and --  
11 and -- and -- and say that that's a -- an  
12 accurate -- an accurate copy of your invoice to  
13 the public defender's office; correct?

14 A Um, yes. That could be. I think we were still  
15 submitting them this way instead of electronically at  
16 that time.

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

19 A Sure.

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

21 A Okay.

22 Q -- because I'm going to -- I'm going to be using  
23 that.

24 Now, on -- at -- your -- your voucher  
25 says that on -- on March 8, the next day, um, you

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

4 A Yes.

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

8 A Yes.

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

12 A Yes.

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

15 A That might be.

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

19 A Yes.

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

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



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

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

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

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

14 A Correct.

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

16 A Yes.

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

18 A Correct.

19 Q And who is Aaron Keller?

20 A I believe he works for TV-26.

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

24 A Yes.

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

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

3       A     Yes.

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

6                     ATTORNEY FALLON:  Objection.  Relevance.

7                     THE COURT:  Overruled.  He can answer.

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

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

17       A     Oh, sure.

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

22       A     Correct.

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

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

1           pretty much stating the obvious.

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

3           right?

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

5   Q       This is the 8th.

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

7           I think --

8   Q       Yeah.  Okay.

9   A       -- the first day --

10  Q       Well, just --

11  A       Yeah.

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

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

14           Is that --

15  A       That sounds correct.

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

17  A       Uh, Criminal Complaint.  The publicity that had

18           attended the case ever since the death of Teresa

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

20           have seen.

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

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

23           reports; right?

24  A       Correct.

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

1 to have gotten it seriously wrong on March 7?

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

3 Keller interview, I think he attributed it to the

4 wrong person.

5 Q Did somebody else say that?

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

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

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

9 argument on bail or something.

10 I think that Mr. Sczygelski had used the

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

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

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

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

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

16 didn't do it.

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

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

19 you read in the Complaint and what you read in

20 the press? Heard --

21 A Correct.

22 Q -- in the press?

23 A I -- I would expect that --

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

25 conviction would carry an automatic life

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

6 A Right.

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

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

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

14 A Correct.

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

18 A Correct. Aaron Keller, yes.

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

21 A Yes, it was.

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

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

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

5 A Yes.

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

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

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

13 A Maybe about ten minutes.

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

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

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

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

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

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

4    A       I have 40 in front of me.

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

9    A       Okay.  I have it here.

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

12   A       Yes, there is.

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

16   A       Correct.

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

18   A       That's correct.

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

24   A       Yes.

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

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

5 A Correct.

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

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

10 ATTORNEY DVORAK: Both of them are.

11 ATTORNEY FALLON: All right.

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

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

22 A Yes.

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



1 A It would.

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

5 A I see it.

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

9 A Correct.

10 Q And, um -- and then there's a sentence that Ken  
11 will talk with us about some things. Do you  
12 recall what that was? Do you recall what he was  
13 referring to?

14 A That's what the secretary wrote down. I'm not sure  
15 what Mr. Wiegert would have said. My interpretation  
16 of that, upon reading it in my computer, was that  
17 they were going to get some more prints from  
18 Mr. Dassey and wanted me to know about it in case  
19 Dassey called up and complained that police were  
20 talking to him again without me being present.

21 Q Okay. But -- but the next line -- had you had  
22 any other discussions with Wiegert about anything  
23 other than palm prints up to this point?

24 A No. I'm not even sure I talked to Wiegert that time.

25 Q All right. Well, I mean --

1 A 'Til I got the message.

2 Q -- up to this point, however?

3 A No.

4 Q Sorry.

5 A No.

6 Q All right. And what about with Mr. Kratz? You

7 had any conversation with Mr. Kratz? I assume

8 the Ken, here, that we're referring to, is -- is

9 Ken Kratz? The D.A.?

10 A I don't -- I don't --

11 Q All right.

12 A -- think so.

13 Q Okay. This is -- this is March 9; right?

14 A Yes.

15 Q Yeah. Okay. Um, now, on your bill, we'll move

16 on to March 10, um, this is the -- you go to --

17 to visit Brendan?

18 A Correct.

19 Q Correct. Okay. Had you had conversations with

20 the press prior to going out to visit Brendan?

21 A I think they might have called our office sometime

22 this morning and ask if that was going to happen,

23 yes.

24 Q Okay. How would they have found out that you

25 were contemplating going to see him on the 10th?

1 A I think they were calling -- they called, wondering  
2 if I'd spoken to Brendan yet. And I says, no, I  
3 haven't, I'm going to see him this morning in  
4 Sheboygan.

5 Q Okay. And -- and when you got out from that  
6 meeting, um, the press was there waiting for you;  
7 right?

8 A They were there waiting when I got there.

9 Q Okay.

10 A Yes, they were.

11 Q All right. Now, you -- I want you to refer to  
12 Exhibit 321. And if you would -- now, this is  
13 a -- a -- an interview with you on -- a -- a  
14 script of an interview with you from NBC 26 on  
15 March 10?

16 A Yes, it is.

17 Q Okay. Um, and I want to refer to -- you -- you  
18 to what would be the third page of that exhibit?

19 A Okay.

20 Q It says you met with him for about an hour.  
21 That's about accurate; right?

22 A Yes.

23 Q Okay. And it says that you describe Dassey as  
24 sad, remorseful, and overwhelmed by the charges  
25 against him; right?

1 A Yes.

2 Q Okay. Is that accurate?

3 A I believe so.

4 Q Okay. You used the term "remorseful"; right?

5 A Yeah. That -- that -- that I'm not sure I said. I  
6 know I said sad and overwhelmed. I don't know about  
7 remorseful or remorseful.

8 Frequently, I was asked, you know, is  
9 Brendan remorseful, and I certainly can't answer  
10 that question. That is an implication of guilt.

11 I don't think I said the word  
12 "remorseful" but certainly sad and overwhelmed.

13 Q So the press got it wrong again?

14 A They might have.

15 Q Okay. And I want you to refer to the next page  
16 after that. The, I guess, second full paragraph  
17 down. It says that Kachinsky says at this point  
18 he hasn't ruled out negotiating a plea deal in  
19 the case; right?

20 A That's correct.

21 Q Okay. You just come out from talking to Brendan;  
22 correct?

23 A Yes.

24 Q And, again, you -- you -- you state to the press  
25 that you haven't ruled out negotiating a plea

1 deal?

2 A Correct.

3 Q Okay. Um, the -- I want you to look at the --

4 let's see. It's probably about five pages down.

5 It's two or three pages after that. It starts

6 A-26 on the top, if you see that line, above

7 the -- sort of a header?

8 A Oh, I see it.

9 Q Okay.

10 A May 26. Yes.

11 Q All right. I want you to --

12 ATTORNEY FALLON: Excuse me, Counsel.

13 How many pages down on this exhibit? Seven?

14 ATTORNEY DVORAK: Yeah.

15 ATTORNEY FALLON: Thank you.

16 Q (By Attorney Dvorak) And if you go to -- you see

17 where it says A-27 on the upper top?

18 A Okay.

19 Q It says that -- again, at the bottom of the page,

20 after meeting with the 16-year-old for the first

21 time, Len Kachinsky describes Dassey as

22 remorseful?

23 A I do.

24 Q Okay. Did you say that?

25 A I might have.

1 Q Okay. Again, you've just come out from -- from  
2 talking to Brendan, um, in the jail? You meet  
3 the press as you walk out?  
4 A Correct.  
5 Q Okay. And -- and you add that he seems sad,  
6 concerned about a happen -- will happen to him,  
7 and just overwhelmed by the whole thing; right?  
8 A Yes.  
9 Q And then you go on to describe that, you know, at  
10 this point you're going to keep your options  
11 open?  
12 A Oh, correct.  
13 Q Yeah. And -- and that you, in the bottom of page  
14 A-27, you haven't ruled out a plea deal?  
15 A Oh, sure. Yes, I said that.  
16 Q And then on A-27, the next page?  
17 A Okay.  
18 Q Uh, third paragraph down?  
19 A Yes.  
20 Q It says, Kachinsky also blames Steven Avery for  
21 leading his nephew down the criminal path?  
22 A Yes.  
23 Q Okay. And, now, is that something you said?  
24 A I don't think the part in all caps is what I said.  
25 That's -- was their summary or interpretation of it.

1 Q I see. Okay.

2 A But the person below is -- is correct.

3 Q Okay. So -- so what you're saying, then, is

4 if -- if you didn't say it, certainly the

5 impression that was left is that Steven Avery's

6 to blame for Brendan Dassey's involvement in this

7 case?

8 A That's the way they could have interpreted it.

9 Whether that's reasonable or not, accurate or not, I

10 don't know. But that's a matter of their

11 interpretation.

12 Q So that's the message that got out to the press?

13 A That's the message the press sent to the public. I

14 don't...

15 Q Okay. Well, the -- the -- the information came

16 from you at some point?

17 A The -- the stuff that I'm quoted here, correct.

18 Q All right. And -- and by -- when we talk about

19 criminal path here, Brendan had never been

20 convicted of anything before; correct?

21 A Oh, correct.

22 Q There no juvenile adjudications? No -- nothing

23 as an adult? So if we're talking about criminal

24 path, we're talking about this case?

25 A Oh, correct. I wanted public to feel sympathetic

1           toward Brendan because of his lack of prior record.

2       Q     Okay. Now, you then say, I think common sense  
3           says he's a 43-year-old who's been in prison,  
4           referring to Steven Avery, right or wrong, it  
5           certainly stands to reason that Brendan Dassey  
6           could, perhaps, not be coerced but easily led  
7           into the offenses he allegedly committed; right?

8       A     That's correct.

9       Q     Okay. So what you're speculating at this point  
10          that Brendan's guilty?

11      A     I guess I'm just pointing out the obvious. I didn't  
12          certainly make any judgments by that -- that  
13          statement. Pointing out the -- what people might  
14          think about it.

15      Q     Okay. And how -- how did that advance Brendan's  
16          case by talking about -- by -- by saying things  
17          like, um, Steven led him down the criminal path,  
18          or saying that while he may not have been coerced  
19          could easily have been led in -- led into  
20          committing the offense?

21      A     I thought it was important to get accurate  
22          information to the media about the case, about  
23          options, about how the criminal justice system works.

24                   And, in part, because I knew that  
25          Brendan's family was watching these news casts,



1 and so in effect in some ways it was a message  
2 that was, um, sent to them, uh, to try to get  
3 them accustomed to the idea that Brendan might  
4 take a legal option that they don't like and try  
5 to explain why he would do that and, perhaps, to  
6 cut down on possible interference from his  
7 family.

8 So part of the intended audience was  
9 Brendan Dassey's family.

10 Q And --

11 A And Brendan himself. He watched -- he was isolated  
12 in the Sheboygan County Detention Facility, and about  
13 his only contact with the outside worlds -- world was  
14 visits with his parents and television.

15 Q So -- so the message that you were sending was  
16 intended not just for Brendan's family but for  
17 Brendan as well, correct?

18 A In -- in a -- in a sense, yes.

19 Q Yeah. Now, during that meeting with Brendan on  
20 that day he told you he didn't do this; correct?

21 ATTORNEY FALLON: Objection.

22 Self-serving hearsay.

23 THE COURT: Overruled. You can answer  
24 that.

25 THE WITNESS: I believe he did.

1 Q (By Attorney Dvorak) Okay. He -- he -- he --  
2 and -- and he said that the statements that he  
3 had made, especially the ones in the Complaint,  
4 you asked him about that; right? You went over  
5 the Complaint with him?  
6 A Yes.  
7 Q And he told you that what he said and what was in  
8 the Complaint about what he said was not true;  
9 correct?  
10 A I believe he said that.  
11 Q Okay. And he also told you at that time that he  
12 wanted to take a polygraph test --  
13 A Oh, correct.  
14 Q -- to prove that; correct?  
15 A Yes.  
16 Q So Brendan is asserting his innocence --  
17 A Yes.  
18 Q -- when he talks to you. Um --  
19 ATTORNEY FALLON: Excuse me, Counsel.  
20 Are we still March 10?  
21 ATTORNEY DVORAK: We're still March 10.  
22 ATTORNEY FALLON: Thank you.  
23 ATTORNEY DVORAK: But we'll move on.  
24 On -- I just want to briefly go through -- I just  
25 want to briefly go through March 11 through

1 March 14, just to -- to summarize what's going on  
2 there.

3 Q (By Attorney Dvorak) Um, would you take a look  
4 at those -- Exhibit 25? Or 55?

5 A Yes. Okay.

6 Q All right. Um, the only work you did on the case  
7 during those three days was correspondence with  
8 the media; correct?

9 A Not entirely.

10 Q Okay.

11 A Clyde Crib was an -- C. Crib is Clyde Crib. He was  
12 an investigator.

13 Q Right.

14 A Cindy McCafferty. I don't recall who she was. I  
15 think it was some member of the public that just  
16 wrote me and said --

17 Q Who's Andy Thompson?

18 A Uh, he's a reporter for the *Appleton Post Crescent*.

19 Q Okay. So you had talked to Aaron Keller again?

20 A Right.

21 Q You talked to Leslie Fox?

22 A Yes.

23 Q That's from Court TV?

24 A I believe so.

25 Q Okay. That's national syndicated program?

1 A Yes.

2 Q All right. Um, Kathy Bender from Dateline NBC?

3 A Yes.

4 Q Another national program?

5 A Right.

6 Q And you got Angenette?

7 A Yes.

8 Q Is that Angenette -- is it Levy or Levy?

9 A Levy.

10 Q Levy. Okay. And she's with a -- a TV station in  
11 what? Green Bay?

12 A Correct.

13 Q All right. You first name basis with her?

14 A At this point, yes. Not then.

15 Q Okay. Well, I'm -- you did an interview with  
16 TV-5?

17 A Yes.

18 Q Uh, you did an -- an interview with Lorin Cook on  
19 Fox 11?

20 A Yes.

21 Q All right. And you spent .1 hours during this  
22 period of time e-mailing your investigator?

23 A I believe so.

24 Q Okay. Now, on March 17 is the first appearance  
25 in court. I -- there was -- there's some

1           confusion when I was reading the record about  
2           whether this was actually an arraignment or -- or  
3           a scheduling conference. Was -- Brendan was  
4           present, however; correct?

5    A       I believe so.

6    Q       Okay. You hadn't seen Brendan, um, since March  
7           10?

8    A       Correct.

9    Q       You hadn't talked to Brendan since March 10?

10   A       Correct.

11   Q       Okay. Had you -- so had you prepared him for  
12           what was going on? That -- what was going to  
13           happen on March 17? Did you talk to him at all  
14           about what was going to happen?

15   A       I think I told him that it was going to be a status  
16           conference to decide when other dates were going to  
17           be scheduled and that's all that there was to say  
18           about it.

19   Q       Okay. And when would you have told him that?

20   A       During a meeting we had on March 10.

21   Q       Okay. Um, now, also, on March 17, you went on  
22           Nancy Grace; right?

23   A       They called me. But, yes.

24   Q       Okay. I'm sorry?

25   A       They called me. But, yes.

1 Q Yeah. Okay. And Exhibit 41 -- by the way, what  
2 is -- what is Nancy Grace?

3 A Nancy Grace, uh, was a news reporter that had a  
4 nationally syndicated show dealing with criminal  
5 justice issues. You said 41?

6 Q Yes. And page ten.

7 A Correct. I have it.

8 Q Okay. Um, your first comment is, you're saying:  
9 "No, he has his wits about him, I'm  
10 sure. But he certainly has learning difficulties  
11 that are greater than that of the average  
12 person."  
13 Um -- um, did you -- that's information  
14 that you had obtained from Mr. Dassey?

15 A I believe I -- oops. I believe I'd obtained that  
16 from -- from his mother.

17 Q So you're -- you're -- you're -- and -- and  
18 probably as well as your observations of  
19 Mr. Dassey?

20 A Sure.

21 Q Okay. So, um -- and -- and then you -- you say:  
22 "If the tape is accurate" --  
23 That's the next thing down.  
24 -- "an accurate recollection of what  
25 occurred, there is, quite frankly, no defense.

1 Coercion under Wisconsin Statutes is not a  
2 defense to first degree intentional homicide and  
3 it requires an imminent threat of death or great  
4 bodily harm. So our first thing we're going to  
5 look at is whether or not the statement's  
6 admissible, whether or not there was some sort of  
7 promises or threats made to Dassey to cause him  
8 to make that statement. Since it's been  
9 preserved on videotape, we should be able to tell  
10 that soon after I get that, although there's also  
11 other circumstances to consider."

12 Is that accurate?

13 A Yes.

14 Q Okay. So you're telegraphing the importance  
15 of -- of -- of that statement to -- to everyone  
16 and -- and -- and -- and the importance of it to  
17 the case; right?

18 A I don't know if telegraphing is the word. I'm kind  
19 of restating the obvious.

20 Q Okay. And you're, in -- in the course of this,  
21 also indicating that, you know, if you concede  
22 the accuracy, and you're making a statement that  
23 there's no defense here; right?

24 A Correct.

25 Q Um, now, again, are you -- do you -- are -- are

1           you going on -- on national -- this is national  
2           TV; right?

3       A     The Nancy Grace one is, yes.

4       Q     Yeah. Were you anticipating that Brendan's  
5           family was going to be watching again? And --  
6           and Brendan as well?

7       A     I thought at some point they might. That they might  
8           hear about the interview or something.

9       Q     Okay. And -- and going on national TV and -- and  
10          talking about the fact that there's -- making  
11          statements like there's no defense, using words  
12          like there's no defense, um, were you sending out  
13          a message to the Dasseys?

14      A     Not by that. I was pretty much stating the obvious.  
15          I mean, it's -- if you take those two words and don't  
16          look at the context about it being a condition, and  
17          if it's accurate, and da--da-da--da-da, I mean, I  
18          suppose if somebody wanted to misconstrue it, yes,  
19          that could be taken that way. Certainly wasn't what  
20          I was saying.

21      Q     You -- you -- you see the possibility for it  
22          being misconstrued?

23      A     I guess by some -- someone who wanted to do that,  
24          yes.

25      Q     You -- you hadn't reviewed -- by this point you



1           hadn't reviewed that -- you still hadn't reviewed  
2           that statement; right?

3       A     No.

4       Q     That's correct?

5       A     That's a correct --

6       Q     That first statement?

7       A     Correct.

8       Q     All right. And had you reviewed any discovery?

9       A     At the time of the interview I -- I'd seen the  
10           Criminal Complaint, which was rather detailed.

11      Q     Okay. But that's it?

12      A     I believe so, yeah.

13      Q     Yeah. There -- there was no transcript prepared  
14           yet of -- of the March 1 interview; correct?

15      A     Um, correct. And I -- I don't think at that point I  
16           have the CD either.

17      Q     Okay. Now, your -- you know, your -- your  
18           statement if -- well --

19                   THE COURT: Counsel, I think what we'll do  
20           is we'll adjourn for lunch --

21                   ATTORNEY DVORAK: Okay.

22                   THE COURT: -- at this point. We'll be  
23           back at 1:15. I have a meeting at one o'clock that  
24           I have to attend. See you then.

25                               (Recess had at 12:10 p.m.)

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(Reconvened at 1:16 p.m.)

THE COURT: You can proceed, Mr. Dvorak.

ATTORNEY DVORAK: Thank you, Judge.

Q (By Attorney Dvorak) We were talking about March 17, if you want to refer to your voucher just --

COURT REPORTER: Could you use the microphone, please?

ATTORNEY DVORAK: Sure.

Q (By Attorney Dvorak) And I'd like to draw your attention to Exhibit 322.

A I have it.

Q Okay. It's a Fox 11 broadcast on March 17; right?

A Correct.

Q Okay. And you indicate you're -- you -- you tell the press there that, in quote, you gave two interviews a couple of days apart. One was apparently quite general from the Complaint. The other one much more extensive. I've been told the tape is approximately four hours in length. In any criminal case, the defendant would see if there's a reasonable opportunity to keep the statements he made out of evidence if there wasn't compliance with his constitutional rights

1 or if it was involuntary for some reason; right?

2 A Oh, correct.

3 Q Remember saying that?

4 A Yes.

5 Q Okay. The fact that Mr. Dassey had given two  
6 statements wasn't out in the public yet, had it?

7 A That I'm not sure. I -- I don't know.

8 Q Okay. You didn't, at the time, bother to check  
9 that you made that statement?

10 A I'm just -- I'm not sure where I -- I got it. I was  
11 pretty sure it was from the public. Certainly not  
12 from Mr. Dassey.

13 Q Okay. Um, and how does saying that Mr. Dassey  
14 confessed twice advance his case? What's your --

15 A Well --

16 Q -- thinking there?

17 A -- it didn't really say that he gave -- that he  
18 confessed twice. It said that there were two -- two  
19 statements. That would certainly, I guess, explain  
20 the process.

21 Q Okay. So -- so your -- your thought was -- was  
22 just helping the public understand the  
23 investigative process?

24 A And -- and the process of representing somebody on a  
25 case like this. That applied to a lot of the

1           comments that I made.

2       Q     Okay. All right. And you also did a phone  
3           conference with CNN and Headline News on that  
4           day; right?

5       A     Yes.

6       Q     And, um, had another conversation with CNN -- or  
7           interview with Nancy Grace. That was the one we  
8           previously referred to. I'm sorry. All right.  
9           So let's move to March 19.

10      A     Okay.

11      Q     Um, there's a -- a phone conference you -- you  
12           note a phone conference with B. Dassey. Was that  
13           Brendan or Barb? Do you remember?

14      A     I -- I'm not sure. Most likely Barb.

15      Q     Okay. So to this point you've talked to Brendan  
16           once for about an hour; correct?

17      A     Once alone in a conference at the jail, um, talking  
18           to him in -- before and after court to some extent.

19      Q     Okay. Those would have been brief conversations  
20           I take it?

21      A     The ones before --

22      Q     Before and after --

23      A     -- and after court --

24      Q     -- court. Yeah.

25      A     Yes.

1 Q Okay. And -- and your voucher shows an e-mail to  
2 J. Lee; right? J -- J. Lee's John Lee, again,  
3 the reporter for *Post Crescent*?

4 A Correct.

5 Q Okay. And on March 20, um -- well, do -- do you  
6 remember what you talked to John Lee about?

7 A I don't. Much of this, again, I wanted to make sure  
8 they got the facts straight, understood what the --  
9 the law was that we were dealing with so that there  
10 was no misinformation to the public, uh, which could  
11 cause difficulties in dealing with Brendan's family,  
12 as well as just -- I just think it's a professional  
13 obligation to at least help the public understand the  
14 process of how criminal case work.

15 Q Okay. Even if it's your own case?

16 A It -- it's hard to get in general terms. You know,  
17 especially if you provide (unintelligible) they  
18 should, I think, would have some -- some basic  
19 understanding.

20 Q Was there some misunderstanding about how many  
21 times -- a misunderstanding of the public about  
22 how many times Brendan was interrogated?

23 A I --

24 Q Or questioned?

25 A -- I don't know.

1 Q Okay. On March 20 you spent .4 hours on the  
2 phone with the D.A.'s office and then a *Milwaukee*  
3 *Journal Sentinel* reporter. Do you -- do you  
4 remember what the call to the D.A.'s office was?

5 A I think it might have been regarding receiving  
6 discovery or being able to observe some of the  
7 discovery in the Calumet County D.A.'s Office.

8 Q Had you gotten discovery yet?

9 A That I'm not sure.

10 Q Okay. You hadn't -- or the tapes as far as you  
11 know?

12 A I'm not sure the -- the --

13 Q Okay.

14 A -- date of receipt exactly at this point. I see the  
15 entry's on the 23rd so I may have gotten them that  
16 day or the day before or something.

17 Q Okay. Um, do you remember what you -- who --  
18 what you talked with Mike Nicholas about for the  
19 *Milwaukee Journal Sentinel*?

20 A I think he wanted confirmation as to future court  
21 dates, what the process is if the Judge wanted us to  
22 go through in terms of filing motions, things of that  
23 sort.

24 Q Okay. And you accommodated him -- him with that  
25 information?

1 A Yeah. I wanted to make sure he got it straight.

2 Q Right. Um, and you reviewed a couple of criminal  
3 cases, including *Jerrell*; right?

4 A Correct.

5 Q To familiarize yourself again with the standard  
6 on voluntariness, etc.? Motion to suppress?

7 A Uh, correct.

8 Q Yeah. Um, and -- and you spent .6 hours on that;  
9 right?

10 A Correct.

11 Q There was a phone conference with Dean Strang.  
12 Do you remember what that was about?

13 A I think it was sort of an icebreaker sort of  
14 conference telling us where they were at. I guess he  
15 was trying -- probably trying to figure out where my  
16 head was at on the case.

17 I think most of my responses to him was  
18 that I was noncommittal, I'd have to see the  
19 discovery, talk it over with Brendan, etc.

20 But that there was nothing imminent in  
21 terms of anything dealing with his client in  
22 particular.

23 Q Okay. Certainly all the signals you've been  
24 sending into the press were -- had to do with  
25 plea agreements?

1 A Well, I don't know if I was sending any signals.  
2 That's a question they kept asking. I -- I said I  
3 didn't initiate the contacts with the media. They  
4 were just bombarding our office with phone calls. I  
5 would return number of them.

6 Q But up until this point you've -- you've -- you  
7 refer to number of times to the press about the  
8 possibility of a plea agreement?

9 A Oh, sure.

10 Q And, um -- and -- and still up until this point  
11 you'd only talked to Brendan once, and during  
12 that conversation Brendan had told you that his  
13 March 1 statement was not the truth, that he was  
14 innocent, and that he wanted to take a polygraph  
15 to prove that?

16 ATTORNEY FALLON: Objection. Asked and  
17 answered.

18 THE COURT: Sustained.

19 ATTORNEY DVORAK: As it's -- as to this  
20 time I don't think it's been asked and answered.

21 THE COURT: With that qualification, you  
22 can answer it.

23 THE WITNESS: I believe so, yeah.

24 Q (By Attorney Dvorak) Okay. Then on -- two days  
25 later, March 22, your work on the case amounted



1 to a -- apparently a phone conference with K.  
2 Sanger (phonetic) of Dateline?

3 A Correct.

4 Q Okay. The next day, the 23rd, you -- know if  
5 it's the same person or not, but you have a phone  
6 conference with K. Singer (phonetic); right?

7 A Yes. I -- I believe it probably was. She was -- I  
8 think she's confirming some procedural information or  
9 something.

10 Q Okay. But it also notes that you've -- you're  
11 now beginning to review the tapes?

12 A Correct.

13 Q Right? Okay. So this is the first time that --  
14 that you've reviewed any of the tapes?

15 A Correct.

16 Q All right. And --

17 A I'm not sure if it was a tape or a CD. Maybe it was.  
18 I -- I'm not sure.

19 Q Okay.

20 A May have been a C -- but it was -- I believe it was  
21 a -- I'm just not sure, tell you the truth.

22 Q Fair enough. Whatever it was, it was a -- an  
23 audio with respect to the February 27 interview;  
24 right?

25 A Yeah. I believe that was audio only. That's maybe

1           why there's a difference between that one and some of  
2           the later ones.

3       Q     Okay.  Um, and did you have -- all right.  And --  
4           and -- and when you did that, you were -- did you  
5           start making notes on that?

6       A     Yeah.  As the tape was being -- being played I would  
7           make some notes.

8       Q     Okay.  And on March 24, uh, you got an e-mail  
9           from Mr. Kratz; right?

10      A     Um, I did.

11      Q     And I'll draw your attention to Exhibit 343.

12      A     I have it in front of me.

13      Q     Okay.  Had a chance to look at it?

14      A     Yes.

15      Q     Okay.  Um, I just want to get clear at this point  
16           on the -- the third item that -- that starts --  
17           says the transcripts will be done by the -- um,  
18           soon.

19                    Um, do you recall what discovery you had  
20           to this point?  Did you -- did you have -- let me  
21           ask it this way:

22                                Did you have everything, uh -- all the  
23           discovery related to your case as far as you  
24           know?

25      A     I'm not sure.  Most likely it was more than simply

1 the two tapes. There may have been some paper  
2 discovery that I'm -- I'm just not sure what -- what  
3 else I'd have.

4 Q Was -- were there any forensics reports or  
5 anything? You recall seeing any of that?

6 A I -- I don't.

7 Q Okay.

8 A Not at this point.

9 Q All right. The -- the fifth item -- well, he --  
10 he mentions a box of discovery and invites you to  
11 come in. Did you -- did you do that?

12 A Eventually I did, yes. It -- it was a lot of  
13 photographs taken at the scene of the Avery compound,  
14 uh, photographs seized from Steve Avery's possession,  
15 including pictures of his girlfriend in various  
16 stages of undress and -- and some other things.

17 Q Okay. And -- and did you have a -- a -- copies  
18 made of that for yourself?

19 A Not -- not of the stuff that was in Kratz's office  
20 that I had viewed of that nature. Stuff that applied  
21 strictly to -- to Steve Avery.

22 I think I received some reports  
23 generally on the search of the Avery compound and  
24 their interview process and everything else that  
25 started with beginning of the case. But this

1           stuff was -- as I looked at it, I think I made  
2           some -- some notes as to what was in there.

3                     But I didn't see, frankly, any use of it  
4           for -- for us, that I needed to have it in my  
5           possession. It might -- something came up later,  
6           of course, we could -- could get it.

7                     But I didn't see it as something I  
8           needed to keep in my office.

9           Q        So -- so your -- in -- in your view it wasn't  
10           necessary that you have a copy of it?

11           A        Not -- not at that time, no.

12           Q        Okay. And -- and what you know what was in there  
13           were -- were photographs of the scene?

14           A        There were some aerial photographs, all kinds of  
15           stuff like that, that certainly was -- was important  
16           in establishing that a crime took place but didn't  
17           really deal directly to -- to Brendan's involvement  
18           in it.

19           Q        Okay. So from the statement that you had read  
20           when you reviewed those statements you didn't  
21           think that any of that evidence had any relevance  
22           to what Brendan's statement was?

23           A        I guess in a sense, yes. I mean, in a general sense,  
24           of course, it had some relevance in which might come  
25           in if the case went to trial, but I didn't see any

1 need at that time immediately to request copies of  
2 it.

3 Q You didn't expect that the case was going to go  
4 to trial at this point?

5 A At that point I wasn't sure.

6 Q Okay. Now -- well, um, but it -- also at this  
7 point Brendan was saying that he was not guilty  
8 and he didn't do anything. Were you -- were you  
9 focused on -- on trying to determine that?

10 A Well, at this point I hadn't reviewed his -- his  
11 statement yet. Including the -- the tapes. So I  
12 guess at that point I really wasn't focused on -- I  
13 think I -- I looked -- as I -- I -- I'd gone -- when  
14 I later went -- started going through the discovery,  
15 I worked particularly on the most critical element  
16 pertaining to Brendan which was the timeline of  
17 activity that occurred the afternoon and evening of  
18 October 31, 2005, and accounting for where Brendan  
19 was at various times. But....

20 Q What about -- you -- so you -- did you -- you  
21 didn't look at anything that related to physical  
22 evidence?

23 A I would have read the descriptions of what was done,  
24 that was in the narratives done by the law  
25 enforcement agencies.

1 Q Okay. All right. And then the fifth paragraph,  
2 it says:

3 "If Avery is granted a prelim on his new  
4 charges of sexual assault, false imprisonment,  
5 and kidnapping, your client will be called as a  
6 witness, and I assume granted use immunity for  
7 that hearing only. You can discuss that with him  
8 if it comes about. It's set for 4-13. If it  
9 happens at all, Judge Willis needs to decide that  
10 issue."

11 Um, did you have any discussions with  
12 Mr. Kratz prior to receiving this about Brendan  
13 testifying?

14 A Not -- not about testifying at the prelim for -- for  
15 Avery, no.

16 Q What about Mr. -- what about Brendan testifying  
17 at all? Had you had discussions with him about  
18 that?

19 A I think I probably did. I think I -- we had had some  
20 discussions. I said I think I understand what the  
21 State would be coming from in this case if you're  
22 going to -- I assume at some point you're going to  
23 make us a plea offer, because the State does that in  
24 virtually any case of any type, and I'm assuming that  
25 any plea offer would be conditioned on Mr. Dassey

1           testifying truthfully against Mr. Avery.

2    Q    Had you discussed the possibility of Brendan  
3           testifying against Steven with -- with Brendan?

4    A    At some point certainly I told Brendan about --  
5           generally what would be happening, or discussable, or  
6           within the realm of the possible if we went the plea  
7           bargaining route, and that that would probably be a  
8           condition of a -- of any plea bargain.

9    Q    Well, up to this point that would only have  
10           happened at -- at your interview on March 10;  
11           right? You hadn't talked to him other than that;  
12           is that fair?

13   A    I think -- yeah. That may be true.

14   Q    Did you view this as -- as -- as being good news?  
15           The invitation by the State to have Brendan  
16           testify against Steven Avery?

17   A    I was actually concerned because it was awfully soon,  
18           and I wasn't sure that that is what Brendan wanted  
19           to -- wanted to do.

20                    Uh, I thought I was pretty sure he  
21           didn't want to, because he was pretty quiet,  
22           noncommittal, and everything else about a lot of  
23           things.

24                    So I guess I was concerned about it  
25           being so soon that -- that there'd be some real

1 problems with it, 'cause I really hadn't seen  
2 Brendan that much. I hadn't reviewed all the  
3 discovery yet. I hadn't sent Brendan -- I guess,  
4 what I ended up doing, reviewing most of the  
5 discovery, sending Brendan letters kind of  
6 summarizing what was in it.

7 So, yeah, I -- I was concerned this was  
8 happening pretty soon. Might not be prepared to  
9 do it.

10 Q Um, and -- and the final thing that Mr. Kratz  
11 does is invite you -- invites you to get  
12 information for him from Brendan; right?

13 A Yes.

14 Q Okay. Had you had any -- given any signals to  
15 Mr. Kratz that you were willing to do that?

16 A Not at that point, no.

17 Q Okay. You don't think your statements in the  
18 press may have signaled that?

19 A No.

20 Q The things that you were signaling to Brendan's  
21 family?

22 A Not about dis -- not about finding physical evidence,  
23 no. I -- I didn't -- I assumed that the State had  
24 thoroughly searched everything and come up with  
25 everything they would have possibly been able to come



1 up with respect to Brendan.

2 There'd been some search warrants around  
3 the time of his arrest. Searches of his house.  
4 Some other things. I -- I didn't think there was  
5 any physical evidence that we'd be able to  
6 present if we wanted to.

7 Q All right. But this certainly gave you a signal  
8 what the State would have been looking for;  
9 right?

10 A Yes. I mean, they're always hopeful to get more  
11 evidence.

12 Q And -- and they -- and they were hopeful to get  
13 it from Brendan?

14 A Right.

15 Q All right. And he also invites discussions about  
16 plea potentials, um, after the five -- the May 4  
17 motion? Did you --

18 A Yes.

19 Q -- did you respond to that? Did you call him up  
20 after you got this and -- to talk about it?

21 A I don't recall if I did or not or if I e-mailed him.

22 Q Did you -- would you have made notes of that?

23 A If there was something specific, yes. I -- I  
24 certainly don't -- I don't recall at this point.

25 Q Okay. Up until this point had you given any

1 thought to Brendan's request to take a polygraph  
2 test?

3 A I had. I have, professionally, a negative opinion  
4 about polygraphs. I've had truthful clients flunk  
5 them and untruthful --

6 Q My --

7 A -- clients pass them.

8 Q My -- my only question is whether or not you had  
9 given any thought to -- or if -- given any  
10 thought to complying --

11 COURT REPORTER: One moment, please.

12 THE COURT: Hold up a second.

13 (Court reporter's computer  
14 malfunctioned.)

15 COURT REPORTER: Okay. Please start  
16 from where you said:

17 "My only question is whether or not you  
18 had given any thought to -- or if -- given any  
19 thought to complying..."

20 Q (By Attorney Dvorak) The -- the -- the question  
21 I want the answer to is did you do anything with  
22 respect to Brendan's request to take a polygraph  
23 test up to this point?

24 A I'm not sure when the exact timing was, but I know  
25 Brendan had to ask me a second time before I did it.

1           And then at that point I acquiesced and went out and  
2           tried to make the arrangements.

3       Q     Right. And you hadn't seen him twice. I mean,  
4           up until this point you've talked to Brendan for  
5           about an hour?

6       A     Correct.

7       Q     Um, the -- March 25, the next day, you -- you --  
8           you, um, listen to the tapes; right? You listen  
9           to tape four and you prepare notes?

10      A     Correct.

11      Q     And you listen to tapes one and two of the  
12           March 1 -- and -- and I'm -- when I use the word  
13           "tapes" I'm talking about whether they're --

14      A     Right.

15      Q     -- CDs, DVDs, whatever they may be just for --

16      A     I called --

17      Q     -- convenience sake.

18      A     -- them tapes so it's -- if it was a mistake, it was  
19           mine.

20      Q     Um, and I just want to focus on the March 1  
21           issue. Um, reviewing the March 1 statements, you  
22           reviewed one and two, and it's my understanding  
23           you couldn't get tape three to work; right?

24      A     That may have been the case.

25      Q     Okay. You, uh -- on the next day you -- you send

1 an e-mail to Mr. Kratz, uh, to the effect that  
2 the tape doesn't work. Do you recall that?

3 A At this point, no.

4 Q Okay. Um, the -- you sent a letter to Brendan  
5 also. Do you remember what was in that letter?  
6 We can't find it. Do you have any idea? Do you  
7 have it with you by any chance?

8 A I -- I don't. Um --

9 Q This -- this would have been after you've --

10 A Right.

11 Q -- reviewed the tapes?

12 A Any letters I would have put in the materials that  
13 were forwarded to the next attorney. Looking at the  
14 context I probably would have told him a summary of  
15 what I saw in the tapes. Just looking at the length  
16 of the letter that's probably what it was.

17 Q All right. Uh, well, it took you .2 to -- to do  
18 the letter.

19 A Oh. Right. It was -- would have been relatively  
20 short.

21 Q Right. Um, March 27 you get a -- an e-mail from  
22 Kratz, um, regarding tape three and a phone  
23 conference. Do you recall what that e-mail was  
24 about?

25 A I think it was just about how he was going to take

1 care of the problem.

2 Q Take care of the problem with tape three?

3 A Correct.

4 Q Okay. And your -- your notes say that you -- you  
5 got around to reviewing tape three.

6 A I might have.

7 Q Okay.

8 A I'm sure if I got it I did.

9 Q Do you remember the significance of tape three on  
10 the -- on the March 1 interrogation?

11 A No, I don't. It was a short one as compared to what  
12 I'd seen before. It might have been from the time  
13 that they left the -- I believe it was called the  
14 Mishicot Inn. I forgot. From the time they left,  
15 though, the place where Brendan was, to the time they  
16 got to the sheriff's department for the interview.

17 Q Well, that's -- the -- the -- the substance of  
18 that tape is -- is -- is Brendan's retraction?  
19 Brendan -- Barb -- Barb comes in, and, uh -- and  
20 at some point during the conversation between  
21 Barb and Brendan, Brendan -- Barb wants to know  
22 why he -- she said those things if they weren't  
23 true, and Brendan said, "They got into my head."  
24 Do you remember that?

25 A I do.

1 Q Okay.

2 ATTORNEY FALLON: Your Honor, from here  
3 on I'm going to impose an objection and simply  
4 ask that the questions be stated in what happened  
5 as opposed to stating it with a legal conclusion.  
6 It's his witness. It's not cross-examination.

7 THE COURT: Fair enough.

8 ATTORNEY DVORAK: He's -- well, I -- I  
9 think, Judge, in all fairness, it's -- he's an  
10 adverse witness under the circumstances.

11 THE COURT: I understand that and you  
12 certainly have more leeway to examine him. But by  
13 the same token we are starting examinations with  
14 opinions.

15 Q (By Attorney Dvorak) You had a phone conference,  
16 according to your notes, on this date, also, with  
17 Mr. Dederling; right?

18 A Yes.

19 Q And who's John Dederling?

20 A I believe he's a police officer.

21 Q Okay. He -- he was one -- one of the police  
22 officers that was on this case; right?

23 A Right.

24 Q Do you remember what that conversation was about?

25 A I think it was about getting copies of some discovery

1 or something like that.

2 Q You don't remember?

3 A I don't remember.

4 Q Okay. And you didn't make any note of that?

5 A No.

6 Q All right. Um, you also had another phone  
7 conference with John Lee on that day?

8 A Yes.

9 Q March 27?

10 A Yes.

11 Q You reviewed tape three? You prepared some notes  
12 of that; right?

13 A Yes.

14 Q Um --

15 ATTORNEY DVORAK: Excuse me, Judge.

16 Q (By Attorney Dvorak) I'd like you to look at  
17 Exhibit 359, please. Oops. And the second to  
18 last page.

19 A The one where it mentions about tape three. Reviewed  
20 3- --

21 Q Yes.

22 A -- -27- --

23 Q Right.

24 A -- -06 --

25 Q Those --

1 A -- okay.

2 Q -- would be your notes relating to your review of  
3 tape three?

4 A Correct.

5 Q And the date next to, 3-27, would refer to the  
6 date that you took those notes; right?

7 A Yes.

8 Q Do you make any notation in your notes on this  
9 tape of Brendan saying, "They got into my head."?

10 A I don't think I did.

11 Q Okay. Do you think that would be a -- something  
12 to investigate on a motion to suppress?

13 A I suppose would have some relevance, yes.

14 Q Um, on March 28, your work on that day is a phone  
15 conference and a TV interview with TV-2?

16 A Right.

17 Q Okay. Um, I'd like you to look at Exhibit 323  
18 and 324.

19 A I'm looking at 3 -- okay.

20 Q Um, you -- you make the statement to the press  
21 that this statement is the strongest and only  
22 piece of evidence?

23 A Yes.

24 Q Okay. Um, and so based on your review of the  
25 evidence to this point that's what your opinion



1 of the -- of -- that's what your assessment is?

2 A I suppose "only" might be an overstatement, but  
3 certainly "strongest" is correct.

4 Q Well, on your review of the evidence to date did  
5 you come upon any physical evidence that  
6 corroborated what Brendan said?

7 A Not that I knew of. Not of a careful examination of  
8 the Avery compound. I (unintelligible) if there was,  
9 you know, circumstantial evidence as to where he was  
10 when, uh, during the evening of October 31 that I  
11 thought was of greatest relevance.

12 Q And -- and -- or forensic evidence --

13 A Right.

14 Q -- for that matter. There --

15 A Right.

16 Q -- was no forensic evidence -- sorry. We're  
17 talking over each other. Apologize. There was  
18 no forensic evidence that corroborated anything  
19 that Brendan had said that you had seen to this  
20 point; correct?

21 A That -- that is correct, in terms of DNA,  
22 fingerprints, things like that, yes.

23 Q Right. Um, and you also make the statement that  
24 if the judge throws out Dassey's confession would  
25 jeopardize the prosecution's case; right?

1 A Correct.

2 Q You got motions due in, what, another week or so?

3 A I don't know what the deadline was.

4 Q Okay. Your hearing is -- is April 5, I believe?

5 A Yes.

6 Q All right. May -- May 4. You have a hearing

7 coming up on May 4? I'm sorry. Sound right?

8 A Right.

9 Q Okay. Um, and I want you to look now at Exhibit

10 No. 324.

11 A Right.

12 Q In your conversation here, um -- and I'm -- want

13 you to look at page two of -- of that exhibit.

14 ATTORNEY FALLON: This is 324, Counsel?

15 ATTORNEY DVORAK: Yes, it is.

16 ATTORNEY FALLON: Thank you.

17 Q (By Attorney Dvorak) You -- you state here that

18 there were some techniques used here that are

19 pretty standard and quite legitimate and in terms

20 of making the suspect feel police know everything

21 and the suspect should tell him because the

22 police already know it; right?

23 A Yes.

24 Q Okay. So you're -- you recognize here that --

25 that there are -- have you had -- you've had

1 confession cases before I assume?

2 A Yes.

3 Q Okay. And, um, have you ever consulted with an  
4 expert in confession cases?

5 A Not prior to this one, no.

6 Q Okay. Had you -- had you -- did you consult with  
7 an expert on confessions in this case?

8 A Yes. Um, after the motion to suppress was denied, I  
9 believe there was a reference at some point -- I  
10 talked to a Mr. -- a Dr. Thompson after talking to  
11 Drizin and some other folks about possible  
12 references. It would have occurred after the  
13 suppression hearing was over.

14 Q All right. So -- but -- so prior to the  
15 suppression hearing you had not contemplated  
16 consulting and/or calling any kind of an expert?

17 A Well, not on the issue of characteristics of false  
18 confessions. There was obviously the need to bring  
19 in the underlying evidence of Brendan's intelligence  
20 level and so forth from his school records, and some  
21 psychological evidence of that sort is one of the  
22 many factors a judge has to consider on a motion to  
23 suppress.

24 Q Let me -- let me ask --

25 A Sure.

1 Q -- you this: You -- you did not consider,  
2 certainly at least to this point, or from what  
3 you're saying at all, you did not consider, um,  
4 the -- or calling a -- or -- or consulting with a  
5 con -- a -- an expert on interrogation techniques  
6 as it relates to voluntariness?

7 A I remember certainly mentally thinking about the  
8 possibility of a psychologist or some expert witness  
9 and whether that would be beneficial or not. But I  
10 certainly would -- decided that -- at least it was my  
11 opinion it would not have been. Just based on just  
12 general background knowledge. I didn't -- don't  
13 think I specifically documented it anywhere.

14 But I -- I didn't think it generally was  
15 possible to find a witness that would say Brendan  
16 could not have understood his *Miranda* rights  
17 given, you know, his, um, mental status.

18 Q Okay. So -- so what you're saying is that you --  
19 you considered it but you -- you -- are you  
20 saying you considered it but rejected it?

21 A Yes. I didn't think it would be effective on the  
22 suppression issue.

23 Q What about, um, issues of, you know, what the  
24 definition of psychological coercion is and --  
25 and what tactics are coercive or not coercive?

1 A Based on what was in the tape and the sort of tactics  
2 I observed there, I didn't think there was an expert  
3 that was going to --  
4 Q Okay.  
5 A -- would say something like that. But I didn't ask  
6 one.  
7 Q Okay. Um -- excuse me a second. Um, on  
8 March 29, you conducted a -- two more phone  
9 conferences with the press. Pete at NBC 26 and  
10 Singer at -- from Dateline; right?  
11 A Right.  
12 Q And you spent maybe 40 minutes or 45 minutes  
13 reviewing reports?  
14 A Correct.  
15 Q Um, do you remember what those reports were or  
16 what they had to do with?  
17 A Not specifically, no.  
18 Q Okay. Um, by the way these -- these -- your  
19 voucher accurately reflects the -- what you did  
20 on -- on the case and -- and -- and the time you  
21 put on it; right?  
22 A It does.  
23 Q Okay. Um, on March 30, the next day, your only  
24 work on the case would have been an e-mail with  
25 Aaron Keller; right? Again, a news person?

1 A Right.

2 Q On March 31, um, your only work on the case would  
3 have been two e-mails with Keller and, um, an  
4 interview with TV-26; right?

5 A Right.

6 Q And on April 1, um, your only work on the case  
7 would have been with Becky from TV-11, an  
8 interview with TV-11. You reviewed a -- a  
9 Dateline, apparently. Was that a broadcast? Is  
10 that what that means?

11 A Yes. I don't recall specifically which one that was.

12 Q Okay.

13 A Um --

14 Q Yes or no would be fine.

15 A Yeah.

16 Q Okay. And, um, so you watched the TV-11 news  
17 cast? I assume you watched the -- the news cast  
18 of your interview? That's what you're talking  
19 about?

20 A No, I don't think so. I think the Dateline there was  
21 a -- a feature on the Avery family, which I know I  
22 watched somewhat. I'm not sure when it was.

23 Q Okay.

24 A Just describing, you know, their relationship with  
25 the Manitowoc community and so forth.

1 Q Okay.

2 A I'm not sure if that was it or not.

3 Q All right. And -- and, also, you had a -- an  
4 e-mail with Aaron Keller again; right?

5 A Right.

6 Q Now, on the interview on April 1 with Fox 11 --  
7 and I want to draw your attention to Exhibit 325.

8 A Okay. I remember that.

9 Q Okay. This had to do -- apparently Steven Avery  
10 had made some comment in the press about Brendan  
11 possibly being someone who could be coerced into  
12 making a statement; right?

13 A Among other things --

14 Q Okay.

15 A -- yes.

16 Q And -- well, there's a quote here. There's --  
17 second paragraph on first page. And -- and this  
18 is from Avery, apparently.

19 "I know he was, um, that is, coerced,  
20 into making a statement, 'cause they ain't no  
21 evidence to back it up. They took everything out  
22 of the trailer and they ain't going to find  
23 nothing."

24 And then it's a quote from you that  
25 you've reviewed the four-hour videotape from

1 Dassey and you don't see it that way. Uh, didn't  
2 appear to me that they were putting words in his  
3 mouth which is kind of what Avery suggests;  
4 right?

5 A Correct.

6 Q Okay. Now, after having reviewed the February 27  
7 tape, as well as the March 1 tape, you're saying  
8 you didn't see any evidence at all of suggestive  
9 questioning or contamination by the police of the  
10 interrogation?

11 A I would have to say, um, yeah, it appeared to me that  
12 they took great pains to try to make the details in  
13 that interview come out from -- from Brendan and not  
14 something that was suggested by them. Um, relatively  
15 low number of -- of leading questions, um, and -- and  
16 things of that sort that you'd might expect to -- to  
17 have from a heated high power -- high-powered  
18 interrogation.

19 Q So by -- I -- I guess what I'm -- your -- what  
20 you're saying here is -- is -- or, you know, what  
21 you're sending out is -- is that, um,  
22 Mr. Dassey's confession is -- is a good  
23 confession?

24 A Well, I was saying that it didn't certainly appear to  
25 be something that was shoved into his brain like



1 Avery had suggested.

2 Q Well, let's --

3 A And -- and I was putting out the message to Avery  
4 that I thought he was trying to intimidate Bran --  
5 Brendan Dassey through the media.

6 Q Okay. But what -- what message do you think it  
7 was sending to Brendan?

8 A Which -- which one?

9 Q Well, the -- the -- the message that you're  
10 saying the confession looks pretty good to me?

11 A Nothing I hadn't already told him. I think at that  
12 point that was -- that was the case.

13 Q So you had -- you had told him already that --  
14 that you thought this was a good confession?

15 A Yes.

16 Q And that was your -- your position going into  
17 preparing the motion?

18 A I -- I believe I told him I thought the chances of  
19 the motion to suppress being granted were not  
20 terribly good. I'd give it my best professional  
21 shot.

22 I'd -- I had a transcript. I could --  
23 would apply the case law to the facts of the  
24 case. Anything that looked questionable at all  
25 I'd put in the motion and argue it. But I wasn't

1 count -- told him don't -- don't count on it  
2 being granted.

3 Q Um, now, the -- were you aware of the  
4 significance of the -- of the March 1, or at  
5 least significance of part of the March 1  
6 confession in terms of physical evidence?

7 A Which -- which part of it? I'm not sure --

8 Q Well, where they --

9 A -- what you're --

10 Q -- where they talk about --

11 A -- referring to.

12 Q -- shooting in the head. Do you remember that?

13 A At this point I --

14 Q Okay.

15 A -- guess I'm just not sure.

16 Q I -- I just want to play --

17 A Yeah.

18 Q -- a --

19 A Sure.

20 Q -- five. I just want to play clip five. Or four  
21 and five.

22 ATTORNEY FALLON: Clip -- and where --  
23 what is that reference to, Counsel?

24 ATTORNEY DVORAK: Um, it identifies 315.

25 ATTORNEY FALLON: Exhibit 315?

1 ATTORNEY DVORAK: Yes.

2 ATTORNEY FALLON: All right.

3 ATTORNEY DVORAK: Page nine.

4 (Wherein clip is played.)

5 Q (By Attorney Dvorak) Does that sound like

6 putting words into somebody's mouth? Certainly

7 is --

8 A It'd certainly be a leading --

9 Q -- suggesting.

10 COURT REPORTER: Excuse me.

11 THE COURT: Okay. You ask the question,

12 you wait 'til he asks it, then you can answer it,

13 okay?

14 THE WITNESS: Okay.

15 Q (By Attorney Dvorak) Oh, I -- um, were you --

16 were you aware that there had been a -- a fairly

17 recent discovery in the case that had some

18 significance with respect to being shot in the

19 head?

20 A It didn't stick out in my mind, no.

21 Q Okay. So you weren't aware of the significance

22 of that question at the time that you listened to

23 the tape?

24 A Correct.

25 Q Or at the time that you filed the motion?

1 A Correct.

2 Q Okay. Um, and Steven Avery says that he feels  
3 that -- didn't think his nephew was very smart?  
4 It'd be awfully easy for someone in law  
5 enforcement to coerce him? And you refute that  
6 statement, too; right? In this interview?

7 A Yes.

8 Q Okay. So, you're -- you're telling the press and  
9 world at this point that you don't think that  
10 Mr. -- that your -- your client is someone who's  
11 likely to be coerced by law enforcement? What  
12 you say is that I think that would be inaccurate;  
13 correct?

14 A Right. Whatever I said, I would say. What the  
15 meaning was behind, I'm not totally sure.

16 Q Okay. Um, and then you talk about, um, some  
17 Avery trying to intimidate or influence a  
18 witness, uh, as showing some consciousness of  
19 guilt?

20 Um, again, do you understand that the  
21 implication that's behind that is that Brendan's  
22 confession is -- is accurate and that he may be  
23 testifying that that signal gets sent?

24 ATTORNEY FALLON: Objection. Relevance.

25 THE COURT: Overruled. You can answer it

1 if you have an answer.

2 THE WITNESS: I'm not sure what spin  
3 somebody would want to put on that. I'm not --

4 Q (By Attorney Dvorak) Now -- and again, this --  
5 this whole discussion that we're talking about  
6 here precedes the motion to suppress? Precedes  
7 your filing on the motion to suppress; right?

8 A It probably did. I don't know.

9 Q Okay. Um, the tenor of this discussion would  
10 suggest that not only is Avery guilty, but  
11 Brendan's complicit in it?

12 A I don't know if that's conclusions anybody would draw  
13 or not. The words were the words and...

14 Q Well, if you're -- if you're saying in this  
15 conversation that Brendan is not someone who's  
16 easily coerced, um, or someone who would be  
17 subject to having words put in his mouth, you're  
18 in -- at least backhandedly vouching for the  
19 accuracy of the confession; fair?

20 A I was -- no. I think it just act -- I'm just  
21 vouching for Brendan's general personal  
22 characteristics.

23 Q So what you're saying in advance of the hearing  
24 is that Brendan's personal characteristics are  
25 such that he's not someone who would be subject

1 to having someone put words in his mouth or  
2 otherwise being coerced?

3 A I -- I don't know what spin you'd put on it.

4 Q All right.

5 A Certainly wasn't directed at Judge Fox.

6 Q Um, yeah. Exactly. On April 2, you -- again,  
7 your work on the case was an e-mail to the press  
8 and a phone conference with a Jeanette from TV-2?

9 A Yes.

10 Q All right. Then on April 2 you indicate that  
11 you've -- you now have finally reviewed the rest  
12 of the initial paper discovery; right?

13 A Right.

14 Q And you send an e-mail to Mr. Kratz and you spend  
15 about -- you spent 4.2 hours doing that?

16 A Right.

17 Q Um, and there is also -- you've also talked to  
18 the press on April 2, I believe. I refer your --  
19 you to Exhibit 326. This is a -- a fairly long  
20 one. The first several pages of it is something  
21 of a tribute to Teresa, the Teresa Halbach  
22 Memorial Fund?

23 A Uh-hmm.

24 Q And if you go to the last page?

25 A Right.

1 Q And the second to laugh -- last paragraph, you're  
2 quoted as saying, well, Kachinsky does believe  
3 Dassey has some intellectual deficits. He  
4 believes Brendan has a reasonably good ability to  
5 recall events he participated in. That accurate?

6 A Yes, it is.

7 Q Okay. So it -- the next day, April 3, you --  
8 you -- let's back up a minute. Up -- up until  
9 that point, um, you have spent -- well, let me  
10 see if I -- you have spent, if -- if -- if I'm  
11 doing my math right, and let me know if I'm  
12 close, um, you've spent about an hour with your  
13 client and probably about at least ten hours with  
14 the press? Sound about right?

15 A That -- that could be. I'm not sure if I saw him,  
16 you know, when I talked to him between that, and  
17 there was at least one letter, but...

18 Q Right.

19 A -- that would be close.

20 Q And there was a -- there was a jail visit that  
21 you did on -- on April 3?

22 A Right.

23 Q Okay. And did you, again, contact the press  
24 prior to going out there?

25 A No.

1 Q Okay. But they -- they did do a -- a -- did have  
2 an interview on that day with the press; right?

3 A I believe so. I think they caught me probably on the  
4 way out of the detention center. They may have  
5 called my office saying they wanted to talk to me and  
6 somebody told them where I was.

7 Q Okay. So --

8 A I don't know exactly.

9 Q So, um, once again, your going to visit Brendan  
10 was a newsworthy event?

11 A I -- was it -- I don't know. I didn't make the  
12 decision. I -- these calls were all initiated by the  
13 media.

14 Q Okay. Um, you had a -- it shows you had a phone  
15 conference with TV-11? Um, do you know how long  
16 that conference was?

17 A Probably very short. Five -- five minutes at the  
18 most.

19 Q Okay. So it -- it's -- it's kind of bundled up  
20 on your voucher here. The -- the phone  
21 conference with TV-11 and your conference with  
22 Brendan Dassey at the Sheboygan Detention Center.  
23 And you got 1.4 hours. So you're saying maybe  
24 you saw Brendan for about an hour and fifteen  
25 minutes?



1 A I might have. I don't recall.

2 Q Okay. Well, does that sound about right? You  
3 spent about an hour and fifteen minutes with him  
4 so far? Or on this --

5 A On that --

6 Q -- date?

7 A -- particular occasion --

8 Q Yeah.

9 A -- that would be about the normal length. Brendan's  
10 not real talkative, so...

11 Q Okay. Um, and -- and --

12 ATTORNEY FALLON: If I may -- excuse me,  
13 Counsel. When he says an hour and fifteen  
14 minutes, are we referring to April 3 or --

15 ATTORNEY DVORAK: Yes.

16 ATTORNEY FALLON: -- is that in -- out  
17 of the hour and 40?

18 ATTORNEY DVORAK: Well, it's 1.4. It  
19 says --

20 ATTORNEY FALLON: Well -- excuse me --

21 ATTORNEY DVORAK: -- goes into tenths.

22 ATTORNEY FALLON: -- 1.4. You're right.

23 ATTORNEY DVORAK: Yeah.

24 ATTORNEY FALLON: Okay. All right. I  
25 just wanted to make sure that we're on the same

1 page.

2 ATTORNEY DVORAK: Yeah.

3 Q (By Attorney Dvorak) And it's at this point  
4 where you first come upon Michael O'Kelly;  
5 correct?

6 A I believe so. I think this may have been the time  
7 Brendan made a second request for the polygraph.

8 Q Right. Once again, um, you go to -- you go there  
9 to interview Brendan and Brendan tells you that  
10 the March 1 statement and the statements that he  
11 made inculcating himself were not true; right?

12 A I don't know. Didn't quite put it that way, but I  
13 think he was kind of non-communicative. But he  
14 definitely told me to get a polygraph again.

15 Q Well, did he -- did he tell you that -- on this  
16 occasion is there any question in your mind that  
17 he told you that he was innocent?

18 A He didn't use those words I don't recall, but --

19 Q Well, okay. Was the message that he communicated  
20 to you was that he didn't do this?

21 A I think at that time, yeah, he said, I didn't do  
22 this. I want a polygraph. It -- it sounded kind of  
23 rote to me, but certainly I was going to --

24 Q So my --

25 A -- grant his request.

1 Q -- my -- my question to you is: Did, what  
2 Brendan tell you, that he didn't -- he was not  
3 involved in this? Was that the message that he  
4 was telling you?

5 A Yes.

6 Q Okay. Whatever words he used, whatever the words  
7 may have been, his message to you was, I'm not  
8 guilty. I want a jury trial.

9 A He definitely didn't use the word jury trial. But he  
10 said he wanted a polygraph.

11 Q Well, okay. I guess one flows from the other,  
12 and maybe he didn't use the word jury trial, but  
13 he did at least say --

14 ATTORNEY FALLON: Objection.

15 THE COURT: Yeah. Yeah. Keep the comments  
16 the -- the judgment comments to yourself, Counsel --

17 ATTORNEY DVORAK: I'm sorry.

18 THE COURT: -- at this time.

19 Q (By Attorney Dvorak) And -- and tied in with  
20 that was, uh, I want to take a polygraph test;  
21 right?

22 A Yes.

23 Q Okay. So how did you come upon Michael O'Kelly?

24 A I did not know any polygraph examiners in the  
25 Sheboygan area. Um, I knew one in Green Bay but he

1 had charged \$500. I knew the State Public Defender  
2 would only authorize 350.

3 Um, so I just -- I did a search engine  
4 for polygraph examiners in Sheboygan, and I think  
5 it was on Superpages or something. One of those  
6 internet -- an internet directory rather than  
7 Google. And Mr. O'Kelly was about the only name  
8 that came up.

9 Q Okay. And what -- are you saying -- okay. But,  
10 in -- what made you decide to -- to contact  
11 Mr. O'Kelly? And doesn't sound like there was  
12 anybody else to compare him to --

13 A Correct.

14 Q -- is that what you're saying?

15 A Right. In that specific area. That would -- might  
16 possibly be willing to work at the rate the State  
17 Public Defender would pay.

18 Q Okay. So what did you do once -- and -- and did  
19 you do any follow-up to check out his background  
20 or anything?

21 A No.

22 Q Okay. Um, so you -- you saw him on Superpages or  
23 wherever you made -- and saw that he did  
24 polygraphs? You thought you'd give him a call  
25 and see if he'd be willing to do this for 350

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bucks?

A I don't know if I called --

Q (Unintelligible.)

A -- him. I think I e-mailed him. But told him what the conditions might be. If he was interested, uh, etc.

Q Okay.

ATTORNEY DVORAK: One second, Judge.

Can I have one second, Judge?

THE COURT: Go ahead.

Q (By Attorney Dvorak) I want to refer you to -- I'm sorry -- Exhibit 347.

A Okay.

Q The -- this is a -- a letter that you sent to Brendan following your interview; right?

A Following the April 3 interview?

Q It's the same day --

A Correct.

Q -- as the interview --

A Yes.

Q -- right? Okay. And you tell Brendan that you've located a polygraph examiner and that he's coming. You also discuss some of the -- some of the facts in the case.

I want to draw your attention to the

1 second to the last paragraph. And in the middle  
2 of that paragraph you write Brendan:

3 "But, once again, the videotape is  
4 pretty convincing that you were being truthful on  
5 March 1. You need to stop thinking about who  
6 benefits from what you say and just think about  
7 what really happened.

8 If a judge or jury thinks you are lying,  
9 cover up for Steve or yourself, you are writing  
10 yourself a sentence to life imprisonment without  
11 parole.

12 If you accept responsibility for what  
13 you did and cooperate in Steve's case, at least  
14 one of the Halbachs will ask Judge Fox to go  
15 relatively easy on you."

16 Right?

17 A Correct.

18 Q Okay. Brendan, I just told you that he's not  
19 guilty; right?

20 A Yes.

21 Q And you're sending him a letter saying, I don't  
22 believe you?

23 ATTORNEY FALLON: Objection.

24 THE WITNESS: I --

25 THE COURT: Well, the letter speaks for

1           itself, Counsel.

2   Q       (By Attorney Dvorak) And, um -- and the letter  
3           also talks about --

4                    ATTORNEY FALLON: My object -- just so  
5           the record was clear, my objection was to the  
6           form. I don't mind Counsel inquiring as to what  
7           his stated intent. It's just that my question  
8           was the form and the opinionation of the  
9           question.

10                   THE COURT: Objection is noted.

11                   ATTORNEY DVORAK: All right.

12   Q       (By Attorney Dvorak) Do you -- do you suppose  
13           that -- do you suppose that might be part of what  
14           Brendan had in mind? That and -- and the  
15           messages he was seeing on TV part of what he had  
16           in mind when Brendan wrote the letter to the  
17           judge on June 30 asking for a new lawyer?

18   A       I have no idea.

19   Q       Okay. Now, um, let's see. You -- did you  
20           have -- do you recall what your next conversation  
21           was with O'Kelly?

22   A       Whenever it was, it would have been on my invoice.

23   Q       Okay. On April 4, um, the only work you do on  
24           the case is a phone conference with somebody from  
25           Inside Edition?

1 A Correct.

2 Q All right. Um, and on April 5, you travel to the  
3 D.A.'s office to have a conference with Mr. Kratz  
4 and to review some evidence; right?

5 A Correct.

6 Q Do you recall what you looked at?

7 A Uh, this was the stuff primarily pertaining only to  
8 Steve. Pictures. Some other stuff that was --  
9 pictures taken from surveillance air crafts.  
10 Diagrams of the Avery property. Um, things seized  
11 from Mr. Avery again. And pictures. Personal  
12 pictures. Things like that.

13 Q What -- how -- how much volume of stuff are we  
14 talking about that you looked at? Boxes? A --

15 A I would say --

16 Q -- box?

17 A -- three or four banker boxes worth of stuff.

18 Q Okay. Um, did you make copies of any of it?

19 A No. I just made some notes.

20 Q Okay. So you looked at it, made some notes, and  
21 moved on? Didn't make any copies?

22 A Correct.

23 Q Did you make an inventory of what was in there?

24 A No.

25 Q Um, and what did you talk to Mr. Kratz about on



1           that occasion?

2    A    Probably just the procedures, progress of the case.

3           Nothing that I remember specifically.

4    Q    Okay.  There were -- there were no substantive

5           discussions about resolution of the case that you

6           recall?

7    A    Not that I recall, no.

8    Q    Any issues about discovery that you recall?

9    A    Not that I recall.

10   Q    Okay.  Um, by the way, up until this point had

11          you retained an investigator?

12   A    Not until after -- no, not until after the polygraph.

13   Q    Okay.  And you also had a phone conference with a

14          guy named Bob Healey?

15   A    Yes.

16   Q    Is that a -- a news person?

17   A    Yes.

18   Q    Okay.  Did -- did that person know that you had

19          gone to the D.A.'s office?  Do --

20   A    No.

21   Q    -- you remember?

22   A    I don't think so.

23   Q    Okay.  The next day you spend .2 hours on a

24          letter to Brendan, and a half an hour in a phone

25          conference with -- or having, it appears,

1           apparently an in person conference with a news  
2           reporter; right?

3    A       Yes.

4    Q       April 7 you got an e-mail from Mr. Kratz?

5    A       Yes.

6    Q       Um, I don't know what that is. Do you remember  
7           what that was about?

8    A       No.

9    Q       Okay. You don't have a copy of that?

10   A       No.

11   Q       Um, and that was your only work on the case on  
12          that day?

13   A       I think so, yeah.

14   Q       All right. Um, and on April 8 you do some legal  
15          research. It says, Mishicot School District, an  
16          e-mail. The -- the legal research. What was  
17          that about?

18   A       I think it would have been how to obtain Brendan's  
19          records from the school district to offer them into  
20          evidence at the suppression hearing.

21   Q       Okay. And then you -- you sent an e-mail to a  
22          psychologist and the teachers. I assume that  
23          means at the school. The school psychologist?

24   A       Correct.

25   Q       Okay. April 11, um -- okay. Let's see 63.

1 The -- I -- I just have a question about Exhibit  
2 63 if you can -- if you can look at that. That's  
3 volume two. I'm not sure if you have that up  
4 there, do you?

5 ATTORNEY NIRIDER: He does.

6 THE WITNESS: I do not.

7 Q (By Attorney Dvorak) Just to make it easier,  
8 it's very short and my question's very short so  
9 rather than take things apart. That's an e-mail  
10 between you and Michael O'Kelly; right?

11 A I don't think it's a phone mes -- I don't think it's  
12 an e-mail. Um --

13 Q Whatever it is, it's communication between you  
14 and O'Kelly?

15 A I believe so. Some -- some kind of -- something I  
16 needed -- I felt it needed documented for some  
17 reason.

18 Q Okay. It's -- it's about your -- your visit with  
19 O'Kelly; right? Or -- I'm sorry. O'Kelly's  
20 going to give an information about where he needs  
21 to be? It's -- it's an e-mail from O'Kelly to  
22 you; is that right? Or a communication phone  
23 message?

24 A I believe it's a phone message. Sometimes I get  
25 messages from the -- the staff, and then I'll type

1           some more things on it for some reason or another,  
2           uh, so I've got the information documented and  
3           available, and then print it. That's --  
4   Q       Okay.  
5   A       -- apparently what this was.  
6   Q       There's the address of the detention facility.  
7           There is a note there that says, "Dassey wants to  
8           do it on Sunday morning." Which is Easter?  
9   A       Yeah.  
10   Q       Right? And -- and the "it", I assume, is the  
11           polygraph test?  
12   A       I think Dassey was referring generically to the  
13           defense team. Really, more accurately, O'Kelly, um,  
14           rather than Mr. Dassey feeling Easter was a kind of  
15           day he'd want to do a polygraph. I think it dealt  
16           with O -- O'Kelly's schedule and needing to arrange  
17           for the Sheboygan County Jail to let Mr. O'Kelly in  
18           to do his polygraph.  
19   Q       Right. And that's why they have Captain  
20           Schulte's (phonetic) phone number on there;  
21           right?  
22   A       Correct.  
23   Q       Schielke (phonetic), rather?  
24   A       Yeah.  
25   Q       Okay. Did -- did you have contact with -- with

1 Schielke or did you somehow help set up the --  
2 the conference or the polygraph test on Easter  
3 Sunday?

4 A Yeah. We did a fax, or an e-mail, or something to  
5 him saying, you know, Michael O'Kelly's on the  
6 defense team. Like to do it then. Um, please let  
7 him have a professional-type visit with Mr. Dassey.  
8 Something like that.

9 Q Okay. So there was -- there obviously would need  
10 to be some communication to alert them to the  
11 fact that somebody was coming in, and that --  
12 that -- that it was a member of the defense team,  
13 so that they could have a contact visit; right?

14 A Correct.

15 Q Okay. April 12, um, it says meeting with  
16 Synthesis Productions. What's Synthesis  
17 Productions?

18 A That was Laurie Ricciardi. She was doing some kind  
19 of documentary on this case. And I think that even  
20 she -- I believe she's here today --

21 Q Okay.

22 A -- outside of here. And she wanted some -- wanted to  
23 go into my personal background, and other stuff, um,  
24 regarding what it was like to work on a case like  
25 this.

1 Q All right. And you spent 2.9 hours with her;  
2 correct? And -- and .5 hours you spent on other  
3 issues related to the case; right? E-mail to  
4 Kratz and Mike O'Kelly, .3 --  
5 A Oh.  
6 Q -- hours?  
7 A On that particular day, yes.  
8 Q Yes. And legal research on polygraph disclosure  
9 .2 hours --  
10 A Yeah.  
11 Q -- correct? Okay. Um, you also -- that e-mail  
12 to -- that you got from Mr. Kratz --  
13 A Right.  
14 Q -- I refer you to Exhibit 344.  
15 A Got it. April 12, 2006?  
16 Q Right. Now, in that e-mail Mr. Kratz is advising  
17 you that he learned that plans were on the way to  
18 have Brendan subjected to a polygraph  
19 examination?  
20 A Yes.  
21 Q Right? Um, do you know how he had learned that  
22 information?  
23 A I can draw some inferences, but I don't personally  
24 know it, no.  
25 Q Okay. And you suspect that it may be that the

1 jail personnel may have alerted him to the fact  
2 that somebody's going to be bringing polygraph  
3 equipment into the jail?

4 A Quite likely.

5 Q Yeah. Okay. Had you given any thought, perhaps,  
6 to seeking an order from the judge that -- that  
7 the people in the Sheboygan County facility  
8 not -- be ordered not to disclose that, uh,  
9 information to the prosecution as much as its --  
10 its -- it relates to attorney/client work  
11 product?

12 ATTORNEY FALLON: Objection. Relevance,  
13 speculation. And if there's an attempt at  
14 impeachment, the first prong was never attempted  
15 in the questioning of Mr. Kratz.

16 So it's procedurally deficient. It's --  
17 it's irrelevant. It's immaterial. And it calls  
18 for speculation as to what this witness thinks  
19 what Mr. Kratz knew.

20 THE COURT: I didn't understand that to be  
21 the question.

22 ATTORNEY FALLON: Well, then I'm missing  
23 something. So maybe the question needs to --

24 THE COURT: Why don't --

25 ATTORNEY FALLON: -- be --

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THE COURT: -- you re-ask --

ATTORNEY DVORAK: Yeah. I --

THE COURT: -- the question.

ATTORNEY DVORAK: -- I think I can do  
this and resolve his -- his problem.

Q (By Attorney Dvorak) Um, you didn't tell the  
prosecution that you were going to have Brendan  
take a polygraph test; correct?

A Correct.

Q The information did not come from you; right?

A Correct.

Q Had you told anybody else?

A No.

Q So the only person -- well, all right. Um, so  
there's a -- a -- a reasonable inference that you  
were drawing that this information came from the  
people in the facility?

A Right.

ATTORNEY FALLON: Still objection.  
Irrelevant, immaterial to the issue at hand.

THE COURT: I -- he's answered the  
question. I'm going to overrule the objection.

ATTORNEY DVORAK: Thank you.

Q (By Attorney Dvorak) Um --

A And -- and I did not think about a protective order,



1 no.

2 Q Okay. Did you respond in any way to Mr. Kratz's  
3 e-mail? Specifically, I guess, the e-mail covers  
4 a couple of issues so let me just deal with the  
5 polygraph issue first.

6 A Sure.

7 Q Did you -- did you contact him in any way to --  
8 to discuss his concerns about polygraph?

9 A I -- I don't believe I did. If I did, it would be on  
10 the -- on the voucher.

11 Q Okay. Now the other issue that Mr. Kratz raises  
12 in this e-mail is his concern about pretrial  
13 publicity that you've chosen to engage in and --  
14 and cites the rule. Um, did you respond to him  
15 about that?

16 A I don't think I responded to him, no.

17 Q Okay. Did you read the rules that he had cited?

18 A Yes.

19 Q You were familiar with the rule before he cited  
20 it?

21 A Yes.

22 Q Okay. And are you sug -- you're saying that you  
23 didn't have any concerns that you -- your  
24 contacts with the press implicated the -- the  
25 rules relating to attorneys con-- discussing

1 pending matters with the press?

2 A I thought the way that I was doing it, primarily in  
3 terms of process and not as to what specifically we  
4 were doing in the case, was legally permissible.

5 Q Also, on this day, you got word that someone from  
6 Brendan's family was -- might have been able to  
7 post bail, or talking about posting property as  
8 surety; correct?

9 A Yes.

10 Q And did you consider that to be good news?

11 A I thought it was worth a try.

12 Q Okay. You didn't see any problems with it?

13 A Well, I mean, property bonds are often frowned upon,  
14 and I think Avery's attempt to do it had already been  
15 rejected by Judge Willis. Um, but I thought we'd at  
16 least give it a try for Brendan and see if it -- it  
17 would work out.

18 Q All right. And -- and there -- the -- um, on  
19 April 13 you have a phone conference with  
20 Angenette Levy, .2 hours; right?

21 A Right.

22 Q And a phone conference with B. Janda? That's  
23 Barb; right?

24 A Correct.

25 Q Okay. What did you talk to Ms. Levy about?

1 A I think she just wanted to know if there was anything  
2 new in the case. A lot of the calls were that day,  
3 sure. And I'm not sure what I talked to her about.  
4 I -- I know positively I didn't tell her about the  
5 polygraph test. But other than that I can't really  
6 recall.

7 Q All right. Were you aware -- I mean, you're  
8 aware up to this point that -- that Barb has some  
9 concern about your representation and -- and  
10 things that you're saying in the press. Did you  
11 get any concerns? Expressions of concern from --  
12 from Barb at this point about that?

13 A I don't recall. I don't recall getting any, no.

14 Q Okay. Um, on April 14 -- take a look at Exhibit  
15 350.

16 A I see it. Yeah.

17 Q It's -- it's relaying information about the fact  
18 that the polygraph test is coming up in two --  
19 couple of days. And you make mention of a recent  
20 discussion with your mother, um, that people have  
21 the impression that what you're trying to do in  
22 the case is to get a quick plea, and drop it,  
23 and -- right?

24 A Now that you refresh my recollection, I do recall she  
25 said something that her relatives were telling her

1           that that's what I wanted to -- to do in the case.  
2           Something like that.

3   Q    And, in fact, that's what the message that you  
4           had been trying to send to them by your talking  
5           to the press?

6   A    No.

7   Q    You testified earlier on; right?

8   A    That's not the message I was trying to send about a  
9           quick plea and drop it.

10  Q    Okay. Well, but you -- you did indicate that you  
11           were trying to prepare the family for the fact  
12           that that may well be what you're going to end up  
13           doing in this case; right?

14  A    Let them know about all the options that are -- are  
15           considered. Everything ranging from, you know, a  
16           jury trial to a -- a -- a plea agreement. Right.

17  Q    At -- at -- at this point never once did you  
18           mention in the press that Brendan said that he is  
19           not guilty; right?

20  A    Correct.

21  Q    And that -- that -- that he's not guilty and  
22           intends to fight the charges?

23  A    I did not say that. That's correct.

24  Q    Okay. Which is what his position, in fact, was,  
25           up to this point; correct?

1 A To look at -- you could look at it that way, yes.

2 Q Okay. You -- you indicate that -- also, by the  
3 way, you indicate that the -- you're not going to  
4 disclose the results of the polygraph test to  
5 Barb, um, or that Mr. O'Kelly is not going to,  
6 but that he will disclose them to you; right?

7 A Right.

8 Q Okay. Um, you've indicated that your primary  
9 focus at this point in that letter is on the  
10 motion to keep the statements out of evidence  
11 and -- right?

12 A Correct.

13 Q And -- and what you've done so far is -- is  
14 talked to Brendan twice, listened to the tapes  
15 and summarized them, and read a couple of cases?

16 A And reviewed the additional discovery that was at the  
17 D.A.'s office and in my possession.

18 Q Okay. Which you did not see to be relevant  
19 toward any of Brendan's statements?

20 A Which -- what are you referring to on that? The  
21 stuff --

22 Q No, I'm just -- I guess I'm just saying back what  
23 you had already said. That you didn't really  
24 view any of this stuff as being terribly  
25 significant to Brendan's case. He didn't bother

1 to copy it? He didn't bother to take it back?  
2 He left it in the D.A.'s office?

3 A At that point --

4 Q You didn't see any significance to -- to -- to  
5 much of what they had?

6 A I didn't see it as insignificance, independent, or in  
7 addition to what was in narratives -- narrative forms  
8 describing it in some of the discovery.

9 Q Okay. So you -- had you, in -- in -- in the  
10 course of analyzing this statement, considered  
11 possibility of contamination from outside sources  
12 or from interrogators at -- at this point?

13 A I certainly considered it as I watched it, and, also,  
14 when I went over the -- the transcript again. Um,  
15 from my observations of it I didn't see contamination  
16 as being there.

17 Q Um, and you -- you -- you indicate that you also  
18 analyzed the statement for purp -- for **Miranda**  
19 purposes?

20 A Yes. The whole, you know, (unintelligible) the  
21 rights advisals (phonetic) down through the end of  
22 it, correct.

23 Q Okay.

24 ATTORNEY DVORAK: Um, can we play -- I  
25 believe it's chapter three to -- and I guess I

1 don't need the whole thing, but... I'm just  
2 going to read it. Um, what exhibit -- 315.  
3 Um --

4 THE WITNESS: That the transcript of the  
5 interview maybe?

6 Q (By Attorney Dvorak) Yeah. Yeah, 315.

7 A Okay.

8 Q Um, item two. And this is page 13. Sorry.

9 A The first word on there is, up to this thing?

10 Q No.

11 A Oh, thirteen. Excuse me. Okay. I see there's  
12 pages. The number's on the bottom. Okay. Go ahead.

13 Q Okay. Yeah. Page thirteen. You got it?

14 A Right.

15 Q Chapter three, *Miranda*?

16 A Right.

17 Q Okay. Um, and we're talking about the 2-27-06  
18 Two Rivers Police Station video, okay?

19 A Okay.

20 Q All right. It says, uh -- and --

21 ATTORNEY FALLON: Your Honor, I'm going  
22 to object again. And if the Court will permit  
23 this as a standing continuing objection, fine.

24 But I -- the State continues to object  
25 to questioning regarding his statement, which was

1 never introduced into evidence. And that's what  
2 this questioning is about, February 27, 2006.

3 ATTORNEY DVORAK: It's relevant, Judge,  
4 to the motion to suppress. The issue of  
5 effect -- or duty of loyalty with respect to the  
6 motion to suppress.

7 ATTORNEY FALLON: Absolutely not. We  
8 take strong issue with that, and we're ready to  
9 debate that right now.

10 Plus -- well, I'll wait. Unless you  
11 want more argument.

12 THE COURT: No. Um, I'm going to sustain  
13 that objection.

14 ATTORNEY DVORAK: Um -- okay.

15 Q (By Attorney Dvorak) Let me ask it this way:  
16 The -- were you aware or had you come to the  
17 conclusion that the *Miranda* warnings that were  
18 given to Mr. Dassey on February 27, 2006 at the  
19 Two Rivers Police Station was illegally  
20 deficient?

21 A I didn't come --

22 ATTORNEY FALLON: Objection, again.  
23 Same issue. Same question.

24 THE COURT: Well --

25 ATTORNEY FALLON: Illegal deficiency is



1 a -- is a question of law for the Court. Well,  
2 it's a mixed question of law and fact. But...

3 THE COURT: I'm going to overrule the  
4 objection. He can answer that. I'm not interested  
5 in hearing any more about this.

6 ATTORNEY DVORAK: Okay.

7 THE COURT: Answer it if you can.

8 THE WITNESS: Sure. The answer is that  
9 I don't think I carefully looked at the issue  
10 regarding February 27 as a **Miranda** warning-type  
11 issue because the State had indicated that it  
12 wasn't going to use that as evidence. And the  
13 only thing, then, that was the subject of the  
14 suppression motion was the March 1 statement,  
15 which I, of course, did go over quite carefully.

16 Q (By Attorney Dvorak) Okay. The -- let me --  
17 I -- let me just ask you this question then: Had  
18 you looked at the sufficiency and made any  
19 determination as to the sufficiency of that  
20 February 27 **Miranda** advisal?

21 A I -- I'd say no.

22 Q Okay. If it was -- if it were not sufficient, do  
23 you think -- well -- hold on. That's fine. I'll  
24 move on. On April 16, Mr. O'Kelly polygraphs  
25 Brendan, um, and you spend .3 hours on the phone

1 with him. Did Mr. O'Kelly tell you what the  
2 results of the polygraph were?

3 A Yes.

4 Q And what did he tell you the results of the  
5 polygraph were?

6 A He said the results were inconclusive.

7 Q Okay. And did you at all relay that to Barb at  
8 that time?

9 A I doubt it. I don't think I did.

10 Q At -- at -- at that time do you recall whether or  
11 not Michael O'Kelly had discussed with you or  
12 mentioned to you that Brendan was wanting to get  
13 a new lawyer?

14 A I don't recall him -- I don't recall that, no. At  
15 some point he did -- at some point he did warn me  
16 there might be problems. I'm not sure where that  
17 fell in the timeline.

18 Q Um, do you have Exhibit 94 in front of you?

19 A Ninety-four?

20 Q Yes.

21 A No, I do not. I think it's in a -- it must be in  
22 volume two. I think the Judge has that one.

23 Q I'll just give him this real quick. It's rather  
24 lengthy. Um, and what I'd like you to do is just  
25 tell me if you've ever seen anything like that

1 before?

2 ATTORNEY FALLON: Counsel, what Exhibit  
3 again?

4 ATTORNEY DVORAK: Ninety-four.

5 ATTORNEY FALLON: Thank you.

6 THE WITNESS: Right. That was -- that  
7 was a form given to me by Mr. Kelly (sic) after  
8 the results of the polygraph exam and his  
9 interview with Brendan.

10 Q (By Attorney Dvorak) Um, and now prior to  
11 interviewing Brendan, did you talk with  
12 Mr. O'Kelly about inter -- your -- you know, what  
13 was going to happen or what you were looking for  
14 from his meeting with him on that day?

15 A I related to Mr. O'Kelly simply -- I wanted to send  
16 him a copy of the Complaint, and that the issue in  
17 the case was or was not Brendan present when all  
18 these things had -- had occurred.

19 So it was a very relatively easy issue  
20 to polygraph. It's not a question of admitting  
21 to the act and intent or something like that.

22 So I wanted -- I said, you know, look at  
23 it. See what -- if he -- how he polygraphs.  
24 Basically on the issue if he was there, did he  
25 participate in some way in burning the corpse, or

1 assisting in the homicide or a sexual assault.

2 Q Right. And did you convey to him the -- the  
3 potential for plea agreement down the road?

4 A At that time, no.

5 Q Did you convey to him at all your sense that the  
6 statement that he gave was truthful?

7 A I think I was non-committal.

8 Q Okay. Um, which is -- which is more than what  
9 you had told Brendan then?

10 A I was non-committal to Mr. O'Kelly 'cause I wanted to  
11 avoid, first of all, contaminating the -- the  
12 polygraph process. I don't want him to do a  
13 polygraph, giving me predetermined results. I wanted  
14 it to be -- to be accurate.

15 Q Okay. And what was your reaction to the  
16 polygraph results?

17 A After --

18 ATTORNEY FALLON: Objection. Relevance.

19 THE COURT: Overruled.

20 THE WITNESS: Okay. After O'Kelly told  
21 me that it was inconclusive, he made some comment  
22 to the effect that he thought that Mr. Dassey was  
23 a kid without a conscience or something. Um, so  
24 I -- I guess took from that I really was -- was  
25 non -- non-determinative.

1 Q Okay. So -- so, now, Mr. O'Kelly has told you  
2 that -- essentially that Brendan Dassey's a  
3 sociopath?

4 ATTORNEY FALLON: Objection to the  
5 characterization.

6 THE COURT: Yeah. That -- that's  
7 sustained.

8 ATTORNEY DVORAK: I'm sorry? Oh. Okay.

9 Q (By Attorney Dvorak) Um, all right. Well,  
10 knowing that -- that that's Mr. O'Kelly's view of  
11 the case, you then went on to hire him as your  
12 investigator; right?

13 A Yes.

14 Q By the way, did you believe that that was the  
15 issue in the case?

16 THE COURT: That what was the issue?

17 ATTORNEY DVORAK: I'm sor --

18 Q (By Attorney Dvorak) The -- you -- you -- the  
19 issue that you had talked about. The -- the --  
20 whether or not Brendan was there, I think you  
21 said. Is that right?

22 A Correct. Either -- right. I thought the case was  
23 pretty much a case of was -- based on what Brendan  
24 has said, was he there? And did he participate in  
25 some way in aiding and abetting, uh, Mr. Avery? Or

1 was he not involved in the offense whatsoever?

2 Q Okay. Well, this -- the -- he had -- he had  
3 all -- always admitted to you that he was by the  
4 fire; right?

5 A Right.

6 Q Okay. That was -- that was not an issue?

7 A Right.

8 Q Okay. So I guess one other thing that I -- I  
9 wanted to touch on at this point about your  
10 preparation for the **Miranda** hearing that you had  
11 con -- that you -- did you at all consider any  
12 custody arguments? Custodial statements, that  
13 is?

14 I mean, as I recall, you -- you waived  
15 **Miranda** issues and I'm just wondering whether or  
16 not you looked at whether or not any argument  
17 could be made that he was in custody at the time  
18 some of these statements were made, particularly  
19 February 27?

20 A I didn't deal at all with February 27 because it  
21 wasn't going to be used by the State. Only thing I  
22 was concerned about was -- was March 1.

23 Q Okay.

24 A Um, and so March 1, it was a question of the overall  
25 circumstances of that particular statement.

1 Q So if there was -- if there were problems with  
2 the February 27, you're saying you -- you -- you  
3 didn't think that that would impact the  
4 legality -- you never considered whether it would  
5 impact the legality or the admissibility of the  
6 March 1 statement?

7 A Oh, I certainly considered it, but it was two days  
8 later, independent **Miranda** warnings, other events. I  
9 thought the intervening events were so strong that  
10 any spillover or prejudice was probably nonexistent.

11 THE COURT: Counsel, let's stop here.  
12 We'll take an afternoon recess of 15 minutes. I'd  
13 like to see counsel in chambers as well.

14 (Recess had at 3:00 p.m.)

15 (Reconvened at 3:15 p.m.)

16 Q (By Attorney Dvorak) Mr. Kachinsky, I'd like you  
17 to look at a transcript of the motion hearing on  
18 February 4. Drawing your attention to page 110.  
19 Um, the -- starting with the second to the last  
20 paragraph.

21 A I believe it's May 4.

22 Q May. What did I say?

23 A February. I pay attention.

24 Q I meant May 4. I'm sorry. I think it's  
25 important to listen to specific wording from

1           there.

2       A     That's Judge Fox's statements or mine?

3       Q     Um, I believe it's yours.

4                    ATTORNEY FALLON:  What page number,  
5       Counsel?

6                    ATTORNEY DVORAK:  One-ten was it?

7                    THE WITNESS:  One-ten.

8       Q     (By Attorney Dvorak)  I believe it's your  
9       argument.

10      A     Okay.

11      Q     All right.  Does that refresh your recollection  
12      as to whether or not you made any arguments and  
13      considered February 27 statement?

14      A     It does.

15      Q     Okay.  And did you?

16      A     Yes, in very much of a -- a summary fashion.

17      Q     What you say in that argument is that you need to  
18      consider the February 27 statement because it's  
19      part of a continuum of the police investigation  
20      in this matter?

21      A     To some extent, yes.

22      Q     Yes.  Okay.  Thank you.  Um, the -- the next day,  
23      February -- April 18, the -- you -- this is now  
24      your third visit to Mr. Dassey; correct?

25      A     Yes.



1 Q Okay. Um, you spend about an hour and ten  
2 minutes with him?

3 A Or -- well, 1.1 is actually an hour and six but...

4 Q Okay.

5 A Probably an hour of time getting in and out of the  
6 jail and so forth, yes.

7 Q Sure. Okay. We don't have any notes of that  
8 interview. What did you talk about?

9 A I think I talked to him about the status of where the  
10 case was at so far. About any additional facts might  
11 need regarding the suppression, uh, issue. About  
12 trying to get a bond motion in for a property bond.  
13 Things of that nature.

14 Q Okay. Um, and based on your interview with him  
15 then, he was still at that time maintaining his  
16 innocence; correct?

17 A I don't think we talked about that issue --

18 Q Okay.

19 A -- at that time. But there hadn't been any sudden  
20 change of heart or anything.

21 Q All right. The -- the next day, April 19 -- by  
22 the -- um, who is Joel Christopher?

23 A Uh, he is a reporter for the Appleton Post Crescent.  
24 I think he's the head of the reporting bureau or  
25 division. Something like that.

1 Q All right. So on that day you spoke to ten  
2 members of the press, and Michael O'Kelly, and  
3 got a message from Brendan Dassey; right?  
4 A Correct.  
5 Q On April 20, are -- on April 20, you also had a  
6 couple of press conferences?  
7 A I don't think they'd be called press conferences  
8 but...  
9 Q Well, okay. You had -- you talked with the press  
10 again. I refer your attention to 327.  
11 A I'm lost where you are.  
12 Q Oh. No --  
13 A Exhibit 327?  
14 Q Yes.  
15 A Okay.  
16 Q I'm sorry.  
17 A All right. I don't know if that was a -- oh, yeah, I  
18 believe I did. Now that I re-read that, I did say  
19 something like that, sure.  
20 Q Okay. And -- and, also, on 328, an interview  
21 with Fox-11?  
22 A That's Exhibit 328 instead of March 28, but, um --  
23 Q Thank you.  
24 A Yes. I -- I don't know if -- there might have been a  
25 short interview, yes.

1 Q Okay. Have you reviewed that?

2 A The one -- Exhibit 328?

3 Q Yeah.

4 A Yes. And I'm not sure. Sometime during this case I  
5 took -- did what I knew that Avery's attorneys were  
6 doing. Dean Strang in particular. I started sending  
7 copies of my motion to -- motions and other  
8 pleadings, uh, to the media so that they get the  
9 story straight, and try to reduce the number of  
10 incoming phone calls, and things like that.

11 I know Dean Strang was doing it at that  
12 time. That's why I figured that was a good idea  
13 that might -- that might work.

14 In fact, a article in the *Wisconsin*  
15 *Lawyer* about four months ago or so suggested some  
16 of the things that I actually did in this case.

17 Q Okay. So what you're saying is that you -- you  
18 had picked up on the idea that rather than  
19 talking to them you would send motions to the  
20 press so that they would have it.

21 A Right. I would do it at such a time as I knew that  
22 they had already gotten the clerk of courts here  
23 because I didn't want Judge Fox to hear about  
24 something before it got to the -- got here.

25 But I tried to time it so that they

1 would get it the same morning that it came here.  
2 So that way they'd stop asking questions. 'Cause  
3 they were monitoring this case on CCAP.

4 Q Okay. Now, you -- you had a phone conference  
5 with Michael O'Kelly on that day, also. And  
6 I'm -- I'm wondering, um, uh, what -- what you --  
7 what -- what your -- what the direction was for  
8 Mr. O'Kelly at this point?

9 A I really don't recall.

10 Q Okay. On -- on -- I want to take you up to 4-23.  
11 There's a reference here to an e-mail from Kra --  
12 Mr. Kratz. Do you recall what that was about?

13 A I do not.

14 Q All right. You had -- on April 24, you had  
15 contact with five members of the media; right?

16 A Um, actually there were three. A. Levy is twice on  
17 that day.

18 Q Okay. Um, there -- there's also mention in there  
19 of an e-mail from Mr. Kratz -- from Mr. Kratz and  
20 to Mark Wiegert. Do you know what that was  
21 about?

22 A I'm not sure if this was the time, but there was  
23 certainly some discussion at some point of making the  
24 March 1 video available for Barb Janda or other Avery  
25 family members to view. But I'm not sure if that's

1           what this was about or not.

2       Q     And to what end?

3       A     I think it was just to show them how convincing it  
4           was and, perhaps, affect the advice they were giving  
5           Mr. Dassey.

6       Q     Yeah. Um, and the advice you were giving to  
7           Mr. Dassey at that point was that his case was  
8           pretty much hopeless and that really what he  
9           ought to be doing here is focusing on a guilty  
10          plea?

11      A     I think I really was strong -- more strongly in that  
12          direction once the decision was made on the motion to  
13          suppress. That was our -- basically our only hope,  
14          in my opinion, based on the evidence available to  
15          have an -- to acquittal. There was no -- the  
16          confession was suppressed, the State would probably  
17          have to dismiss the case for lack of evidence as far  
18          as I knew.

19      Q     Right. And-- and you were making that known to  
20          the press. The fact that if -- if the Judge  
21          suppresses this evidence, that Dassey may well  
22          walk. Mr. Dassey may well walk out the door?

23      A     I believe so, yeah.

24      Q     Um, on -- let's see. Four. Some of the -- I  
25          mean, were you aware that Mr. O'Kelly went out

1 to -- what's St. John's Church? What's the  
2 significance of St. John's Church in this case?

3 A Which, uh --

4 Q April 24. Um, it's not in your notes. I'm just  
5 asking a general question. What is the  
6 significance of St. John's Church?

7 A Offhand I can't remember.

8 Q Okay. Does that have anything to do with Teresa  
9 Halbach?

10 A I -- I never followed the end of that case that  
11 closely. It might have.

12 Q If -- if he went out to St. John's Church and  
13 took a photograph of St. John's Church, do you  
14 have any idea why he might do that?

15 A Um, yes. That would be for the purpose of, perhaps,  
16 persuading Mr. Dassey to reconsider his position that  
17 he didn't commit the crimes he was charged with.

18 Q Okay. So at this point, then, Mr. O'Kelly had  
19 given you his opinion about Mr. Dassey. You had  
20 conveyed your opinion to the Dassey family, as  
21 well as to Brendan, that they did not believe  
22 his -- his claim of not being involved in this.  
23 Uh, and you at this point were setting out to try  
24 and convince him otherwise? Did I summarize --

25 A Yeah, I -- I believe that would be a fairly accurate

1 summary.

2 Q Okay. So maybe St. -- St. John's Church did have  
3 something to do with Teresa Halbach?

4 A I -- I -- it might have.

5 Q Okay. Um, on April 25, there's a contact with  
6 eight members of the press?

7 A That's correct.

8 Q And that's the only thing you did on that day,  
9 other than review Mr. Avery's motion for  
10 adjournment; correct?

11 A Well, there was also the e-mails from Mr. Kelly.

12 Q Okay. And -- and that took two-tenths of an  
13 hour? Those two e-mails?

14 A Right.

15 Q Um, you got a -- an e-mail from -- from Dean  
16 Strang, um, as well as one from Mr. O'Kelly, um,  
17 and in -- in -- in that e-mail you -- you thank  
18 Mr. Strang for sending information regarding  
19 false confessions, or at least stuff that  
20 Mr. Buting had sent to you; right?

21 A I did.

22 Q Yeah. Was -- was there anything new? Was there  
23 any new information that you didn't already know  
24 about confessions in there that you recall?

25 A I read it, and I tried to correlate it to the known

1 facts related to Mr. Dassey. I mean, I thought it  
2 was interesting. I didn't think it was persuasive.

3 But I thought that if Dassey rejected my  
4 advice and decide to go to trial it certainly  
5 would be useful material.

6 Q Okay. But there's no doubt that the focus of  
7 your investigation and your proceeding at this  
8 point is -- is to convince Mr. Dassey of the  
9 futility of doing that.

10 A Well, I'd also previously, you know, reviewed  
11 partic -- particular emphasis on the timeline, and at  
12 least one witness that somebody had asked me to talk  
13 to. I believe it was a -- an employer that had  
14 called the Dassey household.

15 So I also at least looked at the -- the  
16 alibi possibility as -- as a -- as a defense.  
17 But I concluded that it wasn't going to work very  
18 well. That they were not very convincing  
19 witnesses.

20 So, yeah, the focus was trying to  
21 convince Mr. Dassey that this is what the best  
22 thing for him to do was.

23 Q So -- so you had interviewed a witness then?

24 A At least one. I think it --

25 Q Yeah.



1 A -- was Mr. Connerly (phonetic).

2 Q Okay.

3 A I may have misspelled his name on the slip.

4 Q All right. Um, on April 27 -- you don't have

5 this here, but there was an e-mail that Mike

6 O'Kelly sent you? It's Exhibit 64.

7 A That's a volume two item again?

8 Q Yes.

9 A Okay. I see it. April 27. Right.

10 Q Okay. Had -- you recall receiving that and

11 reading that?

12 A Yes, I do.

13 Q Okay. And this is a report from Michael O'Kelly

14 about the work that he's been doing on behalf of

15 Brendan; correct?

16 A Correct.

17 Q And what he's -- what he's saying in here is that

18 he's in the process of -- of -- he's describing,

19 first of all, going out to the property and --

20 and rather comically expressing the reaction of

21 the Avery family as running around. It was like

22 a field mice watching for a cat, is the way he

23 describes it; right? And that's the second

24 paragraph -- first full paragraph on the second

25 page?

1 A Right. That's his description.

2 Q Okay. Um, he then -- two paragraphs down from  
3 that I have Barb collecting information regarding  
4 Brendan's medical, educational, family history so  
5 we can begin assimilating the mitigation  
6 information for sentencing and penal placement?

7 A Right.

8 Q Okay. The focus at this point was on sentencing.  
9 That's what Mr. O'Kelly's doing; right?

10 A Well, that was part of what he was supposed to do,  
11 yes.

12 Q Okay. Well, and the other thing he was doing was  
13 developing -- trying to develop information that  
14 the State could use; right?

15 A I --

16 Q Against Mr. Avery? Correct?

17 A Correct.

18 Q Yeah. 'Cause he talks about developing inside  
19 information that in the immediate days after  
20 Terese (sic) was murdered, that Earl moved both  
21 the Suzuki and her van to the boneyard.

22 And he's concerned that evidence is  
23 going to be degraded and/or disposed of in the  
24 crusher by the Averys.

25 Um, he says, it's clear in the discovery

1           detectives are quietly asking about the Suzuki  
2           and trying not to sound an alarm for fear of  
3           losing the Suzuki and its possible evidentiary  
4           contents.

5                         Now, this is the knife that we're  
6           talking about; right?

7   A     Right.

8   Q     Is that what he was thinking?

9   A     I believe so.

10   Q     Yeah.

11   A     I don't know what he was thinking but --

12   Q     Yeah.

13   A     -- what he wrote.

14   Q     Okay. That's what your understanding was. So  
15         he's out looking for -- for evidence? Um --

16   A     Right.

17   Q     Okay. Um --

18   A     Giving me options.

19   Q     This possible linking evidence and Brendan's  
20         truthful testimony may be the break-through that  
21         will put their case more firmly on all fours.

22                         It says, uh, is there a way that we can  
23         secure the Suzuki and protect them for the  
24         prosecution in Avery's case? And can we obtain  
25         an -- an SDT to secure both of those items?

1 Right?

2 A That's what he wrote.

3 Q Okay. He's looking for you to -- to help him,  
4 um, get a -- a -- some kind of search warrant or  
5 something to -- to seize -- or an order that'll  
6 allow him to seize that stuff so they can inspect  
7 it?

8 A That was -- that's what he was asking for, yes.

9 Q Yeah. Okay. And then there's a -- the next  
10 paragraph, something I -- I -- grammatically I  
11 have a problem with, but he says, I am not  
12 concerned with finding connecting evidence  
13 placing Brendan inside the crime scene as Brendan  
14 will be the State's primary witness.

15 So, in other words, he's not concerned  
16 that if he's going to -- he's going to come  
17 across evidence that -- against Brendan that's  
18 going to nail Brendan, he's not worried about  
19 that?

20 A He didn't --

21 Q Right?

22 A He didn't think that it was available or something.  
23 You'd have to ask him what he was thinking.

24 Q Sure. Fair enough. This will only serve to  
25 bolster the prosecution. It will actually

1 benefit the State if there's evidence attributed  
2 to Brendan, it will corroborate his testimony and  
3 color him truthful; right?

4 A That's what he wrote.

5 Q Okay. Well, did you -- did you tell him to stop  
6 doing that?

7 A No, I didn't tell him to stop. He --

8 Q You had --

9 A -- was --

10 Q You had --

11 A -- providing options.

12 THE COURT: Let him finish.

13 ATTORNEY DVORAK: Sorry.

14 THE WITNESS: It was his job to provide  
15 the options and I would make the decision whether  
16 we do it or not. These ones, in particular, I  
17 don't think we ever did.

18 Q (By Attorney Dvorak) Okay. You had his blessing  
19 to go in this direction?

20 A Right. See what he could come up with.

21 Q Right. And --

22 A I was trying to control his number of hours. That  
23 proved to be a real problem but...

24 Q Um, and -- and up until this point Brendan's  
25 position to you is that he was not guilty?

1 A Yes.

2 Q Okay. And then he goes on in the next paragraph  
3 about salvaging Brendan's future and, um, and --  
4 and gathering mitigating information; right?

5 A What he wrote.

6 Q Okay. Um, he has a curious statement here. If  
7 the detectives were trained in linguistic  
8 analysis, they would have arrested Brendan close  
9 to when they did Steve.

10 Do you -- did you have a discussion with  
11 him about what he was talking about?

12 A No.

13 Q Okay.

14 A I didn't discuss it with him, no.

15 Q Okay. And, um, he was also going to try and  
16 collect a wooden spoon that Barb had apparently  
17 used to beat Brendan with when he was a little  
18 kid?

19 A That's what he said.

20 Q Okay. He also says, I like how you practice law  
21 and defend your client. I enjoy working with an  
22 ethical defense attorney who is not underhanded  
23 and plays hide the ball. You guys were a good  
24 team.

25 A I guess I had -- I had his respect. I certainly had,

1           also, concerns that he was, at times, out of hand,  
2           especially on the expenditure of -- of hours. It was  
3           going way over what was authorized, and I -- it was  
4           clear to him that if it wasn't authorized he wasn't  
5           going to get paid.

6       Q     Okay. Fair enough. Um, but his actions were  
7           authorized by you? One of the things that he  
8           billed for?

9       A     I gave him a general direction to investigate. Come  
10          up with whatever he could come up with. What was  
11          going on with the Avery family. If there was  
12          anything that might support or detract from potential  
13          alibi. Those were the main directions I wanted him  
14          to look at.

15      Q     All right. On May 1, you have a -- and this is  
16          a -- a hand-written note that you have. And I'll  
17          just ask you, there's a -- a note on a -- on one  
18          of your pieces of paper that says, psych on  
19          Branden (sic), with a question mark. Do you  
20          recall that? Look at 361. I'll just -- let's  
21          just do it that way. Maybe that will refresh  
22          your recollection.

23      A     Okay.

24      Q     Um, do you know what you were thinking about when  
25          you wrote that?

1 A I believe what this is, is a number -- is a -- notes  
2 that I took during a conversation with O'Kelly  
3 because it makes reference to when he would be  
4 unavailable.

5 Q Okay. Now --

6 A He may have -- may have talked about whether or not  
7 we should have a psychiatric or psychological  
8 evaluation done.

9 Q And that would be for the purposes of the  
10 sentencing I take it?

11 A I believe -- I'm not sure what the purposes were  
12 going to be. I -- I guess. I don't remember.

13 Q Okay. Um, but it wasn't -- didn't have anything  
14 to do with the motion to suppress?

15 A I don't believe so, no.

16 Q That's like three days away?

17 A Right.

18 Q Yeah. Okay. Um, and on May 3, um -- or on May  
19 2, you -- you file a reply to the D.A.'s memo?  
20 You have a phone conference with the judge and,  
21 uh, Mr. Kratz followed up by an e-mail? And then  
22 you talked to the press, um, on May 3; is that  
23 right?

24 A There was a short phone conference with Angenette  
25 Levy and with Laurie Ricciardi. I'm not sure what it



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was.

Q Okay. I -- I was --

A I didn't call them.

Q I was -- I was summarizing May --

A Sure.

Q -- 2. But -- yeah. Okay. And then I --

A The 2nd. Yes.

Q Yeah.

COURT REPORTER: One at a time, please.

ATTORNEY DVORAK: Oh. Sorry.

THE WITNESS: Yes.

Q (By Attorney Dvorak) Okay. And on -- on May 3,  
again, there's a -- a -- an e-mail to O'Kelly.  
You review a Strang motion. Two phone  
conferences with members of the press. And you  
reorganize your file for the hearing.

The phone conference with Ricciardi and  
reorganizing your file, uh, for the hearing is --  
accounts for half an hour; correct?

A Right.

Q And so your billing records to this day  
accurately summarize the preparation that you did  
for the hearing on May 4?

A Yes.

Q By the way, you stipulated to the **Miranda**

1 warnings issue. Did you ever talk to Brendan  
2 about that?

3 A I don't recall if I did or not.

4 Q Okay. Um, in -- in -- did you, as part of the  
5 **Miranda**, or as part of the -- the motion to  
6 suppress, did you consider any of the police  
7 tacks -- uh, tactics that may have negated the  
8 **Miranda** warnings?

9 A Not as they related to **Miranda**. I did as they  
10 related to voluntariness as the memory items I filed  
11 indicate.

12 Q Okay. And how much time did you -- you called  
13 Barb at the hearing; right?

14 A I did.

15 Q And when did you talk to Barb about that hearing?

16 A Several times before it was conducted. Not for very  
17 long periods of time. I know I talked to her -- I  
18 was undecided whether to call her.

19 I was kind of reluctant to call her,  
20 but, uh, finally decided, I think, a day or two  
21 before the hearing to do it because she would  
22 have the best knowledge from being Brendan's  
23 mother for all of his natural life as to whether  
24 or not he was suggestible.

25 I thought, though, the primary evidence

1 as to the suppression was the -- the tape,  
2 itself, for three-and-a-half hours, which the  
3 Judge had already seen.

4 Q Right. Right. And when you asked her the  
5 question about suggestibility she seemed to  
6 answer -- it was kind of nonresponsive. Do you  
7 remember that?

8 A I do.

9 Q Yeah. Do you -- do you think she even knew what  
10 the word "suggestibility" meant?

11 A I -- I didn't know what the -- the problem was 'cause  
12 I talk -- used the word "suggestible" and things like  
13 that in previous conversations with her and she  
14 seemed to know what it was so I just quit while I was  
15 ahead.

16 Q Yeah. And there's -- I'm just skimming back, uh,  
17 just even the last -- maybe the last couple of  
18 pages on this, and there's no indication, at  
19 least from April 26 to the present, that you had  
20 talked to Barb?

21 A Probably not. April 26, that's --

22 Q Through the date of the hearing.

23 A That sounds about right.

24 Q Yeah. Okay. And I don't know how -- I'm not  
25 going to go back and figure it out. But at least

1 from that period of time you never talked to  
2 Barb?  
3 A I don't believe so.  
4 Q Okay. Um -- I want to -- on -- on May 5, the day  
5 after the hearing, um, I want to refer you to  
6 Exhibit 338.  
7 A Okay.  
8 Q This is an e-mail from you to Mr. Wiegert; right?  
9 A Uh, correct.  
10 Q And Mr. Kratz is copied on it?  
11 A I believe so.  
12 Q And I -- I can't read what the other one is.  
13 Um -- oh, that's Mike O'Kelly. That's right.  
14 Don't lie to me.  
15 A Right.  
16 Q Don't lie to me O'Kelly. He says, our  
17 investigator -- what -- what you -- you're  
18 telling Mr. Wiegert in this -- Mr. -- and -- and  
19 just for the record, Mark Wiegert is an  
20 investigator in this case; right?  
21 A Correct.  
22 Q Yeah. Um, so you're sending an e-mail to him  
23 informing him that Mike O'Kelly has developed  
24 some information in the course of talking to  
25 Brendan's relatives, but not Brendan, uh, that

1           might shed some light on the whereabouts of the  
2           Suzuki and Barb's van, which may contain some  
3           evidence useful in the case. You are authorized  
4           to talk to him directly. And you give him  
5           Mr. O'Kelly's phone number; right?

6    A       Right.

7    Q       Or by e-mail at the address above, and the cc.  
8           Uh, this appears to be insufficient, in and of  
9           itself, to establish probable cause for another  
10          search of the Avery salvage yard. However, it  
11          may go a long way toward getting you there.

12                        Um, had you -- so -- so you --  
13          obviously, you had a -- a discussion with O'Kelly  
14          about turning this stuff over to the State?

15   A       The information, yes.

16   Q       Okay. Had you ever talked to Brendan that you --  
17          about doing that?

18   A       No.

19   Q       Okay. You never got Brendan's okay to -- to have  
20          your investigator talk to the police and -- and  
21          give the police information that your  
22          investigator had gathered in the course of  
23          representing Brendan?

24   A       That's correct.

25   Q       Would you -- and it goes on. Would you -- we

1 would prefer to stay unnamed in any affidavit for  
2 search warrant if at all possible.

3 Um, now, I'm assuming that that's  
4 because you wouldn't want the Avery family or  
5 Brendan to know that that's what's going on?

6 A The Avery family, certainly.

7 Q Okay. Uh, what about Brendan? If Brendan found  
8 out about that, do you think it might cause a --  
9 a problem with your relationship with him?

10 A I don't think I even -- I don't think I considered  
11 that at that time.

12 Q You didn't even think about it. Okay. Um, Mike  
13 has not made any direct observations of the  
14 subject vehicle but it may lead you to  
15 re-question some witnesses prior to another  
16 search warrant application.

17 And then you request some information  
18 from the D.A.'s office so that he can look at the  
19 aerial photos; right?

20 A I requested they made -- made available to O'Kelly to  
21 view. Those were some of the materials that I did  
22 not make copies of.

23 Q Okay. So -- so -- and you didn't have -- you  
24 didn't have copies of those already; right?

25 A Correct.

1 Q That's some of the material that you had  
2 previously reviewed and decided that it really  
3 didn't matter much to -- as far as you could tell  
4 to Brendan's case?  
5 A At least not immediately, no.  
6 Q Yeah. Okay. Um, did -- did you ever turn this  
7 memo -- or this -- copy of this e-mail over to  
8 Mr. Fremgen?  
9 A I don't know if I did or not.  
10 Q Okay.  
11 A I'm not sure I printed it.  
12 Q Or Mr. Edelstein?  
13 A Right. Well, Edelstein was under contract from  
14 Fremgen.  
15 Q Okay. On May 7, Michael O'Kelly -- and I'm  
16 referring to Exhibit 65.  
17 A Okay.  
18 Q This is an e-mail from Len Kachinsky to you;  
19 correct?  
20 A Uh, from -- it's from Mr. O'Kelly to --  
21 Q I'm --  
22 A -- me.  
23 Q Yeah. I'm sorry. That's right. Um, and  
24 Mr. O'Kelly copies Mr. Kratz, Tom Fassbender --  
25 Special Agent Fassbender -- John Dederling, who is

1 with the Calumet Sheriff's Department. Right?

2 A Correct.

3 Q And he is notifying you and the prosecution that

4 he's going to be meeting with Brendan on Friday,

5 May 12, when Brendan returns from the hearing at

6 the Manitowoc County Courthouse, and telling you

7 that he would like to start meeting with Brendan

8 upon his arrival? In other words, as soon as

9 Brendan gets back; right?

10 A Yes.

11 Q What's the significance of May 12?

12 A I believe May 12 was decision day on the motion to

13 suppress. Or at least it was supposed to be.

14 Q Okay. So this is the -- this is a -- a key day,

15 as far as you're concerned, in terms of this --

16 where this case is headed?

17 A Whenever -- I don't -- whatever day that decision was

18 made, yes.

19 Q Yeah. That's -- that's a key day. All right.

20 Um, and he says in bold letters that he's cc'ing

21 the prosecutor, and Special Agent Fassbender, and

22 Dederling, and makes a request that he wants the

23 following information. And he lists a number --

24 11 items there; right?

25 A Right.



1 Q Okay. Um, did you -- what -- what do you -- what  
2 do you -- what can you tell me about what's going  
3 on here?

4 A I guess as I got this, I started getting concerned  
5 that he's doing the prosecutors' work for him. Um,  
6 and just demands, I think, were --

7 Q Well, you had --

8 A -- excessive.

9 Q Okay. You had talked to him about setting up a  
10 meeting once the decision --

11 A Right.

12 Q -- once the decision had come down. You had --  
13 you had talked to Mike O'Kelly about talking to  
14 Brendan to get him to confess again; correct?

15 A Right. Well, at least to see if he had changed his  
16 position. I don't know if I'd call it confess again,  
17 but, yes.

18 Q Well, changing his position means going from  
19 saying, I wasn't involved, to I was involved?

20 A Correct.

21 Q Okay. And saying, I'm involved is a -- a  
22 confession?

23 A Essentially.

24 Q Okay. Did you -- did you talk to Mike O'Kelly,  
25 by the way, about the concerns that you had?

1           That you just expressed about?

2    A    I don't -- I don't think I ever talked to him about  
3           his attitude, but I told him a number of his demands  
4           in there were -- were excessive, and un --  
5           unnecessary, and he was running up time and costs  
6           without any benefit to --

7    Q    Right.

8    A    -- to --

9    Q    Right.

10   A    -- the case. And he wasn't going to -- I was -- you  
11           know, there were limits to what the State Public  
12           Defender was going to pay, and I wasn't going to keep  
13           dumping requests on them without tangible usable  
14           results.

15   Q    Sure. Yeah. So you wanted him to -- to lean  
16           down a little bit about this?

17   A    Right.

18   Q    (Unintelligible.)

19   A    (Unintelligible.)

20                   COURT REPORTER: One at a time, please.

21                   THE COURT: Let's just rewind this. Start  
22                   over.

23   Q    Sure. The -- your -- your concern that you're  
24           expressing is the concern with the number of  
25           stuff that he wants, and your concern that the

1 Public Defender's Office isn't going to pay for  
2 it; right?

3 A Um, that, and I just thought that this was a -- well,  
4 it was going to take so much time to look at and read  
5 this stuff, and it just really was not necessary for  
6 him in terms of doing the job he needed to do for us.

7 Q Right.

8 A So it was running up, you know, in that sense,  
9 excessive hours.

10 Q Okay. Your concern was not that he was  
11 communicating with the prosecution?

12 A Correct.

13 Q Your concern was not that he was gathering  
14 information to lay on Brendan to get him to move  
15 off -- or -- or to -- to confess; right?

16 A That was the objective. We weren't -- the provision  
17 of information beyond the one instance you cited, uh,  
18 wasn't going to be made until another interview by  
19 Kelly with -- with Brendan.

20 Q And you selected May 12 because you knew that if  
21 the decision went against Brendan, that -- and  
22 Brendan learned about that, and you told him,  
23 well, we've lost the motion, this confession's  
24 coming in, you knew that this would be a low  
25 point for Brendan. This would be a -- a body

1 blow for Brendan?

2 A This would be a point he was most likely to think  
3 about what really happened and -- and tell me.

4 Q Yeah. You -- you -- you figured he would be most  
5 vulnerable at this point?

6 A From talking to me, yes.

7 Q Okay. So that was a -- a strategic decision, I  
8 guess you could say, on your part?

9 A The time of the interview shortly after the motion  
10 hearing.

11 Q Yeah.

12 A Yes.

13 Q On May 8 -- Exhibit 339.

14 A Okay.

15 Q You have -- it's a -- it's a e-mail from  
16 Mr. O'Kelly to Dederling and Special Agent  
17 Fassbender; correct?

18 A Right.

19 Q He didn't -- and -- and -- and what he's telling  
20 Fassbender and Dederling that he thinks their  
21 investigation would be well-served by consulting  
22 a student of his -- a former student of his --  
23 named Doug Weber, the Osceola County Sheriff in  
24 Iowa.

25 Did you have any -- did -- and -- and he

1           didn't cc you on this?  Didn't copy you on this?  
2           Did you know he was going to do that?  
3    A       No.  
4    Q       Do you know what that was about?  
5    A       Mr. O'Kelly had a belief that you could tell whether  
6           somebody was lying or telling the truth based upon  
7           linguistic analysis.  And so that's the best I can  
8           think about it.  
9    Q       Okay.  And did you authorize him to talk to  
10           the -- or communicate with the State, agents of  
11           the State, whether it be the D.A. or any of the  
12           officers on the case, without your knowing about  
13           it?  
14   A       No, I did not authorize that.  
15   Q       Okay.  When did you first learn about this  
16           e-mail?  
17   A       Uh, two minutes ago.  
18   Q       Okay.  Um, you had a conversation, however, with  
19           Mr. O'Kelly about linguistic analysis?  
20   A       I think certainly mentioned it off and on.  
21   Q       Okay.  What's your opinion of statement analysis?  
22                    ATTORNEY FALLON:  Objection.  Relevance.  
23                    ATTORNEY DVORAK:  I'll withdraw --  
24                    THE COURT:  Sustained.  
25                    ATTORNEY DVORAK:  -- the question.  I'm

1           sorry.

2       Q     (By Attorney Dvorak) Um, did you ask him to  
3           conduct a -- a linguistic analysis of Mr. -- of  
4           Brendan?

5       A     No.

6       Q     Then on May 9 there's a -- a couple more e-mails.  
7           I want you to refer to 66.

8       A     Okay.

9       Q     And I want you to start -- this is a -- a chain  
10          which starts on the back end of it. It's -- I  
11          think it starts on the second page is what I want  
12          to re -- direct your attention to.

13                        It says, Thanks, Mike. Original  
14          message. And you go down. And before there's a  
15          list of things -- you're talking about making  
16          arrangements for him to do a videotaped in --  
17          interview on May 12; right?

18       A     It was certainly an interview. And he mentioned he  
19          was going to videotape it.

20       Q     Right. He's -- he talks. And --

21       A     Right.

22       Q     In fact, you mention it in your e-mail. He's  
23          going to bring recording devices. A camcorder.  
24          Dictaphone. Portable audio recorder.  
25          Accessories. Tripod. Blank recording tapes.

1 Toshiba laptop -- -top. A Canon IP-90 portable  
2 printer and paper. He wants to bring all of this  
3 stuff in; right?

4 A Right.

5 Q Okay. This is going to be a production on May  
6 12?

7 A That's -- that's what he wanted to try to do  
8 depending on what the conversation was.

9 Q Yeah. Okay. And, um, your -- you find out --  
10 your -- you know about this, and you say earlier,  
11 up farther, you're going to -- you're going to  
12 make that communication.

13 And, um, on your part of the e-mail,  
14 you're going to communicate with him. Try to get  
15 the okay. Uh, and you suggest that he call  
16 the -- the D.A.'s office, speak to Shirley to get  
17 access to the items that he's -- what is it?  
18 This 11 items that he's asked for; right? Rather  
19 than your doing it?

20 A I believe so.

21 Q And then you say, um, in the next paragraph,  
22 unless you think it would be a bad idea, I was  
23 planning on going to Sheboygan on Wednesday  
24 afternoon for a general pep talk, and to talk to  
25 him about giving a complete statement to you on

1 Friday. Um, right?

2 A Correct.

3 Q Okay. You wanted his opinion about that?

4 Whether that was a good idea for you to do?

5 A Right.

6 Q Okay. The next day you hear back from

7 Mr. O'Kelly, and he says -- and it's -- this is

8 the third paragraph from the bottom. "I think

9 that your visit," you see that?

10 A Right.

11 Q I think that your visit will be counterproductive

12 to our goals for Brendan. It could have Brendan

13 digging his heels in further. He could become

14 more entrenched in his illogical position and

15 further distort the facts.

16 He has been relying on a story that his

17 family has told him to say about October 31.

18 Thus, it will take me longer to undo, if I can

19 even, without your visit.

20 So he's telling you not to go?

21 A That was his recommendation, yes.

22 Q Okay. And -- and you reply back to him; is that

23 right?

24 A Correct.

25 Q And you say, Mike, I will cancel my planned visit



1 for today. I have plenty of other work to do.

2 Right?

3 A Correct.

4 Q He goes on to say that Brendan needs -- and this  
5 is the last paragraph. Brendan needs to be  
6 alone. When he sees me this Friday, I will be a  
7 source of relief. He and I can begin to bond.

8 He needs to trust me and the direction  
9 that I steer him into.

10 Brendan needs to provide an explanation  
11 that coincides with the facts, slash, evidence.

12 Right?

13 A Right.

14 Q You knew that's what -- that's where he's headed?  
15 Strategies that -- that he was going to try and  
16 use; right?

17 A Yes.

18 Q So not only did he not want you to go down there  
19 and let him know that -- what was going to happen  
20 on Friday, May 12, um, he also didn't want you  
21 there on May 12?

22 A That's correct.

23 Q Okay. So on May 12 a judge issues a decision  
24 denying your motion; right?

25 A I believe that was the day.

1 Q Yeah. Um, and as part of -- prior -- yeah.  
2 And -- and up until this point, up until May 12,  
3 Brendan is still maintaining his innocence;  
4 correct?

5 A Yeah. He hadn't made any statements contrary to what  
6 he made in the previous one or two. The first ones  
7 when he said he didn't do it, wanted the polygraph.

8 Q Yeah. Okay. Um, and you hadn't told him about  
9 the results of the polygraph, had you?

10 A At some point I did. I'm not sure when it was. I  
11 told him it was inconclusive. I think it was -- I  
12 probably told him that -- the one time -- the first  
13 time I met him after it was, uh (unintelligible) --

14 Q Would it surprise -- I'm sorry. Would it  
15 surprise you to learn that, um, the -- one of the  
16 first things that Mr. O'Kelly did when he was  
17 with Brendan was to show him a computer screen  
18 and explain to him that those were the polygraph  
19 results, and that it was 90-some percent  
20 conclusive that --

21 ATTORNEY FALLON: I'm going to object to  
22 this detail on the polygraph discussion.

23 THE COURT: The grounds?

24 ATTORNEY FALLON: Court's previous  
25 ruling. There's enough evidence in the record

1 for state of mind-type of questioning.

2 But for this particular detail, I think  
3 it's beyond the scope of what would be permitted  
4 for that.

5 So I would object based on the Court's  
6 previous ruling of inadmissibility.

7 ATTORNEY DVORAK: I have a better idea,  
8 Judge. Let me try to rephrase the question. If  
9 his objection is to detail, because I --

10 Q (By Attorney Dvorak) Um, Mr. -- Mr. O'Kelly -- I  
11 guess what I'm getting at is, is the -- the tape  
12 from May 12 would suggest that Brendan did not  
13 know the results of that polygraph test. Would  
14 that surprise you?

15 A It would, 'cause I know I told him at least once.  
16 But maybe he didn't -- I -- I don't know why he  
17 wouldn't remember something like that.

18 Q All right. The -- let me see.. You give a press  
19 conference -- or you talk to the press after --  
20 you talk to Fox 11 after that hearing on May 12.  
21 And I refer you to Exhibit 329.

22 A Okay.

23 Q And you -- you express -- you tell the press that  
24 you're not terribly surprised at the ruling as  
25 much as you're disappointed in it. So we'll just

1           have to take it from there?

2    A    Right.

3    Q    You -- you weren't surprised?

4    A    No.

5    Q    You'd expected to lose?

6    A    Yes.

7    Q    Um, and at this point there is a -- an issue of

8           bail that's addressed by the State where things

9           are to be sealed; right?

10   A    There's mention of that in there.

11   Q    Yeah. Okay. And the State is asking that it be

12           sealed, presumably, because they don't want the

13           information to become public; right?

14   A    Right.

15   Q    And your comment about that is -- the second

16           page. Or is it the third page? I'm sorry. The

17           third page, second to the last paragraph.

18           It's -- it -- you got it?

19   A    Yeah.

20   Q    It's not -- it's not what I would characterize as

21           smoking gun evidence regarding Dassey. Certainly

22           it does, to some extent, corroborate his

23           confession about all I can really say about it.

24                        Um, clearly this evidence was not in the

25           public domain yet; right?

1 A Correct.

2 Q Okay. And, clearly, it is prejudicial to  
3 Brendan? At least to some extent? Whatever it  
4 is?

5 A As I recall, it dealt with some crime lab results.

6 Q Okay. You say --

7 A Not directly --

8 THE COURT: Well, here.

9 Q -- that it does to some extent corroborate his  
10 confession. That's what you say in the press.  
11 Whether it does or not, I don't care. Is that  
12 what you -- that's what you said, though;  
13 correct?

14 A Yes.

15 Q Okay. Um, meanwhile, um, Mr. O'Kelly is waiting  
16 for Brendan at the Sheboygan facility; right?

17 A He was supposed to.

18 Q Had you pretty much given Mr. O'Kelly carte  
19 blanche to do whatever he saw fit at this  
20 interview? I mean, you trusted him to -- to --  
21 to do what he was going to do; right?

22 A I assumed he would act within, you know, ethical  
23 moral behavior.

24 Q Okay. Do you assume that he would -- did you  
25 have a discussion with him about what he was

1 going to do?

2 A Only in very general terms that he was going to go  
3 over the evidence that existed in the case with  
4 Brendan, compare that with his statement, and try to  
5 convince Brendan, logically, that if confession was  
6 valid and that the State was probably going to get a  
7 conviction if there was a trial.

8 Q Okay. Now, but at this point were you aware of  
9 any physical evidence, any DNA, any fingerprints,  
10 or anything of that nature, that put Brendan in  
11 Steven Avery's house that night?

12 A Not that I was aware of, no.

13 Q Okay. In fact, there was none; right?

14 A I don't know what developed after I was off the case.

15 Q Right. But certainly to this point there was no  
16 physical evidence of -- of certainly no  
17 fingerprints, or DNA, or anything of that nature,  
18 that put Brendan inside Steven Avery's house?

19 A That I was aware of, no.

20 Q Right.

21 A Yes.

22 Q Okay. Do you know if Mike O'Kelly was aware of  
23 any?

24 A I don't think so.

25 Q Okay. Did -- but you did -- you knew that

1 Michael O'Kelly was going to bring the tape  
2 because of the e-mail. Did you ever take a look  
3 at that tape?

4 A No.

5 Q You never did?

6 A No.

7 Q Okay. What I'd like to do is --

8 ATTORNEY DVORAK: Can I just have one  
9 second, Judge? Judge, at this point what I would  
10 like to do is play some of the clips from the --  
11 that May 12 interview for Mr. Kachinsky to see  
12 if -- what he knew, and if he knew it, whether he  
13 would have approved of what was going on with  
14 Mr. O'Kelly.

15 ATTORNEY FALLON: The State would object  
16 to that proffer at this particular time based on  
17 the status of the record.

18 Mr. Kachinsky has indicated he was  
19 unaware, had never reviewed the tape, um, and  
20 there's been no authentication or identification  
21 of that matter, uh, what we're going to see is,  
22 in fact, what occurred or allegedly transpired on  
23 May 12.

24 THE COURT: I take it that's a foundation  
25 objection?

1                   ATTORNEY FALLON: Yes. And, most  
2 importantly, I would still object as it relates  
3 to relevance and materiality un -- under the  
4 underlying proceeding.

5                   THE COURT: Court is going to sustain the  
6 objection.

7                   ATTORNEY DVORAK: Judge, uh -- go ahead.

8                   ATTORNEY DRIZIN: May I respond, Your  
9 Honor?

10                  THE COURT: No.

11                  ATTORNEY DRIZIN: Can I make -- can we  
12 make an offer of proof with regard to this, Your  
13 Honor?

14                  THE COURT: Go ahead.

15                  ATTORNEY DVORAK: Um, if the -- I think  
16 the -- the evidence would show that Mr. O'Kelly  
17 had laid out a -- a rather elaborate display of  
18 material that he had gathered from his  
19 investigation, and those materials included  
20 photographs of Teresa Halbach, of the church,  
21 ribbons from her -- from the church, a photograph  
22 of a sign from the Avery property that said "dead  
23 end." Um, and --

24                  Yes. Yes. Okay. That is I -- I'm just  
25 describing what the setting was. And -- and it



1           also had a laptop computer on it. The laptop  
2           is -- Mr. O'Kelly goes in and starts with the  
3           laptop and points to the laptop and asks  
4           Mr. Dassey -- asks Brendan, what do -- does he  
5           know what that is. And Brendan says, no.

6                         And he then proceeds to say that it's  
7           the polygraph results, and proceeds to -- to tell  
8           Brendan that the results of the polygraph test  
9           essentially are that he has -- that he lied and  
10          that he failed the polygraph test. That there  
11          was 98 percent showing of deception.

12                        And a -- Mr. O'Kelly asks Brendan  
13          whether or not he knows what that means. And  
14          Brendan turns to him and says, does that mean I  
15          passed? And Mr. O Kelly says, no, it means you  
16          failed.

17                        Um, that's how this interview starts.  
18          The -- the clip -- the second clip is going to  
19          show that Mr. O'Kelly then engaged in several  
20          coercive tactics, uh, techniques to get Brendan  
21          to confess.

22                        Um, and -- and the -- the third clip,  
23          he -- he tells Mr. -- he tells Brendan that the  
24          only two things that he doesn't know about this  
25          case is whether or not Brendan is sorry for what

1 he did and whether he would do it again.

2 And Brendan tells him that he doesn't  
3 know if he's sorry because he didn't do anything.

4 Michael O'Kelly then tells him that his  
5 situation is essentially helpless. He tells  
6 Brendan that -- Michael O'Kelly -- that I cannot  
7 help you, and that you're going to spend the rest  
8 of your life in prison. Essentially telling him  
9 that he has no hope. He has no other option.

10 In clip four you would see that --  
11 Michael O'Kelly saying you understand it now.  
12 Brendan knows that he has no one in the justice  
13 system to help him. That -- that he's -- he is  
14 totally alone. Totally abandoned.

15 That even his lawyer at this point  
16 doesn't believe him, and that his -- it really --  
17 he's all alone in this and he's by himself.

18 He then gets Brendan to retract his last  
19 statement on this survey form. The previous one  
20 that I think we had introduced into evidence.  
21 And -- and that previous survey form in -- in  
22 which Mr. -- Brendan had -- had claimed  
23 innocence, and telling Mr. Dassey that it was not  
24 an option but to retract it.

25 And -- and did that again in clip seven

1 and eight.

2 Um, I would like to know from  
3 Mr. Kachinsky whether or not, had he been there,  
4 he would have authorized any or all of those  
5 techniques. Any or all of those statements to  
6 Mr. -- to Brendan, to his client. Um, and what  
7 he thought about that activity. Whether he would  
8 have stopped the interrogation. Whether he would  
9 have done anything to mitigate it or minimize the  
10 impact of -- of these clearly coercive  
11 techniques. Or whether or not he would have let  
12 Mr. O'Kelly continue.

13 Um -- did you -- and -- and I would  
14 have -- I would like to know from Mr. Kachinsky  
15 whether or not he knew that was going to -- the  
16 interview was going to proceed that way. Whether  
17 or not he had previously authorized any of these  
18 tactics, um, any of this procedure before  
19 Mr. O'Kelly engaged those things. Um --

20 THE COURT: Does that complete your offer  
21 of proof?

22 ATTORNEY DVORAK: No.

23 ATTORNEY DRIZIN: Judge, I don't want to  
24 interrupt Counsel, but I just need to be clear.  
25 Did you sustain the objection on relevance

1 grounds or did you sustain the objection on  
2 foundation grounds?

3 THE COURT: Actually, at this point, it is  
4 on foundation grounds. I'll reserve rule -- ruling  
5 on relevance grounds. Okay.

6 ATTORNEY DVORAK: Well, then, Judge,  
7 could we offer it conditionally subject to  
8 proving it up? Uh, proving --

9 THE COURT: No.

10 ATTORNEY DVORAK: Okay. Then we reserve  
11 the right to call Mr. Kachinsky again.

12 THE COURT: How much longer, Counsel, are  
13 we going to be spending with Mr. Kachinsky?

14 ATTORNEY DVORAK: Um, I'm -- I think I'm  
15 actually pretty close to being done, Judge,  
16 'cause I don't plan on going past May 13.

17 THE COURT: You're on May 12, so --

18 ATTORNEY DVORAK: Yeah, so not much --  
19 not much left.

20 THE COURT: Okay. Go.

21 ATTORNEY DVORAK: Um, and -- well, I --  
22 and I do have a few follow-up questions. All  
23 right.

24 Q (By Attorney Dvorak) Um -- all right. You  
25 then -- you get a -- a phone call from

1 Mr. O'Kelly later that evening on the 12th;  
2 right?

3 A Yes.

4 Q Okay. Um, and what do you -- what's your  
5 recollection of that phone call?

6 A Approximately nine p.m. he calls me. It's a Friday  
7 night. He tells me about the interview. And that as  
8 a result of his interview, that Brendan had indicated  
9 he was involved in the death and sexual assault of  
10 Teresa Halbach. And that Brendan wanted to give --  
11 now give a statement to -- to law enforcement.

12 Q Okay. Did you get the details of -- of what  
13 Brendan had said from Mr. O'Kelly that night?

14 A No.

15 Q Ultimately, an interview was set up for the  
16 following day; correct?

17 A Saturday, the 13th, yes.

18 Q Right. And did you sit down with Mr. O'Kelly and  
19 get the details of what Mr. -- of what Brendan  
20 had said with him any time prior to the interview  
21 with Wiegert and Fassbender on the 13th?

22 A No.

23 Q Okay. Now, you did -- what -- what -- what  
24 happened next? Tell me what happened next?

25 A We discussed when this would take place.

1 Q Okay.

2 A I told him I had a --

3 Q Had you -- I'm sorry. Let me --

4 A Sure.

5 Q -- interrupt for a second. Had you alerted --

6 ATTORNEY FALLON: Your Honor, I'm going  
7 to object. You -- you can't ask a question, the  
8 witness starts to answer, and then interrupt with  
9 another question. He's got to wait for the  
10 answer.

11 ATTORNEY DVORAK: I -- I'm sorry.

12 THE COURT: All right. Finish your answer.

13 THE WITNESS: Sure. I told him that --  
14 the ques -- question was when it would be done.  
15 He wanted to do it Saturday. I told him Saturday  
16 would be a problem because I couldn't be there  
17 'cause I had a prior military commitment with my  
18 Army Reserve Unit that I thought was going to be  
19 my last drill. Some important administrative  
20 material to -- to take care of.

21 And, then, at some point he put Brendan  
22 on the phone, and Brendan said -- I said the  
23 alternative was to go Wednesday, when that was  
24 the next available day I had without canceling  
25 court appearances.

1                   And, then, Bren -- he put Brendan on the  
2                   phone. Brendan said he wanted to do it now. He  
3                   didn't want to wait 'til, um, Wednesday. He  
4                   didn't want me there.

5                   Um, and so I had some discussions with  
6                   Mr. O'Kelly that we needed to have a member of  
7                   the defense team present during this interview,  
8                   even though it was going be videotaped, and even  
9                   though it was basically a -- a proffer for -- for  
10                  plea negotiations, and that was there some way we  
11                  could work it out.

12                  I'd have to be available by -- by phone  
13                  and he'd have to be there to monitor it. We have  
14                  to do something if we're going to do it on  
15                  Saturday as opposed to waiting until Wednesday.

16                  Q       How long did this conversation last? Um -- okay.

17                  ATTORNEY DVORAK: Judge, I would like to  
18                  play a -- a clip of that conversation. I think  
19                  that Mr. Kachinsky can at least authenticate  
20                  whether or not it's an accurate rendition of what  
21                  the conversation was.

22                  THE COURT: Okay.

23                  ATTORNEY FALLON: From -- from which  
24                  conversation, Counsel?

25                  ATTORNEY DVORAK: The conversation he's

1 just describing.

2 ATTORNEY FALLON: With Mr. O'Kelly?

3 ATTORNEY DVORAK: Yes. And with  
4 Mr. O'Kelly as well as with Mr. -- with Brendan.  
5 I think that's ten.

6 ATTORNEY FALLON: I'm sorry? What was  
7 that again?

8 THE COURT: The exhibit number and the  
9 clip? I take it there's a transcript in here?

10 ATTORNEY DVORAK: Speak up.

11 ATTORNEY NIRIDER: Sorry, Your Honor.  
12 The transcripts of what we're going to  
13 (inaudible) is on Exhibit 315. I'll have the  
14 page number for you in just a moment. And the  
15 video that we'd like to play (inaudible) Exhibit  
16 212.

17 ATTORNEY FALLON: Exhibit 315.

18 ATTORNEY DVORAK: Judge, I think we'll  
19 wait -- we'll wait and do it with Mr. O'Kelly.

20 THE COURT: Okay.

21 Q (By Attorney Dvorak) Now, what conversations did  
22 you have with the prosecution prior to -- let me  
23 back up a minute.

24 Um, the prosecution, State, knew that  
25 you were going to go in and talk to Brendan on



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May 12; right?

A I'm not sure if they knew or not. I mean --

Q There was -- there was an e-mail that we discussed earlier where Mr. O'Kelly was -- let everybody know that this was going to happen on May 12?

A Might have.

Q Remember that?

A Certainly he needed advance warning to the sheriff's department to visit Brendan on a professional visit level.

Q There's Exhibit 65. Would you review Exhibit 65 and see if that refreshes your recollection?

ATTORNEY DRIZIN: Judge, may I ask a question? How long do you intend to go today? Because, you know, I don't know whether it's a good time to break now because I don't know if the State's going to have enough time to finish their cross.

THE COURT: Courthouse is supposed to close at 4:30.

ATTORNEY DRIZIN: That's what I thought.

THE COURT: And I'm allowing this on Mr. Dvorak's representation that he had not many more questions. But one more day -- and I suppose I

1 should have asked Mr. Fallon or Mr. Kratz whether  
2 they have a significant number of questions that  
3 they think they will be asking?

4 ATTORNEY FALLON: Based on the Court's  
5 preliminary rulings, I have lots of questions.

6 THE COURT: All right. Then, let us call  
7 it a day.

8 ATTORNEY DVORAK: Can we get the answer  
9 to the last question?

10 THE COURT: About --

11 ATTORNEY DVORAK: Might as well finish  
12 it up before --

13 THE COURT: Okay. Sure.

14 THE WITNESS: Which number?

15 ATTORNEY FALLON: Exhibit 65.

16 ATTORNEY DVORAK: Sixty-five.

17 THE WITNESS: Okay. That's what I have  
18 in front of me. Yes.

19 Q (By Attorney Dvorak) Does that refresh your  
20 recollection? Let me see if I can --

21 A Right. The watch commander was notified.

22 Q And -- and --

23 A Well, he had sent us (unintelligible) --

24 Q (unintelligible) -- everybody was cc'd on it --

25 A He --

1 Q -- correct?

2 A -- did, yes.

3 Q So everybody knew about it.

4 ATTORNEY DVORAK: Um, Judge, the, um --  
5 at this point we would move into exhibits that we  
6 have referred to; 317, 55, 306, 319, 320, 3 --

7 ATTORNEY FALLON: Slow down.  
8 Three-twenty.

9 ATTORNEY DVORAK: 360, 321, 4 -- 41,  
10 322, 343, 359, 323, 324, 325, 326, 347, 63, 350,  
11 94, 328, 327, 64, 361, 338, 65, 339, 66, 329, 65,  
12 um, and Exhibit 337, which is a -- a -- an  
13 exhibit summary of the media statements that we  
14 referred to, and Exhibit 212, which is a -- a  
15 summary -- a -- a video.

16 THE CLERK: I also had Exhibit 40.

17 ATTORNEY FALLON: That last one was  
18 Exhibit 212?

19 ATTORNEY DVORAK: Yeah.

20 THE COURT: Yes.

21 ATTORNEY DVORAK: And 315, which is  
22 sum -- is a summary of the video transcripts.  
23 The portions that -- anyhow that we played.

24 ATTORNEY FALLON: Um, do you want  
25 argument? Or it might -- given the number of the

1 exhibits here I have some general comments. Most  
2 of it I don't object to but I do have -- there  
3 are cert -- some objections to some of the  
4 material in the exhibits.

5 Most notably, the media reports and  
6 the -- the interpretations by the members of the  
7 media as to what they think Mr. Kachinsky may or  
8 may not have meant, I object to that.

9 As to the parts of those exhibits  
10 directly attributing comments to Mr. Kachinsky in  
11 quotes, which he identified as, yes, I said that,  
12 we have no objection to that.

13 But I object to the -- to the use of the  
14 statements by the -- by the media, or their  
15 connotations, interpretations, or whatever,  
16 because they're irrelevant and immaterial. And  
17 they're also -- well, arguably, hearsay. But...

18 THE COURT: Yeah. And I think in most  
19 instances Mr. Kachinsky voiced his reservations  
20 about those portions of those --

21 ATTORNEY FALLON: He did.

22 THE COURT: -- media -- media releases that  
23 he thought did not accurately reflect what he said  
24 or even what was said.

25 ATTORNEY FALLON: Right.

1 THE COURT: And I understand that. I  
2 understand your objection as well. I'm going to  
3 receive them, but -- but I'm also going to -- I'm  
4 also going to view them, if I have to, through --  
5 through the testimony of the witness --

6 ATTORNEY FALLON: All right.

7 THE COURT: -- who was allegedly quoted.

8 ATTORNEY FALLON: All right. But I do,  
9 then, have -- the only concerns remaining, then,  
10 are these exhibit summaries, uh, 212, 337. I  
11 don't think those have been identified, and I  
12 don't know -- 'cause I haven't looked at them,  
13 and examined them, and we haven't discussed  
14 them -- I don't know if they include additional  
15 matters not discussed at this time given that  
16 they haven't concluded their direct examination  
17 of Mr. Kachinsky.

18 ATTORNEY DVORAK: That's --

19 ATTORNEY FALLON: So --

20 ATTORNEY DVORAK: -- fair, Judge.

21 ATTORNEY FALLON: So I -- I ask you to  
22 just take that -- those summary exhibits under  
23 advisement until we have further discussions and  
24 review.

25 THE COURT: Yeah. I -- I just looked at

1 317, I think it was, or --  
2 ATTORNEY FALLON: 337 and --  
3 THE COURT: 337.  
4 ATTORNEY FALLON: -- 212 or something.  
5 THE COURT: Almost looks like a -- a chart.  
6 ATTORNEY FALLON: Right.  
7 THE COURT: Sort of a Chapter 910 exhibit.  
8 But I don't think Mr. Dvorak is asking at this point  
9 to have them received today. Is that correct?  
10 ATTORNEY DVORAK: Correct. That's  
11 correct, Judge.  
12 ATTORNEY FALLON: Okay. Then we'll just  
13 hold that part in abeyance and that's fine.  
14 ATTORNEY DVORAK: Right.  
15 THE COURT: All right. Now, I think that  
16 concludes the testimony today. Court will reconvene  
17 at 8:30 on Tuesday morning. Court -- courtrooms are  
18 not open on Monday morning next week. So any  
19 questions?  
20 THE CLERK: I just had one exhibit that  
21 wasn't read that they referred to which was Exhibit  
22 40. I don't know if that's --  
23 THE COURT: Well, let's clear that up.  
24 ATTORNEY FALLON: It was a question  
25 regarding Exhibit 40?

1 ATTORNEY DVORAK: I don't think I did.

2 Yeah. I may have mentioned it, Judge. I don't  
3 know that I -- I presented it to --

4 THE COURT: You may have mentioned that in  
5 error. I recall you mentioning it, and looking at  
6 it --

7 ATTORNEY DVORAK: Yes.

8 THE COURT: -- and I don't think that's  
9 what you meant to be talking about.

10 ATTORNEY FALLON: It was mentioned in  
11 the questioning -- I remember now -- regarding a  
12 news report. There were going to be some  
13 questions on it. There may have been one but  
14 then they moved on to another topic.

15 So I'm not sure if they want Exhibit 40  
16 in or not. It is what it is, as they say, in  
17 terms of a media account.

18 THE COURT: Right.

19 ATTORNEY FALLON: I don't care.

20 ATTORNEY DRIZIN: Why don't we take that  
21 up on Tuesday morning, Judge.

22 THE COURT: All right.

23 ATTORNEY DRIZIN: Thank you.

24 THE COURT: Anything else?

25 ATTORNEY FALLON: Could -- could we have

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a little chat in chambers?

THE COURT: Sure. You may step down.

THE WITNESS: Thank you, Your Honor.

(Recess had at 4:40 p.m.)



1 STATE OF WISCONSIN )  
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I, Jennifer K. Hau, Official Court Reporter for Circuit Court Branch 3 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 24<sup>th</sup> day of March, 2010.

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